



Brighton Council

**MINUTES OF THE ORDINARY COUNCIL MEETING
OF THE BRIGHTON COUNCIL HELD IN THE
COUNCIL CHAMBERS, COUNCIL OFFICES, OLD BEACH
AT 5.30 P.M. ON TUESDAY,
21ST JULY 2020**

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

IN ATTENDANCE: Mr J Dryburgh (General Manager); Mr G Davoren (Deputy General Manager); Mr H Macpherson (Municipal Engineer); Mr D Allingham (Manager Development Services); Mrs J Banks (Governance Manager) and Mrs J Blackwell (Planning Officer).

1. ACKNOWLEDGEMENT OF COUNTRY:

I would like to begin by acknowledging the traditional owners of the land on which we meet today. I would like to pay my respects to Elders past, present and emerging and acknowledge the Aboriginal people present today.

2. CONFIRMATION OF MINUTES:

2.1 CONFIRMATION OF MINUTES OF THE ORDINARY COUNCIL MEETING OF 16 JUNE 2020:

Cr Curran moved, Cr Garlick seconded that the Minutes of the Ordinary Council meeting of 16th June 2020 be confirmed.

CARRIED

VOTING RECORD

In favour	Against
Cr Curran	
Cr Foster	
Cr Garlick	
Cr Geard	
Cr Gray	
Cr Jeffries	

Cr Murtagh
Cr Owen
Cr Whelan

3. APPLICATIONS FOR LEAVE OF ABSENCE:

All members were present.

4. PUBLIC QUESTION TIME AND DEPUTATIONS:

- Mr Ben Wilson and Mr James Norman from Centacare Evolve Housing updated Council on Centacare Evolve projects in the municipality.
- Mr Martin Blake from State Growth addressed Council in relation to the proposed Bridgewater Bridge.

5. 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 Gray, Cr Whelan and Cr Geard declared an interest in Item 12.4.

6. REPORTS FROM COUNCILLORS:

6.1 MAYOR'S COMMUNICATIONS:

Mayor Tony Foster provided a verbal update at the meeting.

DECISION:

Cr Owen moved, Cr Jeffries seconded that the report be received.

CARRIED

VOTING RECORD

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

6.2 REPORTS FROM COUNCIL REPRESENTATIVES WITH OTHER ORGANISATIONS:

DECISION:

Cr Geard recently attended a meeting with Council staff in relation to the location of the dog shed/structure at Pontville Park.

Cr Geard and Cathy Harper have been consulting in relation to COVID19 updates.

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

CARRIED

VOTING RECORD

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

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 were held in the previous month.

8. NOTICES OF MOTION:

There were no Notices of Motion.

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:

There were no supplementary agenda items.

10. REPORTS FROM COMMITTEES:

There were no committee reports for the July Ordinary Council Meeting.

Cr Jeffries moved, Cr Curran seconded that the Council meeting be adjourned to allow the Planning Authority to discuss the following items.

CARRIED

VOTING RECORD

In favour	Against
Cr Curran	
Cr Foster	
Cr Garlick	
Cr Geard	
Cr Gray	

Cr Jeffries
Cr Murtagh
Cr Owen
Cr Whelan

Cr Gray took the Chair.

11. 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 11 on this agenda, inclusive of any supplementary items.

11.1 APPLICATION UNDER BRIGHTON INTERIM PLANNING SCHEME 2015 - DA 2018/0017 – 36, 38 & 40 MORRISBY ROAD, OLD BEACH AND ADJOINING COASTAL RESERVE (DERWENT RIVER FORESHORE) - MINOR BOUNDARY ADJUSTMENT, MULTIPLE DWELLINGS (6 UNITS) AND ASSOCIATED HYDRAULIC INFRASTRUCTURE:

Type of Report	Planning Authority – For Decision
Application No:	DA 2018/0017
Address:	36, 38, & 40 Morrisby Road, Old Beach
Proposal:	Minor Boundary Adjustment, Multiple Dwellings (6 Units) and Associated Hydraulic Infrastructure
Zone:	General Residential Zone
Representations:	Three (3)
Discretions:	<ol style="list-style-type: none">1. Building Envelope2. Private Open Space3. Sunlight and overshadowing4. Parking and Access5. Stormwater Drainage and Disposal6. Buildings and Works within a Waterway and Coastal Protection Area7. Buildings and Works within a Coastal Erosion Hazard Area
Author:	Planning Officer (Jo Blackwell)

1. Executive Summary

- 1.1. Planning approval is sought for a minor boundary adjustment, demolition and subsequent development of two dwelling per lot (x3) at 36 and 38-40 Morrisby Road, Old Beach (the 'site'). The site is situated within the General Residential Zone of the *Brighton Interim Planning Scheme 2015* (the 'Interim Scheme').
- 1.2. The application invokes discretion to Acceptable Solutions of the Interim Scheme related to the development standards for building envelope, private open space, sunlight and overshadowing and as well as the Parking and Access Code, Stormwater Management Code, Waterway and Coastal Protection Code, Inundation Prone Areas Code and the Coastal Inundation Hazard Code.
- 1.3. The application has been advertised for public exhibition. A total of four representations were received.
- 1.4. The application is recommended for conditional approval.
- 1.5. Due to the receipt of representations during the public exhibition 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 2018/0017.
- 2.2. This determination must be made no later than 6 September 2020. The statutory assessment period has been extended with the consent of the applicant.
- 2.3. The relevant legislation is the *Land Use Planning and Approvals Act 1993* (the 'Act'). The provisions of the Act require a planning authority to take all reasonable steps to ensure compliance with the planning scheme.
- 2.4. This report details the reasons for the officer recommendation. The Planning Authority must consider this report but is not bound to adopt the recommendation. Broadly, the Planning Authority can either: (1) adopt the recommendation, or (2) vary the recommendation by adding, modifying or removing recommended reasons and conditions or replacing an approval with a refusal (or vice versa). Any alternative decision requires a full statement of reasons to comply with the *Judicial Review Act 2000* and the *Local Government (Meeting Procedures) Regulations 2015*.
- 2.5. This report has been prepared with appropriate regard to the State Policies that apply under the *State Policies and Projects Act 1993*.

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

3. Risk & Implications

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

4. Background

- 4.1. The application was initially listed for decision at the March 2020 Planning Authority meeting. The officers report determined that the original proposal exceeded the building envelope and was not able to satisfy the performance criteria and was therefore recommended for refusal.
- 4.2. The applicant withdrew the application from the March agenda and has subsequently submitted amended plans.
- 4.3. The proposal was re-advertised for a second period of public exhibition. Three representations were received in relation to the proposal; details are outlined in section 9 of this report.

5. Site Detail

- 5.1. The site is comprised within three certificates of title, with a combined land area of 1950sqm. A dwelling has been constructed the dividing boundary between 38 and 40 Morrisby Road (see Figure 1). That building has been identified in the application for demolition.



Figure 1: Subject Site

- 5.2. The site and surrounding land on three sides is within the General Residential Zone of the Interim Scheme, while land located to the west is zoned Open Space (see Figure 2).



Figure 2: Zoning Map

- 5.3. Two overlays affect the land including waterway and coastal protection and coastal erosion hazard area (see Figures 3 and 4).

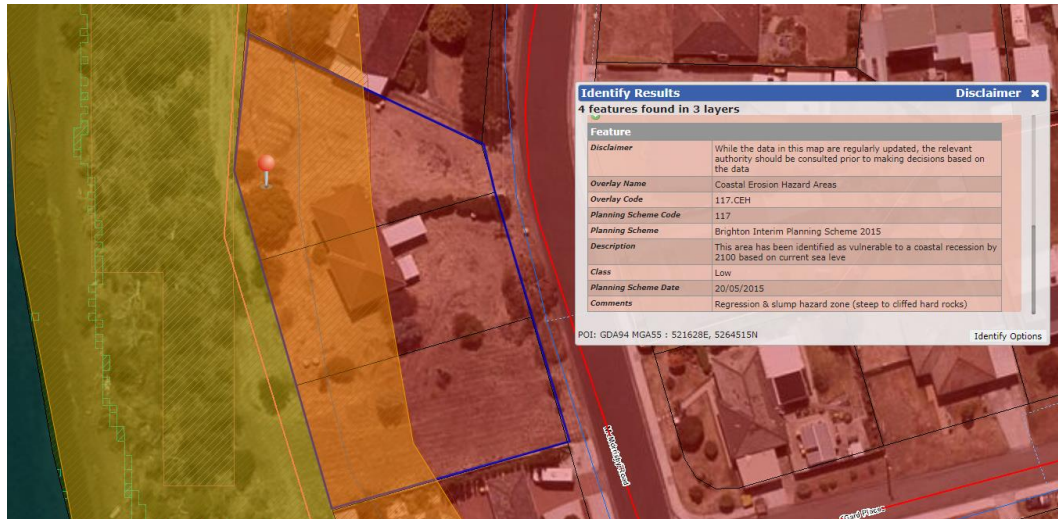


Figure 3: Coastal Erosion Hazard Overlay (Listmap)

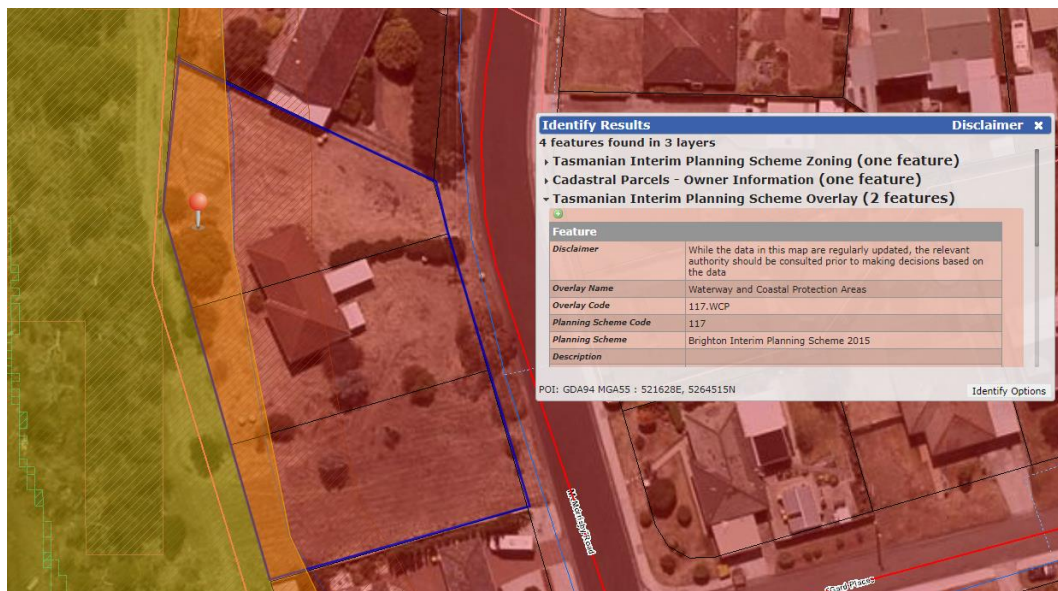


Figure 4: Waterway and Coastal Protection Overlay (Listmap)

- 5.4. The site falls slightly to the west, and slightly more in the northern corner.
- 5.5. There is no significant vegetation present on the site.
- 5.6. Morrisby Road has a speed limit of 50kmh.

6. Proposal

- 6.1. The proposal involves:

- (a) A minor adjustment to the boundaries shared between 36 & 38 Morrisby Road and 38 & 40 Morrisby Road to create three (3) lots with 650m² in land area each.
- (b) Demolition of the existing dwelling.

(c) Two conjoined multiple dwellings on each of 3 lots.

- 6.2. Floor plans show that each multiple dwelling is to have three bedrooms and amenities on the first floor, with the ground floor containing an open plan kitchen and dining room, and separate living room. A single garage is accessible internally. Westerly facing decks are provided for each unit. Floor area per unit is approximately 197sqm (394sqm per title), with total building footprint per title being 238sqm including decks.
- 6.3. Six (6) parking spaces per lot are proposed, including two visitor parking spaces per lot, a total of 18 car parking spaces.
- 6.4. A Landscaping Plan has submitted in support of the application.
- 6.5. Stormwater design shows a single discharge point of discharge per lot to the crown reserve.

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 Performance Criteria. 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 – Clause 9.3 – Minor Boundary Adjustment
 - Part D – Clause 10.0 – General Residential Zone
 - Part E – Clause 5.0 – Road and Railway Assets Code
 - Part E – Clause 6.0 – Parking and Access Code
 - Part E – Clause 7.0 – Stormwater Management Code
 - Part E – Clause 11.0 – Waterway and Coastal Protection Code
 - Part E – Clause 16.0 – Coastal Erosion Hazard Areas Code
- 8.2. The proposed use is for multiple dwellings within the General Residential

Zone. 'Residential (Multiple Dwellings)' is a Permitted Use in the General Residential Zone, pursuant to the Use Table set out in Clause 10.2.

- 8.3. The proposal is considered to satisfy the relevant Acceptable Solutions listed below:

Part C

Clause 9.3 Adjustment of a Boundary

Part D

- 10.4.1 A1 – Residential density
- 10.4.2 A1 & A2 – Setbacks and building envelope
- 10.4.3 A1 – Site coverage and private open space
- 10.4.4 A2 & A3– Sunlight and overshadowing
- 10.4.5 A1 – Width of openings
- 10.4.6 A1, A2 & A3 – Privacy
- 10.4.7 A1 – Frontage fences
- 10.4.8 A1 – Multi Dwelling Waste

Part E

- E5.0 – Road and Railway Assets Code
- E6.0 – Parking and Access Code (except E6.6.1 A1)
- E7.0 – Stormwater Management Code (except E7.7.1 A1 and A2)

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

- Section 10.4.2 A3 – Building Envelope
- Section 10.4.3 A2 – Private Open Space
- Section 10.4.4 A1 – Sunlight and Overshadowing for All Dwellings
- Section E6.6.1 A1 – Number of Car Parking Spaces
- Section E7.7.1 A1 – Gravity Connection
- Section E7.7.1 A2 – Water Sensitive Urban Design

- Section E11.7.1 A1 – Buildings and Works within a Waterway and Coastal Protection Area
- Section E11.7.1 A2 – Buildings and Works within a Waterway and Coastal Protection Area
- Section E16.7.1 A1 – Buildings and Works within a Coastal Erosion Hazard Area

8.5. Discretion 1 – Section 10.4.2 A3 - Building Envelope

8.5.1 The proposal has been assessed looking at the building envelopes on the three lots separately. 36 and 38 Morrisby are both within the prescribed building envelope. However, 40 Morrisby Road falls outside the permitted building envelope prescribed in Section 10.4.2 A3 of the General Residential Zone, which is demonstrated by Diagram 10.4.2A, below:

Diagram 10.4.2A. Building envelope as required by subclause 10.4.2 A3 (a)

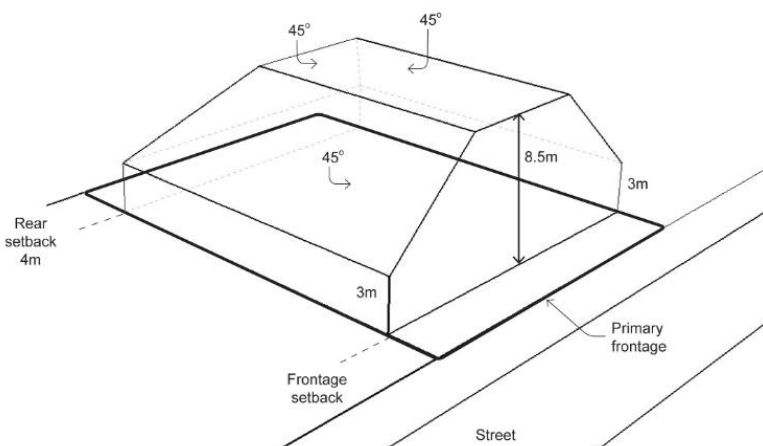


Figure 5: Diagram 10.4.2A (Brighton Interim Planning Scheme 2015)

8.5.2 The proposal plans show two storey duplexes across each of the three sites, with an average building height of 7.2m. The proposed developments at 36 and 38 Morrisby Road satisfy the acceptable solutions for building envelope.

8.5.3 The proposed development for 40 Morrisby Road has a southern side setback of 0.9m, and a southern wall length exceeding 9m. The northern setback increases from 0.9m at the north eastern corner to approximately 12m at the north western corner of the dwelling. Minimum rear setback is 2.5m at the north western corner of the dwelling increasing to 4.182m (excluding stairs and Juliet balconies).

8.5.4 Accordingly, the proposed dwelling at 40 Morrisby Road exceeds the building envelope.

8.5.5 The Performance Criteria at 10.4.3. P3 requires the proposal to satisfy the following:

The siting and scale of a dwelling must:

- (a) *not cause unreasonable loss of amenity by:*
 - (i) *reduction in sunlight to a habitable room (other than a bedroom) of a dwelling on an adjoining lot;* or
 - (ii) *overshadowing the private open space of a dwelling on an adjoining lot;* or
 - (iii) *overshadowing of an adjoining vacant lot;* or
 - (iv) *visual impacts caused by the apparent scale, bulk or proportions of the dwelling when viewed from an adjoining lot; and*
- (b) *provide separation between dwellings on adjoining lots that is compatible with that prevailing in the surrounding area.*

8.5.6 The proposal included shadow diagrams in support of its application (see Figures 6 and 7), relating to overshadowing of habitable rooms of dwellings on adjoining lots and private open space (refer to 10.4.2 P3 (a)(i) and (a)(ii) above).



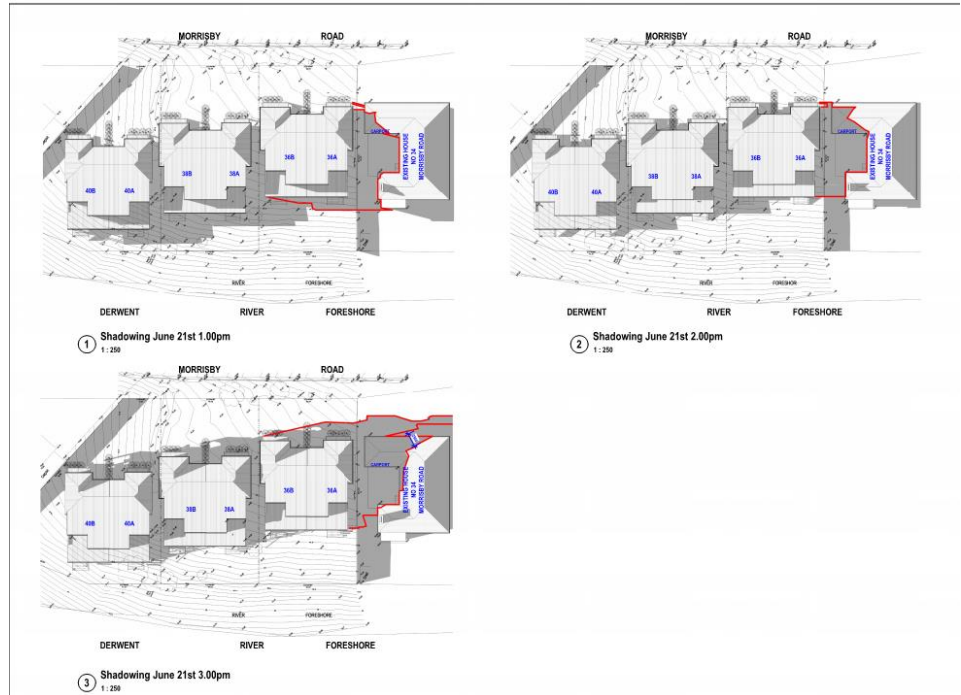


Figure 7: Shadow Diagrams 1pm – 3pm, 21st June

8.5.7 Further shadow diagrams were submitted by the Applicant subsequent to the public exhibition period as shown in Figure 7A. The additional diagrams demonstrate the effect of any overshadowing on the western facing habitable room in Unit 38B.

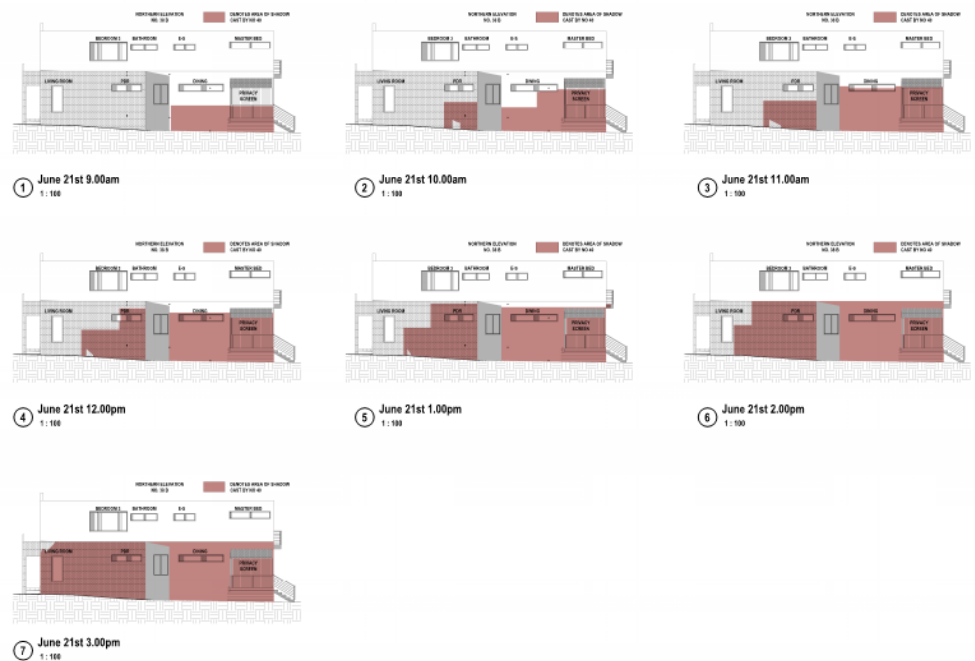


Figure 7A: Effect of overshadowing from 40 Morrisby Road to the south.

8.5.8 The plans show north facing windows in the living room and the dining room. The dining room and the living room are separated

by the laundry and a powder room, accessed from an internal circulation space. Both windows have approximately the same area of glazing.

- 8.5.9 Based on the wording of the performance criterion in D10.4.2. P3(a)(i), any overshadowing of a habitable room on an adjoining lot must be considered.
- 8.5.10 The shadow diagrams provided by the Applicant demonstrate that the building proposed for 40 Morrisby Road will overshadow the window to the dining/kitchen area of the proposed dwelling at 38B Morrisby Road between 11am and 3pm on 21st June 2020.
- 8.5.11 The applicant has also proposed that he is amenable to a condition requiring the installation of a skylight in the open plan dining/kitchen area to allow more sunlight to enter that portion of the dwelling.

It is therefore considered that the performance criteria can be satisfied, with conditions.

- 8.5.12 With regard to overshadowing of private open space on adjoining lots (10.4.2 P3 (a)(ii)), the Site Analysis Plan identifies two areas of private open space at 38 Morrisby Road.
- 8.5.13 The Brighton Interim Planning Scheme 2015 defines private open space as meaning an outdoor area of the land or dwelling for the exclusive use of the occupants of the land or dwelling.
- 8.5.14 A recent decision by the Resource Management and Planning Appeal Tribunal in *M & C Edwards and Ors v. Clarence City Council and Pinnacle Drafting & Design* [2019] TASRMPAT 8 determined that multiple areas of private open space can comprise the private open space as defined by the Scheme.
- 8.5.15 The eastern facing private open space is not overshadowed by the proposed development.

It is therefore considered that the performance criteria can be satisfied.

- 8.5.16 "Lot" is defined by the Planning Scheme as meaning "a piece or parcel of land in respect of which there is only one title other than a lot within the meaning of the Strata Titles Act 1998". Accordingly, as the Crown reserve does not have a Certificate of Title attributable to the land, this criterion does not apply.

Accordingly, there is no adjoining vacant lot for the purpose of this assessment and the performance criteria does not apply.

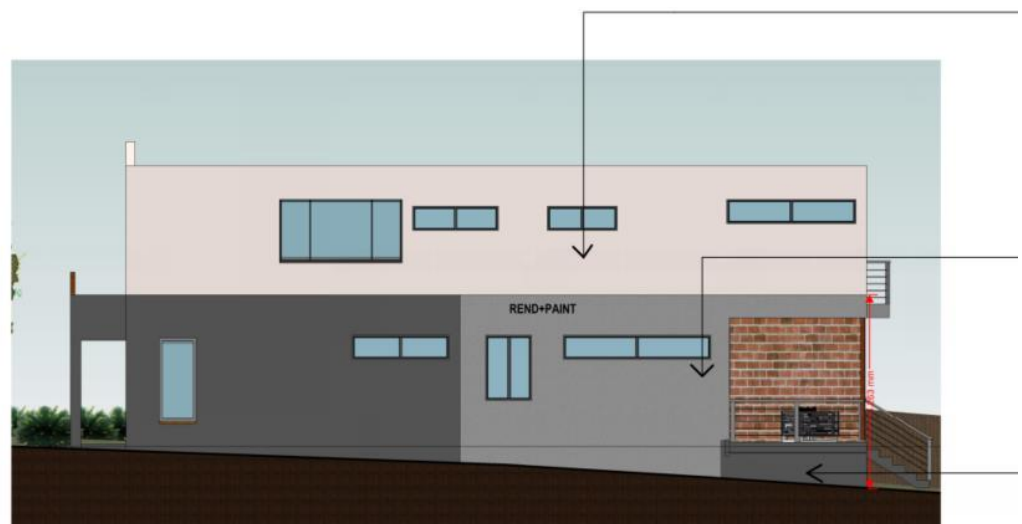
- 8.5.17 The Performance Criteria at 10.4.2 P3(a)(iv) refers to “visual impact caused by the apparent scale, bulk or proportions of the dwelling when viewed from an adjoining lot.”
- 8.5.18 Visual impact is not defined by the Scheme. However, the Tribunal in *A & N McCullagh v Glamorgan Spring Bay Council and Ors* [2019] TASRMPAT 30 at para 26 accepts that *“visual impact of a development is generally a combination of visual effects and visual sensitivity. The visual effects relate to the nature of the proposal and whether it is consistent or harmonious with the surroundings.”*
- 8.5.19 Accordingly, there are two adjoining lots which must be assessed in this instant:
- 42 Morrisby Road
 - 38 Morrisby Road
- 8.5.20 The dwelling at 42 Morrisby Road is situated north of the proposed development. The contours of the land slope down from Morrisby Road to the north western corner of 40 Morrisby Road, which will elevate the proposed building above that of 42 Morrisby Road.

- 8.5.21 The separation distance between 40 and 42 Morrisby Road is considered to be acceptable, with setbacks ranging at the north eastern corner of the proposed dwelling being 0.9m, and to the north western corner approximately 12m. Further, the design for the buildings on each lot show the first floor is set from the external ground floor walls (refer figure 8), thereby articulating the building to reduce visual impact.



Figure 9: Eastern elevation (all units)

- 8.5.22 The external walls of the units utilise a mix of materials and colours, with different face brick proposed for each unit. Figure 9 shows the proposed façade for the north facing wall of unit 40B. A materials schedule is set out on Sheet A106 (amendment) of the proposal plans.



② North Elevation Materials
1:50

Figure 9: North Elevation Materials and Design

- 8.5.23 The proposed development at 38 Morrisby Road is yet to be constructed and as it forms part of this application, is being assessed on its built form.
- 8.5.24 The proposal plans show a 0.9m southern setback from the southern boundary for 40 Morrisby Road, combined with a wall length of 13.29m, at an average height of approximately 4.2m.
- 8.5.25 The ground level slopes down towards the northern boundary of 40 Morrisby Road, resulting in the dwelling at 40 Morrisby Road having a lower floor level than its neighbour to the south (refer sheet A104 – Elevations)
- 8.5.26 The combination of materials, colours and design are considered to reduce the visual impact of the dwelling on 38 Morrisby Road.
- It is therefore considered that the performance criteria can be satisfied in relation to D10.4.2 A(iv).*
- 8.5.27 Clause D10.4.2 P3(b) refers to separation distances between dwellings on adjoining lots.
- 8.5.28 Satellite imagery and site inspection of dwellings within 200m show the surrounding area is characterised by a majority of dwellings with reduced side setback, together with increased front and rear setbacks, other than for corner allotments. The adjoining dwellings at 34 and 42 Morrisby Road also have minimum side boundary setbacks to the eaves measuring 1.4m/2m and 0m/1.8m respectively (source: Listmap).
- 8.5.29 There are a number of two storey dwellings along Morrisby Road. Generally, street frontages have been treated with a single storey protrusion to break up the building mass of facades, with dwellings then rising to two storeys at the rear of the site facing the Derwent River, as the land falls towards the river.

It is considered that the separation between dwellings is consistent with the pattern of development within the surrounding area.

- 8.5.30 For the reasons set out above, it is considered that the proposed development satisfies the Performance Criteria in relation to building envelope.

8.6 Discretion 2 – Section 10.4.3 A2 - Private Open Space

- 8.6.1 The Acceptable Solution contained in Section 10.4.3 A2 requires:

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

- (a) *is in one location and is at least:*
 - (i) *24 m²; or*
 - (ii) *12 m², if the dwelling is a multiple dwelling with a finished floor level that is entirely more than 1.8 m above the finished ground level (excluding a garage, carport or entry foyer); and*
- (b) *has a minimum horizontal dimension of:*
 - (i) *4 m; or*
 - (ii) *2 m, if the dwelling is a multiple dwelling with a finished floor level that is entirely more than 1.8 m above the finished ground level (excluding a garage, carport or entry foyer); and*
- (c) *is directly accessible from, and adjacent to, a habitable room (other than a bedroom); and*
- (d) *is not located to the south, south-east or south-west of the dwelling, unless the area receives at least 3 hours of sunlight to 50% of the area between 9.00am and 3.00pm on the 21st June; and*
- (e) *is located between the dwelling and the frontage, only if the frontage is orientated between 30 degrees west of north and 30 degrees east of north, excluding any dwelling located behind another on the same site; and*
- (f) *has a gradient not steeper than 1 in 10; and*
- (g) *is not used for vehicle access or parking.*

8.6.2 Private open space is defined in the Scheme as “an outdoor area of the land or dwelling for the exclusive uses of the occupants of the land or dwelling”.

- 8.6.3 The proposal shows that all units (excluding 40b) as having two areas of private open space: on the eastern side of the proposed dwellings between the dwellings and the frontage, as well as an alternative area at the rear of the dwelling. No area has been specifically designated as the assessable private open space for the purpose of this application. It is noted that the Tribunal in *JA & RL Sutcliffe v Devonport City Council and J & D Collins [2020] TASRMPAT 6* held that the definition of private open space is broad, and includes any outdoor area attributed for the use of the occupants.
- 8.6.4 Unit 40b has an irregular shaped area of north facing private open space, which, although not having direct access from a habitable living area, satisfies the minimum 4m wide criterion.
- 8.6.5 For Units 36A, 36B, 38A, 38B and 40A, the eastern facing private open space causes a discretion, if designated as the dominant private open space, due to its location between the road frontage and the dwelling.
- 8.6.6 If designating the western facing private open space for the same units, discretion arises because the deck is not able to satisfy the minimum 24sqm required by A2 (a)(i) (being 21.7sqm) nor the area or minimum horizontal dimensions referred to in A2(a)(ii) (2.980m x 7.296m), nor does the lawned area of private open space provide direct access from a habitable room (other than a bedroom). Similarly, Unit 40B, does not satisfy the minimum area or horizontal width required.
- 8.6.7 The performance criteria in 10.4.3 P2 states:
- A dwelling must have private open space that:*
- (a) *includes an area that is capable of serving as an extension of the dwelling for outdoor relaxation, dining, entertaining and children's play and that is:*
 - (i) *conveniently located in relation to a living area of the dwelling; and*
 - (ii) *orientated to take advantage of sunlight*
- 8.6.8 The proposal plans show that all units, other than 40B have direct access to the private open space via an access door from the living room to the eastern facing private open space. The shadow diagrams show that the private open space located on the eastern side of the dwellings has access to sunlight until approximately 3pm on June 21.

- 8.6.9 Unit 40b does not provide direct access to the private open space identified on the site plan. However, access is provided to a 22sqm deck on the north western corner of the dwelling from the living room, with a further north facing land area of approximately 130sqm available for use as private open space.
- 8.6.10 Accordingly, all units are able to demonstrate an area of private open space which is conveniently located in relation to a living area of the dwelling, and orientated to take advantage of sunlight.
- 8.6.11 For the reasons set out above, the proposal is considered to meet the Performance Criteria contained in Section 10.4.3 P2.

8.7 Discretion 3 - 10.4.4 A1 - Sunlight and Overshadowing for All Dwellings

- 8.7.1 Section 10.4.4. A1 requires that a dwelling must have at least one habitable room (other than a bedroom) in which there is a window that faces between 30 degrees west of north and 30 degrees east of north (see Diagram 10.4.4A).
- 8.7.2 Units 36a, 38a and 40a do not satisfy the Acceptable Solution. As such, the application is discretionary, and must be assessed against the relevant Performance Criteria.
- 8.7.3 Section 10.4.4 P1 states:

A dwelling must be sited and designed so as to allow sunlight to enter at least one habitable room (other than a bedroom).
- 8.7.4 The living room in each of the units has access to sunlight rising from the east, with the shadow diagrams (figures 7 and 8) showing that those rooms are not affected by overshadowing until early afternoon.
- 8.7.5 As such, it is considered that the proposed development satisfies the Performance Criteria contained in Section 10.4.4 P1.

8.8 Discretion 4 - E6.6.1. Number of Car Parking Space

- 8.8.1 The proposal shows six (6) car parking spaces per lot, 2 per dwelling and 2 jockey visitor parking spaces.
- 8.8.2 The acceptable solution provides:

A1 The number of on-site car parking spaces must be:

(a) no less than the number specified in Table E6.1;

except if:

- (i) *the site is subject to a parking plan for the area adopted by Council, in which case parking provision (spaces or cash-in-lieu) must be in accordance with that plan.*

8.8.3 Table E6.1 of the Planning Scheme requires each multiple dwelling on a lot containing 2 or more bedrooms (including all rooms capable of being used as a bedroom) to have two (2) car parking spaces. Further one (1) dedicated visitor car parking space per 4 dwellings (rounded up to the nearest whole number).

8.8.4 Dedicated is not defined by the planning scheme in this regard. The Cambridge Dictionary (online) defines “dedicated” as “designed to be used for one particular purpose.”

8.8.5 It is not considered that the jockey parking adjacent to the access as shown on the proposal plans for 36 and 38 Morrisby Road, are “dedicated” within the meaning of the definition. Further the visitor parking space attributed to unit 40B encroaches into the driveway, thereby not being a “a dedicated” space.

8.8.6 Accordingly, the proposal does not provide for dedicated visitor parking spaces, thereby causing a discretion in relation to visitor parking.

8.8.7 The performance criteria require:

P1 The number of on-site car parking spaces must be sufficient to meet the reasonable needs of users, having regard to all of the following:

- (a) *car parking demand;*
- (b) *the availability of on-street and public car parking in the locality;*
- (c) *the availability and frequency of public transport within a 400m walking distance of the site;*
- (d) *the availability and likely use of other modes of transport;*
- (e) *the availability and suitability of alternative arrangements for car parking provision;*
- (f) *any reduction in car parking demand due to the sharing of car parking spaces by multiple uses, either because of variation of car parking demand over time or because of efficiencies gained from the consolidation of shared car parking spaces;*
- (g) *any car parking deficiency or surplus associated with the existing use of the land;*

- (h) *any credit which should be allowed for a car parking demand deemed to have been provided in association with a use which existed before the change of parking requirement, except in the case of substantial redevelopment of a site;*
- (i) *the appropriateness of a financial contribution in lieu of parking towards the cost of parking facilities or other transport facilities, where such facilities exist or are planned in the vicinity;*
- (j) *any verified prior payment of a financial contribution in lieu of parking for the land;*
- (k) *any relevant parking plan for the area adopted by Council;*
- (l) *the impact on the historic cultural heritage significance of the site if subject to the Local Heritage Code;*

8.8.8 The proposal was referred to Council's technical officer who considers the proposed development has sufficient capacity to provide for one (1) dedicated visitor car parking space per lot.

8.8.9 A representation was received regarding lack of on-site parking including the proposed jockey parking and the impacts this may have on Morrisby Road. It does not appear that there is a high demand for existing on-street parking along Morrisby Road. Further, road width permits two way operation in the location of a single parked vehicle, reducing to single lane operation should vehicles be parked on both sides of the road. Council's technical officer considers that this acceptable, given the nature of residential development in the area.

8.8.10 Further, in considering the placement of dedicated visitor parking on each lot, there is sufficient land area adjacent to the road frontage, excluding a minimum 24sqm of private open space (refer to assessment in paragraph 8.6 herein) to accommodate the dedicated visitor parking area, as well as the private open space.

8.8.11 It is therefore recommended that a condition be included on the permit which requires the proposal be amended to comply with the acceptable solution of the planning scheme. Accordingly, it is recommended that an amended site plan be provided for approval by Council's Municipal Engineer prior to commencement of works. The same amendment should also be incorporated in a revised landscaping plan, demonstrating that private open space is maintained.

8.9 Discretion 5 – E7.7.1 A1 – Gravity Connection

8.9.1 The acceptable solution requires that stormwater from a new impervious surface must be disposed of by gravity to public stormwater infrastructure.

8.9.2 The proposal is not serviced by council's public stormwater infrastructure, and as such the proposal cannot satisfy the acceptable solution.

8.9.3 The performance criteria require:

P1 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*

8.9.4 The proposal was referred to Council's technical officer who makes the following comments:

It is proposed to discharge run-off via sheet flow from the front to the rear of the property and pipe each dwelling's driveway and roof to dispersion areas inside the western boundary. It is not deemed practical to disperse runoff on urban blocks which may also saturate the crown reserve/future pathway.

A request for further information required amended plans which show 1 x discharge point per lot, WSUD and a practical means of slowing pipe velocities at the discharge point.

An amended drainage plan was submitted showing 1 x piped discharge per lot that cleared the foreshore 'path' and discharged to the bank along with some detail of erosion protection. The SWV report was not updated to reflect the plan.

The application was referred to the Crown who have provided consent to lodge the application and have indicated they require no more than 1 x SW discharge point per lot and a development that meets WSUD requirements

- 8.9.5 It is considered that the proposal can satisfy the performance criteria through conditions requiring the detailed engineering drawings showing proposed water sensitive urban design (WSUD) measures and the implementation of same.

8.10 Discretion 5 – E7.7.1 A2 – Water Sensitive Urban Design

- 8.10.1 The proposal does not satisfy the Acceptable Solution contained in Section E7.7.1 A2 in that the proposal does address WSUD for the site.

- 8.10.2 The performance criteria in relation to disposal of stormwater requires:

A stormwater system for a new development must incorporate a stormwater drainage system of a size and design sufficient to achieve the stormwater quality and quantity targets in accordance with the State Stormwater Strategy 2010, as detailed in Table E7.1 unless it is not feasible to do so.

- 8.10.3 WSUD has not been adequately addressed within the application. However, council's technical officer is of the view that a standard condition requiring that the applicant incorporate WSUD principles into the development for the treatment and disposal of stormwater, in accordance with the Water Sensitive Urban Design Procedures for Stormwater Management in Southern Tasmania and to the satisfaction of Council's Municipal Engineer, will enable the PC to be satisfied.

- 8.10.4 It is considered that, with conditions, the performance criteria can be satisfied.

8.11 Discretion 6 – Section E11.7.1 A1 – Buildings and Works within a Waterway and Coastal Protection Area

- 8.11.1 The Acceptable Solution contained in Section E11.7.1 A1 states:

Building and works within a Waterway and Coastal Protection Area must be within a building area on a plan of subdivision approved under this planning scheme.

- 8.11.2 The multiple dwellings at 40 Morrisby Road are to be constructed within the overlay for the Waterway and Coastal Protection Area, with the decks at 38 Morrisby Road also within the mapped area. There is no building area shown on the titles to each of the lots.

- 8.11.3 Accordingly, the Acceptable Solution is not satisfied. The application invokes discretion and must be assessed against the corresponding Performance Criteria.

8.11.4 Section E11.7.1 P1 states:

Building and works within a Waterway and Coastal Protection Area must satisfy all of the following:

- (a) avoid or mitigate impact on natural values;*
- (b) mitigate and manage adverse erosion, sedimentation and runoff impacts on natural values;*
- (c) avoid or mitigate impacts on riparian or littoral vegetation;*
- (d) maintain natural streambank and streambed condition, (where it exists);*
- (e) maintain in-stream natural habitat, such as fallen logs, bank overhangs, rocks and trailing vegetation;*
- (f) avoid significantly impeding natural flow and drainage;*
- (g) maintain fish passage (where applicable);*
- (h) avoid landfilling of wetlands;*
- (i) works are undertaken generally in accordance with 'Wetlands and Waterways Works Manual' (DPIWE, 2003) and "Tasmanian Coastal Works Manual" (DPIPWE, Page and Thorp, 2010), and the unnecessary use of machinery within watercourses or wetlands is avoided.*

8.11.5 The applicant supplied a report prepared by GHD, which notes at paragraph 2.3 of that report that the stormwater for the existing dwelling (to be demolished) is via sheet flow to the Derwent River.

8.11.6 The report suggests “likely” mitigation measures, later concluding in section 4 of the report that the development can be constructed and managed such that there is no impact on the Waterway and Coastal zone.

8.11.7 With the incorporation of the mitigation measures, it is considered that the proposed works within the Waterway and Coastal Protection Area can satisfy the requirements of the Performance Criteria. However, it is the assessing officer’s view that these likely measures should be more structured, and consequently a condition requiring that all works are to be undertaken in accordance with the “likely” measures is recommended, should the application be approved.

- 8.11.8 It is considered that the conditions imposed by council in relation to stormwater management will assist in the management of the site relative to the WCP area.

8.12 Discretion 7 – Section E11.7.1 A4 – Buildings and Works within a Waterway and Coastal Protection Area

- 8.12.1 The Acceptable Solution requires that development must involve no new stormwater point discharge into a watercourse, wetland or lake.

- 8.12.2 The proposal is for stormwater to be piped under the existing walking track and dispersed to the Crown reserve. As such, the application invokes discretion, and must be assessed under the corresponding Performance Criteria

- 8.12.3 Section E11.7.1 P4 states:

Development involving a new stormwater point discharge into a watercourse, wetland or lake must satisfy all of the following:

- (a) risk of erosion and sedimentation is minimised;*
 - (b) any impacts on natural values likely to arise from erosion, sedimentation and runoff are mitigated and managed;*
 - (c) potential for significant adverse impact on natural values is avoided.*
- 8.12.4 Council's technical officer has recommended that should the application be approved, underground detention to buffer flows and erosion protection at discharge should be installed. If this occurs, the requirements of the Performance Criteria can be satisfied.
- 8.12.5 It is considered that conditions requiring these works, together with other WSUD measures will satisfy the Performance Criteria in relation to Waterway and Coastal Protection mapped areas.
- 8.12.6 For the reasons set out above, the proposal is considered to meet the Performance Criteria contained in Section 11.7.1 P4

8.13 Discretion 8 – Section E16.7.1 A1 – Buildings and Works within Coastal Erosion Hazard Area

8.13.1 As shown on Sheet A123, the three lots are within the mapped areas for the Coastal Erosion Hazard Code. There is no Acceptable Solution contained in Section E16.7.1 A1. As such, the application is discretionary, and must be assessed against the corresponding Performance Criteria.

8.13.2 Section E16.7.1 P1 states:

Buildings and works must satisfy all of the following:

- (a) not increase the level of risk to the life of the users of the site or of hazard for adjoining or nearby properties or public infrastructure;*
- (b) erosion risk arising from wave run-up, including impact and material suitability, may be mitigated to an acceptable level through structural or design methods used to avoid damage to, or loss of, buildings or works;*
- (c) erosion risk is mitigated to an acceptable level through measures to modify the hazard where these measures are designed and certified by an engineer with suitable experience in coastal, civil and/or hydraulic engineering;*
- (d) need for future remediation works is minimised;*
- (e) health and safety of people is not placed at risk;*
- (f) important natural features are adequately protected;*
- (g) public foreshore access is not obstructed where the managing public authority requires it to continue to exist;*
- (h) access to the site will not be lost or substantially compromised by expected future erosion whether on the proposed site or off-site;*
- (i) provision of a developer contribution for required mitigation works consistent with any adopted Council Policy, prior to commencement of works;*
- (j) not be located on an actively mobile landform.*

8.13.3 The applicant submitted a limited report prepared by GHD to address the criteria of the code. The report addresses the Coastal Erosion Hazard Area at Section 2.4 of that report:

2.4 Coastal Erosion Risk

The area is classified as "Rocky Shores - Sheltered cliffs - lesser potential for rock-falls, collapse or slumping of rock faces". In addition, there is significant vegetation including trees along the shoreline.

There is currently low potential for Coastal Erosion Risk.

- 8.13.4 At Section 3.4 of that report, the Code was again addressed:

3.4 Coastal Erosion Risk Management

No change to the risk of Coastal Erosion Risk is proposed. Stormwater flows are to be dispersed to minimise erosion due to stormwater flows from the development. Trees and other vegetation within Crown Land are to be retained.

- 8.13.5 That report concludes at Section 4 that:

"The risk of coastal Erosion is not affected by the proposed development. Further, the risk of erosion of the landform is low due to the rock and vegetation".

- 8.13.6 It is considered that the development does not increase the level of risk to the life of the users of the site, or create a hazard for adjoining or nearby property, or public infrastructure.
- 8.13.7 Erosion risk from wave run-up is an acceptable level, and based on the advice of GHD, is not required to be modified.
- 8.13.8 No future remediation works are foreseen, nor is the health and safety of the general public put at risk.
- 8.13.9 Natural features and public foreshore access are maintained, and access to the site is not compromised by the development.
- 8.13.10 Council does not have a policy requiring developer contributions for mitigation measures, and the works are not located on an actively mobile landform.
- 8.13.11 Accordingly, it is considered, based on the advice received from GHD dated July 2018, that the Performance Criteria is satisfied.

9 Referrals

9.1 Engineering

The application was referred to the Council's Senior Technical Officer. That officers' comments are included where necessary throughout this report.

9.2 TasWater

Sewer and Water reticulation is available to the site. The application was referred to TasWater who have imposed development conditions. A copy of TasWater's Submission to Planning Authority Notice (SPAN) will be attached to any permit issued.

9.3 TasNetworks

The application was referred to TasNetworks for comment due to proximity to their infrastructure. No response was received.

10 Concerns raised by representors

10.1 The application was re-advertised in accordance with the statutory requirements of the *Land Use Planning and Approvals Act 1993*, subsequent to receipt of amended plans.

10.2 The proposal was advertised for a second public exhibition period. Two of the four original representors asked that their original representation stand; one submitted a new representation, and no response received from the fourth representor

10.3 The concerns of the representors are summarised below:

Representors' Concerns	Planning Comment
Multiple Dwellings/Increase in population density for Old Beach	The proposal satisfies the acceptable solution for density for multiple dwellings.
Building Envelope (incorporating concerns regarding: Separation between dwellings / Overshadowing / Visual Bulk / Setbacks / Building envelope not correct	<p>The proposal for 36 and 38 Morrisby Road satisfies the acceptable solution</p> <p>Building envelopes have been calibrated and measured internally and found to be correct.</p> <p>Refer to paragraph 8.5 for discussion regarding building envelope for 40 Morrisby Road</p>

Loss of Privacy	The proposal satisfies the acceptable solutions in relation to privacy
Noise Pollution	The proposal is for residential use only.
Increased number of vehicles / Increase in traffic in the community	<p>The proposal exceeds the acceptable solution by providing two car parking spaces per unit, as well as two visitor car parking spots per site.</p> <p>Morrisby Road and the broader road network in Old Beach has capacity for increased traffic.</p> <p>Refer to paragraph 8.8 for discussion regarding number of car parking spaces.</p>
Removal of vegetation	<p>The land is identified as an urban area, pursuant to TasVeg 3.0. There are no identified threatened species on the site/s (source: Listmap)</p> <p>A condition for an amended landscaping plan is included in the draft permit to ensure that the site is landscaped and vegetated appropriately.</p>
Proposal not compatible with the prevailing density; small single dwelling more in keeping with the surrounding area	The proposal satisfies the acceptable solution for density for multiple dwellings.
Aesthetic Design	The visual bulk has been assessed as acceptable.
Access to sunlight	Refer to paragraph 8.7 for discussion
North/South elevations not provided for each dwelling	Sheet A104 notes that the south Elevation for 36A is a mirror of the northern elevation, which is confirmed by the floor plans shown on sheet A103A
Private Open Space	Refer to paragraph 8.6 for discussion
The size of the living rooms are small	Not a planning consideration

Privacy – location of windows	The proposal satisfies the acceptable solution.
Angle of cars reversing onto the street form No. 40 is against traffic flow; no passing area provide for the lot and does not comply E6.7.3 of the Scheme	<p>The scheme does not require on site turning in this case.</p> <p>The crossover is wide and shared with the adjoining lot. Vehicles can enter/exit perpendicular to the public road if they choose.</p> <p>In terms of vehicle passing and Code E6.7.3 the access is not considered to serve more than 5 car parks, be greater than 30m long or meet a road that exceeds 6000 vpd.</p> <p>Morrisby Road is considered to have capacity for increased traffic.</p>
Visitor parking exceeds number required for each dwelling	Refer to paragraph 8.8 for discussion.
Concept sewer, stormwater and water services is not consistent with building design services	<p>Proposal has been reviewed by Department of Primary Industries, Parks and Wildlife and Environment, TasWater and council's technical officers.</p> <p>Conditions include the requirement for parking/SW plans by a suitably qualified engineer prior to the issue of plumbing/building permit.</p>
Trade/construction parking	<p>Concrete trucks as registered vehicles are permitted to legally park on a public street.</p> <p>Morrisby Road is wide enough to permit on street parking and maintain traffic flow.</p>
Scaffolding	This is not a planning consideration. However, the Applicant has advised that scaffolding will be modified to ensure that it does not affect neighbouring properties.

11 Conclusion

- 11.1 The proposal is for a minor boundary adjustment, demolition of the existing dwelling, and the construction of 3 duplex across three sites at 36 – 40 Morrisby Road, Old Beach. The site is situated within the General Residential Zone of the Brighton Interim Planning Scheme 2015 (the 'Interim Scheme').
- 11.2 The key issues relate to building envelope, private open space, sunlight and overshadowing, Parking and Access Code, Stormwater Management Code and addressing various overlays mapped across the site including the Waterway and Coastal Protection Code and the Coastal Erosion Hazard Code .
- 11.3 For the reasons set out above, the proposal is considered to satisfy the requirements of the Brighton Interim Planning Scheme 2015, and as such, is recommended for the application is recommended for approval.

RECOMMENDATION:

That: A. Pursuant to the *Brighton Interim Planning Scheme 2015*, Council approve DA 2018/00017 for Minor Boundary Adjustment, Multiple Dwellings (6 Units) and Associated Hydraulic Infrastructure in the General Residential Zone at 36, 38 and 40 Morrisby Road, Old Beach and Adjoining Coastal Reserve (Derwent River Foreshore) with the following conditions:

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. The boundary adjustment approved by the endorsed plans must be finalised prior to commencement of building works.
- 3. 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.

Amended Plans

- 4. Prior to commencement of works, amended plans must be submitted to and approved by the Manager Development Services. The amended plans must show:

- a) One dedicated visitor car parking space per lot;
- b) One skylight above the dining/kitchen area of each unit.

Once approved, the amended plans will be endorsed and will form part of this permit.

Amenity

- 5. 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.

Landscaping

- 6. Prior to commencement of use, all trees and landscaping must be planted and installed in accordance with the approved Landscaping Plan to the satisfaction of the Council's Manager Development Services. Evidence showing compliance with this condition must be submitted to and approved by the Manager Development Services within 30 days of planting.
- 7. Feature trees must be a minimum height of 1.5m at the time of planting.
- 8. Planting must bear a suitable relationship to the proposed height of the buildings and must not use species listed as noxious weeds within Tasmania, displaying invasive characteristics or unsuitable for fire prone areas. If considered satisfactory, the landscape plan will be endorsed and will form part of this permit.
- 9. Replacement trees and landscaping in accordance with the approved Landscaping Plan must be planted if any is lost. All landscaping must continue to be maintained to the satisfaction of Council.

Private open space

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

Services

- 11. The developer must pay the cost of any alterations and/or reinstatement to existing services, Council infrastructure or private property incurred as a result of the development. Any work required is to be specified or undertaken by the authority concerned.
- 12. Any services located under the proposed driveway are to be provided with trafficable covers to the requirements of the relevant authority and Council's Municipal Engineer.

Parking and Access

13. Two (2) x shared vehicle accesses (1 per lot) are to be provided on Morrisby Road. Accesses must be constructed in accordance with the standards shown on standard drawing TSD-R09-v1 Urban Roads Driveways prepared by the IPWE Aust. (Tasmania Division) and the satisfaction of Council's Municipal Engineer. Any redundant accesses are to be reinstated as kerb.
14. Unless approved otherwise by Council's Municipal Engineer at least Fifteen (15) parking spaces must be provided on the land at all times for the use of the occupiers including two (2) per townhouse and one (1) shared visitor space per lot, in accordance with Standards Australia (2004): Australian Standard AS 2890.1 - 2004 - Parking Facilities Part 1: Off Street Car Parking; Standards Australia, Sydney.
15. Unless approved otherwise by Council's Municipal Engineer the internal private driveway and areas set-aside for parking and associated access and turning must be provided in accordance with Standards Australia (2004): Australian Standard AS 2890.1 - 2004 - Parking Facilities Part 1: Off Street Car Parking; Standards Australia, Sydney and include all of the following:
 - a) Double width (5.5m+) driveways to the kerb for No. 36 & 38 Morrisby Road.
 - b) Constructed with a durable all-weather pavement.
 - c) Surfaced with concrete.
 - d) Drained to an approved stormwater system.
16. A parking plan prepared and certified by a qualified civil engineer or other person approved by Council's Municipal Engineer must be submitted to Council prior to or in conjunction with lodgement of Building Application. The parking plan is to include:
 - a) pavement details,
 - b) design surface levels and gradients,
 - c) drainage,
 - d) turning paths,
 - e) dimensions,
 - f) clearance from services in accordance with service authority requirements. (Min. 1m from existing power poles).
 - g) and shall form part of the permit when approved.

17. The completed parking and associated turning areas and access must be certified by a practicing civil engineer to the effect that they have been constructed in accordance with the endorsed drawings and specifications approved by Council before the use commences.
18. All areas set-aside for parking and associated turning, and access must be completed before the use commences and must continue to be maintained to the satisfaction of the Council's Municipal Engineer.

Access to Public Road

ADVICE: Works on or affecting any Council road reservation are to be carried out in accordance with the endorsed plans and Council's Guidelines for Works Within The Road Reservation and to the satisfaction of Council's Municipal Engineer.

Stormwater

19. Drainage from the proposed development is to drain to the Crown reserve on the western boundary using a single discharge point per lot subject to Crown approval, the satisfaction of Council's Municipal Engineer and in accordance with a Plumbing permit issued by the Permit Authority in accordance with the *Building Act 2016*.
20. The Developer is to incorporate Water Sensitive Urban Design Principles into the development for the treatment and disposal of stormwater. These Principles will be in accordance with the Water Sensitive Urban Design Procedures for Stormwater Management in Southern Tasmania and to the satisfaction of the Council's Municipal Engineer.
21. Unless approved otherwise by Council's Municipal Engineer the developer must provide a minor stormwater drainage system designed to comply with the following:
 - a) be able to accommodate a storm with an ARI of 20 years when the land serviced by the system is fully developed;
 - b) Stormwater runoff will be no greater than pre-existing runoff.
 - c) Include proprietary filters on driveway pits and water tanks.
 - d) Discharge points clear of any future coastal path.
 - e) Erosion protection at pipe discharge points.
22. The driveways must be drained to minimise surface runoff over the footpath or to the adjoining road in accordance with the requirements of the Municipal Engineer and a Plumbing Permit issued by the Permit Authority in accordance with the *Building Act 2016*.

23. Prior to the commencement of works or the issue of a plumbing permit, detailed plans and calculations of the stormwater drainage system, including treatment, must be prepared by a suitably qualified civil engineer and be submitted to Councils Municipal Engineer for approval.
24. The completed stormwater disposal system must be certified by a practicing civil engineer to the effect that it has been constructed in accordance with the endorsed drawings and specifications approved by Council before the use commences.

TasWater

25. The development must meet all required Conditions of approval specified by Tas Water Amended Submission to Planning Authority Notice Reference number TWDA 2018/00175-BTN dated 8th May 2020.

Soil and Water Management

26. 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 is to be consistent with the relevant construction recommendations of the Waterways and Coastal Protection report prepared by GHD - dated July 2018 and shall form part of this permit when approved.
27. 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

28. 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.

29. 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, wastewater, 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.
30. Any accumulation of vegetation, building debris or other unwanted material must be disposed of by removal from the site in an approved manner. No burning of such materials on site will be permitted unless approved in writing by the Council's Manager Strategic Planning.
31. 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.
32. 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. The property owner should consider the provisions of the Strata Titles Act 1998, particularly in relation Division 9 of that Act, should it be the intent to seek strata approval. Separate planning approval is required for the strata division of the land, if applicable.
- C. This planning approval shall lapse at the expiration of two (2) years from the date of the commencement of planning approval if the development for which the approval was given has not been substantially commenced. Where a planning approval for a development has lapsed, an application for renewal of a planning approval for that development shall be treated as a new application.

DECISION:

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

CARRIED

VOTING RECORD

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

11.2 APPLICATION UNDER BRIGHTON INTERIM PLANNING SCHEME 2015 - DA 2019/00265 – 25 EAVES COURT, OLD BEACH - DWELLING:

Type of Report:	Planning Report: Planning Authority – For Decision
Application No:	DA 2019/00265
Address:	25 Eaves Court, Old Beach
Proposal:	Dwelling
Zone:	General Residential Zone
Representations:	Two (2)
Discretions:	1. Building envelope 2. Privacy (balcony) 3. Site distance for new access
Author:	Planning Officer (Richard Cuskelly)

1. Executive Summary

- 1.1. Planning approval is sought for a single dwelling at 25 Eaves Court, Old Beach (the 'Site'). The Site is situated within the General Residential Zone of the *Brighton Interim Planning Scheme 2015* (the 'Planning Scheme').
- 1.2. The application invokes building envelope, balcony privacy, and access site distance for new access discretions under the Planning Scheme.
- 1.3. Two (2) representations were received within the statutory public advertising period.
- 1.4. The application is considered to meet all applicable standards of the Planning Scheme and is recommended for approval subject to conditions.

- 1.5. The final decision is delegated to the Planning Authority or by full Council acting as a Planning Authority.

2. Legislative & Policy Content

- 2.1. The purpose of this report is to enable the Planning Authority to determine application DA 2019/00265.
- 2.2. This determination must be made no later than 28 July 2020. The statutory assessment period has been extended at the request of the applicant.
- 2.3. The relevant legislation is the *Land Use Planning and Approvals Act 1993* (the 'Act'). The provisions of the Act require a planning authority to take all reasonable steps to ensure compliance with the planning scheme.
- 2.4. This report details the reasons for the officer recommendation. The Planning Authority must consider this report but is not bound to adopt the recommendation. Broadly, the Planning Authority can either: (1) adopt the recommendation, or (2) vary the recommendation by adding, modifying or removing recommended reasons and conditions or replacing an approval with a refusal (or vice versa). Any alternative decision requires a full statement of reasons to comply with the *Judicial Review Act 2000* and the *Local Government (Meeting Procedures) Regulations 2015*.
- 2.5. This report has been prepared with appropriate regard to the State Policies that apply under the *State Policies and Projects Act 1993*.
- 2.6. This report has been prepared with appropriate regard to Council's Strategic Plan and other Council policies, and the application is not found to be inconsistent with these. Nevertheless, it must be recognised that the Planning Scheme is a regulatory document that provides the overriding consideration for this application.

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 application was first advertised in December 2019 where it received two representations. The applicant subsequently requested an extension of time to consider modifications to the proposal.

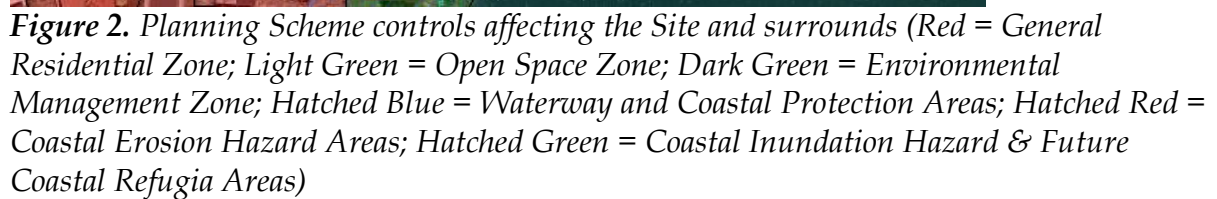
- 4.2. Amended plans were received and re-advertised in June 2020 with slight modifications to ceiling height (reduction) and upper floor siting, particularly in response to concerns raised over overshadowing of the living room skylight of the 23 Eaves Ct dwelling. Two updated representations were received in this advertising period.

5. Site Detail

- 5.1. The Site is an undeveloped narrow 660m² lot with frontage to Eaves Court (see Figure 1).
- 5.2. The site slopes slightly to the south. There is no significant vegetation present.
- 5.3. The Site is within the General Residential Zone of the Planning Scheme. Adjoining land on the Derwent River foreshore is zoned Open Space and the Derwent River itself zoned Environmental Management. (see Figure 2).
- 5.4. Though the Site is affected by several environmental overlays (specifically, Waterway and Coastal Protection, Coastal Erosion Hazard and Coastal Inundation Hazard Areas), none affect the proposed development area.
- 5.5. The rear half of the site is affected by a coastal erosion hazard covenant area prohibiting the construction of a dwelling (see Figure 3).
- 5.6. A small part of the rear of the site is subject to a pipeline and drainage easement.



Figure 1. Aerial image of the Site.



6. Proposal

- 6.1. A two-storey single dwelling is proposed.
- 6.2. The ground level has a floor area of 139.52m² and the second level a floor area of 80.27m².
- 6.3. Three (3) car parking spaces are available on-site.

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 Performance Criteria. 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:
 1. Part D – Clause 10.0 – General Residential Zone
 2. Part E – Clause 5.0 – Road and Railway Assets Code
 3. Part E – Clause 6.0 – Parking and Access Code
 4. Part E – Clause 7.0 – Stormwater Management Code
- 8.2. ‘Residential (Single Dwelling)’ is a No Permit Required use in the General Residential Zone, pursuant to the Use Table set out in Clause 10.2.
- 8.3. The proposal is considered to satisfy the applicable Acceptable Solutions listed below:

Part D

- 10.4.2 – Setbacks and building envelope (bar 10.4.2 A3 (a) below)
- 10.4.3 – Site coverage and private open space
- 10.4.4 – Sunlight and overshadowing
- 10.4.5 – Width of openings

- 10.4.6 – Privacy (bar 10.4.6 A1 below)

Part E

- 5.0 – Road and Railway Assets Code (bar E5.6.4 A1 below)
- E6.0 – Parking and Access Code (all)
- E7.0 – Stormwater Management Code (all)

8.4. The following discretions are invoked by the proposal:

- 10.4.2 A3 – Building envelope
- 10.4.6 A1 – Privacy (balcony)
- E5.6.4 A1 – Site distance for new access

8.5. **Discretion 1 – Building envelope**

- (a) Under Acceptable Solution 10.4.2 A3 (a), all residential buildings are to be within a defined building envelope, excluding eaves up to 0.6m (as shown in Figure 4 below):

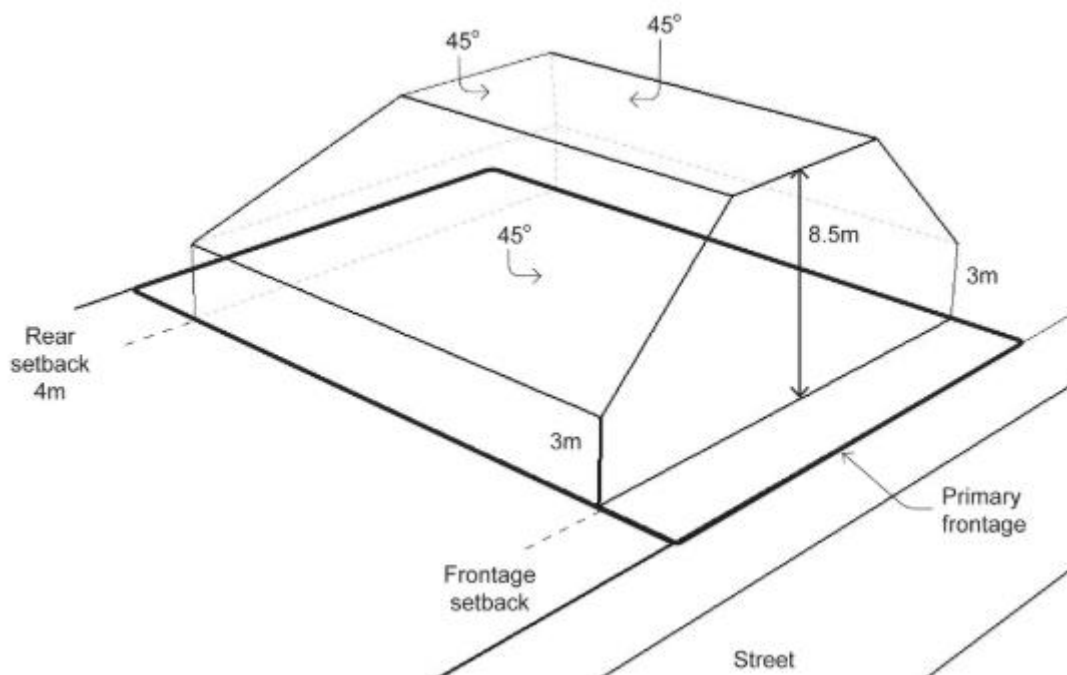


Figure 4. Building envelope designated by 10.4.2 A3 (a)

- (b) The proposed dwelling is within the building envelope on the front, rear, and south-west side boundaries (see Figure 5 below – eaves up to 0.6m comply).

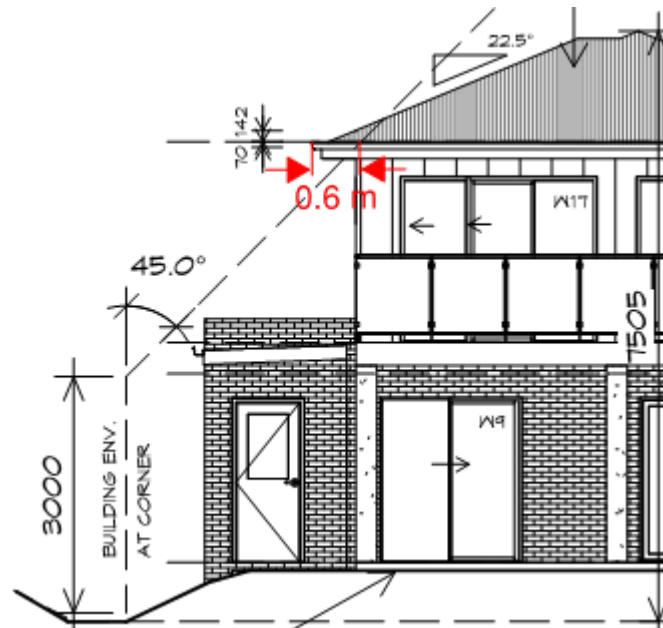


Figure 5. Rear elevation showing the proposed dwelling in relation to the building envelope adjoining 23 Eaves Ct (0.6m measurement by author)

- (c) However, the eastern rear corner of the dwelling extends further beyond the building envelope, meaning the proposal must be assessed against corresponding Performance Criteria 10.4.2 P3.
- (d) Under Acceptable Solution 10.4.2 A3 (b), all residential buildings are to only have a setback within 1.5m of a side boundary if the building:
 - (i) does not extend beyond an existing building built on or within 0.2 m of the boundary of the adjoining lot; or
 - (ii) does not exceed a total length of 9m or one-third the length of the side boundary (whichever is the lesser).
- (e) Although the ground floor garage wall is setback 1m from the south-west side boundary, its total length is only 6.39m and greater than one-third the length of the side boundary in question. The proposal therefore meets 10.4.2 A3 (b).
- (f) Due to the building envelope discretion, the application must be assessed against corresponding Performance Criteria 10.4.2 P3 in full, which states:

The siting and scale of a dwelling must:

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

lot; or

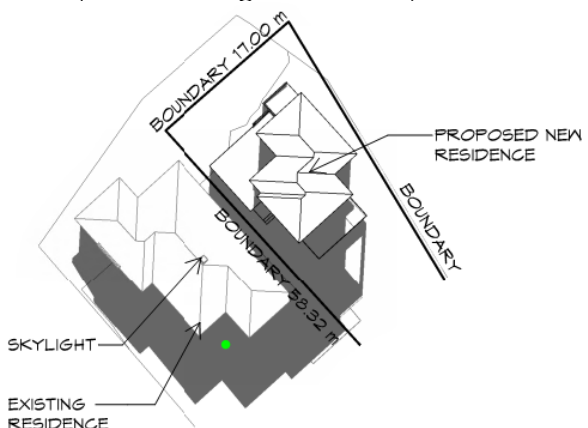
iii. *overshadowing of an adjoining vacant lot; or*

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

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

(g) The Site adjoins three lots: 23 Eaves Ct is developed by a single storey dwelling, 27 Eaves Ct is vacant, and the rear of the lot adjoins a public foreshore trail managed by the Crown.

(h) Assessment is made in Table 1 below against 10.4.2 P3 a) *The siting and scale of a dwelling must not cause unreasonable loss of amenity to adjoining lots.*

23 Eaves Court	
i. <i>reduction in sunlight to a habitable room (other than a bedroom) of a dwelling on an adjoining lot</i>	<p>The dwelling at 23 Eaves Ct (shown front left in Photo 1 below) was approved with a skylight to enable its kitchen/ dining/ living room to receive direct sunlight.</p> <p>Shadow diagrams submitted for the winter solstice (21 June) demonstrate that the proposed dwelling will not impact on the amount of sunlight received by the skylight.</p> <p>Considered to comply</p>
ii. <i>overshadowing the private open space of a dwelling on an adjoining lot</i>	<p>The approved area of private open space for the existing dwelling at 23 Eaves Ct is sited outside the south end of the dining room (marked in green below):</p> 

	Shadow diagrams submitted demonstrate that the proposed dwelling will not impact on the amount of sunlight received. The overshadowing of the area shown on the diagram is rather caused by the 23 Eaves Ct dwelling itself. Considered to comply
<i>iii. overshadowing of an adjoining vacant lot</i>	N/A
<i>iv. visual impacts caused by the apparent scale, bulk or proportions of the dwelling when viewed from an adjoining lot</i>	<p>The visual impact of the proposed dwelling on 23 Eaves Ct is not considered to be unreasonable, for the following reasons:</p> <ul style="list-style-type: none"> - The rooms adjoining the shared boundary are not habitable apart from a bedroom (garage, bathroom, robe and laundry). - The proposed dwelling is well-articulated in terms of building materials, windows, and floor plan arrangement (i.e. the second level is offset from this adjoining side boundary and is a comparatively smaller 80.27m²). - Existing multi-level dwellings are common within the surrounding area and close visual proximity, and the scale of the proposed is not out of character (see Photo 1 below). <p>As the proposed articulation of the dwelling is key to this assessment of visual impact, an addition permit condition is recommended requiring a full final schedule of exterior building materials and colours be received and approved upon application for approval under the <i>Building Act 2016</i>. Considered to comply</p>
27 Eaves Court	
<i>i. reduction in sunlight to a habitable room (other than a bedroom) of a dwelling on an adjoining lot</i>	N/A
<i>ii. overshadowing the private open space of a dwelling on an adjoining lot</i>	N/A

<i>iii. overshadowing of an adjoining vacant lot</i>	The future development area of the currently vacant 27 Eaves Ct lot is to the north-east of the proposed dwelling and will not be overshadowed by the proposed dwelling. Considered to comply
<i>iv. visual impacts caused by the apparent scale, bulk or proportions of the dwelling when viewed from an adjoining lot</i>	The visual impact of the proposed dwelling on 27 Eaves Ct is not considered to be unreasonable, for the following reasons: - The north-east elevation of the proposed dwelling is well-articulated in terms of building materials, windows, and offset from adjoining side boundary. - Existing multi-level dwellings are common within the surrounding area and close visual proximity, and the scale of the proposed is not out of character (see Photo 1 below). Considered to comply
Public foreshore trail (Crown Land)	
<i>i. reduction in sunlight to a habitable room (other than a bedroom) of a dwelling on an adjoining lot</i>	N/A
<i>ii. overshadowing the private open space of a dwelling on an adjoining lot</i>	N/A
<i>iii. overshadowing of an adjoining vacant lot</i>	The proposed dwelling is setback a minimum of 38m from the rear boundary and will cause no overshadowing. Considered to comply
<i>iv. visual impacts caused by the apparent scale, bulk or proportions of the dwelling when viewed from an adjoining lot</i>	The 38m setback, articulated exterior materials and reasonable scale of the proposed dwelling mean that its visual impact when viewed from the public foreshore walking track is compatible with existing development and not unreasonable. Considered to comply

Table 1. Assessment against Performance Criteria 10.4.2 P3 (a)



Photo 1. Taken facing north-west from the rear of the Site.

- (i) The dwelling has minimum side setbacks ranging between 1m (lower floor garage wall on SW side) and 3.86m (lounge and rumpus rooms on NE side) and, as previously stated, meets the Acceptable Solution sub-clause related to side setback.
- (j) In reference to the terms found in Performance Criteria 10.4.2 P3 (b), the Resource Management and Planning Appeal Tribunal (the 'Tribunal') found¹ that "*compatible*" requires an outcome which is in harmony or broad correspondence with the surrounding area, and "*surrounding area*" could be defined by reference to cadastral parcels which were within 100m of the site.
- (k) Figure 6 below shows a 100m radius from the proposed development site. It shows that the surrounding area is characterised by residential development with similarly small degrees of side separation, especially on narrower lots.

¹ 9 Sandy Bay Road Pty Ltd v Hobart City Council & Ors [2017] TASRMPAT 19



Figure 6. Aerial photograph of the site. The yellow circle denotes a 100m radius from the approximate centre of the proposed dwelling.

- (l) The proposed side setbacks of the development are considered in harmony and broad correspondence with that prevailing in the surrounding area.
- (m) For the reasons set out above, the proposal is considered to meet Performance Criteria 10.4.2 P3 in full.

8.6. **Discretion 2 - Privacy (balcony)**

- (a) Acceptable Solution 10.4.6 A1 (a) states:

A balcony, deck, roof terrace, parking space, or carport (whether freestanding or part of the dwelling), that has a finished surface or floor level more than 1m above natural ground level must have a permanently fixed screen to a height of at least

1.7m above the finished surface or floor level, with a uniform transparency of no more than 25%, along the sides facing a:

- (a) side boundary, unless the balcony, deck, roof terrace, parking space, or carport has a setback of at least 3m from the side boundary.*
- (b) The proposed dwelling has a second level balcony setback a minimum of 2.94m from the south-west side boundary. Therefore, the application must meet corresponding Performance Criteria 10.4.6 P1, reproduced below:

A balcony, deck, roof terrace, parking space or carport that has a finished surface or floor level more than 1m above natural ground level, must be screened, or otherwise designed, to minimise overlooking of:

 - a) a dwelling on an adjoining lot or its private open space; or*
 - b) another dwelling on the same site or its private open space; or*
 - c) an adjoining vacant residential lot.*
- (c) This standard is best addressed by the inclusion of a condition of approval that a permanently fixed screen be installed on the south-west side of the balcony that is at least 1.7m in height above the finished floor level with a uniform transparency of no more than 25%.
- (d) The development is considered to satisfy Performance Criteria 10.4.6 P1 which the inclusion of such a condition.

8.7. Discretion 3 – Site distance for new access

- (a) Acceptable Solution E5.6.4 A1 (a) states:

Sight distances at:

- (a) an access or junction must comply with the Safe Intersection Sight Distance.*
- (b) Therefore, the application must meet corresponding Performance Criteria E5.6.4 P1, reproduced below:

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

- (a) the nature and frequency of the traffic generated by the use;*
- (b) the frequency of use of the road or rail network;*
- (c) any alternative access;*
- (d) the need for the access, junction or level crossing;*

(e) any traffic impact assessment;

(f) any measures to improve or maintain sight distance; and

(g) any written advice received from the road or rail authority.

- (c) Council's Senior Technical Officer assessed and concluded the sight distance to the west complied with the Acceptable Solution and the sight distance to the east is sufficient for the speed environment. The proposal is considered to satisfy Performance Criteria 10.4.6 P1 which the inclusion of parking and access conditions.

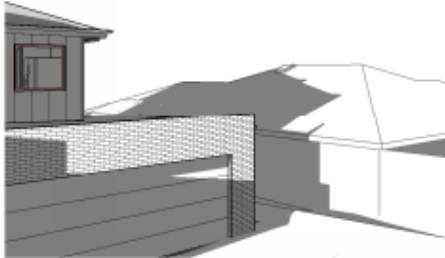
9. Referrals

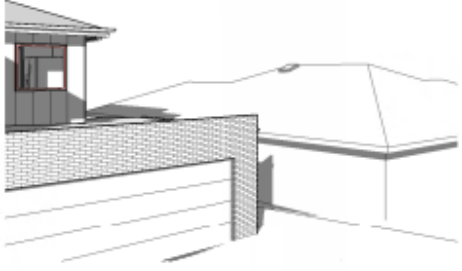
9.1. Engineering

The application was referred to the Council's Senior Technical Officer, whose Engineering Report is attached.

10. Concerns raised by the representors

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

Concerns of Representors	Planning Response
Overshadowing of adjoining dwelling at 23 Eaves Ct.	<p>See assessment under section 8.5.8 above. The roof of the dwelling will be overshadowed in parts in the morning (see perspectives below modelled at 21 June, noting the skylight):</p>  <p>3D PERSPECTIVE - 9AM</p>

	 <p>3D PERSPECTIVE - 12PM</p> <p>However, unfortunately the Planning Scheme only provides for assessment of impact on solar access to a habitable room(s) of an adjoining dwelling, not the roof alone (and potential impact on solar panels).</p>
<p>Overshadowing of adjoining private open space at 23 Eaves Ct.</p>	<p>See assessment under section 8.5.8 above. Shadow diagrams submitted demonstrate that the proposed dwelling will not impact on the amount of sunlight received to the private open space deck area. The overshadowing of the area shown on the diagram is rather caused by the 23 Eaves Ct dwelling itself as the open area is located to the south.</p>
<p>Privacy impacts on adjoining lots from the balcony.</p>	<p>It is agreed that the glass balustrade is insufficient to mitigate the potential privacy impact on the adjoining 23 Eaves Ct property. See section 8.6.3 above which recommends inclusion of a condition of approval that a permanent privacy screen be installed on the balcony along this boundary. The distance of the balcony from the adjoining vacant lot at 27 Eaves Ct is 3.4m (at minimum) which meets the preferred standard ('Acceptable Solution') and cannot be varied due to Council request.</p>
<p>Off-street parking (narrow street).</p>	<p>The application provides for at least three on-site car parking spaces and meets the Acceptable Solution E6.6.1 A1 - Number of Car Parking Spaces.</p>

Unreasonable visual impact due to scale which is not in harmony with the area.	See assessment under section 8.5.8 above which concludes that any visual impact is reasonable. The proposed dwelling is considered well-articulated in terms of building materials, windows, and floor plan arrangement. In terms of scale, there are existing multi-level dwellings within the surrounding area and close visual proximity, and the scale of the proposed is compatible with these. For example, the second level of the proposed dwelling is 80.27m ² in floor area and the existing two multiple dwellings directly opposite the Site at 28 Eaves Ct both have second level floor areas of 79.55m ² .
Inadequate separation between dwellings.	See assessment under section 8.5.9-11 above which concludes the separation is compatible with the surrounding area. The dwelling has minimum side setbacks ranging between 1m (the lower floor garage wall which extends for on SW side) and 3.86m (corner of lounge and rumpus rooms on NE side). The surrounding area is characterised by residential development with similarly small degrees of side separation (see Figure 6 above).
Other dwellings on Eaves Ct are single storey and within the building envelope.	Some dwellings on Eaves Ct are multi-level and were assessed under corresponding Performance Criteria on building envelope discretion.

11. Conclusion

- 11.1. The proposal is for a single dwelling at 25 Eaves Court, Old Beach. The site is situated within the General Residential Zone of the *Brighton Interim Planning Scheme 2015* (the 'Interim Scheme').
- 11.2. The key planning considerations are that the proposed dwelling extends beyond the building envelope on its eastern corner, and that improved privacy management is required for the south-west side of the proposed balcony.
- 11.3. After independent assessment it is concluded that the siting and scale of the proposed dwelling will not cause *unreasonable* loss of amenity to adjoining lots, and that a condition requiring a permanently affixed privacy screen can suitably address privacy concerns for the south-west side of the proposed balcony.

- 11.4. The proposal is considered to satisfy the requirements of the *Brighton Interim Planning Scheme 2015*, and as such, is recommended for approval subject to conditions.

12. Recommendations

That: A. Pursuant to the *Brighton Interim Planning Scheme 2015*, Council approve DA 2019/00265 for a Dwelling in the General Residential Zone at 25 Eaves Court, Old Beach with the following conditions:

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) Any front fence must have a height above natural ground level of not more than:
 - a) 1.2m, if the fence is solid; or
 - b) 1.8m, if the fence has openings above a height of 1.2m which provide a uniform transparency of not less than 30%.
- (4) A full schedule of exterior building materials and colours must be submitted to and approved by the Manager Development Services prior to or upon application for approval under the *Building Act 2016*. This schedule is to closely accord with the endorsed plans. Once approved, the schedule will be endorsed and form part of this planning permit.

Privacy

- (5) A permanently fixed privacy screen must be attached to extend the length of the south-west elevation of the first-floor balcony. The screen must be at least 1.7m above finished floor level with a uniform transparency of no more than 25%.
- (6) Plans showing compliance with Condition 6 must be submitted to and approved by the Manager Development Services prior to or upon application for approval under the *Building Act 2016*. Once approved, they will be endorsed and form part of this planning permit.

Services

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

Parking and Access

- (8) A new reinforced concrete vehicle access must be provided from Eaves Court to the property boundary in accordance with;
 - a) Councils Standard Drawings;
 - b) Standards Australia (2004): *Australian Standard AS 2890.1 - 2004 - Parking Facilities Part 1: Off Street Car Parking*; Standards Australia, Sydney;and to the satisfaction of Council's Municipal Engineer.
- (9) The proposed vehicular access off Eaves Court must be located clear of the existing kerb ramp to the satisfaction of Council's Municipal Engineer.
- (10) At least two (2) parking spaces must be provided on the land at all times for the use of the occupiers, in accordance with Standards Australia (2004): *Australian Standard AS 2890.1 - 2004 - Parking Facilities Part 1: Off Street Car Parking*; Standards Australia, Sydney.
- (11) Unless approved otherwise by Council's Municipal Engineer the internal private driveway and areas set-aside for parking and associated access and turning must be provided in accordance the endorsed drawings, Standards Australia (2004): *Australian Standard AS 2890.1 - 2004 - Parking Facilities Part 1: Off Street Car Parking*; Standards Australia, Sydney and include all of the following;
 - (a) A minimum trafficable width of 3m
 - (b) Constructed with a durable all weather pavement.
 - (c) Drained to an approved stormwater system.
 - (d) Surfaced with concrete, asphalt or pavers.
- (12) All areas set-aside for parking and associated turning, and access must be completed before the use commences and must continue to be maintained to the satisfaction of the Council's Municipal Engineer.

Access to Public Road

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

Stormwater

- (14) Drainage from the proposed development must drain to the public stormwater system to the satisfaction of Council's Municipal Engineer and in accordance with a Plumbing permit issued by the Permit Authority in accordance with the *Building Act 2016*.
- (15) The driveway must be drained to minimise surface runoff over the footpath or to the adjoining road in accordance with the requirements of the Municipal Engineer and the *Building Act 2016*.

Soil and Water Management

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

Construction Amenity

- (17) 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.
- (18) 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.
- (19) 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.
- (20) 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.
- (21) The developer must make good and/or clean any footpath, road surface or other element damaged or soiled by the development to the satisfaction of the Council's Municipal Engineer.

THE FOLLOWING ADVICE APPLIES TO THIS PERMIT:

- A. This permit does not imply that any other approval required under any other legislation or by-law has been granted.
- B. If you notify Council that you intend to commence the use or development before the date specified above you forfeit your right of appeal in relation to this permit.
- C. This planning approval shall lapse at the expiration of two (2) years from the date of the commencement of planning approval if the development for which the approval was given has not been substantially commenced. Where a planning approval for a development has lapsed, an application for renewal of a planning approval for that development shall be treated as a new application.

DECISION:

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

CARRIED

VOTING RECORD

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

11.3 APPLICATION UNDER BRIGHTON INTERIM PLANNING SCHEME 2015 - DA 2020/0003 – 12 MUNDAY STREET, BRIGHTON - MULTIPLE DWELLINGS (1 EXISTING, 4 ADDITIONAL):

Type of Report	Planning Authority – For Decision
Application No:	DA 2020/003
Address:	12 Munday Street, Brighton
Proposal:	Multiple Dwellings (x3)
Zone:	General Residential Zone
Representations:	One (1)
Discretions:	Building Envelope Private Open Space Solar Access Privacy Parking and Access Code (lighting and landscaping) Stormwater Management Code (Water Sensitive Urban Design)
Author:	Planning Officer (Jo Blackwell)

1. Executive Summary

- 1.1. Planning approval is sought for an additional 4 multiple dwellings at 12 Munday Street, Brighton (the 'site'). The site is situated within the General Residential Zone of the *Brighton Interim Planning Scheme 2015* (the 'Interim Scheme').
- 1.2. The application invokes discretion to the Acceptable Solutions of the Interim Scheme related to building envelope, private open space, solar access, privacy, parking and access and stormwater management.
- 1.3. The application has been advertised for public exhibition. One (1) representation was received.
- 1.4. The application is recommended for approval.
- 1.5. Due to the receipt of representations during the public exhibition 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 2020/003.

- 2.2. This determination must be made no later than 21st July 2020. The statutory assessment period has been extended with the consent of the applicant.
- 2.3. The relevant legislation is the *Land Use Planning and Approvals Act 1993* (the 'Act'). The provisions of the Act require a planning authority to take all reasonable steps to ensure compliance with the planning scheme.
- 2.4. This report details the reasons for the officer recommendation. The Planning Authority must consider this report but is not bound to adopt the recommendation. Broadly, the Planning Authority can either: (1) adopt the recommendation, or (2) vary the recommendation by adding, modifying or removing recommended reasons and conditions or replacing an approval with a refusal (or vice versa). Any alternative decision requires a full statement of reasons to comply with the *Judicial Review Act 2000* and the *Local Government (Meeting Procedures) Regulations 2015*.
- 2.5. This report has been prepared with appropriate regard to the State Policies that apply under the *State Policies and Projects Act 1993*.
- 2.6. This report has been prepared with appropriate regard to Council's Strategic Plan and other Council policies, and the application is not found to be inconsistent with these. Nevertheless, it must be recognised that the planning scheme is a regulatory document that provides the overriding consideration for this application. Matters of policy and strategy are primarily a matter for preparing or amending the planning scheme.

3. Risk & Implications

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

4. Site Detail

- 4.1. The site is comprised within Certificate of Title Volume 12648 Folio 2, with a land area of 2400 square metres (sqm). The site has a gentle slope from south to north and is currently developed by a dwelling and outbuildings (Figure 1). The outbuildings are to be demolished and a number of low value trees and shrubs to be removed to allow construction of the multiple dwellings.



Figure 1: Subject Site (Source: Listmap)

- 4.2. The site and surrounding land is zoned General Residential pursuant to the Interim Scheme, with no planning scheme overlays attributable to the site (see Figure 2).

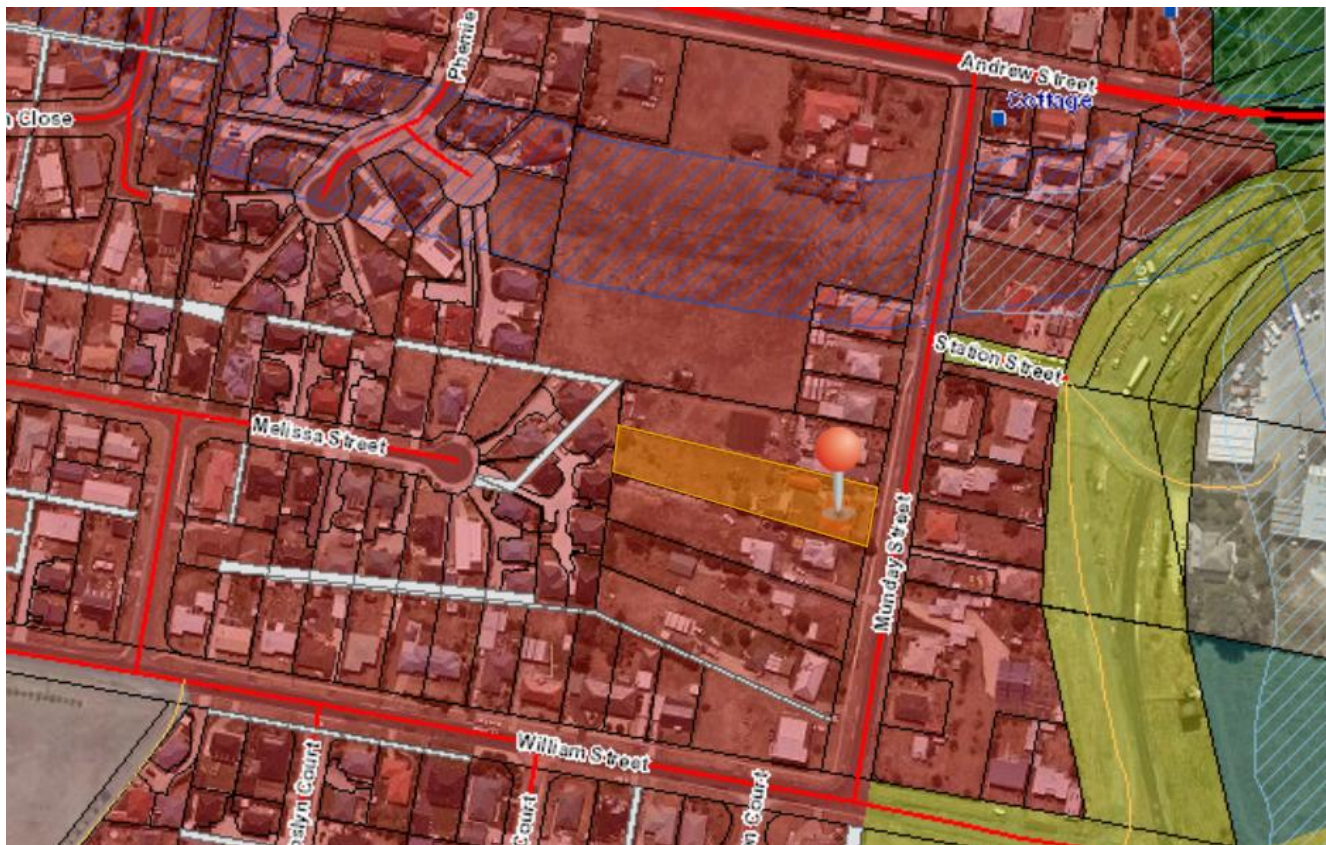


Figure 2: Zoning Map

- 4.3. Munday Street is subject to a residential speed limit of 50kmh, and is located along a Metro bus route.

5. Proposal

- 5.1. The proposal involves:
 - (a) Four (4) additional multiple dwellings and associated site works.
- 5.2. Each additional dwelling will have three bedrooms, open plan living area, and the usual amenities. External walls are to be constructed from light weight cladding with skillion roofing. Total floor area per unit is approximately 148sqm.
- 5.3. Carports provide for tandem carparking for each dwelling. Parking for the existing dwelling is to be provided forward of the building line for the dwelling. A total of 12 car parking spaces have been proposed – Two per dwelling and two (2) visitor parking spaces.

6. Assessment

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

7. Assessment against planning scheme provisions

- 7.1. The following provisions are relevant to the assessment of the proposed use and development:
 - Part D – Clause 10.0 – General Residential Zone
 - Part E – Clause 5.0 – Road and Railway Assets Code
 - Part E – Clause 6.0 – Parking and Access Code
 - Part E – Clause 7.0 – Stormwater Management Code
- 7.2. The proposed use is for multiple dwellings within the General Residential Zone. 'Residential (Multiple Dwellings)' is a Permitted Use in the General Residential Zone, pursuant to the Use Table set out in Clause 10.2.
- 7.3. The proposal is considered to satisfy the relevant Acceptable Solutions listed below:

Part D

- Section 10.4.1 - Density
- Section 10.4.2- Setbacks and Building Envelope (excluding A3)
- Section 10.4.3 – Site Coverage and Private Open Space (excluding A2)
- Section 10.4.4- Sunlight and Overshadowing (excluding A1)
- Section 10.4.5 – Width of Openings for Garages & Carports
- Section 10.4.6 – Privacy (excluding A3)
- Section 10.4.7 – Frontage Fences

Part E

- E5.0 – Road and Railway Assets Code
- E6.0 – Parking and Access Code (excluding E6.7.1A1, and E6.7.8 A1)
- E7.0 – Stormwater Management Code (excluding E7.7.1 A2)

7.4. The following discretions are invoked by the proposal:

- Section D10.4.2 A3 – Building envelope
- Section D10.4.3 A2 – Private Open Space
- Section D10.4.4 A1 - Sunlight
- Section D10.4.6 A3 - Privacy
- Section E6.7.7.A1 - Lighting
- Section E6.7.8 A1 - Landscaping
- Section E7.7.1 A2 – Water Sensitive Urban Design

7.5. **Discretion 1 – Section D10.4.2 A3 – Building envelope**

7.5.1 The proposal does not satisfy the acceptable solution due to a small section of unit 5 exceeding the building envelope (refer to Sheet 13 of the proposal plans). As such, the application is discretionary, and must be assessed against the corresponding Performance Criteria.

7.5.2 Section D10.4.2 P3 states:

P3 The siting and scale of a dwelling must:

- (a) not cause unreasonable loss of amenity by:*
 - (i) reduction in sunlight to a habitable room (other than a bedroom) of a dwelling on an adjoining lot; or*
 - (ii) overshadowing the private open space of a dwelling on an adjoining lot; or*
 - (iii) overshadowing of an adjoining vacant lot; or*
 - (iv) visual impacts caused by the apparent scale, bulk or proportions of the dwelling when viewed from an adjoining lot; and*
- (b) provide separation between dwellings on adjoining lots that is compatible with that prevailing in the surrounding area.*

7.5.3 Addressing each of the criterion in turn:

7.5.3.1 Shadow diagrams submitted in support of the application demonstrate that there is no unreasonable loss of amenity in relation to reduction to sunlight or overshadowing to any adjoining property, and there are no vacant lots adjoining the land.

7.5.3.2 The proposed dwellings are setback from boundaries within usual distances. Building mass is separated by parking spaces between the single storey units, with each unit having approximately 200sqm of private open space. Further, the proposed dwellings have a relatively small footprint of approx. 92sqm. Each dwelling is single storey, with a maximum building height of 4.2m above NGL. This together, with the proposed setbacks assists to reducing visual bulk.

7.5.3.3 The setbacks proposed are similar to that of other unit developments within the vicinity.

7.5.4 It is considered that the proposal can satisfy the performance criteria.

7.6 Discretion 2 – Section D10.4.3 A2 – Private Open Space

7.6.1 The proposal is not able to satisfy the acceptable solution in relation to Private Open Space (POS) due to siting or area for units 1 – 4 inclusive.

7.6.2 The performance criteria requires that

P2A dwelling must have private open space that:

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

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

(ii) *orientated to take advantage of sunlight*

7.6.3 The POS for unit 1 is located on the eastern side of the respective dwellings, and units 2, 3 and 4 are located to the north western corner of the dwelling.

7.6.4 In addition to the enclosed POS accessible from the living area, each unit has a land area of approximately 200sqm available for use as private open space, which significantly exceeds the POS required by the planning scheme.

7.6.5 It is therefore considered that each unit can satisfy the performance criteria.

7.7 Discretion 3: Section D10.4.4 A1 – Sunlight

7.7.1 The proposal plans show that unit 5 does not have a habitable room (other than a bedroom) in which there is a window that faces between 30 degrees west of north and 30 degrees east of north.

7.7.2 The performance criterion requires that:

P1 A dwelling must be sited and designed so as to allow sunlight to enter at least one habitable room (other than a bedroom).

7.7.3 The proposal plans show eastern facing windows from the living area, which allows sunlight to enter during the morning.

7.7.4 Accordingly, the performance criterion can be satisfied.

7.8 Discretion 4: Section D10.4.6 A3 – Privacy (shared driveway or parking space)

7.8.1 The proposal shows two visitor car parking spaces located approximately 0.8m from the north facing wall of units 2 and 3. This does not satisfy the acceptable solution which requires:

A3 *A shared driveway or parking space (excluding a parking space allocated to that dwelling) must be separated from a window, or glazed door, to a habitable room of a multiple dwelling by a horizontal distance of at least:*

(a) 2.5 m; or

(b) 1 m if:

(i) *it is separated by a screen of at least 1.7 m in height; or*

(ii) *the window, or glazed door, to a habitable room has a sill height of at least 1.7 m above the shared driveway or parking space, or has fixed obscure glazing extending to a height of at least 1.7 m above the floor level*

7.8.2 The performance criteria requires:

P3 *A shared driveway or parking space (excluding a parking space allocated to that dwelling), must be screened, or otherwise located or designed, to minimise detrimental impacts of vehicle noise or vehicle light intrusion to a habitable room of a multiple dwelling.*

7.8.3 Council's technical officer advises that there is sufficient space to increase the separation distance between the dwellings and the proposed visitor parking spaces, to allow for privacy screening to be installed, without significantly impacting the vehicle access.

7.8.4 Accordingly, it is recommended that a condition be included in the permit to allow for the applicant to submit an amended site plan. The amended site plan should show a minimum distance between the proposed visitor parking spaces and the adjacent dwellings of 1m.

Screening along the length of the visitor car parking spaces should be installed to a minimum height of 1.7m and maximum uniform transparency of 25%.

- 7.8.5 The performance criteria can be satisfied, with the recommended condition.

7.9 Discretion 5: E6.7.7.A1 Lighting of Parking Areas

7.9.1 Section E6.7.7 A1 of the Parking and Access Code requires lighting to be provided in accordance with the Australian Standard, where five (5) or more car parking spaces are to be provided outside of daylight hours.

7.9.2 The proposal does not include lighting of parking areas as part of the proposal. However, it is considered that the acceptable solution can be achieved, and that a condition requiring appropriate lighting to be installed in accordance with the acceptable solution can satisfy the performance criteria.

7.10 Discretion 6: E6.7.8 A1 Landscaping of Parking Areas

7.10.1 A minimum of five percent (5%) of the area of the parking and circulation areas is required to be landscaped in accordance with E6.7.8 A1 of the Parking and Access Code, if more than five (5) car parking spaces are proposed.

7.10.2 The proposal does not include a landscaping plan as part of the application. However, it is considered there is sufficient land area to accommodate the landscaping, and a condition requiring the implementation of same in accordance with the acceptable solution will address the requirements of the standard.

7.11 Discretion 7: E7.7.1 A2 Water Sensitive Urban Design

7.11.1 Section E7.7.1 A2 of the Stormwater Management Code requires:

A2 A stormwater system for a new development must incorporate water sensitive urban design principles for the treatment and disposal of stormwater if any of the following apply:

- (a) *the size of new impervious area is more than 600 m²;*

(b) *new car parking is provided for more than 6 cars;*

(c) *a subdivision is for more than 5 lots.*

7.11.2 The proposal includes parking for 12 vehicles, together with an impervious area greater than 600sqm.

7.11.3 Accordingly the performance criteria must be addressed which requires that a stormwater system for a new development must incorporate a stormwater drainage system of a size and design sufficient to achieve the stormwater quality and quantity targets in accordance with the State Stormwater Strategy 2010, as detailed in Table E7.1 unless it is not feasible to do so.

7.11.4 The application was referred to council's technical officer who considers that, as outlined in the stormwater report submitted with the application, it is impractical to connect to the existing council SW main in Munday Street due to the other services and particularly the DN648 watermain installed with minimal cover. Other means of draining this and adjoining lots including from the rear or middle of the lots was considered but these required further investigation and involve downstream lots. Instead, the existing kerb connection is to be retained coupled with a minor drainage system (roof runoff into tanks with reduced diameter outlets and detention at two locations in the driveway) such that site runoff does not exceed existing for 20 and 100 ARI events. Water sensitive urban design (WSUD) principles have been included in terms of detention/reduction in peak flows but not treatment due to the limited site fall preventing swales etc. A contribution for WSUD is recommended.

7.11.5 It is considered therefore that the proposal can satisfy the performance criteria through the proposed installation of rainwater tanks to reduce peak flows and seeking a contribution to water sensitive urban design in accordance with Council's policy. A condition requiring registration of a Part 5 Agreement is recommended, to ensure that the water tanks are maintained on site for the life of the additional dwellings.

8 Referrals

8.1 Engineering

The application was referred to the Council's Technical Officer, whose comments are included where necessary throughout this report.

8.2 TasWater

Sewer and Water reticulation is available to the site. The application was referred to TasWater who have imposed development conditions. A copy of TasWater's Submission to Planning Authority Notice (SPAN) will be attached to any permit issued.

9 Concerns raised by representors

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

9.2 One (1) representation was received during the public exhibition period.

9.3 The concerns of the representors are summarised below:

Concerns of Representor 1	Planning Response
Stormwater runoff	In the pre-development scenario there will be runoff from the subject site - it is unreasonable to expect no surface runoff from particularly pervious services onto downhill adjoining land. In the post development scenario, less land area will discharge to the representors land - runoff from roofs will be directed via tanks to the properties SW connection and the driveway and parking will be discharged to the SW connection including detention of larger rain events. Stormwater Management is more fully addressed in clause 7.11

Boundary Fence – height, fencing materials	This is not a planning consideration. Boundary fencing is a civil matter between property owners.
Privacy	The proposal satisfies the acceptable solution in relation to privacy, other than for shared driveways and parking spaces, which is addressed in clause 7.8 above.
Noise	The proposal satisfies the density and parking requirements for development in general residential zone.
Increase in traffic, on-street parking	The proposed parking including visitor parking meets the requirements of the planning scheme.
Location of Rubbish and Recycling bins	Plans submitted with the application shown bin storage outside each dwelling. Bins will need to be placed on the Munday Street nature strip on collection days. The planning scheme does not address waste collection.
Road maintenance	Not a planning consideration
Trade vehicles	<p>For such a small development with a short term construction period, it is not usual to require any specific management plan regarding construction vehicles and parking.</p> <p>Council Standard conditions prohibit use of public streets for construction work/storage.</p> <p>It is reasonable to assume that there will be a short-term increase in traffic/parking demand due to construction works.</p>

10 Conclusion

- 10.1 The proposal is for multiple dwellings (4 additional, 1 existing) at 12 Munday Street, Brighton. The site is situated within the General Residential Zone of the Brighton Interim Planning Scheme 2015 (the 'Interim Scheme').
- 10.2 The key issues relate to building envelope, private open space, solar access, parking and access and stormwater management.
- 10.3 For the reasons set out above, the proposal is considered to satisfy the requirements of the Brighton Interim Planning Scheme 2015, and as such, is recommended for the application is recommended for approval.

RECOMMENDATION:

That: A. Pursuant to the *Brighton Interim Planning Scheme 2015*, Council approve DA 2020/003 for multiple dwellings (4 additional, 1 existing) in the General Residential Zone at 12 Munday Street, Brighton with the following conditions:

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*.

Amended Plans

- (3) Prior to commencement of works or prior to issue of approvals pursuant to the *Building Act 2016*, whichever first occurs, an amended site plan must be submitted for approval by the Manager Development Services showing:
 - (a) A minimum setback of one metre (1m) between the north facing walls of units 2 and 3 and the visitor parking areas
 - (b) Privacy screening adjacent to the visitor parking areas. The privacy screening must be a minimum height of 1.7metres and have a uniform transparency not exceeding 25%.

- (c) Lighting in accordance with clause 3.1 “Basis of Design”, Clause 3.6 “Car Parks” in AS/MZS 1158.3.1:2005 Lighting for Roads and Public Spaces Part 3.1 Pedestrian Area (Category P) lighting.

Once approved the amended plan will form part of the approved documents

Staging

- (4) The development must not be staged without prior approval in writing by the Manager Development Services.

Amenity

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

Private Open Space

- (7) The private open space for unit 1 must be fenced or screened to a minimum height of 1.8m, with a uniform transparency of thirty percent (30%) above 1.2m. Plans demonstrating same should be submitted to Council’s Manager Development Services for approval. Once approved the plans will form part of the approved documents.
- (8) The private open space for all units must be formed or constructed to the satisfaction of Council’s Manager Development Services before the use commences.

Landscaping

- (9) Prior to commencement of works or prior to issue of approvals pursuant to the *Building Act 2016*, whichever first occurs, submit a landscape plan prepared by a suitably qualified person for approval by Council’s Manager Development Services. The landscape plan must include:
 - (a) A survey of all existing vegetation to be retained and/or removed.
 - (b) The areas to be landscaped,
 - (c) Details of surface finishes of paths and driveways.

- (d) Details of fencing and privacy screening, including separation of private open spaces.
 - (e) Lighting
 - (f) 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.
 - (g) Landscaping and planting within all open areas of the site.
- (10) Planting must bear a suitable relationship to the proposed height of the buildings and must not use species listed as noxious weeds within Tasmania, displaying invasive characteristics or unsuitable for fire prone areas. If considered satisfactory, the landscape plan will be endorsed and will form part of this permit.
- (11) Prior to commencement of use, all trees and landscaping must be planted and installed in accordance with the approved Landscaping Plan to the satisfaction of the Council's Manager Development Services. Evidence showing compliance with this condition must be submitted to and approved by the Manager Development Services within 30 days of planting.
- (12) Replacement trees and landscaping in accordance with the approved Landscaping Plan must be planted if any is lost. All landscaping must continue to be maintained to the satisfaction of Council.

Agreements

- (13) An agreement pursuant to Part 5 of the *Land Use Planning and Approvals Act 1993* must be entered into, prior to occupancy of any of the dwelling, to the effect that:
- a. the stormwater detention system must be maintained to ensure quality is maintained and water is conveyed so as not to create any nuisance to adjacent properties.
 - b. The number of parking spaces required by this permit will be maintained and kept available on site.
- (14) 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.

- (15) 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.
- (16) Any services located under the proposed driveway are to be provided with trafficable covers to the requirements of the relevant authority and Council's Municipal Engineer.

Parking and Access

- (17) Parking and access must be generally in accordance with the approved plan and to the satisfaction of Council's Municipal Engineer.
- (18) The vehicle access from Munday Street must be in accordance with the following;
 - a. Councils Standard Drawings;
 - b. Have a minimum width of 5.5m for a distance of no less than 6.0m from the edge of the road;
 - c. Be constructed in reinforced concrete;

and to the satisfaction of Council's Municipal Engineer.

- (19) At least twelve (12) parking spaces must be provided on the land at all times for the use of the occupiers including at least two (2) car parking spaces per dwelling and at least two (2) designated for visitor parking, in accordance with Standards Australia (2004): Australian Standard AS 2890.1 - 2004 - Parking Facilities Part 1: Off Street Car Parking; Standards Australia, Sydney.
- (20) Unless approved otherwise by Council's Municipal Engineer the internal private driveway and areas set-aside for parking and associated access and turning must be provided in accordance with Standards Australia (2004): Australian Standard AS 2890.1 - 2004 - Parking Facilities Part 1: Off Street Car Parking; Standards Australia, Sydney and include all of the following:
 - a. A minimum trafficable width of 4.0m.
 - b. Passing bays 5.5m wide x 6.0m long at the road and at maximum 30m spacing.

- c. Constructed with a durable all-weather pavement and surfaced with concrete.
 - d. Drained to an approved stormwater system.
 - e. Permit on site turning.
- (21) Parking and vehicle circulation roadways and pedestrian paths serving 5 or more car parking spaces, used outside daylight hours, must be provided with lighting in accordance with clause 3.1 “Basis of Design” and clause 3.6 “Car Parks” in AS/NZS 1158.3.1:2005 Lighting for roads and public spaces Part 3.1: Pedestrian area (Category P) lighting, or as otherwise approved by Council’s General Manager.
- (22) A parking plan prepared and certified by a qualified civil engineer or other person approved by Council’s Municipal Engineer must be submitted to Council prior to or in conjunction with lodgement of Building Application. The parking plan is to include:
- pavement details,
 - design surface levels and gradients – including certification from a suitably qualified engineer the required detention volume from the stormwater report is provided,
 - drainage,
 - turning paths,
 - dimensions,
 - line marking,
 - signage,
 - pedestrian access,
 - lighting
- and shall form part of the permit when approved.
- (23) The completed parking and associated turning areas and access must be certified by a practicing civil engineer to the effect that they have been constructed in accordance with the endorsed drawings and specifications approved by Council before the use commences.

- (24) All areas set-aside for parking and associated turning, and access must be completed before the use commences and must continue to be maintained to the satisfaction of the Council's Municipal Engineer.

Stormwater

- (25) Drainage from the proposed development must drain to the legal discharge point by gravity to the satisfaction of Council's Municipal Engineer and in accordance with a Plumbing permit issued by the Permit Authority in accordance with the *Building Act 2016*.
- (26) The Developer is to incorporate Water Sensitive Urban Design Principles into the development for the treatment and disposal of stormwater. These Principles will be in accordance with the Water Sensitive Urban Design Procedures for Stormwater Management in Southern Tasmania and to the satisfaction of the Council's Municipal Engineer.

Alternatively:

The developer may make a financial contribution to Brighton Council for the provision of stormwater treatment in accordance with Council Policy 6.1 *Interim Water Sensitive Urban Design Contributions*.

Advice: A copy of Policy 6.1 Interim Water Sensitive Urban Design Contributions can be downloaded from Council's website.

<https://www.brighton.tas.gov.au/wp-content/uploads/2019/05/Policy-6.1-Interim-Water-Sensitive-Urban-Design-Contributions.pdf>

- (27) The developer must provide a minor stormwater drainage system designed to comply with all of the following:
- a. be able to accommodate a storm with an ARI of 20 years when the land serviced by the system is fully developed;
 - b. stormwater runoff will be no greater than pre-existing runoff or any increase can be accommodated within existing or upgraded public stormwater infrastructure.
- (28) The developer is to provide a major stormwater drainage system designed to accommodate a storm with an ARI of 100 years.

- (29) The driveways must be drained to minimise surface runoff over the footpath or to the adjoining road in accordance with the requirements of the Municipal Engineer and a Plumbing Permit issued by the Permit Authority in accordance with the *Building Act* 2016.
- (30) Prior to the commencement of works or the issue of a plumbing permit, detailed plans of the stormwater drainage system, including detention must be prepared by a suitably qualified civil engineer and be submitted to Councils Municipal Engineer for approval.
- (31) The completed stormwater detention must be certified by a practicing civil engineer to the effect that it has been constructed in accordance with the endorsed drawings and specifications approved by Council before the use commences.

Tas Water

- (32) The development must meet all required Conditions of approval specified by Tas Water Submission to Planning Authority Notice TWDA 2020/00023-BTN, dated 20/01/2020.

Soil and Water Management

- (33) 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.
- (34) 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

- (35) 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.
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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.

- (36) 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.
- (37) 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.
- (38) 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.
- (39) 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. No works on or affecting any Council road reservation is to be commenced until the Brighton Council has issued a WORKS IN ROAD RESERVATION PERMIT. Application for the issue of the necessary works permit is to be made to the Brighton Council's Asset Services department prior to the proposed date of commencement of any works.
- C. **This planning approval shall lapse at the expiration of two (2) years from the date of the commencement of planning approval if the development for which the approval was given has not been substantially commenced. Where a planning approval for a development has lapsed, an application for renewal of a planning approval for that development shall be treated as a new application.**

DECISION:

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

CARRIED

VOTING RECORD

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

11.4 APPLICATION UNDER BRIGHTON INTERIM PLANNING SCHEME 2015 - DA 2020/99 – 32 AND 34 EAVES COURT, OLD BEACH, MULTIPLE DWELLINGS (X3):

Type of Report	Planning Authority – For Decision
Application No:	DA 2002/99
Address:	32 and 34 Eaves Court, Old Beach
Proposal:	Multiple Dwellings (x3)
Zone:	General Residential Zone
Representations:	One (1)
Discretions:	1. Stormwater Management
Author:	Planning Officer (Jo Blackwell)

1. Executive Summary

- 1.1. Planning approval is sought for a three (3) multiple dwellings across two sites at 32 and 34 Eaves Court, Old Beach (the 'site'). The site is situated within the General Residential Zone of the *Brighton Interim Planning Scheme 2015* (the 'Interim Scheme').
- 1.2. The application invokes discretion to Acceptable Solutions of the Interim Scheme related to the Stormwater Management Code.
- 1.3. The application has been advertised for public exhibition. One (1) representation was received.
- 1.4. The application is recommended for approval.
- 1.5. Due to the receipt of representations during the public exhibition 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 2002/99.
- 2.2. This determination must be made no later than 21st July 2020. The statutory assessment period has been extended with the consent of the applicant.
- 2.3. The relevant legislation is the *Land Use Planning and Approvals Act 1993* (the 'Act'). The provisions of the Act require a planning authority to take all reasonable steps to ensure compliance with the planning scheme.
- 2.4. This report details the reasons for the officer recommendation. The Planning Authority must consider this report but is not bound to adopt the recommendation. Broadly, the Planning Authority can either: (1) adopt the recommendation, or (2) vary the recommendation by adding, modifying or removing recommended reasons and conditions or replacing an approval with a refusal (or vice versa). Any alternative decision requires a full statement of reasons to comply with the *Judicial Review Act 2000* and the *Local Government (Meeting Procedures) Regulations 2015*.
- 2.5. This report has been prepared with appropriate regard to the State Policies that apply under the *State Policies and Projects Act 1993*.

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

3. Risk & Implications

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

4. Site Detail

- 4.1. The site is comprised within two certificates of title, with a combined land area of 1458 square metres (sqm). The site has a gentle slope from the north eastern corner of 34 Eaves court to the south western corner of number 32.
- 4.2. The site and surrounding land is within the General Residential Zone of the Interim Scheme, with no significant vegetation or planning scheme overlays attributable to the site (see Figure 2).



Figure 1: Subject Site (source: Listmap)



Figure 2: Zoning Map

- 4.3. The sites are located at the eastern end of Eaves Court in a cul-de-sac. Eaves Court is subject to a speed limit of 50kmh, and is considered a low traffic area.

5. Proposal

- 5.1. The proposal involves:
- (a) Three (3) multiple dwellings, and associated site infrastructure.
- 5.2. Floor plans show that each multiple dwelling is to have three bedrooms, open plan living area, single car garage and the usual amenities. External walls are to be constructed from light weight cladding with colorbond skillion roofing. Total floor area per unit is approximately 148sqm.
- 5.3. A total of 7 car parking spaces have been proposed – Two per dwelling and one (1) visitor parking space.
- 5.4. A Landscaping Plan also forms part of the application.

6. Assessment

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

7. Assessment against planning scheme provisions

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

- Part D – Clause 10.0 – General Residential Zone
- Part E – Clause 5.0 – Road and Railway Assets Code
- Part E – Clause 6.0 – Parking and Access Code
- Part E – Clause 7.0 – Stormwater Management Code

- 7.2. The proposed use is for multiple dwellings within the General Residential Zone. ‘Residential (Multiple Dwellings)’ is a Permitted Use in the General Residential Zone, pursuant to the Use Table set out in Clause 10.2.

- 7.3. The proposal is considered to satisfy the relevant Acceptable Solutions listed below:

Part D

- D10.0 General Residential Zone

Part E

- E5.0 – Road and Railway Assets Code
- E6.0 – Parking and Access Code
- E7.0 – Stormwater Management Code (except E7.7.1A2)

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

- Section E7.7.1A2 – Water Sensitive Urban Design

- 7.5. **Discretion 1 – Section E7.7.1 A21 –**

7.5.1 The Acceptable solution in relation to water sensitive urban design (WSUD) requires that:

A2 *A stormwater system for a new development must incorporate water sensitive urban design principles R1 for the treatment and disposal of stormwater if any of the following apply:*

- (a) *the size of new impervious area is more than 600 m²;*
- (b) *new car parking is provided for more than 6 cars;*
- (c) *a subdivision is for more than 5 lots.*

7.5.2 The new impervious area exceeds 600m², namely 721m². Accordingly, the performance criteria need to be addressed, which requires:

P2 *A stormwater system for a new development must incorporate a stormwater drainage system of a size and design sufficient to achieve the stormwater quality and quantity targets in accordance with the State Stormwater Strategy 2010, as detailed in Table E7.1 unless it is not feasible to do so.*

7.5.3 The proposal was referred to council's technical officer. That officer has considered the application, and considers that the proposal can satisfy the performance criteria through the imposition of conditions requiring implementation of WSUD principles, or a financial contribution in accordance with Council Policy 6.1 Interim Water Sensitive Urban Design Contributions.

8 Referrals

8.1 Engineering

The application was referred to the Council's Technical Officer. That officer's comments are included where necessary throughout this report.

8.2 TasWater

Sewer and Water reticulation is available to the site. The application was referred to TasWater who have imposed development conditions. A copy of TasWater's Submission to Planning Authority Notice (SPAN) will be attached to any permit issued.

9 Concerns raised by representors

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

9.2 One (1) representation was received during the public exhibition period.

9.3 The concerns of the representors are summarised below:

Concerns of Representor 1	Planning Response
Number of units proposed	Three units are proposed for a total land area in excess of 1400sqm. Density provisions in the planning scheme provides for a minimum of 325sqm per dwelling. The proposed development provides for 486sqm per dwelling.
Lack of on street parking /Only 1 parking space for each unit	The proposal includes 7 car parking spaces. Two car parking spaces are provided per dwelling (including 1 in garage) and 1 visitor car parking space, which satisfies the acceptable solution.
Safety for children playing outside	A footpath is provided on both sides of Eaves Court to enable safe passage of pedestrians

10 Conclusion

- 10.1 The proposal is for multiple dwellings (x3) at 32-34 Eaves Court, Old Beach. The site is situated within the General Residential Zone of the Brighton Interim Planning Scheme 2015 (the 'Interim Scheme').
- 10.2 The key issues relate to water sensitive urban design.
- 10.3 For the reasons set out above, the proposal is considered to satisfy the requirements of the Brighton Interim Planning Scheme 2015, and as such, is recommended for the application is recommended for approval.

RECOMMENDATION:

That: A. Pursuant to the *Brighton Interim Planning Scheme 2015*, Council approve DA 2020/99 for multiple dwellings (x3) in the General Residential Zone at 32 and 34 Eaves Court, Old Beach with the following conditions:

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*.

Staging

- (3) The development must not be staged without prior approval in writing by the Manager Development Services.

Adhesion of Lots

- (4) Prior to the issue of building consent or the commencement of works on the site (whichever occurs first), the lots comprising the site area must be the subject of an Adhesion Order pursuant to Section 110 of the *Local Government (Building and Miscellaneous Provisions) Act 1993*. The cost of preparing the Adhesion Order lies solely with the developer.

Advice: The Adhesion Order should be prepared by a solicitor and forwarded to Council for signing and sealing. Upon Sealing, Council will return the adhesion order to the applicant who must lodge it and any relevant titles with the Recorder of Titles.

Amenity

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

Private open space

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

Landscaping

- (7) Prior to commencement of use, all landscaping must be planted and installed in accordance with the approved Landscaping Plan to the satisfaction of the Council's Manager Development Services. Evidence showing compliance with this condition must be submitted to and approved by the Manager Development Services within 30 days of planting.

- (8) Replacement trees and landscaping in accordance with the approved Landscaping Plan must be planted if any is lost. All landscaping must continue to be maintained to the satisfaction of Council.

Services

- (9) The developer must pay the cost of any alterations and/or reinstatement to existing services, Council infrastructure or private property incurred as a result of the development. Any work required is to be specified or undertaken by the authority concerned.
- (10) Any services located under the proposed driveway are to be provided with trafficable covers to the requirements of the relevant authority and Council's Municipal Engineer.

Parking and Access

- (11) The vehicle access from Eaves Court must be in accordance with the following;
- a) Councils Standard Drawings;
 - b) Have a minimum width of 5.5m for a distance of no less than 6.0m from the edge of the road;
 - c) Be constructed in reinforced concrete;
 - d) and to the satisfaction of Council's Municipal Engineer.
- (12) At least seven (7) parking spaces must be provided on the land at all times for the use of the occupiers including at least two (2) car parking spaces per dwelling and at least one (1) designated for visitor parking, in accordance with Standards Australia (2004): Australian Standard AS 2890.1 - 2004 - Parking Facilities Part 1: Off Street Car Parking; Standards Australia, Sydney.
- (13) Unless approved otherwise by Council's Municipal Engineer the internal private driveway and areas set-aside for parking and associated access and turning must be provided in accordance with Standards Australia (2004): Australian Standard AS 2890.1 - 2004 - Parking Facilities Part 1: Off Street Car Parking; Standards Australia, Sydney and include all of the following;
- a) A minimum trafficable width of 3.0m with 0.3m offset to any high wall or kerb.
 - b) Constructed with a durable all weather pavement and surfaced with concrete.
 - c) Drained to an approved stormwater system.
 - d) Permit on site turning.

- (14) Parking and vehicle circulation roadways and pedestrian paths serving 5 or more car parking spaces, used outside daylight hours, must be provided with lighting in accordance with clause 3.1 “Basis of Design” and clause 3.6 “Car Parks” in AS/NZS 1158.3.1:2005 Lighting for roads and public spaces Part 3.1: Pedestrian area (Category P) lighting, or as otherwise approved by Council’s General Manager.
- (15) The completed parking and associated turning areas and access must be certified by a practicing civil engineer to the effect that they have been constructed in accordance with the endorsed drawings and specifications approved by Council before the use commences.
- (16) All areas set-aside for parking and associated turning, and access must be completed before the use commences and must continue to be maintained to the satisfaction of the Council’s Municipal Engineer.

Stormwater

- (17) Drainage from the proposed development must drain to the legal discharge point by gravity to the satisfaction of Council’s Municipal Engineer and in accordance with a Plumbing permit issued by the Permit Authority in accordance with the Building Act 2016.
- (18) The Developer is to incorporate Water Sensitive Urban Design Principles into the development for the treatment and disposal of stormwater. These Principles will be in accordance with the Water Sensitive Urban Design Procedures for Stormwater Management in Southern Tasmania and to the satisfaction of the Council’s Municipal Engineer.

Alternatively:

The developer may make a financial contribution to Brighton Council for the provision of stormwater treatment in accordance with Council Policy 6.1 Interim Water Sensitive Urban Design Contributions.

Advice: A copy of Policy 6.1 Interim Water Sensitive Urban Design Contributions can be downloaded from Council’s website.

<https://www.brighton.tas.gov.au/wp-content/uploads/2019/05/Policy-6.1-Interim-Water-Sensitive-Urban-Design-Contributions.pdf>

- (19) The developer must provide a minor stormwater drainage system designed to comply with all of the following:
 - a) be able to accommodate a storm with an ARI of 20 years when the land serviced by the system is fully developed;

- (20) The driveways must be drained to minimise surface runoff over the footpath or to the adjoining road in accordance with the requirements of the Municipal Engineer and a Plumbing Permit issued by the Permit Authority in accordance with the Building Act 2016.
- (21) Unless a WSUD contribution is made prior to the commencement of works or the issue of a plumbing permit, detailed plans of the stormwater drainage system, including treatment must be prepared by a suitably qualified civil engineer and be submitted to Councils Municipal Engineer for approval.
- (22) The completed stormwater treatment must be certified by a practicing civil engineer to the effect that it has been constructed in accordance with the endorsed drawings and specifications approved by Council before the use commences.

TasWater

- (23) The use and/or development must comply with the requirements of TasWater, as detailed in the form Submission to Planning Authority Notice, Reference No TWDA 2020/00557-BTN dated 5th May 2020, as attached to this permit.

Construction amenity

- (24) 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.
- (25) 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:
- (e) Emission of noise, artificial light, vibration, odour, fumes, smoke, vapour, steam, ash, dust, waste water, waste products, grit or otherwise.
 - (f) The transportation of materials, goods and commodities to and from the land.
 - (g) Obstruction of any public footway or highway.
 - (h) Appearance of any building works or materials.
- (26) 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.

- (27) 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.
- (28) 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 Geard moved, Cr Jeffries seconded that the recommendation be adopted.

CARRIED

VOTING RECORD

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

Cr Curran moved, Cr Garlick seconded that that the Ordinary Council meeting be resumed.

CARRIED

VOTING RECORD

In favour	Against
Cr Curran	
Cr Foster	
Cr Garlick	
Cr Geard	
Cr Gray	
Cr Jeffries	

Cr Murtagh
Cr Owen
Cr Whelan

Cr Foster resumed the Chair.

12. REPORTS FROM OFFICERS:

12.1 BRIGHTON COUNCIL'S 2050 VISION PROJECT:

AUTHOR: General Manager
(Mr J Dryburgh)

Background:

Fourteen (14) years ago, in 2006, Council undertook a facilitated process to explore and determine its 2040 Vision. The document (and the process of preparing it) assisted council in clarifying its longer term ambitions and provided an aspirational framework to help guide the more specific strategic documents a council is legally required to prepare, such as strategic plans and annual plans, long term financial plans and strategies and long term asset management plans. Such long-term visions are also useful for strategic documents not required by law, such as structure plans and local area plans.

Much has changed in the municipality and in the wider world since 2006 and several long-term plans and strategies are due for full review/rewrite. Globally, nationally and locally many institutions, governments and corporations have developed their 2050 vision and goals. As such, it is an ideal time to undertake a long-term visioning process and to set the timeframe at 2050 – 30 years from now.

Externally, the process also provides a great opportunity for broadscale input from our community and stakeholders about their aspirations for the municipality and demonstrates that council is willing to listen and respond.

Internally, the process will assist councillors and council staff to develop a shared long-term vision, which in turn helps to provide greater focus and motivation to work towards clearer aspirations. It is easier to get to a destination if you have clarity on where it is.

Other benefits of the process include relationship building between staff and councillors; relationship building between council representatives and community members/stakeholders; positive marketing and media collateral; and preliminary work towards other required strategic processes. The process is almost finalised, but will include an online community survey early on, a full day workshop with councillors, staff and stakeholders, a draft vision and report for review and then a final vision and report professionally designed. It is intended that the process will begin in July and be completed by Christmas.

Consultation:

Consultation has occurred amongst the Senior Management Team, Executive Officer and Councillors.

Risk Implications:

No significant risks.

Financial/Budget Implications:

The proposed process is likely to cost in the vicinity of \$20,000, which includes consultant/facilitator fees; professionally designed documentation, final report; and digital collateral and community consultation. This cost will be accommodated within the Long-Term Planning budget item.

Social Implications:

The process will offer a great opportunity for the community to be heard and for council to consider their long-term aspirations for council and the area in its strategic planning processes. An early stage of the process will be an online community survey. The findings from this survey will help inform the process for all the key participants. A broad range of social issues and opportunities will likely be considered during the process.

Environmental/ Climate Change Implications:

A broad range of environmental issues and opportunities will likely be considered during the process.

Economic Implications:

A broad range of economic issues and opportunities will likely be considered during the process.

Strategic Plan:

The 2050 Vision will sit above the Strategic Plan and assist in developing and reviewing it.

Options:

1. As per the recommendation.
 2. Other.
-

RECOMMENDATION:

That Council endorse the proposed 2050 Vision process, including the online community survey.

DECISION:

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

CARRIED

VOTING RECORD

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

12.2 LOCAL ROADS AND COMMUNITY INFRASTRUCTURE PROGRAM:

AUTHOR: Deputy General Manager
(Mr G Davoren)

Background:

On 22 May 2020, the Australian Government announced a new \$500 million Local Roads and Community Infrastructure Program.

Funding allocations for the Local Roads and Community Infrastructure Program were calculated in a similar way to how the Roads to Recovery Program and the road component of the Financial Assistance Grants works. Brighton Council will receive \$249,567.

Funding is available for local road and community infrastructure projects that involve the construction, maintenance and/or improvements to council-owned assets (including natural assets) that are generally accessible to the public. Projects will need to deliver benefits to the community, such as improved accessibility, visual amenity, and safety benefits.

Eligible local road projects could include works involving any of the following associated with a road:

- traffic signs;
- traffic control equipment;
- street lighting equipment;
- a bridge or tunnel;
- a facility off the road used by heavy vehicles in connection with travel on the road (for example, a rest area or weigh station);
- facilities off the road that support the visitor economy; and

- road and sidewalk maintenance, where additional to normal capital works are scheduled. Eligible community infrastructure projects could include works involving:
 - Closed Circuit TV (CCTV);
 - bicycle and walking paths;
 - painting or improvements to community facilities;
 - repairing and replacing fencing;
 - improved accessibility of community facilities and areas;
 - landscaping improvements, such as tree planting and beautification of roundabouts;
 - picnic shelters or barbeque facilities at community parks;
 - playgrounds and skateparks (including all ability playgrounds);
 - noise and vibration mitigation measures; and
 - off-road car parks (such as those at sporting grounds or parks).

Council will need to complete all project works by 30 June 2021 to receive our full nominal share of funding. Council will also need to demonstrate that our project is additional to our pre-COVID-19 work program for 2020-21. If a project has been brought forward from a future work program it will be eligible for funding.

Consultation:

Asset Services Manager.

Risk Implications:

Not Applicable

Financial/Budget Implications:

An additional budget allocation of \$249,567.00.

Strategic Plan:

Relates to our Goal 1 to 'Strengthen our Communities'.

Social Implications:

Not applicable.

Environmental or Climate Change Implications:

Not applicable.

Economic Implications:

Not applicable.

Issues:

The funding must be new to the budget and spent this financial year.

Assessment:

In consultation with the Asset Manager, the recommendation is to allocate the funding in line with our long-term asset management plan. The Asset Manager would like to nominate adding the funds to extend the works currently identified in the budget for Baskerville Road.

Options:

1. As per the recommendation.
2. Amend the recommended allocation to an alternative eligible item.

RECOMMENDATION:

That Council amends the 2020/21 budget to include the additional funding from the Local Roads and Community Infrastructure of \$249,567.00 to be allocated against Renewal Capital Works – Baskerville Road.

DECISION:

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

CARRIED

VOTING RECORD

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

12.3 KUTALAYNA HEALTH/CONNECTED BEGINNINGS COMMUNITY MEMBER PARTICIPATION ASSISTANCE:

AUTHOR: Council Services Officer
(Ms C Harper)

Background:

Kutalayna Health have written to Council on behalf of the Connected Beginnings project seeking financial assistance to provide to their community members on their Collective Leadership Table (CLT). The types of financial assistance they may need include; taxi fares, petrol, phone connectivity, internet access, and printing of documentation.

The CLT has emerged from two place based collective impact initiatives: Connected Beginnings and Collective Ed. Kutalayna Health is an equal partner within the Connected Beginnings initiative.

The two initiatives collectively have a focus on ensuring that young children and young people living in the Brighton Municipality have the best start to life, access to the education that they deserve and accessible pathways for successful lives.

Consultation:

Raelene Foster (Kutalayna Health), Governance Manager, General Manager, Council Services Officer.

Risk Implications:

This assistance is in line with Council's Community Grants program.

Financial/Budget Implications:

This request is a late application under Council's Community grants program; there are funds available in the 2020/21 budget.

Strategic Plan:

S1.5 Building a resilient community.

Social Implications:

By providing financial support to the community, members of the CLT will assist in their development as potential community leaders.

Environmental or Climate Change Implications:

Not applicable.

Economic Implications:

Not applicable.

Other Issues:

Not applicable.

Assessment:

Connected Beginnings project has received some financial assistance in the form of discounted hire for the use of the Civic Centre for some of its events and community consultation.

Assisting community members to be a part of groups that are designed to improve the outcomes for this community is important in community development, as it not only recognises the community members contribution in these activities, is as valuable as members of groups who are paid to be participating, but also helps in practical measures to ensure their participation.

An acquittal of the funds would still be required as a usual process of the community grants program.

Options:

1. As per the recommendation.
2. Council approves an amount other than the recommendation.
3. Council not approve funding.

RECOMMENDATION:

Council provide the \$1000.00 requested to the Kutulyna Health on behalf of the Connected Beginnings program to assist community member participation. The grant is provided as part of Council's annual Grants and Donations program and recorded in the Annual Report accordingly.

DECISION:

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

CARRIED

VOTING RECORD

In favour

Cr Curran
Cr Foster
Cr Garlick
Cr Geard
Cr Gray
Cr Owen
Cr Whelan

Against

Cr Jeffries
Cr Murtagh

Cr Geard, Cr Gray and Cr Whelan declared an interest in the next item and left the meeting 7.02pm.

12.4 WEST BRIGHTON AND ROSEWOOD ZONING REVIEW:

AUTHOR: Manager Development Services
(Mr D Allingham)

Background:

The purpose of this report is to update Councillors on the zoning review for West Brighton and Rosewood.

The “West Brighton and Rosewood Zoning Review” final report (“Report”) prepared by Agribusiness can be viewed at Attachment A. The intention is to put the Report and a draft West Brighton Specific Area Plan (SAP) (see Attachment B) out for further consultation before preparing a planning scheme amendment to insert the SAP into the planning scheme.

Report Summary:

Following targeted phone interviews with key stakeholders and two community meetings with over 40 landowners in attendance, the report concludes that both areas should remain within the Agriculture Zone for the Brighton Local Provisions Schedule (LPS). Notably, Brighton West was identified as having strong potential for high intensity horticulture involving artificial housing or structures.

It was reasonably clear from the community feedback that people should be able to build a dwelling if they are serious about farming the land, but that no further subdivision is desirable.

West Brighton

The report recommends that a SAP be prepared for the West Brighton area, which elevates both “controlled environment agriculture” and “residential” use to permitted.

The report also recommends that a single dwelling would only be allowed if it is accompanied by an agricultural use that contributes to the agricultural economy and doesn’t constrain agricultural use on adjoining properties. Input from a suitably qualified person would be required to justify an agricultural use meets these requirements. Development standards for building envelopes, setbacks and buffers are also recommended to manage potential land use conflict.

Planning staff have prepared the draft “West Brighton Specific Area Plan” which adopts the recommendations of the Report by providing a new qualification for residential use and introducing new residential use standards and development standards.

The qualification for residential use in the West Brighton SAP is “if a single dwelling *accompanied* by a commercial agricultural use” which is clearly a lower threshold than the current “only if a single dwelling *necessary to support* an agricultural use”. The change recognises the challenges of establishing an agricultural use in the area without a dwelling due to the fragmented subdivision pattern, site constraints and high land prices.

During the community consultation, there were some landowners that viewed the requirement to prepare “Farm Management Plans” (FMP) to accompany dwelling applications were unnecessary and ineffective, especially if Council does not have capacity to monitor and enforce the implementation of the FMPs. However, planning staff are of the opinion that without the need for FMPs there is no other way to demonstrate that landowners are serious about establishing an agricultural use and without the requirement the area will quickly become a residential area with no agricultural use.

Importantly, planning staff need to take a more active role in enforcing the conditions of current and future permits for the area to maintain the agricultural use and character within the area.

The Report also recommends that 9 properties at the end of Fergusson Road be rezoned to Agriculture Zone and fall under the proposed West Brighton SAP (see Figure 1).

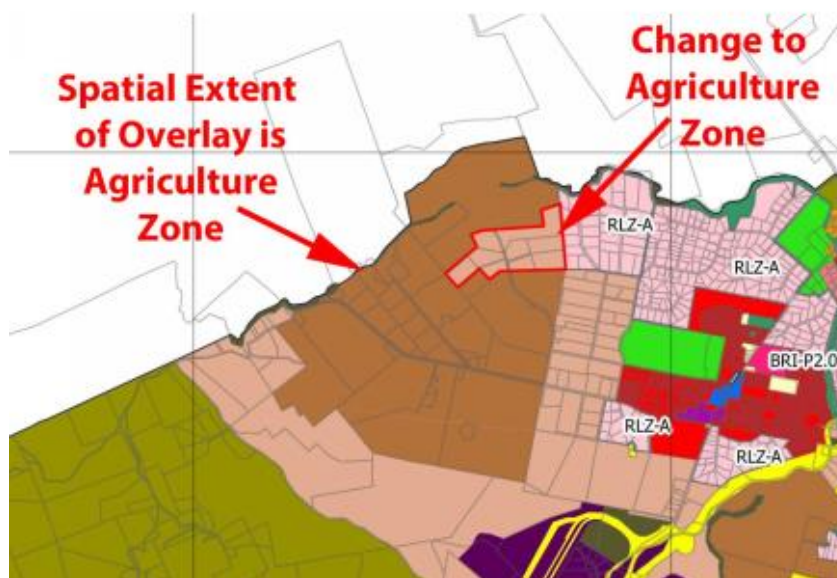


Figure 1: Area bordered by red proposed to be rezoned to Agriculture Zone and included in West Brighton SAP

Rosewood

The Report identifies that the area is suitable for small-scale market driven farming activities – a number of which are already established in the area such as a vineyard and olive groves. Rosewood has the added benefit of access to recycled water.

A Part 5 Agreement exists on each of the properties requiring the owners to produce a FMP for the establishment of any agricultural activity when applying for a dwelling. Largely, landowners in the Rosewood area are genuine in their desire to farm the land. Council could, however, take a more active role in enforcing planning conditions in the area.

The report recommends that a SAP should also be considered for Rosewood, but given the area is already functioning well as an agricultural area interspersed with residential use, the introduction of a SAP is not a priority at this time.

Consultation:

Planning staff, General Manager, affected landowners, agricultural consultants.

Stakeholder interviews and community meetings were conducted as part of the consultation. Landowners requested that the final Report be circulated prior to any action being taken. It is proposed to make the final Report and draft SAP available to landowners for a further three week consultation period.

Risk Implications:

In recent years, Council staff have had difficulty assessing dwelling applications in this area, particularly on small lots. This is largely due to the fact that the land perhaps should not have been subdivided for intensive agricultural lots in the first place as the land capability and lack of water in the area make it difficult to establish a sustainable agricultural use without a dwelling.

The proposed SAP in Wet Brighton provides greater certainty and clarity about how the land can be developed and reduces the risk of future planning appeals.

Financial/Budget Implications:

Further input from the agricultural consultants will be minimal and will be covered under the existing agreement.

Future costs will be for staff time to prepare the planning scheme amendment.

Strategic Plan:

The draft policy is consistent with the following Brighton Council strategies:

- S1.5: Build a resilient community and environmentally sustainable future
- S2.1: A focus on Agriculture /Horticulture/ Aquaculture – (Food)
- S4.2: Be well-governed
- S4.4: Long-term thinking & evidence-based

Social Implications:

Clearly establishing West Brighton as an agricultural area in the future has the potential to make the area a stronger community.

Council taking a more active role in enforcing previous conditions on permits, which often say a residential use must cease if an agricultural use ceases, may be difficult for some existing landowners to address.

Economic Implications:

Providing greater certainty that the area will continue to be an agricultural area in the future, albeit with interspersed residential use, will hopefully generate greater investment in the area.

The Report also recognises the potential for high intensity horticulture in the area which is encouraged under the SAP.

Other Issues:

There are without a doubt competing interests between owners of agricultural enterprises, lifestyle farmers, tourism businesses and those that don't want to farm at all and it is unlikely that the report and draft SAP will be supported by all stakeholders.

Options:

1. As per the recommendation.
2. Amend the Report or SAP prior to community consultation.
3. Other.

RECOMMENDATION:

That the "West Brighton and Rosewood Zoning Review Report" and "Draft West Brighton Specific Area Plan" be approved for three weeks of community consultation, targeted at affected landowners.

DECISION:

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

CARRIED

VOTING RECORD

In favour	Against
Cr Curran	
Cr Foster	
Cr Garlick	
Cr Jeffries	
Cr Murtagh	
Cr Owen	

Cr Whelan, Geard and Gray rejoined the meeting 7.06pm

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

CARRIED

13. 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)(b).

13.1 RENT RELIEF:

13.2 FINANCIAL SUPPORT:

Cr Gray moved, Cr Curran seconded that Council resolve out of Closed Council and the decisions made in Closed Council be ratified.

CARRIED

VOTING RECORD

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

14. QUESTIONS ON NOTICE:

There were no Questions on Notice.

The meeting closed 7.25pm

Confirmed:

(Mayor)

Date:

18th August 2020