



# Brighton Council

MINUTES OF THE **PLANNING AUTHORITY MEETING**  
OF THE BRIGHTON COUNCIL HELD  
IN THE COUNCIL CHAMBER, COUNCIL OFFICES  
OLD BEACH AT 5.32 P.M. ON TUESDAY,  
13<sup>TH</sup> OCTOBER, 2020

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

**IN ATTENDANCE:** Mrs J Banks (Governance Manager); Mr D Allingham  
(Manager Development Services) and Mr P Carroll  
(Senior Planning Officer)

**1. ACKNOWLEDGEMENT OF COUNTRY:**

**2. APOLOGIES:**

*Cr Owen moved, Cr Geard seconded that the Cr Curran be granted leave of absence.*

**CARRIED**

**VOTING RECORD**

**In favour    Against**

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

**3. QUESTION TIME & DEPUTATIONS:**

*There was no requirement for public question time.*

#### 4. DECLARATION OF INTEREST:

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

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

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

*Cr Geard, Cr Gray and Cr Whelan declared an interest in Item 5.4.*

#### 5. COUNCIL ACTING AS PLANNING AUTHORITY:

In accordance with the provisions of Part 2 Regulation 25 of the *Local Government (Meeting Procedures) Regulations 2015*, the intention of the Council to act as a planning authority pursuant to the *Land Use Planning and Approvals Act 1993* is to be noted. In accordance with Regulation 25, the Council will act as a planning authority in respect to those matters appearing under Item 5. on this agenda, inclusive of any supplementary items.

*The following item was withdrawn by the applicant prior to the Planning Authority meeting.*

##### 5.1 APPLICATION UNDER BRIGHTON INTERIM PLANNING SCHEME 2015 DA 2020/256 – 182 BOYER ROAD, BRIDGEWATER OUTBUILDING:

##### 5.2 APPLICATION UNDER BRIGHTON INTERIM PLANNING SCHEME 2015 DA2020/284 – 6 BORONIA PLACE, GAGEBROOK - DWELLING:

Type of Report	Planning Authority – For Decision
Application No:	DA 2020/284
Address:	6 Boronia Place, Gagebrook
Applicant:	Prime Design
Proposal:	Dwelling
Zone:	General Residential

Representations: One (1)  
Discretion: 1. Solar Access  
Author: Planning Officer (Jo Blackwell)

## **1. Executive Summary**

- 1.1. Planning approval is sought for a Dwelling in the General Residential Zone at 6 Boronia Place, Gagebrook.
- 1.2. The application is discretionary due to not satisfy the acceptable solution in relation to solar access and therefore relies on performance criteria].
- 1.3. One (1) representation was received. It is considered that the issues raised in the representations does not warrant refusal or modification of the application.
- 1.4. The key planning issues relate to provision of sunlight to habitable living rooms.
- 1.5. The proposal is recommended for approval.
- 1.6. The final decision must be made by the Planning Authority or by full Council acting as a planning authority due to the receipt of representations via the public exhibition period for the development application.

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

- 2.1. The purpose of this report is to enable the Planning Authority to determine application DA 2020/284.
- 2.2. This determination must be made no later than 20<sup>th</sup> October 2020, which has been extended beyond the statutory timeframe with the consent of the applicant.
- 2.3. The relevant legislation is the *Land Use Planning and Approvals Act 1993 (LUPAA)*. The provisions of LUPAA require a planning authority to take all reasonable steps to ensure compliance with the planning scheme.
- 2.4. This report details the reasons for the officer recommendation. The Planning Authority must consider this report but is not bound to adopt the recommendation. Broadly, the Planning Authority can either: (1) adopt the recommendation, or (2) vary the recommendation by adding, modifying or removing recommended reasons and conditions or replacing an approval with a refusal (or vice versa). Any alternative decision requires a full statement of reasons to comply with the *Judicial Review Act 2000* and the *Local Government (Meeting Procedures) Regulations 2015*.

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

### 3. Risk & Implications

- 3.1. Approval or refusal of this application will have no direct financial implications for the Planning Authority.
- 3.2. No specific implications for Council asset maintenance or renewal or need for new capital works have been identified.

### 4. Relevant Background and Past Applications

- 4.1. A single dwelling previously constructed on the site was damaged by fire in approximately 2017, and subsequently demolished.

### 5. Site Detail

- 5.1. The site is zoned General Residential, as shown in Figure 1, with open space zoned land located adjacent to the southern boundary.

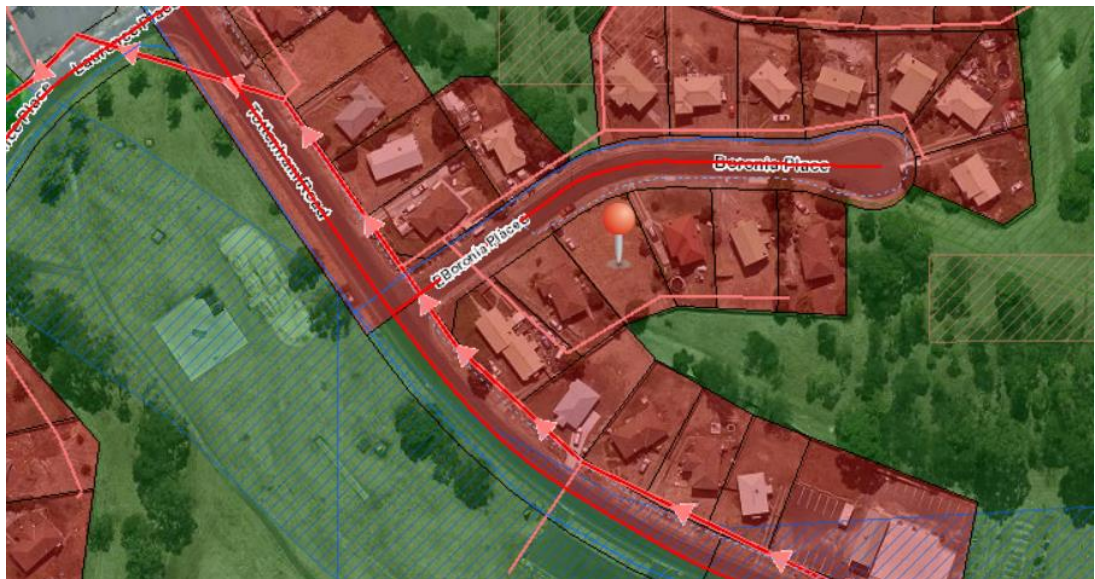


Figure 1: Zoning Map (source: [www.thelist.tas.gov.au](http://www.thelist.tas.gov.au))

- 5.2. The subject site, which has a land area of 713m<sup>2</sup>, is located approximately 45m from the intersection of Tottenham Road on the south eastern side of Boronia Place. The land falls from the east to west and is vacant (Figure 2).



Figure 2: Site Map (source: [www.thelist.tas.gov.au](http://www.thelist.tas.gov.au))

## 6. Proposal

- 6.1. The proposal is for a dwelling comprising 3 bedrooms, open plan living area and the usual amenities. A single carport is shown on the north eastern side of the dwelling, to be included under the same roofline.

Materials include face brickwork, feature lightweight cladding and Colorbond sheet roofing.

- 6.2. The application is supported by the attached building design plans.

## 7. Assessment against planning scheme provisions

- 7.1. The following provisions are relevant to the proposed use and development;

- General Residential Zone
- Code E 5.0 – Road and Railway Assets Code
- Code E 6.0 – Parking and Access Code
- Code E 7.0 – Stormwater Management Code.

- 7.2. The proposal accords with the use table contained in 10.2, with a single dwelling having a status of No Permit Required. Clause 10.3, which provides standards for non-residential uses, does not apply, as the proposed use is for residential purposes.

- 7.3. The following multiple dwelling standards are not applicable to this proposal:

10.4.1 Residential Density

10.4.4 A2 and A3 – Sunlight and Overshadowing for all Dwellings

10.4.8 Waste Storage for Multiple Dwellings

- 7.4. The application satisfies the following Acceptable Solutions:

10.4.2 Setbacks and building envelope for all dwellings

10.4.3 Site Coverage and private open space for all dwellings

10.4.5 Width of openings for garages and carports for all dwellings

10.4.6 Privacy for all dwellings

10.4.7 Frontage fences for all dwellings

E5.0 Road and Railway Assets Code

E6.0 Parking and Access Code

E7.0 Stormwater Management Code

- 7.5. The following discretions are invoked:

- 10.4.4 A1 Sunlight and Overshadowing for all dwellings.

**8. Discretion 1 – Solar Access to Habitable Rooms – 10.4.4. A1**

- 8.1 The proposal does not satisfy the acceptable solution in that there is not 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.
- 8.2 Accordingly the performance criteria must be addressed, which requires that a dwelling must be sited and designed so as to allow sunlight to enter a least one habitable room (other than a bedroom).
- 8.3 The proposal plans show that windows are to be installed along the south eastern elevation and the north eastern elevation which will allow a reasonable amount of sunlight into the open plan living area.
- 8.4 The performance criteria can be satisfied.

## 9. Discussion

### 9.1. Referrals

- Council's Technical Officer - The proposal was referred to Council's Senior Technical, who has provided standard conditions should the application be approved.

## 10. Concerns raised by representors

10.1. Two representations in similar, although not identical, terms from the same representor were received.

10.2. The following table outlines the issues raised by representors.

Issue/s	Brief Response
Neighbourhood noise impacting on existing health issues	This is not a planning consideration.
Tree should be removed as it could be set alight	There is no application to remove the tree at this time.

## 11. Conclusion

11.1. The proposed use and development of a dwelling in General Residential Zone at 6 Boronia Place, Gagebrook satisfies the relevant provisions of the *Brighton Interim Planning Scheme 2015*, and as such is recommended for approval.

### RECOMMENDATION:

That pursuant to the *Brighton Interim Planning Scheme 2015*, Council approve application DA-2020/284 for use and development of a dwelling in the General Residential Zone at 6 Boronia Place, Gagebrook for the reasons outlined in the officer's report and a permit containing the following conditions be issued:

#### General

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

### **Amenity**

- (3) 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) 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.

### **Services**

- (5) 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**

- (6) At least two (2) car parking spaces must be provided on the land at all times for the use of the development, in accordance with Standards Australia (2004): Australian Standard AS 2890.1 - 2004 – Parking Facilities Part 1: Off Street Car Parking; Standards Australia, Sydney.
- (7) The internal driveway and areas set-aside for parking and associated access and turning must be provided in accordance with Standards Australia (2004): Australian Standard AS 2890.1 - 2004 – Parking Facilities Part 1: Off Street Car Parking; Standards Australia, Sydney and to the satisfaction of Council's Municipal Engineer, and must include all of the following;
  - a) Surfaced with a material to resist abrasion from traffic and to minimise the entry of water. The surfacing material must be spray seal, asphalt, concrete or other approved material;
  - b) Drained to an approved stormwater system.

### **Access to Road**

- (8) A new reinforced concrete vehicle access must be provided from the road carriageway to the property boundary. The access must be located and constructed in accordance with the standards shown on standard drawings TSD-R09-v1 Urban Roads Driveways and TSD-RF01-v1 Guide to Intersection and Domestic Access Sight Distance Requirements prepared by the IPWE Aust. (Tasmania Division), an approved parking plan and the satisfaction of Council's General Manager.



### **Stormwater**

- (9) Stormwater drainage from the proposed development must drain to a legal point of discharge to the satisfaction of Council's General Manager and in accordance with a Certificate of Likely Compliance or Plumbing permit issued by the Permit Authority in accordance with the Building Act 2016.

### **Soil and Water Management**

- (10) 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.
- (11) 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**

- (12) 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.
- (13) 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.

- (14) 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.
- (15) 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.
- (16) 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. Before commencing any works contact your private building surveyor to ascertain what approvals (if any) are required under the Building Act 2016.
- B. This permit does not imply that any other approval required under any other legislation or by-law has been granted.
- 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 Geard moved, Cr Murtagh seconded that the recommendation be adopted.*

**CARRIED**

**VOTING RECORD**

**In favour    Against**

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

### **5.3 APPLICATION UNDER BRIGHTON INTERIM PLANNING SCHEME 2015 DA 2020/285 – 31 GREVILLEA AVENUE, OLD BEACH DWELLING:**

Type of Report	Planning Authority – For Decision
Application No:	DA 2020/285
Address:	31 Grevillea Avenue, Old Beach
Proposal:	Dwelling
Zone:	General Residential Zone
Representations:	Two (2)
Discretions:	1. Building Envelope (10.4.2 A3) 2. Private Open Space (10.4.3 A2) 3. Vehicular Passing Along an Access
Author:	Senior Planner (Patrick Carroll) Manager Development Services (David Allingham)

#### **1. Executive Summary**

- 1.1. Planning approval is sought for a Dwelling at 31 Grevillea Avenue, Old Beach (the 'site'). The site is within the General Residential Zone of the *Brighton Interim Planning Scheme 2015* (the 'Interim Scheme').
- 1.2. The application is known as DA 2020/285. The application is discretionary, and relies on Performance Criteria. The key issue is the building being located outside the building envelope.
- 1.3. Two (2) representations were received within the statutory public advertising period relating to visual bulk, overshadowing, privacy and vegetation retention.
- 1.4. The application is recommended for approval.
- 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 2020/256.
- 2.2. This determination must be made no later than 20 October 2020. The statutory assessment period has been extended to this date with the consent of both the applicant and the Planning Authority.
- 2.3. The relevant legislation is the *Land Use Planning and Approvals Act 1993* (the 'Act'). The provisions of the Act require a planning authority to take all reasonable steps to ensure compliance with the planning scheme.

- 2.4. This report details the reasons for the officer recommendation. The Planning Authority must consider this report but is not bound to adopt the recommendation. Broadly, the Planning Authority can either: (1) adopt the recommendation, or (2) vary the recommendation by adding, modifying or removing recommended reasons and conditions or replacing an approval with a refusal (or vice versa). Any alternative decision requires a full statement of reasons to comply with the *Judicial Review Act 2000* and the *Local Government (Meeting Procedures) Regulations 2015*.
- 2.5. This report has been prepared with appropriate regard to the State Policies that apply under the *State Policies and Projects Act 1993*.
- 2.6. This report has been prepared with appropriate regard to Council's Strategic Plan and other Council policies, and the application is not found to be inconsistent with these. Nevertheless, it must be recognised that the planning scheme is a regulatory document that provides the overriding consideration for this application. Matters of policy and strategy are primarily a matter for preparing or amending the planning scheme.

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

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

### **4. Relevant Background**

- 4.1. None relevant.

### **5. Site Detail**

- 5.1. The subject site consists of one title, being CT 140039/19, which has a lot size of 1919m<sup>2</sup>. The site sits on the northern side of Grevillea Avenue, Old Beach. It is zoned General Residential under the Interim Scheme.
- 5.2. The site is an internal lot, with frontage to Grevillea Avenue. There is a shared access that serves several properties, formalised on the title via rights of way.
- 5.3. The site is currently vacant and slopes steeply downwards from north to south.
- 5.4. The land adjoining the site is also zoned General Residential.





*Figure 1. Aerial photography of the subject site.*



*Figure 2. Zoning of the subject site and surrounds. Red denotes the General Residential Zone.*

## 6. Proposal

6.1. The applicant has proposed the development of a dwelling at the site.

- 6.2. The proposed dwelling measures 21.20 metres by 12.30 metres, and will be constructed to a maximum height of 5.13 metres above natural ground level.
- 6.3. The proposed dwelling will be setback 2.49 metres from the south-eastern (rear) boundary; 4.00 metres from the north-eastern (side) boundary, and 3.04 metres from the north-western (side).
- 6.4. The dwelling is set over two levels. On the lower level, there is a garage and sub-floor. On the upper level, there is four bedrooms, two bathrooms, a kitchen, and living/ dining area, a study and a sun room. There is also a deck off the living/ dining area.

## **7. Assessment**

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

## **8. Assessment against planning scheme provisions**

- 8.1. The following provisions are relevant to the assessment of the proposed use and development:
  - Part D – Section 10.0 – General Residential Zone
  - Part E – Section E5.0 – Road and Railway Assets Code
  - Part E – Section E6.0 – Parking and Access Code
  - Part E – Section E7.0 – Stormwater Management Code
- 8.2. The application satisfies the following relevant Acceptable Solutions of the applicable provisions:
  - Section 10.4.2 A1 – Setbacks from a Frontage
  - Section 10.4.2 A2 – Setbacks for Garages
  - Section 10.4.3 A1 – Site Coverage
  - Section 10.4.4 A1 – Sunlight and Overshadowing
  - Section 10.4.6 A1 – Privacy
  - Section 10.4.6 A2 – Privacy

- Section 10.4.6 A3 – Privacy
- Section E5.5.1 A3 – Existing Road Accesses and Junctions
- Section E5.6.2 A2 – Road Accesses and Junctions
- Section E5.6.4 A1 – Sight Distances
- Section E6.6.1 – Number of parking spaces
- Section E6.7.1 A1 – Number of Vehicular Accesses
- Section E6.7.2 A1 - Design of Vehicular Accesses
- Section E6.7.4 A1 – On-Site Turning
- Section E6.7.5 A1 – Layout of Parking Areas
- Section E6.7.6 A1 – Surface Treatment of Parking Areas
- Section E6.7.14 A1 - Access to a road
- Section E7.7.1 A1 – Stormwater Drainage and Disposal

8.3. The following discretions are invoked by the proposal:

- Section 10.4.2 A3 – Building Envelope
- Section 10.4.3 A2 – Private Open Space
- Section E6.7.3 A1 – Vehicular Passing Areas Along an Access

8.4. **Discretion 1 – Building Envelope**

8.4.1 The Acceptable Solution contained in Section 10.4.2 A3 states:

*A dwelling, excluding outbuildings with a building height of not more than 2.4 m and protrusions (such as eaves, steps, porches, and awnings) that extend not more than 0.6 m horizontally beyond the building envelope, must:*

*(a) be contained within a building envelope (refer to Diagrams 10.4.2A, 10.4.2B, 10.4.2C and 10.4.2D) determined by:*

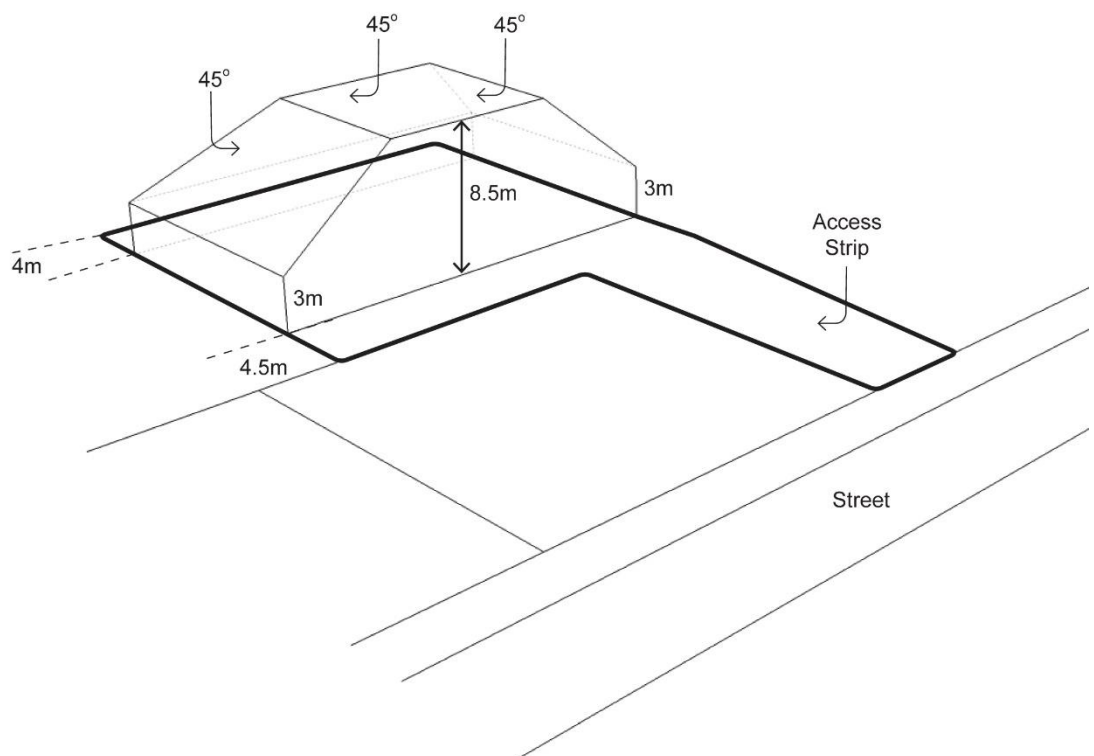
- (i) a distance equal to the frontage setback or, for an internal lot, a distance of 4.5 m from the rear boundary of a lot with an adjoining frontage; and*
- (ii) projecting a line at an angle of 45 degrees from the horizontal at a height of 3 m above natural ground level at the side boundaries and a distance of 4 m from the rear*



*boundary to a building height of not more than 8.5 m above natural ground level; and*

- (b) *only have a setback within 1.5 m of a side boundary if the dwelling:*
  - (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 9 m or one-third the length of the side boundary (whichever is the lesser).*

8.4.2 The permitted building envelope for internal lots is depicted in Diagram 10.4.2D of the Interim Scheme:



8.4.3 The proposed development does not comply with the permitted building envelope, as described in Section 10.4.2 A3 and as shown in Diagram 10.4.2D of the Interim Scheme. As such, the application invokes discretion and must be assessed against the corresponding Performance Criteria.

8.4.4 Section 10.4.2 P3 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.*

8.4.5 It is acknowledged that, due to the size and scale of the proposed development, as well as the topography and orientation of the lot, there will be a certain level of overshadowing to nearby properties, most notably to the south and south-west of the site. This is depicted on the sun shadow diagrams supplied by the applicant.

8.4.6 An inspection of the site was undertaken, and it is extremely unlikely that the portion of the proposed development that sits outside the permitted building envelope will create an unreasonable impact upon the amenity of adjoining properties. It is more likely that existing vegetation creates a greater level of overshadowing to neighbouring properties than the proposed dwelling.



**Figure 3.** Photo taken from the site, specifically from the southern side of the access road looking south to south-west. The roof of the property at 21 Grevillea Avenue is highlighted.



**Figure 4.** Photo taken from the site, specifically from the northern side of the access road (the approximate house location) looking south to south-west. No adjoining properties to the south or south-west are visible from this location. However, it is also accepted that the dwelling will be constructed to a height of approximately 5.13m above natural ground level.

- 8.4.7 The proposed encroachment outside the permitted building envelope is relatively minor, and it is considered that the encroachment will not create an additional unreasonable level of overshadowing or reduction in sunlight compared to what would be permitted under the relevant Acceptable Solution.
- 8.4.8 Further, the separation between dwellings is considerable for a residential setting, and the visual impacts caused by scale or bulk of the proposed development are significantly reduced by this separation. Any impact is considered to be reasonable.
- 8.4.9 Separation between dwellings is compatible with both the surrounding area and what is reasonable for land zoned General Residential.
- 8.4.10 It is considered that the proposed development satisfies the Performance Criteria.

## **8.5 Discretion 2 – Private Open Space**

- 8.5.1 Section 10.4.3 A2 of the Interim Scheme states:

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

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

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

8.5.3 Section 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.*

- 8.5.4 The proposed dwelling includes a 9.79m by 2.80m deck, that can serve as an extension of the dwelling for outdoor relaxation, dining, entertaining and children's play. The deck is located immediately adjacent to the living and dining area of the dwelling. Being to the south of the dwelling, the deck will receive limited direct sunlight. However, the deck will receive sun in the afternoon.
- 8.5.5 Further, there is a small outdoor area to the north of the dwelling, adjacent to the sunroom. This area provides for an additional area of private open space.
- 8.5.6 The proposed development satisfies the Performance Criteria contained in Section 10.4.3 P2.

## 8.6 Discretion 3 – Vehicular Passing Along an Access

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

*Vehicular passing areas must:*

- (a) *be provided if any of the following applies to an access:*
  - (i) *it serves more than 5 car parking spaces;*
  - (ii) *is more than 30 m long;*
  - (iii) *it meets a road serving more than 6000 vehicles per day;*
- (b) *be 6 m long, 5.5 m wide, and taper to the width of the driveway;*
- (c) *have the first passing area constructed at the kerb;*
- (d) *be at intervals of no more than 30 m along the access.*

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

- 8.6.3 Section E6.7.3 P1 states:

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

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

(d) ease of accessibility and recognition for users.

- 8.6.4 Council's Senior Technical Officer has assessed the access arrangements, and despite no formal passing areas existing, the Senior Technical Officer is of the opinion that the existing access has adequate areas to provide for vehicles to pass in an informal manner that does not create a conflict between users of either the access or of Grevillea Avenue.
- 8.6.5 However, should a bushfire hazard management plan be required at building approval stage, and that plan states that passing bays are required to adequately protect the property from the risk of bushfire, then Council's standard conditions will cover that scenario.
- 8.6.6 Should the vacant lot at 33 Grevillea Avenue be developed in the future, there will be an opportunity to create a sealed passing area as part of that dwelling's driveway apron.
- 8.6.7 As such, the proposed development satisfies the Performance Criteria.

## 9. Concerns raised by representors

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

<i>Concerns of Representor 1</i>	<i>Planning Response</i>
Concerns relating to building on a sloping lot and keeping within the building envelope. Is the slope pushing the proposed dwelling outside the building envelope, or is it the desire to have a huge home? It appears that height is the issue, and a reduction in room sizes would bring the home within the building envelope without losing comfort.	Building envelope has been assessed in Section 8.4, above.
Acknowledges that a large portion of the lot is unusable due to easements but is of the opinion that the home is out of character with the area based on size.	Building envelope has been assessed in Section 8.4, above.

Concerns regarding the accuracy of the sun shadow diagrams provided by the applicant.	The Officer has contacted the applicant, who is confident the sun shadow diagrams are accurate.
<i>Concerns of Representor 2</i>	<i>Planning Response</i>
<p>The proposed building will create significant overshadowing, as demonstrated in the supplied shadow diagrams.</p> <p>The application drawings only include overshadowing diagrams for June, and the representor hold concerns for the impact of overshadowing throughout the year and at various times of the day.</p>	<p>See above for comments regarding the supplied sun shadow diagrams.</p> <p>It is standard that sun shadow diagrams demonstrate the extent of shadow at winter solstice (June 21), as this is the day of the year where impacts from overshadowing will be at their greatest. Further, there are provisions within the planning scheme that specifically reference the shadow cast between the hours of 9am and 3pm on June 21.</p> <p>Some applicants choose to provide more detail. However, winter solstice is the critical date.</p>
Concerns relating to overlooking and loss of privacy, creating impacts to an adjoining house and garden.	The proposed development satisfies the relevant Acceptable Solutions for privacy.
Concerns relating to the proposed dwelling exceeding the permitted building envelope. This will increase the impact of the development, by increasing overshadowing, overlooking, and impact on private amenity.	Building envelope has been assessed in Section 8.4, above.
The excessive scale of the proposed building will impact on adjoining properties through overshadowing, loss of sunlight, overlooking and loss of privacy.	Building envelope has been assessed in Section 8.4, above.
<p>The land to the south of the access road/right of way is noted on the plans as "slope and tree area".</p> <p>Can it be confirmed that the trees and vegetation will be retained?</p>	<p>No vegetation is proposed to be removed in this area as part of this application.</p> <p>However, the Planning Scheme does not require approval for vegetation removal in this zone.</p>

<p>Could the existing trees and vegetation be protected with a condition on the planning permit?</p>	<p>The application satisfies the Acceptable Solution for privacy and visual bulk is not considered to be an issue given the large separation between dwellings so a condition requiring the vegetation be protected is not warranted.</p>
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## 10. Referrals

### 10.1. Development Engineering

The application was referred to Council's Senior Technical Officer, who has provided comments, conditions and advice.

### 10.2. TasWater

The application was referred to the TasWater. TasWater responded, stating that they had assessed the application, and determined that no submission was required.

## 11. Conclusion

11.1. The proposal is for a Dwelling in the General Residential Zone at 31 Grevillea Avenue, Old Beach

11.2. The key issues relate to building envelope and overshadowing.

11.3. The proposed development has been assessed against the relevant provisions of the *Brighton Interim Planning Scheme 2015*, and is considered to perform well. As such, the development application is recommended for approval.

## RECOMMENDATION:

That pursuant to the *Brighton Interim Planning Scheme 2015*, Council approve application DA 2020/285 for the proposed Dwelling in the General Residential Zone at 31 Grevillea Avenue, Old Beach, and a permit be granted subject to 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, which ever is later, in accordance with section 53 of the *land Use Planning And Approvals Act 1993*.

*Amenity*

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

*Services*

- (4) 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*

- (5) At least two (2) car parking spaces must be provided on the land at all times for the use of the development, in accordance with Standards Australia (2004) Australian Standard AS 2890.1 - 2004 - Parking Facilities Part 1: Off Street Car Parking; Standards Australia, Sydney.
- (6) The internal driveway and areas set-aside for parking and associated access and turning must be provided in accordance with Standards Australia (2004): Australian Standard AS 2890.1 - 2004 - Parking Facilities Part 1: Off Street Car Parking; Standards Australia, Sydney and to the satisfaction of Council's Municipal Engineer, and must include all of the following;
  - (a) Constructed with a durable all weather pavement.
  - (b) Surfaced with a material to resist abrasion from traffic and to minimise the entry of water. The surfacing material must be spray seal, asphalt, concrete or other approved material.
  - (c) Drained to an approved stormwater system.

or as otherwise required by an approved Bushfire Plan.

*Stormwater*

- (7) Stormwater drainage from the proposed development must drain to a legal point of discharge to the satisfaction of Council's General Manager and in accordance with a Certificate of Likely Compliance or Plumbing permit issued by the Permit Authority in accordance with the Building Act 2016.

*Soil and Water Management*

- (8) 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.



- (9) 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*

- (10) 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.
- (11) 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.
- (12) 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.
- (13) 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.
- (14) 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. Please consult your private building surveyor to ascertain what approvals (if any) are required under the Building Act 2016.
- B. This permit does not imply that any other approval required under any other legislation or by-law has been granted.

- 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 Jeffries seconded that the recommendation be adopted.*

**CARRIED**

## VOTING RECORD

### In favour Against

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

Cr Geard, Cr Gray and Cr Whelan had declared an interest in the following item and left the meeting at 5.40pm.

*Cr Owen took the Chair for the following item.*

## **5.4 RZ 2020/03 – SECTION 35 REPORT – AMENDMENT TO BRIGHTON INTERIM PLANNING SCHEME 2015 – INSERT THE WEST BRIGHTON SPECIFIC AREA PLAN AND REZONE, OR PARTIALLY REZONE, 17 PROPERTIES FROM RURAL RESOURCE TO SIGNIFICANT AGRICULTURE:**

Type of Report	Planning Authority
Application No:	RZ 2020/03
Address:	Several properties on Elderslie Road, Fergusson Road, Millvale Road and Stonefield Road.
Requested by:	Brighton Council
Proposal:	Insert the West Brighton Specific Area Plan and rezone, or partially rezone, 17 properties from Rural Resource to Significant Agriculture.
Zone:	Rural Resource & Significant Agriculture

Author: Manager Development Services (David Allingham)

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## 1. Executive Summary

- 1.1. The report considers an amendment of the *Brighton Interim Planning Scheme 2015* (BIPS 2015) for the purposes of inserting the West Brighton Specific Area Plan and rezone, or partially rezone, 17 properties from Rural Resource to Significant Agriculture.
- 1.2. To proceed, the request must be initiated by the Planning Authority. If initiated, public exhibition would follow, with the final decision ultimately made by the Tasmanian Planning Commission.
- 1.3. The proposed amendment will implement some of the recommendations of the "West Brighton and Rosewood Zoning Review". The Review was initiated by Council as the two areas had long been a problematic for Council due to the fragmented land and competing priorities between agriculture and residential development. The proposed amendment provides a mechanism for managing the competing priorities and to mitigate land use conflict.
- 1.4. The amendment has not previously been considered.
- 1.5. The proposal is recommended for initiation.

## 2. Legislative & Policy Content

- 2.1. The purpose of this report is to enable the Planning Authority to determine whether or not to initiate the planning scheme amendment.
- 2.2. The relevant legislation is the *Land Use Planning and Approvals Act 1993* (the Act). The provisions of the Act establish the test of whether a planning scheme amendment is reasonable or not.
- 2.3. It is anticipated that the Brighton draft Local Provisions Schedule (LPS) will be approved and come into effect in the next three to six months. There are savings and transitional provisions under Schedule 6 of the Act that will allow for the draft amendment to continue if it has been initiated by the planning authority but not approved before the LPS comes into effect.
- 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 2005.*

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

### 3. Risk & Implications

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

### 4. Proposal

- 4.1. The proposed amendment comprises two parts:

4.1.1 First, it is proposed to rezone 12 titles at the end of Fergusson Road and all or part of 5 titles on the upper slopes of Cobbs Hill from Rural Resource to Significant Agriculture (See Attachment A, Figure 1 and Table 1).

*Table 1: Properties to be rezoned from Rural Resource to Significant Agriculture*

PID	Address	Owner
3154881	610 Millvale Road	K L Jarvie
3305766	299 Elderslie Road	S R Cook
3368177	297 Elderslie Road	B R Cook
5027579	252 Elderslie Road	W W Tas Pty Ltd
2014051	177 Elderslie Road	I J Fehlberg
7442119	157 Fergusson Road	T A & M V Lacey
7442100	155 Fergusson Road	R J & B J Weston
7393396	141 Fergusson Road	N D Muir, L A Williams
7442063	171 Fergusson Road	R P & K E Noyes
7442127	159 Fergusson Road	T & C P Herbert
7393409	140 Fergusson Road	T A Barham
7393417	160 Fergusson Road	M F Hibberd
7442047	174 Fergusson Road	A C & A R Duggan
7442039	150 Fergusson Road	G W & J A Turner
7442020	152 Fergusson Road	D G Schultz
5021986	59 Fergusson Road	I J Fehlberg
5041530	95 Fergusson Road	I J Fehlberg

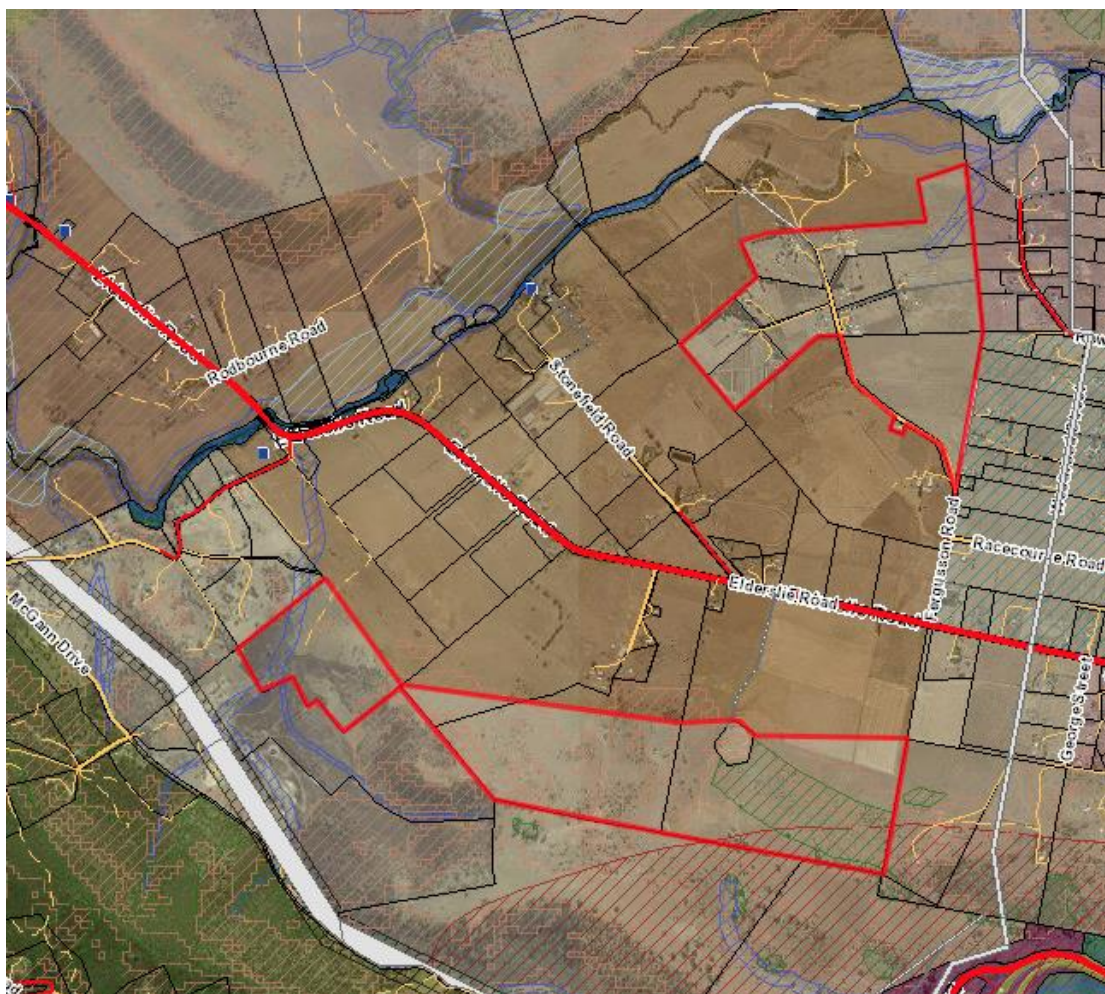


Figure 1: Areas proposed to be rezoned from Rural Resource to Significant Agriculture shown by red border.

- 4.1.2 Secondly, it is proposed to insert the F3.0 West Brighton Specific Area Plan into the Brighton Interim Planning Scheme 2015 (see attachment A). The SAP will apply to the area in Figure 2 below and the properties listed in Table 2.

The proposed amendment is contained at Attachment A.

Table 2: Properties within the West Brighton Specific Area Plan area.

PID	Address	Owner
7786149	630 Millvale Road	R P Parker
9286620	365 Elderslie Road	J P Gray
9286621	377 Elderslie Road	J P Gray
9286622	381 Elderslie Road	E J Hall
9286623	391 Elderslie Road	E J Hall
9286624	443 Elderslie Road	P A Woods
3154881	610 Millvale Road	K L Jarvie
9286619	357 Elderslie Road	J P Gray

9286618	353 Elderslie Road	J P Gray
7786130	335 Elderslie Road	G A & K L Hossack
3305766	299 Elderslie Road	S R Cook
5027595	293 Elderslie Road	A P Green, D B Beaumont
5027608	295 Elderslie Road	J P Gray
3368177	297 Elderslie Road	B R Cook
7101066	269 Elderslie Road	P J & J S Geard
2014051	177 Elderslie Road	I J Fehlberg
5027579	252 Elderslie Road	W W Tas Pty Ltd
2982706	262A Elderslie Road	C D Salter
7479720	260 Elderslie Road	D M Gangell
7479712	258 Elderslie Road	S R & C A Howells
5021978	27 Fergusson Road	Twelve Stones Pty Ltd
5021978	27 Fergusson Road	Twelve Stones Pty Ltd
5021978	27 Fergusson Road	Twelve Stones Pty Ltd
2982714	264 Elderslie Road	N D Salter
5044803	62 Stonefield Road	B J & M S Price
7894123	118 Stonefield Road	C R Cooper
2602013	126 Stonefield Road	E & M Schmul
1776185	124 Stonefield Road	P J & C M Hill
3247885	117 Stonefield Road	B A Heenan
3247949	119 Stonefield Road	A T & E R Mayne
3136907	398 Elderslie Road	D J Parker, R J Wells
3136894	426 Elderslie Road	Z G Medhurst
7492124	430 Elderslie Road	A E & D M Blackwell
3247893	99 Stonefield Road	M C Tibballs & Son Pty Ltd
3136915	388 Elderslie Road	G R & T M & A R Greig
3136923	356 Elderslie Road	T A Skeggs
3247906	81 Stonefield Road	T R Ford
3247914	59 Stonefield Road	B J Rossendell, R P Hawkins
1441844	320 Elderslie Road	M J Houstein, K H Baker
3247922	39 Stonefield Road	S V & A J Webberley
3247930	37 Stonefield Road	M J & E A Fitzallen
7393396	141 Fergusson Road	N D Muir, L A Williams
7442100	155 Fergusson Road	R J & B J Weston
7442119	157 Fergusson Road	T A & M V Lacey
7442127	159 Fergusson Road	T & C P Herbert
7442063	171 Fergusson Road	R P & K E Noyes
7393417	160 Fergusson Road	M F Hibberd
7393409	140 Fergusson Road	T A Barham
7442020	152 Fergusson Road	D G Schultz
7442039	150 Fergusson Road	G W & J A Turner
7442047	174 Fergusson Road	A C & A R Duggan
7442055	186-188 Fergusson Road	Grach Pty Ltd



5041530	95 Fergusson Road	I J Fehlberg
5021986	59 Fergusson Road	I J Fehlberg

## 5. Site Detail

5.1. The proposed West Brighton SAP area relates to 54 properties and is located on the western edge of the Brighton township and extends to the edge of the Jordan River to the north and north-west and the foothills of Cobbs Hill to the south (see Figure 1). Land across most of the study area is flat with marginal soils.

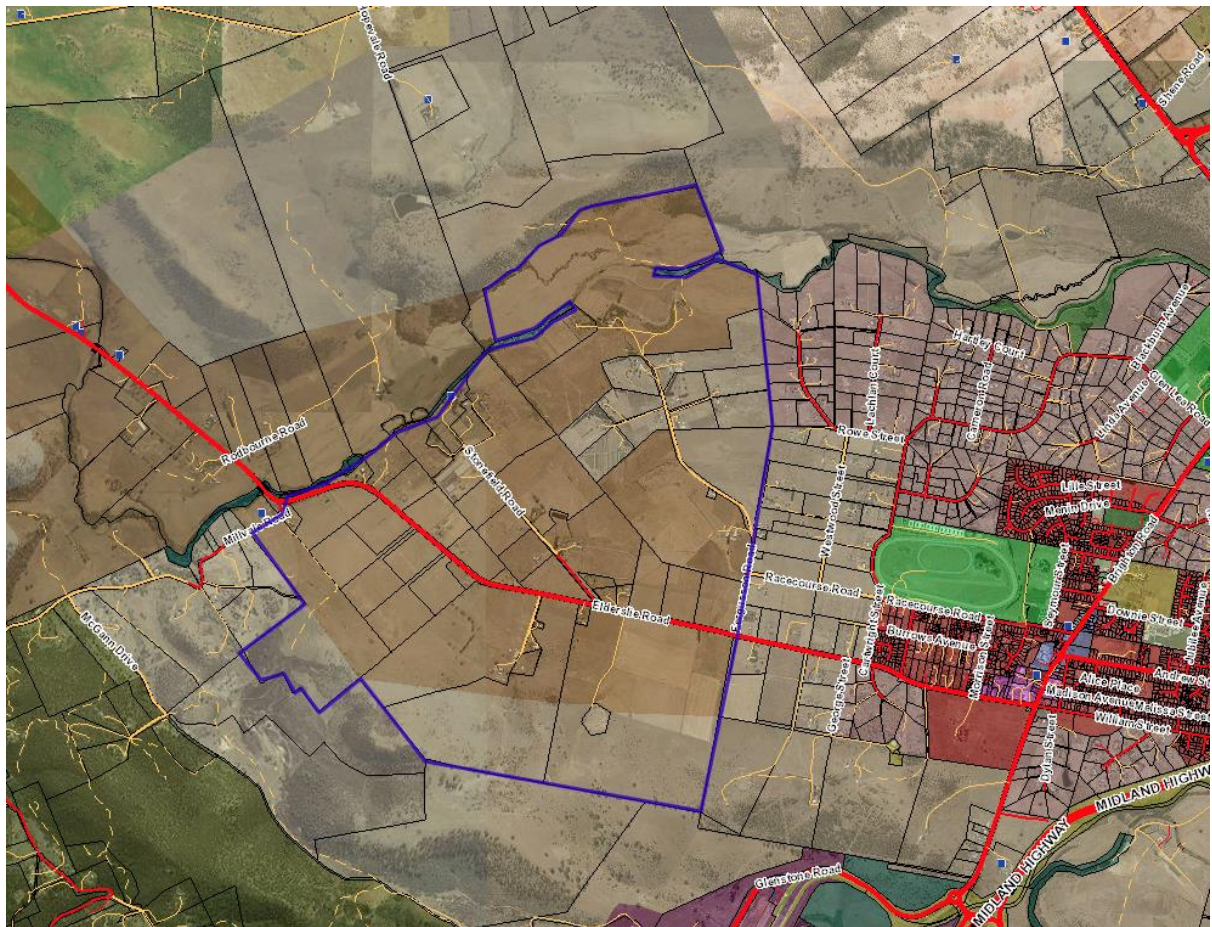


Figure 2: The West Brighton SAP area shown by the blue border.

5.2. Elderslie Road is the main arterial road that traverses the centre of the subject area.

5.3. The West Brighton study area has a mixture of land uses as follows:

- Horse studs and related equine activities
- Horticultural enterprises: one nursery business, some minor market gardening, and a protected cropping operation

- Cattle grazing on the large holdings to the south of Elderslie Rd
- Rural residential (often in conjunction with recreational horse uses and cattle grazing)
- Stonefield reception centre
- Elderslie quarry.

5.4. Most of the land is currently zoned Significant Agriculture under the Brighton Interim Planning Scheme 2015 (BIPS 2015) except for the 17 properties subject to the proposed rezoning (see Figure 1) which are zoned Rural Resource.

5.5. Land capability in the area is Class 4 & Class 5 land (see Figure 3).

Definitions from the Land Capability Handbook<sup>1</sup> for Class 4 and 5 land are below:

Class 4

*Land primarily suitable for grazing but which may be used for occasional cropping. Severe limitations restrict the length of cropping phase and/or severely restrict the range of crops that could be grown. Major conservation treatments and/or careful management is required to minimise degradation.*

Class 5

*This land is unsuitable for cropping, although some areas on easier slopes may be cultivated for pasture establishment or renewal and occasional fodder crops may be possible. The land may have slight to moderate limitations for pastoral use. The effects of limitations on the grazing potential may be reduced by applying appropriate soil conservation measures and land management practices.*

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<sup>1</sup> Grose C.J. (Ed) 1999, Land Capability Handbook. Guidelines for the Classification of Agricultural Land in Tasmania. Second Edition, Department of Primary Industries, Water and Environment, Tasmania, Australia





Figure 3: Land capability. Class 4 = green and Class 5 = Brown

5.6. The subject area consists of varying lot sizes between 2,000m<sup>2</sup> and 95ha, however the majority of lots range between 5 and 10ha.

5.7. Under the Brighton draft LPS, the majority of the land is proposed to be zoned Agriculture (see Figure 4).

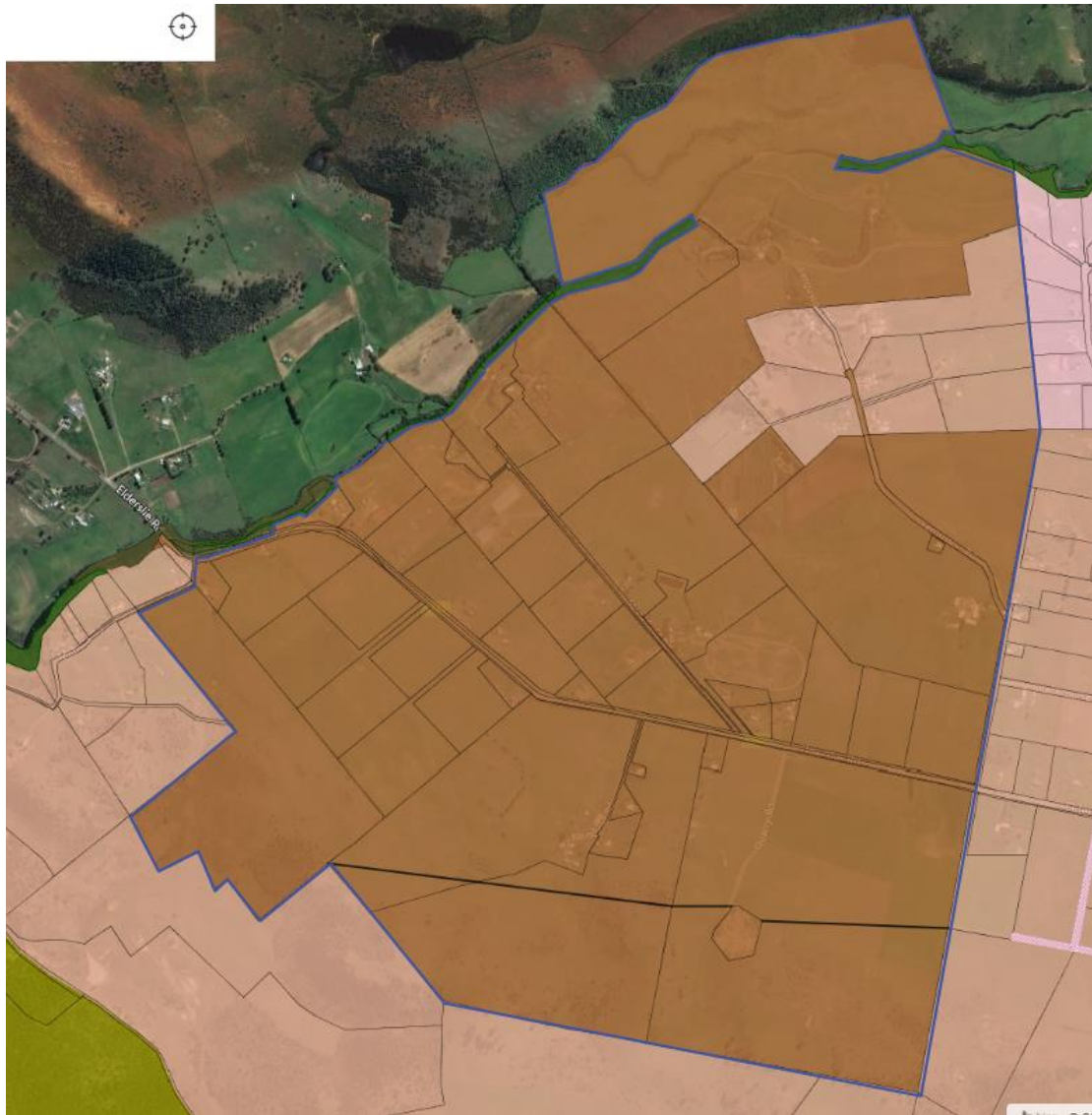


Figure 4 - Proposed zoning under the Brighton draft LPS.

## 6. Relevant Background and Past Applications

### 6.1. Past Approvals

6.1.1 Unfortunately, Brighton Council has historically taken a reasonably relaxed approach to allowing subdivision of agricultural land and approving dwellings despite the zoning of the subject area. Several subdivision approvals between 2007-2015 (See Figure 5) have resulted in a subdivision pattern of 5-10ha lots which was allowable under the Brighton Planning Scheme 2000 (BPS 2000). The justification for these subdivision approvals were that the land was suitable for intensive agriculture on small lots. To exacerbate the issue, multiple residences have been approved on this land with supporting “Farm Management Plans” (FMPs) to establish an agriculture use.

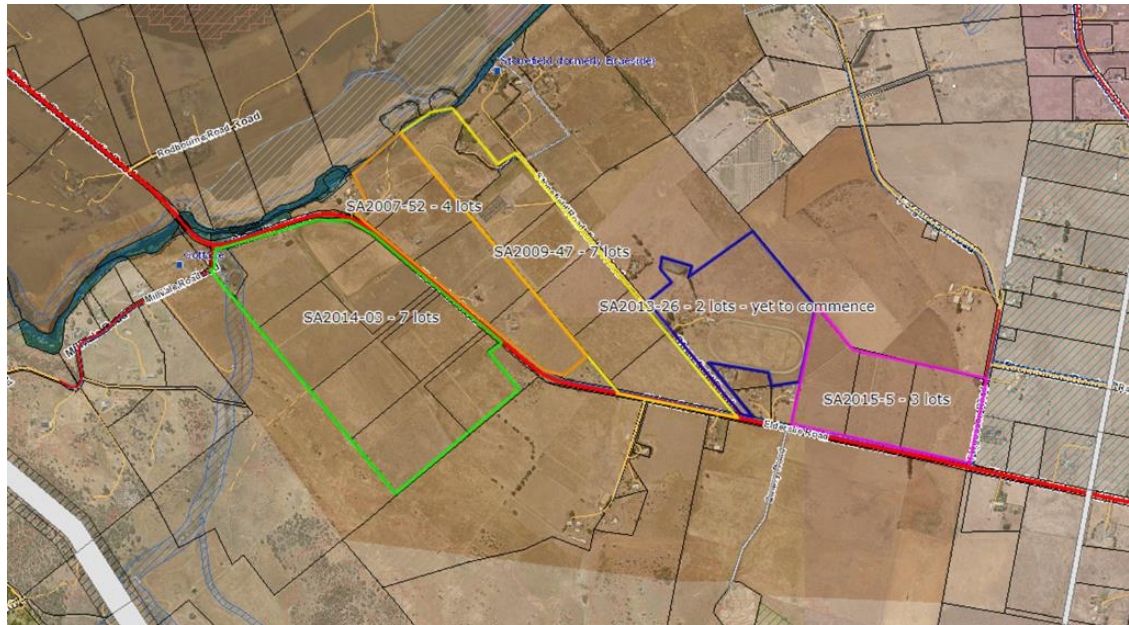


Figure 5 – Recent subdivision approvals in the West Brighton subject area.

- 6.1.2 The subdivision standards of the BPS 2000 Intensive Agriculture Zone allowed for a minimum lot size of 5ha if proposed subdivision 'demonstrates that a sustainable agricultural use can be achieved (including water supply) and that the proposal will have no adverse effect on the continued operation of the land uses surrounding the site.'
- 6.1.3 Each application was supported by an agricultural assessment prepared by an agricultural consultant.
- 6.1.4 A requirement for subdivision was for applications for residential use to be supported by Farm Management Plans (FMPs) to demonstrate that the land will be used for agricultural purposes. Subsequently, a number of dwellings have been approved on this basis, but many of the FMPs were of a poor standard and were never implemented or never proposed anything more than a small hobby farm, meaning the area has become increasingly rural-residential in character.
- 6.1.5 Council took a stronger position on dwelling approvals when under BIPS 2015, but despite the recent subdivisions being approved for intensive agricultural use, recent assessments by agricultural consultants (engaged by landowners when applying for a dwelling) have argued that the land is of poor quality, too small and does not have sufficient access to water to provide for a sustainable agricultural enterprise without a dwelling, particularly given the price of the land.

- 6.1.6 There has been a push from some owners of the undeveloped lots to change the zoning to something that provides greater transparent flexibility for allowing residential use.
- 6.1.7 In contrast owners of some of the larger lots that are being used for agricultural use are pushing for the Agriculture Zone to remain due to the risk of increased land use conflict.

## **6.2 West Brighton and Rosewood Zoning Review (“the Zoning Review”)**

- 6.2.1 In 2019, Council engaged Agribusiness Tasmania to consider existing subdivision patterns and land use, and previous agricultural reports, and provide an agricultural assessment of the land to assist in providing zoning recommendations for the West Brighton and Rosewood (Tea Tree) areas.
- 6.2.2 The Zoning Review included a literature review which considered the changing nature of ‘peri-urban’ areas. The key learnings were that ‘peri-urban’ areas had an important role to play in agriculture production and was moving away from traditional farming activities to more diverse intensive high value production, which is often independent of soil type and land use classes. Regardless, land for agriculture around urban areas is declining.

The literature review also talks of the importance of planning certainty and to consider the unique and diverse requirements of rural areas:

*“There must be a balance struck which will seek to maintain character, charm and visual amenity of these predominantly rural zones, whilst still providing necessary economic development, services and employment for local residents.” (Pg 16).*

- 6.2.3 The Zoning Review also includes an assessment of agricultural potential of the land and identifies that the land has agricultural potential in Southern Tasmania Regional Land Use Strategy (STRLUS) and the State-wide agricultural land mapping project undertaken for the preparation of the Tasmanian Planning Scheme. Although it should be noted that some of the area was identified as potentially constrained (see Figure 6).
- 6.2.4 Section 4.6 of the Zoning Review identifies a range of agricultural activities that could potentially be successful within the study area. Although, the author is careful to point out that not all sites would be suitable for all identified activities. Section 4.7 discusses the considerable potential for a range of complementary enterprises within the study area.



This would include at operations such as pick-your-own and farm-gate produce sales, cellar-doors, breweries, packhouses, cheese-making facilities, pickles and jam making, catering businesses serving a wider market area, and more.

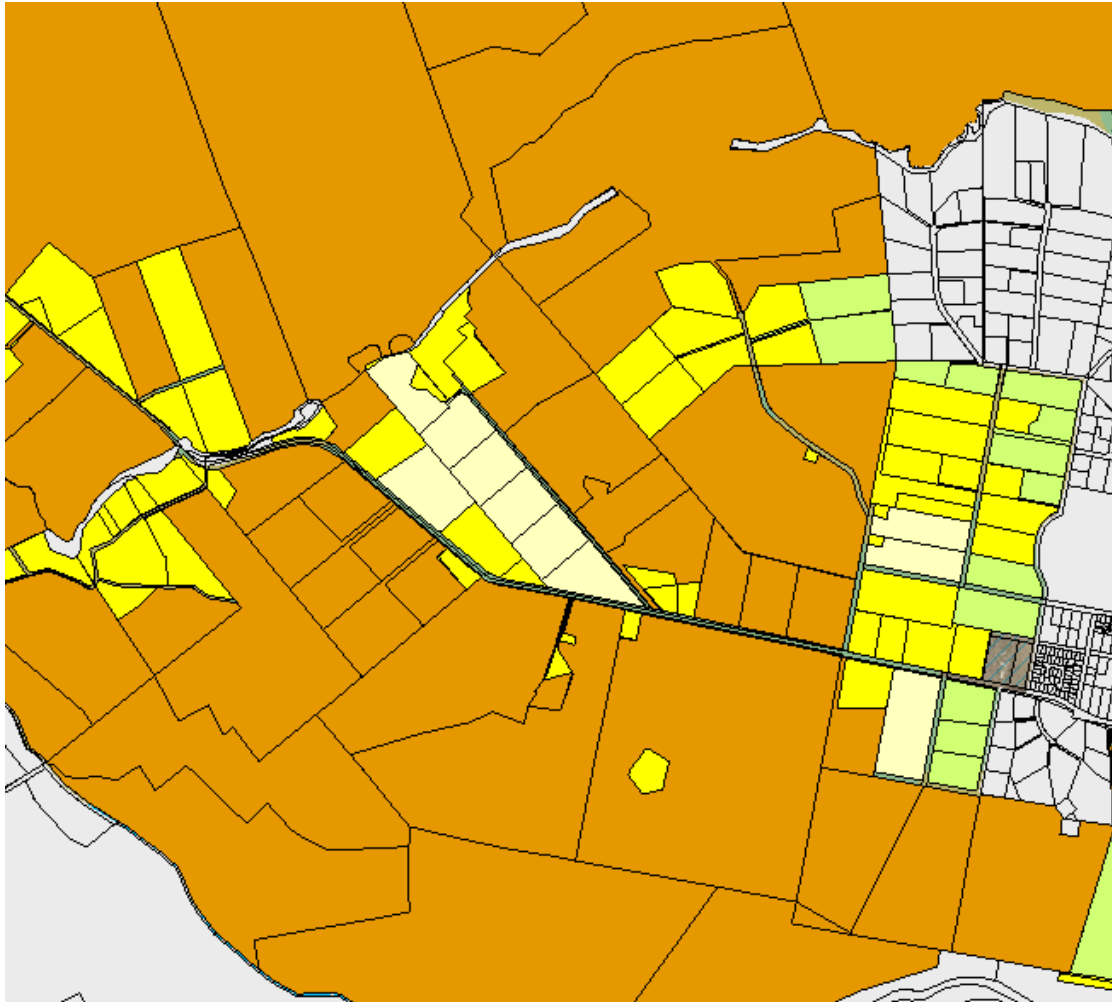


Figure 6: Land potentially suitable for Agriculture Zone from state-wide agricultural land mapping project. Areas shaded yellow, cream or green are potentially constrained.

- 6.2.5 A critical part of the Zoning Review was the focus on engaging with the local landowners in the subject area. Key stakeholders with significant land holdings were interviewed at length. These stakeholders were either farming the land or held several smaller properties they were looking at selling. A public forum was also held at the Brighton Bowls Club on 29 October 2019 and was attended by 33 people, representing 34 properties.

The consultation outcomes at Section 5.2 of the Zoning Review were generally consistent with the findings of the literature review and agricultural potential assessment in that landowners believed that the land was important for agricultural production, even if it did not look like farming in the past.

The biggest constraint to agricultural activities in the area was access to water, but this had the potential to be overcome by large irrigation infrastructure projects.

Further subdivision in the area was not supported, but allowing a dwelling an occupier is serious about farming the land. Managing land use conflict was considered equally important. Many thought the need to prepare Farm Management Plans to demonstrate a specific agricultural purpose was unnecessary red tape if Council weren't going to monitor or enforce the plans.

6.2.6 In summary the Zoning Review recommended the following for the West Brighton area:

- *The predominant zoning for the West Brighton study area should be Agriculture and that:*
  - *the current minimum lot size of 5 hectares be retained; and*
  - *physical barriers (buffers, clustered building envelopes etc) be incorporated into any new applications within the zone to ensure appropriate separation of uses and minimise the risk of future conflict.*
- *Consideration be given to applying a Rural Zone to the Stonefield reception centre and the Elderslie quarry.*
- *A Specific Area Plan (SAP) be developed to address these issues. This approach would provide clarity and certainty for both current residents and potential investors into the future. A SAP should consider these factors:*
  - *The SAP should include physical barriers and other application provisions, as outlined above; and*
  - *The report identifies that the Brighton West area is suitable for high intensity horticulture involving artificial housing or structures. The SAP should also recognise this by elevating "controlled environment agriculture" in the Resource Development use class from Discretionary to a Permitted use.*
  - *Elevating residential use to "Permitted" if it is accompanied by an agricultural use that contributes to the region's agricultural economy and does not confine or constrain agricultural use on adjoining properties and minimises restraint of potential agricultural use on the site*

- *Council should play a more active role in enforcing previous and future permit conditions in relation to agricultural activities, whilst recognising the importance of providing for some flexibility to allow for different agricultural uses may have been initially approved.*

6.2.7 At the July 2020 Ordinary Council Meeting, the Zoning Review and a draft version of the SAP was endorsed for a further three weeks of targeted consultation. A letter was sent to each landowner advising that the Zoning Review and draft SAP were available on Council's website and that feedback was encouraged. No submissions were received during the consultation period.

6.2.8 The purpose of this draft amendment is to implement the recommendations of the Zoning Review.

## 7 Explanatory notes to the Specific Area Plan

The following notes provide an explanation of the purpose and intent of the provisions under the proposed SAP.

The SAP clearly identifies whether the standard is in addition to or in substitution for the underlying Significant Agriculture Zone (SAZ).

Clause	Provision	Commentary
<i>Purpose</i>		
F3.1.1	To promote an area for horticulture in West Brighton and specifically protected cropping horticulture in the future.	The statements under Clause F3.1 outline the overall intent of the specific area plan and the desired character that is to be achieved through future subdivision and development.  The purpose statements also articulate the need for the Specific Area Plan above the standard provisions within the SAZ or other possible zones.
F3.1.2	To protect the existing rural and agricultural character of the area by requiring agricultural use to accompany residential development.	
F3.1.3	To provide for new residential use and development only where agricultural use is supported and protected.	
F3.1.4	To ensure residential use and development is appropriately designed, sited and screened to	

	minimise conflict with existing and potential agricultural uses.	
<i>Application of the Specific Area Plan</i>		
F3.2	Application of Specific Area Plan	Application of the specific area plan to an application for a planning permit is to be determined by reference to Figure F3.1.
<i>Definition of terms</i>		
F3.4.1	commercial agricultural use	This term is clarified to ensure that agricultural uses accompanying a residential use are a genuine attempt at contributing to the agricultural economy.
F3.4.1	shelterbelt	This term provides a clear understanding of what is required to provide a shelterbelt.
<i>Use Table</i>		
F3.5	No Permit Required	No change from SAZ.
	Permitted	Promoted Residential use to Permitted with qualification for residential use to be “accompanied” by an agricultural use, which reduces the threshold for allowing residential use in line with recommendations of the Zoning Review.  Promoted “controlled environment agriculture” to Permitted to recognise the potential for high intensity uses in the area as per recommendation of Review.
	Discretionary	Removed residential use (promoted to Permitted)  Removed “controlled environment agriculture (promoted to Permitted)  Removed “Sport and Recreation” use as it is incompatible with the area.
<i>Use standards</i>		
F3.6	Residential use	This clause has been provided to achieve purpose statements F3.1.1 to F3.1.3



		<p>The provisions replace sensitive use standards 27.3.1 of the SAZ.</p> <p>The provisions provide a permitted pathway for a residential use if an existing agricultural use exists.</p> <p>If no residential use exists, the Performance Criteria requires the residential use to demonstrate it will be accompanied by genuine agricultural use and minimise land use conflicts with adjoining sites.</p>
<i>Development Standards</i>		
F3.7.1 A1	Frontage setback for buildings for residential use.	<p>This clause furthers purpose statement F3.1.4.</p> <p>This clause is in substitution for Significant Agriculture Zone - clause 27.4.2 Setback.</p> <p>The standard requires development to be located near the road to allow the balance of the land to be used for productive purposes.</p>
F3.7.1 A2	Side and rear setbacks for buildings for residential use.	<p>This clause furthers purpose statement F3.1.4.</p> <p>This clause is in substitution for Significant Agriculture Zone - clause 27.4.2 Setback.</p> <p>The standard requires development to be setback a reasonable distance from adjoining uses and requires a landscape buffer to mitigate land use conflicts.</p>
F3.7.1 A3	Setbacks for buildings other than residential use.	<p>This clause furthers purpose statement F3.1.1 and F3.1.2.</p> <p>This clause is in substitution for Significant Agriculture Zone - clause 27.4.2 Setback.</p> <p>The clause allows non-residential buildings to be located close to boundaries so that the land can be productive.</p>

Subdivision standards		
F3.8	No Standards	

## 8 Planning Assessment

### 8.1 Requirements of the Act

#### 8.1.1 Pursuant to s.32(1) of LUPAA:

(1) *A draft amendment of a planning scheme, and an amendment of a planning scheme, in the opinion of the relevant decision-maker within the meaning of section 20(2A) –*

(a) . . . . .

(b) . . . . .

(c) . . . . .

(d) . . . . .

(e) *must, as far as practicable, avoid the potential for land use conflicts with use and development permissible under the planning scheme applying to the adjacent area; and*

(ea) *must not conflict with the requirements of section 30O; and*

(f) *must have regard to the impact that the use and development permissible under the amendment will have on the use and development of the region as an entity in environmental, economic and social terms.*

(2) *The provisions of section 20 (2), (3) , (4) , (5) , (6) , (7) , (8) and (9) apply to the amendment of a planning scheme in the same manner as they apply to planning schemes.*

Section 30O of the Act requires that an amendment to an interim planning scheme is as far as practicable, consistent with the regional land use strategy. Section 30O also sets a number of requirements relating to the insertion of a local provision and its relationship to a common provision.

In addition to these requirements, Section 20(1) is also relevant as a planning scheme amendment is also the making of a planning scheme:

(1) *A relevant decision-maker, in preparing, accepting, declaring or making a relevant scheme, or giving approval in relation to the making or approving of a relevant scheme, must, in the opinion of the relevant decision-maker–*

(a) *seek to further the objectives set out in Schedule 1 within the area covered by the scheme; and*

(b) *prepare the scheme in accordance with State Policies made under section 11 of the State Policies and Projects Act 1993; and*

(c) . . . . .

(d) *have regard to the strategic plan of a council referred to in Division 2 of Part 7 of the Local Government Act 1993 as adopted by the council at the time the planning scheme is prepared; and*

(e) *have regard to the safety requirements set out in the standards prescribed under the Gas Pipelines Act 2000.*

The following sections address the matters that are covered by the above-mentioned legislative requirement.

## **8.2 Brighton Council Strategic Plan 2019-2029**

The proposed amendment is consistent with the below relevant strategies from the Brighton Council Strategic Plan 2019-2029:

*S1.5: Build a resilient community and environmentally sustainable future*

*S2.1: A focus on Agriculture/Horticulture/Aquaculture – (Food)*

*S3.1: Support 30% Growth Target*

*S4.4: Long-term thinking & evidence-based*

The proposed amendment does not conflict with any of Council's strategies.

## **8.3 Brighton Structure Plan 2018**

While consistency with the *Brighton Structure Plan 2018* (the Structure Plan) is not a legislative requirement under the Act, it does represent orderly and sound strategic planning direction for the Brighton municipal area.

The Structure Plan guides the major changes to land use, built form and public spaces that together can achieve identified economic, social and environmental objectives for Brighton for years to 2032.

*Strategy 7: Support agricultural businesses* and *Strategy 29: Improve buffer management between differing land uses* are relevant to the proposed amendment. The Actions from Strategy 7 and 29 are summarised in the table below.

Action	Comment
<i>Strategy 7: Support agricultural businesses</i>	
Recognise the importance of agricultural tourism in the planning scheme, and ensure the planning controls facilitate the development of this.	The SAP continues to allow for a Tourist operation use if associated with an agricultural use, farm stays, cellar doors, etc.
Support Brighton's agricultural land uses from encroachment by limiting the rezoning of Rural Resource and Significant Agriculture land, for residential purposes.	<p>The proposed amendment provides for additional land within the SAZ</p> <p>The SAP area continues to be an agricultural area as desired by the community.</p>
Protect agricultural land by utilising the buffer management techniques suggested in Strategy 29.	See Strategy 29 actions below
Recognise the importance of innovative technology to agricultural businesses in the planning scheme, and ensure the planning controls allow consideration of these.	The Zoning Review identifies that some of the land within the SAP area is suitable for high intensity agriculture which has been elevated to a Permitted use under the SAP.

<i>Strategy 29: Improve buffer management between differing land uses</i>	
<p>Apply the interface treatments suggested to rezoning and development application as appropriate.</p> <p>Potential interface treatments between residential and rural uses:</p> <ul style="list-style-type: none"> <li>• Building setbacks on residential side;</li> <li>• Placement of roads between uses</li> </ul>	The proposed SAP provides for interface treatments by requiring residential uses to be sited close to road frontages and screening vegetation.

<ul style="list-style-type: none"> <li>• Placement of shared paths</li> <li>• Rural residential, although this can constrain future growth of townships</li> <li>• Placement of parks and drainage infrastructure</li> <li>• Existing infrastructure e.g. highway</li> <li>• Screening vegetation</li> <li>• Buffer on rural side where certain activities cannot occur, although this should not be used to fetter existing uses</li> </ul>	
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The proposed amendment is considered to be consistent with the relevant strategies and actions from the Structure Plan.

#### 8.4 Southern Tasmania Regional Land Use Strategy 2010-2035

As required under s.32(1)(ea) the proposed amendment must be, as far as practicable, consistent with regional land use strategies. In southern Tasmania, the relevant regional land use strategy is the *Southern Tasmania Regional Land Use Strategy 2010-2035* (STRLUS).

The STRLUS outlines policies for protecting productive resources in section 16. The relevant policies are considered in the table below.

It is noted that STRLUS was amended 9 May 2018 to provide for a Tasmanian Planning Scheme (TPS) Addendum for application through Local Provisions Schedules (LPS). As the LPS has not yet been adopted the wording in the addendum is not used here.

Further comment on the TPS is at section 9 of this report.

Policy	Comment
<p>PR 1</p> <p>Support agricultural production on land identified as significant for agricultural use by affording it the highest level of protection</p>	<p>See comments on sub-clauses below</p>

from fettering or conversion to non-agricultural uses.	
<p>PR 1.1</p> <p>Utilise the 'Significant Agriculture Zone' to identify regionally significant agricultural land in planning schemes and manage that land consistently across the region.</p>	<p>Part of the proposed amendment is to include more land identified as Significant Agricultural Land from Map 5 within the SAZ. The entire area subject to the SAP will be within the SAZ.</p>
<p>PR 1.2</p> <p>Avoid potential for further fettering from residential development by setting an acceptable solution buffer distance of 200 metres from the boundary of the Significant Agriculture Zone, within which planning schemes are to manage potential for land use conflict.</p>	<p>The 200m buffer will continue to apply to adjoining zone in the SAP area.</p> <p>The 200m setback for sensitive use standard at 27.4.2 A3 has been substituted with a new standard. The new standard has a 40m setback and a requirement for vegetation screening within 100m to mitigate land use conflict. This is required due to the fragmented nature and constrained land size of many of the lots in the area (i.e. some are not even 200m wide.)</p>
<p>PR 1.3</p> <p>Allow for ancillary and/or subservient non-agricultural uses that assist in providing income to support ongoing agricultural production</p>	<p>The SAP continues to provide for ancillary and/or subservient non-agricultural use.</p>
<p>PR 1.4</p> <p>Prevent further land fragmentation by restricting subdivision unless necessary to facilitate the use of the land for agriculture.</p>	<p>The subdivision standards of the SAZ continue to apply to the SAP area.</p>

As such, it is considered that the proposed amendment continues to further the requirements of Section PR1 of the STRLUS.

## **8.5 Overriding Local and Common Provisions:**

In addition to requiring that a Draft Amendment is consistent as far as practicable with the Regional Land Use Strategy, Section 30O requires that an amendment to a local provision of the scheme is not directly or indirectly inconsistent with the common provisions.

The proposed amendment does not conflict with common or overriding local provisions of the Scheme.

## **8.6 State Policies**

### **8.6.1 State Coastal Policy 1996**

The *State Coastal Policy 1996* applies to land within 1 km of the high-water mark. The subject land is more than 1km from the high-water mark and this policy does not apply.

### **8.6.2 State Policy on the Protection of Agricultural Land 2009**

The *State Policy on the Protection of Agricultural Land 2009* protects Prime Agricultural Land (Land Capability Classes 1, 2, and 3) and conversion of agricultural land to non-agricultural uses is subject to the principles of the Policy.

STRLUS states:

*A marked feature of the pattern of agricultural land in the region is the large range in productive capacity and the discrete, spatially well defined nature of areas of high productivity nestled within larger areas of much lower productivity. As such the region should adopt a strategy recognising that the one size fits all approach to planning scheme standards across the region will not achieve the best outcomes.*

Based on the recommendations of the Zoning Review, the proposed SAP does not propose to convert agricultural land to non-agricultural uses, rather it recognises the constraints within this lower productive area and that the one size fits all approach has not worked in this area. Based on the recommendations of the Zoning Review, the SAP aims to promote controlled environment agriculture which is more suitable for the area. Further, it aims to ensure that agricultural land is not unreasonably converted, and agricultural use continues if a residential use is established.

The proposed amendment is considered to be consistent with the State Policy.



### 8.6.3 The State Policy on Water Quality Management 1997

The *State Policy on Water Quality Management 1997* applies but is more relevant to individual developments.

## 8.7 RMPS Objectives

The objectives of the Resource Management and Planning System must be furthered by the rezoning request.

- (a) *to promote the sustainable development of natural and physical resources and the maintenance of ecological processes and genetic diversity; and*

The proposed amendment provides for the sustainable development of agricultural resources where constraints exist.

- (b) *to provide for the fair, orderly and sustainable use and development of air, land and water; and*

The amendment continues to provide for fair, orderly and sustainable use and development of air, land and water.

- (c) *to encourage public involvement in resource management and planning; and*

The public has been involved in the development of the Review through stakeholder interviews and community meetings. Further informal consultation of the Review document and the draft SAP was undertaken prior to the preparation of this report.

The public will be further involved in the draft planning scheme amendment through opportunity to make representation and attend public hearings.

- (d) *to facilitate economic development in accordance with the objectives set out in paragraphs (a), (b) and (c); and*

The draft amendment continues to encourage commercial agricultural use on the land.

- (e) *to promote the sharing of responsibility for resource management and planning between the different spheres of Government, the community and industry in the State.*

The proposed amendment will require the consideration of the Tasmanian Planning Commission following community consultation.

The proposed Planning Scheme Amendment as it relates to the Objectives of Part 2 of Schedule 1 of LUPAA is discussed below:

- (a) *to require sound strategic planning and co-ordinated action by State and local government;*

The proposed amendment is consistent with the *Southern Tasmania Regional Land Use Strategy 2010-2035*, *Brighton Structure Plan 2018* and the *Brighton Council Strategic Plan 2015-2025*.

The Planning Scheme amendment process allows for coordinated action by State and local government.

- (b) *to establish a system of planning instruments to be the principal way of setting objectives, policies and controls for the use, development and protection of land.*

The proposal has been submitted in accordance with Section 34(1)(b) of the Act and is consistent with all relevant legislation. The proposed amendment will form part of the Planning Scheme, which controls the use, development and protection of land.

- (c) *to ensure that the effects on the environment are considered and provide for explicit consideration of social and economic effects when decisions are made about the use and development of land; and*

The land contains no natural values of major significance. Risks from future development can be appropriately managed under the *Brighton Interim Planning Scheme 2015* and any subsequent planning schemes.

- (d) *to require land use and development planning and policy to be easily integrated with environmental, social, economic, conservation and resource management policies at State, regional and municipal levels; and*

The proposed amendment does not conflict with this objective and is consistent with State, regional and local planning policies and strategies.

- (e) *to provide for the consolidation of approvals for land use or development and related matters, and to co-ordinate planning approvals with related approvals; and*

This Objective is not directly relevant to the current matter.

- (f) *to secure a pleasant, efficient and safe working, living and recreational environment for all Tasmanians and visitors to Tasmania; and*

The proposed amendment will continue to provide for protection of resources from encroachment of inappropriate residential development.

- (g) *to conserve those buildings, areas or other places which are of scientific, aesthetic, architectural or historical interest, or otherwise of special cultural value; and*

The site and adjoining land is not known to contain any items or places of scientific, aesthetic, architectural or historic interest.

- (h) *to protect public infrastructure and other assets and enable the orderly provision and co-ordination of public utilities and other facilities for the benefit of the community; and*

The proposed amendment will not impact any public infrastructure or assets.

- (i) *to provide a planning framework which fully considers land capability.*

Land capability is considered throughout the assessment. The subject area not considered to be prime agricultural land.

## **8.8 Gas Pipeline safety**

Section 20(e) of the Act provides that a draft amendment must have regard to the safety requirements for gas pipelines.

There are no issues of gas pipeline safety associated with the draft amendment.

## **8.9 Potential for Land Use Conflicts S 32 1 (e)**

The proposed amendment makes it somewhat easier to have a residential use approved in the SAZ. However, the SAP addresses a unique situation where land is already fragmented and is of high value due to its proximity to Brighton township. The SAP manages potential land use conflicts through appropriate siting and screening of residential use.

## **8.10 Regional Impacts s 32 1 (f)**

As discussed earlier in this report, the proposed listing is entirely consistent with the STRLUS in terms of protecting agricultural resources in the region.

## **8.11 Other requirements of s.20**

The substantially altered Draft Amendment is also consistent with the other requirements under Section 20(2), (3), (4), (5), (6), (7), (8) and (9) of the Act. In particular, the substantially altered Draft Amendment does not:

- prevent the continuance or completion of any lawful use or development;
- prevent the reconstruction or restoration of buildings or works unintentionally destroyed or damaged;
- extend or transfer a use from one part of a parcel of land to another part; or
- affect forestry operations, mineral exploration, fishing or marine farming.

## 9 Tasmanian Planning Scheme

- 9.1 It is anticipated that the Brighton draft Local Provisions Schedule (LPS) will be approved and come into effect in the next three to six months. There are savings and transitional provisions under Schedule 6 of the Act that will allow for the draft amendment to continue if it has been initiated by the planning authority but not approved before the LPS comes into effect.
- 9.2 However, if the draft amendment is approved prior to the LPS coming into effect then it will NOT transition, and the amendment will need to be applied for again. Given that a planning scheme amendment usually takes between three to six months to determine the risk of this draft amendment being determined prior to the LPS coming into effect is unlikely. It is also hoped that if the timing were not favourable, the Tasmanian Planning Commission (the Commission) would take a pragmatic approach and hold off on making their decision.
- 9.3 As there is no clear guide for preparing a draft amendment that will be continued if it has not approved before the LPS comes into effect, it is assumed that a copy of the West Brighton Agricultural SAP in the LPS format will be required (see Attachment C). Further, there will need to be some consideration of whether the draft amendment meets the LPS criteria under s.38 of the Act. Many of the LPS criteria are addressed in this report, including:
- Furthering the RMPS objectives;
  - Is consistent with the State policy;
  - As far as is practicable, is consistent with the regional land use strategy;
  - Has regard to the strategic plan prepared under section 66 of the Local Government Act 1993;
  - Has regard to the safety requirements in standards prescribed by the Gas Pipelines Act 2000

A key criterion that is not covered is the s.32(4) requirement that an LPS may only contain a SAP in relation to an area of land if:

*the area of land has particular environmental, economic, social or spatial qualities that require provisions, that are unique to the area of land, to apply to the land in substitution for, or in addition to, or modification of, the provisions of the SPPs.*

Section 6 of this report provides detail about the unique spatial qualities of the land due to its fragmentation from previous subdivision and subsequent development approvals under BPS 2000. The background also provides detail about the unique environmental constraints of the land; particularly a lack of irrigated water and poor land capabilities. The Zoning

Review also talks about the unique economic qualities of the peri-urban area and its potential on some of the land for high value horticulture.

It is considered that the report adequately demonstrates that the SAP area has particular environmental, economic and spatial qualities that are unique to the area.

## 10 Conclusion

The proposal to amend the *Brighton Interim Planning Scheme 2015* is consistent with regional and local land use strategy and the requirements of the *Land Use Planning and Approvals Act 1993*.

On this basis, it is recommended that Council initiate and certify draft amendment RZ 2020/03, as detailed in the attachments to this report.

### RECOMMENDATION:

- A. That in accordance with Section 34(1)(b) of the *Land Use Planning & Approvals Act 1993*, subject to the provisions of section 3 of schedule 6, Council initiates the draft amendment, to be known as draft amendment RZ 2020/03 to Insert the West Brighton Specific Area Plan and rezone, or partially rezone, 17 properties from Rural Resource to Significant Agriculture.
- B. That in accordance with Section 35(1) of the *Land Use Planning and Approvals Act 1993*, Council considers that draft amendment RZ 2020/03 satisfies the provisions of Section 32 of the *Land Use Planning and Approvals Act 1993*.
- C. That in accordance with Section 35(2) of the *Land Use Planning and Approvals Act 1993*, Council directs that draft amendment RZ 2020/03 be certified by instrument in writing affixed with the common seal of the Council; and
- D. That in accordance with Section 35(4) of the *Land Use Planning and Approvals Act 1993*, Council directs that a certified copy of draft amendment RZ 2020/03 be given to the Tasmanian Planning Commission within 7 days;
- E. That in accordance with Section 38 of the *Land Use Planning and Approvals Act 1993*, Council directs that draft amendment RZ 2020/03 be placed on public exhibition for no less than 28 days.

### DECISION:

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

**CARRIED**

## VOTING RECORD

	In favour	Against
1. The Government has been successful in its efforts to reduce unemployment.	60%	40%
2. The Government has failed to address the needs of the poor.	75%	25%
3. The Government's policies have led to economic growth.	80%	20%
4. The Government has increased public spending too much.	30%	70%
5. The Government has improved the quality of education.	90%	10%
6. The Government has reduced the cost of living.	55%	45%
7. The Government has increased taxes on the wealthy.	65%	35%
8. The Government has improved the healthcare system.	85%	15%
9. The Government has reduced inflation.	70%	30%
10. The Government has increased the minimum wage.	60%	40%

Cr Foster  
Cr Garlick  
Cr Jeffries  
Cr Murtagh  
Cr Owen

Cr Geard, Cr Gray and Cr Whelan returned to the meeting at 5.46pm.

*Cr Gray resumed as Chairperson.*

**5.5 SUBSTANTIAL MODIFICATION TO PART OF THE BRIGHTON DRAFT LOCAL PROVISIONS SCHEDULE AND SECTION 35G REPORT:**

Author: Manager Development Services (David Allingham)

### Purpose:

The purpose of this report is for the Planning Authority to consider the representations to the substantially modified part of the Brighton Draft Local Provisions Schedule (Draft LPS), and for the Planning Authority to provide recommendations to the Tasmanian Planning Commission (the Commission) pursuant to s.35F (Attachment A) and s.35G (Attachment C) of the *Land Use Planning and Approvals Act 1993* (the Act).

### Background:

The Draft LPS was endorsed by the Planning Authority at its meeting on 19 June 2018 and submitted to the Commission. The Commission directed that the Draft LPS be publicly notified in accordance with the Act on 28 March 2019.

The Draft LPS was publicly notified for 60 days and 39 representations were received. At the August 2019 Ordinary Council Meeting (OCM), the Planning Authority endorsed the s35F report, which responded to the representations.

On 18 October 2019, the Commission conducted a Direction Hearing for the Brighton draft LPS and four subsequent Hearing days in November. The Hearings were attended by Council staff, representors and authorities that chose to attend.

The Commission issued a notice to Brighton Council directing the Planning Authority to substantially modify parts of the Draft LPS and place the 'substantial modification' on public exhibition for 60 days.

It is a requirement of the legislation that representations may only be made on the specific matters that are the subject of substantial modification. The public exhibition of the substantial modifications is not an opportunity to revisit issues that were not subject to modification in the TPC notice or to raise new matters. In accordance with the legislation, the Planning Authority must disregard submissions on matters that are not directly related to the substantial modifications.

At the conclusion of the exhibition period, 4 representations were received. Three representations were from State Service Authorities and one from a private landowner. The matters raised in the representations are addressed in accordance with the requirements of the Act in Attachment A.

Having considered the representations received during exhibition of the Draft LPS and the substantially modified part of the Draft LPS, Section 35G of the Act provides for the planning authority to provide advice to the TPC in a notice, that the planning authority is of the opinion that the State Planning Provisions (SPP's) should be altered.

Following receipt of the planning authority report under Section 35F, the Commission will hold hearings into the representations made. The TPC will then seek the agreement of the Minister for Planning for the final form of the Brighton LPS before it is approved and commences operation.

There is no legislative process prescribed for a notice submitted by the planning authority under Section 35G.

### **Consultation:**

The substantial modifications were exhibited from 11 July 2020 to 11 September 2020 in accordance with the requirements of the Act, whereby a notice was placed in two Saturday editions of the Mercury newspaper and the documents displayed on Council's website under "Advertised Development Applications". In addition to the requirements under the Act, Council sent a letter to each property owner affected by the substantial modifications.

### **Risk Implications:**

Once the Draft LPS is finalised, Brighton Council will move to the Tasmanian Planning Scheme (TPS). Through the process of preparing the Draft LPS, it has become clear that the TPS is in many ways inferior to the existing *Brighton Interim Planning Scheme 2015*.

However, moving to the TPS and preparation of modified part of the Draft LPS is a statutory requirement under the Act.

Planning staff will continue to advocate for improvements to the TPS.

Transitioning to the TPS will likely lead to a temporary increase in assessment timeframes as planning staff familiarise themselves with the new planning scheme. Transitioning to the TPS would be particularly problematic if it occurred prior to the traditionally busy Christmas period, where statutory timeframes are already impacted by public holidays and office closures. As such, it would be preferred that the TPS does not come into force until the beginning of 2021.



**Financial/Budget Implications:**

Council staff has spent a significant amount of time over several years preparing the Draft LPS. This has resulted in a resourcing stress for Council for what could be argued was an unnecessary and cumbersome planning reform.

Additionally, external consultants have been required to be engaged by Council to transition towards to the LPS. For example, the GIS component of the LPS has been outsourced and has cost Council approximately \$7,500 to date.

The Commission has recently advised that Council will need to engage an additional consultant so that the GIS work already undertaken can be converted into the format used required by the Commission.

**Social Implications:**

The LPS provides for managing some land-use conflict and creating healthier communities. Generally, the LPS improves health and wellbeing standards provided in the SPP's. However, it is considered that the TPS has inferior outcomes than under the current *Brighton Interim Planning Scheme 2015*.

**Environmental Implications:**

Due to the Guidelines provided by the TPC, there are likely to be a number of bushland areas on agricultural land and Rural Living areas that have a bushland character that receive a lower level of vegetation protection than they do currently. The S.35G report proposes an amendment to rectify this in the Rural Living Zone.

**Economic Implications:**

There are unlikely to be any significant economic implications.

**Options:**

1. As per the recommendation.
2. Reject the proposal and provide reasons.
3. Other.

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**RECOMMENDATION:**

It is recommended that the Planning Authority:

1. Endorse the attached document 'A – Substantially modified part of the Brighton Draft Local Provisions Schedule Section 35 F Report' pursuant to s35F of the Act.
2. That the planning authority endorse the attached document 'Planning Authority Notice under Section 35G of LUPAA – Recommended Amendments to the State Planning Provisions' as its notice pursuant to Section 35G of the Act and forward to the Tasmanian Planning Commission.

3. That the planning authority delegate to the General Manager its powers and functions to:
- a) Modify the document submitted under recommendation 1 and 2 if a request is received from the Tasmanian Planning Commission for further information.; and
  - b) Represent the planning authority at hearings pursuant to Section 35H.

**DECISION:**

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

**CARRIED**

**VOTING RECORD**

**In favour    Against**

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

The meeting closed at 5.50pm.

Confirmed:

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

Date:

\_\_\_\_\_  
20<sup>th</sup> October 2020