



Brighton Council

Council Representatives:	Cr Gray (Chairperson); Cr Owen (Deputy Chair); Cr Curran; Cr Foster; Cr Garlick; Cr Geard; Cr Jeffries; Cr Murtagh and Cr Whelan.
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NOTICE OF MEETING

Dear Councillor,

Notice is hereby given that the next *Planning Authority Meeting* will be held in the Council Chambers, Council Offices, Old Beach at 5.30 p.m. on *Tuesday, 8th December 2020*, to discuss business as printed below.

Qualified Person Certification

I HEREBY CERTIFY that in accordance with Section 65 of the Local Government Act 1993, any advice, information and recommendation contained in the reports related to the Agenda have been prepared by persons who have the qualifications or experience necessary to give such advice, information and recommendations.

Dated at Old Beach this 2nd day of *December 2020*.

James Dryburgh
GENERAL MANAGER

A G E N D A

1. ACKNOWLEDGEMENT OF COUNTRY:

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

2. APOLOGIES:

3. QUESTION TIME & DEPUTATIONS:

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*.

5. COUNCIL ACTING AS PLANNING AUTHORITY:

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

5.1 SECTION 39 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:

Author:	Manager Development Services (D Allingham)
Applicant:	Brighton Council
Location:	Several properties on Elderslie Road, Fergusson Road, Millvale Road and Stonefield Road.
Proposal:	Insert the West Brighton Specific Area Plan and rezone, or partially rezone, 17 properties from Rural Resource to Significant Agriculture.
Zoning:	Rural Resource & Significant Agriculture
Planning Instrument:	Brighton Interim Planning Scheme 2015
Attachments:	Att. A - TasWater submission
Representations:	Four

1. Executive Summary

- 1.1 The request to initiate 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 was approved by Council's Planning Authority at its meeting on 13th October 2020.
- 1.2 A notice of draft amendment was forwarded to the Tasmanian Planning Commission (the Commission) on 21 Oct 2020.
- 1.3 The draft amendment was advertised in The Mercury newspaper on 24 October 2020 and 4 November 2020, and placed on public exhibition between 24 October 2020 and 23 November 2020
- 1.4 Four representations to the draft amendment were received during the public notification period.
- 1.5 The proposal is a recommendation to:
 - 1.5.1 Advise the Tasmanian Planning Commission that four representations were received following exhibition of draft amendment RZ2020/03 to BIPS 2015

1.5.2 Advise the Tasmanian Planning Commission that no modifications to the draft amendment RZ 2020/03 is necessary.

2. Background:

- 2.1 Council’s Planning Authority, at its meeting of 13th October 2020, resolved to amend the *BIPS 2015* by inserting the West Brighton Specific Area Plan and rezone, or partially rezone, 17 properties from Rural Resource to Significant Agriculture (see Figures 1 & 2).
- 2.2 The purpose of the draft amendment is to 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 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.
- 2.3 The certified draft amendment was publicly exhibited. There were four representations received during the public exhibition period.
- 2.4 The application was also referred to TasWater, who does not object to the application. (See Attachment A).



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



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

3. Consultation

- 3.1 The Draft Amendment was exhibited in accordance with Section 38 of the Land Use Planning and Approvals Act 1993 (the Act) and Section 6 of the Land Use Planning and Approvals Act Regulations 2004 from 24 October 2020 and 23 November 2020. The draft amendment was published in The Mercury 24 October 2020 and 4 November 2020.

- 3.2 A submission was received from TasWater stating that that entity does not object to the proposal and does not wish to have any involvement in subsequent hearings (see Att A).
- 3.3 Four representations were received to the application. The concerns raised are outlined in the following table together with an officer response.

Concern Raised	Comments
<p>All four representations submitted that the existing Rural Resource zoned parts of the properties in the south of the West Brighton SAP area are not suitable for the Significant Agriculture Zone (SAZ), as the land is steep, highly constrained, has poor land capability with no cropping potential and no access to water.</p>	<p>The process for this draft amendment is highly complex given that the Brighton Local Provisions Schedule (LPS) is likely to take effect whilst this draft amendment is undertaking its own statutory process. If this is the case, then all the land in the SAP area will be in the "Agriculture Zone" under the LPS, which is considered to be a more flexible zone than the Significant Agriculture Zone of the Interim Scheme.</p> <p>The main reason for rezoning the 17 properties to SAZ as part of the draft amendment was to have all the properties within the SAP area under the same zone, as will be the case when the Brighton LPS takes effect.</p> <p>Each property in this area is, or has the potential to be, farmed as part of a medium to large scale agricultural enterprise and are considered to meet the Guidelines for applying the Agriculture Zone in the LPS.</p>

	<p>It is acknowledged that the representations have merit. It is also acknowledged that the ordinary amendment process is complex. The complexity only increases given the transition to the LPS is also occurring in parallel. However, given the likelihood that the assessment is likely to be undertaken under the Brighton LPS, it is the Officer’s opinion there is no need to alter the draft amendment to provide for either amended zoning or amended SAP provisions.</p>
<p>Council should consider only allowing/applying residential use on the 17 allotments if an effective Farm Plan depicting sound use of the particular landform on each allotment can be applied and maintained.</p>	<p>Clause F3.6.1 P1(a) of the SAP provides the ability to request a report such a as a Farm Management Plan</p>
<p>The Brighton West SAP area encompasses small allotments with agricultural merit, which is endorsed.</p> <p>The SAP purpose F3.1.1 to F3.1.3 is endorsed.</p>	<p>Noted.</p>
<p>The extension of the SE Irrigation Scheme is necessary for agricultural production of the area to be realised.</p>	<p>The SAP provides standards to consider the agricultural potential of the area if the SE Irrigation Scheme is delivered.</p>
<p>The zoning of the 252 Elderslie Rd quarry is completely inappropriate and is best suited to Rural Resource for below reasons:</p> <ul style="list-style-type: none"> • The quarry is active and has a number of years of available resource remaining before it is rehabilitated. • The site has no current or future potential to be used as intensive agricultural use. After rehabilitation could only be used for low intense grazing. • The quarry is sited between 110m-150m contour which is extremely steep. 	<p>The Significant Agriculture Zone (SAZ) was applied across the West Brighton SAP area to provide consistency with the Brighton LPS which has the land zoned as “Agriculture”.</p> <p>Both the quarry and Stonefield Reception centre have existing use rights under the Act. The underlying zoning will not affect their operation or use rights.</p>

<ul style="list-style-type: none"> • The site has no potential for irrigation or to be serviced by TasWater mains. • The “West Brighton and Rosewood Zoning Review” recommended that “consideration be given to applying a Rural Zone to the Stonefield Reception centre and quarry”. 	
<p>The zoning of the long-standing commercial site at "Stonefield" should be Rural Resource. The site is a commercially viable reception site that has an existing dwelling and conjoined accommodation premises. A rezoning of this premises is unjustified. It would appear to only be suggested as an attempt provide a bulk zoning and does not reflect the long-term use of the site.</p>	<p>“Stonefield” is an established use and has existing use rights under the Act. The land is already zoned SAZ and maintaining this zoning, and “Agriculture” zoning under the LPS, will ensure that the land is developed in harmony with the surrounding area.</p>
<p>The definition of “commercial agricultural use” does not rightfully quantify the intensity of the agricultural use required to suitable protect the area from pseudo rural residential living whilst at the same time enabling the area to be promoted for future agricultural use and protecting the current and future agricultural character.</p> <p>The Performance Criteria provides that the residential use must provide an income and contribute to the region’s agricultural economy. This statement is worthless and provides no minimum standard of investment or expected income. Any permitted new dwelling should have an agricultural use that produces an intended profit over and above a specified definition or value.</p>	<p>The definition for “commercial agricultural use” is the SAP is:</p> <p><i>“An agricultural use making or intended to make a profit.”</i></p> <p>Throughout the consultation process of the “West Brighton and Rosewood Zoning Review” there was consistent feedback that the standard for a residential use “necessary to support an agricultural use” set a threshold that was difficult to achieve, particularly on the smaller lots that had limited access to water.</p> <p>The feedback was that the area should remain an agricultural area, but people should be able to build dwellings if they are genuine about developing more than subsistence agriculture which is suitable for the current conditions and not prevent future agricultural use if a secure water supply is introduced to the area.</p>

<p>By definition, a commercial agricultural use is a large-scale farming activity. The commercial agricultural use must be detailed and quantified by a qualified agricultural consultant and accountant.</p>	<p>The residential use standards and definition of “commercial agricultural use” aim to strike a balance between the threshold for residential use in the SAZ, the land constraints and the desire of the community.</p> <p>The standards put the onus on the applicant to demonstrate how they will make a profit (i.e. producing more than they personally use and selling if for profit) from an agricultural use with input from a suitably qualified consultant. This process will potentially discourage those who are disingenuous about establishing a commercial agricultural use.</p> <p>Introducing a quantitative figure is inflexible and potentially creates issues for the most constrained areas of land. It would also be extremely difficult to enforce if an operator was not making the set amount.</p>
<p>Why has 621 Milvale Rd been changed from Agriculture to Rural Zone when it has access to water.</p>	<p>621 Milvale is a small, constrained site with a dwelling on it and was considered to align best with the Rural Zone under the Brighton LPS</p>
<p>How can 610 Milvale be rezoned to significant agriculture when there is no water and the properties to the south have water and are zoned Rural.</p> <p>It was mentioned that there may be irrigation introduced to the area. When will this be and what is the cost?</p>	<p>As noted above, the rezoning of a portion of the property to Significant Agriculture is to provide consistency across the SAP area.</p> <p>Tas Irrigation are investigating an extension of their infrastructure down Elderslie Road. At the moment this project is in a feasibility phase, but the potential for agricultural use needs to be considered when selecting zoning.</p>

<p>Zoning that would allow for some subdivision would be desirable, so that the good agricultural areas could be farmed and the balance be used for non-agricultural uses such as residential.</p>	<p>Throughout the process there was a clear desire that the land within the SAP area should not be subdivided further. The subdivision standards of the underlying zone are considered appropriate.</p>
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4. Legislation

4.1 Section 39(2) of the Act provides that a Planning Authority (Council) must, within 35 days after the public notification period has closed, forward to the Tasmanian Planning Commission a report comprising:

- (a) a copy of each representation received by the authority in relation to the draft amendment or, where it has received no such representation, a statement to that effect; and
- (b) a statement of its opinion as to the merit of each such representation, including, in particular, its views as to-
 - (i) the need for modification of the draft amendment in the light of that representation; and
 - (ii) the impact of that representation on the draft amendment as a whole; and
- (c) such recommendations in relation to the draft amendment as the authority considers necessary.

4.2 Subsection (b) relates specifically to any representation received.

4.3 Subsection (c) allows the Planning Authority (Council) to provide any additional information or recommendation in relation to the draft amendment as certified or recommend to the Tasmanian Planning Commission that a modification should be made regardless of any representation.

4.4 As the draft amendment has been initiated and certified the Tasmanian Planning Commission must make a determination on the matter.

5. Assessment

5.1 Four representations were received, each raising the issue of rezoning the southern portion of 177, 252, 297, 299 Elderslie Road & 610 Millvale Road from Rural Resource to Significant Agriculture. This land is depicted in Figure 3, below:



Figure 3. Land at 177, 252, 297, 299 Elderslie Road & 610 Millvale Road

- 5.2 These areas are generally steep, rocky and have no access to water. The arguments of these portions of land being unsuitable for Significant Agriculture are strong.
- 5.3 The reason for proposing to rezone these areas was to provide consistency with the Brighton draft LPS, where the underlying zone of the West Brighton SAP is entirely "Agriculture" Zone. The Agriculture Zone has a different purpose and provides greater flexibility for use and development than the Significant Agriculture Zone.
- 5.4 When considering zoning for the area under the Brighton draft LPS, Council engaged agricultural consultants to look at this area specifically. The consultants advised that the entirety of these sites should be zoned Agriculture as they are part of, or have the potential to be part of, a medium to large scale agriculture enterprise. Regarding the quarry specifically, the consultants advised that Extractive Industry Use should be zoned Agriculture if surrounded by agricultural land.
- 5.5 As noted in section 9 of the s.35 report, it is likely that the assessment of the draft amendment will be complete once the Brighton draft LPS is already in effect. As such, it is likely that the underlying zone will be Agriculture under the LPS, and not Significant Agriculture under the Interim Scheme. If this is the case, then no alterations to the draft amendment are required. However, if the assessment of the draft amendment is completed whilst the Brighton Interim Planning Scheme 2015 is still in effect, then it is reasonable to retain the current split zoning across the five lots and amend the West Brighton SAP ordinance as required.

Options:

1. To adopt the recommendation; or
2. To adopt an alternative recommendation satisfying the provisions of section 39 of the Act, with a full statement of reasons as determined by Council.

RECOMMENDATION:


That in accordance with Section 39 (2) of the Land Use Planning and Approvals Act 1993 Council resolves to:

- A. Advise the Tasmanian Planning Commission that four representations were received following exhibition of draft amendment RZ 2020/03 to the Brighton Interim Planning Scheme 2015 and provide copies of the representations to the Tasmanian Planning Commission; and
- B. Advise the Tasmanian Planning Commission that no modification to amendment RZ 2020/03 is considered necessary to the initial s.35 report.

DECISION:

ATTACHMENTS:

Submission to Planning Authority Notice

Council Planning Permit No.	RZ 2020/03	Council notice date	21/10/2020
TasWater details			
TasWater Reference No.	TWDA 2020/01732-BTN	Date of response	24/11/2020
TasWater Contact	Phil Papps	Phone No.	0474 931 272
Response issued to			
Council name	BRIGHTON COUNCIL		
Contact details	development@brighton.tas.gov.au		
Development details			
Address	41 GEORGE ST, BRIGHTON	Property ID (PID)	7318791
Description of development	s.56S Referral - Brighton Interim Planning Scheme West Brighton SAP		
Schedule of drawings/documents			
Prepared by	Drawing/document No.	Revision No.	Date of Issue
Agribusiness Tasmania	Report	--	May 2020
Conditions			
<p>Pursuant to the <i>Water and Sewerage Industry Act 2008 (TAS)</i> Section 56S(2) TasWater makes the following submission(s):</p> <ol style="list-style-type: none"> TasWater does not object and has no formal comments for the Tasmanian Planning Commission in relation to this matter and does not require to be notified of nor attend any subsequent hearings. 			
Advice			
<p>General</p> <p>For information on TasWater development standards, please visit http://www.taswater.com.au/Development/Development-Standards</p>			
Declaration			
The drawings/documents and conditions stated above constitute TasWater's Submission to Planning Authority Notice.			
<p>Authorised by</p>  <p>Jason Taylor Development Assessment Manager</p>			
TasWater Contact Details			
Phone	13 6992	Email	development@taswater.com.au
Mail	GPO Box 1393 Hobart TAS 7001	Web	www.taswater.com.au