



Brighton Council

MINUTES OF THE **PLANNING AUTHORITY MEETING**
OF THE BRIGHTON COUNCIL HELD
IN THE COUNCIL CHAMBER, COUNCIL OFFICES
OLD BEACH AT 5.30 P.M. ON TUESDAY,
9TH FEBRUARY, 2021

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

IN ATTENDANCE: Mrs J Banks (Governance Manager) and Mrs J Blackwell (Planning Officer)

1. ACKNOWLEDGEMENT OF COUNTRY:

2. APOLOGIES:

All members were present.

3. QUESTION TIME & DEPUTATIONS:

As there were no members in the gallery there was no requirement for 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*.

There were no declarations of interest.

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 SOUTHERN TASMANIA REGIONAL LAND USE STRATEGY – EXTENSION OF URBAN GROWTH BOUNDARY IN CITY OF HOBART LOCAL GOVERNMENT AREA:

Type of Report:	Planning Authority
Address:	66 Summerhill Road, West Hobart
Requested by:	City of Hobart
Proposal:	Amend the Regional Land Use Strategy to extend the Urban Growth Boundary over part of 66 Summerhill Road, West Hobart
Author:	Manager Development Services (David Allingham)

1. Executive Summary

- 1.1. The City of Hobart has submitted a request to the Minister for Planning to amend the Southern Tasmanian Regional Land Use Strategy (STRLUS) 2010-2035 to extend the Urban Growth Boundary (UGB) over 66 Summerhill Rd, West Hobart in the City of Hobart (CoH) Local Government Area (LGA).
- 1.2. The Minister for Planning has requested that the City of Hobart seek endorsement for this amendment to the STRLUS from all councils within the southern region, in the form of a Council resolution.
- 1.3. The area of land proposed to be added to the UGB is approximately 7,000m² and would only facilitate 3 additional lots and has no effect on the overall attainment of the residential and settlement policies with the STRLUS.
- 1.4. The proposal is recommended to be supported.

2. Legislative & Policy Content

- 2.1. The Southern Tasmanian Regional Land Use Strategy (STRLUS) was approved by the Minister for Planning on 27 October 2011. The STRLUS was subsequently amended on 1 October 2013, 14 September 2016, 9 May 2018, and 19 February 2020. Most of the amendments to the STRLUS were to provide for minor expansions of the Urban Growth Boundary.

- 2.2. Under Section 5A of *the Land Use Planning and Approvals Act 1993* (LUPAA), the Minister must undertake regular and periodic reviews of regional strategies. To date, no broad review has taken place, nor has the process for a review begun.
- 2.3. The Tasmanian Planning Commission (TPC) has advised it cannot consider planning scheme amendments that propose to rezone land for suburban densities that is located outside the UGB as shown in STRLUS.
- 2.4. Currently, there is no statutory mechanism for either individuals or Planning Authorities to apply to amend the STRLUS.
- 2.5. As no thorough review of STRLUS has commenced and there is no statutory mechanism for it to be amended by an individual or planning authority, the Planning Policy Unit has prepared an Information Sheet, which provides guidance on when and under what circumstances the regional land use strategies are reviewed and amended. It also provides information on the requirements and process for reviewing and considering amendments to the regional land use strategies.
- 2.6. The Information Sheet recommends that written endorsement for the proposed change is sought from all planning authorities in the relevant region as well as all relevant State Service agencies.
- 2.7. The purpose of this report is to enable the Planning Authority to determine whether to support an amendment to the STRLUS as requested by the City of Hobart (see Attachment A).

3. Risk & Implications

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

4. Site Detail

- 4.1. The site is located on the fringe of existing residential development at the end of Summerhill Road in West Hobart and adjoins the Knocklofty Reserve (see Figure 1).
- 4.2. The site is currently partly zoned General Residential, Environmental Living and Environmental Management.



Figure 1: 66 Summerhill Rd, West Hobart

5. Proposal

- 5.1. The proposal is to seek Brighton Council's endorsement for amending the STRLUS by expanding the UGB over 66 Summerhill Road, West Hobart to facilitate the attached rezoning (See Figure 2).

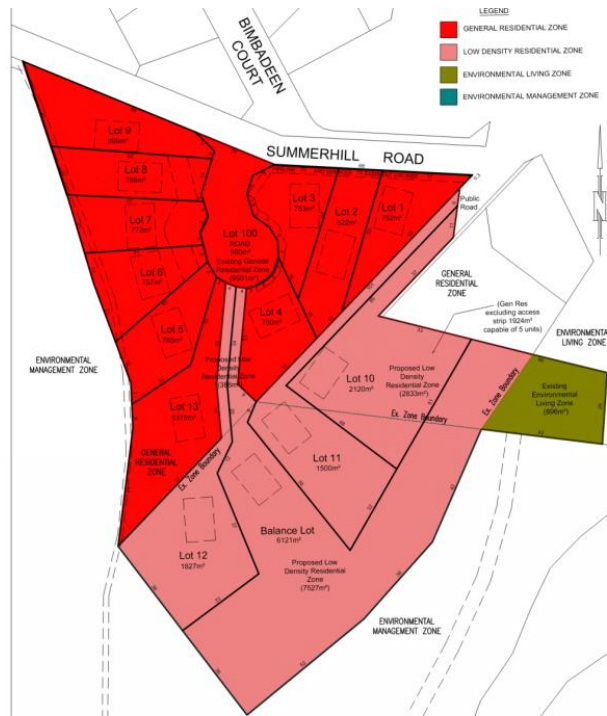


Figure 2: Proposed rezoning of 66 Summerhill Rd, West Hobart.

6. Planning Assessment

- 6.1. STRLUS provides for a Greater Hobart Residential Strategy to provide for greater efficiency in the use of land through balancing the ratio of greenfield to infill development.
- 6.2. The Strategy proceeds based on a 50/50 ratio of greenfield to infill scenario with a minimum net density of 15 dwelling per hectare. Residential growth will be primarily managed through an UGB that will set the physical extent for a 15-year supply of residential land for the metropolitan area.
- 6.3. The following extract is taken from the CoH Planning Report (see Attachment B) and provides justification for the rezoning and amendment to STRLUS:
 - 2.11. It is considered that both the proposed rezoning and the amendment to the STRLUS are capable of meeting the requirements of LUPAA for the following reasons:
 - 2.11.1. The land is not considered to be suitable for retention under the Environmental Management Zone given it does not contain high conservation value vegetation;
 - 2.11.2. The Low Density Residential Zone provides for a transition in residential density between the adjacent General Residential Zone and neighbouring Council-owned Knocklofty Reserve;
 - 2.11.3. The development potential following the rezoning is not significantly different in terms of number of permitted dwellings compared to the existing situation;
 - 2.11.4. The rezoning is not considered to increase potential for land use conflicts considering surrounding land uses and the likely location and number of future dwellings.
 - 2.12. It is recommended that the Biodiversity Protection Area Overlay should be extended across the entire rezoned area, in order to consider existing vegetation at the development stage and to protect a significantly old, large, hollow-bearing white gum.
 - 2.13. The proposed amendment is recommended for initiation, and it is recommended that a letter be sent to the Minister for Planning to request a STRLUS amendment to extend the UGB.
- 6.4. CoH's justification is supported.

7. Consultation

7.1. Technical Reference Group

CoH informally consulted with the Southern Technical Reference Group (TRG), which is a regional body representing the local planning authorities in the Southern Region, of its intention to pursue the amendment of the STRLUS. Council's Manager Development Services indicated that Brighton had no issues with the proposed amendment to STRLUS at an officer level as did other members of the TRG.

8. Conclusion

- 8.1. The City of Hobart's request for Brighton Council's endorsement to amend STRLUS for an incremental extension to the UGB over 66 Summerhill Rd, West Hobart should be supported as the area of land proposed to be added to the UGB has no effect on the overall attainment of the residential and settlement policies with the STRLUS.

RECOMMENDATION:

That Council resolve to endorse the amendment to the Southern Tasmania Regional Land Use Strategy 2010-2035 to extend the Urban Growth Boundary over 66 Summerhill Road, West Hobart in the City of Hobart.

DECISION:

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

CARRIED

VOTING RECORD

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

Cr Whelan moved, Cr Murtagh seconded that the following item be deferred.

CARRIED

VOTING RECORD

In favour Against

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

5.2 APPLICATION UNDER *BRIGHTON INTERIM PLANNING SCHEME 2015*- DA 2020/00306 – MULTIPLE DWELLINGS (15) AND ASSOCIATED INFRASTRUCTURE – 75 FOUCHE AVENUE, 77 FOUCHE AVENUE & FOUCHE AVENUE PUBLIC RESERVE, OLD BEACH:

Type of Report: Planning Authority – For Decision
Application No: DA 2020/00306
Address: 75 Fouche Avenue, 77 Fouche Avenue & Fouche Avenue Public Reserve, Old Beach
Proposal: Multiple dwellings (15) and Associated Infrastructure
Zones: General Residential and Open Space
Representations: Four (4)
Discretions:
1 – Privacy (habitable room window to private open space)
2 – Number of vehicle movements
3 – Site distance at access
4 – Number of motorcycle parking spaces
5 – Lighting of parking spaces
6 – Facilities for commercial vehicles
7 – Buildings and works within a Waterway and Coastal Protection Area
8 – Landfill in an Inundation Hazard Area
Author: Planning Officer (Richard Cuskelly)

1. Executive Summary

- 1.1. Planning approval is sought for multiple dwellings (15) and associated infrastructure at 75 Fouche Avenue, 77 Fouche Avenue & Fouche Avenue Public Reserve, Old Beach. 75 and 77 Fouche Avenue are situated within the General Residential Zone of the *Brighton Interim Planning Scheme 2015* (the 'Planning Scheme'), whilst the Fouche Avenue Public Reserve is situated within the Open Space Zone.
- 1.2. The application invokes certain privacy, vehicle access, manoeuvring and parking, natural values, and coastal inundation discretions under the Planning Scheme.
- 1.3. Four (4) representations were received within the statutory public advertising period.
- 1.4. The application is considered to meet all applicable standards of the Planning Scheme apart from the Waterway and Coastal Protection Code and is thus recommended for refusal.
- 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 2020/00306.
- 2.2. This determination must be made no later than 16 February 2021. The statutory assessment period has been extended at the request of the applicant.
- 2.3. The relevant legislation is the *Land Use Planning and Approvals Act 1993* (the 'Act'). The provisions of the Act require a planning authority to take all reasonable steps to ensure compliance with the planning scheme.
- 2.4. This report details the reasons for the officer recommendation. The Planning Authority must consider this report but is not bound to adopt the recommendation. Broadly, the Planning Authority can either: (1) adopt the recommendation, or (2) vary the recommendation by adding, modifying or removing recommended reasons and conditions or replacing an approval with a refusal (or vice versa). Any alternative decision requires a full statement of reasons to comply with the *Judicial Review Act 2000* and the *Local Government (Meeting Procedures) Regulations 2015*.
- 2.5. This report has been prepared with appropriate regard to the State Policies that apply under the *State Policies and Projects Act 1993*. The proposal was found to be contrary to the Tasmanian State Coastal Policy 1996, specifically section 2.4.1:

2.4.1. Care will be taken to minimise, or where possible totally avoid, any impact on environmentally sensitive areas from the expansion of urban and residential areas, including the provision of infrastructure for urban and residential areas.

- 2.6. This report has been prepared with appropriate regard to Council's Strategic Plan and other Council policies, and the application is not found to be inconsistent with these. Nevertheless, it must be recognised that the Planning Scheme is a regulatory document that provides the overriding consideration for this application.

3. Risk & Implications

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

4. Relevant Background

- 4.1. The application was advertised from mid-December 2020 until mid-January 2021 where it received four (4) representations in opposition. The advertising timeframe was extended to 28 days from the usual 14 days due to the New Year's break office closures, and in accordance with section 57(5AA) of the Act.
- 4.2. Crown consent was given to the lodgement of this application, pursuant to section 52(1B) of the Act.

5. Site Detail

- 5.1. The key property - 75 Fouche Avenue - is an undeveloped internal 6331m² lot with access to Fouche Avenue via shared right of way with three other internal lots (see Figure 1/3 and Photo 1).

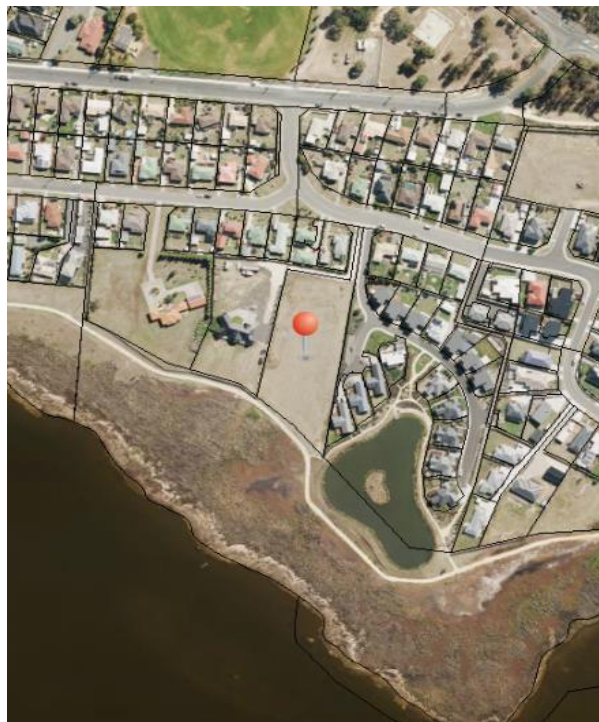


Figure 1. Aerial image of 75 Fouche Avenue (pinned) and surrounding area



Photo 1. 75 Fouche Avenue (taken from north boundary of the lot proper, facing south to the Derwent River)

- 5.2. One of these lots forms part of the site – 77 Fouche Avenue – a 5152m² lot developed by a single dwelling and burdened by a 2m wide drainage easement within its side boundary (see Figure 2/3).



Photo 2. 75 & 77 Fouche Avenue (taken from the south rear boundary of 75 facing north-west to the single dwelling on 77)

- 5.3. The final lot that forms part of the site is the Fouche Avenue Public Reserve (Property ID: 2061595) – 5.4 hectare lot managed by the Crown and comprising the Old Beach Foreshore Trail, and predominantly saltmarsh vegetation and habitat, before its southern boundary on the high water mark of the Derwent River.



Figure 2. Aerial image of the site with key properties marked

- 5.4. The site fronts Fouché Avenue which is a Council maintained road constructed to a full urban standard with concrete kerb and channel, and concrete footpath both sides. The section of Fouché Avenue closest to the site has a carriageway width of approximately 10m.
- 5.5. The access strip to the lot is adjacent access strips to 77 Fouché Avenue to the west and a private access strip to the unit development to the east (Duval Drive).
- 5.6. Whilst the properties have existing driveway aprons from the edge of the road to the property boundary, the crossover is not continuous across the frontage of 75 and 77 Fouché Avenue.

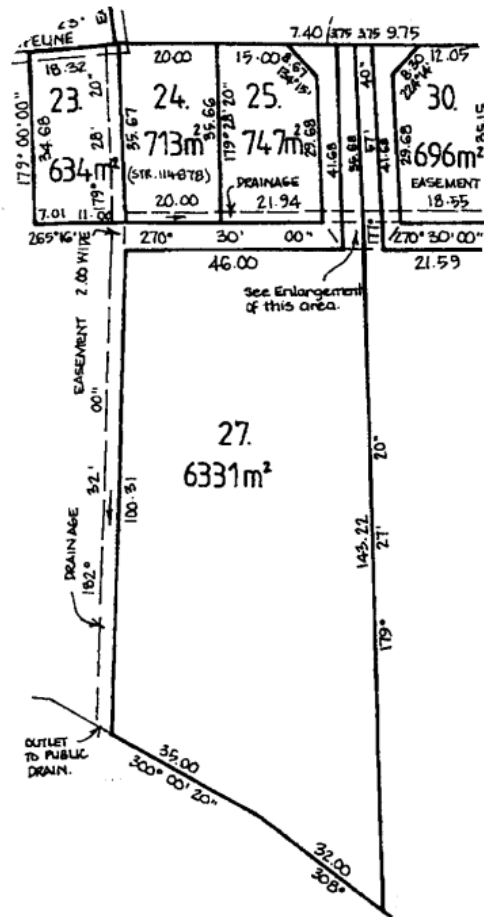


Figure 3. Sealed Plan 107918

- 5.7. 75 and 77 Fouche Avenue are within the General Residential Zone and the adjoining Public Reserve toward the Derwent River is zoned Open Space (see Figure 4).



Figure 4. Zoning of the site and immediate surrounds (Red = General Residential Zone; Green = Open Space Zone)

- 5.8. The development area is affected by several environmental overlays: Coastal Inundation Low and Medium Hazard Areas, Waterway and Coastal Protection Area and Future Coastal Refugia Area (see Figures 5-8 below).



Figure 5. Coastal Inundation Low Hazard Area (highlighted)



Figure 6. Coastal Inundation Medium Hazard Area



Figure 7. Waterway and Coastal Protection Area



Figure 8. Future Coastal Refugia Area

- 5.9. The property title of 75 Fouche Avenue (107918/27) has the below covenant:

COVENANT

The owner of each lot on the plan covenants with Girrabong Pty Ltd and the owner for the time being of every other lot on the plan to the intent that the burden of this covenant may run with and bind the covenantor's lot and every part thereof and that the benefit thereof may be annexed and devolve with each and every part of every other lot shown on the plan not, without the consent of the Warden Councillors and Electors of the Municipality of Brighton, to construct any building below the 1.75 metre contour Australian Height Datum.

- 5.10. Though Units 12-15 are proposed under 1.75m AHD, it is considered that the required consent is being sought within this development application process, and no further direct consideration of the covenant is required.

6. Proposal

- 6.1. The application proposes development at 75 Fouche Avenue, Old Beach of:

- 15 multiple dwellings, including 4 single storey and 11 double storey;
- All dwellings:
 - incorporate 3 bedrooms;
 - are provided with 2 dedicated off street car parking spaces;
 - have a minimum floor height of 2.5m AHD; and
 - are provided with individual letter boxes, clothes lines and storage areas for waste bins;
- Provision of road access by means of a shared access strip with 77 Fouche Avenue;
- The access is designed to accommodate a garbage truck as waste collection will be from within the development, not the public street frontage.
- Land fill in some areas to 2m AHD;
- Provision of internal circulation roadways that provide:
 - five (5) additional off street car parking spaces for visitors (a total of 35 on-site car parking spaces);
 - vehicle manoeuvring and passing areas;
 - landscaping and lighting; and
 - a common waste bin collection area;
- Provision of all associated services infrastructure and connections into existing public networks; and
- A street number sign (0.5m and non-illuminated).

- 6.2. 77 Fouche Avenue forms part of the application as upgrades to the existing DN300 RCP Council stormwater main within the 2m wide drainage easement burdening this property (and benefitting Council) are required to facilitate the proposal.

- 6.3. Similarly, Fouche Avenue Public Reserve forms part of the application as the existing stormwater disposal point is within Crown land adjacent to the Old Beach Foreshore Walking Trail and will also require upgrade to facilitate the proposal. Crown consent was received for the making of the application.
- 6.4. The applicant proposes to use proprietary stormwater treatment devices to meet the quality targets in accordance with the State Stormwater Strategy 2010, as detailed in Table E7.1 of the Planning Scheme. Proposed overland flow paths through the site are directed around the dwellings and down the eastern and western side boundaries.
- 6.5. Staging is proposed as follows:

Stage 1 delivering Units 1 to 8 inclusive, the vehicle access and internal roadways to service Stage 1; in addition to the water, sewage and stormwater infrastructure for the entire proposal.

Stage 2 delivering Units 9 to 15 inclusive and the associated internal roadways.

7. Assessment

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

8. Assessment against planning scheme provisions

- 8.1. The following provisions are relevant to the assessment of the proposed use and development:
 - 10.0 – General Residential Zone
 - 19.0 – Open Space Zone
 - E5.0 – Road and Railway Assets Code
 - E6.0 – Parking and Access Code
 - E7.0 – Stormwater Management Code
 - E11.0 – Waterway and Coastal Protection Code
 - E15.0 – Inundation Prone Areas Code
 - E17.0 – Signs Code

- 8.2. *Residential (multiple dwellings)* is a Permitted land-use in the General Residential Zone (10.2).
- 8.3. *Utilities (minor utilities and underground)* is a No Permit Required land-use in the Open Space Zone (19.2).
- 8.4. The proposal is considered to satisfy the following Code exemptions:

Signs Code

Proposed is a street number sign with a non-illuminated display area of 0.5m² to be placed adjacent to the access strip entrance. This sign is exempt under Table E17.1.

Waterway and Coastal Protection Code

The stormwater infrastructure upgrade works affecting 77 Fouche Avenue and the Fouche Avenue Public Reserve are exempt under E11.4.1 (l), below:

(l) works within 2m of existing infrastructure including roads, tracks, footpaths, cycle paths, drains, sewers, pipelines and telecommunications facilities for the maintenance, repair, upgrading or replacement of such infrastructure

- 8.5. The proposal is considered to satisfy the applicable Acceptable Solutions listed below. Plan measurements have been scaled and confirmed where required.

General Residential Zone

- 10.4.1 – Residential density for multiple dwellings
- 10.4.2 – Setbacks and building envelope (see Figure 9)
- 10.4.3 – Site coverage and private open space
- 10.4.4 – Sunlight and overshadowing
- 10.4.6 – Privacy for all dwellings (except A2)
- 10.4.8 – Waste storage for multiple dwellings

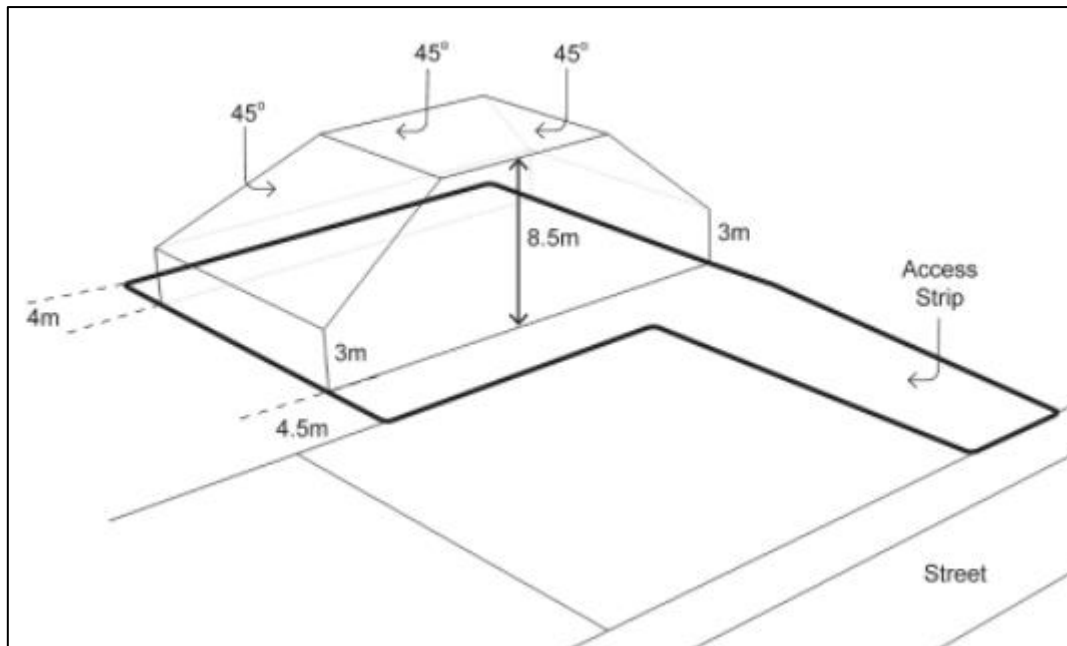


Figure 9. Building envelope for internal lots as required by 10.4.2 A3(a)

Open Space Zone

- 19.2 – No Permit Required use
- 19.4 – There are no applicable development standards for the upgrade of existing stormwater infrastructure

Road and Railway Assets Code

- E5.6.2 A1 – New road accesses
- E5.6.2 A2 – Number of accesses

Parking and Access Code

- E6.6.1 A1 – Number of car parking spaces
- E6.6.4 A1 – Number of bicycle parking spaces
- E6.7.1 A1 – Number of accesses
- E6.7.2 A1 – Design of accesses
- E6.7.3 A1 – Passing
- E6.7.4 A1 – Turning
- E6.7.5 A1 – Layout
- E6.7.6 A1 – Surfacing

- E6.7.8 A1 – Landscaping of parking areas
- E6.7.14 A1 – Road authority access

Stormwater Management Code

- E7.7.1 A1 – Public connection
- E7.7.1 A2 – Water Sensitive Urban Design (via standard condition)
- E7.7.1 A3 – Minor system
- E7.7.1 A4 – Major system

Waterway and Coastal Protection Code

- E11.7.1 A4 – No new stormwater disposal point

Inundation Prone Areas Code

- E15.7.3 A1 – Floor level of new habitable buildings within a Low Hazard Area

8.6. The following discretions are invoked by the proposal:

- 8.4.6 A2 – Privacy (habitable room window to private open space)
- E5.5.1 A3 – Number of vehicle movements
- E.5.6.4 A1 – Site distance at access
- E6.6.3 A1 – Number of motorcycle parking spaces
- E6.7.1 A1 – Lighting of parking spaces
- E6.7.1 A1 – Facilities for commercial vehicles
- E11.7.1 A1 – Buildings and works within a Waterway and Coastal Protection Area
- E15.7.5 A1 – Landfill in an Inundation Hazard Area

8.7. **Discretion 1 – Privacy (windows overlooking the private open space of another dwelling on the same site)**

8.7.1 The objective¹ of standard 10.4.6 is:

¹ Clause 7.5.4 of the Scheme allows the planning authority to consider the relevant objective in an applicable standard to help determine whether a use or development complies with the performance criterion for that standard.

To provide reasonable opportunity for privacy for dwellings.

8.7.2 Under Acceptable Solution 10.4.6 A2 (a)(iv), a window to a habitable room of a dwelling, that has a floor level more than 1m above the natural ground level, must be at least 6m from the private open space of another dwelling on the same site, unless:

(b) The window or glazed door:

(i) is to be offset, in the horizontal plane, at least 1.5 m from the edge of a window or glazed door, to a habitable room of another dwelling; or

(ii) is to have a sill height of at least 1.7 m above the floor level or has fixed obscure glazing extending to a height of at least 1.7 m above the floor level; or

(iii) is to have a permanently fixed external screen for the full length of the window or glazed door, to a height of at least 1.7 m above floor level, with a uniform transparency of not more than 25%.

8.7.3 The second storey living room windows of Units 5, 6, 7 and 8 are each a minimum of 4.5 from the private open space areas of Units 9, 10 and 11 to the south (see Figure 10 below, for example). The other proposed units meet the above Acceptable Solution.

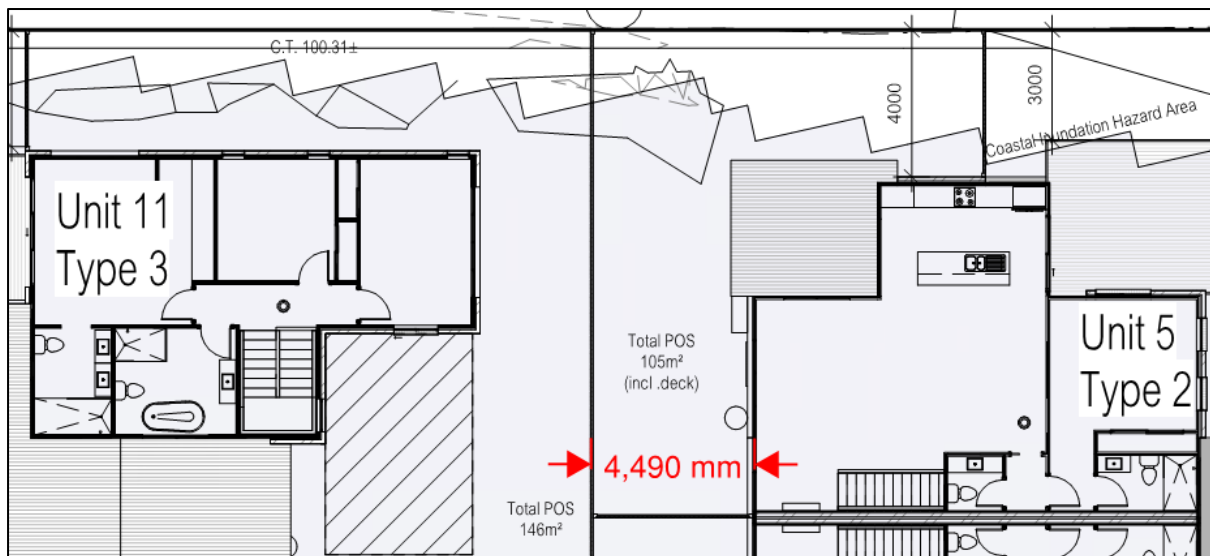


Figure 10. Section of site plan showing the minimum 4.5m setback of the living room window of Unit 5 to the private open space of Unit 11 (scaled measurement by author)

8.7.4 Units 5, 6, 7 and 8 must be assessed against corresponding Performance Criteria 10.4.6 P2 (b) which requires that a window to a habitable room of a dwelling, that has a floor level more than 1m above the natural ground level, must be screened, or otherwise located or designed, to minimise direct views to the private open space of another dwelling.

8.7.5 To address this Performance Criteria, the applicant has proposed to:

Provide additional screening (at 30% transparency) 0.6m above the 1.8m internal unit fence separating these units, to a total height of 2.4m to further decrease the sight line angle, as shown on Units 5 & 6 Elevations Sheet 1... and

As an additional measure, mature deciduous plantings (for example ornamental pear trees...), which can be pruned to provide solid screening in summer (when the POS is most likely to be used) are included along the internal fence on the land associated with Units 5 to 11.

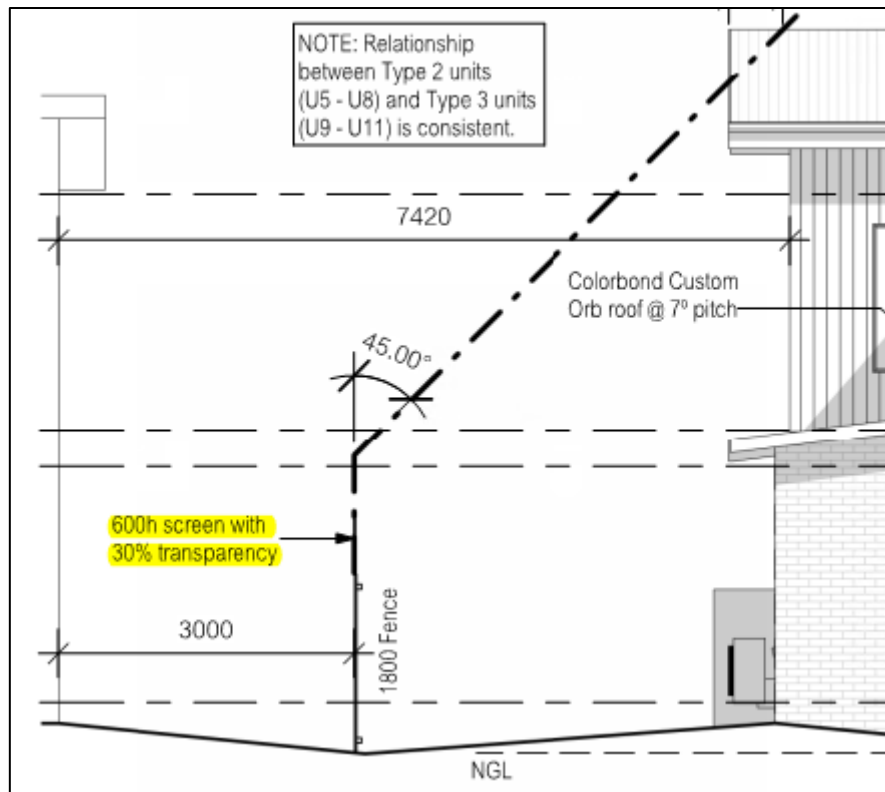


Figure 11. Section of east elevation plan for Units 5 and 6 highlighting the proposed fence screening addition

- 8.7.6 The concept of screening proposed by the applicant is considered reasonable, however input should be sort from a suitably qualified person as to the most appropriate species. Trees should also be planted at a minimum height of 1.8m so that screening is instantly provided.
- 8.7.7 It is considered that the additional fence screening and landscaping proposed will adequately minimise direct views from the living room windows of Units 5, 6, 7 and 8 to the private open space of Units 9, 10 and 11.
- 8.7.8 The proposal is considered to meet Performance Criteria 10.4.6 P2with conditions.

8.8 Discretion 2 – Number of vehicle movements

- 8.8.1 The objective of standard E5.5.1 is:

To ensure that the safety and efficiency of roads is not reduced by increased use of existing accesses and junctions.

8.8.2 Acceptable Solution E5.5.1 A3 states:

The annual average daily traffic (AADT) of vehicle movements, to and from a site, using an existing access or junction, in an area subject to a speed limit of 60km/h or less, must not increase by more than 20% or 40 vehicle movements per day, whichever is the greater.

8.8.3 The AADT will increase from 8-10 vehicles for an assumed single dwelling to 90 (or more) vehicles for the proposed development.

8.8.4 Therefore, the application must meet corresponding Performance Criteria E5.5.1 P3, reproduced below:

P3 – Any increase in vehicle traffic at an existing access or junction in an area subject to a speed limit of 60km/h or less, must be safe and not unreasonably impact on the efficiency of the road, having regard to:

- (a) the increase in traffic caused by the use;*
- (b) the nature of the traffic generated by the use;*
- (c) the nature and efficiency of the access or the junction;*
- (d) the nature and category of the road;*
- (e) the speed limit and traffic flow of the road;*
- (f) any alternative access to a road;*
- (g) the need for the use;*
- (h) any traffic impact assessment; and*
- (i) any written advice received from the road authority.*

8.9 A Traffic Impact Assessment (TIA) prepared a suitably qualified person was submitted with the application. The TIA concluded that:

The traffic activity at the driveway junction will operate without any significant queuing or delay. The increased traffic activity associated with the development will also therefore not create any operational traffic issues on the immediate surrounding road network.

8.10 Council's Senior Technical Officer assessed and concluded similarly. The proposal is considered to satisfy Performance Criteria E5.5.1 P3.

8.11 Discretion 3 - Site distance at access

8.11.1. The objective of standard E5.6.4 is:

To ensure that accesses, junctions and level crossings provide sufficient sight distance between vehicles and between vehicles and trains to enable safe movement of traffic.

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

Sight distances at an access or junction must comply with the Safe Intersection Sight Distance shown in Table E5.1.

Fouche Avenue has a 50km/h speed limit whereby Table E5.1 requires a minimum sight distance of 80m.

8.11.3. Sight distances at the proposed access are approximately 150m to the east and 68-75m to the north-west.

8.11.4. Therefore, the application must meet corresponding Performance Criteria E5.6.4 P1, reproduced below:

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

(a) the nature and frequency of the traffic generated by the use;

(b) the frequency of use of the road or rail network;

(c) any alternative access;

(d) the need for the access, junction or level crossing;

(e) any traffic impact assessment;

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

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

8.11.5. The TIA submitted states:

The available sight distances between turning and approaching vehicle at the development site driveway will be quite sufficient for the speed environment.

8.11.6. Council's Senior Technical Officer assessed and concluded that the proposal is considered to satisfy Performance Criteria E5.6.4 P1 with a condition that sight distance is to be in accordance with the TIA and endorsed documents.

8.12. Discretion 4 – Number of motorcycle parking spaces

8.12.1. The objective of standard E6.6.3 is:

To ensure enough motorcycle parking is provided to meet the needs of likely users of a use or development.

8.12.2. Acceptable Solution E6.6.3 A1 states:

The number of on-site motorcycle parking spaces provided must be at a rate of 1 space to each 20 car parking spaces after the first 19 car parking spaces... (rounded to the nearest whole number).

For the proposed development, two (2) dedicated motorcycle spaces are required to meet the Acceptable Solution.

8.12.3. No motorcycle parking spaces are proposed. Therefore, the application must meet corresponding Performance Criteria E6.6.3 P1, below:

P1 – The number of on-site motorcycle parking spaces must be sufficient to meet the needs of likely users having regard to all of the following, as appropriate:

- (a) motorcycle parking demand;*
- (b) the availability of on-street and public motorcycle parking in the locality;*
- (c) the availability and likely use of other modes of transport;*
- (d) the availability and suitability of alternative arrangements for motorcycle parking provision.*

8.12.4. The applicant has provided the following response to the Performance Criteria:

(a) Each dwelling is provided with dedicated parking for two cars. In addition, there is secure private space associated with each dwelling should residents have motorcycles instead of, or in addition to cars. The available secure areas associated with each dwelling are considered likely to meet any requirement for motorcycle parking requirements. Visitors to the site are likely to be visiting specific residents and therefore it is reasonable to expect that visiting motorcyclists could use the dedicated visitor parking facilities, or, if these facilities are occupied park, their motorcycles the secure private space associated with each dwelling;

(b) The development site is an internal lot and although there is on-street parking available, it is considered likely that visitors will enter the site and park as outlined above;

(c) As detailed in the TIA (p9) the availability of Metro Tasmania bus services and the proximity of bus stops “means that public transport will be a viable alternative for some of the trips generated by the development”;

(d) Refer to the response to a) above.

8.12.5. The development complies with the number of car parking spaces including visitor spaces. Motorcycles can use car parking spaces when required and there is sufficient room on site for some informal motorcycle parking.

8.12.6. The proposal is considered to satisfy Performance Criteria E6.6.3 P1.

8.13. Discretion 5 – Lighting of parking spaces

8.13.1. The objective of E6.7.7 is:

To ensure parking and vehicle circulation roadways and pedestrian paths used outside daylight hours are provided with lighting to a standard which:

- (a) enables easy and efficient use;*
- (b) promotes the safety of users;*
- (c) minimises opportunities for crime or anti-social behaviour; and*
- (d) prevents unreasonable light overspill impacts.*

8.13.2. Acceptable Solution E6.7.7 A1 states:

Parking and vehicle circulation roadways and pedestrian paths serving 5 or more car parking spaces, used outside daylight hours, must be provided with lighting in accordance with clause 3.1 "Basis of Design" and clause 3.6 "Car Parks" in AS/NZS 1158.3.1:2005 Lighting for roads and public spaces Part 3.1: Pedestrian area (Category P) lighting.

8.13.3. Lighting is proposed in accordance with the Building Code but does not comply to the standard specified in the Acceptable Solution, which is applicable for public spaces.

8.13.4. Therefore, the application must be assessed against Performance Criteria E6.7.7 P1, below:

P1 – Parking and vehicle circulation roadways and pedestrian paths used outside daylight hours must be provided with lighting to a standard which satisfies all of the following:

- (a) enables easy and efficient use of the area;*
- (b) minimises potential for conflicts involving pedestrians, cyclists and vehicles;*
- (c) reduces opportunities for crime or anti-social behaviour by supporting passive surveillance and clear sight lines and treating the risk from concealment or entrapment points;*
- (d) prevents unreasonable impact on the amenity of adjoining users through light overspill;*
- (e) is appropriate to the hours of operation of the use.*

8.13.5. Council's Senior Technical Officer assessed and concluded, that due to private and enclosed nature of the development, the proposed Building Code compliant lighting of parking and vehicle circulation roadways and pedestrian areas satisfies Performance Criteria E6.7.7 P1.

8.14. Discretion 6 – Facilities for commercial vehicles

8.14.1. The objective of E6.7.13 is:

To ensure that facilities for commercial vehicles are provided on site, as appropriate.

8.14.2. Acceptable Solution E6.7.13 A1 states:

Commercial vehicle facilities for loading, unloading or manoeuvring must be provided on-site in accordance with Australian Standard for Off-street Parking, Part 2: Commercial. Vehicle Facilities AS 2890.2:2002, unless:

(a) the delivery of all inward bound goods is by a single person from a vehicle parked in a dedicated loading zone within 50 m of the site;

(b) the use is not primarily dependent on outward delivery of goods from the site.

8.14.3. Whilst the development is not commercial in use, access is required for regular garbage collection (using a commercial vehicle), which has not been explicitly addressed within the application.

8.14.4. Therefore, the application must be assessed against Performance Criteria E6.7.13 P1, below:

P1 – Commercial vehicle arrangements for loading, unloading or manoeuvring must not compromise the safety and convenience of vehicular traffic, cyclists, pedestrians and other road users.

8.14.5. Council's Senior Technical Officer assessed and concluded that there is adequate manoeuvring available to the development as proposed for a Medium Rigid Vehicle (i.e. garbage truck), and that Performance Criteria E6.7.13 P1 can be met via a conditioned parking plan.

8.15. Discretion 7 – Building and works within a Waterway and Coastal Protection Area

8.15.1. The objective of E11.7.1 is:

To ensure that buildings and works in proximity to a waterway, the coast, identified climate change refugia and potable water supply areas will not have an unnecessary or unacceptable impact on natural values.

8.15.2. Acceptable Solution E11.7.1 A1 states:

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

8.15.3. There is no building area defined on the relevant plan of subdivision (Sealed Plan 107918) and four proposed dwellings (Units 12, 13, 14 and 15) are sited within a Waterway and Coastal Protection Area (otherwise referred to as 'WCPA').

8.15.4. Therefore, the application must be assessed against Performance Criteria E11.7.1 P1, below:

P1 – Building and works within a Waterway and Coastal Protection Area must satisfy all of the following:

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

8.15.5. It is important to consider the defined terms of the Waterway and Coastal Protection Code (E11.3.1), particularly:

Natural values

means biodiversity, environmental flows, natural streambank stability and stream bed condition, riparian vegetation, littoral vegetation, water quality, wetlands, river condition and waterway and/or coastal values.

Riparian vegetation

means vegetation found within or adjacent to watercourses, wetlands, lakes and recharge basins.

Waterway values

means the values of watercourses and wetlands derived from their aquatic habitat and riparian vegetation, physical elements, landscape function, recreational function and economic function.

Coastal values

means the values of coastal areas derived from their coastal habitat and vegetation, physical elements, landscape values, recreational values and economic values and the processes and functions that underpin them.

Natural values assessment

means an assessment by a suitably qualified person which is generally consistent with the Guidelines for Natural Values Assessment, (DPIPWE July 2009)² and includes:

- (a) a survey of the site for natural values;*
- (b) an assessment of the significance of the natural values of a site;*
- (c) an assessment of the likely impact of the proposed development on natural values;*
- (d) recommendations for the appropriate siting and design of proposed development to minimise likely impact on natural values;*
- (e) recommendations for how the likely impact on natural values can be avoided, minimised or mitigated;*
- (f) a site plan depicting the above information.*

- 8.15.6. A Natural Values Comment prepared by North Barker Ecosystem Services (a suitably qualified person) was provided as part of the application (see in full at Appendix E of the advertised documents). The Comment states:

During our assessment of all the WCPA in the lot (including the Future Coastal Refugia area) we found no natural values of conservation significance. The area is a highly modified patch of disturbed land with introduced species forming a notable component of the flora throughout the site. Native elements do remain in places with a species of wallaby grass (Rytidosperma setaceum) dominating in some areas north of the WCPA. Although some saltmarsh species do occur in the Future Coastal Refugia area, these are sparse (<15 %); this area is highly disturbed with introduced species (especially Plantago cononopus) dominating the flora.

Concluding:

It is our assessment that the proposal can meet the Performance Criteria of the Waterway and Coastal Protection Area Code.

- 8.15.7. Representors 1 and 2 raise concerns regarding the impact on natural values of the proposed buildings and works within the Waterway and Coastal Protection Area. Their concerns relate to future coastal refugia protection for the saltmarsh community, stormwater run-off impact on existing saltmarsh, lack of buffer between relatively dense residential development and saltmarsh community and habitat, and potential impacts on fauna (particularly bird habitat) within the Derwent Estuary. Representations are summarised and responded to in further detail in Section 9.2 below.

² ...ensure that the personnel undertaking the survey have extensive experience and/or advanced training in identification and documentation of all natural values of interest. For flora and fauna, knowledge of their habitat and other ecological requirements is also required. (DPIPWE July 2009, p.3)

- 8.15.8. Compliance with (d)-(i) of Performance Criteria E11.7.1 P1 are considered clearly either not applicable or, in the case of criterion (i), conditionable if required. It is also agreed that proposed buildings and works are either clear or exempt from assessment against the mapped Future Coastal Refugia Area. It is criteria E11.7.1 P1 (a)-(c) that are in doubt.
- 8.15.9. Both the author of the Natural Values Comment submitted with the application and the author of Representation 2 are considered suitably qualified persons for the purposes of natural values assessment as defined by the Waterway and Coastal Protection Code (see Section 8.15.5 and Footnote 3 above).
- 8.15.10. Council's Development Services do not have a suitably qualified person for natural values assessment on staff. Therefore, in order to provide full and proper assessment of natural values, Dr Richard Barnes of Van Diemen's Consulting (a suitably qualified person) was engaged to provide independent professional opinion on the proposal adequately demonstrated compliance with Performance Criteria E11.7.1 P1 (a – c) (see Section 8.15.4 above), with consideration to the objective of this standard (see Section 8.15.1 above).
- 8.15.11. Regarding the independence of the professional opinion mentioned above, it should be noted that no agenda (i.e. bias toward recommendation of approval or refusal), either formal nor informal, was existing or provided by Council's Development Services to the suitably qualified person upon commissioning the advice, nor prior to its completion.
- 8.15.12. Dr Barnes concurs with North Barker Ecosystem Services that the land at 75 and 77 Fouche Avenue currently lacks any natural values of conservation significance in their own right.
- 8.15.13. Based on Dr Barnes' qualified natural values assessment (see Attachment B), the saltmarsh vegetation present in the WCPA is the *Subtropical and Temperate Coastal Saltmarsh* ecological community which listed as Vulnerable under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*. The ecological community is a natural value (including a coastal value), as defined, and must be addressed even though it is not directly within the building footprint of Units 12 to 15.



Photo 3. The Fouche Avenue Public Reserve saltmarsh facing east (75 Fouche Avenue is identified by the yellow arrow)

8.15.14. Dr Barnes continues:

The objective of Clause E11.7.1 suggests that the overlay is more than a means to assess direct impact, rather the assessment should be for works and buildings within the overlay and 'in the proximity' of where the overlay is 'triggered'. Support for this approach is that some 'must be satisfied' matters in Clause E11.7.1 P1 include runoff impacts, sedimentation and adverse erosion impacts which are not necessarily constrained to the immediate impact location but could be impacts caused elsewhere (e.g., adjacent) in the overlay by buildings and works occurring within the overlay. for example, a building (which creates a large impervious surface) may cause runoff impacts to natural values in the adjacent land or same land as the development. at the very least, buildings and works located within the overlay should be assessed for impacts to natural values in the overlay.

- 8.15.15. It is agreed that the term 'natural values' includes elements that are further defined, such as coastal values which includes landscape values, recreational values, and economic values. These considerations are not limited to, and should not be limited to, the immediate footprint of proposed development. Rather they must be considered in the context of the site (noting that the Fouche Avenue Public Reserve land parcel is part of the site), the WCPA overlay and those buildings and works that intersect with it.

It is not evident that the four dwellings proposed within the WCPA either avoid or mitigate impact on coastal values in the scope required by the Code and, apart from being sited clear of the Future Coastal Refugia Area as mapped, the application has not addressed all potential impacts.

For instance, as raised by Representatives 1 and 2, the potential impacts on fauna (particularly bird habitat) within the WCPA in question have not been considered by a suitably qualified person.

- 8.15.16. Relevant comment was also received from the Derwent Estuary Program's (DEP) Biodiversity Officer regarding the natural values present on and in vicinity of the site (see Section 10.2). They noted,

Regarding birds, the DEP has surveyed the marsh here on several occasions. This is a very important bird habitat (with the Derwent estuary having lost half its saltmarsh), but we have noted, both from direct observation and anecdotal evidence from locals, that dogs are often running off-lead across the wetland leading to disturbance to feeding, roosting and breeding behavior. I mention this because additional 15 units will no doubt bring more dogs into the area, as well as more light, noise and general human disturbance.

- 8.15.17. Regarding criteria E11.7.1 P1 (b), the potential impact of stormwater run-off created by proposed buildings and works in the WCPA on natural values (particularly the littoral and riparian saltmarsh vegetation) has not been addressed in the application. Dr Barnes' assessment of this potential impact concludes as below:

The addition of more volume of freshwater, greater volumes/intensity of flows and more consistent flows of freshwater caused by buildings and works (the development) in the overlay would cause a greater infiltration of weeds into the saltmarsh by favouring less saline tolerant species such as typha latifolia. It would in my view impact substantially on the natural values present in the overlay.

Key threats to Subtropical and Temperate Coastal Saltmarsh based on the Conservation Advice prepared under the EPBC Act that are of direct relevance to this planning matter include –

- ***Altered hydrology/tidal restriction*** - changes to tidal regime or tidal connection that result from development, land-use practices or infrastructure can lead to habitat loss, invasion of 'problem species' or modification of ecological function (Laegdsgaard et al., 2009; Williams et al., 2011).
- ***Invasive species*** - non-native weed species and other problem species (e.g. native species that can form monotypic stands) are increasingly replacing native Coastal Saltmarsh plants which limits biodiversity, changes vegetation structure and potentially alters ecosystem function, and in some cases fire regimes (Laegdsgaard et al., 2009; VSS, 2011).

- 8.15.18. The conclusion of the independent advice from Dr Barnes is reproduced below:

I am of the view that the application should be refused as there is substantial information lacking to demonstrate compliance with Clause E11.7.1 P1. The onus is on the applicant to demonstrate compliance with Clause 11.7.1 P1.

The reasons for my opinion are –

a) the development information does not include a natural values assessment that adequately covers the full suite of matters listed in Clause 11.7.1 P1 – the information provided is too narrow in its scope.

b) It is likely that natural values, such as the EPBC Act listed Subtropical and Temperate Coastal Saltmarsh ecological community, will be unnecessarily impacted by the development (namely Units 12 to 15, and Unit 11 if the LPS³ overlay is considered) because –

(i) there is no avoidance or mitigation of impact on natural values (at least one is known) required by Clause E11.7.1 P1(a);

(ii) there are no mitigation or management of run-off impacts on natural values required by Clause E11.7.1 P1(b); and

(iii) there is no avoidance or mitigation of impact on riparian or littoral vegetation required by Clause E11.7.1 P1(c).

c) It is likely that coastal values which is encapsulated within the meaning of natural values will be impacted but there is no demonstration of compliance because there has not been an assessment of natural values. notable in the meaning of coastal values are ‘...landscape values, recreational values and economic values’...

d) The Soil and Water Management Plan does not include best practice principles of the Wetlands and Waterways Works Manual (DPIWE, 2003) nor does it contain any mitigation or management measures to demonstrate compliance with Clause E.11.7.1 P1 (a to c).

8.15.19. It is concluded that the proposed development with the WCPA overlay could have unnecessary and unacceptable impacts on natural values. The application does not sufficiently prove compliance with Performance Criteria (a)-(c) of E11.7.1 P1 and should therefore be refused.

8.16. Discretion 8 – Landfill in a Coastal Inundation Hazard Area

8.16.1. According to 15.3.1 of the Inundation Prone Areas Code, inundation:

Means permanent, periodic or anticipated flooding of land whether by sea or rainfall and includes inundation by high tide.

8.16.2. The majority of the site is mapped within a Coastal Inundation Low Hazard Area (see Figure 11 below), which means an area forecast to be subject to inundation from a 1% annual exceedance probability (AEP) storm tide event in 2100. Therefore, assessment of the Code is required.

³ Local Provision Schedule of the upcoming Tasmanian Planning Scheme.

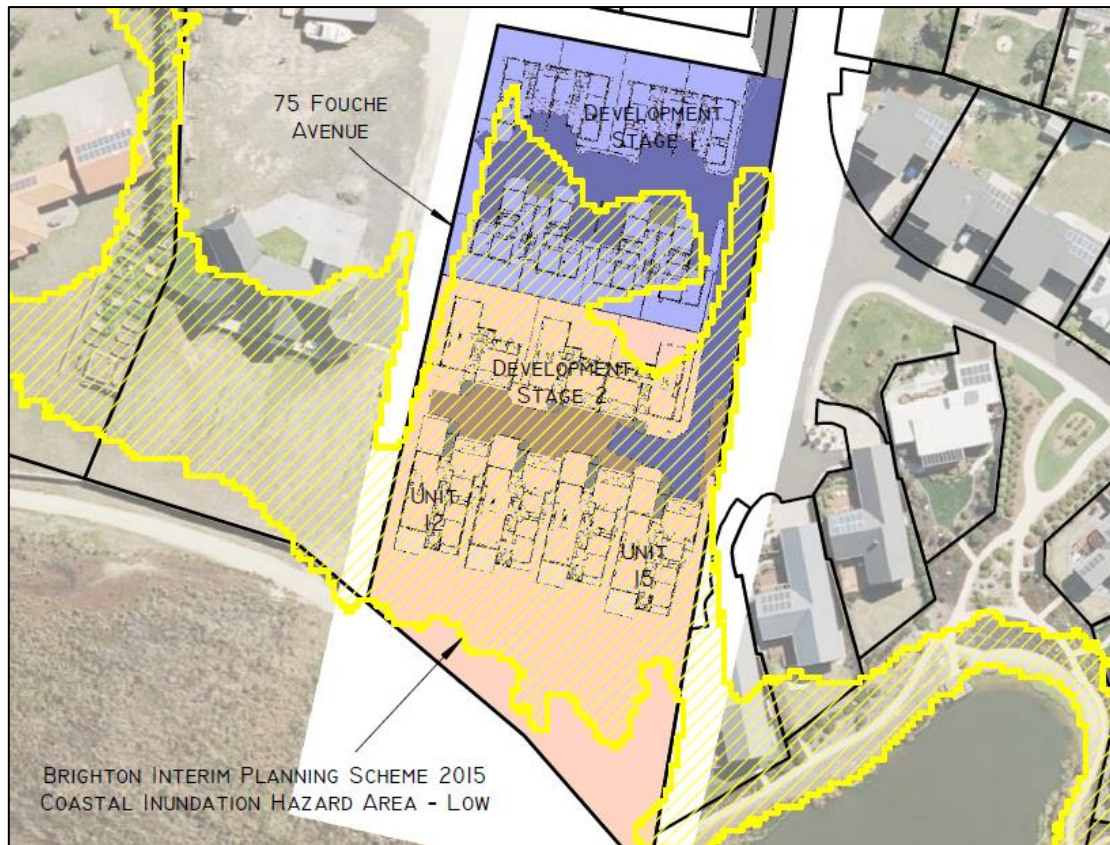


Figure 11. Location of the Coastal Inundation Low Hazard Area in relation to proposed dwellings

8.16.3. As flagged previously in section 8.5, the proposal meets Acceptable Solution E15.7.3 A1 because each proposed dwelling has a floor level no lower than 2.5m AHD.

8.16.4. The discretion in question relates to proposed landfill. The relevant objective of E15.7.5 is:

(a) To ensure that landfill and mitigation works do no [sic] unreasonably increase the risk from riverine, watercourse and inland flooding, and risk from coastal inundation.

8.16.5. There is no acceptable solution for landfill, or solid walls greater than 5m in length and 0.5m in height within any mapped Inundation Area (E15.7.5 A1).

8.16.6. Parts of the development site (north of the Waterway and Coastal Protection Area) are proposed to be filled to 2m AHD. In addition, the southern walls below floor level of Units 12 to 15 inclusive will be greater than 5m in length.

8.16.7. Therefore, the application must meet Performance Criteria E15.7.5 P1, below:

P1 – Landfill, or solid walls greater than 5 m in length and 0.5 m in height, must satisfy all of the following:

(a) no adverse affect on flood flow over other property through displacement of overland flows;

(b) the rate of stormwater discharge from the property must not increase;

(c) stormwater quality must not be reduced from pre-development levels.

8.16.8. As required by E15.5.1, the application included assessment by a suitably qualified person, accompanied by necessary engineering detail, to address these criteria.

8.16.9. The Coastal Vulnerability Assessment by GES submitted with the application, *... is based on the specific plans as outlined in the development application, with the duration based on the building design life as defined herein. Particularly where wave runup is concerned, consideration is given to the presence of solid walls on ground versus buildings elevated above ground on piers, with both scenarios affecting the wave runup height against the building.*

8.16.10. For 2070 (the building design life mentioned above), 1% AEP wave runup forces are minor on the site due to predominant wave attenuation across the river terrace. The Assessment concludes:

There is low risk and minor consequence associated with effect on flood flow over other property through displacement of overland flows; and

There is a low risk that the proposed four units closest to the river will cause an adverse effect on floodwater displacement.

8.16.11. The assessment demonstrates that no adverse effects on flood flow over other property through displacement of overland flows are likely.

8.16.12. Criteria E15.7.5 P1 (b) and (c) are not applicable as the inundation risk to the site relates to sea level rise and wave run-up rather than stormwater flow.

8.16.13. The proposal is considered to satisfy Performance Criteria E6.6.3 P1.

9. Concerns raised by representors

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

9.1.2 Four (4) representations were received during the statutory public advertising period. The concerns of the representors are listed below (some items have been slightly summarised to enable clearer response) and the applicant's responses included verbatim:

Representor comments ►	Applicant response ►	Council Development Services response
Representation 1		
<p>Inundation prone areas will be utilised. These areas have been predetermined as areas of high hazard. To now be determined as low risk to facilitate a commercial enterprise seems questionable.</p> <p>High tides, rainfall and flood events regularly impact the section where Units 12-15 are proposed.</p>	<p>The proposed development is within the Coastal Inundation Medium and Low Bands under BIPS. Consequently overland flow and coastal vulnerability assessments have been undertaken. All dwellings are at the 2.5m AHD level as required under Table E15.1 of the scheme. There is no high hazard inundation area on the site (refer to figure 4 of the Coastal Vulnerability Assessment).</p>	<p>See Section 8.14 above for relevant assessment.</p> <p>The majority of the site is mapped within a Coastal Inundation Low Hazard Area, which means an area forecast to be subject to inundation from a 1% AEP storm tide event in 2100.</p>
<p>The natural values comment submitted provides no analysis of fauna impact.</p> <p>I.e. The adjacent foreshore is the nesting and hunting habitat of a pair of Swamp Harriers (predatory raptors) observed regularly over recent years. Whether their habitat may be disturbed and reduced has not been addressed.</p>	<p>The NVA submitted states that in the area within the Waterway and Coastal Protection Overlay area of the site <i>"natural values in terms of flora and fauna habitat are very limited given the high level of historical disturbance throughout the area"</i>. The area of the foreshore where there is nesting habitat is not part of the proposal, other than the replacement of an existing stormwater pipe.</p>	<p>See Section 8.15 above for relevant assessment.</p> <p>It is agreed that the application only partially considers and assesses the natural values and potential risk of impact from the proposal.</p>
<p>Approving a development utilising predetermined Crown Land, waterway and coastal protection areas or inundation prone areas does not accord the environmental goals of the Brighton Council Strategy for 2019-2029 and the Annual Plan 2020-2021.</p>	<p>The only development in Crown land is the replacement of an existing stormwater pipe. The documents referred to are not relevant to an assessment under the BIPS.</p>	<p>The most relevant environmental strategy is S1.5 of the Brighton Council Strategy 2019-2029:</p> <p><i>S1.5: Build a resilient community and environmentally sustainable future</i></p>

		Development Services have assessed the environmental impacts of the proposed development within the scope of the applicable regulatory document available to the Planning Authority – the Brighton Interim Planning Scheme 2015.
Previously told that the southern portion of the site could not be developed.	This is not relevant to this assessment.	This is not relevant to this assessment.
Representation 2		
Almost the entire area is within a coastal floodplain (see Future Coastal Refugia Area Guidance Map & attached Prahalad et al., 2019 paper) and provides potential habitat for Coastal Saltmarsh listed for protection under the <i>Commonwealth Environment Protection and Biodiversity Conservation Act 1999</i> (Pralhad et al., 2019). The presence of a few patches of <i>Sarcocornia</i> and larger areas of <i>Plantago</i> (noted in the North Barker assessment) are indeed indicative of the landward movement of saltmarsh and should be considered in this long-term context.	The proposed development is largely outside the Future Coastal Refugia overlay area. With respect to landward colonisation of wetlands the North Barker NVA states: “ <i>regardless, the low density of saltmarsh species, and the prevalence of introduced species suggest that this area is unlikely to transition to saltmarsh in the near term</i> ”. Long term effects are considered by the Future Coastal Refugia overlay area and the development is responsive to this. The Coastal Refugia mapping in the TPS for the Brighton municipality is not present on the subject site.	See Section 8.15 above for relevant assessment.
The proposed development overlaps on both the Waterways & Coastal Protection Areas (WCPA) overlay and the Future Coastal Refugia Area (FCRA) overlay areas. The Old Beach area is already highly developed and	As per above, the ‘buffer’ suggested is provided by the Future Coastal Refugia overlay under BIPS and the development is responsive to this by keeping dwellings out of this area. There is no	See Section 8.15 above for relevant assessment.

<p>a lot of the buffering and retreat/refugia areas lost to infill development. This proposed location is one of few areas where infill hasn't occurred yet and hence, all the more important to be protected to avoid ongoing cumulative loss of both buffer and retreat/refugia areas. At the very least, the Units 12-15 which occur on the Waterways & Coastal Protection Area (Buffer) should be removed to provide a buffer between the current Old Beach saltmarsh and the other proposed dwellings.</p> <p>Planting of suitable native plants in this buffer would to some extent offset the effects of this large housing development on natural values.</p>	<p>landscaping proposed in this Future Coastal Refugia area, but the applicant is amenable to a condition on the permit requiring limited revegetation of this area (excluding the area immediately adjacent to the buildings) if Council agrees it is necessary.</p> <p>Excising the 4 westward units is not supported. These units comply with the purpose of the WWCP Code in that there are no significant impacts on water quality or natural values, there is no impact on natural processes and appropriate setbacks have been allowed to allow for future transgression of the salt marsh in accordance with the planning scheme requirements.</p>	
<p>Visits to the area indicate high bird use, especially at the water's edge. Light and noise pollution resulting from this development might be disruptive for wildlife using this sensitive Estuary habitat.</p> <p>This has not been considered. Yet again, a vegetated buffer (by excising Units 12-15) would be helpful to mitigate this.</p>	<p>Noise pollution from residential uses is not high and is already prevalent on many sites along the foreshore. Impacts from lighting could be ameliorated by baffled external lighting, implemented via a condition on the permit.</p> <p>Again, excising the 4 westward units is not supported for the reasons outlined above.</p>	<p>See Section 8.15 above for relevant assessment.</p> <p>It is agreed that the application only partially considers and assesses the natural values and potential risk of impact from the proposal.</p>
<p>Concern relating to run-off from the development, both during construction and post-construction use, considering the extent and nature of impervious surfaces proposed.</p>	<p>Construction impacts of stormwater run-off will be controlled through a Sediment and Water Management Plan which is typically a condition of</p>	<p>See Section 8.15 above for relevant assessment.</p> <p>The application is not considered to meet required criteria E11.7.1 P1</p>

	the permit. Post construction water from impervious surfaces will be captured and directed to stormwater treatment devices to ensure the required levels of water quality in accordance with the State Stormwater Strategy 2010.	(b): <i>Building and works within a Waterway and Coastal Protection Area must mitigate and manage adverse erosion, sedimentation and runoff impacts on natural values.</i>
<p>I consider the proposal not keeping up with the purpose of Waterway and Coastal Protection Code and Inundation Prone Areas Code, as noted below:</p> <ol style="list-style-type: none"> 1. <i>'protect vulnerable coastal areas to enable natural processes to continue to occur, including the landward transgression of sand dunes, wetlands, saltmarshes and other sensitive coastal habitats due to sea-level rise.'</i> – refugia areas built upon. 2. <i>'minimise impact on coastal and foreshore values, native littoral vegetation, natural coastal processes and the natural ecological function of the coast'</i> – potential light and noise pollution effects. 3. <i>'minimise impact on water quality, natural values including native riparian vegetation, river condition and the natural ecological function of watercourses, wetlands and lakes'</i> – removal of buffer zone and potential effects from run off. 	Neither existing or future coastal refugia areas are built upon. Light and pollution can be controlled to acceptable levels as discussed above.	See Section 8.15 above for relevant assessment.

Representation 3		
The site is flood prone.	The site is subject to inundation but the development has been designed to accommodate for this through appropriate floor levels.	See section 8.14 above for relevant assessment.
Traffic safety concern due to significant increase in traffic movements.	The Traffic Impact Assessment concluded the proposal <i>"will not give rise to any adverse safety or operational traffic issues"</i> .	The TIA submitted with the application addressed the impact of the increased traffic generation from the development and concludes: <i>The increased traffic activity associated with the development will ... not create any operational traffic issues on the immediate surrounding road network.</i>
Headlights from cars exiting the complex will shine into bedroom window of a dwelling on opposite side of road.	The driveway entry exit on Fouche Ave is aligned with the side fence of the two opposite properties (56 & 58 Fouche Ave), thus any impact from headlights should be indirect. The vehicle movements in peak times is only 9vmph thus exiting vehicles during night hours will be less than 4.5 existing vehicles per hour.	Hopefully, any loss of amenity due to headlights would be minimal. The Planning Scheme does not provide a standard whereby this could be regulated.
Representation 4		
My major concern is safe access and exiting for the existing residents from The Old Beach Waterfront Estate and the private residence located adjacent to the proposed development. Proposed development will result a minimum of at least 64	The Traffic Impact Assessment states: <i>"The likely traffic generation associated with the proposed development has been calculated at 90 vehicles/day which equates to some 9 vehicle/hour during the morning and afternoon peak hours"</i> . However the	The TIA submitted with the application considered the interaction with the proposed development and Duval Drive. The TIA assumes that Duval Drive carries some 100-110 vehicles/ day, with 10% of this traffic occurring

vehicles entering and exiting the driveway from and onto Fouche Avenue, this is also a bus route and carries additional traffic.	conclusion of this assessment is that the proposal <i>"will not give rise to any adverse safety or operational traffic issues"</i> .	during peak traffic periods. Given the relatively low traffic movements from both developments during peak period, the occurrence of vehicles concurrently wanting to enter or exit the adjacent driveways is minimal. The TIA states: <i>The interaction between traffic movements to and from these two driveways will not create any safety or operational issues at their junction with Fouche Avenue.</i>
The proposed high density is more appropriate for an inner city suburb.	The proposed density complies with the Acceptable Solution requirement for the General Residential zone.	The proposed multiple dwelling site area per dwelling ⁴ is 411.6m ² . Under General Residential Zone standard 10.4.1 A1 (a), the Acceptable Solution is a site area of not less than 325m ² . So, though the proposed development is of higher density than the surrounding area, since the proposal complies with standard 10.4.1 A1 (a) there is no ability for Council to assess density compatibility.

10. Referrals

10.1. Development Engineering

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

⁴ Means the area of the site (excluding any access strip) divided by the number of dwellings (Clause 4.1).

10.2. Van Diemen's Consulting (Dr Richard Barnes)

Council's Development Services do not have a suitably qualified person for natural values assessment on staff. Therefore, in order to provide full and proper assessment of natural values as required by the Waterway and Coastal Protection Code, a suitably qualified person (Dr Richard Barnes of Van Diemen's Consulting) was engaged to provide independent professional opinion regarding the proposal's compliance with Performance Criteria E11.7.1 P1 (a – c) of the Waterway and Coastal Protection Code (see Section 8.10.3 above), with reference and consideration to the objective of E11.7.1.

10.3. Derwent Estuary Program (Biodiversity Officer)

The Derwent Estuary Program is *a partnership between state and local government and industry to make the Derwent a world class asset by sharing science for the benefit of nature, the economy and the community*, of which Brighton Council is a program partner.

Advice and/or comment were sought from the Program's Biodiversity Officer regarding the site and surrounds in order for Council's Development Services to best assess the natural values pertinent to this application.

10.4. TasWater

TasWater have provided a Submission to Planning Authority Notice (SPAN TWDA 2020/01365-BTN, dated 24 November 2020). The SPAN contains conditions pursuant to the *Water and Sewerage Industry Act 2008* and is to be included with any permit should approval be granted.

11. Conclusion

- 11.1 Planning approval is sought for multiple dwellings (15) and associated infrastructure at 75 Fouche Avenue, 77 Fouche Avenue & Fouche Avenue Public Reserve, Old Beach. 75 and 77 Fouche Avenue are situated within the General Residential Zone of the Brighton Interim Planning Scheme 2015 (the 'Planning Scheme'), whilst the Fouche Avenue Public Reserve is situated within the Open Space Zone.
- 11.2 The application invokes certain privacy, vehicle access, manoeuvring and parking, natural values, and coastal inundation discretions under the Planning Scheme.
- 11.3 Four (4) representations were received within the statutory public advertising period.
- 11.4 The application is considered to meet all applicable standards of the Planning Scheme apart from the Waterway and Coastal Protection Code and is thus recommended for refusal.

RECOMMENDATION:

That pursuant to the *Brighton Interim Planning Scheme 2015*, Council refuse application DA 2020/306 for multiple dwellings (15) and associated infrastructure at 75 Fouche Avenue, 77 Fouche Avenue & Fouche Avenue Public Reserve, Old Beach, for the following reason:

1. The proposal does not satisfy the requirements of Section E11.7.1 of the *Brighton Interim Planning Scheme 2015*, specifically Performance Criteria E11.7.1 P1 (a)-(c):
P1 – Building and works within a Waterway and Coastal Protection Area must satisfy all of the following:
 - (a) *avoid or mitigate impact on natural values;*
 - (b) *mitigate and manage adverse erosion, sedimentation and runoff impacts on natural values;*
 - (c) *avoid or mitigate impacts on riparian or littoral vegetation.*

DECISION:

The meeting closed at 5.35pm.

Confirmed:

(Mayor)

Date:

16th February 2021