



Brighton Council

MINUTES OF THE **PLANNING AUTHORITY MEETING**
OF THE BRIGHTON COUNCIL HELD
IN THE COUNCIL CHAMBER, COUNCIL OFFICES
OLD BEACH AT 5.34 P.M. ON TUESDAY,
9TH MARCH, 2021

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

IN ATTENDANCE: Mr P Carroll (Senior Planner) and Mr L Wighton (Senior Technical Officer)

1. ACKNOWLEDGEMENT OF COUNTRY:

2. APOLOGIES:

Cr Geard moved, Cr Garlick seconded that Cr Foster be granted leave of absence.

CARRIED

VOTING RECORD

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

3. QUESTION TIME & DEPUTATIONS:

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.

Cr Jeffries left the meeting 5.40pm

5.1 APPLICATION UNDER BRIGHTON INTERIM PLANNING SCHEME 2015 - SA 2020/029 – 5 SUNNYVIEW PLACE & 6 SUNNYVIEW PLACE, HONEYWOOD TWO (2) LOT SUBDIVISION:

- Type of Report:** Planning Authority - For Decision
- Application No:** SA 2020/029
- Address:** 5 Sunnyview Place & 6 Sunnyview Place, Honeywood
- Proposal:** Two (2) Lot Subdivision
- Zone:** Rural Living Zone
- Representations:** One (1)
- Discretions:**
 1. Subdivision (Section 9.10)
 2. Lot Design (Section 13.5.1 A2)
 3. Lot Design (Section 13.5.1 A4)
 4. Public Open Space (Section 13.5.3 A1)
 5. Services (Section 13.5.4 A2)
 6. Services (Section 13.5.4 A3)
 7. Sight Distance at Accesses, Junctions and Level Crossings (E5.6.4 A1)

8. Vehicular Passing Along an Access (Section E6.7.3 A1)
9. Stormwater Management (Section E7.7.1 A1)
10. Development on Dispersive Soils (Section E21.7.1 A1)

Author: Senior Planner (Patrick Carroll)

1. Executive Summary

- 1.1. Planning approval is sought for Subdivision at 5 Sunnyview Place & 6 Sunnyview Place, Honeywood (the 'site'). The site is within the Rural Living Zone of the *Brighton Interim Planning Scheme 2015* (the 'Interim Scheme').
- 1.2. The application is known as SA 2020/029. The application is discretionary and relies on Performance Criteria. The key issues relate to lot design, stormwater management and dispersive soils management.
- 1.3. One (1) representation was received within the statutory public advertising period, with concerns relating to density.
- 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 SA 2020/029.
- 2.2. This determination must be made no later than 16 March 2021. 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 two titles, being 5 Sunnyview Place, Honeywood (CT 143314/4) & 6 Sunnyview Place, Honeywood (CT 143314/3).
- 5.2. 5 Sunnyview Place has a lot size of 3.002 ha. 6 Sunnyview Place has a lot size of 7258m².
- 5.3. The site sits to the south of the cul-de-sac head of Sunnyview Place, which is a Council maintained road.
- 5.4. The land slopes down towards the south, as shown on the contour map, below. The road, at the northern end of the site, is near the 125m contour. The southern boundary of the site is near the 80m contour.
- 5.5. The site is zoned Rural Living under the Interim Scheme.
- 5.6. The land adjoining the site is also zoned Rural Living.
- 5.7. The closest Rural Resource zoned land is approximately 200m to the west. The closest Significant Agriculture zoned land is approximately 3.6km to the north-east. The closest Environmental Management zoned land is approximately 2km to the west.



Figure 1. Aerial photography of the subject site.

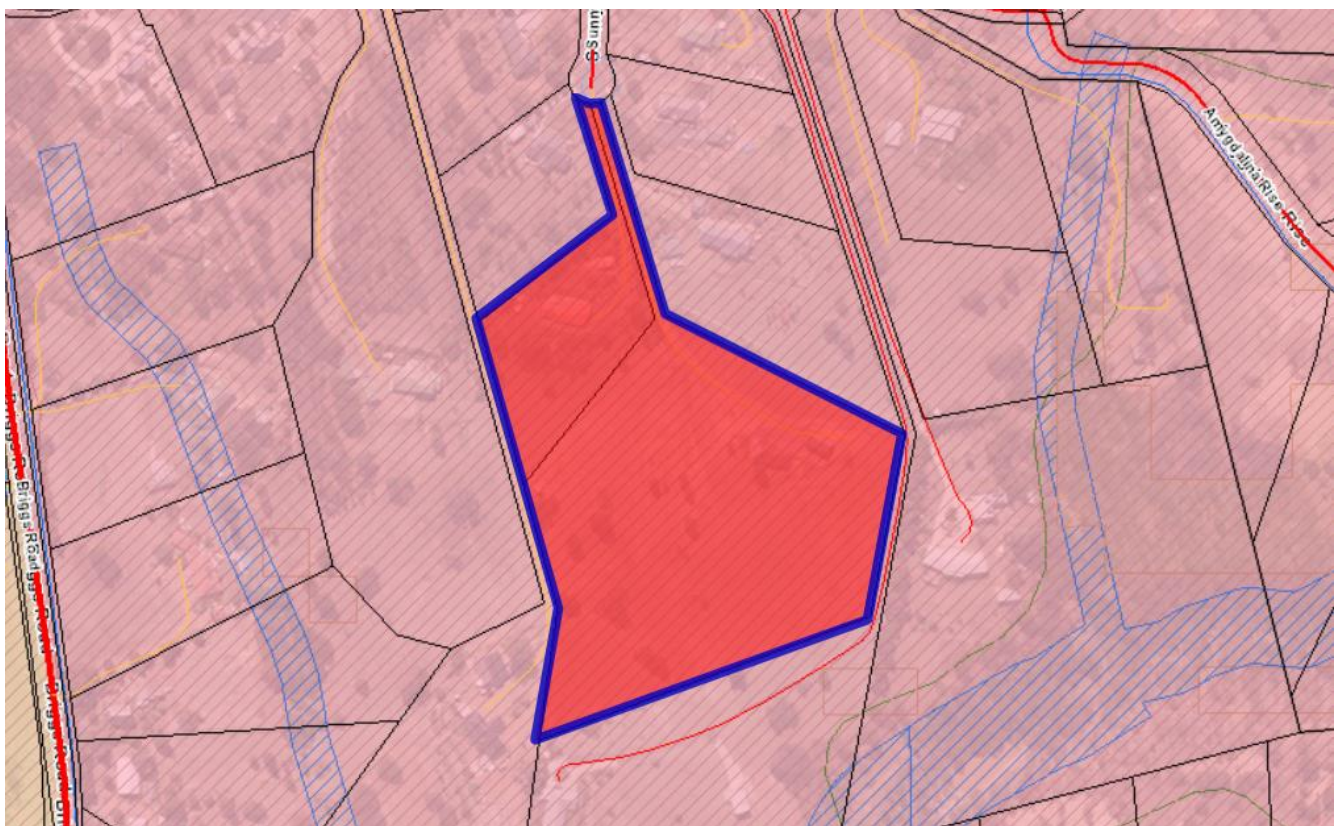


Figure 2. Zoning of the subject site and surrounds. Pink denotes the Rural Living Zone.



Figure 3. Contour plan of subject site.

6. Proposal

- 6.1. The applicant has proposed a two-lot subdivision of the site.
- 6.2. The subdivision generally relates to an additional parcel being created on 5 Sunnyview Place, per Figure 3 below. However, 6 Sunnyview Place has also been formally incorporated as part of the application, as the supplied bushfire hazard management plan required vehicular passing bays to protrude into that property. The requisite notifications have been made by the applicant to the owner of 6 Sunnyview Place.

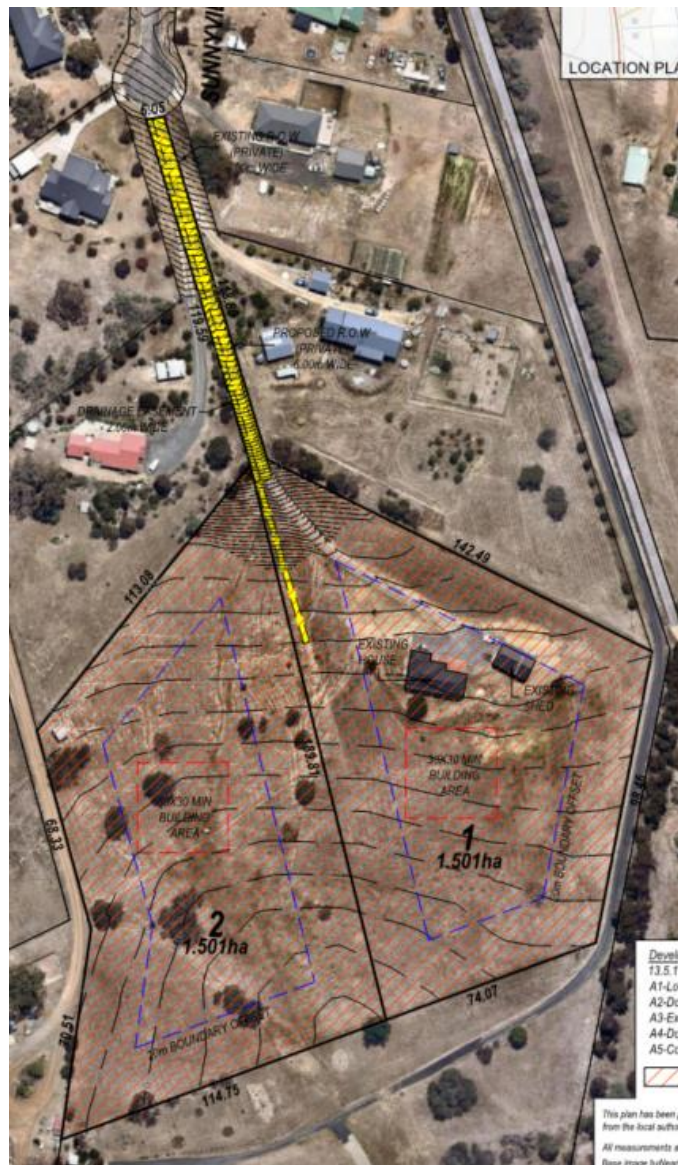


Figure 4. Proposed subdivision layout.

- 6.3. Lot 1 will include the existing dwelling and outbuildings, and is proposed to have a lot area of 1.501 ha.
- 6.4. Lot 2 is currently vacant, except for a small outbuilding. It, too, has a proposed lot area of 1.501 ha.
- 6.5. Both lots are proposed to access Sunnyview Place via a shared access strip. It is proposed that the access strip will sit within Lot 1, and Lot 2 will have a right of way over this access strip.
- 6.6. Both lots are considered to be ‘internal lots’. An internal lot is defined in Section 4.1.3 of the Interim Scheme as:

A lot:

- (a) lying predominantly behind another lot; and

(b) *having access to a road by an access strip, private road or right of way.*

6.7. An 'access strip' is defined in Section 4.1.3 as:

Land, the purpose of which is to provide access to a road.

6.8. A 'way' (as in 'right of way') is defined in Section 3 of the Local Government (Building and Miscellaneous Provisions) Act 1993 as:

Way means –

(a) *any land over which anyone other than the person in possession, his or her family, servants, customers or callers, may of right pass and repass with or without animals and vehicles; and*

(b) *any land which obviously appears to be regularly used for the passage of persons with or without animals or vehicles; and*

(c) *any land made ready to be so regularly used.*

7. Assessment

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

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

8. Assessment against planning scheme provisions

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

- Part C – Section 9.0 – Special Provisions
- Part D – Section 13.0 – Rural Living Zone
- Part E – Section E1.0 – Bushfire Hazard Management Code
- Part E – Section E5.0 – Road and Railway Assets Code
- Part E – Section E6.0 – Parking and Access Code
- Part E – Section E7.0 – Stormwater Management Code
- Part E – Section E21.0 – Dispersive Soils Management Code

8.2. The application satisfies the following relevant Acceptable Solutions of the applicable provisions:

- Section 13.5.1 A1 – Lot Design
- Section 13.5.1 A5 – Lot Design
- Section 13.5.2 A1 – Roads
- Section 13.5.4 A1 – Services
- Section E1.6.1 A1 – Subdivision Hazard Management Areas
- Section E1.6.2 A1 – Subdivision Public & Fire Fighting Access
- Section E1.6.3 A1 – Subdivision Water Supply
- Section E5.5.1 A3 – Existing Road Accesses and Junctions
- Section E5.6.2 A2 – Road Accesses and Junctions
- 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 E6.7.6 A1 – Surface Treatment of Parking Areas
- Section E6.7.14 A1 - Access to a Road
- Section E7.7.1 A3 - Stormwater Drainage and Disposal
- Section E7.7.1 A4 - Stormwater Drainage and Disposal

8.3. The following discretions are invoked by the proposal:

- Section 9.10 – Subdivision
- Section 13.5.1 A2 – Lot Design
- Section 13.5.1 A4 – Lot Design
- Section 13.5.3 A1 – Public Open Space
- Section 13.5.4 A2 – Services
- Section 13.5.4 A3 - Services

- Section E5.6.4 A1 – Sight Distances at Accesses, Junctions and Level Crossings
- Section E6.7.3 A1 – Vehicular Passing Along an Access
- Section E7.7.1 A1 – Stormwater Management
- Section E21.7.1 A1 – Development on Dispersive Soils

8.4. Discretion 1 – Subdivision

8.4.1 Section 9.10.2 of the Interim Scheme states:

A permit for development involving a plan of subdivision is discretionary unless:

- (a) *for adjustment of a boundary in accordance with clause 9.3.1;*
- (b) *the subdivision is prohibited in accordance with clause 8.9; or*
- (c) *the plan of subdivision must not be approved under section 84 Local Government (Building and Miscellaneous Provisions) Act 1993.*

8.4.2 The application invokes discretion under this standard.

8.5 Discretion 2 – Lot Design

8.5.1 The Acceptable Solution contained in Section 13.5.1 A2 states:

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

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

8.5.2 The proposed lot design does not comply with the Acceptable Solution. As such, the application invokes discretion under this standard, and must be assessed against the corresponding Performance Criteria.

8.5.3 Section 13.5.1 P2 states:

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

- (a) is reasonably capable of accommodating residential use and development;*
- (b) meets any applicable standards in codes in this planning scheme;*
- (c) enables future development to achieve reasonable solar access, given the slope and aspect of the land;*
- (d) minimises the requirement for earth works, retaining walls, and cut & fill associated with future development;*
- (e) is sufficiently separated from the land zoned Rural Resource and Significant Agriculture to prevent potential for land use conflict that would fetter non-sensitive use of that land, and the separation distance is no less than:*
 - (i) 40 m from land zoned Rural Resource;*
 - (ii) 80 m from land zoned Significant Agriculture;*
- (f) is setback from land zoned Environmental Management to satisfy all of the following:*
 - (i) there is no significant impact from the development on environmental values;*
 - (ii) the potential for the spread of weeds or soil pathogens onto the land zoned Environmental Management is minimised;*
 - (iii) there is minimal potential for contaminated or sedimented water runoff impacting the land zoned Environmental Management;*
 - (iv) there are no reasonable and practical alternatives to developing close to land zoned Environmental Management*

8.5.4 It is considered that the proposed lots are of a size and shape that are able to accommodate residential development in the future.

- 8.5.5 All relevant codes are assessed under this report.
- 8.5.6 The lots are oriented to achieve reasonable solar access.
- 8.5.7 No significant earthworks, retaining walls, cut or fill are required to facilitate future residential development.
- 8.5.8 The site is setback at least 200m from land zoned Rural Resource, Significant Agriculture or Environmental Management. The setback to the Environmental Management Zone (>2km) is considered more than sufficient to comply with the requirements of part (f) of the Performance Criteria.
- 8.5.9 It is considered that the proposed development satisfies the Performance Criteria.

8.6 Discretion 3 - Lot Design

- 8.6.1 Section 13.5.1 A4 of the Interim Scheme states:

No lot is an internal lot.

- 8.6.2 As internal lots are proposed, the development does not comply with the Acceptable Solution. As such, the application invokes discretion, and must be assessed against the relevant Performance Criteria.

- 8.6.3 Section 13.5.1 P4 states:

An internal lot must satisfy all of the following:

- (a) *access is from a road existing prior to the planning scheme coming into effect, unless site constraints make an internal lot configuration the only reasonable option to efficiently utilise land;*
- (b) *it is not reasonably possible to provide a new road to create a standard frontage lot;*
- (c) *the lot constitutes the only reasonable way to subdivide the rear of an existing lot;*
- (d) *the lot will contribute to the more efficient utilisation of rural living land;*
- (e) *the amenity of neighbouring land is unlikely to be unreasonably affected by subsequent development and use;*
- (f) *the lot has access to a road via an access strip, which is part of the lot, or a right-of-way, with a width of no less than 3.6m;*

- (g) *passing bays are provided at appropriate distances along the access strip to service the likely future use of the lot;*
 - (h) *the access strip is adjacent to or combined with no more than three other internal lot access strips and it is not appropriate to provide access via a public road;*
 - (i) *a sealed driveway is provided on the access strip prior to the sealing of the final plan.*
 - (j) *the lot addresses and provides for passive surveillance of public open space and public rights of way if it fronts such public spaces.*
- 8.6.4 Road access is from Sunnyview Place. The road was in existence prior to 2015.
- 8.6.5 Given the existing subdivision pattern, it is not considered reasonably possible to provide a new road to create a standard frontage lot. The internal lot layout is the only reasonable way to subdivide the lot.
- 8.6.6 By increasing the lot density, the layout provides for the more efficient utilisation of Rural Living-zoned land.
- 8.6.7 The amenity of neighbouring properties is unlikely to be unreasonably affected by subsequent development and use, although more detail is provided regarding specific issues raised elsewhere in this report.
- 8.6.8 Each lot has access to a road via either an access strip or a right of way. These accesses are at least 3.6m wide.
- 8.6.9 The bushfire report that forms part of this application recommends the provision of passing bays at specified distances and dimensions. Passing bays that are compliant with the Bushfire Code will provide an adequate level of service. The first passing bay shall be located where the access strip meets the road.
- 8.6.10 The access strip for each lot is adjacent to or combined with no more than three other internal lot access strips. It is not considered appropriate to provide a public road.
- 8.6.11 It is recommended that a condition be included on any permit that requires the access strip for each lot to be sealed prior to the sealing of the final plan, should Council acting as the Planning Authority grant approval.

- 8.6.12 The lot does not front any public open space.
- 8.6.13 The proposed development satisfies the Performance Criteria contained in Section 13.5.1 P4 of the Interim Scheme.

8.7 Discretion 4 - Public Open Space

- 8.7.1 There is no Acceptable Solution for Section 13.5.3 A2.
- 8.7.2 As such, the application invokes discretion for this standard, and must be assessed against the relevant Performance Criteria.
- 8.7.3 Section 13.5.3 P2 states:
Public Open Space must be provided as land or cash in lieu, in accordance with the relevant Council policy.
- 8.7.4 Should Council, acting as the Planning Authority, determine to approve the proposed subdivision, it is recommended that a condition requiring a financial contribution in lieu of public open space, in accordance with the relevant Council Policy, be included on any permit.
- 8.7.5 As such, the proposed development satisfies the Performance Criteria contained in Section 13.5.3 P2 of the Interim Scheme.

8.8 Discretion 5 - Services

- 8.8.1 There is no Acceptable Solution for Section 13.5.4 A2.
- 8.8.2 As such, the application invokes discretion for this standard, and must be assessed against the relevant Performance Criteria.
- 8.8.3 Section 13.5.4 P2 states:
Each lot must be capable of accommodating an on-site wastewater treatment system adequate for the future use and development of the land.
- 8.8.4 Given the proposed size of the lots, it is considered that there is adequate room on site to accommodate an on-site wastewater treatment system that is suitable for the future use and development of the land. It is recommended that a condition be imposed on any permit requiring a wastewater report that addresses the location and suitability of the existing system on Lot 1, and recommendations for a system on Lot 2.
- 8.8.5 As such, the proposed development satisfies the Performance Criteria contained in Section 13.5.4 P2 of the Interim Scheme.

8.9 Discretion 6 – Services

8.9.1 The Acceptable Solution for Section 13.5.4 P3 states:

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

8.9.2 There is no public stormwater system that services the area.

8.9.3 As such, the application invokes discretion for this standard, and must be assessed against the relevant Performance Criteria.

8.9.4 Section 13.5.4 P3 states:

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

8.9.5 Given the proposed size of the lots, it is considered that there is adequate room on site to accommodate an on-site stormwater management system that is suitable for the likely future use and development of the land. It is recommended that a condition be imposed on any permit requiring a stormwater management report to be prepared and submitted in conjunction with engineering design drawings.

8.9.6 As such, the proposed development satisfies the Performance Criteria contained in Section 13.5.4 P3 of the Interim Scheme.

8.10 Discretion 7 – Sight Distances at Accesses, Junctions and Level Crossings

8.10.1 The Acceptable Solution for Section E5.6.4 A1 states:

Sight distances at:

(a) an access or junction must comply with the Safe Intersection Sight Distance shown in Table E5.1; and

(b) rail level crossings must comply with AS1742.7 Manual of uniform traffic control devices - Railway crossings, Standards Association of Australia.

8.10.2 A desktop assessment concluded that the access has a sight distance of approximately 40-50m, which is less than that required by Table E5.1.

8.10.3 As such, the application invokes discretion for this standard, and must be assessed against the relevant Performance Criteria.

8.10.4 Section E5.6.4 P1 states:

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.*

8.10.5 Council's Senior Technical Officer has provided the following comment in regard to sight distance:

It is arguable whether this section of the code applies as the access is existing and not new.

As the access is located at the head of the cul-de-sac the sight distances are not strictly applicable in this instance as they apply to left turn and right turn manoeuvres into two way roads.

The sight distance does however comply with Fig 3.2 in AS2890.1 for a domestic driveway and are considered safe and reasonable in this instance.

8.10.6 As such, the proposed development satisfies the Performance Criteria contained in Section E5.6.4 P1 of the Interim Scheme.

8.11 Discretion 8 - Vehicular Passing Areas Along an Access

8.11.1 The Acceptable Solution 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.

The application proposes vehicular passing bays, but at intervals greater than every 30m. The proposed passing bays are compliant with bushfire standards.

8.11.2 As such, the application invokes discretion for this standard, and must be assessed against the relevant Performance Criteria.

8.11.3 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.*

8.11.4 Council's Senior Technical Officer has provided the following comment:

Access to the property is off the head of a short cul-de-sac, which services only 6 properties. As a passing bay is proposed at the road no undue delays or conflicts should arise from vehicles waiting to enter or exit the driveway.

The driveway is approximately 120m in length from the road to the lot proper where the shared access to the proposed lots will diverge. Access to the adjacent lots branch off at approximately the 40m and 60m marks providing additional passing opportunity.

Given the low traffic volumes generated by the development (approx. 10 additional vehicle movements per day) it is considered that the proposed access will provide sufficient passing opportunity for safe and easy access.

8.11.5 As such, the proposed development satisfies the Performance Criteria contained in Section E6.7.3 P1 of the Interim Scheme.

8.12 Discretion 9 – Stormwater Management

8.12.1 Section E7.7.1 A1 states:

Stormwater from new impervious surfaces must be disposed of by gravity to public stormwater infrastructure.

8.12.2 There is no public stormwater system in the area able to service the development.

8.12.3 As such, the application invokes discretion for this standard, and must be assessed against the relevant Performance Criteria.

8.12.4 Section E7.7.1 P1 states:

Stormwater from new impervious surfaces must be managed by any of the following:

(a) *disposed of on-site with soakage devices having regard to the suitability of the site, the system design and water sensitive urban design principles*

(b) *collected for re-use on the site;*

(c) *disposed of to public stormwater infrastructure via a pump system which is designed, maintained and managed to minimise the risk of failure to the satisfaction of the Council.*

8.12.5 Council's Senior Technical Officer has recommended that a condition be imposed on any permit requiring that the stormwater run off from the new impervious surface (i.e., the driveway works) be managed on site, and that any run-off from the site is to be no greater than pre-existing run-off.

8.12.6 As such, the proposed development satisfies the Performance Criteria contained in Section E7.7.1 P1.

8.13 Discretion 10 – Development on Dispersive Soils

8.13.1 There is no Acceptable Solution for Section E21.7.1 A1.

8.13.2 As such, the application invokes discretion for this standard, and must be assessed against the relevant Performance Criteria.

8.13.3 Section E21.7.1 P1 states:

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

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

8.13.4 The application was supported by a Dispersive Soils Management Plan, prepared by a suitably qualified person.

8.13.5 The supporting report concludes that should the management recommendations contained in the report not be adhered to, there is a moderate risk associated with dispersive soils and potential erosion on the site. However, the report states, provided the recommendations are adhered to, the development represents a low risk, and is concluded to be compliant with the Performance Criteria.

8.13.6 It is recommended that, should Council acting as the Planning Authority approve the application, a condition requiring the recommendations contained in the report be adhered to should be included on any permit.

8.13.7 As such, the proposed development satisfies the Performance Criteria contained in Section E21.7.1 P1 of the Interim Scheme.

9. Concerns raised by representors

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

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

<i>Concerns of Representor</i>	<i>Planning Response</i>
<i>Stormwater Management</i>	
<p><i>The existing drainage flow paths across the proposed LOT 2 flows to the existing gully through to Honeywood Drive. There is documented evidence that this water flow already negatively impacts the driveway by flowing / flooding over the driveway and eroding the soil parallel to the driveway and surrounding land on said property. The proposed subdivision and subsequent building on LOT 2 would increase pre-existing runoff and exacerbate water to Honeywood Drive contrary to E.7.1. A3.</i></p>	<p><i>The flow paths indicated on the proposal plan are existing natural flow paths as a result of the lay of the land and dominated by a gully contained predominantly on lot 2 and through the representors land where it joins a watercourse to the south.</i></p> <p><i>Stormwater runoff from adjacent land naturally falls to the low point and through the representor's property and to the watercourse below.</i></p> <p><i>The representor's driveway also acts as a cut-off drain and directs water from the eastern portion of the catchment to the culvert in the low point under their driveway.</i></p> <p><i>Existing flooding of the driveway could be mitigated with a larger culvert.</i></p> <p><i>The proposed subdivision has potential to increase runoff onto the representor's property if the stormwater from the sealed driveway is not managed on the subject property. The sealing of the driveway will reduce the infiltration and potentially result in an increased flow rate at the end of the sealed driveway. This point is however approximately 180m from the boundary with the representor's property, leaving sufficient space for the runoff to be managed on site to reduce flows to predevelopment before reaching the representors property.</i></p> <p><i>A condition requiring the developer to provide a stormwater management report, including calculations, detailing measures to limit stormwater runoff to pre-development</i></p>

	<p>levels in conjunction with the engineering design plans has been recommended.</p>
<p>Due to the slope of proposed LOT 2 heading South any future dwelling / buildings will have concentrated water runoff impacting Honeywood Drive Honeywood contrary to E.7.1. A3.</p>	<p>This would be independently assessed if/when a development application is received for new building(s).</p>
<p>Land is impacted from water runoff and draining water from 5 Sunnyview Place, Honeywood whenever there is consistent rain and /or heavy rain and over winter with the land remaining congested over the following weeks.</p> <p>Recent work undertaken by the current owners of 5 Sunnyview Place Honeywood to address their own water issues has resulted in increased water runoff onto said driveway, resulting in damaging erosion to the soil surrounding the driveway in addition to damage to the driveway itself.</p>	<p>The matter has been referred to Council's Plumbing Inspector for follow up.</p>
<p>Map on page 8 indicates plans to construct a low berm along boundary to retain flows within LOT 1. This is of particular concern because this has the potential to increase pre-existing run offs and negatively impact a property in Honeywood Drive where there is already water runoff issues from LOT 1 and proposed LOT 2.</p>	<p>The proposed bund has potential to alter existing overland flow paths and is not supported.</p>
<p>Stormwater from new impervious surfaces must be disposed of by gravity to public storm water infrastructure (E7.7.1 A1). Where is the drainage from the new road and driveway, and dwellings / buildings going to go taking in to account the natural slope of the land, pre-existing flow to the gully that runs through</p>	<p>Refer to Discretion 9, above.</p> <p>The application has been assessed by Council's Senior Technical Officer and is deemed to perform well. It is recommended that conditions be imposed on any permit, should approval be granted, addressing stormwater management.</p>

<p>said property?</p> <p><i>In addition, the Brighton Interim Planning policy (2015) E7.7.1 A3 b) requires that "stormwater runoff with be no greater than the pre-existing runoff or any increase can be accommodated within existing or upgraded public storm water infrastructure". The proposed subdivision will increase pre-existing run-off that will flow on to Honeywood Drive given the slope of the land and dispersive soil of the proposed subdivision.</i></p>	
<p><i>Increased water flow and runoff from LOT 1 & 2 on to a property in Honeywood Drive will lead to increased vegetation growth which then increases bush fire risk and maintenance requirements.</i></p>	<p><i>Refer to Discretion 9, above.</i></p>
<p><i>As identified in the Bushfire Hazard Report for proposed LOT 2 subdivision prior to sealing of titles on-site vegetation clearing must be conducted. This will increase pre-existing runoff on to a property in Honeywood Drive; causing increased soil erosion and damage to the driveway.</i></p>	<p><i>Refer to Discretion 9, above.</i></p>
<p><i>Increased water pooling resulting from increased runoff during rain (and the weeks following) would potentially make it difficult for utility and emergency service vehicles to access our wooded area as they would get bogged.</i></p>	<p><i>Refer to Discretion 9, above.</i></p>
<p><i>Dispersive Soils</i></p>	
<p><i>The dispersive soils assessment report has noted that a specific surface layer for new driveways surfaces for surface stability is required; where does the resulting runoff from the driveway</i></p>	<p><i>The dispersive soil report concludes that:</i></p> <p><i>Provided all the recommendations in this management report are adhered to the development represents a low risk,</i></p>

<p><i>fall given that it will slope down to the south i.e., again towards said property?</i></p>	<p><i>and it is concluded to be compliant with D13.4.3P4 and E21.7.1P1 of the Brighton interim planning scheme.</i></p> <p><i>A condition requiring compliance with the Dispersive Soil Report and the publication "Dispersive soils and their management - Technical manual" (DPIWE Tas 2009) is recommended.</i></p>
<p><i>Their report does not adequately address how development on this site will impact the area surrounding the proposed building on LOT 2 and subsequent neighbouring properties (contrary to E21.7.1 P1a &b). Nor does the report describe sufficient management practices to stop additional water runoff on to dispersive soil and contribute to an area that already has water from LOTS 1 and 2 pool onto the property (contrary to E21.7.1 P1 c and d).</i></p>	<p><i>This would be independently assessed if/when a development application is received for new building(s).</i></p> <p><i>Re: stormwater management. Addressed above.</i></p>
<p>Lot Design</p>	
<p><i>In the application's assessment against Clause 13.5.1 (Lot Designs) the planner reports that A4 P4 d "the lot will contribute to more efficient utilisation of rural living land". This is debatable given proposed LOT 1 has a number of soil erosion, tunnelling and water drainage issues that make the land unusable.</i></p>	<p><i>Both the lot design (Discretion 2) and the dispersive soils (Discretion 10) have been addressed in the assessment above.</i></p>
<p><i>The applicant's submission for subdivision report also claims that P4 e) the amenity of neighbouring land is unlikely to be unreasonably affected by subsequent development and use. We strongly dispute this claim. Clearly the increase in water runoff from LOT 2 (and planned changes to LOT 1 reported above) on to a property in Honeywood Dr will further damage that land through</i></p>	

<i>increased water flow and subsequent erosion.</i>	
<i>Overlooking of the property will result in loss of privacy.</i>	<i>Likely 100m+ separation between a new dwelling which is ample separation in the Rural Living Zone.</i>
Liability	
<i>Who is liable for increased damage to property and the associated cost of repairs, increased maintenance and decrease in property value if the subdivision is approved?</i>	<i>It is recommended that a condition be imposed requiring the developer to undertake stormwater management in accordance with a plan prepared by a suitably qualified and experienced civil engineer. The works will be supervised by an engineer and require certification from the engineer at the completion of works.</i>

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 TasWater. TasWater has provided a Submission to Planning Authority Notice (TasWater Ref No TWDA 2020/01316-BTN, dated 10 December 2020), which is to be included with any permit, should approval be granted.

11. Section 35K Endorsement

11.1. On 3 February 2021, Council received a notice from the Tasmanian Planning Commission under Section 35(K)(1)(a) of the *Land Use Planning and Approvals Act 1993* to modify a draft Local Provisions Schedule (LPS).

11.2. Section 35(K)(2)(d) relevantly states:

(2) If a planning authority is directed under subsection (1)(a) to modify a draft LPS –

(a) ...

(b) ...

(c) ...

(d) *the planning authority must not issue a permit, or do any other thing that would, if the draft LPS as modified were an LPS, be a contravention of the LPS.*

- 11.3. The application has been assessed against the provisions of the draft LPS (as modified), and it is concluded that the application does not conflict with those provisions.
- 11.4. Should Council determine to issue a permit, it is the Officer's opinion that the Planning Authority's decision would not be in contravention of the Brighton draft LPS and would therefore satisfy the requirements of Section 35K(2)(d) of the Act.

12. Conclusion

- 12.1. The proposal is for a two lot subdivision in the Rural Living Zone at 5 & 6 Sunnyview Place, Honeywood.
- 12.2. The key issues relate to the subdivision standards for the Rural Living Zone (e.g., lot design), stormwater management and dispersive soils management.
- 12.3. The proposed development has been assessed against the relevant provisions of the *Brighton Interim Planning Scheme 2015*, and is considered to perform well.
- 12.4. The development application is recommended for approval, subject to conditions.

RECOMMENDATION:

That pursuant to the *Brighton Interim Planning Scheme 2015*, Council approve application SA 2020/029 for the proposed Two (2) Lot Subdivision in the Rural Living Zone at 5 & 6 Sunnyview Place, Honeywood, 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, whichever is later, in accordance with Section 53 of the *Land Use Planning and Approvals Act 1993*.

- (3) The development and works must be carried out in accordance with:
- a) BUSHFIRE HAZARD REPORT, Proposed 2 Lot Subdivision, Address: 5 Sunnyview Place, Honeywood TAS 7017, Title Reference: C.T.143314/4 Prepared by James Rogerson, Provisional Bushfire Hazard Practitioner (BFP-P) VERSION - 01 Date: 30/10/2020
 - b) DISPERSIVE SOIL ASSESSMENT, 5 Sunnyview Place, Honeywood, January 2021 prepared by Geo-Environmental Solutions.
 - c) The Dispersive Soils and their Management: Technical Reference Manual (DPIW, 2009)
- (4) Prior to Council sealing the final plan of survey the developer must provide certification from a suitably qualified person that all works required by the Bushfire Hazard Report have been complied with.

TasWater

- (5) The use and/or development must comply with the requirements of TasWater, as detailed in the form Submission to Planning Authority Notice, TasWater Ref No TWDA 2020/01316-BTN, dated 10 December 2020, as attached to this permit.

Lot Size

- (6) All lot sizes must comply with the relevant standards of the Brighton Interim Planning Scheme 2015.

Public Open Space

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

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

- (8) The cash-in-lieu of public open space must be in the form of a direct payment made before the sealing of the final plan of survey or, alternatively, in the form of a Bond or Bank guarantee to cover payment within ninety (90) days after demand, made after the final plan of survey has taken effect.

Easements

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

Endorsements

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

Final plan

- (11) A final approved plan of survey and schedule of easements as necessary, together with two (2) copies, must be submitted to Council for sealing for each stage. The final approved plan of survey must be substantially the same as the endorsed plan of subdivision and must be prepared in accordance with the requirements of the Recorder of Titles.
- (12) Prior to Council sealing the final plan of survey for each stage, security for an amount clearly in excess of the value of all outstanding works and maintenance required by this permit must be lodged with the Brighton Council. The security must be in accordance with section 86(3) of the *Local Government (Building & Miscellaneous Provisions) Act 1993*. The amount of the security shall be determined by the Council's Municipal Engineer in accordance with Council Policy 6.3 following approval of any engineering design drawings and shall not to be less than \$5,000.
- (13) All conditions of this permit, including either the completion of all works and maintenance or payment of security in accordance with this permit, must be satisfied before the Council seals the final plan of survey for each stage. It is the subdivider's responsibility to notify Council in writing that the conditions of the permit have been satisfied.
- (14) The subdivider must pay any Titles Office lodgment fees direct to the Recorder of Titles.

Engineering

- (15) The subdivision must be carried out in accordance with the Tasmanian Subdivision Guidelines October 2013 (attached).
- (16) Engineering design drawings, to the satisfaction of the Council's Municipal Engineer, must be submitted to and approved by Council before any works associated with development of the land commence.
- (17) Engineering design drawings are to be prepared by a qualified and experienced civil engineer, or other person approved by Council's Municipal Engineer, in accordance with the Tasmanian Subdivision Guidelines October 2013, and must show -
 - a) all existing and proposed services required by this permit;
 - b) all existing and proposed roadwork required by this permit;

- c) measures to be taken to provide sight distance in accordance with the relevant standards of the planning scheme;
 - d) measures to be taken to limit or control erosion and sedimentation;
 - e) any other work required by this permit.
- (18) Approved engineering design drawings will remain valid for a period of 2 years from the date of approval of the engineering drawings.
- (19) The developer shall appoint a qualified and experienced Supervising Engineer (or company registered to provide civil engineering consultancy services) who will be required to certify completion of subdivision construction works. The appointed Supervising Engineer shall be the primary contact person on matters concerning the subdivision.

Water quality

- (20) A soil and water management plan (here referred to as a 'SWMP') prepared in accordance with the guidelines Soil and Water Management on Building and Construction Sites, by the Derwent Estuary Programme and NRM South, must be approved by Council's Municipal Engineer before development of the land commences.
- (21) Temporary run-off, erosion and sediment controls must be installed in accordance with the approved SWMP and must be maintained at full operational capacity to the satisfaction of Council's Municipal Engineer until the land is effectively rehabilitated and stabilised after completion of the development.
- (22) The topsoil on any areas required to be disturbed must be stripped and stockpiled in an approved location shown on the detailed soil and water management plan for reuse in the rehabilitation of the site. Topsoil must not be removed from the site until the completion of all works unless approved otherwise by the Council's Municipal Engineer.
- (23) All disturbed surfaces on the land, except those set aside for roadways, footways and driveways, must be covered with topsoil and, where appropriate, re-vegetated and stabilised to the satisfaction of the Council's Municipal Engineer.

Property Services

- (24) The Subdivider must pay the cost of any alterations and/or reinstatement to existing services, Council infrastructure or private property incurred as a result of the proposed subdivision works. Any work required is to be specified or undertaken by the authority concerned.
- (25) Any existing services shared between lots are to be separated to the satisfaction of Councils Municipal Engineer.

- (26) Property services must be contained wholly within each lots served or an easement to the satisfaction of the Council's Municipal Engineer or responsible authority.
- (27) Property services must be extended the length of the access strip to the lot proper, or conduits for future services provided, to the satisfaction of Council's Municipal Engineer.

Telecommunications and electrical reticulation

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

Vehicular Access

- (30) A sealed vehicle access must be provided from the road carriageway to service each lot.
- (31) The shared vehicular access to Lots 1 and 2 must be constructed/upgraded for the entire length of the R.O.W. to Lot 1 and Lot 2 lot proper (approx. 125m) and, unless approved otherwise by Council's Municipal Engineer, be:
 - a) Constructed with a durable all weather pavement
 - b) Designed so as stormwater runoff is not concentrated onto adjacent properties.
 - c) Surfaced with a material to resist abrasion from traffic and to minimise the entry of water. The surfacing material may be a spray seal, asphalt, concrete, pavers or other approved material.
 - d) A min trafficable width of 4.0m with a minimum sealed width of 3.0m
 - e) Provided with passing pays of 2.0m additional width and 20 metres long (excluding tapers) every 100 metres.

- f) As required by BUSHFIRE HAZARD REPORT, Proposed 2 Lot Subdivision, Address: 5 Sunnyview Place, Honeywood TAS 7017, Title Reference: C.T.143314/4 Prepared by James Rogerson, Provisional Bushfire Hazard Practitioner (BFP-P) VERSION - 01 Date: 30/10/2020.

Stormwater

- (32) Stormwater from the proposed development must be managed on site such that any stormwater runoff from the site, for a storm with an ARI of 20 years, will be no greater than pre-existing runoff to the satisfaction of Council's Municipal Engineer.
- (33) Prior to the approval of Engineering Design Drawings the developer must submit a Stormwater Management Report, including calculations, prepared by a suitably qualified person demonstrating compliance with the conditions of this permit for approval by Councils Municipal Engineer. Once approved the Report will form part of the endorsed documents.

Any measures required by the report must be included in the engineering design drawings and implemented prior to the sealing of the Plan of Survey for the subdivision.

Advice: The report must consider the dispersive nature of the soils on the site.

Wastewater

- (34) Prior to Council sealing the final plan of survey the developer must provide a Wastewater Report, prepared by a suitably qualified person, demonstrating that the wastewater system for the existing house is contained entirely on Lot 1 and that Lot 2 is capable of accommodating an on-site wastewater system suitable for any future development of the site to the satisfaction of Council's Senior Environmental Health Officer.

Any measures required by the report must be implemented prior to the sealing of the Plan of Survey for the subdivision.

Maintenance and Defects Liability Period

- (35) The subdivision must be placed onto a twelve (12) month maintenance and defects liability period in accordance with Council Policy following the completion of the works in accordance with the approved engineering plans and permit conditions.
- (36) Prior to placing the subdivision onto the maintenance and defects liability period the Supervising Engineer must provide certification that the works comply with the Council's Standard Drawings, specification and the approved plans.

Construction Amenity

- (37) 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.
- (38) 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.
- (39) 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.
- (40) 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.
- (41) The developer must make good and/or clean any footpath, road surface or other element damaged or soiled by the development to the satisfaction of the Council's Municipal Engineer.

THE FOLLOWING ADVICE APPLIES TO THIS PERMIT:

- A. This permit does not imply that any other approval required under any other legislation or by-law has been granted.
- B. The owner is advised that an engineering plan assessment and inspection fee of 1% of the value of the approved engineering works (minimum of \$300.00), or as otherwise specified in Council's Schedule of Fees, must be paid to Council prior to the approval of engineering plans.

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

DECISION:

Cr Whelan moved, Cr Murtagh seconded that the application be refused.

MOTION LOST

Cr Whelan withdrew the motion.

Cr Owen moved, Cr Geard seconded that the item be held over and discussed at the March Ordinary Council Meeting.

CARRIED

VOTING RECORD

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

The meeting closed at 6.25pm.

Confirmed: _____
(Mayor)

Date: _____
16th March 2021