



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,
13TH APRIL, 2021

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

IN ATTENDANCE: Mrs J Banks (Governance Manager); Mr D Allingham (Manager Development Services) and Mr L Wighton (Senior Technical Officer)

1. ACKNOWLEDGEMENT OF COUNTRY:

2. APOLOGIES:

Cr Owen moved, Cr Murtagh seconded that Cr Foster and Cr Jeffries be granted leave of absence.

CARRIED

VOTING RECORD

In favour	Against
Cr Curran	
Cr Garlick	
Cr Geard	
Cr Gray	
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 Owen moved, Cr Curran seconded that Item 5.3 be brought forward and discussed.

CARRIED

VOTING RECORD

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

For the purpose of these Minutes they will remain in numerical order.

5.1 APPLICATION UNDER BRIGHTON INTERIM PLANNING SCHEME 2015 - SA 2020/049 – 13 GLEN LEA ROAD, PONTVILLE TWO (2) LOT SUBDIVISION:

Type of Report:	Planning Authority – For Decision
Application No:	SA 2020/049
Address:	13 Glen Lea Road, Pontville
Proposal:	Two (2) Lot Subdivision
Zone:	Rural Living Zone
Representations:	One (1)
Discretions:	<ol style="list-style-type: none">1. Subdivision (Section 9.10)2. Lot Design (Section 13.5.1 A2)3. Lot Design (Section 13.5.1 A5)4. Public Open Space (Section 13.5.3 A2)5. Services (Section 13.5.4 A2)6. Services (Section 13.5.4 A3)7. Stormwater Management (Section E7.7.1 A1)8. Waterway and Coastal Protection (Section E11.7.1 A1, E11.8.1 A1)
Author:	Manager Development Services (David Allingham)

1. Executive Summary

- 1.1. Planning approval is sought for Subdivision at 13 Glen Lea Road, Pontville (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 2020/049. The application is discretionary and relies on Performance Criteria. The key issues relate to stormwater management.
- 1.3. One (1) representation was received within the statutory public advertising period, with concerns relating to stormwater management.
- 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 2020/049.

- 2.2. This determination must be made no later than 20 April 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 is the land contained at 13 Glen Lea Road, Pontville.
- 5.2. The site has an area of 1.464a.
- 5.3. The site sits to the south of Glen Lea Road, which is a Council maintained road. The land is relatively flat.

- 5.4. The site is currently developed by a single dwelling.
- 5.5. The site is zoned Rural Living under the Interim Scheme. The land adjoining the site is also zoned Rural Living.
- 5.6. The closest Rural Resource zoned land is approximately 310m to the north-west. The closest Significant Agriculture zoned land is approximately 1.3km to the north. The closest Environmental Management zoned land is approximately 670m to the north-west.



Figure 1. Aerial photography of the subject site.

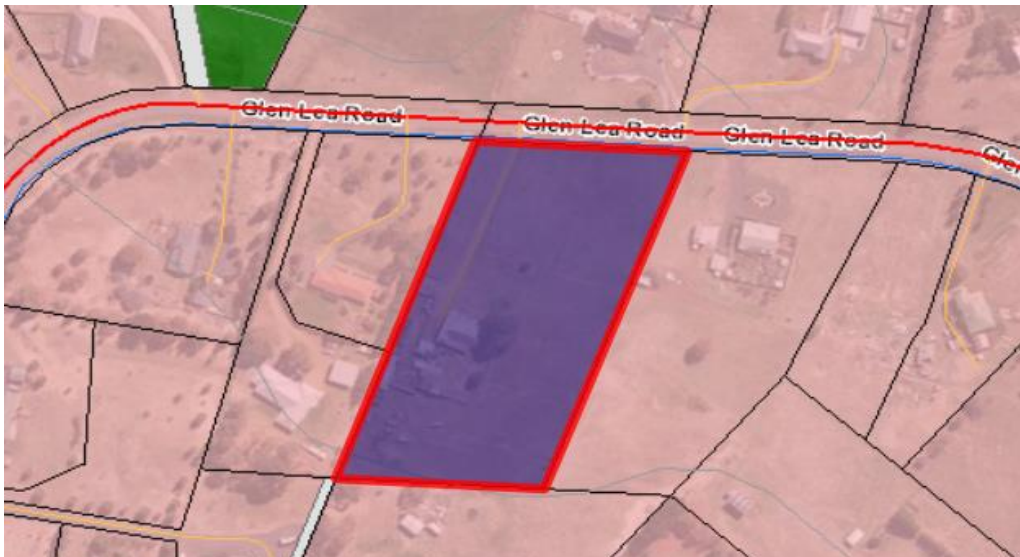


Figure 2. Zoning of the subject site and surrounds. Pink denotes the Rural Living Zone.

6. Proposal

6.1. The applicant has proposed a two-lot subdivision of the site.

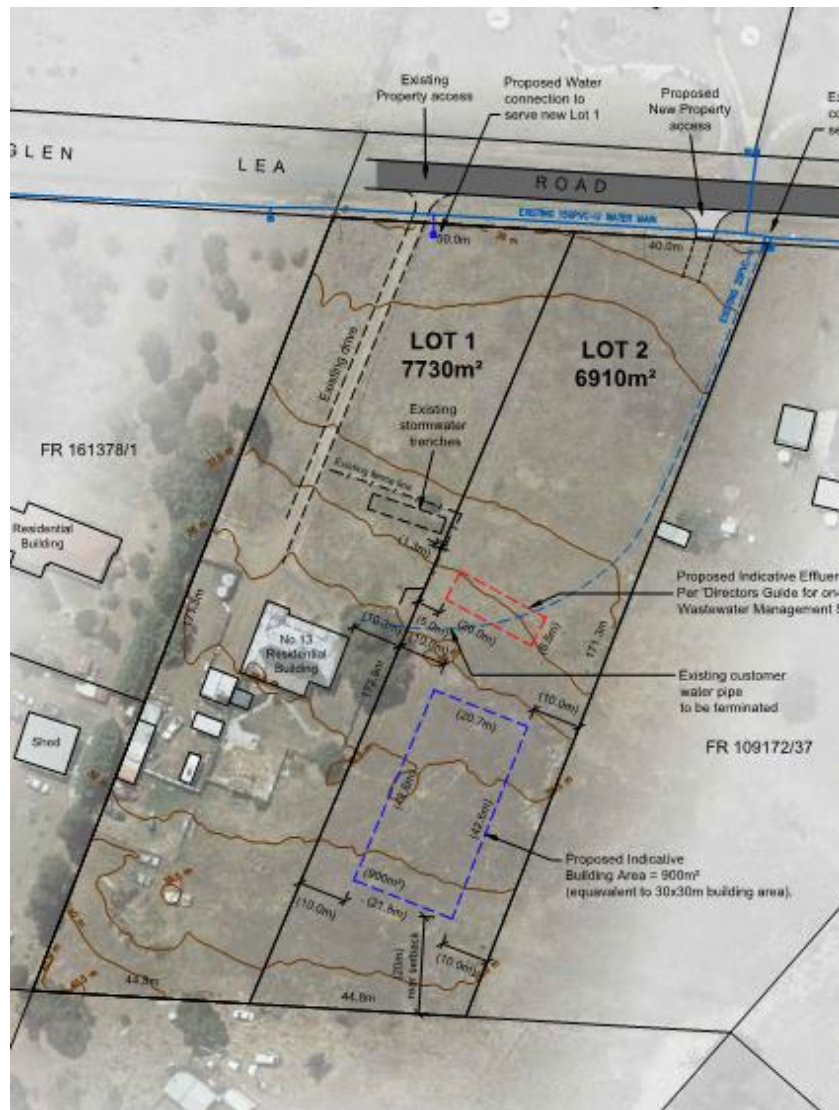


Figure 4. Proposed subdivision layout.

- 6.2. Lot 1 will include the existing dwelling and outbuildings, and is proposed to have a lot area of 7730m².
- 6.3. Lot 2 is currently vacant. It has a proposed lot area of 6910m².
- 6.4. Both lots are proposed to have their own access to Glen Lea Road.

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 11.0 – Waterway and Coastal Protection Code

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

- Section 13.5.1 A1 – Lot Design - Area
- Section 13.5.1 A3 – Lot Design - Frontage
- Section 13.5.1 A4 – Lot Design - Internal Lot
- 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
- E5.6.4 A1 – Sight distance at accesses, junctions and level crossings

- 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 11.7.1 A2, A3 and A4 – Building and works
- Section 11.7.2 A2, A3 – Buildings and Works Dependent on Coastal Location
- Section 11.8.1 A2 - Subdivision

8.3. The following discretions are invoked by the proposal:

- Section 9.10 – Subdivision
- Section 13.5.1 A2 – Lot Design – Building Area
- Section 13.5.1 A5 – Lot Design - Setback
- Section 13.5.3 A1 – Public Open Space
- Section 13.5.4 A2 – Services – On-site wastewater
- Section 13.5.4 A4 – Services - Stormwater
- Section E7.7.1 A1 – Stormwater Management
- Section E11.7.1 A2 – Buildings and Works
- Section E11.8.1 A1 - Subdivision

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.

8.4.3 The application is consistent with the rural Living Zone Purpose:

13.1.1 Zone Purpose Statements

13.1.1.1 To provide for residential use or development on large lots in a rural setting where services are limited.

13.1.1.2 To provide for compatible use and development that does not adversely impact on residential amenity.

13.1.1.3 To provide for agricultural uses that do not adversely impact on residential amenity.

13.1.1.4 To facilitate passive recreational uses that enhance pedestrian, cycling and horse trail linkages.

13.1.1.5 To avoid land use conflict with adjacent Rural Resource or Significant Agriculture zoned land by providing for adequate buffer areas.

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 a 30m x 30m building area cannot be provided clear of the side and rear setbacks. 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 A5 of the Interim Scheme states:

Setback from a new boundary for an existing building must comply with the relevant Acceptable Solution for setback.

The setback from the existing building to the side proposed boundary is 10.3m which doesn't satisfy the 20m setback for the Rural Living Zone. As such, the application must be assessed under the corresponding Performance Criteria.

- 8.6.2 Section 13.5.1 P5 states:

Setback from a new boundary for an existing building must satisfy the relevant Performance Criteria for setback.

The relevant Performance Criteria is at clause 13.4.2 P2 as follows:

Building setback from side and rear boundaries must maintain the desirable characteristics of the surrounding landscape and protect the amenity of adjoining lots, having regard to all of the following:

- (a) *the topography of the site;*
- (b) *the size and shape of the site;*
- (c) *the location of existing buildings on the site;*

- (d) *the proposed colours and external materials of the building;*
- (e) *visual impact on skylines and prominent ridgelines;*
- (f) *impact on native vegetation;*
- (g) *be sufficient to prevent unreasonable adverse impacts on residential amenity on adjoining lots by:*
 - (i) *overlooking and loss of privacy;*
 - (ii) *visual impact, when viewed from adjoining lots, through building bulk and massing.*

8.6.3 The existing dwelling will have a setback from the eastern boundary which is generally consistent with other dwellings in the area. A large tree provides additional screening which will reduce any adverse impact on residential amenity.

8.6.4 The proposed development satisfies the Performance Criteria.

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 (On-site wastewater)

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 The applicant provides the following statement in relation to the Performance Criteria:

A review of the Directors Guidelines for On-site Wastewater Management Systems (the standard) has been undertaken during the design of this subdivision to ensure that the existing and future development is capable of complying with this standard for on-site waste water treatment.

The waste disposal field for the existing dwelling is located within its own lot and has at least a 1.3m setback to the new boundary. Lot 2 has shown capacity to locate an area of at least 130m² for an indicative effluent disposal field (shown on the plan), which is compliant with a minimum area in the standard for heavier clay soil profiles (worst case scenario drainage) and able to meet the required setbacks from boundaries (generally 2 metres from boundaries). Given that the actual soil profile for the subject land is identified as "Undifferentiated alluvial soils" it is expected that an area of less than 130m² will be necessary.

The applicant's statement is supported, and the application is considered to satisfy the Performance Criteria.

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 – Stormwater Management

- 8.10.1 Section E7.7.1 A1 states:

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

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

- 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 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.*

- 8.10.5 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.

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

8.11 Discretion 8 – 11.7.1 A1 – Works

8.11.1 Section E11.7.1 A1 states

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

8.11.2 The proposal includes vehicular access to Lot 2 which will encroach into the Waterway and Coastal Protection Area. The Performance Criteria requires:

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

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

8.11.3 Council's Senior Technical Officer has determined that works within the WCP area can be avoided through a condition requiring the vehicle access to be constructed on the eastern side of Lot 2. Accordingly, the PC can be satisfied.

8.12 Discretion 9 – E11.8.1 A1 Subdivision Standards**8.12.1 Section E11.8.1 A1 requires:**

Subdivision of a lot, all or part of which is within a Waterway and Coastal Protection Area, Future Coastal Refugia Area or Potable Water Supply Area must comply with one or more of the following:

- (a) be for the purpose of separation of existing dwellings;*
- (b) be for the creation of a lot for public open space, public reserve or utility;*
- (c) no works, other than boundary fencing works, are within a Waterway and Coastal Protection Area, Future Coastal Refugia Area or Potable Water Supply Area;*
- (d) the building area, bushfire hazard management area, services and vehicular access driveway are outside the Waterway and Coastal Protection Area, Future Coastal Refugia Area or Potable Water Supply Area.*

8.12.2 The proposal includes vehicular access to Lot 2 which will encroach into the Waterway and Coastal Protection Area. The Performance Criteria requires:

Subdivision of a lot, all or part of which is within a Waterway and Coastal Protection Area, Future Coastal Refugia Area or Potable Water Supply Area, must satisfy all of the following:

- (a) minimise impact on natural values;*
- (b) provide for any building area and any associated bushfire hazard management area to be either:*
 - (i) outside the Waterway and Coastal Protection Area, Future Coastal Refugia Area or Potable Water Supply Area; or*
 - (ii) able to accommodate development capable of satisfying this code.*
- (c) if within a Potable Water Supply Area, be in accordance with the requirements of the water and sewer authority.*

8.12.3 Council's Senior Technical Officer has determined that works within the WCP area can be avoided through a condition requiring the vehicle access to be constructed on the eastern side of Lot 2. Accordingly, the PC can be satisfied.

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>
<p><i>Water flows through the rear of 13 Glen Lea Road onto 11 Glen Lea Road which has resulted in flooding and property damage at 11 Glen Lea Road.</i></p> <p><i>Council needs to consider a very extensive storm water plan when the property is to be developed/built on so that the adjoining property is not impacted.</i></p>	<p>The concerns raised by the representor are valid. There is a natural overland flow path for stormwater which runs north east through number 13 and onto number 11 Glen Lea Road as approximately indicate on the sketch they provided. This is evident when viewing the contours over the area and has been highlighted as part of Council's stormwater investigation.</p> <p>The subdivision of 13 Glen Lea Road however has no direct impact on this overland flow path. Further development of the newly created lot will require stormwater to be managed and disposed of on site. Care will need to be taken to ensure any future dwelling or structure does not alter the overland flow path such that there is an increase in risk of flooding created on any adjacent property. The proposed new lot is of sufficient size to allow any future building to be clear of the overland flow path or manage the overland flow such that there is no increase in risk of flooding to adjacent properties. This can be managed by implementation of the Inundation Code when assessing future development on the lot.</p>

	<p>Council is currently preparing mapping of overland flow paths to inform future decision making and application of the Inundation Prone Areas Code in the Interim Planning Scheme (Flood-Prone Areas Hazard Code in the SPP). It is envisaged that this will be completed in the near future. As an interim measure a condition requiring a 10m minimum width drainage easement be provided along the eastern boundary of Lot 2 to ensure an overland flow path to Glen Lea Road is maintained is recommended. The condition should be worded to allow discretion for the Municipal Engineer to waive the requirement should the mapping be completed prior to sealing of the final plan.</p>
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10. Referrals

10.1. Development Engineering

The application was referred to Council's Senior Technical Officer, who has provided comments, conditions and advice that are incorporated into the body of this report.

10.2. TasWater

The application was referred to TasWater. TasWater has provided a Submission to Planning Authority Notice (TasWater Ref No TWDA 2021/00098-BTN, dated 4 Feb 2021), 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 13 Glen Lea Road, Pontville.

12.2. The key issues relate to the subdivision standards for the Rural Living Zone (e.g., lot design), stormwater 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.

13. Recommendations

That: A. Pursuant to the *Brighton Interim Planning Scheme 2015*, Council approve application SA 2020/049 for the proposed Two (2) Lot Subdivision in the Rural Living Zone at 13 Glen Lea Road, Pontville, 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) The subdivision must be carried out in accordance with:
 - a) Bushfire Hazard Report – 46085CT, Two lot subdivision - 13 Glen Lea Rd Brighton Prepared by Jim Mulcahy Dated: 11 December 2020
- (3) 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.
- (4) 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*.

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 2021/00098-BTN, dated 4 Feb 2021, as attached to this permit.

Public Open Space

- (6) 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 “Lot 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.

- (7) 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

- (8) 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.

- (9) Unless approved otherwise by Council's Municipal Engineer an 10m wide drainage easement must be provided along the eastern boundary of Lot 2. The easement is to ensure an unimpeded overland stormwater flowpath to Glen Lea Road is maintained.

Advice:

Should Council complete mapping of overland flowpath networks within the area to inform future decision making and implementation of the Inundation Code Council's Municipal Engineer may waive the requirement for the easement.

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 lodgement 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).

Water quality

- (16) Temporary run-off, erosion and sediment controls must be installed in accordance with the guidelines Soil and Water Management on Building and Construction Sites, by the Derwent Estuary Programme and NRM South, 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.

Property Services

- (17) 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.
- (18) Any existing services shared between lots are to be separated to the satisfaction of Council's Municipal Engineer.
- (19) Property services must be contained wholly within each lot served or an easement to the satisfaction of the Council's Municipal Engineer or responsible authority.
- (20) Property services for Lot 2 are to be located on the eastern side of the frontage.

Telecommunications and electrical reticulation

- (21) 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.
- (22) 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

- (23) A sealed vehicle access must be provided from the road carriageway to service each lot.
- (24) The access to Lot 2 must be located toward the eastern side of the frontage.

- (25) Vehicular accesses must be located and constructed in accordance with the standards shown on standard drawings TSD-R03-v2 Rural Roads Typical Property Access, TSD-R04-v2 Rural Roads Typical Driveway Profile and TSD-RF01-v2 Guide To Intersection And Domestic Access Sight Distance Requirements prepared by the IPWE Aust. (Tasmania Division), or as otherwise required by this permit, and the satisfaction of Council's Municipal Engineer.
- (26) The existing vehicular access to Lot 1 must be upgraded and provided with a culvert such that the culvert is at a level that maintains grade within the roadside table drain. The culvert end walls are to be constructed to a standard and showing a clear unobstructed stormwater pathway to the neighbouring pit.

Access to Public Road

ADVICE: No works on or affecting any Council road reservation is to be commenced until the Brighton Council has issued a WORKS IN ROAD RESERVATION PERMIT. Application for the issue of the necessary works permit is to be made to the Brighton Council's Asset Services department prior to the proposed date of commencement of any works.

Wastewater

- (27) 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.

Construction Amenity

- (28) The development must only be carried out between the following hours unless otherwise approved by the Council's Manager Development Services:
- Monday to Friday 7:00 a.m. to 6:00 p.m.
 - Saturday 8:00 a.m. to 6:00 p.m.
 - Sunday and State-wide public holidays 10:00 a.m. to 6:00 p.m.
- (29) All works associated with the development of the land shall be carried out in such a manner so as not to unreasonably cause injury to, or prejudice or affect the amenity, function and safety of any adjoining or adjacent land, and of any person therein or in the vicinity thereof, by reason of:

- a) Emission of noise, artificial light, vibration, odour, fumes, smoke, vapour, steam, ash, dust, 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.
- (30) Any accumulation of vegetation, building debris or other unwanted material must be disposed of by removal from the site in an approved manner. No burning of such materials on site will be permitted unless approved in writing by the Council's Manager Development Services.
- (31) Public roadways or footpaths must not be used for the storage of any construction materials or wastes, for the loading/unloading of any vehicle or equipment; or for the carrying out of any work, process or tasks associated with the project during the construction period.
- (32) The developer must make good and/or clean any footpath, road surface or other element damaged or soiled by the development to the satisfaction of the Council's Municipal Engineer.

THE FOLLOWING ADVICE APPLIES TO THIS PERMIT:

- A. This permit does not imply that any other approval required under any other legislation or by-law has been granted.
- B. The 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. 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 Curran moved, Cr Murtagh seconded that the recommendation be adopted.

CARRIED

VOTING RECORD

In favour	Against
Cr Curran	
Cr Garlick	

Cr Geard
Cr Gray
Cr Murtagh
Cr Owen
Cr Whelan

5.2 APPLICATION UNDER BRIGHTON INTERIM PLANNING SCHEME 2015 – DA2020/416 – 27 RIVIERA DRIVE, OLD BEACH MULTIPLE DWELLINGS (1 ADDITIONAL):

Type of Report:	Planning Authority – For Decision
Application No:	DA 2020/416
Address:	27 Riviera Drive, Old Beach
Applicant:	Bryden Homes Pty Ltd
Proposal:	Multiple Dwellings (1 additional)
Zone:	General Residential Zone
Representations:	One (1)
Discretion:	1. Building Envelope D10.4.2 A3 2. Private Open Space 3. Privacy 4. Waste Storage for Multiple Dwellings
Author:	Senior Planner (Joanne Blackwell)

1. Executive Summary

- 1.1. Planning approval is sought for Multiple Dwellings (1 additional) in the General Residential Zone at 27 Riviera Drive, Old Beach.
- 1.2. The application is discretionary due to reliance on performance criteria.
- 1.3. One (1) representation was received. It is considered that the issues raised in the representations warrant modification of the proposal to include conditions for additional privacy screening on the north eastern facing deck.
- 1.4. The key planning issues relate to reliance on performance criteria in relation building envelope, private open space, privacy and waste storage.
- 1.5. The proposal is recommended for approval subject to conditions.

- 1.6. The final decision must be made by the Planning Authority or by full Council acting as a planning authority due to the receipt of representations via the public exhibition period for the development application.

2. Legislative & Policy Content

- 2.1. The purpose of this report is to enable the Planning Authority to determine application DA 2020/416.
- 2.2. This determination must be made no later than 20th April 2021, which has been extended beyond the statutory timeframe with the consent of the applicant.
- 2.3. The relevant legislation is the *Land Use Planning and Approvals Act 1993 (LUPAA)*. The provisions of LUPAA require a planning authority to take all reasonable steps to ensure compliance with the planning scheme.
- 2.4. This report details the reasons for the officer recommendation. The Planning Authority must consider this report but is not bound to adopt the recommendation. Broadly, the Planning Authority can either: (1) adopt the recommendation, or (2) vary the recommendation by adding, modifying or removing recommended reasons and conditions or replacing an approval with a refusal (or vice versa). Any alternative decision requires a full statement of reasons to comply with the *Judicial Review Act 2000* and the *Local Government (Meeting Procedures) Regulations 2015*.
- 2.5. This report has been prepared with appropriate regard to the State Policies that apply under the *State Policies and Projects Act 1993*.
- 2.6. This report has been prepared with appropriate regard to Council's Strategic Plan and other Council policies, and the application is not found to be inconsistent with these. Nevertheless, it must be recognised that the planning scheme is a regulatory document that provides the overriding consideration for this application. Matters of policy and strategy are primarily a matter for preparing or amending the planning scheme.

3. Risk & Implications

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

4. Relevant Background and Past Applications

- 4.1. DA 2016/12 – Dwelling – No Permit Required – 10/2/2016

5. Site Detail

- 5.1. The subject site is located on the northern side of Riviera Drive, Old Beach, opposite the Hannah Court intersection, and approximately 125m east of the Jye Court intersection. The site is located on the crest of the hill, with the site falling steeply along the north eastern boundary.
- 5.2. A dwelling has been constructed in the southern portion of the lot (Figure 1). There is no significant vegetation identified on site.



Figure 1: Aerial View (source: www.thelist.tas.gov.au)

- 5.3. As shown in Figure 2, the site is located in an area of land zoned General Residential, with low density residential land located to the south west. Land to the east of Old Beach Road is zoned Rural Resource. There are no overlays applicable to the site.



Figure 2: Zoning Map (source: www.thelist.tas.gov.au)

6. Proposal

- 6.1. The proposal is for an additional dwelling to be constructed in the northern section of the site. The proposal is for a single storey brick dwelling with iron Colorbond sheet roofing and a north easterly facing deck. The plans show an open plan living/kitchen/dining area, and three bedrooms (master with ensuite), and the usual amenities. Three additional car parking spaces are shown in the centre of the site, two being provided for the use of the occupants of the second dwelling and a visitor parking space.
- 6.2. The application is supported by the attached building design plans.

7. Assessment against planning scheme provisions

7.1. The Zone Purpose

1.5.1 The zone purpose statements for the residential zone are:

- 10.1.1.1 To provide for residential use or development that accommodates a range of dwelling types at suburban densities, where full infrastructure services are available or can be provided.
- 10.1.1.2 To provide for compatible non-residential uses that primarily serve the local community.
- 10.1.1.3 To provide for the efficient utilisation of services.

7.1.2 The proposal accords with the zone purpose statements.

7.2. The following provisions are relevant to the proposed use and development:

- General Residential Zone
- E5.0 – Road and Railway Assets Code
- E6.0 – Parking and Access Code
- E7.0 – Stormwater Management Code

7.3. The following standards are not applicable to this application:

- 10.3 Use Standards (non-residential use, visitor accommodation and local shop).

7.4. The application satisfies the following Acceptable Solutions:

- 10.4.1 A1 Residential Density
- 10.4.2 A1 and A2 Setbacks

- 10.4.3 A1 Site coverage and Private Open Space
- 10.4.4 A1, A2 and A3 Sunlight and Overshadowing for all Dwellings
- 10.4.5 A1 Width of openings for garages and carports for all dwellings
- 10.4.6 A1, A2 and A3 Privacy for all dwellings
- 10.4.7 A1 Frontage fences
- E5.0 Road and Railway Assets Code (entire code)
- E6.0 Parking and Access Code (entire code)
- E7.0 Stormwater Management Code (entire code)

7.5. The following discretions are invoked:

- 10.4.2 A3 Building Envelope
- 10.4.3 A2 Private Open Space
- 10.4.6 A1 Privacy
- 10.4.8 A1 Waste storage for Multiple Dwellings.

7.6. **Discretion 1 - Building Envelope 10.4.2 A3**

7.6.1 The acceptable solution requires construction within a specified building envelope, as shown in Figure 3.

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

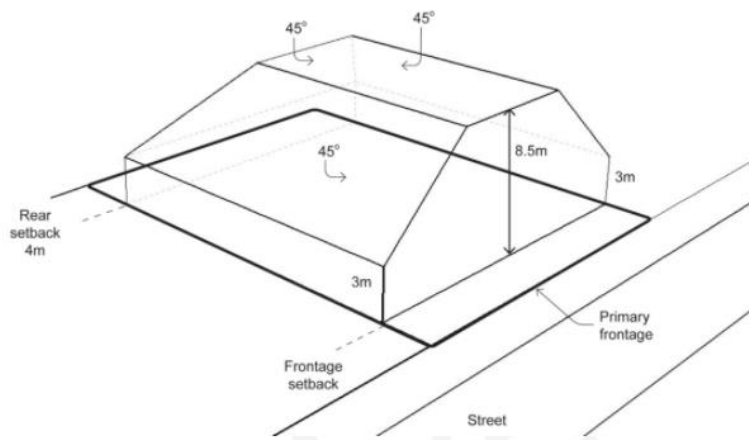


Figure 3: Diagram 10.4.2A – Building Envelope

7.6.2 The proposal plans show a 3m rear setback. Accordingly, the acceptable solution cannot be satisfied and the performance criteria must be addressed.

7.6.3 The performance criteria requires that the proposal address the following:

P3 The siting and scale of a dwelling must:

(a) not cause unreasonable loss of amenity by:

(i) reduction in sunlight to a habitable room (other than a bedroom) of a dwelling on an adjoining lot; or

(ii) overshadowing the private open space of a dwelling on an adjoining lot; or

(iii) overshadowing of an adjoining vacant lot; or

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

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

7.6.4 Shadow diagrams show that there will not be an unreasonable loss of amenity caused by reduction in sunlight to habitable rooms or private open space of adjoining lots due to the orientation of the lots. Further, the topography assists to reduce any impact, given the fall across the subject site.

7.6.5 There are no adjoining vacant lots.

7.6.6 The additional dwelling is a single storey dwelling with a floor area of 110.94m². The dwelling has a maximum building height of 5.6m above natural ground level. Extensive use of windows helps to minimise visual bulk.

7.6.7 The separation between dwellings on adjoining lots is considered to be similar to that in the prevailing area.

7.6.8 Accordingly, the performance criteria can be satisfied.

7.7 Discretion 2 – Private Open Space 10.4.3 A2

7.7.1 The acceptable solution requires that

A2 A dwelling must have an area of private open space that:

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

7.7.2 The proposal is able to satisfy the criteria contained in A2(b)-(g) inclusive. However, the deck (15m²) does not satisfy A2(a). Therefore, the performance criteria must be addressed.

7.7.3 The performance criteria require:

P2 A dwelling must have private open space that:

- (a) *includes an area that is capable of serving as an extension of the dwelling for outdoor relaxation, dining, entertaining and children's play and that is:*
 - (i) *conveniently located in relation to a living area of the dwelling; and*

(ii) orientated to take advantage of sunlight.

7.7.4 The proposed deck is situated on the north eastern side of the dwelling, directly adjacent to the living area. The deck's location is situated to take advantage of sunlight. Further, an additional (approx. 300sqm) area of private open space is available at ground level for use of the occupants.

7.7.5 The performance criteria can be satisfied.

7.8 Discretion 3 - Privacy - D10.4.6 A1

7.8.1 The acceptable solution for D10.4.6 A1 requires:

A1 A balcony, deck, roof terrace, parking space, or carport (whether freestanding or part of the dwelling), that has a finished surface or floor level more than 1 m above natural ground level must have a permanently fixed screen to a height of at least 1.7 m above the finished surface or floor level, with a uniform transparency of no more than 25%, along the sides facing a:

- (a) *side boundary, unless the balcony, deck, roof terrace, parking space, or carport has a setback of at least 3 m from the side boundary; and*
- (b) *rear boundary, unless the balcony, deck, roof terrace, parking space, or carport has a setback of at least 4 m from the rear boundary; and*
- (c) *dwelling on the same site, unless the balcony, deck, roof terrace, parking space, or carport is at least 6 m:*
 - (i) *from a window or glazed door, to a habitable room of the other dwelling on the same site; or*
 - (ii) *from a balcony, deck, roof terrace or the private open space, of the other dwelling on the same site.*

7.8.2 The proposal shows a setback for the northern-most corner of the proposed deck of 2.1m, increasing to 4m at the southern corner. The finished surface level of the deck at its highest point is approximately 1.75m. Approximately 2m of the deck is proposed to be within the 3m setback required by the acceptable solution.

7.8.3 Accordingly, the performance criteria must be addressed, which requires:

P1 A balcony, deck, roof terrace, parking space or carport (whether freestanding or part of the dwelling) that has a finished surface or floor level more than 1 m above natural ground level, must be screened, or otherwise designed, to minimise overlooking of:

- (a) a dwelling on an adjoining lot or its private open space; or*
- (b) another dwelling on the same site or its private open space; or*
- (c) an adjoining vacant residential lot.*

7.8.4 As evidenced in Figure 2 herein, lots along Riviera Drive are large, with dwellings generally developed in the front half of each site. The topography of the site lends itself to overlooking, even at natural ground level, given the sharp drop along the north eastern boundary of the site. (Refer Figure 4).

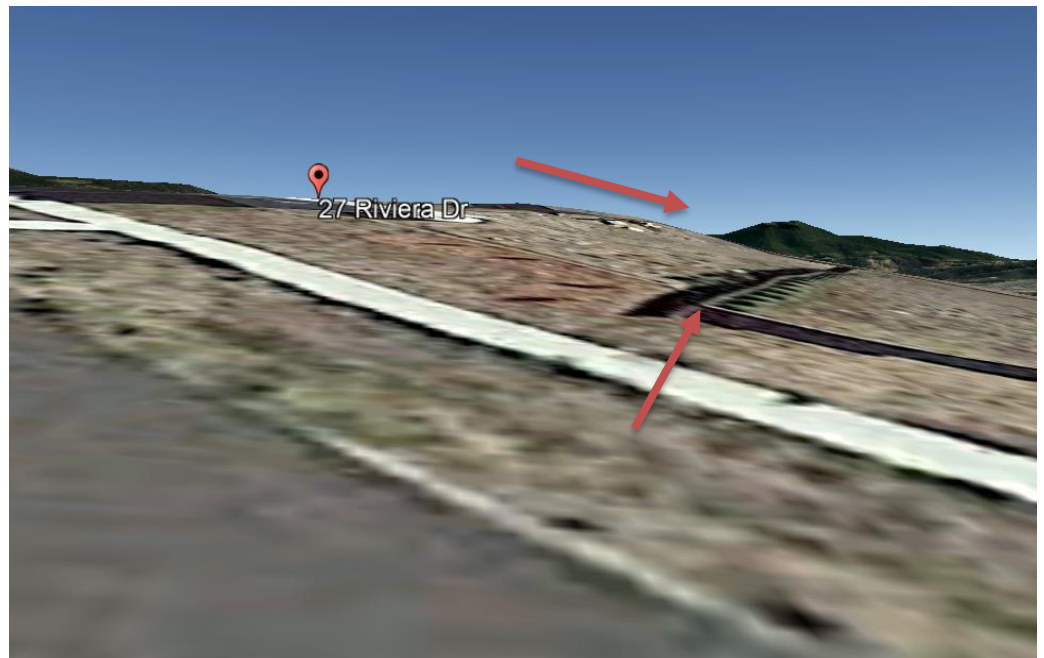


Figure 4. Ground level view (source: Google Earth Pro). The dividing fence line between 27 and 29 Riviera Drive is shown in the centre right of the image. Red pin shows approximate location of existing dwelling.

7.8.5 It is considered that the performance criteria can be satisfied by imposing a condition on any permit approved requiring screening along the north eastern edge of the deck, where the deck is within 3m of the boundary, at a minimum. The screening should be a minimum of 1.7m high, and have a maximum uniform transparency of 25% in accordance with the acceptable solutions.

7.9 Discretion 4 - Waste Storage - D10.4.8 A1

7.9.1 The acceptable solution in clause 10.4.8 A1 requires:

A1 A multiple dwelling must have a storage area, for waste and recycling bins, that is an area of at least 1.5 m² per dwelling and is within one of the following locations:

- (a) in an area for the exclusive use of each dwelling, excluding the area in front of the dwelling; or*
- (b) in a communal storage area with an impervious surface that:
 - (i) has a setback of at least 4.5 m from a frontage; and*
 - (ii) is at least 5.5 m from any dwelling; and*
 - (iii) is screened from the frontage and any dwelling by a wall to a height of at least 1.2 m above the finished surface level of the storage area.**

7.9.2 The proposal has not addressed this standard. The performance criteria, requires therefore:

P1 A multiple dwelling development must provide storage, for waste and recycling bins, that is:

- (a) capable of storing the number of bins required for the site; and*
- (b) screened from the frontage and dwellings; and*
- (c) if the storage area is a communal storage area, separated from dwellings on the site to minimise impacts caused by odours and noise.*

7.9.3 There is sufficient land area available on site for each dwelling to provide for a storage area for waste and recycling bins. It is recommended that a condition be included in any permit approved, requiring that a storage area is created for the exclusive use of each dwelling, behind the building line of the dwelling.

7.9.4 The performance criteria can be satisfied through the above condition.

8 Discussion

8.1 Referrals

8.1.1 TasWater

TasWater have imposed the attached conditions that must be included in any permit granted.

8.1.2 Council's Technical Officer

- 8.1.2.1 The application was referred to council's senior technical officer. That officer's comments are included within the body of this report, where applicable. Standard conditions relating to stormwater management and parking and access have been included.

Concerns raised by Representors

- 8.2 The following table outlines the issues raised by representor.

Planning Concern	Planning Response
Privacy concerns regarding the proposed dwelling and deck overlooking into yard.	Refer to paragraph 7.8

9 Section 35K(1)(a)

- 9.1 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).

- 9.2 Section 35(K)(2)(d) relevantly states:

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.

- 9.3 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.
- 9.4 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.

10 Conclusion

- 10.1 The proposed use and development of *Multiple Dwellings (1 additional)* in *General Residential Zone* at *27 Riviera Drive, Old Beach* satisfies the relevant provisions of the *Brighton Interim Planning Scheme 2015*, and as such is recommend for approval.

11 Recommendations

That: A. Pursuant to the *Brighton Interim Planning Scheme 2015*, Council approve application DA-2020/416 for use and development of Multiple Dwellings (1 additional) in the General Residential Zone at 27 Riviera Drive, Old Beach, for the reasons outlined in the officer's report and a permit containing the following conditions be issued:

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

Amenity

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

Private open space

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

Privacy

- (5) A 1.7 metre high screen, with a uniform transparency of no more than 25 per cent, must extend the entire length of the north-eastern elevation of the deck (i.e. 5 metres). Plans showing compliance with this condition must be submitted to and approved by Council's Manager Development Services prior to commencement of the development.
- (6) The privacy screening must remain in situ for the lifetime of the deck.

Landscaping

- (7) Before any work commences submit a landscape plan prepared by a suitably qualified person for approval by Council's Manager Development Services. The landscape plan must include:
 - (a) A survey of all existing vegetation to be retained and/or removed.
 - (b) Landscaping for the entirety of the site.
 - (c) Lighting,
 - (d) Waste storage. Waste storage must:
 - (i) have a minimum area of 1.5m² per dwelling,
 - (ii) be for the exclusive use of each dwelling, and
 - (iii) not be located between the road frontage and the building line.
 - (d) Details of surface finishes of paths and driveways.
 - (e) Details of fencing including private open space for each dwelling.
 - (f) A planting schedule of all proposed trees, shrubs and ground covers including botanical names, common names, pot sizes, sizes at maturity and quantities of each plant. Feature trees must be a minimum of 1.5m high at the time of planting.
 - (g) Landscaping and planting within all open areas of the site.
- (8) Planting must bear a suitable relationship to the proposed height of the buildings and must not use species listed as noxious weeds within Tasmania, displaying invasive characteristics or unsuitable for fire prone areas. If considered satisfactory, the landscape plan will be endorsed and will form part of this permit.
- (9) Prior to commencement of use, all trees and landscaping must be planted and installed in accordance with the approved Landscaping Plan to the satisfaction of the Council's Manager Development Services. Evidence showing compliance with this condition must be submitted to and approved by the Manager Development Services within 30 days of planting.

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

Fencing

- (11) Any front fence must have a height above natural ground level of not more than:
 - (a) 1.2m, if the fence is solid; or
 - (b) 1.8m, if the fence has openings above a height of 1.2m which provide a uniform transparency of not less than 30%.

Services

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

Parking & Access

- (13) The existing concrete vehicle access must be widened to a minimum width of 5.5m from Riviera Drive to the property boundary in accordance with;
 - (a) Councils Standard Drawings;
 - (b) Standards Australia (2004): Australian Standard AS 2890.1 - 2004 – Parking Facilities Part 1: Off Street Car Parking; Standards Australia, Sydney;and to the satisfaction of Council's Municipal Engineer.
- (14) At least five (5) parking spaces must be provided on the land at all times for the use of the occupiers including at least two (2) car parking space per dwelling and at least one (1) designated for visitor parking, in accordance with Standards Australia (2004): Australian Standard AS 2890.1 - 2004 – Parking Facilities Part 1: Off Street Car Parking; Standards Australia, Sydney.
- (15) Unless approved otherwise by Council's Municipal Engineer the internal private driveway and areas set-aside for parking and associated access and turning must be provided in accordance the endorsed drawings, Standards Australia (2004): Australian Standard AS 2890.1 - 2004 – Parking Facilities Part 1: Off Street Car Parking; Standards Australia, Sydney and include all of the following;

- (a) A minimum trafficable width of 3m
 - (b) Passing bays 5.5m wide by 6.0m long located at the road and every 30m
 - (c) Constructed with a durable all weather pavement.
 - (d) Drained to an approved stormwater system.
 - (e) Surfaced with concrete, asphalt or pavers.
 - (f) Provision for two way traffic.
- (16) The completed parking and associated turning areas and access must be certified by a practicing civil engineer to the effect that they have been constructed in accordance with the endorsed drawings and specifications approved by Council before the use commences.
- (17) All areas set-aside for parking and associated turning, and access must be completed before the use commences and must continue to be maintained to the satisfaction of the Council's Municipal Engineer.

Access to Public Road

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

Stormwater

- (18) Drainage from the proposed development must drain to the public stormwater system to the satisfaction of Council's Municipal Engineer and in accordance with a Plumbing permit issued by the Permit Authority in accordance with the Building Act 2016.

Advice: Roof runoff must be collected in rainwater tanks with the tank overflow directed to the public stormwater system.

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

- b) stormwater runoff will be no greater than pre-existing runoff or any increase can be accommodated within existing or upgraded public stormwater infrastructure
- (20) The driveways must be drained to minimise surface runoff over the footpath or to the adjoining road in accordance with the requirements of the Municipal Engineer and a Plumbing Permit issued by the Permit Authority in accordance with the Building Act 2016.

TasWater

- (21) The use and/or development must comply with the requirements of TasWater, as detailed in the form Submission to Planning Authority Notice, Reference No TWDA 2020/02008-BTN dated 3rd December 2020, as attached to this permit.

Soil and Water Management

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

Construction amenity

- (23) 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.
- (24) 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.
- (25) 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.
- (26) 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.
- (27) 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. Separate approval is required for the strata division of the land.
- C. This planning approval shall lapse at the expiration of two (2) years from the date of the commencement of planning approval if the development for which the approval was given has not been substantially commenced. Where a planning approval for a development has lapsed, an application for renewal of a planning approval for that development shall be treated as a new application.

DECISION:

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

CARRIED

VOTING RECORD

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

5.3 APPLICATION UNDER BRIGHTON INTERIM PLANNING SCHEME 2015- DA 2020/178 – 7 WALLACE STREET, BRIDGEWATER PLEASURE BOAT FACILITY (HOVERCRAFT):

Type of Report: Planning Authority – For Decision

Application No: DA 2020/178

Address: 7 Wallace Street, Bridgewater

Proposal: Pleasure Boat Facility (Hovercraft)

Zone: Rural Resource Zone
General Residential Zone
Open Space Zone
Utilities Zone
Environmental Management Zone

Representations: Two (2)

Discretions:

1. Use - Pleasure Boat Facility (Use Table 26.2)
2. Discretionary use (26.3.3)
3. Setbacks (26.4.2 A2)
4. Setback to Environmental Management Zone (26.4.2 A4)
5. Use Vehicle Parking (Use Table 19.2)
6. Discretionary Use in Open Space Zone (19.3.5)
7. Setback from Residential Zone (19.4.2)
8. Landscaping on residential zone boundary (19.4.3 A2)
9. Building and works within Waterway and Coastal Protection Area (E11.7.1 A1)
10. Coastal Inundation Low Hazard Areas (E15.7.3 A3)
11. Building and works within Coastal Erosion Hazard Code (E16.7.1 A1)
12. Existing Road access and Junctions (E5.5.1 A3)
13. Development adjacent to Road and Railways (E5.6.1 A1)
14. Pleasure Boat Facility (Use Table 29.2)
15. Use standards for reserved land (29.3.1 A1)
16. Parking and Access Code (Surfacing E6.7.6 A1)
17. Parking and Access Code (Landscaping E6.7.8 A1)

Author: Manager Development Services (David Allingham)

Executive Summary

- 1.1 Planning approval is sought for a Pleasure Boat Facility (Hovercraft) at 7 Wallace Street, Bridgewater (the 'site'). The development site is located within the Rural Resource Zone, Utilities Zone and Open Space Zone of the *Brighton Interim Planning Scheme 2015* (the 'Interim Scheme').
- 1.2 The application is known as DA 2020/178. The application is discretionary and relies on Performance Criteria. The key issues relate to use, setbacks and access over the State Rail Network.
- 1.3 Two (2) representations were received within the statutory public advertising period, with concerns relating to road safety and the development's impact on the adjoining bird sanctuary.
- 1.4 The application is recommended for approval, subject to non-standard conditions.
- 1.5 The final decision is delegated to the Planning Authority or by full Council acting as a planning authority.

2. Legislative & Policy Content

- 2.1 The purpose of this report is to enable the Planning Authority to determine application DA 2020/178.
- 2.2 This determination must be made no later than 20 April 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 is the land contained at 7 Wallace Street, Bridgewater, as shown in Figure 1. The subject site comprises three Certificates of Title:
- 5.1.1 Certificate of Title Volume 31371 Folio 1. This lot is zoned Utilities and is to be used for vehicle access to the Open Space Zone. It has a total land area of 4060 square metres (sqm) and can be directly accessed from Wallace Street.
- 5.1.2 Certificate of Title Volume 175791 Folio 1, which is the lot zoned Open Space identified for visitor parking. This lot has a total land area of 1224sqm and has the benefit of an easement providing right of carriageway varying between 3.05m and 3.66m wide over Sealed Plan SP 199710.
- 5.1.3 Certificate of Title Volume 199710 Folio 1 is the dominant lot for the proposed development. It is zoned Rural Resource and has a land area of 1.429ha. This lot comprises the existing dwelling and hothouses.



Figure 1: Development site (Source: Listmap)

- 5.2 Access to the site is from Boyer Road, into Wallace Street as shown in the top right corner of Figure 1. A short distance south of the intersection, Wallace Street crosses the rail line twice before terminating in the Utilities Zoned land comprised in Certificate of Title Volume 31371 Folio 1. A right of way exists from the western end of Wallace Street to the Open Space zone, burdening the Rural Resource Zoned lot (refer figure 2).
- 5.3 The site is complex with numerous titles, different zones, many overlays and access through the State Rail network. The hovercraft will also be launched into the Derwent River which is in the Environmental Management Zone. Figure 2 Shows the various zonings applying to the site and adjoining properties, whilst Figure 3 shows mapped overlays. Overlays include Waterway and Coastal Protection Code; Coastal Inundation Hazard Code, Coastal Erosion Hazard Code. As is the case with all applications, the proposal is also required to address the standards contained within unmapped Codes, such as Road and Railway Assets Code, Parking and Access Code and Stormwater Management Code.



Figure 2: Zoning Map – Red – General Residential Zone; Green Open Space Zone; Beige – Rural Resource Zone; Yellow – Utilities Zone, Blue – Environmental Management Zone (including wetlands to the north and Derwent River).



Figure 3: Mapped Overlays.

- 5.4 The site was previously used for agricultural purposes (commercial scale tomato farm). The supporting planning report identifies that there were originally a large number of hothouses across the site (approximately 8500sqm) which were used for this purpose. Google Earth Pro shows that a number of the hothouses appear to have been dismantled over time. A dwelling also forms part of the development on the site. The submitted site plan is shown in Figure 4.

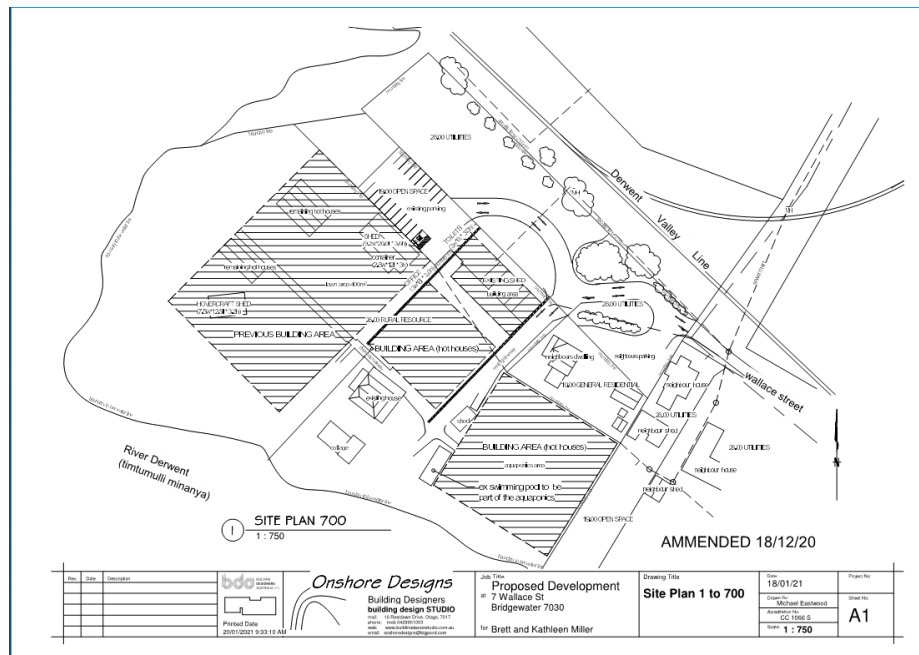


Figure 4: Site Plan

- 5.5 The proposal includes launching the hovercraft into the Derwent River which is within the Environmental Management Zone (EMZ) in the Brighton Interim Planning Scheme 2015. However, it should be noted that other than launching of the hovercraft the majority of the tours are within waters administered under the Derwent Valley Interim Planning Scheme 2015 and managed by Parks & Wildlife Service (See Figure 5 below).



Figure 5: The part of the Derwent River highlighted yellow is administered under the Derwent Valley Interim Planning Scheme 2015.

6. Proposal

- 6.1 The supporting planning report which forms part of the assessment documents sets out in detail the works proposed to be undertaken, with vehicle parking for 19 spaces to be provided on the land contained in Certificate of Title Volume 175791 Folio 1.
- 6.2 In essence, the applicant proposes:
- construction of a 12.55 x 7.5m building to house the hovercraft;
 - construction of a 20 x 9.2m building for the bumper car ride;
 - 12 x 2.4m container for storage of bumper cars;
 - Inflatable jumping castle, inflatable slide;
 - office 6 x 3m;
 - toilets 6 x 3m;

7. Assessment

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

8. Assessment against planning scheme provisions

- 8.1 The following provisions are relevant to the assessment of the proposed use and development:
- Part D – Section 26.0 - Rural Resource Zone
 - Part D – Section 28.0 - Utilities Zone
 - Part D – Section 19.0 - Open Space Zone
 - Part D – Section 29.0 – Environmental Management Zone
 - Part E – Section E5.0 – Road and Railway Assets Code
 - Part E – Section E6.0 – Parking and Access Code
 - Part E – Section E7.0 – Stormwater Management Code
 - Part E – Section 11.0 - Waterway and Coastal Protection Code
 - Part E – Section 15.0 - Inundation Prone Areas Code
 - Part E – Section 16.0 - Coastal Erosion Hazards Code

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

Rural Resource Zone

- Section 26.3.1 A1 - Sensitive Use
- Section 26.3.2 A1 - Visitor Accommodation
- Section 26.4.1 A1 - Building height
- Section 26.4.2 A1 - Front Setback, A3 Sensitive Use
- Section 26.4.3 A1, A2, A3 - Design
- Section 26.4.4. A1 - Plantation Forestry

Open Space Zone

- Section 19.3.1 A1 - Operating Hours
- Section 19.3.2 A1, A2 - Noise
- Section 19.3.3 A1 - Lighting
- Section 19.3.4 A1 - Commercial vehicles
- Section 19.4.1 A1 - Building height
- Section 19.4.2 A1 - Front setback
- Section 19.4.3 A1 - Landscaping (Frontage)
- Section 19.4.4 A1 - Fencing

Environmental Management Zone

- Section 29.4 - Development Standards (all)

Utilities Zone

- Section 28.0 (Entire Code)

Waterway and Coastal Protection Code

- Code E11.7.1 A4 - Discharge Point
- Code 11.7.2 A1 - Dependent on Coastal Location
- Code E11.7.2 A2 - Dredging and reclamation
- Code E11.7.2 A3 - Coastal Protection Works

Inundation Prone Areas Code

- Code E15.6.1 A1 - Habitable Buildings
- Code E15.7.1 A1, A2 - Coastal - High Hazard
- Code E15.7.2 A1 - A3 - Coastal - Medium Hazard
- Code E17.7.3 A1, A2 - Coastal - Low Hazard

- Code E15.7.4 A1-A3 – Riverine areas
- Code E15.7.5 A1-A3 – Landfill, Flooding, onsite wastewater
- Code E15.7.6 A1 – A3 – Works Dependent on Coastal Location

Coastal Erosion Hazards Code

- Code E16.6.1 A1 – Use
- Code E16.7.2 A1 – Extensions to jetties, etc
- Code E16.7.2 A2 – Dredging
- Code E16.7.2 A3 – Coastal Protection works

Parking and Access Code

- Code E6.0 - Entire Code

Stormwater Management Code

- E7.0 - Entire Code

Road and Railway Assets Code

- E.5.0 – Entire code, except E5.6.1 A1

8.3 The following discretions are invoked by the proposal:

Rural Resource Zone

- Section 26.2 – Use Table
- Section 26.3.3 A1 – Discretionary use
- Section 26.4.2 A2 –Setbacks
- Section 26.4.2 A4 – Setback to Environmental Management Zone (EMZ)

Open Space Zone

- Section 19.2 – Use Table
- Section 19.3.5 A1 – Discretionary Use
- Section 19.4.2 A2 – Setback from Residential Zone
- Section 19.4.3 A2 – Landscaping adjoining residential zone

Environmental Management Zone

- Section 29.2 – Use Table
- Section 29.3.1 A1 – Use Standards for Reserved Land

Waterway and Coastal Protection Code

- Code E11.7.1 A1 - Works within WCP area

Coastal Inundation Code

- Code E15.7.3 A3 – Building and works within Low overlay

Coastal Erosion Hazard Code

- Code E16.7.1 A1 – Buildings and works within CEH Area

Road and Railway Assets Code

- Code E5.5.1 A3 – Existing road accesses and junctions
- Code E5.6.1 A1 – Development Adjacent to Roads and Railways

Parking and Access Code

- Code E6.7.6 A1 – Surfacing
- Code E6.7.8 A1 – Landscaping

8.4 Discretion 1 – Use – Pleasure boat facility (Use Table 26.2 - RRZ)

- 8.4.1 The application is considered to be a “Pleasure boat facility”, which is a discretionary use in Use Table 26.2 of the Rural Resource Zone (RRZ) and is defined as:

use of land to provide facilities for boats operated primarily for pleasure or recreation, including boats operated commercially for pleasure or recreation. An example is a marina.

The dodgem car and children’s party component of the application is considered as ‘not directly related yet subservient’.

- 8.4.2 The Zone Purpose must be considered when assessing a Discretionary Use.

26.1.1.1 To provide for the sustainable use or development of resources for agriculture, aquaculture, forestry, mining and other primary industries, including opportunities for resource processing.

26.1.1.2 To provide for other use or development that does not constrain or conflict with resource development uses.

26.1.1.3 To provide for non-agricultural use or development, such as recreation, conservation, tourism and retailing, where it supports existing agriculture, aquaculture, forestry, mining and other primary industries.

26.1.1.4 To allow for residential and other uses not necessary to support agriculture, aquaculture and other primary industries provided that such uses do not:

- (a) *fetter existing or potential rural resource use and development on other land;*
- (b) *add to the need to provide services or infrastructure or to upgrade existing infrastructure;*
- (c) *contribute to the incremental loss of productive rural resources.*

26.1.1.5 To provide for protection of rural land so future resource development opportunities are not lost.

The proposal is to revitalise the existing agricultural use on a smaller scale and to introduce a new non-agricultural use which will not fetter the existing agricultural use.

The application is consistent with the Zone Purpose.

8.5 Discretion 2 – Discretionary Use standards (26.3.3 - RRZ)

- 8.5.1 The Discretionary Use standard at clause 26.3.3 of the application applies. There is no Acceptable Solution (AS), so the application must be assessed under the Performance Criteria (PC):

A discretionary non-agricultural use must not conflict with or fetter agricultural use on the site or adjoining land having regard to all of the following:

- (a) the characteristics of the proposed non-agricultural use;*
- (b) the characteristics of the existing or likely agricultural use;*
- (c) setback to site boundaries and separation distance between the proposed non-agricultural use and existing or likely agricultural use;*
- (d) any characteristics of the site and adjoining land that would buffer the proposed non-agricultural use from the adverse impacts on amenity from existing or likely agricultural use.*

- 8.5.2 The proposal includes revitalising the aquaponics use that used to operate from the site. Other than “controlled environment agriculture” the site has no agricultural potential.
- 8.5.3 The proposed non-agricultural uses on the site will not conflict or fetter the agricultural use.
- 8.5.4 There is no existing or potential agricultural land on the site or adjoining land.

8.5.5 The proposal satisfies the Performance Criteria.

8.6 Discretion 3 – Setbacks (26.4.2 A2 - RRZ)

8.6.1 The Acceptable Solution for side and rear setback in the RRZ is 50m. Three proposed buildings are within 50m of a side or rear boundary. The hovercraft shed is a minimum of approximately 36m from the west side boundary and 39m from the rear south boundary. The conjoined Bumper car shed and container are a minimum of 1.5m from the side boundary adjoining the OSZ lot and approximately 49m from the side boundary shared with 6 Wallace St.

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

Building setback from side and rear boundaries must maintain the character of the surrounding rural landscape, having regard to all of the following:

- (a) the topography of the site;*
- (b) the size and shape of the site;*
- (c) the location of existing buildings on the site;*
- (d) the proposed colours and external materials of the building;*
- (e) visual impact on skylines and prominent ridgelines;*
- (f) impact on native vegetation.*

8.6.3 The proposed sheds are generally in the location of the hothouses. The site is small and constrained in size to satisfying setback standards. The sheds are generally clustered with other sheds and are open sided to reduce the visual impact. The proposed colours and materials are muted to reduce the visual impact. There is no impact on native vegetation or skylines and ridgelines.

8.6.4 The proposal satisfies the Performance Criteria.

8.7 Discretion 4 – Setback to Environment Management Zone (EMZ) (Clause 26.4.2 A4 - RRZ)

8.7.1 The AS required building and works to be setback 100m from the EMZ and the proposal does not satisfy this requirement.

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

Buildings and works must be setback from land zoned Environmental Management to minimise unreasonable impact from development on environmental values, having regard to all of the following:

- (a) the size of the site;*
- (b) the potential for the spread of weeds or soil pathogens;*
- (c) the potential for contamination or sedimentation from water runoff;*
- (d) any alternatives for development.*

8.7.3 The applicant has not addressed the above PC. The hovercraft is to traverse over land from its storage facility into the water in the EMZ. The spread of weeds has not been adequately addressed and a Weed Management Plan should be provided as a condition to any permit to ensure all weeds are removed from the hovercrafts overland path.

8.7.4 The proposal meets the PC subject to conditions.

8.8 Discretion 5 - Use - Vehicle Parking (Use Table 19.2 - OSZ)

8.8.1 The parking area for the proposed operation will be located on a separate title which is in the Open Space Zone (OSZ). Vehicle parking is defined as:

use of land for the parking of motor vehicles. Examples include single and multi-storey car parks.

8.8.2 The Zone Purpose must be considered when assessing a Discretionary Use.

19.1.1.1 To provide land for open space purposes including for passive recreation and natural or landscape amenity.

19.1.1.2 To encourage open space networks that are linked through the provision of walking and cycle trails.

8.8.3 The Open Space title is a small title and of little value as an open space parcel. Whilst not entirely consistent with the Zone Purpose, vehicle parking is considered to be a satisfactory use.

8.9 Discretion 6 - Discretionary Use (19.3.5 OSZ)

8.9.1 The Discretionary Use standard at clause 19.3.5 of the application applies. There is no Acceptable Solution (AS), so the application must be assessed under the Performance Criteria (PC):

Discretionary use must complement and enhance the use of the land for recreational purposes by providing for facilities and services that augment and support Permitted use or No Permit Required use.

8.9.2 Vehicle parking use is provided within the Open Space Zone, with the primary purpose of supporting the Pleasure Boat Facility Use. Users of the site may also be able to appreciate the natural and cultural values of the area when using the car park.

8.9.3 The proposal satisfies the PC.

8.10 Discretion 7 – Setback from residential zone (19.4.2 A2 - OSZ)

8.10.1 The proposed toilet block in the OSZ is proposed to be 200mm from the boundary of the adjoining residential zone and fails to meet the AS. The toilet setback is to be assessed against PC:

Building setback from a residential zone must be sufficient to prevent unreasonable adverse impacts on residential amenity by:

- (a) *overshadowing and reduction of sunlight to habitable rooms and private open space on adjoining lots to less than 3 hours between 9.00 am and 5.00 pm on June 21 or further decrease sunlight hours if already less than 3 hours;*
- (b) *overlooking and loss of privacy;*
- (c) *visual impact when viewed from adjoining lots taking into account aspect and slope.*

8.10.2 A large outbuilding will be directly adjacent to the proposed toilet block and there will no unreasonable adverse impact on residential amenity.

8.10.3 The proposal satisfies the PC.

8.11 Discretion 8 – Landscaping on residential zone boundary (19.4.3 A2 - OSZ)

8.11.1 The AS requires landscaping of a depth of 2m along a boundary with a residential zone. No landscaping is proposed so the application is assessed against the PC:

Along a boundary with a residential zone landscaping or a building design solution must be provided to avoid unreasonable adverse impact on the visual amenity of adjoining land in a residential zone, having regard to the characteristics of the site and the characteristics of the adjoining residentially-zones land.

8.11.2 As noted above, a large outbuilding adjoins the residential zone boundary and there will be no adverse impact on the residential zone.

8.11.3 The proposal satisfies the PC.

8.12 Discretion 9 – Building and works within Waterway and Coastal Protection (WCP) Area (E11.7.1 A1/P1)

8.12.1 The AS requires building and works within the WCP overlay to be within a building envelope. There are no building envelopes and the proposed sheds and car parking areas are partially within the overlay, so the PC applies:

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.*

8.12.2 A Coastal Vulnerability Assessment (CVA) was provided with the application. The CVA considered the above PC (see page 37 of CVA) and concluded that the application satisfied the PC if the below management options are implemented:

- A soil and water management plan is required if there is proposed building works at the site.
- This fringe of wetland should not be infilled.
- 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.

8.12.3 It is recommended that conditions reflecting the management options are included on any permit issued.

8.12.4 The proposal meets the PC subject to conditions.

8.13 Discretion 10 – Coastal Inundation Low Hazard Areas (E15.7.3 A3/P3)

8.13.1 The AS requires an outbuilding within the Low Hazard Area to have a floor area of no more than 60m². The hovercraft storage shed is within the Low Hazard Area and has a floor area of 84m² and the proposal must be assessed against the PC:

A non-habitable building must satisfy all of the following:

- (a) risk to users of the site, adjoining or nearby land is acceptable;*
- (b) risk to adjoining or nearby property or public infrastructure is acceptable;*
- (c) need for future remediation works is minimised;*
- (d) provision of any developer contribution required pursuant to policy adopted by Council for coastal protection works;*

except if it is a building dependent on a coastal location ^{R1}.

8.13.2 The CVA report considers the above and determines that the risk of Inundation is low, but recommends that:

the finished floor levels for buildings established at the site are at or above 2.2 m AHD. On this basis, there is a low risk that the floors will be inundated by 2070 based on a 1% AEP event.

It is recommended that a condition to this effect be included on a permit issued.

8.13.3 The proposal meets the PC subject to conditions.

8.14 Discretion 11 – Building and Works within Coastal Erosion Hazard Code (E16.7.1 A1/P1)

8.14.1 Building and works are proposed within low and medium hazard areas. There is no AS for this standard so it must be assessed against the PC:

Buildings and works must satisfy all of the following:

- (a) not increase the level of risk to the life of the users of the site or of hazard for adjoining or nearby properties or public infrastructure;*

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

8.14.2 The CVA considers the potential for coastal erosion and concludes the following:

- It is established that up to 25 m of coastline recession may be expected by 2070.
- As the proposed structures are not located within the zone of reduced foundation capacity, the foundations should be designed to account for the site classification Class M.

8.14.3 The conclusion of the CVA is accepted, however it is noted that the CVA report and the site plan show the location of the hovercraft shed in different locations. A condition should be included in any permit granted that requires the CVA to be amended to assess the suitability of the location of the hovercraft shed on the Site Plan or the hovercraft shed be relocated to the area shown in the CVA.

8.14.4 The proposal meets the PC subject to conditions.

8.15 Discretion 12 – Existing road accesses and Junctions (E5.5.1 A3/P3 - Road and Railway Assets Code)

8.15.1 The AS requires:

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.

8.15.2 The TIA submitted in support of the application assumes the AADT will increase from 60 to 76 AADT. However, the assumption for existing traffic movements (60 vpd) in the TIA has not been substantiated. The previous use has not been operational for some time. It is considered that the development does not meet the acceptable solution.

8.15.3 The PC requires:

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.*

8.15.4 Council, as the relevant road authority, considers that to provide a safe environment for vehicle traffic unfamiliar with the road (i.e. tourist/visitors) Wallace Street should be upgraded to dual lane (two way) or as a minimum provided with formal passing opportunities. A condition to this effect is recommended.

8.15.5 The PC can be satisfied subject to conditions.

8.16 Discretion 13 –Development adjacent to Road and Railways (5.6.1 A1 – Road and Railway Assets Code)

8.16.1 The proposal includes car parking to be constructed in the OSZ, which is setback approximately 28m from the rail corridor, together with vehicle access across the UZ. A toilet block is proposed to be constructed, which is in alignment with existing buildings on site.

8.16.2 The AS requires:

A1.1 Except as provided in A1.2, the following development must be located at least 50m from the rail network, or a category 1 road or category 2 road, in an area subject to a speed limit of more than 60km/h:

- (a) new buildings;*
- (b) other road or earth works; and*
- (c) building envelopes on new lots.*

A1.2 Buildings, may be:

- (a) located within a row of existing buildings and setback no closer than the immediately adjacent building; or*
- (b) an extension which extends no closer than:*
 - (i) the existing building; or*
 - (ii) an immediately adjacent building.*

8.16.2 As the proposal includes works to create vehicle parking within 50m of the rail network, the PC applies:

P1 The location of development, from the rail network, or a category 1 road or category 2 road in an area subject to a speed limit of more than 60km/h, must be safe and not unreasonably impact on the efficiency of the road or amenity of sensitive uses, having regard to:

- (a) the proposed setback;*
- (a) the setback;*
- (b) the existing setback of buildings on the site;*
- (c) the frequency of use of the rail network;*
- (d) the speed limit and traffic volume of the road;*
- (e) any noise, vibration, light and air emissions from the rail network or road;*
- (f) the nature of the road;*
- (g) the nature of the development;*
- (h) the need for the development;*
- (i) any traffic impact assessment;*
- (j) any recommendations from a suitably qualified person for mitigation of noise, if for a habitable building for a sensitive use; and*
- (k) any written advice received from the rail or road authority.*

- 8.16.3 It is considered that the proposal can satisfy the PC, given the non-sensitive use and development proposed within the 50m setback from the rail corridor.

8.17 Discretion 14 – Use – Pleasure boat facility (Use Table 29.2 - EMZ)

- 8.17.1 The application is considered to be a “Pleasure boat facility”, which is a discretionary use in Use Table 29.2 of the EMZ, if no reserve management plan applies to the land in the Zone. The hovercraft tours will be launched from the foreshore directly into the River Derwent Marine Conservation Area, but there is no management plan for this area.

- 8.17.2 The Zone Purpose must be considered when assessing a Discretionary Use:

29.1.1.1 To provide for the protection, conservation and management of areas with significant ecological, scientific, cultural or aesthetic value, or with a significant likelihood of risk from a natural hazard.

29.1.1.2 To only allow for complementary use or development where consistent with any strategies for protection and management.

29.1.1.3 To facilitate passive recreational opportunities which are consistent with the protection of natural values in bushland and foreshore areas.

29.1.1.4 To recognise and protect highly significant natural values on private land.

29.1.1.5 To protect natural values in un-developed areas of the coast.

- 8.17.3 The operator proposes that the hovercraft tours will help educate people about the local flora & fauna in the area and that the hovercraft is low impact. An Avifauna assessment on the impact of the operation of the hovercraft is provided with the application which concludes that the impact on avifauna will be acceptable.

- 8.17.4 It should be noted that the majority of the tours will be undertaken on land outside Brighton Council’s jurisdiction.

8.18 Discretion 15 – Use standards for Reserved Land (Clause 29.3.1 A1/P1 - EMZ)

- 8.18.1 The AS requires the use to be undertaken in accordance with a reserve management plan, however no reserve management plan exists for the River Derwent Marine Conservation Area. The application must be assessed under the following PC:

Use must satisfy all of the following:

- (a) be complementary to the use of the reserved land;*
- (b) be consistent with any applicable objectives for management of reserved land provided by the National Parks and Reserves Management Act 2002;*
- (c) not have an unreasonable impact upon the amenity of the surrounding area through commercial vehicle movements, noise, lighting or other emissions that are unreasonable in their timing, duration or extent.*

8.18.2 As noted above the use is proposed to provide education about the flora & fauna in the area and the Avifauna assessment concludes that the impact of the hovercraft will be low.

8.18.3 The Crown consent from PWS states that PWS “... has deemed it to be consistent with the relevant management objectives under the National Parks and Reserves Management Act 2002.”

8.18.4 The application satisfies the PC.

8.19 Discretion 16 – 6.7.6 A1 – Surfacing

8.19.1 The AS requires that *parking spaces and vehicle circulation roadways must be in accordance with all of the following;*

- (a) paved or treated with a durable all-weather pavement where within 75m of a property boundary or a sealed roadway;*
- (b) drained to an approved stormwater system,*

unless the road from which access is provided to the property is unsealed.

8.19.2 The proposal includes a sealed surface for the parking area and access to parking. Gravel is proposed for other internal (non-public) access. Accordingly, the PC must be addressed:

Parking spaces and vehicle circulation roadways must not unreasonably detract from the amenity of users, adjoining occupiers or the quality of the environment through dust or mud generation or sediment transport, having regard to all of the following:

- (a) the suitability of the surface treatment;*
- (b) the characteristics of the use or development;*
- (c) measures to mitigate mud or dust generation or sediment transport.*

8.19.3 It is considered that the proposal can satisfy the PC through a condition to ensure that public access and parking areas are sealed and that internal (private) access be maintained so as not to create a nuisance.

8.20 Discretion 17 – E6.7.8 A1 – Landscaping

8.20.1 The AS requires that landscaping of parking and circulation areas must be provided where more than 5 car parking spaces are proposed. This landscaping must be no less than 5 percent of the area of the car park, except in the Central Business Zone where no landscaping is required.

8.20.2 The applicant has not addressed this criteria. Accordingly, the PC must be addressed which requires:

Landscaping of parking and circulation areas accommodating more than 5 cars must satisfy all of the following:

- (a) *relieve the visual impact on the streetscape of large expanses of hard surfaces;*
- (b) *soften the boundary of car parking areas to reduce the amenity impact on neighbouring properties and the streetscape;*
- (c) *reduce opportunities for crime or anti-social behaviour by maintaining passive surveillance opportunities from nearby public spaces and buildings.*

8.20.3 There is sufficient land area available on site to accommodate landscaping. It is therefore considered that the PC can be satisfied through a condition landscaping to be implemented as part of the development.

9. Concerns raised by representors

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

9.2 Two representations were 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>Representation 1</i>	
<i>Adequate consideration has not been given to the section of road between 3 Wallace Street to 5 Wallace Street in the Traffic Impact</i>	The concerns raised by the representor are valid.

<p><i>Assessment. The section of road covers a length of approximately 60 meters and approximately 3 meters in width of sealed bitumen road. This section of road is only able to cater to a single direction of traffic and there is insufficient space for cars travelling in the opposite direction to pass.</i></p>	<p>The section of Wallace St is only single lane with no passing opportunity.</p>
<p><i>The road does not have sealed footpaths for any potential foot traffic. How will pedestrians safely access existing properties with the increase to traffic in the street?</i></p>	<p>If the figures given in the TIA of 60 vehicle movements per day and a peak of 20 vehicle movements per hour for the existing approved use have not been substantiated</p>
<p><i>The road does not have any infrastructure such as gutters to manage water being pushed off the road due to rain by cars travelling along the road.</i></p>	<p>E5.5.1 Existing road accesses and junctions A3 requires that: 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. The performance criteria P3 is: 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:</p> <ul style="list-style-type: none"> (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.

	<p>Council, as the relevant road authority, considers Wallace Street inadequate to support a tourism type venture where vehicle traffic is unfamiliar with the road conditions and lack of passing. A condition requiring the developer to upgrade Wallace St to 2 lane or at a minimum provide formal passing bays is recommended.</p> <p>The application was referred to TasRail as an adjoining land owner. The development also triggers E5.6.1 P1 of the Road and Railway Assets Code which requires Council to consider “any written advice received from the rail or road authority”. Subsequently TasRail have provided advice requiring a risk assessment to be undertaken. A condition of approval requiring any recommendations from the report to be implemented by the developer is recommended for inclusion in any planning permit. Whilst the risk assessment may not deal directly with the road related issues raised it will address traffic and pedestrian safety as it relates to the rail crossings.</p>
<i>Representation 2</i>	
<p><i>A comprehensive bird survey program will be required prior to the start of operation, otherwise there is no baseline dataset to compare with. It concerns me that the Avifauna Assessment was a desktop assessment only. Given the importance of the upper estuary as a bird sanctuary, I would have expected a comprehensive on-ground/water bird monitoring program to have been undertaken, and thus having data to compare with.</i></p>	<p>Brighton Council only regulates a small area of the River Derwent where the hovercraft will enter and exit the water (See Figure 5.)</p> <p>The use beyond this small area is within the Derwent Valley Council area and managed by Parks & Wildlife Service. The applicant has prepared a Reserve Activity Assessment and PWS will need to issue a license for the use in regards</p>

	to PWS requirements.
<p><i>Potential impact on the Australasian bitterns by the current proposal, is being justified by the fact that there has been a continual presence of Australasian bitterns in the upper estuary over the last 10 years, despite use of the waterway by powerboats and other vessels. But there is absolutely no evidence available to prove that current activities have not, and are not, having an impact on bitterns. The Avifauna Assessment states: Repetitive disturbance events can result in possible long-term effects such as loss of weight, condition and a reduction in reproductive success, leading to population impacts (Natural England 2017). We have no information about the long-term impact on the bitterns with current vessel numbers (and there is no quantitative information about current boat usage of the area) so it is disingenuous to simply assume that the impact will not be increase to detrimental levels by adding up to eight trips a day (one round trip constitutes two trips along the river). The Australasian bittern records from eBird are not mentioned in the Avifauna Assessment so may not have been included. Here are three records from the reed beds on the shore opposite Murphys Flats:</i></p> <p><i>https://ebird.org/australia/checklist/S42332485</i></p> <p><i>https://ebird.org/australia/checklist/S53842352</i></p> <p><i>https://ebird.org/australia/checklist/S59996456, thus critical that the boat is not allowed to veer towards these beds.</i></p>	See above.
<p><i>The plight of the Black swan appears undervalued in this assessment. As the Avifauna Assessment correctly states: The reserve area in the River Derwent was first proclaimed a "sanctuary with respect to black swans". The recent State of the Derwent Estuary 2020 page 126-27 reports on DPIPWE surveying of Black swans in</i></p>	See above

<p><i>this area, and importantly, that this area attracts swans from other parts of Tasmania when other areas become too dry</i> https://www.derwentestuary.org.au/assets/State_of_the_Derwent_Estuary_2020_Update.pdf. Further, this area of the River Derwent is one of the premier sites in Tasmania to see the Black swans and it attracts numerous tourists as well as locals. Impact on this species should be minimised, and the impact by 'joy-rides' proposed by the Bridgewater Causeway could be considerable. At the very least a maximum number of such trips should be stipulated.</p>	
<p><i>The Avifauna Assessment recommends that the hovercraft be operated in a way that reduces speed when flocks of birds are visible on the water. Some very clear guidelines will be required to implement such a complex condition. Approx. how many birds constitutes a flock of birds? All bird species? Distance from birds when required to slow down? How far from the birds before the boat can pick up speed again? It is critical that all this information is stipulated clearly and not left to various skippers (with potential pressures from thrill-seeking customers and company) to make their own interpretation of what is required.</i></p>	<p>See above.</p>

10. Referrals

10.1 Development Engineering

The application was referred to Council's Senior Technical Officer, who has provided comments, conditions and advice that are incorporated into the body of this report.

10.2 TasRail

10.2.1 Planning staff sought advice from the rail authority, TasRail, as an adjoining land owner.

10.2.2 TasRail provided advice that TasRail owns the majority of the land around Wallace St and none of that is to be used to support the proposed development, which includes permitting pedestrian access through TasRail land.

- 10.2.3 TasRail also provided the following comments in relation to the TIA and the risk assessment on the rail crossings:

TasRail notes there are numerous errors and/or misunderstandings within the TIA Report which did not reference or take into account Rail Safety National Law 2012 (RSNL). For example under RSNL the roles and responsibilities of the road owner (Brighton Council) and the rail infrastructure manager (TasRail) are very clear and include a requirement for these two parties to risk assess any change in conditions at a railway crossing. For clarification, RSNL requires the Council and TasRail to risk assess the two railway crossings that interface with Wallace Street to identify any required change in controls as triggered by the impending change in conditions caused by the development, and likely also the other rail crossing on Boyer Road if this is the main access point. The TIA author's assessment of risk in relation to the rail crossings is therefore irrelevant.

Based on the above feedback, TasRail requested the following actions:

That TasRail and Council promptly arrange for a joint risk assessment of the three railway crossings being the currently non-operational crossing and the operational crossing over Wallace Street (DV Line); and the rail crossing on Boyer Road which interfaces with both the operational South Line and the operational DV Line. This risk assessment to determine if any additional safety controls are required to support the development. If additional controls are required, these should be at either Council or the developer's cost, but may include for example pedestrian maze crossings. TasRail will revert to Council as to how it wishes to approach this with the developer, and/or reference in any Permit issued.

- 10.2.4 Planning staff advised the applicant of the advice from TasRail and offered an extension of time so that they engage a consultant with the necessary qualifications to undertake a risk assessment in accordance with the RSNL. The applicant was also advised that Council would not be contributing to the risk assessment or any additional safety controls.
- 10.2.5 The applicant denied the extension of time and requested that the application be determined.
- 10.2.6 It is recommended that a condition be included in any approvals requiring the provision of the risk assessment in accordance with the RSNL, as required by TasRail.

10.3 Parks & Wildlife Service (PWS)

PWS provided Crown consent for the application (attached). In its consent letter it was advised that the proposed development relates to Reserve land known as the River Derwent Marine Conservation Area, reserved pursuant to the Nature Conservation Act. PWS noted that it was assessing the Reserve Activity Assessment for the proposal and has deemed it to be consistent with the relevant management objectives under the *National Parks and Reserves Management Act 2002*.

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 Pleasure Boat Facility use (hovercraft tours and ancillary childrens' parties) at 7 Wallace Street, Bridgewater.

12.2 The application is complex given it includes numerous titles, different zones, many overlays and access over the State Rail Network.

12.3 The proposed development has been assessed against all relevant

provisions of the *Brighton Interim Planning Scheme 2015*, and is considered to perform well.

- 12.4** The application is recommended for approval subject to non-standard conditions in relation to access over the State Rail Network.

13. Recommendations

That: A. Pursuant to the *Brighton Interim Planning Scheme 2015*, Council approve application DA 2020/178 for a Pleasure Boat Facility (Hovercraft tours) at 7 Wallace Avenue, Bridgewater for the reasons outlined in the officer's report and a permit containing the following conditions to be issued.

General

- (1) The use or development must be carried out substantially in accordance with the application for planning approval, the endorsed drawings and with the conditions of this permit and must not be altered or extended without the further written approval of Council.
- (2) No works are to be undertaken on Crown Land without prior approval from the Crown.
- (3) This permit shall not take effect and must not be acted on until development 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*.

Derwent Marine Conservation Area

- (4) Prior to any works or activities commencing, the proponent must seek a final authority from the Crown for the operation of hovercraft tours within the River Derwent Marine Conservation Area.

Amenity

- (5) The proposed colours and materials for the walls and roof (Colourbond Evening Haze, Cove & Mangrove) are approved. Any variation in the colours and materials must be submitted to and approved by the Council's Manager Development Services.
- (6) No vegetation other than that necessary for the construction of the building, associated access and services is to be cleared without the approval of Council.

Weed Management

- (7) Prior to the use commencing, A Weed Management Plan, prepared by a suitably qualified person, must be submitted and approved by the Manager Development Services. The Weed Management Plan must assess the potential for the spread of weeds or soil pathogens by the launching of the hovercraft and identify methods to control weeds. The recommendations must be implemented.

Waterway & Coastal Protection

- (8) Before any work commences a soil and water management plan (SWMP) prepared in accordance with the guidelines *Soil and Water Management on Building and Construction Sites*, by the Derwent Estuary Programme and NRM South, must be approved by Council's Manager Development Services before development of the land commences (refer to advice below). The SWMP shall form part of this permit when approved.
- (9) Before any work commences install temporary run-off, erosion and sediment controls in accordance with the recommendations of the approved SWMP and maintain these controls at full operational capacity until the land is effectively rehabilitated and stabilised after completion of the development in accordance with the guidelines *Soil and Water Management on Building and Construction Sites*, by the Derwent Estuary Programme and NRM South and to the satisfaction of Council's Manager Development Services.
- (10) Use of fill on the fringe of the wetland is prohibited.
- (11) 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.

Coastal Inundation

- (12) Prior to, or in conjunction with any Building Application, plans must be submitted showing the finished floor levels for buildings established at the site are at or above 2.2 m AHD.

Coastal Erosion

- (13) Prior to, or in conjunction with any Building Application, either:
 - a. an amended Site Plan must be submitted showing the hovercraft shed shown in the same location as in Figure 6 of the Coastal Vulnerability Assessment; or

- b. The Coastal Vulnerability Assessment is amended to assess the location of the hovercraft shed as shown on the Site Plan and it can be determined that the location is suitable.

Services

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

Wallace Street

- (16) Prior to the use commencing the developer must upgrade Wallace Street from Boyer Road to 7 Wallace Street to dual lane, or provide formal passing bays at regular intervals, to the satisfaction of Council's Municipal Engineer.
- (17) Public roadworks and drainage must be constructed in accordance with the standard drawings and specification prepared by the IPWE Aust. (Tasmania Division) and to the requirements of Council's Municipal Engineer.
- (18) All works to be adopted by Council or within a Council Road Reservation must be placed onto a 12 month maintenance and defects liability period following the completion of the works in accordance with the approved engineering plans, permit conditions and Council Policy.

Engineering

- (19) All works associated with Council Assets must be carried out in accordance with the Tasmanian Subdivision Guidelines October 2013 (attached).
- (20) Engineering design drawings for the upgrade of Wallace Street must be submitted to and approved by Council's Municipal Engineer before any works associated with development of the land commence.
- (21) 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.
- (22) Approved engineering design drawings will remain valid for a period of 2 years from the date of approval of the engineering drawings.

- (23) 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 construction works relating to Council assets or works within Council's Road Reservation.

ADVICE:

The majority of Wallace Street is located on State Rail Network land. Prior to accessing State Rail Network land the developer must obtain a separate TasRail permit. Application for the permit can be made to property@tasrail.com.au.

Parking and Access

- (24) The maximum sized vehicle to access the proposed development on a regular service basis is to be limited to a 12 seater bus.
- (25) Parking and access must be generally in accordance with the endorsed plans and to the satisfaction of Council's Municipal Engineer.
- (26) At least twenty one (21) parking spaces must be provided on the land at all times for the use of the occupiers including at least two (2) car parking spaces for the existing dwelling, in accordance with Standards Australia (2004): Australian Standard AS 2890.1 - 2004 - Parking Facilities Part 1: Off Street Car Parking; Standards Australia, Sydney.
- (27) Unless approved otherwise by Council's Municipal Engineer the internal driveway and areas set-aside for parking and associated access and turning must be provided in accordance with;
- a) Standards Australia (2004): Australian Standard AS 2890.1 - 2004 - Parking Facilities Part 1: Off Street Car Parking; Standards Australia, Sydney;
 - b) Standards Australia (2002): Australia Standard AS 2890.2 - 2002, Parking facilities - Part 2: Off-Street, Commercial vehicle facilities, Sydney;
- and include all of the following:
- (a) A minimum trafficable width of 5.5m for the length of the access from Wallace St to the car park
 - (b) A minimum trafficable width of 3m with passing bays 5.5m wide by 6.0m long every 30m elsewhere
 - (c) Constructed with a durable all weather pavement.
 - (d) The access from Wallace St to the parking area and associated turning and manoeuvring areas must be surfaced with spray seal, concrete, asphalt or approved equivalent

- (e) The remaining vehicular access areas within the site (not utilised by the public) must have a minimum gravel surface that is designed, constructed and maintained to avoid dust or mud generation, erosion or sediment transfer on or off site;
 - (f) Drained to an approved stormwater system.
 - (g) On site turning
- (28) A parking plan prepared and certified by a qualified civil engineer or other person approved by Council's Municipal Engineer must be submitted to Council prior to or in conjunction with lodgement of Building Application. The parking plan is to include:
- pavement details,
 - design surface levels and gradients,
 - drainage,
 - turning paths,
 - dimensions,
 - line marking,
 - signage,
 - pedestrian access,
- and shall form part of the permit when approved.
- (29) The completed parking and associated turning areas and access must be certified by a practicing civil engineer to the effect that they have been constructed in accordance with the endorsed drawings and specifications approved by Council before the use commences.
- (30) All areas set-aside for parking and associated turning, and access must be completed before the use commences and must continue to be maintained to the satisfaction of the Council's General Manager.

Access to Public Road

ADVICE: No works on or affecting any Council road or 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.

Stormwater

- (31) Stormwater from the proposed development must drain to the existing private stormwater system (swale drain) to the satisfaction of Council's Municipal Engineer and in accordance with the Building Act 2016.
- (32) The stormwater system for the development must incorporate stormwater treatment prior to discharging to the Derwent River or public stormwater system to achieve the quality targets in accordance with the State Stormwater Strategy 2010, as detailed in Table E7.1 of the Brighton Interim Planning Scheme 2015, and to the satisfaction of the Council's Municipal Engineer.
- (33) The stormwater treatment system must continue to be maintained to ensure quality targets are maintained and water is conveyed so as not to create any nuisance to adjacent properties.
- (34) The developer must provide a minor stormwater drainage system designed to comply with all of the following:
 - a) be able to accommodate a storm with an ARI of 20 years when the land serviced by the system is fully developed;
- (35) The developer is to maintain a major stormwater drainage path through the site to accommodate a storm with an ARI of 100 years.
- (36) The driveway must be drained to minimise surface runoff to adjoining land in accordance with the requirements of the Municipal Engineer and the *Building Act* 2016.

Tas Rail

- (37) Prior to the commencement of any works, use, or lodgement of building or plumbing applications the developer must submit to Council's General Manager a TasRail guided risk assessment, prepared by a suitably qualified person, of the three railway crossings being the currently non-operational crossing and the operational crossing over Wallace Street (DV Line); and the rail crossing on Boyer Road which interfaces with both the operational South Line and the operational DV Line.

Once accepted the assessment shall form part of the endorsed documents and any additional works or safety controls recommended by the report are to be funded by the developer and implemented prior to the use commencing.

- (38) Prior to accessing State Rail Network land for fencing installation, or any other reason, the developer must obtain a TasRail permit.

ADVICE:

Application for the permit can be made to property@tasrail.com.au. This requirement applies to both the non-operational and the operational rail corridor.

- (39) Prior undertaking any excavation within 3 metres from the boundary of State Rail Network land the developer must obtain a separate Permit in accordance with section 44 of the *Rail Infrastructure Act 2007*.

ADVICE:

Application for the permit can be made to property@tasrail.com.au. Such application will need to be submitted a minimum of 10 business days prior to commencement.

- (40) The development must be undertaken in accordance with TasRail's Standard Notes for both operational and non-operational lines (attached).

Soil and Water Management

- (41) Before any work commences a soil and water management plan (SWMP) prepared in accordance with the guidelines Soil and Water Management on Building and Construction Sites, by the Derwent Estuary Programme and NRM South, must be approved by Council's General Manager before development of the land commences. The SWMP shall form part of this permit when approved.
- (42) Before any work commences install temporary run-off, erosion and sediment controls in accordance with the recommendations of the approved SWMP and maintain these controls at full operational capacity until the land is effectively rehabilitated and stabilised after completion of the development in accordance with the guidelines Soil and Water Management on Building and Construction Sites, by the Derwent Estuary Programme and NRM South and to the satisfaction of Council's General Manager.

Construction Amenity

- (43) 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.
- (44) 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.
- (45) 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.
- (46) 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.
- (47) 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:

This permit does not imply that any other approval required under any other legislation or by-law has been granted.

- A. No works on or affecting any Council road or road reservation 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.
- B. The owner is advised that an engineering plan assessment and inspection fee of 1% of the value of the approved engineering works, or a minimum of \$300.00, must be paid to Council in accordance with Council's fee schedule.
- C. This planning approval shall lapse at the expiration of two (2) years from the date of the commencement of planning approval if the development for which the approval was given has not been substantially commenced. Where a planning approval for a development has lapsed, an application for renewal of a planning approval for that development shall be treated as a new application.

DECISION:

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

CARRIED

VOTING RECORD

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

The meeting closed at 5.45pm.

Confirmed: _____
(Mayor)

Date: _____
20th April 2021