



Brighton Council

MINUTES OF THE **PLANNING AUTHORITY MEETING**
OF THE BRIGHTON COUNCIL HELD
IN THE COUNCIL CHAMBER, COUNCIL OFFICES
OLD BEACH AT 5.40 P.M. ON TUESDAY,
11TH MAY, 2021

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

IN ATTENDANCE: Mrs J Banks (Governance Manager); Mr H Macpherson (Municipal Engineer); and Mrs J Blackwell (Senior Planner)

1. ACKNOWLEDGEMENT OF COUNTRY:

2. APOLOGIES:

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

CARRIED

VOTING RECORD

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

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.

5.1 APPLICATION UNDER THE TASMANIAN PLANNING SCHEME – BRIGHTON - DA 2020 / 311 – 18 HASKELL ROAD & 14 BESIER COURT, BRIGHTON - MULTIPLE DWELLINGS (8):

Type of Report:	Planning Authority – For Decision
Application No:	DA 2020 / 311
Address:	18 Haskell Road & 14 Besier Court, Brighton
Applicant:	Longview Design
Proposal:	Multiple Dwellings (8)
Zone:	General Residential
Representations:	Two (2)
Discretion:	1. Proximity of storage area for waste and recycling bins to a dwelling 2. Number of vehicle movements
Author:	Richard Cuskelly (Planning Officer)

1. Executive Summary

- 1.1. Planning approval is sought for eight (8) multiple dwellings in the General Residential Zone at 18 Haskell Road & 14 Besier Court, Brighton.
- 1.2. The application is discretionary due to reliance on performance criteria.
- 1.3. Two (2) representations were received. It is considered that the issues raised in the representations warrant minor modification of the application.
- 1.4. The key planning issues relate to waste and recycling bin storage and collection, and number of vehicle movements.
- 1.5. The proposal is recommended for approval subject to various 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 / 311.
- 2.2. This determination must be made no later than 18/05/2021.
- 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. 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. Brighton Council transitioned to the Tasmanian Planning Scheme - Brighton on 14/04/2021.
- 4.2. Section 51(3) of LUPAA states:
 - (3) *The decision of a planning authority on an application referred to in subsection (1A) or (1B) is to be made by reference:*
 - (a) *to the provisions of the planning scheme as in force at the date of that decision*
- 4.3. Accordingly, whilst the proposal was submitted under the provisions of the Brighton Interim Planning Scheme 2015, the assessment must be assessed pursuant to the provisions of the Tasmanian Planning Scheme - Brighton.
- 4.4. The Tasmanian Planning Scheme - Brighton is a performance-based planning scheme.
- 4.5. To meet an applicable standard, a proposal must demonstrate compliance with either an Acceptable Solution or Performance Criteria. Where a proposal complies with a standard by relying on one or more Performance Criteria, the Council may approve or refuse the proposal on that basis. The ability to refuse the proposal relates only to the Performance Criteria relied upon.

5. Site Detail

- 5.1. The site refers to two adjoining lots: 14 Besier Ct and 18 Haskell Rd.

14 Besier Ct

- 5.2. 14 Besier Ct is an internal lot accessed via a 240.4m² access off the end of the cul-de-sac.
- 5.3. It is 1356m² in total area and is burdened by the following easements:
 - 1.5.1 Pipeline & services easement 3.5m wide
 - 2.5.1 Drainage easement 3.5m wide
 - 3.5.1 Pipeline & services easement (variable width)
 - 4.5.1 Drainage easement (variable width)

18 Haskell Rd

- 5.4. 18 Haskell Rd is an internal lot accessed via a 180.4m² access strip.
- 5.5. It is 1649m² in total area and is burdened by the following easements:
 - 1.5.1 Pipeline & services easement (variable width)
 - 2.5.1 Drainage easement (variable width)
- 5.6. Both lots are relatively level and have presence of Rough Speargrass: a formerly listed rare species under the Tasmanian *Threatened Species Protection Act 1995*. According to the Department of Primary Industries, Parks, Water and Environment¹, it has since been delisted due to “its widespread distribution and large number of populations and individuals resulting from new observations since the time of listing.”
- 5.7. Both are zoned General Residential and adjoin Rural Living Zone A land to the north.
- 5.8. The Bushfire-Prone Areas Code overlay covers both sites; however, it does not apply to this proposal.

¹Threatened Species Section (2021). *Austrostipa scabra (rough speargrass): Species Management Profile for Tasmania's Threatened Species Link*. <https://www.threatenedspecieslink.tas.gov.au/pages/austrostipa-scabra.aspx>. DPIPWE. Accessed on 3/5/2021.

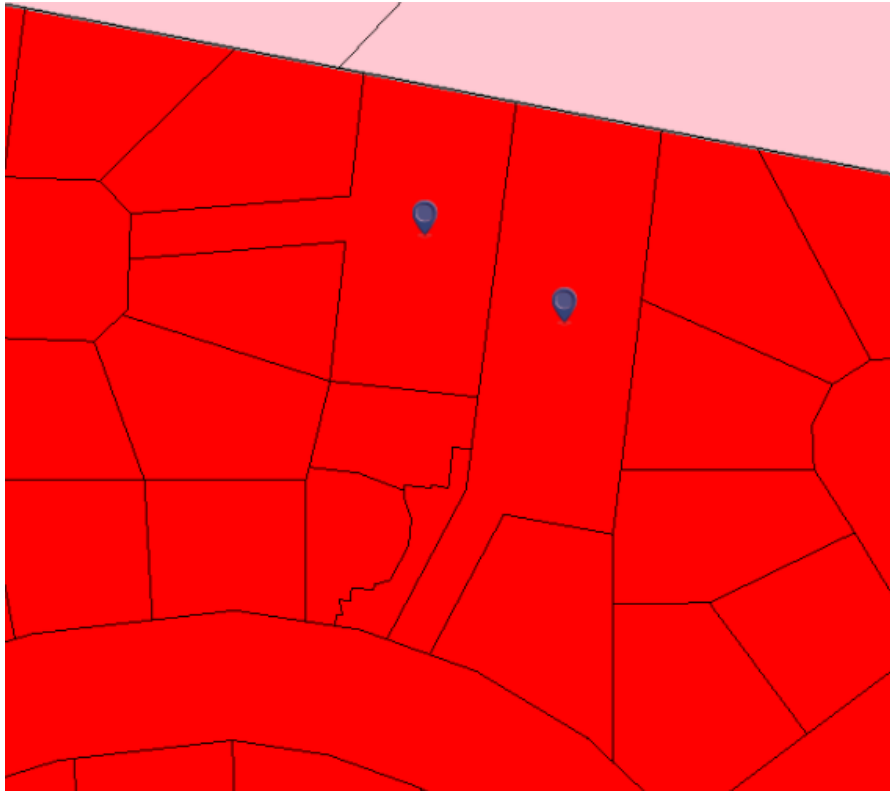


Figure 1. Zoning: General Residential (Red) and Rural Living Zone A (Pink)



Figure 2. Aerial image

6. Proposal

- 6.1. Proposed are 8 two storey dwellings with ground floor areas of 77.37m². The dwellings are proposed to be facilitated/accompanied by:
- 1.5.1 Adhering the two lots into one.
 - 2.5.1 Extensive landscaping, including the conversion of the 14 Besier Ct access strip to a landscaped access for pedestrian use only.
 - 3.5.1 Engineering works (stormwater, water and sewer).
 - 4.5.1 Vehicle access and parking for 19 cars (two per dwelling and three designated for visitors only).
- 6.2. The application is supported by the attached design, servicing and landscaping plans.

7. Assessment against planning scheme provisions

- 7.1. The following provisions are relevant to the proposal:
- General Residential Zone
 - Parking and Sustainable Transport Code
 - Road and Railway Assets Code
- 7.2. The application satisfies the following Acceptable Solutions:
- 1.5.18.4.1 A1 - Density for multi dwellings
 - 2.5.18.4.2 A1-A3 - Setbacks and building envelope
[Note the corrected elevation plans in Appendix C which remove reference to the superseded Brighton Interim Planning Scheme 2015.]
 - 3.5.18.4.3 A1-A2 - Site coverage and private open space
 - 4.5.18.4.4 A1 - Overshadowing of private open space
 - 5.5.18.4.6 A2-A3 - Privacy impact from habitable room windows and driveway
- 7.3. The following discretions are invoked:
- 1.5.18.4.8 A1 - Waste and recycling bin storage for multiple dwellings
 - 2.5.1 C3.5.1 A1.4 - Traffic generation at an existing vehicle crossing
- 7.4. **Discretion 1 - Waste and recycling bin storage for multiple dwellings**

7.5. The objective of standard 8.4.8 is:

To provide for the storage of waste and recycling bins for multiple dwellings.

7.6. Acceptable Solution 8.4.8 A1 states:

A multiple dwelling must have a storage area, for waste and recycling bins, that is not less than 1.5m² per dwelling and is within one of the following locations:

(a) an area for the exclusive use of each dwelling, excluding the area in front of the dwelling; or

(b) a common storage area with an impervious surface that:

(i) has a setback of not less than 4.5m from a frontage;

(ii) is not less than 5.5m from any dwelling; and

(iii) is screened from the frontage and any dwelling by a wall to a height not less than 1.2m above the finished surface level of the storage area.

7.7. The application proposes a common bin storage area that is approximately 1.7m from an existing dwelling on an adjoining site. Therefore, it does not clearly meet 8.4.8 A1 (b)(ii) and must meet corresponding Performance Criteria 8.4.8 P1, reproduced below:

A multiple dwelling must have storage for waste and recycling bins that is:

(a) capable of storing the number of bins required for the site;

(b) screened from the frontage and dwellings; and

(c) if the storage area is a common storage area, separated from dwellings on the site to minimise impacts caused by odours and noise.

7.8. The proposal meets the above Performance Criteria, with frontage screening to be clarified by recommended permit condition.

7.9. See Section 9 below regarding concerns raised by a representor regarding the proposed storage area, as well as a mutually beneficial outcome agreed to by the applicant for an improved arrangement whereby bins are stored behind each dwelling until collection day.

7.10. **Discretion 2 - Traffic generation at an existing vehicle crossing**

7.11. The objective of standard C3.5.1 is:

To minimise any adverse effects on the safety and efficiency of the road or rail network from vehicular traffic generated from the site at an existing or new vehicle crossing or level crossing or new junction.

7.12. Acceptable Solution C3.5.1 A1.4 states:

Vehicular traffic to and from the site, using an existing vehicle crossing or private level crossing, will not increase by more than:

(a) the amounts in Table C3.1; or

(b) allowed by a licence issued under Part IVA of the Roads and Jetties Act 1935 in respect to a limited access road.

7.13. The application proposes 8 dwellings which entails an estimated 64 vehicle movements per day. This exceeds the 20% or 40 vehicle movements per day, whichever is the greater amount prescribed in Table C3.1 which means the application must be assessed against corresponding Performance Criteria C3.5.1 P1, reproduced below:

Vehicular traffic to and from the site must minimise any adverse effects on the safety of a junction, vehicle crossing or level crossing or safety or efficiency of the road or rail network, having regard to:

(a) any increase in traffic caused by the use;

(b) the nature of the traffic generated by the use;

(c) the nature of the road;

(d) the speed limit and traffic flow of the road;

(e) any alternative access to a road;

(f) the need for the use;

(g) any traffic impact assessment; and

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

7.14. Council Technical Officers assessed these criteria and determined that the amount of vehicle movements likely to be generated from 8 dwellings via the Haskell Rd access strip would not result in unreasonable risk to the safety or efficiency or either the vehicle crossing or the road network. Request for a traffic impact assessment was not deemed warranted.

7.15. The proposal is considered to meet the above Performance Criteria.

8. Discussion

8.1. Referrals

- TasWater

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

- Council’s Technical Officer

See attached report – Appendix D.

9. Concerns raised by representors

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

Representation 1	Response
Concern regarding impact on amenity from traffic to and from site	See section 7.10 above. There is no unreasonable impact on amenity expected to result as the infrastructure to provide for the increase in vehicle movements is well provided for.
Concern regarding impact on amenity from the minimal distance of the common bin storage area to the lounge room and alfresco area of a dwelling on an adjoining site	<p>As summarised in Discretion 1 above (section 7.4), the minimal setback proposed complies as the Performance Criteria can only be applied to dwellings on the same site.</p> <p>However, to mitigate the potential for odour and noise impact on the neighbouring dwelling, the applicant has agreed to alter the proposed arrangement and ensure bins are stored beside/behind dwellings and only taken out to the driveway storage area for collection day.</p> <p>A permit condition is recommended to formalise this.</p>
Concern that double storey dwellings are out of character with the area and will impact privacy	<p>As the proposal meets the density and building envelope Acceptable Solutions prescribed by the Tasmanian Planning Scheme, Council cannot consider these concerns further.</p> <p>The proposal was submitted prior to 14th April 2021 and was at that time subject to the standards contained in the Brighton Interim Planning Scheme 2015, with the proposal being located outside the building envelope required by clause 10.4.2 A3. However, as the application is required to be</p>

	assessed under the Tasmanian Planning Scheme including the Brighton Provisions Schedule, the proposal now satisfies the acceptable solution for that standard.
Representation 2	Response
Concern that side and rear fencing will be mismatched	This is not a consideration for Council acting as Planning Authority, however the representor will be contacted directly with general advice.
Concern that landscaping could damage or overhang boundary fences	As above.

10. Conclusion

The proposed use and development of eight (8) multiple dwellings in the General Residential Zone at 18 Haskell Road and 14 Besier Court, Brighton, satisfies the relevant provisions of the Tasmanian Planning Scheme including the Brighton Local Provisions Schedule, and as such is recommend for approval.

RECOMMENDATION:

That pursuant to the Tasmanian Planning Scheme including the Brighton Local Provisions Schedule, Council approves application DA 2020 / 311 for use and development of eight (8) multiple dwellings in the General Residential Zone at 18 Haskell Road and 14 Besier Court, Brighton, for the reasons outlined in the officer’s report and a permit containing the following conditions be issued:

THE FOLLOWING CONDITIONS APPLY TO THIS PERMIT:

General

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

TasWater

- (3) The development must meet all required Conditions of approval specified by TasWater Submission to Planning Authority Notice TWDA 2020/01407-BTN, dated 15/09/2020 (attached).

Adhesion of Lots

- (4) Prior to the issue of building consent or the commencement of works on site (whichever occurs first), the lots comprising the site area must be the subject of an Adhesion Order pursuant to Section 110 of the *Local Government (Building and Miscellaneous Provisions) Act 1993*. The cost of preparing the Adhesion Order lies solely with the developer.

Advice: The Adhesion Order should be prepared by a solicitor and forwarded to Council for signing and sealing. Upon sealing, Council will return the adhesion order to the applicant who must lodge it and any relevant titles with the Recorder of Titles.

- (5) The developer must pay any Titles Office lodgement fees required by the Recorder of Titles.

Bin Collection

- (6) Bins must be placed along the eastern boundary of the access strip for collection and must not be placed on Haskell Road or Besier Court. Signage and line marking must be provided to delineate the area set aside for bin collection to the satisfaction of Council's Manager Development Services.
- (7) Waste storage bins are to be returned to their designated unit as indicated on the site plan after each collection day.
- (8) The requirements relating to bin collection in the above condition must become a by-law of the Body Corporate in accordance with section 90 of the *Strata Titles Act 1998*.
- (9) Prior to the use commencing the owner/body corporate must provide written agreement allowing Council's waste collection contractor to enter the site and indemnify Council and said contractor from any damage arising from the collection of waste from the site.

Part 5 Agreement

- (10) Prior to the issue of occupancy under the *Building Act 2016*, the owner(s) and Council must enter into an agreement pursuant to Part 5 of the *Land Use Planning and Approvals Act 1993* in respect of the land. The Agreement is to provide that the owner(s) covenant and agree with the Brighton Council that waste and recycling bins shall be stored behind respective dwellings and only moved to the waste collection area on the access strip for collection.
- (11) Agreement(s) made pursuant to Part 5 of the *Land Use Planning and Approvals Act 1993* must:
 - (a) bind the current owner and his/her successors in title;

- (b) be prepared on the Land Titles Office blank instrument form; and
- (c) be registered with the Recorder of Titles in accordance with Section 78 of the *Land Use Planning and Approvals Act 1993* by the applicant at no cost to Council.

Advice: The applicant is advised to discuss the requirements of preparing a Part 5 Agreement with their solicitor.

Landscaping

- (12) Prior to the issue of building consent under the *Building Act 2016*, an amended landscaping plan must be submitted to and approved by the Manager Development Services replacing the “crushed lime stone walking” path with a “concrete walking path”. The amended landscaping plan will form part of this permit when approved.
- (13) Prior to the issue of first occupancy under the *Building Act 2016* or the sealing of a strata plan (whichever comes first), all landscaping must be completed in accordance with the endorsed landscaping plans.
- (14) All landscaping must continue to be maintained to the satisfaction of Council.

Amenity

- (15) Any front fence or gate 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%.
- (16) All external metal building surfaces must be clad in non-reflective pre-coated metal sheeting or painted to the satisfaction of the Manager Development Services.

Services

- (17) 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.
- (18) Any redundant property connections are to be capped and sealed or removed to the satisfaction of the Council’s Municipal Engineer and the responsible authority.

Parking and Access

- (19) At least nineteen (19) car parking spaces must be provided on the land at all times for the use of the development, including at least two (2) car parking spaces per dwelling and at least three (3) designated for visitor parking, in accordance with Australian Standard AS 2890.1- Parking Facilities Part 1: Off Street Car Parking.
- (20) Unless approved otherwise by Council's Municipal Engineer all parking, access ways, manoeuvring and circulation spaces must be provided in accordance the endorsed drawings, Australian Standard AS 2890 - Parking facilities, Parts 1-6 and include all of the following;
- (a) be constructed with a durable all weather pavement;
 - (b) be drained to the public stormwater system, or contain stormwater on the site; and
 - (c) be surfaced by a spray seal, asphalt, concrete, pavers or equivalent material to restrict abrasion from traffic and minimise entry of water to the pavement.
 - (d) have a gradient in accordance with Australian Standard AS 2890 - Parking facilities, Parts 1-6;
 - (e) provide for vehicles to enter and exit the site in a forward direction;
 - (f) have an access width not less than 5.5m;
 - (g) have car parking space dimensions not less than 3.0m x 5.4m;
 - (h) have car parking spaces delineated by line marking or other clear physical means.
- (21) 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,
 - pavement and concrete details in trafficable areas to accommodate a 22.5 tonne truck,
 - design surface levels and gradients,
 - drainage,
 - turning and travel paths (where required to demonstrate compliance with AS 2890.1) including medium rigid service vehicle requirements for waste removal,
 - dimensions,
 - line marking,

- signage,
- pedestrian access,

and shall form part of the permit once accepted.

- (22) 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.
- (23) 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

- (24) Unless approved otherwise by Council's Municipal Engineer, the redundant driveway apron off Besier Court is to be removed and the nature strip reinstated.

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.

Stormwater

- (25) Stormwater from the proposed development must drain to the piped public stormwater system to the satisfaction of Council's Municipal Engineer and in accordance with the *Building Act 2016*.
- (26) The Developer is to incorporate Water Sensitive Urban Design Principles into the development for the treatment and disposal of stormwater. These Principles will be in accordance with the Water Sensitive Urban Design Procedures for Stormwater Management in Southern Tasmania and to the satisfaction of the Council's Municipal Engineer.

Alternatively;

The developer may make a financial contribution to Brighton Council for the provision of stormwater treatment in accordance with Council Policy Water Sensitive Urban Design Contributions Policy - Tasmanian Planning Scheme.

Advice: A copy of Policy 6.1 Interim Water Sensitive Urban Design Contributions can be obtained from Council's Asset Services Department.

- (27) Where stormwater treatment is provided, the stormwater treatment system must continue to be maintained to ensure the quality targets in accordance with the State Stormwater Strategy 2010 are maintained and water is conveyed so as not to create any nuisance to adjacent properties.
- (28) The driveway must be drained to minimise surface runoff over adjoining land in accordance with the requirements of the Municipal Engineer and in accordance with the *Building Act 2016*.

Soil and Water Management

- (29) 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.
- (30) 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

- (31) The road frontage of the development site including road, kerb and channel, footpath and nature strip, must be,
 - (a) Surveyed prior to construction, photographed, documented and any damage or defects be noted in a dilapidation survey to be provided to Council's Asset Services Department prior to construction.
 - (b) Be protected from damage, heavy equipment impact, surface scratching or scraping and be cleaned on completion.
 - (c) In the event a dilapidation report is not provided to Council prior to commencement, any damage on completion will be deemed a result of construction activity requiring replacement prior to approval.
- (32) 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:

- (33) 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.
- (34) 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. **This planning approval shall lapse at the expiration of two (2) years from the date of the commencement of planning approval if the development for which the approval was given has not been substantially commenced. Where a planning approval for a development has lapsed, an application for renewal of a planning approval for that development shall be treated as a new application.**

DECISION:

Cr Whelan moved, Cr Geard seconded that the recommendation be adopted with the inclusion of the pedestrian pathway to be concrete and not gravel.

CARRIED

VOTING RECORD

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

5.2 APPLICATION UNDER TASMANIAN PLANNING SCHEME - BRIGHTON - DA 2021/0027 - 62 JETTY ROAD, OLD BEACH - MULTIPLE DWELLINGS (2):

Type of Report:	Planning Authority – For Decision
Application No:	DA 2021/0027
Address:	62 Jetty Rd, Old Beach
Proposal:	Multiple Dwellings (2)
Zone:	General Residential Zone
Representations:	One (1)
Discretions:	Private Open Space
Author:	Senior Planner (Jo Blackwell)

1. Executive Summary

- 1.1. Planning approval is sought for two multiple dwellings at 62 Jetty Rd, Old Beach (the 'site'). The site is situated within the General Residential Zone of the *Tasmanian Planning Scheme – Brighton* (TPS).
- 1.2. The application relies on assessment under the Performance Criteria related to private open space.
- 1.3. The application has been advertised for public exhibition. One (1) representation was received.
- 1.4. The application is recommended for approval.
- 1.5. Due to the receipt of representations during the public exhibition period, 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 2021/0027.
- 2.2. This determination must be made no later than 18th May 2021. The statutory assessment period has been extended with the consent of the applicant.
- 2.3. The relevant legislation is the *Land Use Planning and Approvals Act 1993* (the 'Act'). The provisions of the Act require a planning authority to take all reasonable steps to ensure compliance with the planning scheme.

- 2.4. This report details the reasons for the officer recommendation. The Planning Authority must consider this report but is not bound to adopt the recommendation. Broadly, the Planning Authority can either: (1) adopt the recommendation, or (2) vary the recommendation by adding, modifying or removing recommended reasons and conditions or replacing an approval with a refusal (or vice versa). Any alternative decision requires a full statement of reasons to comply with the *Judicial Review Act 2000* and the *Local Government (Meeting Procedures) Regulations 2015*.
- 2.5. This report has been prepared with appropriate regard to the State Policies that apply under the *State Policies and Projects Act 1993*.
- 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. Site Detail

- 4.1. The site is a 902 square metre (sqm) vacant site. The site falls approximately 1m from the NE corner to the SE corner.
- 4.2. The adjoining properties are all developed with single dwellings. The adjoining property to the north and north-west are double storey dwellings with all other adjoining properties single storey.



Figure 1: Subject Site (Source: Listmap)

- 4.3. The site and surrounding land is zoned General Residential pursuant to the TPS, with no planning scheme overlays attributable to the site (see Figure 2).



Figure 2: Zoning Map (Source Listmap)

- 4.4. Jetty Rd is subject to a residential speed limit of 50kmh and is located along a Metro bus route.

5. Proposal

- 5.1. The proposal is for two three bedroom double storey multiple dwelling units. Both units have an "L" shaped footprint and the ground floor footprint is identical to the upper floor, with minimal articulation between the two levels. The built form is broken up using brick on the lower floor and lightweight cladding on the upper floor. Skillion roofs also provide visual interest.
- 5.2. The living area is located on the upper floor for both dwellings. A rectangular 12sqm deck is accessible directly off the living room for unit 1, whilst unit 2 comprises a 16.23sqm deck which wraps around the corner of the living room.
- 5.3. A total of 5 car parking spaces are provided for the development. Each dwelling has a garage and a "jockey" parking space. One visitor space and a turning area is also provided. The existing access will be widened and the parking areas and front setback are proposed to be landscaped.

6. Assessment

- 6.1. Brighton Council transitioned to the *Tasmanian Planning Scheme – Brighton* (TPS) on 14th April 2021.
- 6.2. Section 51(3) of the *Land Use Planning and Approvals Act 1993* states:

“(3) The decision of a planning authority on an application referred to in subsection (1A) or (1B) is to be made by reference:

 (a) to the provisions of the planning scheme as in force at the date of that decision”
- 6.3. Accordingly, whilst the proposal was submitted under the provisions of the *Brighton Interim Planning Scheme 2015*, the assessment must be assessed pursuant to the provisions of the *TPS*.
- 6.4. The *TPS* is a performance-based planning scheme.
- 6.5. To meet an applicable standard, a proposal must demonstrate compliance with either an Acceptable Solution or Performance Criteria. Where a proposal complies with a standard by relying on one or more Performance Criteria, the Council may approve or refuse the proposal on that basis. The ability to refuse the proposal relates only to the Performance Criteria relied upon.

7. Assessment against planning scheme provision

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

- Clause 8 - General Residential Zone
- C2.0 - Parking and Sustainable Access Code
- C3.0 - Road and Railway Assets Code

7.2. The proposed use is for multiple dwellings within the General Residential Zone. 'Residential (Multiple Dwellings)' is a Permitted Use in the General Residential Zone, pursuant to the Use Table set out in Clause 8.2.

7.3. The proposal is considered to satisfy the relevant Acceptable Solutions listed below:

General Residential Zone

- Clause 8.4.1 A1 Residential density for multiple dwellings
- Clause 8.4.2 A1, A2, A3 Setbacks and building envelope for all dwellings
- Clause 8.4.3 A1 Site Coverage and Private Open Space for all dwellings
- Clause 8.4.4. A1 Sunlight to Private Open Space of all dwellings
- Clause 8.4.5 A1 Width of Openings for garages and carports for all dwellings
- Clause 8.4.6 A1, A2, A3 Privacy for all dwellings
- Clause 8.4.7 A1 Frontage Fences for all dwellings
- Clause 8.4.8 A1 Waste storage for multiple dwellings

Code

- C2.0 Parking and Sustainable Transport Code (entire code)
- C3.0 Road and Railway Assets Code (entire code)

7.4. The following discretions are invoked by the proposal:

- Clause 8.4.3 A2 Private Open Space

7.5. Discretion 1 - Clause D8.4.3 A2 - Private Open Space

7.5.1 The acceptable solution requires the proposal satisfy the following:

A2 A dwelling must have private open space that:

- (a) *is in one location and is not less than:*
 - (i) *24m² or*
 - (ii) *12m², if the dwelling is a multiple dwelling with a finished floor level that is entirely more than 1.8m above the finished ground level (excluding a garage, carport or entry foyer);*
- (b) *has a minimum horizontal dimension of not less than:*
 - (i) *4m; or*
 - (ii) *2m, if the dwelling is a multiple dwelling with a finished floor level that is entirely more than 1.8m above the finished ground level (excluding a garage, carport or entry foyer);*
- (c) *is located between the dwelling and the frontage only if the frontage is orientated between 30 degrees west of true north and 30 degrees east of true north; and*
- (d) *has a gradient not steeper than 1 in 10.*

7.5.2 The proposal does not satisfy the AS, given the dimensions of the available private open spaces for unit 1.

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

P2 A dwelling must have private open space that includes an area capable of serving as an extension of the dwelling for outdoor relaxation, dining, entertaining and

- (a) *conveniently located in relation to a living area of the dwelling; and*
- (b) *orientated to take advantage of sunlight.*

7.5.4 The proposal plans show a 4.6m x 2.5m (approx. 12sqm) western facing deck accessible from the living room on the first floor of Unit 1, together with an area of approximately 66sqm of north and western facing private open space at ground floor level.

7.5.5 Unit 2 has a south western facing deck accessible from the living room on the first floor, which has a floor area of approximately 16sqm. In addition, there is approximately 160sqm of private open space available at ground level for the use of the occupants.

7.5.6 It is considered that the proposal satisfies the performance criteria, in that it provides for various areas of private open space which allow for outdoor relaxation and dining, entertaining and children’s play whilst being orientated to take advantage of sunlight.

8 Referrals

8.1 Engineering

The application was referred to the Council’s Technical Officer, whose comments are included where necessary throughout this report.

8.2 TasWater

Sewer and Water reticulation is available to the site. The application was referred to TasWater who have imposed development conditions. A copy of TasWater’s Submission to Planning Authority Notice (SPAN) will be attached to any permit issued.

8.3 Concerns raised by Representors

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

8.3.2 One (1) representation was received during the public exhibition period.

8.3.3 The concerns of the representor is summarised below:

Concerns of Representor 1	<i>Planning Response</i>
Loss of amenity relating to significant visual bulk, with 1.5m setback and double storey design contributing factors	The proposal satisfies the acceptable solution in relation to building envelope and the building setback 3m (8.4.2 A3). Accordingly, the performance criteria cannot be considered
Loss of views arising from proposal scale bulk and proportions	
Overshadowing of adjoining properties	
Private Open Space of unit 1 does not receive at least 3 hours sunlight to more than 50% of deck	Private open space is addressed in clause 7.5 above.

Private open space for unit 2 is not considered to be conveniently located in relation to a living area of the dwelling.	Private open space for unit 2 addresses the acceptable solution, and is addressed in clause 7.5 above.
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9 Conclusion

- 9.1 The proposal is for multiple dwellings (x2) at 62 Jetty Road, Old Beach. The site is situated within the General Residential Zone of the Tasmanian Planning Scheme – Brighton.
- 9.2 The key issues relate to private open space.
- 9.3 For the reasons set out above, the proposal is considered to satisfy the requirements of the Tasmanian Planning Scheme - Brighton, and as such, is recommended for the application is recommended for approval.

RECOMMENDATION:

Pursuant to the *Tasmanian Planning Scheme – Brighton* Council approve DA 2021/27 for multiple dwellings (x2) in the General Residential Zone at 62 Jetty Road, Old Beach with the following conditions:

General

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

Amended Plans

- (3) Prior to issue of approvals pursuant to the *Building Act 2016*, whichever first occurs, correctly labelled elevations for Unit 2 must be submitted for approval by the Manager Development Services. Once approved the amended plan will form part of the approved documents.

Staging

- (4) The development must not be staged without prior approval in writing by the Manager Development Services.

TasWater

- (5) 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 2021/0332-BTN, dated 5th March 2021, as attached to this permit.

Amenity

- (6) 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

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

Landscaping

- (8) Before any work commences submit an amended 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) The areas to be landscaped, including the private open space for each unit.
 - c) Details of surface finishes of paths and driveways.
 - d) Details of fencing, including frontage and internal privacy fencing.
 - e) 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.
- (9) All plantings 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.
- (10) 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.

- (11) 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.

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 and Access

- (13) At least five (5) car parking spaces must be provided on the land at all times for the use of the development, including at least two (2) car parking spaces per dwelling and at least one (1) designated for visitor parking, in accordance with Australian Standard AS 2890.1- Parking Facilities Part 1: Off Street Car Parking.
- (14) Unless approved otherwise by Council's Municipal Engineer all parking, access ways, manoeuvring and circulation spaces must be provided in accordance the endorsed drawings, Australian Standard AS 2890 - Parking facilities, Parts 1-6 and include all of the following:
- a) be constructed with a durable all weather pavement;
 - b) be drained to the public stormwater system, or contain stormwater on the site; and
 - c) be surfaced by a spray seal, asphalt, concrete, pavers or equivalent material to restrict abrasion from traffic and minimise entry of water to the pavement.
 - d) have a gradient in accordance with Australian Standard AS 2890 - Parking facilities, Parts 1-6;
 - e) provide for vehicles to enter and exit the site in a forward direction;
 - f) have an access width not less than 3m;
 - g) have car parking space dimensions not less than 3.0m x 5.4m;
 - h) have car parking spaces delineated by line marking or other clear physical means.
- (15) 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: 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.

Stormwater

- (16) Stormwater from the proposed development must drain to the piped public stormwater system to the satisfaction of Council's Municipal Engineer and in accordance with the Building Act 2016.
- (17) The driveway must be drained to minimise surface runoff over adjoining land in accordance with the requirements of the Municipal Engineer and in accordance with the Building Act 2016.

Soil and Water Management

- (18) 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.
- (19) 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

- (20) The road frontage of the development site including road, kerb and channel, footpath and nature strip, must be:
 - (a) Surveyed prior to construction, photographed, documented and any damage or defects be noted in a dilapidation survey to be provided to Council's Asset Services Department prior to construction.
 - (b) Be protected from damage, heavy equipment impact, surface scratching or scraping and be cleaned on completion.
 - (c) In the event a dilapidation report is not provided to Council prior to commencement, any damage on completion will be deemed a result of construction activity requiring replacement prior to approval.

(21) 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.

(22) 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.

(23) 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.

(24) 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.

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

DECISION:

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

CARRIED

VOTING RECORD

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

The meeting closed at 6.00pm.

Confirmed: _____

(Mayor)

Date: _____ 18th May 2021