



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 JULY, 2021

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

IN ATTENDANCE: Mrs J Banks (Governance Manager); Mr D Allingham (Manager Development Services); and Mr R Cuskelly (Acting Senior Planner)

1. Acknowledgement of Country

2. Apologies

Cr Geard moved, Cr Garlick seconded that Cr Jeffries and Cr Murtagh be granted leave of absence.

CARRIED

VOTING RECORD

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

3. Public Question Time and Deputations

As there were no members in the gallery there was no requirement for public question time.

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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 Regulations 25 of the Local Government (Meeting Procedures) Regulations 2015, the intention of the Council to act as 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 DA2021/0049 - 852 Middle Tea Tree Road, Tea Tree - Dwelling (supporting agricultural use):

Type of Report:	Planning Authority – For Decision
Application No:	DA 2021/0049
Address:	852 Middle Tea Tree Road, Tea Tree
Applicant:	Enprove Pty Ltd
Proposal:	Dwelling (Supporting Agricultural Use)
Zone:	Agriculture
Representations:	One (1)
Discretion:	1. Discretionary (Residential) Use 2. Setbacks – Sensitive Use
Author:	Jo Blackwell - Senior Planner

1. Executive Summary

- 1.1. Planning approval is sought for a Dwelling (Supporting Agricultural Use) in the Agriculture Zone at 852 Middle Tea Tree Road, Tea Tree.
- 1.2. The application is discretionary due to the proposed residential use and setbacks to boundaries for sensitive use.
- 1.3. One (1) representation was received during the public exhibition period. It is considered that the issues raised in the representation does not warrant refusal or modification of the application.
- 1.4. The key planning issues relate to sensitive use and setback.
- 1.5. The proposal is recommended for approval.
- 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 2021/0049.
- 2.2. This determination must be made no later than 20th July 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.

4. Relevant Background and Past Applications

- 4.1. Brighton Council transitioned to the Tasmanian Planning Scheme – Brighton on 14 April 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* (TPS-Brighton).

5. Site Detail

- 5.1. The site is a vacant 3.645ha allotment located on the northern side of Middle Tea Tree Road, approximately 750m southeast of the intersection of Middle Tea Tree and Tea Tree Roads. It is generally rectangular in shape, with a small section of the southern corner excised to form part of adjoining land (Refer figure 1). The site slopes gently north-west to southeast with an average slope of 6%.

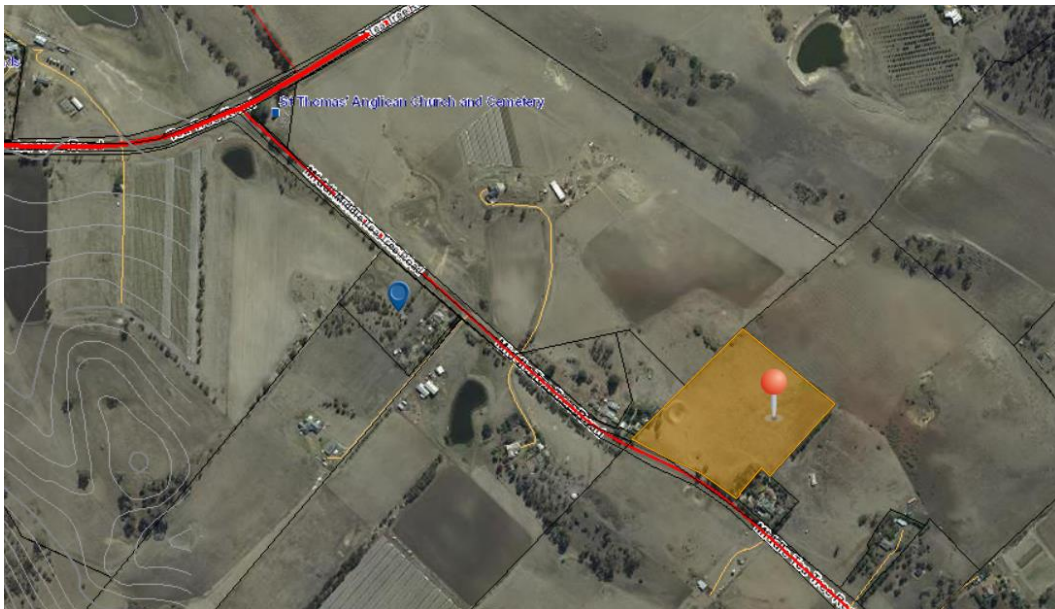


Figure 1: Site location (Source: Listmap).

- 5.2. The site and adjoining land is zoned Agriculture, pursuant to the provisions of the TPS. Mapped overlays include the Bushfire Prone Areas Code and a natural waterway emitting from the existing dam on site. A TasWater trunk main is located to the northeast of the

site, with potable water available at the road and adjoining the north western boundary, as shown in Figure 2 below.



Figure 2: Zoning, Mapped Overlays, and Infrastructure (Source: Listmap)

6. Proposal

- 6.1. The proposal is for a four bedroom, single storey dwelling and associated shed to support a horticultural farm.
- 6.2. The Applicant has submitted a Farm Management Plan (Enprove, 2020) in support of the proposed dwelling. The Farm Management Plan proposes the introduction of both olive and mixed fruit trees, with the olives to be processed to olive oil and fruit sold as local produce in the short term.
- 6.3. The application is supported by the attached building design plans and Farm Management Plan

7. Assessment against planning scheme provisions

- 7.1. The following provisions are relevant to the proposed use and development;
 - Agriculture Zone
 - Road and Railway Assets Code
 - Parking and Sustainable Transport Code
- 7.2. The application satisfies the following Acceptable Solutions:
 - 21.3.1 A1 – A3 – Discretionary Uses
 - 21.4.1 A1 – Building Height

- 21.4.2 A1 – Setback (All boundaries)
- 21.4.3 A1 – Access for new dwellings
- C2.0 Parking and Sustainable Assets Code – Entire Code
- C 3.0 - Road and Railway Assets Code – Entire code

7.3. The following discretions are invoked:

- 21.3.1 A4 – Discretionary Use – Residential Use
- 21.4.2 A2 – Setback (Sensitive Use)

8. Discretions

8.1. Discretionary use – Residential 21.3.1 A4

8.1.1. The Use Table contained in clause 21.2 of the Agriculture Zone identifies that Residential use is a Discretionary Use, if the proposed residential use is not restricted by an existing agreement under section 71 of the Act, or not listed as permitted.

8.1.2. The proposed dwelling does not meet the qualification for permitted residential use as it is neither for a home-based business, or alterations and extensions to an existing dwelling. There are no section 71 Agreements registered on the title.

8.1.3. The objective of the standard at 21.3.1 is:

That uses listed as Discretionary:

(a) support agricultural use; and

(b) protect land for agricultural use by minimising the conversion of land to non-agricultural use.

8.1.4. The proposal does not conflict with the objective of the standard.

8.1.5. Clause 21.3.1 A4 relates to residential use, for which there is no acceptable solution.

8.1.6. The Performance Criteria set out in 21.3.1 P4 is replicated below:

P4 A Residential use listed as Discretionary must:

(a) be required as part of an agricultural use, having regard to:

(i) the scale of the agricultural use;

(ii) the complexity of the agricultural use;

(iii) the operational requirements of the agricultural use;

*(iv) the requirement for the occupier of the dwelling to attend to the agricultural use;
and*

(v) proximity of the dwelling to the agricultural use; or

(b) be located on a site that:

(i) is not capable of supporting an agricultural use;

(ii) is not capable of being included with other agricultural land (regardless of ownership) for agricultural use; and

(iii) does not confine or restrain agricultural use on adjoining properties.

8.1.7. A farm management plan prepared by *Enprove Ag and Environment* (December 2020) is provided in support of the application. That report identifies that the site is suitable for the proposed horticultural use, given access to on-site water via existing dams and mains water supply, with some minor soil remediation required prior to establishing the trees. The developer proposes to plant both olive and fruit trees, and to value-add by producing olive oil.

8.1.8. The report identifies that the site has a notional production value of \$6000pa in its current form. However, the site is expected to produce in excess of 20,000kg of olives and 6,000kg of fruit, for a combined farm gate value of approximately \$170,000pa, following investment to improve soil capability.

8.1.9. The proposed horticultural use is an intensive one, including, amongst others, screening of all visitors to site, pest management, irrigation, tree maintenance etc.

The Enprove report details the work required to ensure a successful venture on the site, which includes on-site monitoring to provide for extended operating hours.

8.1.10. It is considered that the scale to which the developers intend to operate is significant and complex given the level of intensive labour value-adding proposed once the site is established.

8.1.11. The proposed dwelling is within close proximity to the olive grove and orchard, providing for immediate response as required. Its location is dictated by surrounding topography, including flow paths and existing dams, whilst allowing for future expansion of the olive grove and orchard to the south of the dwelling.

8.1.12. It is considered that the proposal can satisfy the performance criteria. A condition for a Part 5 Agreement is recommended, acknowledging that the residential use is dependent on the agricultural use of the site.

8.2. Discretion 2 - Sensitive use building setbacks

8.2.1. The objective of standard 21.4.2 is:

That the siting of buildings minimises potential conflict with use on adjoining properties.

8.2.2. Acceptable Solution 21.4.2 A2 states:

Buildings for a sensitive use must have a setback from all boundaries of:

(a) not less than 200m; or

- (b) if the setback of an existing building for a sensitive use on the site is within 200m of that boundary, not less than the existing building*

8.2.3. The proposed dwelling is sited 60m from Middle Tea Tree Road, 90m east of the shared boundary with 870 Middle Tea Tree Road and a minimum of 40m to the west of the shared boundary with 850 Middle Tea Tree Road, which means the application must be assessed against corresponding Performance Criteria 21.4.2 P2, reproduced below:

Buildings for a sensitive use must be sited so as not to conflict or interfere with an agricultural use, having regard to:

- (a) the size, shape and topography of the site;*
- (b) the prevailing setbacks of any existing buildings for sensitive uses on adjoining properties;*
- (c) the location of existing buildings on the site;*
- (d) the existing and potential use of adjoining properties;*
- (e) any proposed attenuation measures; and*
- (f) any buffers created by natural or other features.*

8.2.4. The site is generally rectangular (refer figure 1) other than a slither of land that forms part of the adjoining property at 850 Middle Tea Tree Road. The proposed dwelling has a 65m setback from the road frontage, and minimum 40m setback to the eastern boundary (being the minimum setback required under the performance criteria in BIPS, pursuant to which this application was initially submitted).

8.2.5. The proposed dwelling is setback from existing flow paths and dams on the site, whilst providing for a buffer to adjoining properties. The site is currently vacant grassland, with some vegetative screening adjacent to the shared boundary with 850 Middle Tea Tree Road.

8.2.6. Prevailing setbacks for existing sensitive uses on adjoining properties are well below 200m, having been developed pursuant to previously planning schemes:

850 Middle Tea Tree Road – between 25 and 30m

870 Middle Tea Tree Road – approximately 10m

872 Middle Tea Tree Road – between 10 and 30m

8.2.7. Adjoining properties appear to be used for both residential and agricultural purposes, other than 850 Middle Tea Tree Road, and there does not appear to be any future impediment to future agricultural uses, other than existing lot sizes. This property is a small allotment of 3800sqm and appears to be used solely for residential purposes.

8.2.8. It is considered that the proposal can satisfy the performance criteria.

9. Discussion

9.1.1. Council's Technical Officer

The application was assessed by Council's Technical Officer. That officer's comments have been included in the body of this report, where appropriate.

10. Concerns raised by representors

10.1 During the public exhibition period one representation was received.

10.2 The following table summarises the issues raised by the representor.

Representor's Issues	Brief Response
Query to confirm setbacks from boundaries	The representor was emailed on 22 nd June 2021 clarifying setback details.
Proximity to existing building and possible overshadowing	Refer to clause 8.2 above
Dam and drainage/overflow	Dams are the responsibility of the Dept. of Primary Industry Parks Wildlife and Environment (DPIPWE). However, council's engineering staff have considered stormwater impacts arising from the dam, and advice has been provided to the affected land owner that the overflow occurs across a natural, mapped watercourse.

11. Conclusion

11.1 The proposed use and development of ***Dwelling (Supporting Agricultural Use)*** in Agriculture Zone at 852 Middle Tea Tree Road, Tea Tree satisfies the relevant provisions of the *Tasmanian Planning Scheme including the Brighton Local Provisions Schedule*, and as such is recommended for approval.

12. Recommendations

That: A. Pursuant to the *Tasmanian Planning Scheme including the Brighton Local Provisions Schedule*, Council approve application DA 2021/49 for use and development of ***Dwelling (Supporting Agricultural Use)*** in Agriculture Zone at 852 Middle Tea Tree Road, Tea Tree, for the reasons outlined in the officer's report and a permit containing the following conditions 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) 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.

Agricultural Uses

- (4) The use of the dwelling is incidental to the primary use of land for agricultural purposes, which initially includes the establishment of an olive grove and fruit orchard.
- (5) The agricultural enterprise must be established prior to the issue of a Certificate of Occupancy for the dwelling under the *Building Act 2016*.
- (6) Residential use of the property is dependent upon the establishment of the agricultural activities and their ongoing operation. The residential use must cease if and when the agricultural use ceases.

Agreements

- (7) Prior to commencement of any works, the owner 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 covenants and agrees with the Brighton Council that:
- a) the residential use of the property is dependent upon the establishment and ongoing operation of agricultural use(s) that aim to maximise the potential of the land with consideration of limitations and constraints such as land capability, access to water, and that the residential use must cease if and when the agricultural use ceases; and
 - b) The land is within an established rural area and may be subject to occasional noise, odour, chemical and dust emissions associated with surrounding agricultural activities.
- (8) Agreement(s) made pursuant to Part 5 of the *Land Use Planning and Approvals Act 1993* must bind the current owner and his/her successors in title and must be prepared on a blank instrument form and 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.

Services

- (9) 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

- (10) Prior to issue of a Certificate of Occupancy pursuant to the *Building Act* 2016, at least two (2) car parking spaces must be provided on the land at all times for the use of the development, in accordance with Standards Australia (2004) Australian Standard AS 2890.1 - 2004 – Parking Facilities Part 1: Off Street Car Parking; Standards Australia, Sydney.
- (11) Prior to issue of a Certificate of Occupancy pursuant to the *Building Act* 2016, the internal driveway and areas set-aside for parking and associated access and turning must be provided in accordance with 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, and must include all of the following;
- (a) Constructed with a durable all-weather pavement.
 - (b) Minimum carriageway width of 4 metres
 - (c) Drained to an approved stormwater system.
 - (d) Vehicular passing areas 6 metres wide (total) x 20 metres long every 200 metres, or as otherwise required by an approved Bushfire Plan.
- (12) The internal driveway and areas set-aside for parking and associated access and turning must be designed, constructed, and maintained to avoid dust or mud generation, erosion and sediment transfer off site or de-stabilisation of the soil on site or on adjacent properties to the standard required by Council's Municipal Engineer.

Access to Road

- (13) Prior to issue of a Certificate of Completion pursuant to the *Building Act* 2016, or unless approved otherwise by Council's General Manager, the existing vehicular access, from the road carriageway to the property boundary, must be upgraded (including a minimum 2 coat seal) to comply with Standard Drawings TSD-R03-v1 Rural Roads Typical Property Access, TSD-R04-v1 Rural Roads Typical Driveway Profile and TSD-RF01-v1 Guide To Intersection And Domestic Access Sight Distance and to the satisfaction of Council's General Manager.

Stormwater

- (14) Stormwater drainage from the proposed development must be retained on site to the satisfaction of Council's General Manager and in accordance with a Certificate of Likely Compliance or Plumbing permit issued by the Permit Authority in accordance with the Building Act 2016.

Wastewater

- (15) Wastewater from the development must discharge to an on-site waste disposal system in accordance with a Certificate of Likely Compliance or Plumbing Permit issued by the Permit Authority in accordance with the *Building Act* 2016.

Soil and Water Management

- (16) 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.
- (17) 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

- (18) 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.
- (19) 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.
- (20) 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.
- (21) 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.

- (22) 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 Geard moved, Cr Whelan seconded that the recommendation be adopted.

CARRIED

VOTING RECORD

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

**5.2 Section 38 Report - Amendment to Brighton Local Provisions Schedule -
Rezone Bowden Drive, Bridgewater (C/T 237205/1) from Open Space Zone to
General Residential Zone:**

Type of Report:	Planning Authority
Application No:	SA 2021-0024 / RZ 2021-003
Address:	Bowden Drive, Bridgewater (Certificate of Title Volume 237205 Folio 1)
Requested By:	Holmes Dyer on behalf of Centacare Evolve Housing
Proposal:	Rezone land at Bowden Drive, Bridgewater from Open Space Zone to General Residential zone
Zone:	Open Space / General Residential
Author:	Jo Blackwell – Senior Planner

1. Executive Summary

- 1.1. The report (Annexure A) considers rezoning the land at Bowden Drive, Bridgewater, more particularly contained in Certificate of Title Vol 237205 Folio 1) from Open Space Zone to General Residential Zone under the Brighton Local Provisions Schedule (LPS) which form part of the recently adopted *Tasmanian Planning Scheme – Brighton* (the Scheme). The proposed amendment does not seek to alter any overlays or provisions relating to the land.
- 1.2. To proceed, the request must be initiated by the Planning Authority. If initiated, public exhibition would follow and a final decision made by the Tasmanian Planning Commission.
- 1.3. The land in question was initially developed to incorporate a Radburn-style internal park which allows for private yards to address shared open spaces. However, in contrast to predicted low or no fencing development, with dwellings orientated towards the park, the erection of numerous and high fences have created concealment and entrapment opportunities, contrary to Crime Prevention Through Environmental Design (CPTED) principles.
- 1.4. The subject site is owned by Brighton Council, and adjoins land which, in the majority, is owned privately or by the Crown.
- 1.5. The rezoning is considered necessary to convert underutilised open space for the purpose of infill residential development and to facilitate better outcomes in relation to safe use of the site pursuant to CPTED principles.
- 1.6. The land has not previously been considered for rezoning.
- 1.7. The proposal is recommended for initiation.

2. Legislative & Policy Content

- 2.1. The purpose of this report is to enable the Planning Authority to determine whether to initiate the requested planning scheme amendment.
- 2.2. The relevant legislation is the *Land Use Planning and Approvals Act 1993* (the Act). The provisions of the Act establish the test of whether a planning scheme amendment is reasonable or not.
- 2.3. The request is made pursuant to section 37 of the Act.
- 2.4. Section 38 of the Act requires Council to consider the criteria of the LPS when approving or refusing an amendment.
- 2.5. The LSP criteria is contained in section 34 of the Act.
- 2.6. 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*.

3. Risk & Implications

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

4. Site Detail

4.1. Pursuant to the LPS, the entirety of the site is currently zoned Open Space (see Figure 1) and described as a “reserve” pursuant to the *Local Government Act 1993*.



Figure 1: Subject site (continuous green area) Surrounding areas in red are zoned General Residential, with inner residential zoned land located to the north of the site (Source: Listmap).

4.2. The land subject to the proposed amendment relates to a single parcel of land, as identified in Table 1:

Address	Owner	Title Reference	Land Area
Bowden Drive, Bridgewater	Brighton Council	Certificate of Title Volume 237205 Folio 1	8204m ²

- 4.3. The land is an unorthodox shaped site, commencing with street frontage to Bowden Drive, and running west at the rear of properties along Surrey Place, Bromley Street, Carlton Place and Willis Street. As shown in figure 1, pedestrian access to the subject site is provided via Albion Road, Bromley Street, Scott Road and Willis Street.
- 4.4. Surrounding land is held variously in private ownership and in Crown ownership. Adjacent to the subject site (eastern end) is the Bridgewater Community Centre and Community Garden, with the Jordan River Learning Federation (JRLF) East Derwent Primary School located on the eastern side of Bowden Road.
- 4.5. The site is generally grassland with minimal vegetation. Site photos are included in the Applicant's report (pp 10 – 13). No significant natural values are identified on the site.
- 4.6. The applicant advises that it has undertaken searches of the site and adjoining land to identify any sites that may be subject to the *Aboriginal Heritage Act 1975*. No known sites have been identified, however the proponent will be required to observe the principles of the Act, and must be aware of the possibility of an unanticipated discovery. As this proposal is for rezoning only, actual or potential harm to Aboriginal Heritage is limited.
- 4.7. The land is not bushfire prone.
- 4.8. Sewer and water infrastructure is provided to the extremities of the subject land (Holmes Dyer 2021, p21).
- 4.9. The site can be serviced by public transport. Current route details are provided in Attachment A (Holmes Dyer 2021, pp 22-24).

5. Relevant Background

- 5.1. The proposal arises from the failure of the Radburn style development to provide for shared use open space, and in the alternative creates an area of space which provides for limited public use, and spaces that do not satisfy CPTED principles.
- 5.2. Centacare Evolve Housing (CEH) through the Better Housing Futures programme prepared the Bridgewater-Gagebrook Masterplan, which has underpinned the recent improvements to social and low-income housing across the area. The Masterplan is *"a blue print to retrofit and redevelop the estate through creative physical resident to support improved services and facilities and as far as is practicable improve the functionality of the estate, improve housing choice, availability, and tenure mix, bolster the underlying land economics, and improve community safety, wellbeing and cohesiveness."* (Holmes Dyer 2021, p5).

6. Proposal

- 6.1. Pursuant to s37 of the Act, the Applicant seeks to amend the Brighton LPS by:
 - Rezoning the land contained in Certificate of Title Volume 237205 Folio 1 and known as Bowden Drive, Bridgewater from Open Space to General Residential.
- 6.2. The proposal is supported by the attached Rezoning Request, prepared by Holmes Dyer dated 28th May 2021.
- 6.3. Council (acting as planning authority) may initiate an amended pursuant to the Scheme pursuant to s38(2) of the Act.

7. Planning Scheme Implications

7.1. Zone Purpose

- 7.1.1 The Scheme establishes a series of objectives for achieving sustainable use and development of land, which are relevant for the consideration of any planning scheme amendment.
- 7.1.2 It is relevant for this amendment, to outline the relevant provisions which relate to the proposed amendment to rezone the land General Residential.
- 7.1.3 The zone purpose statements for the General Residential Zone include:
- 8.1.1 To provide for residential use or development that accommodates a range of dwelling types where full infrastructure services are available or can be provided.*
- 8.1.2 To provide for the efficient utilisation of available social, transport and other service infrastructure.*
- 8.1.3 To provide for non-residential use that:*
- (a) primarily serves the local community; and*
- (b) does not cause an unreasonable loss of amenity through scale, intensity, noise, activity outside of business hours, traffic generation and movement, or other off site impacts.*
- 8.1.4 To provide for Visitor Accommodation that is compatible with residential character.*

The proposal accords with the zone purpose.

7.2. Allowable Uses

- 7.2.1 Should the proposal for rezone be approved, the following changes to the Use Table will occur:

Table 1: Applicable Use Classes

Use	Open Space Zone	General Residential
Natural and Cultural Values Management	No Permit Required	No Permit Required
Passive Recreation	No Permit Required	No Permit Required
Utilities –	No Permit Required - If for minor utilities and underground utilities	No Permit Required - If for minor utilities
Business and Professional Services	Prohibited	Discretionary – If for a consulting room, medical centre, veterinary centre, child health clinic, or for the provision of residential support services
Community Meeting and Entertainment	Discretionary	Discretionary -

		If for a place of worship, art and craft centre, public hall, community centre or neighbourhood centre.
Crematoria and Cemeteries	Discretionary - If for a cemetery	Prohibited
Educational and Occasional Care	Prohibited	Discretionary – If not for a tertiary institution
Emergency Services	Prohibited	Discretionary
Food Services	Discretionary	Discretionary - If not for a take-away food premises with a drive through facility.
General Retail and Hire	Discretionary	Discretionary – If for a local shop
Pleasure Boat Facility	Discretionary	Prohibited
Residential	Prohibited	No Permit Required – If for a single dwelling Permitted – If not listed as No Permit Required
Resource Development - if for 1. marine farming shore facility or other facility that relies upon a coastal location to fulfil its purpose); or 2. Grazing	Discretionary	Prohibited
Sport and Recreation	Discretionary	Discretionary - If for a fitness centre, gymnasium, public swimming pool or sports ground
Tourist operation	Discretionary	
Transport depot and distribution	Discretionary - If associated with wharves, water taxis or commuter or passenger ferry terminals	
Vehicle Parking	Discretionary	
Visitor Accommodation	Discretionary -	Permitted

	If for camping and caravan park or overnight camping areas	
Utilities	Prohibited	Discretionary – If not listed as No Permit Required
All other use prohibited in both Open Space or General Residential Zones		

7.2.2 The proposed rezoning would allow for a permitted pathway for some or all of the open space zone to be converted to residential use.

8. Planning Assessment

8.1. Requirements of the Act s34(2))

Section 34(2) requires:

(2) The LPS criteria to be met by a relevant planning instrument are that the instrument –

(a) contains all the provisions that the SPPs specify must be contained in an LPS; and

(b) is in accordance with section 32; and

(c) furthers the objectives set out in Schedule 1 ; and

(d) is consistent with each State policy; and

(da) satisfies the relevant criteria in relation to the TPPs; and

(e) as far as practicable, is consistent with the regional land use strategy, if any, for the regional area in which is situated the land to which the relevant planning instrument relates; and

(f) has regard to the strategic plan, prepared under section 66 of the Local Government Act 1993, that applies in relation to the land to which the relevant planning instrument relates; and

(g) as far as practicable, is consistent with and co-ordinated with any LPSs that apply to municipal areas that are adjacent to the municipal area to which the relevant planning instrument relates; and

(h) has regard to the safety requirements set out in the standards prescribed under the Gas Safety Act 2019

8.2. Contains all the provisions that the SPP's specify must be contained in an LPS (s34(2)(a))

The proposal does not conflict with the SPPs

8.3. Amendment is in accordance with section 32 (s34(2)(b))

Section 32 requires that an LPS is to consist of certain provisions that apply only to a single municipal area specified in the LPS. It is considered that the proposal does not contradict s32.

8.4. Furthers RMPS Objectives (s34(2)(c))

The objectives of the Resource Management and Planning System must be furthered by the rezoning request.

The proposed Planning Scheme Amendment as it relates to the Objectives of Part 1 of Schedule 1 of LUPAA is discussed below:

- (a) To promote the sustainable development of natural and physical resources and the maintenance of ecological processes and genetic diversity; and*

The proposed amendment does not conflict with this objective.

- (b) To provide for the fair, orderly and sustainable use and development of air, land and water; and*

The amendment continues to provide for fair, orderly and sustainable use and development of air, land and water.

- (c) To encourage public involvement in resource management and planning; and*

The public will be involved in the draft planning scheme amendment through the opportunity to make representations and attend public hearings.

- (d) To facilitate economic development in accordance with the objectives set out in paragraphs (a), (b) and (c); and*

The draft amendment will facilitate economic development through the future development of land for additional housing stock for social and low income housing.

- (e) To promote the sharing of responsibility for resource management and planning between the different spheres of Government, the community and industry in the State.*

The amendment demonstrates the sharing of responsibility for resource management and planning between different spheres of government, community and industry.

The proposed Planning Scheme Amendment as it relates to the Objectives of Part 2 of Schedule 1 of LUPAA is discussed below:

- (a) to require sound strategic planning and co-ordinated action by State and local government; and*

The proposed amendment is consistent with the Southern Tasmanian Regional Land Use Strategy 2010-2035; Brighton Structure Plan 2018, Brighton Council Strategic Plan 2019-2029 and the Bridgewater-Gagebrook Master Plan 2018.

- (b) to establish a system of planning instruments to be the principal way of setting objectives, policies and controls for the use, development and protection of land; and*

The proposal has been submitted in accordance with section 37 of the Act and is consistent with all relevant legislation. The proposed amendment will form part of the Tasmanian Planning Scheme – Brighton, which controls the use, development and protection of land in accordance with the Land Use Planning and Approvals Act 1993.

- (c) to ensure that the effects on the environment are considered and provide for explicit consideration of social and economic effects when decisions are made about the use and development of land; and*

The land contains no natural values of major significance. Risks from future development can be appropriately managed under the LPS and any subsequent planning schemes.

(d) to require land use and development planning and policy to be easily integrated with environmental, social, economic, conservation and resource management policies at State, regional and municipal levels; and

The proposed amendment does not conflict with this objective and is consistent with State, regional and local planning policies and strategies.

(e) to provide for the consolidation of approvals for land use or development and related matters, and to co-ordinate planning approvals with related approvals; and

This Objective is not directly relevant to the current matter.

(f) to promote the health and wellbeing of all Tasmanians and visitors to Tasmania by ensuring a pleasant, efficient and safe environment for working, living and recreation; and

The proposed amendment will allow for an improved physical and social environment for residents through the provision of infill residential development that will enhance the amenity of the surrounding area and contribute to public safety due to increased passive surveillance.

(g) to conserve those buildings, areas or other places which are of scientific, aesthetic, architectural or historical interest, or otherwise of special cultural value; and

The subject land is not identified as having heritage values.

(h) to protect public infrastructure and other assets and enable the orderly provision and co-ordination of public utilities and other facilities for the benefit of the community; and

All necessary public infrastructure can be easily provided to the site.

The permit application process provides adequate safeguards to protect public infrastructure.

(i) to provide a planning framework which fully considers land capability.

The capability of the subject land has been considered and is not considered to affect the attainment of this objective.

8.4 Consistent with State Policies (S34(2)(d))

8.4.1 State Coastal Policy 1996

The *State Coastal Policy 1996* applies to land within 1km of the high-water mark. The subject land is within 400m of the Derwent River, however it is separated from the river by existing residential development.

The applicant's comments at pages 40-41 are supported.

8.4.2 State Policy on the Protection of Agricultural Land 2009

The subject land is predominantly within a residential area. It is not used for agriculture and nor is there any real potential for it to be used as such.

8.4.3 State Policy on Water Quality Management 1997

The subject land has full access to reticulated services. Given this, it is considered that there will be no direct impact on the land during future development.

8.5 Consistent with TPPS (S34(2)(da))

8.5.1 There are currently no Tasmanian Planning Policies in effect.

8.6 Southern Tasmanian Regional Land Use Strategy 2010-2035 (s34(2)(e))

8.6.1 As required under s34(2)(e), the proposed amendment must be, as far as practicable, consistent with the regional land use strategies. In southern Tasmania, the relevant regional land use strategy is the *Southern Tasmanian Regional Land Use Strategy 2010-2035 (STRLUS)*.

8.6.2 The STRLUS outlines strategic directions as to how the STRLUS will support Tasmania's regional vision. The strategic directions provide a broad policy framework to guide what we plan and decide how we do it.

8.6.3 The amendment accords particularly with the following strategic directions (SD):

- SD1 Adopting a more integrated approach to planning an infrastructure;
- SD2 Holistically managing residential growth
- SD8 Supporting strong and healthy communities
- SD10 Creating liveable communities

By:

- rationalising existing areas of underutilised public open space to create more useable, functional public open space;
- maximising the use of existing infrastructure systems and improving opportunities for the community to access existing services;
- promoting a less car dependent environment and providing improved access to high quality open spaces
- facilitating the creation of more liveable community by improving access to services, providing housing diversity, and creating safe and attractive areas of open space.

8.6.4 An assessment against the Regional Policies is set out in Table 2 of the supporting report (Holmes Dyer, 2021, pp32-35). The applicant's assessment is supported. It is considered that the proposed amendment continues to further the requirements of STRLUS.

8.7 Brighton Council Strategic Plan 2019-2029 (s34(2)(f))

8.7.1 The proposed amendment is consistent with the below relevant strategies from the Brighton Council Strategic Plan 2019-2029:

- S1.1 Understand/Improve Health and Wellbeing
- S1.2 Create Housing/Employment/Play/Education (Liveability)
- S1.3 Provide Public Facilities/Amenities
- S1.4 Support Connected Communities

S1.5 Build a resilient community and environmentally sustainable future.

8.7.2 The proposed amendment does not conflict with any of Council's strategies.

8.8 Brighton Structure Plan 2018

8.8.1 While consistency with the *Brighton Structure Plan 2018* (the Structure Plan) is not a legislative requirement under the Act, it does represent orderly and sound strategic planning direction for the Brighton Municipal Area.

8.8.2 The Structure Plan guides the major changes to land use, built form and public spaces that together can achieve identified economic, social and environmental objectives for years 2018-2023.

8.8.3 The proposed amendment is consistent with the following strategies identified in the Structure Plan:

- Strategy 2: Plan for housing growth within the urban growth boundary
- Strategy 3: Increase housing diversity
- Strategy 12 – Improve the permeability of the movement networks

8.9 Local and Common Provisions

8.9.1 In addition to requiring that a Draft Amendment is consistent as far as practicable with the Regional Land Use Strategy, Section 30O requires that an amendment to a local provision of the scheme is not directly or indirectly inconsistent with the common provisions.

8.9.2 The proposed amendment does not conflict with common or overriding local provisions of the Scheme.

8.10 Content of LPS (s34(2)(g))

8.10.1 The LPS came into effect for the Brighton LGA on 14th April 2021 and sets out requirements for the use or development of land in accordance with the Act.

8.10.2 The proposed amendment seeks to rezone the land to General Residential utilising the state planning provisions. It is considered that the application of the General Residential zone for the site for future residential development is consistent with the requirement relating to the contents of an LPS pursuant to s32 of the Act.

8.11 Gas Pipeline Safety (s34(2)(h))

8.11 The subject land is not affected by the Gas Pipeline. Accordingly, there are no issues of gas pipeline safety associated with the draft amendment.

9. Conclusion

9.1 The proposal to amend the Brighton Local Provisions Schedule is consistent with regional and local land use strategy and the requirements of the Land Use Planning and Approvals Act 1993.

9.2 On this basis, it is recommended that Council initiate and certify draft amendment RZ 2021-03, as detailed in the attachments to this report.

RECOMMENDATION:

- A. That in accordance with s38(2)(a) of the *Land Use Planning and Approvals Act 1993*, to be known as draft amendment RZ 2021-03 to rezone the land contained in Certificate of Title Volume 237205 Folio 1 (PID 5026752) and known as Bowden Drive, Bridgewater from Open Space to General Residential.
- B. That in accordance with Section 40F(2)(a) of the *Land Use Planning and Approvals Act 1993*, Council considers that draft amendment RZ 2021-03 satisfies the provisions of Section 34 of the *Land Use Planning and Approvals Act 1993*.
- C. That in accordance with Section 40F(3) of the *Land Use Planning and Approvals Act 1993*, Council directs that draft amendment RZ 2021-03 be certified by instrument in writing affixed with the common seal of the Council; and
- D. That in accordance with Section 40F(4) of the *Land Use Planning and Approvals Act 1993*, Council directs that a certified copy of draft amendment RZ 2021-03 be given to the Tasmanian Planning Commission within seven (7) days.
- E. That in accordance with Section 40FA(1) of the *Land Use Planning and Approvals Act 1993*, Council directs that a copy of the draft amendment be provided to relevant agencies and those state service, or State authorities, that the planning authority considers may have an interest in the draft amendment.
- F. That in accordance with Section 40G(1) of the *Land Use Planning and Approvals Act 1993*, Council directs that draft amendment RZ 2021-03 be placed on public exhibition.

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 Owen	
Cr Whelan	

5.3 Application Under *Tasmanian Planning Scheme - Brighton* - DA 2020 / 306 - Multiple Dwellings (15) and Associated Infrastructure - 75 Fouche Avenue, Old Beach:

Type of Report:	Planning Authority – For Decision
Application No:	DA 2020/306
Address:	75 Fouche Avenue, Old Beach
Proposal:	Multiple dwellings (15) and Associated Infrastructure
Zones:	General Residential
Representations:	Four (4)
Discretions:	1 – Privacy (habitable room window to private open space) 2 – Number of motorcycle parking spaces 3 – Pedestrian access 4 – Traffic generation 5 – Buildings and works within a waterway and coastal protection area 6 – Buildings and Works excluding coastal protection works within a coastal inundation hazard area
Author:	Planning Officer (Richard Cuskelly)

1. Executive Summary

- 1.1. Planning approval is sought for multiple dwellings (15) and associated infrastructure at 75 Fouche Avenue, Old Beach (the 'Site'), which is situated within the General Residential Zone of the *Tasmanian Planning Scheme - Brighton* (the 'Planning Scheme').
- 1.2. The application invokes certain privacy, vehicle access, manoeuvring and parking, and natural values discretions under the Planning Scheme.
- 1.3. Four (4) representations were received within the statutory public advertising period. The points in the representations concerning natural values impact were considered to warrant amendment of the application.
- 1.4. The modified application is considered to meet all applicable standards of the Planning Scheme and is thus recommended for approval subject to 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 2020/306.

- 2.2. This determination must be made no later than 20 July 2021. The statutory assessment period has been extended at the request of the applicant.
- 2.3. The relevant legislation is the *Land Use Planning and Approvals Act 1993* (the 'Act'). The provisions of the Act require a planning authority to take all reasonable steps to ensure compliance with the planning scheme.
- 2.4. This report details the reasons for the officer recommendation. The Planning Authority must consider this report but is not bound to adopt the recommendation. Broadly, the Planning Authority can either: (1) adopt the recommendation, or (2) vary the recommendation by adding, modifying or removing recommended reasons and conditions or replacing an approval with a refusal (or vice versa). Any alternative decision requires a full statement of reasons to comply with the *Judicial Review Act 2000* and the *Local Government (Meeting Procedures) Regulations 2015*.
- 2.5. This report has been prepared with appropriate regard to the State Policies that apply under the *State Policies and Projects Act 1993*. Particularly the Tasmanian State Coastal Policy 1996, and specifically section 2.4.1:

2.4.1. Care will be taken to minimise, or where possible totally avoid, any impact on environmentally sensitive areas from the expansion of urban and residential areas, including the provision of infrastructure for urban and residential areas.
- 2.6. This report has been prepared with appropriate regard to Council's Strategic Plan and other Council policies, and the application is not found to be inconsistent with these. Nevertheless, it must be recognised that the Planning Scheme is the regulatory document that provides the overriding consideration for this application.

3. Risk & Implications

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

4. Relevant Background

- 4.1. Crown consent was given to the lodgement of this application, pursuant to section 52(1B) of the Act.
- 4.2. The application was advertised from mid-December 2020 until mid-January 2021 where it received four (4) representations in opposition.

The advertising timeframe was extended to 28 days from the usual 14 days due to the New Year's break office closures, and in accordance with section 57(5AA) of the Act.
- 4.3. A report recommending refusal due to unnecessary impacts on natural values (specifically saltmarsh flora/fauna) was on the agenda for Council's Planning Authority Meeting of 9 February 2021.
- 4.4. Prior to the meeting, the applicant requested the Planning Authority defer determination of the application and agree to an 'extension of time' in order to address deficiencies. The Planning Authority agreed and over the next few months infrastructure changes were made to the application and a more comprehensive natural values assessment undertaken and submitted.

- 4.5. These changes resulted in only change to the development (a slight increase in floor level of buildings) and therefore re-advertising was not required. The two representors who raised concerns over natural values impact were given a 14-day window to view the amended plans and update their representation if they wished. No amended representations were received.

5. Site Detail

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



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



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



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

- 5.2. To the immediate south of the site is the Fouche Avenue Public Reserve (Property ID: 2061595): a 5.4-hectare lot managed by the Crown and comprising the Old Beach Foreshore Trail and predominantly saltmarsh vegetation and habitat, before its southern boundary on the high water mark of the Derwent River.



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

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

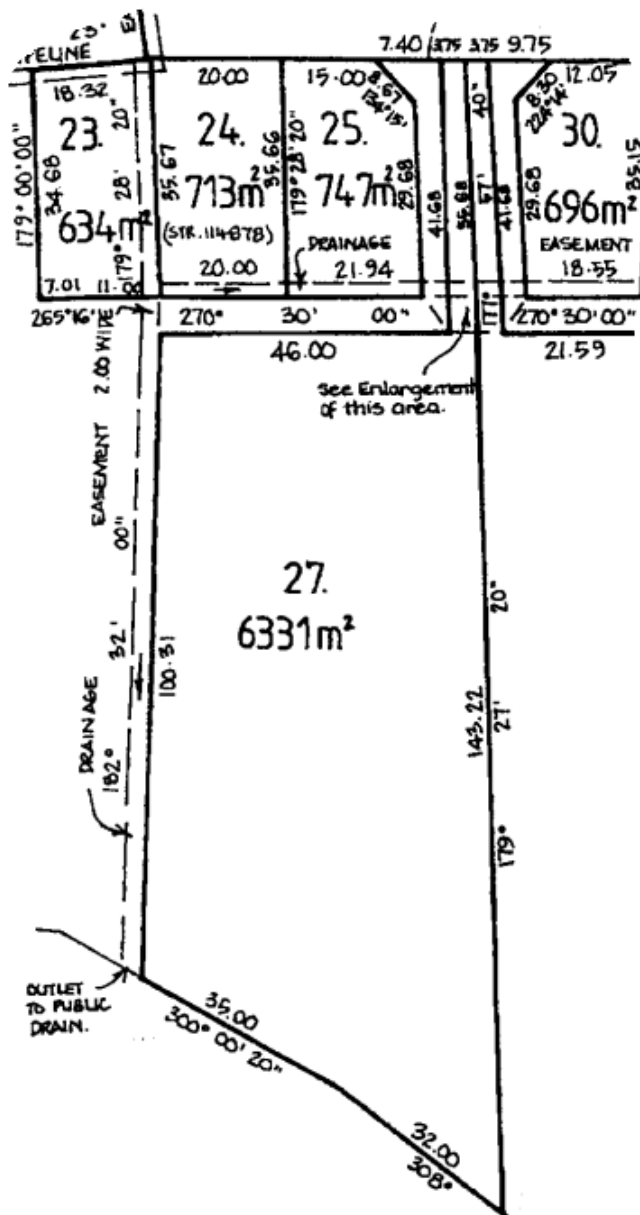


Figure 3. Sealed Plan 107918

- 5.6. The site is within the General Residential Zone whilst the adjoining Public Reserve toward the Derwent River is zoned Open Space (see Figure 4).



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

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



Figure 5. Coastal Inundation Low Hazard Area (highlighted)



Figure 6. Coastal Inundation Medium Hazard Area



Figure 7. Waterway and Coastal Protection Area

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

COVENANT

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

5.9. Though Units 12-15 are proposed under 1.75m AHD, it is considered that the required consent is being sought within this development application process.

6. Proposal

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

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

6.2. Stormwater will be disposed of and treated on site by infiltration via the use of permeable pavers with storage under the pavers to cater for a 5% AEP service level.

6.3. Staging is proposed as follows:

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

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

7. Assessment against planning scheme provisions

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

- 8.0 – General Residential Zone
- E1.0 – Signs Code
- E2.0 – Parking and Sustainable Transport Code
- E3.0 – Road and Railway Assets Code
- E7.0 – Natural Assets Code
- E11.0 – Coastal Inundation Prone Areas Code

7.2. *Residential (multiple dwellings)* is a Permitted land-use in the General Residential Zone (8.2).

7.3. The proposal is considered to satisfy the following Code exemption:

Signs Code

Proposed is a street number sign with a non-illuminated display area of 0.5m² to be placed on the gate to the development site at the end of the shared access strip. This sign is exempt under Table C1.4.

Coastal Inundation Hazard Code

All aspects of the development that require authorisation under the *Building Act 2016* are exempt under C11.4.1 (a) (e.g. dwellings). However all remaining works are to be assessed.

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

General Residential Zone

- 8.4.1 – Residential density for multiple dwellings
- 8.4.2 – Setbacks and building envelope (see Figure 9)
- 8.4.3 – Site coverage and private open space
- 8.4.4 – Sunlight and overshadowing
- 8.4.5 – Width of openings for garages and carports
- 8.4.6 – Privacy for all dwellings (except A2)
- 8.4.8 – Waste storage for multiple dwellings

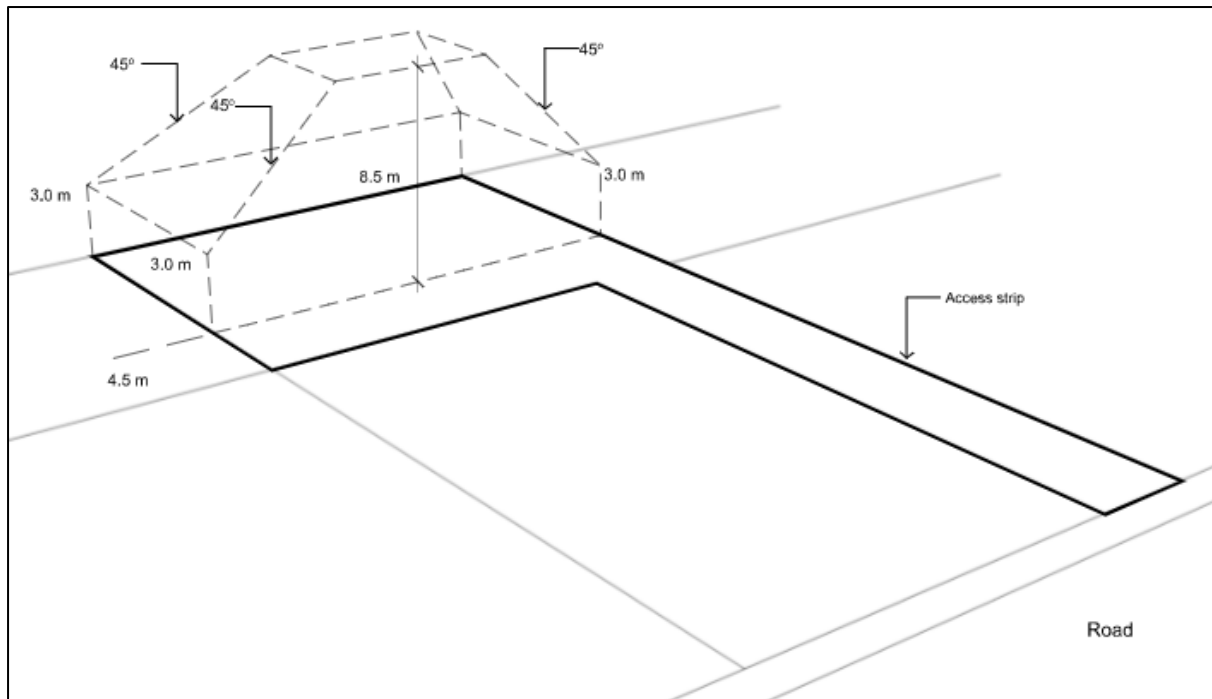


Figure 9. Building envelope for internal lots as required by 8.4.2 A3(a)

Parking and Sustainable Transport Code

- C2.5.1 A1 – Number of car parking spaces
- C2.5.2 A1 – Number of bicycle parking spaces
- C.2.6.1 A1 – Construction of parking areas
- C2.6.2 A1.1 – Design & Layout (manoeuvring, etc.)
- C2.6.3 A1 – Number of accesses

Road and Railway Assets Code

- C3.5.1 A1.5 – Traffic generation

Natural Assets Code

- C7.6.1 A3 – No new stormwater disposal point

7.5. The following discretions are invoked by the proposal:

- 8.4.6 A2 – Privacy (habitable room window to private open space)
- C2.5.3 A1 – Number of motorcycle parking spaces
- C2.6.5 A1.1 – Pedestrian access (10 or more spaces)
- C3.5.1 A1.4 – Traffic generation
- C7.6.1 A1 – Buildings and works within a waterway and coastal protection area

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

7.6.1 The objective of standard 8.4.6 is:

To provide reasonable opportunity for privacy for dwellings.

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

(b) The window or glazed door:

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

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

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

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

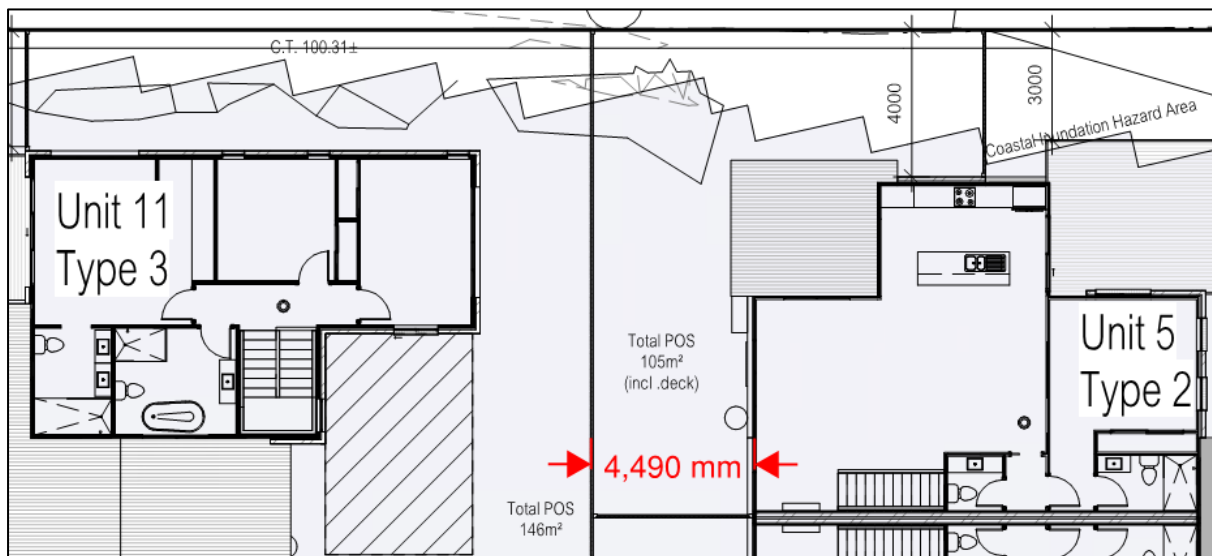


Figure 10. Section of site plan showing the minimum 4.5m setback of the living room window of Unit 5 to the private open space of Unit 11 (scaled measurement by author)

7.6.4 Units 5, 6, 7 and 8 must be assessed against corresponding Performance Criteria 8.4.6 P2 (b) which requires that a window to a habitable room of a dwelling, that has a floor level more than 1m above the natural ground level, must be screened, or otherwise located or designed, to minimise direct views to the private open space of another dwelling.

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

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

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

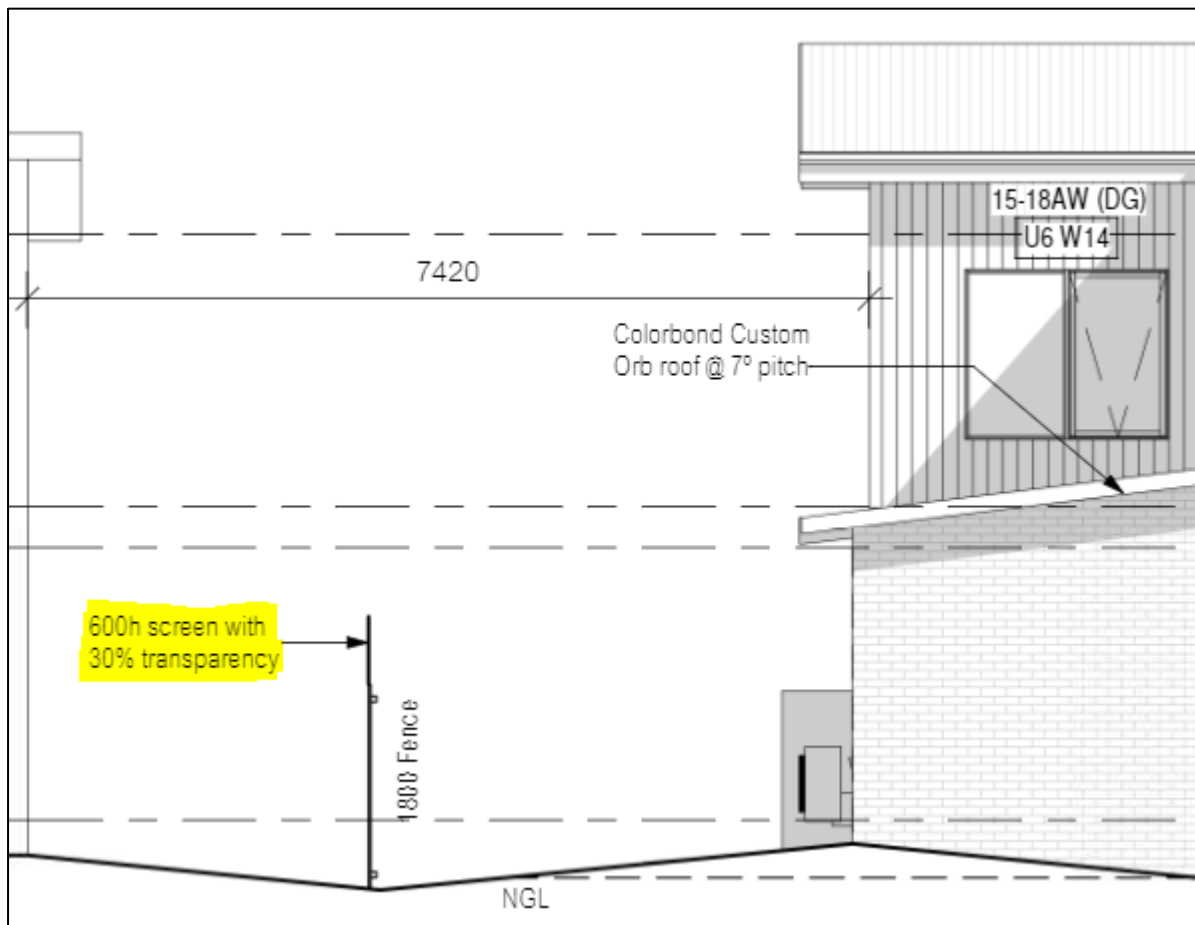


Figure 11. Section of east elevation plan for Units 5 and 6 highlighting the proposed fence screening addition

7.6.6 However, there is no analysis undertaken by the applicant as to whether the screening will impact sightlines into the private open space. As such, a condition requiring the south facing living room window for units 5-8 is to have a sill height of at least 1.7 m above the floor level or has fixed obscure glazing extending to a height of at least 1.7 m above the floor level. Trees should also be planted at a minimum height of 1.8m so that screening is provided immediately.

7.6.7 The proposal is considered to meet Performance Criteria 8.4.6 P2 with conditions.

7.7. Discretion 2 – Number of motorcycle parking spaces

7.7.1 Acceptable Solution C2.5.3 A1 requires 1 motorcycle space for a development of this nature.

7.7.2 No motorcycle space is delineated on the proposal plans.

7.7.3 Therefore, the application must meet corresponding Performance Criteria C2.5.3 P1, reproduced below:

Motorcycle parking spaces for all uses must be provided to meet the reasonable needs of the use, having regard to:

- (a) the nature of the proposed use and development;*
- (b) the topography of the site;*
- (c) the location of existing buildings on the site;*
- (d) any constraints imposed by existing development; and*
- (e) the availability and accessibility of motorcycle parking spaces on the street or in the surrounding area.*

7.7.4 Council's Senior Technical Officer assessed and advised that:

The development complies with the number of car parking spaces including visitor spaces. Motorcycles can use car parking spaces when required and there is sufficient room on site for some informal motorcycle parking. The proposal is considered to have satisfied the performance criteria.

7.7.5 The proposal is considered to satisfy Performance Criteria E5.5.1 P3.

7.8. Discretion 3 - Pedestrian access

7.8.1 Acceptable Solution C2.6.5 A1.1 (a) states:

Uses that require 10 or more car parking spaces must:

- (a) have a 1m wide footpath that is separated from the access ways or parking aisles, excluding where crossing access ways or parking aisles, by:*
 - (i) a horizontal distance of 2.5m between the edge of the footpath and the access way or parking aisle; or*
 - (ii) protective devices such as bollards, guard rails or planters between the footpath and the access way or parking aisle; and*
- (b) be signed and line marked at points where pedestrians cross access ways or parking aisles.*

7.8.2 A footpath is proposed though it is not 2.5m from the access and does not have protective devices installed. Therefore, the application must meet corresponding Performance Criteria C2.6.5 P1, reproduced below:

Safe and convenient pedestrian access must be provided within parking areas, having regard to:

- (a) the characteristics of the site;*
- (b) the nature of the use;*
- (c) the number of parking spaces;*
- (d) the frequency of vehicle movements;*
- (e) the needs of persons with a disability;*
- (f) the location and number of footpath crossings;*
- (g) vehicle and pedestrian traffic safety;*

- (h) the location of any access ways or parking aisles; and*
- (i) any protective devices proposed for pedestrian safety.*

7.8.3 The TIA submitted with the application makes the following statement.

The proposed driveway and circulation road widths are considered sufficient for expected level of traffic and pedestrian activity to accommodate both in a shared zone environment where vehicles speed will be quite low, at no more than 20km/h and clear forward sight lines.

7.8.4 Council's Senior Technical Officer assessed and concurred with the above (see also response to representation below). The proposal is considered to satisfy Performance Criteria C2.6.5 P1.

7.9. Discretion 4 – Traffic generation

7.9.1 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 20% or 40 vehicle movements per day, whichever is the greater.

7.9.2 Annual average daily traffic (AADT) will increase from 8-10 AADT for an assumed single dwelling to 90 (or more) AADT.

7.9.3 Therefore, the application must meet corresponding Performance Criteria C3.5.1 P1, 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.*

7.9.4 The traffic impact assessment submitted with the application concluded:

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

7.9.5 Council's Senior Technical Officer assessed and concurred with the above. The proposal is considered to satisfy Performance Criteria C3.5.1 P1.

7.10. Discretion 5 – Building and works within a Waterway and Coastal Protection Area

7.10.1 The objective of C7.6.1 is:

That buildings and works within a waterway and coastal protection area or future coastal refugia area will not have an unnecessary or unacceptable impact on natural assets.

7.10.2 Acceptable Solution C7.6.1 A1 (a) states:

Buildings and works within a waterway and coastal protection area must be within a building area on a sealed plan approved under this planning scheme.

7.10.3 There is no building area defined on the sealed plan (SP107918), and five proposed dwellings (Units 11, 12, 13, 14 and 15) are sited within a Waterway and Coastal Protection Area (otherwise referred to as 'WCPA').

7.10.4 Therefore, the application must be assessed against Performance Criteria C7.6.1 P1.1, below:

Buildings and works within a waterway and coastal protection area must avoid or minimise adverse impacts on natural assets, having regard to:

- (a) impacts caused by erosion, siltation, sedimentation and runoff;*
- (b) impacts on riparian or littoral vegetation;*
- (c) maintaining natural streambank and streambed condition, where it exists;*
- (d) impacts on in-stream natural habitat, such as fallen logs, bank overhangs, rocks and trailing vegetation;*
- (e) the need to avoid significantly impeding natural flow and drainage;*
- (f) the need to maintain fish passage, where known to exist;*
- (g) the need to avoid land filling of wetlands;*
- (h) the need to group new facilities with existing facilities, where reasonably practical;*
- (i) minimising cut and fill;*
- (j) building design that responds to the particular size, shape, contours or slope of the land;*
- (k) minimising impacts on coastal processes, including sand movement and wave action;*
- (l) minimising the need for future works for the protection of natural assets, infrastructure and property;*
- (m) the environmental best practice guidelines in the Wetlands and Waterways Works Manual; and*
- (n) the guidelines in the Tasmanian Coastal Works Manual.*

7.10.5 It is important to consider the following defined terms of the Natural Assets Code (C7.3.1):

Natural values

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

Littoral vegetation

means vegetation adjacent to a sea, lake or river that is close to the shore. It includes the intertidal zone to high water mark and can include wetlands.

Waterway values

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

7.10.6 A Natural Values Comment prepared by North Barker Ecosystem Services (a suitably qualified person) was provided as part of the original application. The Comment states:

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

Concluding:

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

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

7.10.8 Compliance with (c)-(n) of Performance Criteria C7.6.1 P1 are considered either not applicable or, in the case of criteria (1)-(n), conditionable. It is also agreed that proposed buildings and works are either clear or exempt from assessment against the mapped Future Coastal Refugia Area. It is criteria C7.6.1 P1 (a)-(b) that are in doubt:

Buildings and works within a waterway and coastal protection area must avoid or minimise adverse impacts on natural assets, having regard to:

(a) impacts caused by erosion, siltation, sedimentation and runoff;

(b) impacts on riparian or littoral vegetation;

7.10.9 Both the author of the Natural Values Comment submitted with the application and the author of Representation 2 are considered suitably qualified persons for the purposes of natural values assessment.

7.10.10 Council's Development Services do not have a suitably qualified person for natural values assessment on staff. Therefore, in order to provide full and proper assessment of natural values, Dr Richard Barnes of Van Diemen's Consulting (a suitably qualified person) was engaged to provide independent professional opinion on the proposal adequately demonstrated compliance with Performance Criteria C7.6.1 P1.

7.10.11 Regarding the independence of the professional opinion mentioned above, it should be noted that no agenda (i.e. bias toward recommendation of approval or refusal), either formal nor informal, was existing or provided by Council's Development Services to the suitably qualified person upon commissioning the advice, nor prior to its completion.

7.10.12 Dr Barnes concurs with North Barker Ecosystem Services that the land at 75 Fouche Avenue currently lacks any natural values of conservation significance in their own right.

7.10.13 Based on Dr Barnes' qualified natural values assessment, the saltmarsh vegetation present in the WCPA is the *Subtropical and Temperate Coastal Saltmarsh* ecological community which listed as Vulnerable under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*. The ecological community is a natural value (including a coastal value), as defined, and must be addressed even though it is not directly within the building footprint of Units 11 to 15.



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

7.10.14 Dr Barnes continues:

The objective of Clause E11.7.1 [reference to Brighton Interim Planning Scheme 2015] suggests that the overlay is more than a means to assess direct impact, rather the assessment should be for works and buildings within the overlay and 'in the proximity' of where the overlay is 'triggered'. Support for this approach is that some 'must be satisfied' matters in Clause E11.7.1 P1 include runoff impacts, sedimentation and adverse erosion impacts which are not necessarily constrained to the immediate impact location but could be impacts caused elsewhere (e.g., adjacent) in the overlay by buildings and works occurring within the overlay. for example, a building (which creates a large impervious surface) may cause runoff impacts to natural values in the adjacent land or same land as the development. at the very least, buildings and works located within the overlay should be assessed for impacts to natural values in the overlay.

7.10.15 It is agreed that the term 'natural values' includes elements that are further defined, such as coastal values which includes landscape values, recreational values, and economic values. These considerations are not limited to, and should not be limited to, the immediate footprint of proposed development. Rather they must be considered in the context of the site, the WCPA overlay and those buildings and works that intersect with it.

It is not evident that the four dwellings proposed within the WCPA either avoid or mitigate impact on coastal values in the scope required by the Code and, apart from being sited clear of the Future Coastal Refugia Area as mapped, the application has not addressed all potential impacts. For instance, as raised by Representors 1 and 2, the potential impacts on fauna (particularly bird habitat) within the WCPA in question have not been considered by a suitably qualified person.

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

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

7.10.17 Based on the advice provided by Dr Barnes, it was concluded that the application should be refused due to unnecessary impacts on natural values (specifically saltmarsh flora/fauna).

7.10.18 Based on the concerns raised in representations and the conclusion by Dr. Barnes, the potential for impact on the saltmarsh has been further addressed by the applicant. Specifically:

- An onsite infiltration drainage system was developed that uses permeable paving and onsite storage.
- A full values assessment of the site was submitted to fully consider potential impacts.

7.10.19 This supplementary report details the findings of the natural values survey, including consideration of the onsite infiltration solution.

7.10.20 The principal impact on natural values from the project is stormwater runoff into the saltmarsh. Indirect impacts to the saltmarsh are also notable and include the introduction of invasive species, light pollution, predation on native fauna by cats and dogs off-lead (the latter two are primarily of concern to birds). The updated NVA recommends:

- *Develop and implement a sediment and erosion control plan that includes measures to mitigate potential impact to the saltmarsh during and post construction. This should include controls to eliminate the risk of sediment runoff and erosion and manage materials that could run into the saltmarsh during rain events (e.g. sand, concrete). Also included should be the demarcation of the future coastal refugia area as an exclusion zone during construction to ensure no inadvertent impact to this area.*
- *Avoid any hard surface development in the balance.*
- *Rehabilitate any impact from the construction phase to the balance using Tasmanian native species.*
- *Avoid the planting of any species in the project area other than Tasmanian natives that are compatible with this environment.*
- *Avoid the use of pesticides and fertilisers in the project area that could increase the potential for chemicals and nutrients (especially nitrogen and phosphorous) to run into the saltmarsh.*
- *Manage the project area for weeds to ensure invasive weeds do not establish that could migrate into the saltmarsh.*
- *Install interpretive and instructive signage at strategic points on the walkway hemming the saltmarsh (especially in front of the project area); such signage should detail the values of the saltmarsh and the need to keep dogs on lead.*
- *Implement a cat-free policy or a policy that includes confining cats indoors and mandatory desexing.*
- *Minimise external lighting, this is especially relevant for the front four units closest to the saltmarsh. Lighting intensity should be the minimum required to provide safe and secure illumination for the area. Lights should be directed and shielded and kept as close to the ground as possible. Further guidance on the controlling of artificial light to reduce impact to wildlife can be found in the National Light Pollution Guidelines for Wildlife Including Marine Turtles, Seabirds and Migratory Shorebirds.*
- *Use tinted glass to dampen the effect of interior lighting for the front four units or any other units visible from the saltmarsh.*
- *Follow best practice construction hygiene protocols to prevent the spread of weed propagules to the site and the saltmarsh. This should involve cleaning all machinery before arriving and leaving the works area.*

7.10.21 The conclusion of the independent advice from Dr Barnes is reproduced below:

I am of the opinion that the development does meet the performance criterion requirements of 'buildings and works within a waterway and coastal protection area must avoid or minimise adverse impacts on natural assets, having regard to ...'. Specifically, the development seeks, as whole, to avoid or minimise adverse impacts to the natural assets through engineering solutions (stormwater), structural/architectural methods and ecologically related construction management measures.

7.10.22 It is concluded that the proposed development within the WCPA overlay will not have an unnecessary or unacceptable impact on natural values and can meet Performance Criteria C7.6.1 P1.1 with conditions.

7.11. Discretion 6 – 11.6.1 P1 Buildings and Works, excluding coastal protection works, within a coastal inundation hazard area

7.11.1 The southern two thirds of the site is mapped for the Coastal Inundation Hazard Code, with the northern balance mapped as low (refer figures 5 and 6 herein).

7.11.2 The objective for the standard requires that:

(a) building and works, excluding coastal protection works, within a coastal inundation hazard area, can achieve and maintain a tolerable risk from coastal inundation; and

(b) buildings and works do not increase the risk from coastal inundation to adjacent land and public infrastructure.

7.11.3 As noted above, development that requires authorisation under the *Building Act 2016* is exempt from this Code (e.g. dwellings). However, the risk from coastal inundation across the site and its potential to impact adjacent land and public infrastructure must still be considered.

7.11.4 There are no acceptable solutions applicable to the standard.

7.11.5 The performance criteria at 11.6.1. P1 requires:

P1.1 Buildings and works, excluding coastal protection works, within a coastal inundation hazard area must have a tolerable risk, having regard to:

(a) whether any increase in the level of risk from coastal inundation requires any specific hazard reduction or protection measures;

(b) any advice from a State authority, regulated entity or a council; and

(c) the advice contained in a coastal inundation hazard report.

P1.2

A coastal inundation hazard report also demonstrates that the building or works:

(a) do not cause or contribute to coastal inundation on the site, on adjacent land or public infrastructure; and

(b) can achieve and maintain a tolerable risk from a 1% annual exceedance probability coastal inundation event in 2100 for the intended life of the use without requiring any specific coastal inundation protection works.

7.11.6 The Coastal Vulnerability Assessment by GES submitted with the application,

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

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

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

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

Given 1% AEP wave runup levels for 2070, there is a low risk to adjoining or nearby property or public infrastructure is acceptable;

There will be no need for future remediation works within the lifetime of the proposed development.

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

7.11.9 The proposal is considered to satisfy Performance Criteria.

8. Concerns raised by representors

8.1. The application was advertised in accordance with the statutory requirements of the Act.

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

Representor comments	Development Services response
Representation 1	
Inundation prone areas will be utilised. These areas have been predetermined as areas of high hazard. To now be determined as low risk to facilitate a commercial enterprise seems questionable.	See Section 7.11 above for assessment of coastal inundation risk.

High tides, rainfall and flood events regularly impact the section where Units 12-15 are proposed.	
<p>The natural values comment submitted provides no analysis of fauna impact.</p> <p>I.e. The adjacent foreshore is the nesting and hunting habitat of a pair of Swamp Harriers (predatory raptors) observed regularly over recent years. Whether their habitat may be disturbed and reduced has not been addressed.</p>	<p>See Section 7.10 above for relevant assessment.</p> <p>It was agreed that the original application did not fully consider natural values and potential risk of impact from the proposal. Accordingly, further assessment of the natural values has been undertaken.</p>
Approving a development utilising predetermined Crown Land, waterway and coastal protection areas or inundation prone areas does not accord the environmental goals of the Brighton Council Strategy for 2019-2029 and the Annual Plan 2020-2021.	<p>The most relevant environmental strategy is S1.5 of the Brighton Council Strategy 2019-2029:</p> <p><i>S1.5: Build a resilient community and environmentally sustainable future</i></p> <p>Development Services have assessed the environmental impacts of the proposed development within the scope of the applicable regulatory document available to the Planning Authority – the <i>Tasmanian Planning Scheme - Brighton</i>.</p>
Previously told that the southern portion of the site could not be developed.	This is not relevant to this assessment.
Representation 2	
Almost the entire area is within a coastal floodplain (see Future Coastal Refugia Area Guidance Map & attached Prahalad et al., 2019 paper) and provides potential habitat for Coastal Saltmarsh listed for protection under the <i>Commonwealth Environment Protection</i>	See Section 7.10 above for relevant assessment.

<p><i>and Biodiversity Conservation Act 1999</i> (Prahalad et al., 2019). The presence of a few patches of <i>Sarcocornia</i> and larger areas of <i>Plantago</i> (noted in the North Barker assessment) are indeed indicative of the landward movement of saltmarsh and should be considered in this long-term context.</p>	
<p>The proposed development overlaps on both the Waterways & Coastal Protection Areas (WCPA) overlay and the Future Coastal Refugia Area (FCRA) overlay areas. The Old Beach area is already highly developed and a lot of the buffering and retreat/refugia areas lost to infill development. This proposed location is one of few areas where infill hasn't occurred yet and hence, all the more important to be protected to avoid ongoing cumulative loss of both buffer and retreat/refugia areas. At the very least, the Units 12-15 which occur on the Waterways & Coastal Protection Area (Buffer) should be removed to provide a buffer between the current Old Beach saltmarsh and the other proposed dwellings.</p> <p>Planting of suitable native plants in this buffer would to some extent offset the effects of this large housing development on natural values.</p>	<p>See Section 7.10 above for relevant assessment.</p>
<p>Visits to the area indicate high bird use, especially at the water's edge. Light and noise pollution resulting from this development might be disruptive for wildlife using this sensitive Estuary habitat.</p> <p>This has not been considered. Yet again, a vegetated buffer (by excising Units 12-15) would be helpful to mitigate this.</p>	<p>See Section 7.10 above for relevant assessment and conditions.</p>
<p>Concern relating to run-off from the development, both during construction and post-construction use, considering the extent and nature of impervious surfaces proposed.</p>	<p>See Section 7.10 above for relevant assessment and conditions.</p>

<p>I consider the proposal not keeping up with the purpose of Waterway and Coastal Protection Code and Inundation Prone Areas Code, as noted below:</p> <ol style="list-style-type: none"> 1. <i>'protect vulnerable coastal areas to enable natural processes to continue to occur, including the landward transgression of sand dunes, wetlands, saltmarshes and other sensitive coastal habitats due to sea-level rise.'</i> <p>– refugia areas built upon.</p> <ol style="list-style-type: none"> 2. <i>'minimise impact on coastal and foreshore values, native littoral vegetation, natural coastal processes and the natural ecological function of the coast'</i> <p>– potential light and noise pollution effects.</p> <ol style="list-style-type: none"> 3. <i>'minimise impact on water quality, natural values including native riparian vegetation, river condition and the natural ecological function of watercourses, wetlands and lakes'</i> <p>– removal of buffer zone and potential effects from run off.</p>	<p>See Section 7.10 above for relevant assessment and conditions.</p>
<p>Representation 3</p>	
<p>The site is flood prone.</p>	<p>See Representation point 1.</p>
<p>Traffic safety concern due to significant increase in traffic movements.</p>	<p>The TIA submitted with the application addressed the impact of the increased traffic generation from the development and concludes:</p> <p><i>The increased traffic activity associated with the development will ... not create any</i></p>

		<i>operational traffic issues on the immediate surrounding road network.</i>
Headlights from cars exiting the complex will shine into bedroom window of a dwelling on opposite side of road.		Hopefully, any loss of amenity due to headlights would be minimal. The Planning Scheme does not provide a standard whereby this could be regulated.
Representation 4		
<p>My major concern is safe access and exiting for the existing residents from The Old Beach Waterfront Estate and the private residence located adjacent to the proposed development.</p> <p>Proposed development will result a minimum of at least 64 vehicles entering and exiting the driveway from and onto Fouche Avenue, this is also a bus route and carries additional traffic.</p>		<p>The TIA submitted with the application considered the interaction with the proposed development and Duval Drive.</p> <p>The TIA assumes that Duval Drive carries some 100-110 vehicles/day, with 10% of this traffic occurring during peak traffic periods. Given the relatively low traffic movements from both developments during peak period, the occurrence of vehicles concurrently wanting to enter or exit the adjacent driveways is minimal.</p> <p>The TIA states:</p> <p><i>The interaction between traffic movements to and from these two driveways will not create any safety or operational issues at their junction with Fouche Avenue.</i></p>
The proposed high density is more appropriate for an inner city suburb.		The proposed multiple dwelling <i>site area per dwelling</i> ¹ is 411.6m ² .

¹ Means the area of the site (excluding any access strip) divided by the number of dwellings.

	<p>Under General Residential Zone standard 8.4.1 A1 (a), the Acceptable Solution is a site area of not less than 325m².</p> <p>So, though the proposed development is of higher density than the surrounding area, since the proposal complies with standard 8.4.1 A1 (a) there is no ability for Council to assess density compatibility.</p>
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9. Referrals

9.1. Development Engineering

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

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

Council's Development Services do not have a suitably qualified person for natural values assessment on staff. Therefore, in order to provide full and proper assessment of natural values as required by the Waterway and Coastal Protection Code, a suitably qualified person (Dr Richard Barnes of Van Diemen's Consulting) was engaged to provide independent professional opinion regarding the proposal's compliance with the Waterway and Coastal Protection Code of the *Brighton Interim Planning Scheme 2015*, and subsequently the Natural Assets Code of the *Tasmanian Planning Scheme – Brighton*.

9.3. Derwent Estuary Program (Biodiversity Officer)

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

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

9.4. TasWater

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

10. Conclusion

- 10.1. Planning approval is sought for multiple dwellings (15) and associated infrastructure at 75 Fouche Avenue, Old Beach, situated within the General Residential Zone of the *Tasmanian Planning Scheme - Brighton*.
- 10.2. The application invokes certain privacy, vehicle access, manoeuvring and parking, and natural values discretions under the Planning Scheme.

- 10.3. Four (4) representations were received within the statutory public advertising period.
- 10.4. After revision and better consideration of potential impact on natural values, the application is considered to meet all applicable standards of the Planning Scheme subject to conditions.

11. Recommendation

That: Pursuant to the *Tasmanian Planning Scheme - Brighton*, Council approve application DA 2020/306 for multiple dwellings (15) and associated infrastructure at 75 Fouche Avenue, Old Beach, and issue a permit including 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*.

TasWater

- (3) 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 2020/01365-BTN, dated 24 November 2020, as attached to this permit.

Staging

- (4) Any variation to the staging as proposed must be first agreed to in writing by Council's Manager Development Services.

Part 5 Agreement

- (5) Prior to issue of occupancy under the *Building Act 2016* or the sealing of a strata plan (whichever occurs first), the owner 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 current and future owners of Units 12, 13, 14 and 15 (as approved by DA 2020/306) covenant and agree with the Brighton Council that the land south of each approved dwelling footprint is saltmarsh-buffer and is not to be developed by buildings or works (including fences, decks or outbuildings) without prior written approval from Council's General Manager.
- (6) 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.

Waste Collection Agreement

- (7) 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.

Advice: *The agreement is to include entry/exit to any locked gate by remote access, with a keyed backup or access code, to the satisfaction of Council's Municipal Engineer.*

Elevation plans

- (8) Prior to the issue of building consent under the *Building Act 2016* or the commencement of works (whichever occurs first), amended elevation plans must be submitted for Units 9-15 that clearly show tinted glass to be used for all south-facing windows and sliding doors (excluding the lower level of Units 9-11).
- (9) Prior to the issue of building consent under the *Building Act 2016* or the commencement of works (whichever occurs first), amended elevation plans must be submitted for Units 5-8 showing a sill height of at least 1.7 m above the floor level or has fixed obscure glazing extending to a height of at least 1.7 m above the floor level for the south facing living room windows.
- (10) Amended plans will form part of this permit when approved.

Landscaping

- (11) Prior to the issue of occupancy under the *Building Act 2016* or the sealing of a strata plan (whichever occurs first), all landscaping must be completed in accordance with the approved landscaping plans, to the satisfaction of the Council's Manager Development Services. This must include written certification from the authors of the approved Natural Values Assessment (or similarly qualified person) that the saltmarsh buffer landscaping has been installed in accordance with 'Landscaping Plan Sheet 3'.
- (12) All landscaping must continue to be maintained to the satisfaction of Council's Manager Development Services.

Amenity

- (13) 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

- (14) The private open space, including proposed fencing and landscaping for privacy screening, must be formed or constructed to the satisfaction of Council's Manager Development Services prior to the issue of occupancy under the *Building Act 2016* or the sealing of a strata plan (whichever occurs first).

Services

- (15) 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.
- (16) Services located under the proposed driveway are to be provided with trafficable covers to the requirements of the relevant authority and Council's Municipal Engineer.

Parking and Access

- (17) Parking and access must be generally in accordance with the endorsed plans and to the satisfaction of Council's Municipal Engineer.
- (18) Prior to the use commencing the existing vehicular access to the road must be modified to provide a single continuous crossover across the access strip to 75 and 77 Fouche Avenue. Vehicular access must be in accordance with;
- a) Councils Standard Drawings and specification;
 - b) Standards Australia (2004): Australian Standard AS 2890.1 - 2004 – Parking Facilities Part 1: Off Street Car Parking; Standards Australia, Sydney;
 - c) Standards Australia (2002): Australia Standard AS 2890.2 – 2002, Parking facilities - Part 2: Off-Street, Commercial vehicle facilities, Sydney;
- and to the satisfaction of Council's Municipal Engineer.
- (19) At least thirty five (35) 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 five (5) 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.
- (20) 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 with;
- Standards Australia (2004): Australian Standard AS 2890.1 - 2004 – Parking Facilities Part 1: Off Street Car Parking; Standards Australia, Sydney;
 - 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;
- (d) A minimum trafficable width of 5.5m for the length of the access strip (from the public road to the lot proper)
 - (e) A minimum trafficable width of 3m with passing bays 5.5m wide by 6.0m long every 30m
 - (f) Constructed with a durable all weather pavement
 - (g) Surfaced with concrete, asphalt or pavers. (temporary access areas may be spray seal)
 - (h) Drained to an approved stormwater system
 - (i) Provision for two way traffic
 - (j) On site turning
 - (k) Access and turning for vehicles required to service the sewage pump station, stormwater treatment devices, and garbage collection

(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,
- design surface levels and gradients,
- drainage,
- turning paths,
- dimensions,
- line marking,
- signage,
- pedestrian access,
- lighting

and shall form part of the permit when approved.

(22) Parking and vehicle circulation roadways and pedestrian paths must be provided with lighting in accordance with the Building Code and the *National Light Pollution Guidelines for Wildlife Including Marine Turtles, Seabirds and Migratory Shorebirds*, and to the satisfaction of Council's General Manager.

(23) 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.

(24) 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.

Stormwater

(25) Stormwater from the proposed development must be disposed of on-site via infiltration in accordance with the Concept Services Report prepared by Gandy & Roberts, dated 26/5/01, to the satisfaction of Council's Municipal Engineer and in accordance with the *Building Act 2016*.

(26) The stormwater system for the development must incorporate stormwater treatment to achieve the quality targets in accordance with the State Stormwater Strategy 2010, and to the satisfaction of the Council's Municipal Engineer.

(27) 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.

(28) 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
- (29) The developer is to provide a major stormwater drainage system through the site designed to accommodate a storm with an ARI of 100 years.
- (30) The driveway must be drained to minimise surface runoff over the footpath or to adjoining land in accordance with the requirements of the Municipal Engineer and the *Building Act 2016*.

Soil and Water Management

- (31) Prior to the issue of building consent under the *Building Act 2016* or the commencement of works (whichever occurs first), a soil and water management plan (SWMP) prepared in accordance with best practice principles of the *Wetlands and Waterways Works Manual* (DPIWE, 2003) and the *Soil and Water Management on Building and Construction Sites* guidelines by the Derwent Estuary Programme and NRM South. This should include controls to eliminate the risk of sediment runoff and erosion and manage materials that could run into the saltmarsh during rain events (e.g. sand, concrete).
- (32) Once approved by Council's Manager Development Services, the SWMP will form part of this permit.
- (33) 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 best practice principles of the *Wetlands and Waterways Works Manual* (DPIWE, 2003) and 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.
- (34) All workers must follow best practice construction hygiene protocols to prevent the spread of weed propagules to the site and the saltmarsh. This should involve cleaning all machinery before arriving and leaving the works area.

Construction amenity

- (35) 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 report 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.

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.

- (36) The development must only be carried out between the following hours unless otherwise approved by the Council's Manager Strategic Planning:

- 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.

(37) 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.

(38) 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 Strategic Planning.

(39) 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.

(40) 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. 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.
- B. The issue of this permit does not ensure compliance with the provisions of the *Threatened Species Protection Act 1995* or the *Environmental Protection and Biodiversity Protection Act 1999* (Commonwealth). The applicant may be liable to complaints in relation to any non-compliance with these Acts and may be required to apply to the Threatened Species Unit of the Department of Tourism, Arts and the Environment or the Commonwealth Minister for a permit.
- C. The issue of this permit does not ensure compliance with the provisions of the *Aboriginal Relics Act 1975*. If any aboriginal sites or relics are discovered on the land, stop work and immediately contact the Tasmanian Aboriginal Land Council and Aboriginal Heritage Unit of the Department of Tourism, Arts and the Environment. Further work may not be permitted until a permit is issued in accordance with the *Aboriginal Relics Act 1975*.
- D. This permit does not imply that any other approval required under any other legislation or by-law has been granted.
- E. If you notify Council that you intend to commence the use or development before the date specified above you forfeit your right of appeal in relation to this permit.

- F. 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 Gray seconded that the recommendation be adopted.

CARRIED

VOTING RECORD

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

Cr Gray vacated the Chair in accordance with S10(5) of the Local Government (Meeting Procedures) Regulation 2015.

Cr Owen (Deputy Chair) took the Chair while the motion was dealt with.

Cr Gray resumed the Chair.

5.4 Application Under *Tasmanian Planning Scheme - Brighton* - SA 2021 / 7 - Tivoli Green - 201 Old Beach Road, 3 Tivoli Road & Lot 108 Lewis Court, Old Beach - Subdivision (Stages 9 to 16 - 269 Lots, Public Open Space and Balance):

Type of Report:	Planning Authority – For Decision
Application No:	SA 2021 / 7
Address:	201 Old Beach Road, Old Beach (CT173657/109) Lot 108 Lewis Court, Old Beach (CT173656/1) 3 Tivoli Road, Old Beach (CT165380/1)
Proposal:	Subdivision (Stages 9 to 16 - 269 Lots, Public Open Space and Balance)
Zones:	General Residential, Open Space
Representations:	One
Discretions:	BRI-S9.8.2 – Subdivision layout BRI-S9.8.3 – Traffic impact BRI-S9.8.4 – Water sensitive urban design 8.6.1 P2 – Frontage C7.7.1 P1 – Subdivision within a waterway and coastal protection area

C14.7.1 – Subdivision of potentially contaminated land for sensitive use

Author: Richard Cuskelly (Planning Officer)

1. Executive Summary

- 1.1. Planning approval is sought for a Subdivision (Stages 9 to 16 - 269 Lots, Public Open Space and Balance) at 201 Old Beach Rd Lot 108 Lewis Ct and 3 Tivoli Rd, Old Beach which is subject to the Tivoli Green Specific Area Plan.
- 1.2. The Tivoli Green Specific Area Plan applies and overrides some General Residential Zone and Road & Railway Assets Code standards.
- 1.3. The key issues are water sensitive urban design, contamination management, protection of the Gage Brook waterway, traffic management, and provision of street trees.
- 1.4. One representation was received. It is considered that some of the issues raised have merit and are addressed by recommended permit conditions.
- 1.5. The proposal is recommended for approval subject to both standard and non-standard 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 SA 2021 / 7.
- 2.2. This determination must be made no later than 20 July 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. Implications for Council include general matters related to rate income, asset maintenance and renewal and responding to future building applications.

4. Relevant Background and Past Applications

- 4.1. In recent years, Development Services worked in collaboration with the applicant on a planning scheme amendment (RZ 2016 / 2) to rezone the land known as “Tivoli Green” General Residential and Open Space and to insert the Tivoli Green Specific Area Plan (SAP). This planning scheme amendment was approved in May 2016.
- 4.2. The Tivoli Green SAP includes a Development Framework and additional use, development and subdivision standards.
- 4.3. 201 Old Beach Road is subject to an existing permit SA 2007/73 for a 112-lot subdivision. The first 7 stages of the subdivision have been completed. Stage 8 is nearing completion and sealing under existing permit SA 2018 / 40.

5. Site Detail

- 5.1. The site contains three lots:

- 1) 201 Old Beach Road, Old Beach (CT173657/109)
- 2) Lot 108 Lewis Court, Old Beach (CT173656/1)
- 3) 3 Tivoli Road, Old Beach (CT165380/1)

- 5.2. The shaded section in figure 1 below shows the proposal footprint in relation to these lots:

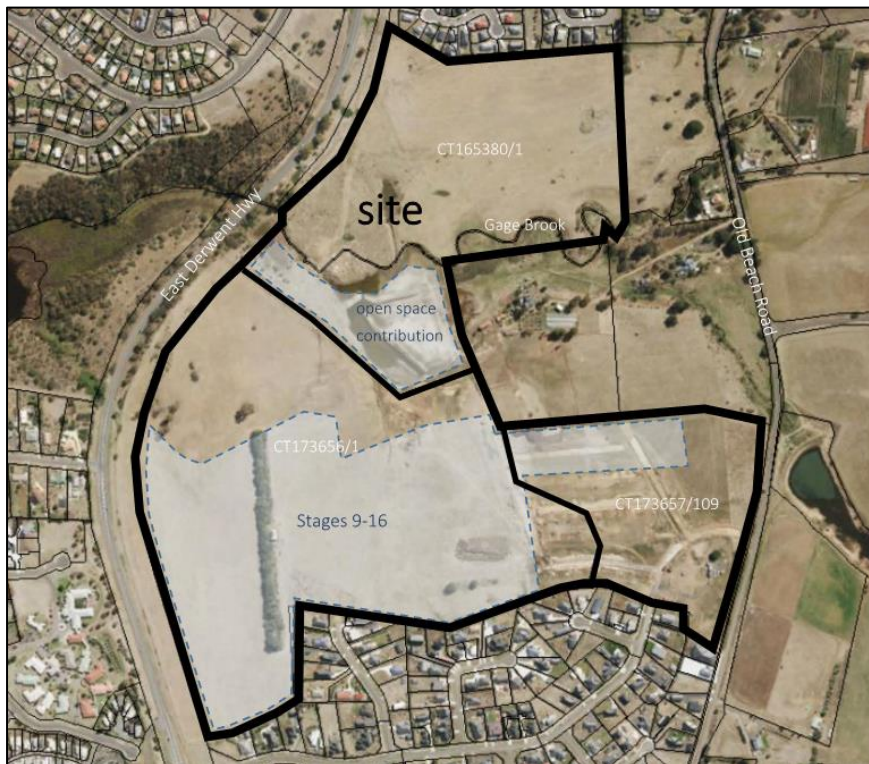


Figure 1. Subject site: showing the 3 lots and development footprint (Source: Applicant)

- 5.3. The site is located between the existing residential areas of Gagebrook and Old Beach. The site is predominantly vacant ex-farmland, with grassland and more extensive vegetation along the waterway known as Gage Brook. Proposed stages 9 – 16 of the subdivision are in the southern half of the site (Figure 1 above).
- 5.4. The site is in the Tivoli Green Specific Area Plan (SAP) and is zoned General Residential and Open Space (see Figure 2 below).

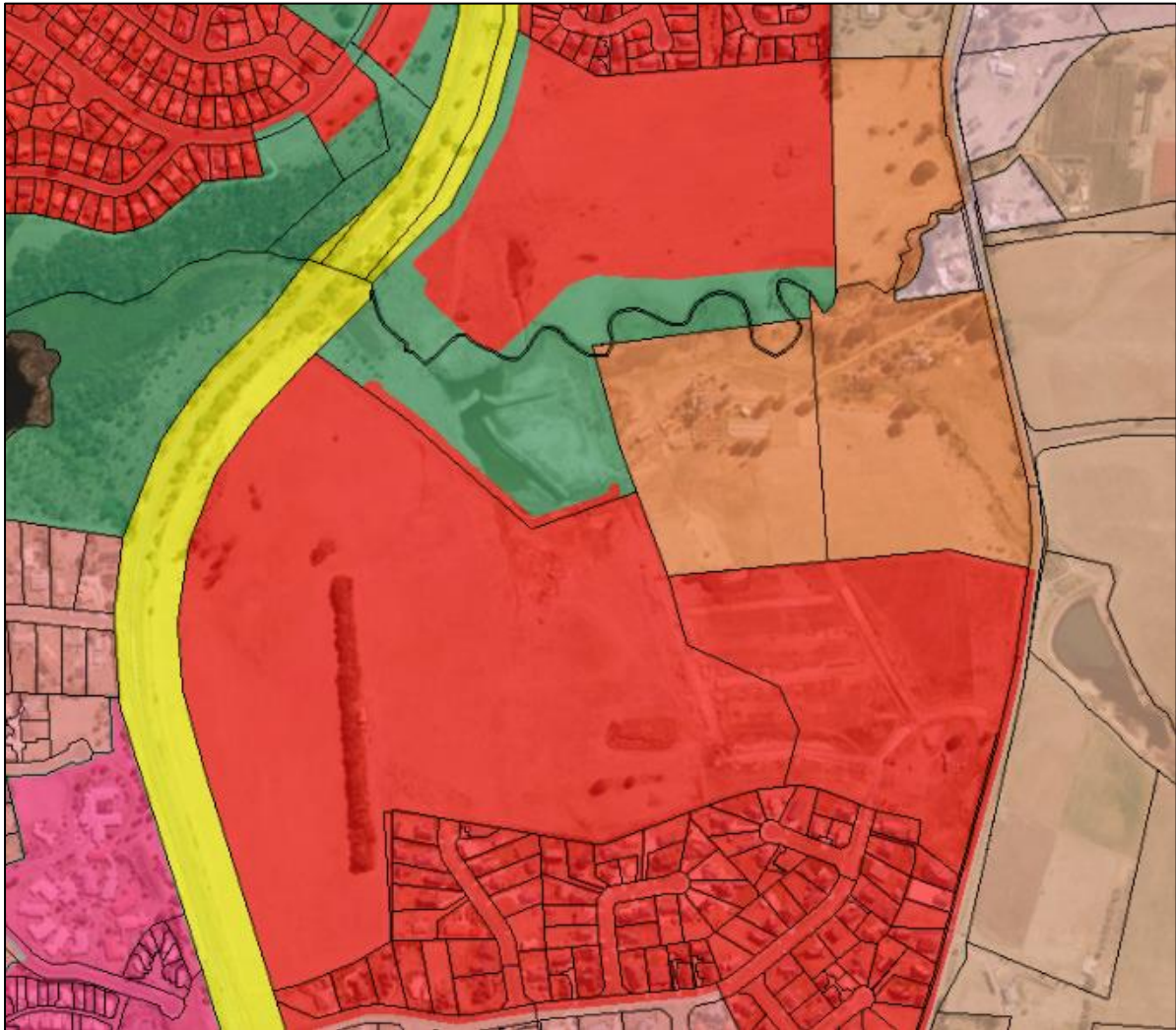


Figure 2. Zoning. Subject site: General Residential (red); Open Space (Green). **Surrounding:** Utilities (yellow); Future Urban (orange); Rural (tan); Rural Living A (light pink); Low Density Residential (dark pink); St Ann's Precinct SAP (purple)

- 5.5. The entire site is bushfire prone.
- 5.6. There are sites of natural and Aboriginal value in and around the Gage Brook wetland area, and these will be preserved in the management of the public open space development (see overlays in Figure 3 below).
- 5.7. The northern area of Gage Brook contains a significant amount of land fill, which has been subject to contamination and acid sulfate soil testing.

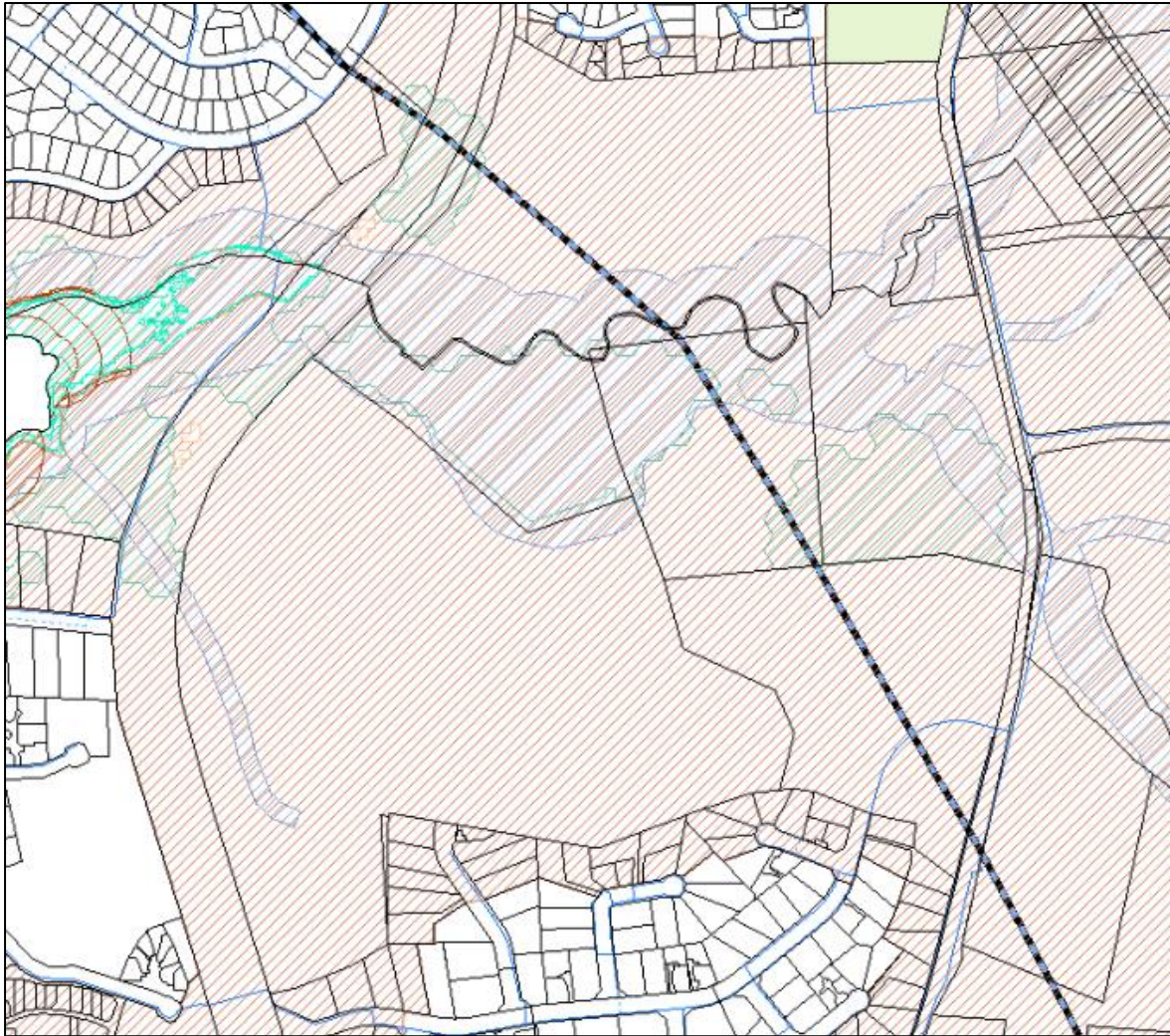


Figure 3. Overlays and infrastructure. Subject site: Bushfire-prone Areas Code (red); Waterway Protection Area (blue); Priority Vegetation Area (green); TasWater bulk water transfer main (blue and black line)

6. Proposal

- 6.1. The proposal seeks to subdivide 3 existing lots into 269 new residential lots plus roads, public open space, and balance. This will comprise stages 9 to 16 of the Tivoli Green housing estate (see Figure 4 below).
- 6.2. Council is collaborating with the developer to design the public open space surrounding Gage Brook to ensure the area will function sustainably for stormwater treatment and management, natural values conservation, and future public recreation space.
- 6.3. Proposed lots will each be provided with frontage to new subdivision roads and contain new stormwater, water, sewer, power, and telecommunications connections.
- 6.4. The lots located in Precinct B are a minimum of 500m² and those in Precinct C a minimum of 800m². No lots are proposed in Precinct A in this application.
- 6.5. The proposed lots and subdivisional road network have been designed in accordance with the Tivoli Green Specific Area Plan (SAP).

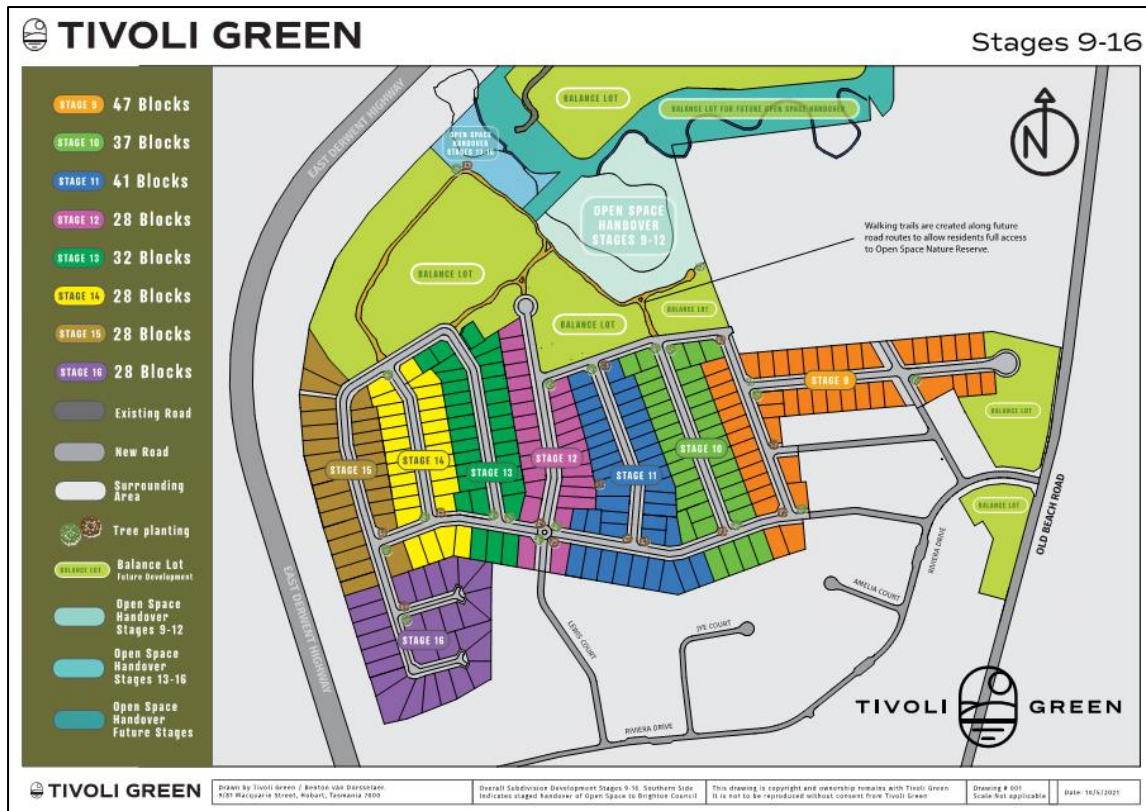


Figure 4. Proposal plan (Source: Applicant)

6.6. The road network will be progressively developed as the stages roll out. Access will initially be through stage 8 (off Riviera Drive). Future stages will be accessed off Lewis Court.

7. Assessment against planning scheme provisions

7.1. The following provisions of the Planning Scheme are relevant to the proposal:

Brighton Local Provisions Schedule

- BRI-S9 – Tivoli Green Specific Area Plan

State Planning Provisions

- Clause 8 – General Residential Zone
- Clause 29 – Open Space Zone
- Clause C.2 – Parking and Sustainable Transport Code
- Clause C.3 – Road and Railway Assets Code
- Clause C.7 – Natural Assets Code
- Clause C.12 – Flood-Prone Areas Hazard Code
- Clause C.13 – Bushfire-Prone Areas Code
- Clause C.14 – Potentially Contaminated Land Code

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

- BRI-S9.8.1 – Lot sizes
- BRI-S9.8.5 – Noise attenuation for East Derwent Highway
- 8.6.1 A3 – Vehicle access to lots
- 8.6.3 A1 – Reticulated water
- 8.6.3 A2 – Reticulated sewer
- 8.6.3 A3 – Stormwater
- 29.5.1 A1 – Public open space
- C7.7.2 A1 – Subdivision within a priority vegetation area
- C12.7.1 A1 – Subdivision within a flood-prone hazard area
- C13.6.1 A1 – Provision of hazard management areas
- C13.6.2 A1 – Public and fire fighting access
- C13.6.3 A1 – Provision of water supply for fire fighting purposes

7.3. The following discretions are invoked and are discussed in more detail below:

- BRI-S9.8.2 – Subdivision layout
- BRI-S9.8.3 – Traffic impact
- BRI-S9.8.4 – Water sensitive urban design
- 8.6.1 P2 – Frontage
- C7.7.1 P1 – Subdivision within a waterway and coastal protection area
- C14.7.1 – Subdivision of potentially contaminated land for sensitive use

7.4. Discretion 1 – Subdivision layout

7.4..1. Under BRI-S9.8.2 A1 of the Tivoli Green SAP,

The layout of lots (including lots proposed in a plan of subdivision), roads and pedestrian connections must be consistent with the development framework in Figure BRI-S9.3 [below].



Figure 5. Figure BRI-S9.3: Tivoli Green development framework

7.4..3. The proposed subdivision is consistent with the development framework above, apart from the number of street trees proposed.

7.4..4. Therefore, assessment is required against Performance Criteria BRI-S9.8.2 P1, reproduced below:

The layout of lots, roads and pedestrian connections must be compatible with the purpose of the Specific Area Plan and the development framework in Figure F2.3 having regard to:

(a) the potential for passive solar design through the orientation of lots;

(b) the facilitation of high levels of vehicular and pedestrian connectivity within the subdivision and to open spaces and adjacent areas;

(c) the integration of landscaping into the road, pedestrian and open space network;

(d) the future subdivision of adjoining lots and the likely layout;

(e) the safety and efficiency of East Derwent Highway and Old Beach Road;

(f) the creation of a hierarchy of roads including the creation of a new minor collector road connecting the East Derwent Highway and Old Beach Road;

(g) avoiding compromising the appropriate and reasonable future subdivision of the entirety of any balance lot; and

(h) the travel distance between key local service destinations.

- 7.4..5. The relevant criterion is marked in bold above. Other criteria are clearly consistent with the SAP development framework.
- 7.4..6. The development framework shows an average of 1 street tree per lot. The application shows an average of 1 street tree per 5 lots, which is considered neither consistent nor compatible with the development framework.
- 7.4..7. The development framework shown in Figure 5 above clearly shows one or more street trees provided per frontage. Any less than one per frontage is not considered compatible.
- 7.4..8. The application meets Performance Criteria BRI-S9.8.2 P1 with a condition that an amended landscaping plan is submitted to satisfaction of Council's Manager Development Services showing a minimum average ratio of one medium-large street tree per lot frontage.

7.5. Discretion 2 – Traffic impact

- 7.5..1. BRI-S9.8.3 A1 of the Tivoli Green SAP is a trigger for further assessment of the safety and efficiency of the road network:

Subdivision does not result in a total of more than 260 lots within the area south of the open space on the land subject to the Specific Area Plan as shown in Figure BRI-S9.3.

- 7.5..2. This proposal results in more than 260 lots, therefore Performance Criteria BRI-S9.8.3 P1 below applies:

Vehicular traffic generated by subdivision must not impact upon the safety and efficiency of the East Derwent Highway or local road network having regard to:

- (a) any increase in traffic caused by the subdivision;*
- (b) the nature of the road;*
- (c) the speed limit and traffic flow of the road;*
- (d) a traffic impact assessment prepared by a suitably qualified person; and*
- (e) any advice received from the road authority.*

- 7.5..3. The proposal is supported by a traffic impact assessment (dated August 2017) and addendum (dated June 2020) prepared by a suitably qualified person, which submits that the proposed subdivision would not impact upon the safety and efficiency of East Derwent Highway or the local road network.
- 7.5..4. The Department of State Growth responded that they were satisfied with the findings of the proposal. However, Council's Senior Technical Officer has concerns regarding the dated traffic figures and reliance on projected growth to calculate traffic volumes on the East Derwent Highway.
- 7.5..5. Therefore, to meet Performance Criteria BRI-S9.8.3 P1 above, a condition is recommended requiring a traffic impact assessment based on recently recorded traffic data be submitted prior to works commencing on Stage 12. Any measures recommended by the traffic impact assessment are to be implemented by the developer.

7.6. Discretion 3 – Water sensitive urban design

7.6..1. BRI-S9.8.4 A1 of the Tivoli Green SAP states:

Subdivision must:

(a) incorporate water sensitive urban design principles consistent with Water Sensitive Urban Design Engineering Procedures for Stormwater Management in Southern Tasmania;

(b) include vegetated swales for stormwater management within roads where appropriate; and

(c) gross-pollutant traps at the primary detention basin inlets.

7.6..2. This proposal does not include vegetated swales for stormwater management within roads as these can create issues relating to maintenance and parking. Therefore, Performance Criteria BRI-S9.8.4 P1 below applies:

Subdivision must incorporate a stormwater disposal system that maintains, protects and improves the water quality of Gage Brook having regard to:

(a) water sensitive urban design principles; and

(b) the topography of the land and its natural pattern of drainage.

7.6..3. Tivoli Green has the unique opportunity to utilise a wetland type treatment system for stormwater.

7.6..4. The proposed treatment system is supported by Council who has worked in conjunction with the developer to develop a concept stormwater strategy that meets Performance Criteria BRI-S9.8.4 P1 above.

7.7. Discretion 4 – Lot frontages

7.7..1. Under Acceptable Solution 8.6.1 A2 of the General Residential Zone,

Each lot, or a lot proposed in a plan of subdivision, excluding for public open space, a riparian or littoral reserve or Utilities, must have a frontage not less than 12m.

7.7..2. Ten (10) of the 269 new residential lots proposed have less than 12m of road frontage. Therefore, these lots must meet Performance Criteria 8.6.1 P2, below:

Each lot, or a lot proposed in a plan of subdivision, excluding for public open space, a riparian or littoral reserve or Utilities, must be provided with a frontage or legal connection to a road by a right of carriageway, that is sufficient for the intended use, having regard to:

(a) the width of frontage proposed, if any;

(b) the number of other lots which have the land subject to the right of carriageway as their sole or principal means of access;

(c) the topography of the site;

(d) the functionality and useability of the frontage;

(e) the ability to manoeuvre vehicles on the site; and

(f) the pattern of development existing on established properties in the area,

and is not less than 3.6m wide.

7.7..3. Table 1 below addresses the discretionary lots against the above PC.

Lot #	Frontage	Response
276	11.9m	Lot provides compliant building area with good solar orientation. Sufficient frontage.
277	11.5m	"
326	8.8m	"
369	7.3m	Lot provides compliant building area with good solar orientation. Suitable for multiple dwellings. Sufficient frontage.
370	6m	"
371	7.2m	"
378	7.5m	"
380	11.6m	"
424	6.6m	"
436	10.9m	"

Table 1. Summary of discretionary lot frontages

7.7..4. All lots are provided with a frontage that is sufficient for their intended residential use. The application complies with Performance Criteria 8.6.1 P2.

7.8. Discretion 5 – Subdivision within a waterway and coastal protection area

7.8..1. A waterway and coastal protection overlay covers the site in the vicinity of Gage Brook as well as a narrow swale to the south-west, both as shown in Figure 3 previously.

7.8..2. Acceptable Solution C7.7.1 A1 of the Natural Assets Code states:

Each lot, or a lot proposed in a plan of subdivision, within a waterway and coastal protection area or a future coastal refugia area, must:

(a) be for the creation of separate lots for existing buildings;

(b) be required for public use by the Crown, a council, or a State authority;

(c) be required for the provision of Utilities;

(d) be for the consolidation of a lot; or

(e) not include any works (excluding boundary fencing), building area, services, bushfire hazard management area or vehicular access within a waterway and coastal protection area or future coastal refugia area.

7.8..3. The protection area covering Gage Brook will be required for public use by Council and therefore meets (b) above. Works within this area are exempt from assessment under the development standards of this Code as they will be by or on behalf of council for the protection of a wetland as part of an approved management plan (a recommended condition of this permit) [*Exemption C7.4.1 (e)*].

7.8..4. The narrow swale to the west covers some of the lots and sections of road in proposed Stages 14 and 15, and therefore must meet Performance Criteria C7.7.1 P1, below:

Each lot, or a lot proposed in a plan of subdivision, within a waterway and coastal protection area or a future coastal refugia area, must minimise adverse impacts on natural assets, having regard to:

(a) the need to locate building areas and any associated bushfire hazard management area to be outside a waterway and coastal protection area or a future coastal refugia area; and

(b) future development likely to be facilitated by the subdivision.

7.8..5. A full Natural Values Assessment (NVA) of the site was prepared by North Barker Ecosystem Services (a 'suitably qualified person') and submitted with the application.

7.8..6. The western swale identified in the Waterways and Coastal Protection Area overlay was surveyed and found to support no natural riparian values.

7.8..7. The wetland in the Gage Brook waterway protection area is summarised by the NVA below:

Gagebrook meanders sinuously through the landscape. The associated river flats support a dense sward of native sedges and rushes mixed with non-native grasses. Two separated water bodies occur along the lower section. The upper, larger one includes patches of deeper water interspersed with extensive mudflats only periodically inundated. These support succulent salt marsh with saline sedgeland. The lower deeper water body is edged with a permanent saline sedgeland. Native vegetation is almost exclusively confined to these wetland areas except for two localised native remnants on slopes, and scattered white gums in the south of the study area.

Woody and herbaceous weeds dominate unmanaged land surrounding the wetlands.

7.8..8. Two rare fauna species were surveyed in the wetland area: *Vittadinia muelleri* (narrowleaf new-holland-daisy) and *Bolboschoenus caldwellii* (marsh club-rush). Many native wetland birds were surveyed on site, and there are several large mature white gums of which some support hollows suitable for nesting birds and mammals.

7.8..9. The management and conservation of natural values will be a priority for Council as the planning of the Gage Brook public open space area develops.

7.8..10. The proposal satisfies Performance Criteria C7.7.1 P1 with conditions that:

- the recommendations on page 20 of the NVA are upheld (including that no white gums [*Eucalyptus viminalis*] identified in Figure 4 of the NVA are modified or removed),
- a Weed Management Plan is submitted prior to works commencing, &
- an updated NVA is submitted if and when required by Council in the planning of the public open space.

7.9. Discretion 6 – Subdivision of potentially contaminated land for sensitive use

7.9..1. The purpose of the Potentially Contaminated Land Code is:

To ensure that use or development of potentially contaminated land does not adversely impact on human health or the environment.

7.9..2. An Environmental Site Assessment was prepared by Geo-Environmental Solutions (GES) prepared in accordance with the National Environment Protection (Assessment of Site Contamination) Measure 1999 (amended 2013) and submitted with the application.



Location of landfill and testing of potentially contaminated land (Source: Applicant)

- 7.9..3. Since the assessment submitted was not prepared by the Director of the Environment Protection Authority (or a person approved by the Director), the application must be assessed against Performance Criteria C14.7.1 P1, below:

Subdivision of potentially contaminated land does not adversely impact on human health or the environment and is suitable for its intended use or development, having regard to:

(a) an environmental site assessment that demonstrates there is no evidence the land is contaminated;

(b) an environmental site assessment that demonstrates that the level of contamination does not present a risk to human health or the environment; or

(c) an environmental site assessment, including a plan to manage contamination and associated risk to human health and the environment, that includes:

(i) any specific remediation and protection measures required to be implemented before any use or development commences; and

(ii) a statement that the land is suitable for the intended use or development.

- 7.9..4. The assessment tests for contaminants of potential concern associated with imported landfill and potentially the service station up-hill to the north on Gage Road: Total Petroleum/Recoverable Hydrocarbons; Mono Aromatic Hydrocarbons; Xylene; Polycyclic Aromatic Hydrocarbons and Heavy Metals. After a desktop and soil testing analysis, the assessment concludes:

Environment: *There were no hydrocarbons detections and no guideline exceedances for Ecological Screening Level guidelines. There were some low-level detections of heavy metals and no Ecological Investigation Level guideline exceedance. No risk from contamination to ecological receptors was identified.*

Human Health: *Although there were some slightly elevated metals detected; there were no human health guideline exceedances for commercial use or trench workers during construction or future restricted access of commercial users of the site.*

- 7.9..5. As the Environmental Site Assessment is limited to the landfill area only and the health of 'commercial users'/construction workers, it is considered necessary to condition for an updated assessment to be submitted that tests additional locations (including for asbestos) and has regard to the future passive recreation use of the public open space. This updated report and recommendation should be required for the approval of Council before any works commence, in order to meet Performance Criteria C14.7.1 P1.

- 7.9..6. Acid Sulfate Soils were also identified by GES in the vicinity of Gage Brook, and a specific Acid Sulfate Soils Management Plan prepared and submitted. Compliance with the management recommendations of this report (which relate to minimising excavation where possible and pH neutralisation of disturbed soils) is also recommended via permit condition.

8 Referrals

8.1 TasWater

- 8.1.1 TasWater has imposed conditions on the proposal which are to be included in any resulting permit.

8.2 Metro

- 8.2.1 The application was referred to Metro on multiple occasions for input on potential bus infrastructure requirements. No response was received.

8.3 Department of State Growth (DSG)

- 8.3.1 DSG responded stated they were satisfied with the findings of the Traffic Impact Assessment and Addendum submitted.

- 8.3.2 They also flagged the need for pedestrian facilities along the East Derwent Highway:

On the proposal plans in Appendix A, a laneway is shown within stage 15 to presumably bus stops on the East Derwent Highway. The Department has no plans to provide pedestrian facilities in this area in the near future nor is there any pedestrian facilities along the highway at this location. Pedestrian needs should be considered by the development.

A permit condition requiring pedestrian facilities be provided on the east side of the East Derwent Highway connecting the proposed Stage 15 footway and Riviera Drive is recommended.

8.4 TasGas

- 8.4.1 The subdivision is affected by the Enwave Declared Gas Pipeline Planning Corridor along the western boundary. The application was referred to TasGas who did not respond.

8.5 TasNetworks

- 8.5.1 TasNetworks responded stating they did not object to the proposal.

8.6 Council's Technical Officer

- 8.6.1 Council's Senior Technical Officer has assessed the application and response to representations are incorporated into the body of this report (including responses to representation points pertaining to stormwater and traffic impact below).

9. Concerns raised by representor

- 9.1 The following table summarises the issues raised by the representor (full copy attached):

Concern	Response
<u>Stormwater</u> Concern over climate change impacts on future flooding and water detention capacity of Gage Brook. Notes that much of the public open space will be the responsibility of Council.	The area of Gage Brook, particularly the wetland area east of the East Derwent Highway, has been heavily modified in the past. Council, in conjunction with the developer, is working with experts to prepare a concept plan for this area to be utilised for stormwater quality and quantity management as well as public recreation space. The concepts will be further developed as part of the detail design for the

	<p>subdivision. Climate change forecasts are to inform all planning.</p> <p>Condition of approval will require a Flood Hazard Report prior to approval of engineering design drawings to ensure there is no increased flood impact on adjacent properties.</p>
<p><u>Traffic – Old Beach Rd</u></p> <p>Concerns over various details contained within the Traffic Impacts Assessment submitted, as well the currency of several figures quoted.</p> <p>Concern over capacity of Old Beach Rd to safely accommodate growth.</p>	<p>No lots with direct access to Old Beach Road form part of this application. The Riviera Drive/Old Beach Road intersection is included in the previously approved Stage 8 and does not form part of this application. The intersection however is yet to be constructed and works are intended to be bonded and delivered with construction of Stage 9.</p> <p>Council shares concern regarding the use of dated traffic data. A condition requiring a new TIA based on recently recorded traffic data be submitted prior to works commencing on stage 12 is recommended. Any measures recommended by the TIA (including a roundabout at the East Derwent Highway if necessary) are to be implemented by the developer.</p>
<p><u>Traffic – Tivoli Rd</u></p> <p>Concerns over various details contained within the Traffic Impacts Assessment submitted, as well the currency of several figures quoted.</p>	<p>The application is only for stages 9-16, south of Gage Creek. A connecting road between the southern and northern stages is a likely requirement and will be considered as part of any future applications. The road layout for stages 9-16 allows for future connectivity to the north.</p>
<p>A connecting road to the should be considered.</p>	<p>It is agreed that a connecting road is desired and will be a likely requirement of a subsequent application for subdivision of lots north of Gage Brook.</p>
<p><u>Lot Density</u></p> <p>Concern over amenity impacts with some lots being close to the minimum size permitted.</p> <p>The note that a future local road may be desirable through adjoining private land is presumptive.</p>	<p>All lots are above the minimum sizes preferred by the Acceptable Solution (Precinct B over 500m² and Precinct C over 800m²).</p> <p>Smaller lots (within Precinct A) will form part of future stages closer to public open space and businesses, as developed and endorsed under the Tivoli Green Specific Area Plan.</p> <p>The note by the applicant's traffic consultant that a future local road may be desirable through private land is simply a future option to consider, not a requirement of current owners. Whilst the road</p>

	network allows for connectivity through the land known as 223 Old Beach Road the Road Hierarchy Plan clearly shows this as a “possible future road access”. It is not intended to construct a physical road link as part of this development. The allowance for future access provides for the orderly future development of this land but any road would be subject to future approvals.
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10. Conclusion

10.1 The proposal is for subdivision of 269 residential lots in 8 stages, public open space development and balance.

10.2 The key issues relate to water sensitive urban design, contamination management, protection of the Gage Brook waterway, traffic management, and provision of street trees.

10.3 The proposal is considered to meet the relevant provisions of the Tasmanian Planning Scheme – Brighton, and as such is recommended for approval with conditions.

11. Recommendation:

That: A. Pursuant to the *Tasmanian Planning Scheme – Brighton*, Council approve application SA 2021 / 7 for Subdivision (Stages 9 to 16 - 269 Lots, Public Open Space and Balance) at 201 Old Beach Rd, Lot 108 Lewis Ct and 3 Tivoli Rd, Old Beach for the reasons outlined in the officer’s report, and a permit containing the following conditions be issued:

General

1. The subdivision layout 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 plan of survey

3. This permit shall not take effect and must not be acted on until an amended plan of survey for Stage 16 has been submitted to and approved by the Manager Development Services. This amended plan of survey must show:
 - (a) A footway reservation of at least 5m wide between lots 385 and 386;
 - (b) A road reservation of 18m fronting lots 387 to 392;
 - (c) A minimum of 25m fronting lots 385 and 386 to accommodate an urban cul-de-sac turning head; and
 - (d) Property boundaries at the corners of each road intersection splayed or rounded by chords of a circle with a radius of not less than 6m, unless approved otherwise by Council's Municipal Engineer.

4. Once approved, the amended plan of survey shall become part of the endorsed documents of this permit.

Staged development

5. The subdivision must take place in the staging order proposed. Any change must first be approved by Council's Manager Development Services.

Landscaping

6. The road reserves must be landscaped by trees in accordance with an amended landscape plan prepared by a landscape architect or other person approved by Council and submitted to Council for endorsement with engineering drawings. The landscape plan must show a minimum average ratio of one medium-large street tree per lot frontage, the form of landscaping, the species of trees and estimates of the cost of the works.
7. Street trees must be a minimum of 2 metres in height at the time of planting.
8. 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 prior to the sealing of respective stages.
9. All trees and landscaping must be maintained and replaced if lost.

Public open space

10. A concept design plan for the entire area of public open space must be received to the satisfaction of Council's Manager Development Services prior to the sealing of Stage 9.
11. Detailed design and construction management plans for the area shown as *Open Space Handover Stages 9-12* on the endorsed 'Overall Subdivision Development Stages 9-16. Southern Side' Drawing #1 must be received to the satisfaction of Council's Manager Development Services prior to the sealing of Stage 9.
12. The area shown as *Open Space Handover Stages 9-12* must be delivered to the satisfaction of Council's Manager Development Services prior to the sealing of Stage 10.
13. Detailed design and construction management plans for the area shown as *Open Space Handover Stages 13-16* on the endorsed 'Overall Subdivision Development Stages 9-16. Southern Side' Drawing #1 must be received to the satisfaction of Council's Manager Development Services prior to the sealing of Stage 13.
14. The area shown as *Open Space Handover Stages 13-16* must be delivered to the satisfaction of Council's Manager Development Services prior to the sealing of Stage 16.

Natural values management

15. All works must be carried out in accordance with the recommendations prescribed on page 20 of the endorsed *Tivoli Green Subdivision, Stages 9-16, Natural Values Assessment (NVA)* prepared by North Barker Ecosystem Services and dated March 2021.
16. A Weed Management Plan prepared in accordance with the NVA must be submitted to the satisfaction of Council's Manager Development Services prior to works commencing. Once approved it will form part of this permit and must be adhered to.
17. No white gums [*Eucalyptus viminalis*] identified in Figure 4 of the NVA are to be modified or removed without written approval of Council's Manager Development Services.

18. An updated NVA must be received to the satisfaction of Council's Manager Development Services prior to the sealing of Stage 9. This NVA must, but is not limited to, consider details of the biofiltration system footprint and minimise impact to the nearby salt marsh community remnants.
19. Once approved the updated NVA will form part of this permit and must be adhered to.

Stormwater management

20. The developer is to provide a 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
21. The developer is to provide a major stormwater drainage system designed to accommodate a storm with an ARI of 100 years.
22. The developer is to provide a piped stormwater property connection to each lot capable of servicing the entirety of each lot by gravity in accordance with Council standards and to the satisfaction of Council's Municipal Engineer.
23. The Developer is to incorporate Water Sensitive Urban Design Principles into the development for the treatment and disposal of stormwater. The stormwater treatment system is to achieve the quality targets in the State Stormwater Strategy 2010 for each stage and be in accordance with:
 - (a) the Water Sensitive Urban Design Procedures for Stormwater Management in Southern Tasmania, and
 - (b) to the satisfaction of the Council's Municipal Engineer.
24. Gross pollutant traps are to be provided on the outfalls of all piped stormwater networks prior to discharging to any basins or watercourses.
25. The developer is to obtain Ministerial consent to discharge stormwater to the State Road drainage network under section 17B of the *Roads and Jetties Act 1975* prior to the approval of Engineering Design Drawings for any stage that discharges stormwater to the East Derwent Highway.

Advice: *Stage 15 Stormwater discharges to the East Derwent Highway corridor.*

Flood management

26. Prior to the approval of Engineering Design Drawings, the developer must submit a Flood Hazard Report, prepared in accordance with section C12.0 Flood-Prone Areas Hazard Code of the *Tasmanian Planning Scheme - Brighton* for approval by Council's Municipal Engineer.

The Report is to demonstrate that works:

- (a) do not cause or contribute to flood on the site, on adjacent land or public infrastructure; and
- (b) can achieve and maintain a tolerable risk from a 1% annual exceedance probability flood event for the intended life of the use without requiring any flood protection measures.

27. Any specific hazard reduction or protection measures recommended in the report are to be incorporated in the engineering design drawings and implemented prior to the sealing of the Plan of Survey for the relevant stage of the subdivision.
28. Once approved the Report will form part of the endorsed documents.

Contaminated land management

29. An updated Environmental Site Assessment (ESA), prepared by a suitably qualified person, must be submitted to the satisfaction of Council's Manager Development Services prior to any works commencing in the public open space. The ESA must demonstrate that any land contaminants (including asbestos) will not adversely impact on human health or the environment, having regard to the intended recreational and residential use of the land.
30. Once approved the updated Environmental Site Assessment (ESA) will form part of this permit and must be adhered to.

Acid sulfate soils management

31. All works within the public open space must be carried out in accordance with the recommendations prescribed on page 20 of the endorsed *Acid Sulfate Soil Management Plan* prepared by GES and dated October 2019.

Bushfire management

32. Before the sealing of respective stages, the developer must provide certification from a suitably qualified person that all works required by the endorsed '*Bushfire Hazard Management Plan – Tivoli Green Subdivision Stages 9 to 16, J3077v1*' (prepared by GES and dated February 2021) have been complied with.

Final plan

33. A final approved plan of survey and schedule of easements as necessary, together with two (2) copies, must be submitted to Council for sealing. 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.
34. Prior to Council sealing the final plan of survey, 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) Council 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.
35. 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.
36. The subdivider must pay any Titles Office lodgement fees direct to the Recorder of Titles.

Easements

37. 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.

38. A drainage easement must be provided over the proposed stormwater pipes and temporary drains on the balance lot.

Engineering

39. The subdivision must be carried out in accordance with the Tasmanian Subdivision Guidelines October 2013 (**attached**) or most up-to-date equivalent.
40. Engineering design drawings to the satisfaction of the Council's Municipal Engineer must be submitted to and approved by Council's Municipal Engineer, Tasmanian Subdivision Guidelines October 2013 or most up-to-date equivalent, before development of the land commences.
41. Engineering design drawings are to be prepared by a qualified and experienced civil engineer, or other person approved by Council's Municipal Engineer, and must show:
- (a) all existing and proposed services required by this permit;
 - (b) all existing and proposed roadwork required by this permit;
 - (c) measures to be taken to provide sight distance in accordance with the relevant standards of the planning scheme;
 - (d) measures to be taken to limit or control erosion and sedimentation;
 - (e) any other work required by this permit.
42. Approved engineering design drawings will remain valid for a period of 2 years from the date of approval of the engineering drawings.
43. The developer shall appoint a qualified and experienced Supervising Engineer (or company registered to provide civil engineering consultancy services) who will be required to certify completion of subdivision construction works. The appointed Supervising Engineer shall be the primary contact person on matters concerning the subdivision.

Services

44. Property services must be contained wholly within each lots served or an easement to the satisfaction of the Council's General Manager or responsible authority.
45. Any existing services shared between lots are to be separated to the satisfaction of Councils Municipal Engineer.
46. 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.
47. Property services for internal lots must be extended the full length of the access strip to the lot proper, or conduits for future services provided, to the satisfaction of Council's Municipal Engineer.

Sewer and water

48. Each lot must be connected to a reticulated potable water supply.
49. Each lot must be connected to a reticulated sewerage system.

TasWater

50. The development must meet all required Conditions of approval specified by Tas Water Submission to Planning Authority Notice, TWDA 2021/00408-BTN, dated 12 May 2021 (**attached**).

Telecommunications and electrical reticulation

51. Electrical and telecommunications services must be provided underground to each lot in accordance with the requirements of the responsible authority and to the satisfaction of Council's Municipal Engineer.
52. Prior to the work being carried out a drawing of the electrical reticulation and street lighting, and telecommunications reticulation in accordance with the appropriate authority's requirements and relevant Australian Standards must be submitted to and endorsed by the Council's Municipal Engineer.
53. Prior to sealing the final plans 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 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 at the time each lot is further developed.

Traffic impact assessment

54. Prior to works commencing on Stage 12, the developer must submit an amended Traffic Impact Assessment (TIA). The TIA is to be based on recently recorded traffic data and include any recommendations for works required to provide a safe and acceptable level of service. Any measure recommended by the report are to be included in engineering design drawings.
55. Once approved the TIA will form part of the endorsed documents.

Roadworks

56. Roadworks and drainage must be constructed in accordance with the standard drawings and specifications prepared by the IPWE Aust. (Tasmania Division) and to the requirements of Council's Municipal Engineer or as otherwise required by this permit.
57. Temporary turning heads with a minimum radius of 12m are to be provided at the termination of roads for each stage with the approved bushfire hazard management plan. Unless approved otherwise by Council's Municipal Engineer, turning heads are to be surfaced with hotmix asphalt within 12 months of the plan of survey being sealed for the relevant stage.
58. New roads must, unless approved otherwise by Council's Municipal Engineer, include:
- (a) Minor Collector Roads (Extension of Lewis Court)
 - i. 20m min. reservation width;
 - ii. 11.0m min. carriageway width;
 - iii. Kerb and channel;

- iv. 1.5m min. width concrete footpath both sides; and
- v. Underground stormwater drainage.

(b) Local Streets

- i. 18.0m min. reservation width;
- ii. 8.9m min. carriageway width;
- iii. Kerb and channel;
- iv. 1.5m min. width concrete footpath both sides; and
- v. Underground stormwater drainage.

(c) Access Places

- i. 15.0m min. reservation width;
- ii. 6.9m min. carriageway width;
- iii. Kerb and channel;
- iv. 1.5m min. width concrete footpath both sides; and
- v. Underground stormwater drainage.

Advice: Council's Municipal Engineer may approve variations to the above requirements, subject to detail design, to incorporate water sensitive urban design principles, where there are no lots with frontage to the road, or where narrower pavements are utilised to provide traffic calming and assist in creating a clear road hierarchy within the development.

- 59. The existing section of Lewis Court must be upgraded, including the intersection with Riviera Drive to a standard consistent with the section of Lewis Court which forms part of Stage 12 prior to the sealing of that stage.
- 60. The northern intersections contained within Stages 10 and 14 that will result in 4 leg intersections must be designed either as roundabouts or to allow for the future installation of roundabouts.
- 61. All carriageway surface courses must be constructed with a 10mm nominal size hotmix asphalt with a minimum compacted depth of 35mm, or 40mm where bus traffic is expected, in accordance with standard drawings and specifications prepared by the IPWE Aust. (Tasmania Division) and the requirements of Council's General Manager.
- 62. A reinforced concrete vehicle access must be provided from the road carriageway to each lot.
- 63. Vehicle accesses must be located and constructed generally in accordance with the standards shown on standard drawings TSD-R09 Urban Roads Driveways and TSD-RF01 Guide to Intersection and Domestic Access Sight Distance Requirements prepared by the IPWE Aust. (Tasmania Division) and the satisfaction of Council's Municipal Engineer.
- 64. Kerb ramps must be provided to accommodate the needs of people with disabilities in accordance with standard drawings prepared by the IPWE Aust. (Tasmania Division) and to the requirements of Council's Municipal Engineer.

Pedestrian facilities

65. Prior to the sealing of Stage 9, the developer is to extend a minimum 1.5m wide concrete footpath in Riviera Drive to the bus stops on either side of the East Derwent Highway at the Riviera Drive Intersection, including provision of pedestrian refuge.
66. Prior to the sealing of Stage 15, the developer is to construct a minimum 1.5m wide reinforced concrete footpath between lots 351 and 352.
67. Prior to the sealing of Stage 15, the path between lots 351 and 352 is to extend along the East Derwent Highway corridor to the nearest bus stop and a pedestrian crossing point is to be provided across the East Derwent Highway in the vicinity of the Stanfield Drive intersection.
68. Prior to the sealing of Stage 15, a 2.5m wide concrete shared path is to be constructed from the path between lots 351 and 352 along the East Derwent Highway corridor to the existing footpath on Riviera Drive.
69. Prior to the sealing of Stage 16, the developer is to construct a minimum 1.5m wide reinforced concrete footpath between lots 385 and 386.
70. Gravel walking trails are to be constructed in the Balance along future road corridors to provide access to the public open space. Stages 9 and 10 must each be provided walking trails prior to the sealing of Stage 10. Subsequent stages must each be provided a trail connection prior to their sealing.
71. Prior to any works commencing in the East Derwent Highway reservation, the applicant must obtain a permit from the Department of State Growth. Any conditions imposed by the Department of State Growth for works affecting the road reserve shall form part of this permit and must be adhered to. No works on the State Road shall commence until the Minister's consent has been obtained and a permit issued in accordance with the *Roads and Jetties Act 1935*.
72. All pedestrian facilities must be completed to the satisfaction of Council's Municipal Engineer.

Transfers

73. All roads or footways must be shown as "Road" or "Footway" on the Final Plan of Survey and transferred to the Council by Memorandum of Transfer prior to the sealing of relevant stages.
74. Public open space and stormwater treatment infrastructure must be transferred to Council by Memorandum of Transfer upon satisfactory completion.

Water quality

75. 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.
76. Temporary run-off, erosion and sediment controls must be installed in accordance with the approved SWMP and must be maintained at full operational capacity to the satisfaction of Council's General Manager until the land is effectively rehabilitated and stabilised after completion of the development.

77. The topsoil on any areas required to be disturbed must be stripped and stockpiled in an approved location shown on the detailed soil and water management plan for reuse in the rehabilitation of the site. Topsoil must not be removed from the site until the completion of all works unless approved otherwise by the Council's General Manager.
78. All disturbed surfaces on the land, except those set aside for roadways, footways and driveways, must be covered with topsoil and, where appropriate, re-vegetated and stabilised to the satisfaction of the Council's General Manager.

Construction

79. The subdivider must provide not less than forty-eight (48) hours written notice to Council's Municipal Engineer before commencing construction works on-site or within a council roadway.
80. Subdivision works must be carried out under the direct supervision of an approved practising professional civil engineer engaged by the subdivider and approved by the Council's Municipal Engineer.
81. The subdivider must provide not less than forty-eight (48) hours written notice to Council's Municipal Engineer before reaching any stage of works requiring inspection by Council unless otherwise agreed by the Council's Municipal Engineer.

Construction Amenity

82. The development must only be carried out between the following hours unless otherwise approved by the Council's General Manager:
- | | |
|------------------------------|---------------------|
| • Monday to Friday | 7:00 AM to 6:00 PM |
| • Saturday | 8:00 AM to 6:00 PM |
| • Sunday and public holidays | 10:00 AM to 6:00 PM |
83. All subdivision works associated with the development of the land must be carried out in such a manner so as not to unreasonably cause injury to, or unreasonably 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 from activities or equipment related to the use or development, including noise and vibration, which can be detected by a person at the boundary with another property; and/or
 - (b) transport of materials, goods or commodities to or from the land; and/or
 - (c) appearance of any building, works or materials.
84. Any accumulation of vegetation, building debris or other unwanted material must be disposed of by removal from the land in an approved manner. No burning of such materials on-site will be permitted unless approved in writing by the Council's General Manager.
85. 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 subdivision during the construction period.

Maintenance and Defects Liability Period

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

THE FOLLOWING ADVICE APPLIES TO THIS PERMIT:

- A. The issue of this permit does not ensure compliance with the provisions of the *Threatened Species Protection Act 1995* (Tasmania) or the *Environmental Protection and Biodiversity Protection Act 1999* (Commonwealth).
- B. The issue of this permit does not ensure compliance with the provisions of the *Aboriginal Relics Act 1975*. If any aboriginal sites or relics are discovered on the land, stop work and immediately contact the Tasmanian Aboriginal Land Council and Aboriginal Heritage Unit of the Department of Tourism, Arts and the Environment. Further work may not be permitted until a permit is issued in accordance with the *Aboriginal Relics Act 1975*.
- C. 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, must be paid to Council in accordance with Council's fee schedule.
- D. The SWMP shall be prepared in accordance with the guidelines *Soil and Water Management on Building and Construction Sites*, by the Derwent Estuary Programme and NRM South, the State Policy for Water Quality Management 1997 and the requirements of the Council's Municipal Engineer and show the following:
- (a) Allotment boundaries, north-point, contours, layout of roads, driveways, building envelopes and reticulated services (including power and telephone and any on-site drainage or water supply), impervious surfaces and types of all existing natural vegetation;
 - (b) Critical natural areas such as drainage lines, recharge area, wetlands, and unstable land;
 - (c) Estimated dates of the start and completion of the works;
 - (d) Timing of the site rehabilitation or landscape program;
 - (e) Details of land clearing and earthworks or trenching and location of soil stockpiles associated with roads, driveways, building sites, reticulated services and fire hazard protection;
 - (f) Arrangements to be made for surface and subsurface drainage and vegetation management in order to prevent sheet and tunnel erosion;
 - (g) Temporary erosion and sedimentation controls to be used on the site; and
 - (h) Recommendations for the treatment and disposal of wastewater in accordance with Standards Australia: AS/NZS 1547: On-site wastewater management, Standards Australia, Sydney, 2000.

- E. 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 Geard moved, Cr Garlick seconded that the recommendation be adopted.

CARRIED

VOTING RECORD

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

The meeting closed at 6.35pm.

Confirmed:

(Acting Mayor)

Date:

20th July 2021