



**Brighton  
Council**

**MINUTES OF THE PLANNING AUTHORITY MEETING  
OF THE BRIGHTON COUNCIL HELD  
IN THE COUNCIL CHAMBER, COUNCIL OFFICES  
OLD BEACH AT 5.40 P.M. ON TUESDAY,  
14<sup>TH</sup> SEPTEMBER 2021**

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

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

**1. Acknowledgement of Country**

**2. Apologies**

*All members were present.*

**3. Public Question Time and Deputations**

*There was no requirement for public question time.*

**4. Declaration of Interest**

In accordance with Part 5, Section 48 of the Local Government Act 1993, the Chairman of a meeting is to request Councillors to indicate whether they have, or are likely to have an interest in any item on the agenda; and

Part 2 Regulation 8 (7) of the Local Government (Meeting Procedures) Regulations 2015, the Chairman of a meeting is to request Councillors to indicate whether they have, or are likely to have, a pecuniary interest in any item on the agenda.

Accordingly, Councillors are requested to advise of any interest they may have in respect to any matter appearing on the agenda, or any supplementary item to the agenda, which the Council has resolved to deal with, in accordance with Part 2 Regulation 8 (6) of the Local Government (Meeting Procedures) Regulations 2015.

*Cr Curran declared an interest in Item 5.2*

## 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 Draft Planning Scheme Amendment - Request to Rezone Land at Bowden Drive, Bridgewater (C/T DA 237205/1) from Open Space Zone to General Residential Zone - Section 40K Report:

Author: Jo Blackwell – Senior Planner

Applicant:	Holmes Dyer
Owner:	Brighton Council
Location:	Bowden Drive, Bridgewater (C/T 237205/1)
Application No:	SA 2021/024 - RZ 003
Zoning:	Open Space
Planning Instrument:	Tasmanian Planning Scheme - Brighton
Date Received:	23 <sup>rd</sup> June 2021
Dated Advertised:	21 <sup>st</sup> July 2021 to 18 <sup>th</sup> August 2021
Decision Required:	22 <sup>nd</sup> September 2021
Representations:	One (1)
Recommendations:	<ul style="list-style-type: none"> <li>Advise the Tasmanian Planning Commission that one (1) representation was received following exhibition of draft amendment RZ 2021/003 to the Tasmanian Planning Scheme - Brighton; and</li> <li>Advise the Tasmanian Planning Commission that no modification to amendment RZ 2021/003 is considered necessary to the initial s.38 report; and</li> </ul>

	<ul style="list-style-type: none"><li>Advise the Tasmanian Planning Commission that modification to amendment RZ 2021/003 is considered necessary to the initial s38 report relating to re-certification of the Instrument of Certification.</li></ul>
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## 1. BACKGROUND

Council at its meeting of 13<sup>th</sup> July 2021 resolved to amend the *Tasmanian Planning Scheme – Brighton* by rezoning land at Bowden Drive, Bridgewater from Open Space Zone to General Residential Zone.

The purpose of the proposed rezoning is 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.

## 2. CONSULTATION

The Draft Amendment was exhibited in accordance with Section 40G of the *Land Use Planning and Approvals Act 1993* (the Act) and Section 7 of the *Land Use Planning and Approvals Act Regulations 2014* from 21<sup>st</sup> July 2021 to 18<sup>th</sup> August 2021 inclusive.

**Representation:** One (1) representation was received to the application during the public exhibition period and is attached as Annexure “B”.

That representation identified concerns relating to:

- Increase in traffic, pedestrian safety, and public transport
- Concerns regarding proposed lot design included in the supporting report
- Need for upgraded infrastructure (sewer and water)
- Access to public health services
- Activities suitable for younger people and need for open spaces, in light of possible high density development.

In responding to the representation, it is noted that the majority of the representor’s concerns will be addressed at the time of any future development on the site, including traffic, infrastructure and lot design.

More particularly, though:

- **Traffic Concerns:** The draft planning scheme amendment has been referred to Council's Senior Technical Officer as well as Metro Tasmania, and the Department of State Growth (Transport Systems and Planning Policy Unit) ("DSG") for comment.

Council's Senior Technical Officer has reviewed the proposal and made the following comments :

*"... the redevelopment of this land provides the opportunity to provide better active transport outcomes with safe pedestrian and shared use pathways.*

*The application is for re-zoning. Subdivision and development of the land will be subject to further detailed assessment and approval.*

*The surrounding road network should have more than sufficient capacity for the additional traffic generated by potential redevelopment of the rezoned land. A key requirement of any future development would be to maintain and improve pedestrian connectivity, particularly in relation to pedestrian safety with improved passive surveillance.*

*Future development applications would require a Traffic Impact Assessment with careful consideration given to any proposed road linkages."*

Metro Tasmania has not responded to the referral. Accordingly, it is assumed that that agency does not foreshadow any issues arising from the proposed rezoning. Future development of the site will be again referred to Metro for comment, at the relevant time.

DSG raised no issues with the proposed rezoning of the land, however, has asked that it have input into any future development proposal.

- **Water and Sewer:** The draft planning scheme amendment was referred to TasNetworks, TasWater and Council's Senior Technical Officer for comment.

TasNetworks and TasWater have responded to the referral, with each agency advising that it has no comment to make on the proposed rezoning. No additional comment was received from Council's Senior Technical Officer. It is therefore assumed that the site can be serviced appropriately and future development of the site will be considered at the time an application is received.

- **Lot Design:** Future lot design has not yet been finalised. The lot design shown in the draft planning scheme amendment are those contained within the Bridgewater-Gagebrook Master, which provides a conceptual indication of what could be achieved on the site, should re-zoning of the land be approved.

Importantly, though, the intent of the rezoning is to facilitate a subdivision that continues to provide good connectivity but improve safety and passive surveillance in the area.

A portion of the land at the east of the Site adjacent to Bowden Drive is to remain zoned Open Space. The concept plans shown in the Bridgewater-Gagebrook Master Plan and replicated in Holmes Dyer's supporting report indicate that as a preferred outcome.

- **Public Health Services:** Access to public health services is not a planning consideration for the proposed rezoning, however it is acknowledged that a sufficient public transport network is required to provide access to public health services for those residents who do not own vehicles. The area is currently serviced by Metro Tasmania, with existing stops within approximately 400m of the Site. Access to Greenpoint Plaza is within 750m walk, and the Greenpoint Medical Centre is approximately 1.1km walk from eastern end of the Site.
- **Need for youth activities in light of high density residential development:** The density of future development has not yet been determined but would need to be in accordance with the density standards for the General Residential Zone, should the draft planning scheme amendment be approved.

As previously identified, a portion of land at the east of the Site is identified for open space. The open space is intended to be developed as part of any future development. In addition, community members are well served with access to additional open space areas including:

- the nearby Bridgewater Parklands
- at the adjacent Jordan River Learning Foundation campus at the East Derwent Primary School and surrounding land,
- Scott Road Public Recreation Area
- nearby Derwent River Foreshore areas.

Given the above, it is not considered that the representation warrants any modification to the draft planning scheme amendment.

**Relevant Agencies:** Following initiation of the proposed rezoning pursuant to s38 of the Act, and referral to the Tasmanian Planning Commission pursuant to s40F(4) of the Act, the draft planning scheme amendment was referred to the following agencies pursuant to s40FA of the Act:

- TasWater
- TasNetworks
- Department of State Growth (Transport Systems and Planning Policy Unit) (“DSG”)
- Metro Tasmania

Table 1 sets out the relevant agency’s response:

Agency	Response
TasNetworks	<p>Thanks for the update regarding the amendment to the Draft Planning Scheme, particularly Bowden Drive, Bridgewater.</p> <p>Based on the information provided, the rezoning is not likely to adversely affect TasNetworks’ operations</p>
TasWater	<p>TasWater does not object to the proposed amendment to the Interim Planning Scheme as mentioned above and has no formal comments for the Tasmanian Planning Commission in relation to this matter and does not require to be notified of nor attend any subsequent hearings as stated in the attached SPAN.</p> <p>(The SPAN is attached as “Annexure C”)</p>
DSG	<p>“...The Department of State Growth (State Growth) has reviewed the draft planning scheme amendment, including the exhibited documentation and Council’s section 35 Report.</p> <p>State Growth has no opposition to the draft scheme amendment.</p> <p>Should the proposed amendment be successful, it would be appreciated that any future Development Application for the site be referred to State Growth...”</p> <p>(Full response is attached as “Annexure D”)</p>

Metro Tasmania	No response was received.
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### 3. INSTRUMENT OF CERTIFICATION

The Instrument of Certification executed 13<sup>th</sup> July 2021 incorrectly refers to “General Residential Area A”. The General Residential Zone as contained in the State Planning Provisions does not include a reference to “Area A”. It is therefore recommended that the draft planning scheme amendment be modified to include an amended and re-certified Instrument replace the original Instrument of Certification sealed on 13<sup>th</sup> July 2021 as part of the draft planning scheme amendment.

### 4. LEGISLATION

Section 40K(1) of the Act provides that a Planning Authority (Council) must, within 35 days after the public notification period has closed, forward to the Tasmanian Planning Commission a report in relation to the draft amendment of an LPS.

Section 40K(2) of the Act requires the report to contain:

- (a) *a copy of each representation made under section 40J in relation to the draft amendment before the end of the exhibition period in relation to the draft amendment, or, if no such representations were made before the end of the exhibition period, a statement to that effect; and*
- (b) *a copy of each representation, made under section 40J in relation to the draft amendment after the end of the exhibition period in relation to the draft amendment, that the planning authority, in its discretion, includes in the report; and*
- (c) *a statement of the planning authority's opinion as to the merit of each representation included under paragraph (a) or (b) in the report, including, in particular, as to –*
  - (i) *whether the planning authority is of the opinion that the draft amendment ought to be modified to take into account the representation; and*
  - (ii) *the effect on the draft amendment, and the LPS to which it relates, as a whole, of implementing the recommendation; and*
- (d) *a statement as to whether it is satisfied that the draft amendment of an LPS meets the LPS criteria; and*
- (e) *any recommendations in relation to the draft amendment that the planning authority thinks fit.*

Subsection (b) relates specifically to any representation received.

Subsection (c) allows the Planning Authority (Council) to provide any additional information or recommendation in relation to the draft amendment as certified or recommend to the Tasmanian Planning Commission that a modification should be made regardless of any representation.

Subsection (d) requires the Planning Authority (Council) to consider whether the proposal satisfies the LPS criteria contained within Section 34 of the Act.

Subsection (e) requires the Planning Authority to recommend any changes it may think appropriate after consideration of section 40K(2)(a)-(d) of the Act.

As the draft amendment has been initiated and certified the Tasmanian Planning Commission must make a determination on the matter.

## 5. ASSESSMENT

One representation was received to the draft amendment. The representation is addressed in clause 3 above. It is considered the representation, together with submissions from TasWater, TasNetworks and Department of State Growth do not warrant modification to the permit.

The Planning Authority considers that one (1) change is warranted to the proposed amendment, relating to re-certification of an amended Instrument of Certification, as detailed in section 4 above.

### OPTIONS:

1. To adopt the recommendation; or
2. To adopt an alternative recommendation satisfying the provisions of section 40K of the Act, with a full statement of reasons as determined by Council.

### **RECOMMENDATION:**

That in accordance with Section 40K of the *Land Use Planning and Approvals Act 1993* Council resolves to:

- A. Advise the Tasmanian Planning Commission that one (1) representation was received following exhibition of draft amendment RZ 2021/003 to the Tasmanian Planning Scheme - Brighton; and
- B. Advise the Tasmanian Planning Commission that no modification to amendment RZ 2021/003 is considered necessary to the initial s.38 report.
- C. Advise the Tasmanian Planning Commission that modification to amendment RZ 2021/003 is considered necessary to the initial s38 report relating to re-certification of the Instrument of Certification.

### **DECISION:**

*Cr Whelan moved, Cr Curran seconded that the recommendation be adopted.*

**CARRIED**



## VOTING RECORD

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

## 5.2 Development Application SA 2020 / 00041 for 230 Tea Tree Road, Brighton - Subdivision (4 lots) - Brighton Interim Planning Scheme 2015:

Author: Jo Blackwell – Senior Planner

Applicant:	Peter Binny Surveys
Subject Site:	230 Tea Tree Road, Brighton
Proposal:	Subdivision (4 lots)
Planning Scheme:	Brighton Interim Planning Scheme 2015
Zoning:	Rural Living
Codes:	Nil
Local Provisions:	NA
Use Class:	Residential
Discretions:	13.5.1 A2/P2 – Building Area 13.5.1 A3/P2 – Frontage 13.5.1 A4/P4 – Internal lot 13.5.1 A5/P5 – Setback between existing buildings and proposed new boundaries 13.5.3 A2/P2 – Public Open Space – Cash in Lieu 13.5.4 A2/P2 - Services 13.5.4 A3/P3 - Services
Representations:	One (1) representation was received. The representor raised the following issues: <ul style="list-style-type: none"> <li>Building area in BFHMP is inconsistent with Building Area shown on Plan of Subdivision</li> </ul>
Recommendation:	Approval with conditions

## 1. STATUTORY REQUIREMENTS

The purpose of this report is to enable the Planning Authority to determine application SA 2020/41.

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.

Council's assessment of this proposal should also consider the issues raised in any representations received, the outcomes of the State Policies and the objectives of Schedule 1 of the *Land Use Planning and Approvals Act, 1993* (LUPAA).

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. SITE ASSESSMENT

The subject site is: 230 Tea Tree Road, Brighton and is contained within the land described in Certificate of Title Volume 100272 Folio 1.

The site is an "L" shaped lot, comprising 2.776ha, with dual access from Tea Tree Road and Derwent Street. The site has been developed by a dwelling and numerous outbuildings.

The land is generally level, with the land falling to the south eastern corner of the site. Existing boundaries are generally screened by existing vegetative borders and a small dam is located adjacent to the eastern boundary, on proposed Lot 2 (refer Figure 1).



Figure 1: Subject site (source: [www.thelist.tas.gov.au](http://www.thelist.tas.gov.au))

The site is zoned Rural Living, as are the lots in the immediate vicinity, with the Midlands Highway and associated road reserve zoned Utilities. The site is subject to the Bushfire Prone Areas Code only (Figure 2)



## PROPOSAL

The proposal is for a four (4) lot subdivision, including the balance lot (lot 4) containing the existing dwelling. All achieve the minimum lot size required of 5000m<sup>2</sup>, with Lot 4 having a land area of 1.202ha. The subdivision is to be staged, with stage 1 comprising Lots 1 and 2, and stage 2 comprising Lots 3 and 4.

The proposal shows that lots 1 and 2 will require new vehicular access from Tea Tree Road, adjacent to the existing access for Lot 4. Lot 3 will utilise an existing access located off Derwent Street.

The application is supported by the attached plans, Traffic Impact Assessment (TIA) and Bushfire Hazard Management Plan (BFHMP). The TIA considers the effect of the new vehicular access to Tea Tree Road, given its proximity to State Growth owned sections of that road, together with impact on local collector roads, and finds no reason for the development not to proceed, based on traffic impacts. The BFHMP concludes that the proposed subdivision can achieve BAL-19 as required by the Code.

## 4. PLANNING SCHEME ASSESSMENT

The Planning Scheme provides:

### Compliance with Applicable Standards:

*5.6.1 A use or development must comply with each applicable standard in the State Planning Provisions and the Local Provisions Schedules.*

*5.6.2 A standard is an applicable standard if:*

- (a) *the proposed use or development will be on a site within:*

  - (i) *a zone;*
  - (ii) *an area to which a specific area plan relates; or*
  - (iii) *an area to which a site-specific qualification applies; or*

- (b) *the proposed use or development is a use or development to which a relevant applies; and*
- (c) *the standard deals with a matter that could affect, or could be affected by, the proposed use or development.*

5.6.3 *Compliance for the purposes of subclause 5.6.1 of this planning scheme consists of complying with the Acceptable Solution or satisfying the Performance Criterion for that standard.*

5.6.4 *The planning authority may consider the relevant objective in an applicable standard to determine whether a use or development satisfies the Performance Criterion for that standard.*

**Determining applications (clause 6.10.1):**

6.10.1 *In determining an application for any permit for use or development the planning authority must, in addition to the matters required by section 51(2) of the Act, take into consideration:*

- (a) *all applicable standards and requirements in this planning scheme; and*
- (b) *any representations received pursuant to and in conformity with section 57(5) of the Act,*

*but in the case of the exercise of discretion, only insofar as each such matter is relevant to the particular discretion being exercised.*

**Relevant Planning Scheme**

This application was received prior to 11<sup>th</sup> February 2021, and therefore must be determined under the Brighton Interim Planning Scheme 2015 (the Scheme).

**Use Class**

The current Use Class is categorised as Residential under the Scheme. No additional development is proposed as part of this application.

**Compliance with Performance Criteria**

The proposal meets the Scheme's relevant Acceptable Solutions with the exception of the following:

### Clause 9.10 Subdivision

A proposal for subdivision is discretionary pursuant to clause 9.10.2, as the proposal does not satisfy (a) to (c) below:

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

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

### Clause 13.5.1 A2/P2 Building Area

Objective:	
<p>To provide for new lots that:</p> <p>(a) have appropriate area and dimensions to accommodate development consistent with the Zone Purpose and any relevant Local Area Objectives or Desired Future Character Statements;</p> <p>(b) contain building areas which are suitable for residential development, located to avoid hazards and values and will not lead to land use conflict and fettering of resource development use on adjoining rural land;</p> <p>(c) are not internal lots, except if the only reasonable way to provide for infill development in existing subdivided areas.</p>	
Acceptable Solution	Performance Criteria
<p>A2 The design of each lot must provide a minimum building area that is rectangular in shape and complies with all of the following, except if for public open space, a riparian or littoral reserve or utilities;</p> <p>(a) clear of the frontage, side and rear boundary setbacks;</p> <p>(b) not subject to any codes in this planning scheme;</p> <p>(c) clear of title restrictions such as easements and restrictive covenants;</p>	<p>P2 The design of each lot must contain a building area able to satisfy all of the following:</p> <p>(a) is reasonably capable of accommodating residential use and development;</p> <p>(b) meets any applicable standards in codes in this planning scheme;</p> <p>(c) enables future development to achieve reasonable solar access, given the slope and aspect of the land;</p> <p>(d) minimises the requirement for earth works, retaining walls, and cut &amp;</p>

<p>(d) has an average slope of no more than 1 in 5;</p> <p>(e) has a separation distance no less than:</p> <ul style="list-style-type: none"> <li>(i) 100 m from land zoned Rural Resource;</li> <li>(ii) 200 m from land zoned Significant Agriculture;</li> </ul> <p>(f) has a setback from land zoned Environmental Management no less than 100 m.</p> <p>(g) is a minimum of 30 m x 30 m in size</p>	<p>fill associated with future development;</p> <p>(e) is sufficiently separated from the land zoned Rural Resource and Significant Agriculture to prevent potential for land use conflict that would fetter nonsensitive use of that land, and the separation distance is no less than:</p> <ul style="list-style-type: none"> <li>(i) 40m from land zoned Rural Resource</li> <li>(ii) 80m from land zoned Significant Agriculture</li> </ul> <p>(f) is setback from land zoned Environmental Management to satisfy all of the following:</p> <ul style="list-style-type: none"> <li>(i) there is no significant impact from the development on environmental values;</li> <li>(ii) the potential for the spread of weeds or soil pathogens onto the land zoned Environmental Management is minimised;</li> <li>(iii) there is minimal potential for contaminated or sedimented water runoff impacting the land zoned Environmental Management;</li> <li>(iv) there are no reasonable and practical alternatives to developing close to land zoned Environmental Management.</li> </ul>
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The proposal is not able to satisfy (a) and (b) as set out in 13.5.1 A2 above. As the proposal does not satisfy the acceptable solution, assessment against the performance criteria is relied upon.

Each lot has a minimum lot size of 5000m<sup>2</sup> which is considered appropriate for residential use and development, including solar access for future development given the topography of the site and gentle gradient. This will also reduce the need for future earthwork.

A Bushfire Hazard Management Plan has been submitted in support of the application, which certifies that the proposal is in accordance with the Bushfire Prone Areas Code.

The site is in excess of 600m from rural resource, significant agriculture or environmental management zoned land.

Accordingly, the PC is satisfied.

#### Clause 13.5.1 A3/P3 – Frontage

<b>Objective:</b>	
<p>To provide for new lots that:</p> <p>(a) have appropriate area and dimensions to accommodate development consistent with the Zone Purpose and any relevant Local Area Objectives or Desired Future Character Statements;</p> <p>(b) contain building areas which are suitable for residential development, located to avoid hazards and values and will not lead to land use conflict and fettering of resource development use on adjoining rural land;</p> <p>(c) are not internal lots, except if the only reasonable way to provide for infill development in existing subdivided areas.</p>	
<b>Acceptable Solution</b>	<b>Performance Criteria</b>
<p>A3 The frontage for each lot must be no less than the following, except if for public open space, a riparian or littoral reserve or utilities and except if an internal lot:</p> <p>40 m.</p>	<p>P3 The frontage of each lot must provide opportunity for reasonable vehicular and pedestrian access and must be no less than:</p> <p>6m.</p>

The proposal provides for 40m frontages for lots 1, 2, and 3. Lot 4 has a frontage to Tea Tree Road of 19.44m and a frontage to Derwent Street of 19.30m, which does not satisfy the acceptable solution. Therefore, assessment against the performance criteria is relied upon, and can be satisfied, given that frontages greater than 6m are to be provided.

Accordingly, the PC is satisfied.

### Clause 13.5.1 A4/P4 – Internal Lot

<b>Objective:</b>	
<p>To provide for new lots that:</p> <p>(a) have appropriate area and dimensions to accommodate development consistent with the Zone Purpose and any relevant Local Area Objectives or Desired Future Character Statements;</p> <p>(b) contain building areas which are suitable for residential development, located to avoid hazards and values and will not lead to land use conflict and fettering of resource development use on adjoining rural land;</p> <p>(c) are not internal lots, except if the only reasonable way to provide for infill development in existing subdivided areas.</p>	
<b>Acceptable Solution</b>	<b>Performance Criteria</b>
No lot is an internal lot.	<p>P4</p> <p>An internal lot must satisfy all of the following:</p> <p>(a) access is from a road existing prior to the planning scheme coming into effect, unless site constraints make an internal lot configuration the only reasonable option to efficiently utilise land;</p> <p>(b) it is not reasonably possible to provide a new road to create a standard frontage lot;</p> <p>(c) the lot constitutes the only reasonable way to subdivide the rear of an existing lot;</p> <p>(d) the lot will contribute to the more efficient utilisation of rural living land;</p> <p>(e) the amenity of neighbouring land is unlikely to be unreasonably affected by subsequent development and use;</p> <p>(f) the lot has access to a road via an access strip, which is part of the lot, or a right-of-way, with a width of no less than 3.6m;</p>



	<p>(g) passing bays are provided at appropriate distances along the access strip to service the likely future use of the lot;</p> <p>(h) the access strip is adjacent to or combined with no more than three other internal lot access strips and it is not appropriate to provide access via a public road;</p> <p>(i) a sealed driveway is provided on the access strip prior to the sealing of the final plan.</p> <p>(j) the lot addresses and provides for passive surveillance of public open space and public rights of way if it fronts such public spaces.</p>
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The Scheme defines ***“Internal Lot”*** as:

*A lot:*

- (a) Lying predominantly behind another lot; and*
- (b) Having access to a road by an access strip, private road or right of way.*

Lot 4 is deemed to be an internal based on the definition, and therefore invokes assessment against the performance criteria.

Access to Lot 4 (the balance lot) from both Derwent Street and Tea Tree Road, is pre-existing. The proposal plans show access strips in excess of 19m wide at both frontages, which provides for sufficient passing bays to be provided. It is considered that creation of an internal lot demonstrates a suitable way to subdivide the south eastern corner of the site, while maintaining the amenity of the existing dwelling and creating additional rural living parcels of land.

Lot 4 contains the existing dwelling, in the centre of the lot, and as such the use of the site is not considered to impact residential amenity for adjoining land owners.

Lot 4 is to be accessed from Tea Tree Road, in keeping with current practices, and it is considered that the performance criteria can be satisfied through a condition requiring sealing of the access strip from Tea Tree Road, as part of Stage 2 of the proposed subdivision.

Accordingly, the PC is satisfied with conditions.

### Clause 13.5.1 A5/P5 – Setback from new boundary to existing buildings

<b>Objective:</b>	
<p>To provide for new lots that:</p> <p>(a) have appropriate area and dimensions to accommodate development consistent with the Zone Purpose and any relevant Local Area Objectives or Desired Future Character Statements;</p> <p>(b) contain building areas which are suitable for residential development, located to avoid hazards and values and will not lead to land use conflict and fettering of resource development use on adjoining rural land;</p> <p>(c) are not internal lots, except if the only reasonable way to provide for infill development in existing subdivided areas.</p>	
<b>Acceptable Solution</b>	<b>Performance Criteria</b>
A5 Setback from a new boundary for an existing building must comply with the relevant Acceptable Solution for setback.	P5 Setback from a new boundary for an existing building must satisfy the relevant Performance Criteria for setback.

The existing dwelling and some outbuildings to the south west of the dwelling do not satisfy the acceptable solution, which would require 20m setbacks from side and rear boundaries. Therefore, assessment against the performance criteria is relied upon.

The performance criteria for setbacks in the rural living zone requires the following to be considered:

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

- (a) the topography of the site;*
- (b) the size and shape of the site;*
- (c) the location of existing buildings on the site;*
- (d) the proposed colours and external materials of the building;*
- (e) visual impact on skylines and prominent ridgelines;*
- (f) impact on native vegetation;*
- (g) be sufficient to prevent unreasonable adverse impacts on residential amenity on adjoining lots by:*

(i) overlooking and loss of privacy;

(ii) visual impact, when viewed from adjoining lots, through building bulk and massing.

Existing site development is situated across proposed Lots 3 and 4. A dwelling will be contained within Lot 4, with the associated outbuildings on Lot 3. As can be seen from figure 3, the dwelling is currently screened by existing vegetation to a small outbuilding at the south western corner of the “back yard” with additional outbuildings located further to the south west.



Figure 3: Location of dwelling and outbuildings (source: [www.listmap.tas.gov.au](http://www.listmap.tas.gov.au))

There is no proposal for vegetation removal included with the proposal.

It is considered that the undulating ground levels, together with existing vegetative screening can provide compliance with the performance criteria in relation to overlooking and loss of privacy.

Accordingly, the PC is satisfied.

#### Clause 13.5.3 A2/P2 – Public Open Space

<b>Objective:</b>
To ensure that the arrangement of ways and public open space provides for all of the following:
(a) the provision of safe, convenient and efficient connections for accessibility, mobility and recreational opportunities for the community;

(b) the adequate accommodation of pedestrian and cycling traffic; (c) the adequate accommodation of equestrian traffic.	
Acceptable Solution	Performance Criteria
A2 No Acceptable Solution	P2 Public Open Space must be provided as land or cash in lieu, in accordance with the relevant Council policy

There is no acceptable solution available to this standard, therefore assessment against the performance criteria is relied upon.

A condition requiring payment of a contribution towards Public Open Space in accordance with Council's policy can satisfy the performance criteria, and is accordingly recommended.

Accordingly, the PC is satisfied with conditions.

#### 13.5.4 A2/P2 Services

<b>Objective:</b>	
To ensure that the subdivision of land provides adequate services to meet the projected needs of future development.	
Acceptable Solution	Performance Criteria
A2 No Acceptable Solution	P2 Each lot must be capable of accommodating an on-site wastewater treatment system adequate for the future use and development of the land.

There is no acceptable solution available to this standard, therefore assessment against the performance criteria is relied upon.

Each site is in excess of 5000sqm of land area, which is considered sufficient to accommodate an appropriately designed on-site wastewater system. A condition requiring that all services being contained within the respective lot boundaries is also required.

Accordingly, the PC is satisfied with conditions

## 5. REFERRALS

### Senior Technical Officer

Council's Senior Technical Officer has been consulted. That officer's comments have been incorporated into this report where necessary

### TasWater

The application was referred to TasWater for comment. That agency has provided a Submission to Planning Authority Notice, reference number TWDA 2020/01960-BTN dated 25<sup>th</sup> November 2020. The SPAN is required to form part of any permit approved.

### Department of State Growth

The application was referred to the Department of State Growth for comment. That agency's reply is replicated:

*"Noted that State Government ownership of Tea Tree Road ends at the Midland Highway interchange and doesn't extend past the frontage of 230 Tea Tree Road.*

*60 km/h speed limit on Tea Tree Road commences some 700 metres to the east of the interchange.*

*No impact on the operation of the State road network."*

## 6. REPRESENTATIONS

One (1) representation was received during the statutory public exhibition period between 12/5/2021 and 26/5/2021.

The concerns of the representors are summarised below:

Representor's concerns	Planning Response
Building area in BFHMP is inconsistent with Building Area shown on Plan of Subdivision	Agreed.  The building areas shown on the Bushfire Hazard Management Plan demonstrate that the lots meet the acceptable solutions prescribed in the Bushfire Prone Areas Code in the Planning Scheme. The Plan is certified by the accredited person under Part 4a of the <i>Fire Service Act 1979</i> and must be accepted pursuant to s51(2)(d) of the <i>Land use Planning and Approvals Act 1993</i> .

	In comparison, the building areas shown on the plan of survey are indicative areas which demonstrate the lots can achieve a reasonable area for future residential development to demonstrate compliance with the Rural Living Zone Standards.
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## 7. CONCLUSION

The proposal for Subdivision (4) lots at 230 Tea Tree Road, Brighton in the Rural Living Zone satisfies the relevant provisions of the Tasmanian Planning Scheme - Brighton, and as such is recommended for approval.

### **RECOMMENDATION:**

That: A. Pursuant to the *Tasmanian Planning Scheme - Brighton*, Council approves application SA 2020/41 for Subdivision (4) Lots 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. The development and works must be carried out in accordance with:
  - a. Traffic Impact Assessment, 230 Tea Tree Road, Brighton – 4 Lot Subdivision, dated January 2021, prepared by Hubble Traffic;
  - b. Proposed Subdivision, 230 Tea Tree Road, Brighton, Bushfire Hazard Report dated April 2021, prepared by Geo Environmental Solutions.
3. Prior to Council sealing the final plan of survey the developer must provide certification from a suitably qualified person that all works required by the Bushfire Hazard Report have been complied with.

#### *Staging*

4. The subdivision development is approved to be carried out in the following stages:
 

Stage 1	Lots 1 and 2
Stage 2	Lots 3 and 4

### *Public open space*

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

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

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

### *Easements*

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

### *Endorsements*

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

### *Covenants*

9. Covenants or other similar restrictive controls that conflict with any provisions or seek to prohibit any use provided within the planning scheme must not be included or otherwise imposed on the titles to the lots created by this permit, either by transfer, inclusion of such covenants in a Schedule of Easements or registration of any instrument creating such covenants with the Recorder of Titles, unless such covenants or controls are expressly authorised by the terms of this permit or the consent in writing of the Council's Senior Planner.

### *Final plan*

10. A final approved plan of survey and schedule of easements as necessary, together with two (2) copies, must be submitted to Council for sealing for each stage. The final approved plan of survey must be substantially the same as the endorsed plan of subdivision and must be prepared in accordance with the requirements of the Recorder of Titles.
11. Prior to Council sealing the final plan of survey for each stage, security for an amount clearly in excess of the value of all outstanding works and maintenance required by this permit must be lodged with the Brighton Council. The security must be in accordance with section 86(3) of the Local Government (Building & Miscellaneous Provisions) Act 1993. The amount of the security shall be determined by the Council's Municipal Engineer in accordance with Council Policy

6.3 following approval of any engineering design drawings and shall not to be less than \$5,000.

12. 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.
13. The subdivider must pay any Titles Office lodgement fees direct to the Recorder of Titles.

### *Engineering*

14. The subdivision must be carried out and constructed in accordance with the:
  - a. Tasmanian Subdivision Guidelines
  - b. Tasmanian Municipal Standard – Specifications
  - c. Tasmanian Municipal Standard – Drawingsas published by the Local Government Association of Tasmania and to the satisfaction of Council's Municipal Engineer.
15. Engineering design drawings, to the satisfaction of the Council's Municipal Engineer, must be submitted to and approved by Council before any works associated with development of the land commence.
16. 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.
17. Approved engineering design drawings will remain valid for a period of 2 years from the date of approval of the engineering drawings.
18. 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.

Advice: This condition is applicable if the subdivider undertakes upgrades to Derwent Street.

### *Property Services*

19. 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.



20. Any existing services shared between lots are to be separated to the satisfaction of Council's Municipal Engineer.
21. Property services must be contained wholly within each lot served or an easement to the satisfaction of the Council's Municipal Engineer or responsible authority.
22. Property services must be extended the length of the access strip to the lot proper, or conduits for future services provided, to the satisfaction of Council's Municipal Engineer.

#### *Telecommunications and electrical reticulation*

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

#### *Roadworks*

25. A vehicle access must be provided from the road carriageway to service each lot.  
Advice: A break will need to be made in the painted chevron on Tea Tree Road to legally permit access to lot 2
26. Vehicular accesses must be located and constructed in accordance with the standards shown on standard drawings must be located and constructed in accordance with the standards shown on standard drawings TSD-R03 Rural Roads Typical Property Access, TSD-R04 Rural Roads Typical Driveway Profile and TSD-RF01 Guide To Intersection And Domestic Access Sight Distance Requirements prepared by the IPWE Aust. (Tasmania Division), or as otherwise required by this permit, and the satisfaction of Council's Municipal Engineer.  
Advice: Existing vehicle accesses must be upgraded, where necessary, to comply with this condition.
27. The vehicular access to Lot 4 must be upgraded/constructed for the entire length of the access strip from Tea Tree Road to the lot proper (approx. 88m) and, unless approved otherwise by Council's Municipal Engineer, be:
  - (a) Constructed with a durable all weather pavement
  - (b) Drained so as stormwater runoff is not concentrated onto adjacent properties.

- (c) Surfaced with a material to resist abrasion from traffic and to minimise the entry of water. The surfacing material may be a spray seal, asphalt, concrete, pavers or other approved material.
  - (d) A minimum trafficable width of 4.0 metres with a minimum sealed width of 3.0 metres.
  - (e) As required by Proposed Subdivision, 230 Tea Tree Road, Brighton, Bushfire Hazard Report dated April 2021, prepared by Geo Environmental Solutions.
  - (f) Be completed prior to Council sealing the final plan of survey for Stage 2.
28. Prior to Council sealing the final plan of survey for Stage 2, the developer must:
- a. Upgrade Derwent Street for a distance equivalent to half the combined frontage of Lots 3 and 4 (37 metres). Unless approved otherwise by Council's General Manager works must include: -
    - i. Sealed surface course (minimum of a two-coat seal) with a minimum sealed width of 5.5 metres;
    - ii. 1m wide gravel shoulders (including 500mm verge);
    - iii. Table drains.
  - or;
  - b. Make a financial contribution to Brighton Council for upgrading Derwent Street. The value of the contribution is to be 50% of the total cost of upgrading Derwent St across the combined frontage of lots 3 and 4 to the above standard. The value of the contribution is to be agreed by Council's Municipal Engineer and based on approved engineering construction plans and cost estimate.

### ***Stormwater***

29. Stormwater from the proposed development must be managed on site such that any stormwater runoff from the site, for a storm with an ARI of 20 years, will be no greater than pre-existing runoff to the satisfaction of Council's Municipal Engineer.

### ***Tas Water***

30. The development must meet all required Conditions of approval specified by Tas Water Submission to Planning Authority Notice TWDA 2020/01960-BTN, dated 25/11/2020.

### ***Water quality***

31. A soil and water management plan (here referred to as a 'SWMP') prepared in accordance with the guidelines Soil and Water Management on Building and Construction Sites, by the Derwent Estuary Programme and NRM South, must be approved by Council's Municipal Engineer before development of the land commences.

32. Temporary run-off, erosion and sediment controls must be installed in accordance with the approved SWMP and must be maintained at full operational capacity to the satisfaction of Council's Municipal Engineer until the land is effectively rehabilitated and stabilised after completion of the development.
33. The topsoil on any areas required to be disturbed must be stripped and stockpiled in an approved location shown on the detailed soil and water management plan for reuse in the rehabilitation of the site. Topsoil must not be removed from the site until the completion of all works unless approved otherwise by the Council's Municipal Engineer.
34. All disturbed surfaces on the land, except those set aside for roadways, footways and driveways, must be covered with top soil and, where appropriate, re-vegetated and stabilised to the satisfaction of the Council's Municipal Engineer.

### ***Construction Amenity***

35. 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 State-wide public holidays 10:00 AM to 6:00 PM
36. 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.
37. 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.
38. 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***

39. Works constructed as part of the subdivision to become Council assets 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.

Advice: This condition is applicable if the subdivider undertakes upgrades to Derwent Street.

**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 permit does not take effect until all other approvals required for the use or development to which the permit relates have been granted.
- C. The owner is advised that an engineering plan assessment and inspection fee of 1% of the value of the approved engineering works (minimum of \$300.00), or as otherwise specified in Council's Schedule of Fees, must be paid to Council prior to the approval of engineering plans.
- D. This planning approval shall lapse at the expiration of two (2) years from the date of the commencement of planning approval if the development for which the approval was given has not been substantially commenced. Where a planning approval for a development has lapsed, an application for renewal of a planning approval for that development shall be treated as a new application.

**DECISION:**

*Cr Geard moved, Cr Murtagh seconded that the recommendation be adopted.*

**CARRIED**

**VOTING RECORD**

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

### 5.3 Development Application DA 2021/134 for Outbuilding (Agricultural Use) at 182 Boyer Rd, Bridgewater:

Author: Richard Cuskelly (Planning Officer)

Applicant:	Matthew Booth
Subject Site:	182 Boyer Rd, Brighton
Proposal:	Outbuilding (Agricultural Use)
Planning Scheme:	Tasmanian Planning Scheme - Brighton
Zoning:	Future Urban
Codes:	Parking and Sustainable Transport Road and Railway Assets
Local Provisions:	Nil
Use Class:	Resource Development (Agriculture)
Discretions:	30.4.1 A1 – Buildings and works in Future Urban Zone C2.6.1 A1 – Construction of parking areas
Representations:	2 representations were received. The representors raised the following issues: <ul style="list-style-type: none"> <li>• Unapproved earthworks and outbuildings are existing,</li> <li>• Concern regarding fire risk management, especially due to proximity to boundaries, and</li> <li>• Concern that the development will compromise or prejudice the potential for efficient future urban subdivision.</li> </ul>
Recommendation:	Approval with conditions

#### 1. STATUTORY REQUIREMENTS

The purpose of this report is to enable the Planning Authority to determine application DA 2021/134.

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.

Council's assessment of this proposal should also consider the issues raised in any representations received, the outcomes of the State Policies and the objectives of Schedule 1 of LUPAA.

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. SITE ASSESSMENT

The site refers to a single lot: 182 Boyer Rd. The site has a lot size of 7.575 ha and frontage to Boyer Road.

The site is bushfire-prone and dissected by a small watercourse. It is benefitted by a pipeline easement and not burdened by any easements or covenants.



Figure 1. Aerial image

The site is undeveloped apart from unapproved earthworks and outbuildings undertaken and installed in recent months (one 40ft shipping container and two 20ft shipping containers joined by a roof, located within the same development area proposed – see **Photograph 1** below). Note the aerial image above was taken prior to these works.



**Photograph 1.** Taken north of site showing recent earthworks and outbuildings

The site is now zoned 'Future Urban' under the Tasmanian Planning Scheme – Brighton. Formerly it was in the 'Particular Purpose Zone – Urban Growth Zone' under the Brighton Interim Planning Scheme 2015.

The land immediately to the south-east is also in the Future Urban Zone. The land immediately to the north-east is split zoned Future Urban and Landscape Conservation. The land adjoining to the north-west is zoned Agriculture (see Figure 2 below).



**Figure 2.** Zoning of site and adjoining lots: Future Urban (Orange); Agriculture (Brown); Landscape Conservation (Green); Utilities (Yellow)



### 3. PROPOSAL

The proposal includes:

- A 435.8m<sup>2</sup> outbuilding constructed on a concrete slab.
- Colorbond 'Woodland grey' exterior walls and roof.
- Earthworks to create a gravel all-weather hardstand/manoeuvring area on the north-western side of the outbuilding.
- A gravel all-weather driveway linking the outbuilding to the front boundary at Boyer Rd.
- Associated stormwater collection tanks and wastewater treatment system (absorption beds).

The proposed use of the outbuilding is to store farm implements and materials, hay bales, a tractor and a digger for use in the on-going mixed agricultural use of the property. The outbuilding also contains an undercover work area and bathroom.

The application is supported by a planning report, and site and design plans.

Note that in response to Development Services' June recommendation for refusal (<https://www.brighton.tas.gov.au/wp-content/uploads/2021/07/OCM-Minutes-15-06-21-closed-Website.pdf> - page 10 to 19), the applicant has submitted the following amended plans (see Attachment B) to argue that the proposal will not '*not prejudice the efficient future utilisation of land for urban development*':

- Amended outbuilding scale, reducing the floor area from 435.8sqm to 297.3sqm, and
- Two concept plans for potential future subdivision layout.

### 4. PLANNING SCHEME ASSESSMENT

#### Compliance with Applicable Standards:

*5.6.1 A use or development must comply with each applicable standard in the State Planning Provisions and the Local Provisions Schedules.*

*5.6.2 A standard is an applicable standard if:*

- (a) *the proposed use or development will be on a site within:*
  - (i) *a zone;*
  - (ii) *an area to which a specific area plan relates; or*
  - (iii) *an area to which a site-specific qualification applies; or*
- (b) *the proposed use or development is a use or development to which a relevant applies; and*



(c) *the standard deals with a matter that could affect, or could be affected by, the proposed use or development.*

5.6.3 *Compliance for the purposes of subclause 5.6.1 of this planning scheme consists of complying with the Acceptable Solution or satisfying the Performance Criterion for that standard.*

5.6.4 *The planning authority may consider the relevant objective in an applicable standard to determine whether a use or development satisfies the Performance Criterion for that standard.*

#### **Determining applications (clause 6.10.1):**

6.10.1 *In determining an application for any permit for use or development the planning authority must, in addition to the matters required by section 51(2) of the Act, take into consideration:*

- (a) *all applicable standards and requirements in this planning scheme; and*
- (b) *any representations received pursuant to and in conformity with section 57(5) of the Act,*

*but in the case of the exercise of discretion, only insofar as each such matter is relevant to the particular discretion being exercised.*

#### **Use Class**

The Use Class is categorised as Resource Development (Agricultural Use) under the Scheme. In the Future Urban Zone, the Resource Development (Agricultural Use) is Permitted.

#### **Compliance with Performance Criteria**

The proposal meets the Scheme's relevant Acceptable Solutions apart from the following:

##### **Clause 30.4.1 A1/P1 Buildings and works**

<b>Objective</b>	
<i>That buildings and works do not prejudice the efficient future utilisation of land for urban development.</i>	
<b>Acceptable Solution</b>	<b>Performance Criteria</b>
<i>A1 - Buildings and works must:</i>	<i>P1 - Buildings and works must not preclude or hinder the effective and efficient future subdivision and</i>

<p><i>(a) be for an addition to an existing dwelling, a secondary residence or a home-based business;</i></p> <p><i>(b) be for a single dwelling and on a lot not more than 1000m<sup>2</sup> in size; or</i></p> <p><i>(c) be of a temporary nature able to be readily removed prior to the development of the land for urban purposes.</i></p>	<p><i>development of the land to urban densities, having regard to:</i></p> <p><i>(a) the topography of the site;</i></p> <p><i>(b) any existing access arrangements;</i></p> <p><i>(c) location of any services; and</i></p> <p><i>(d) the purpose, location and extent of any building and works.</i></p>
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Proposed is a permanent 435.8m<sup>2</sup> outbuilding, which does not satisfy the Acceptable Solution. Therefore, assessment against the Performance Criteria is relied upon.

Regard has been had to topography (gradual rise to the north with watercourse through centre), existing access arrangements (crossover to Boyer Rd at south corner) and service locations (none relevant), and they are not considered to impact criteria (a) to (c). Criterion (d) is considered most relevant.

In response to the previous recommended refusal based on this Performance Criteria, the applicant submitted amended plans showing a reduction in scale (435.8m<sup>2</sup> reduced to 297.3m<sup>2</sup>) and demonstrating through the submission of two concept subdivision plans that the location does not hinder efficient future subdivision to urban densities.

Accordingly, the Performance Criteria is now satisfied.

#### Clause C2.6.1 A1/P1 Construction of parking areas

Objective	
<i>That parking areas are constructed to an appropriate standard.</i>	
Acceptable Solution	Performance Criteria
<p><i>A1 - All parking, access ways, manoeuvring and circulation spaces must:</i></p> <p><i>(a) be constructed with a durable all weather pavement;</i></p> <p><i>(b) be drained to the public stormwater system, or contain stormwater on the site; and</i></p>	<p><i>P1 - All parking, access ways, manoeuvring and circulation spaces must be readily identifiable and constructed so that they are useable in all weather conditions, having regard to:</i></p> <p><i>(a) the nature of the use;</i></p> <p><i>(b) the topography of the land;</i></p>

<p><i>(c) excluding all uses in the Rural Zone, Agriculture Zone, Landscape Conservation Zone, Environmental Management Zone, Recreation Zone and Open Space Zone, be surfaced by a spray seal, asphalt, concrete, pavers or equivalent material to restrict abrasion from traffic and minimise entry of water to the pavement.</i></p>	<p><i>(c) the drainage system available;</i></p> <p><i>(d) the likelihood of transporting sediment or debris from the site onto a road or public place;</i></p> <p><i>(e) the likelihood of generating dust; and</i></p> <p><i>(f) the nature of the proposed surfacing.</i></p>
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The application proposes an unsealed driveway in the Future Urban Zone. Therefore, assessment against the Performance Criteria is relied upon.

Council's Senior Technical Officer has responded to the criteria below:

*(a) the nature of the use;*

The use will be agricultural, and a gravel surface will be serviceable for the intended use.

*(b) the topography of the land;*

The land falls to Boyer Road.

*(c) the drainage system available;*

Stormwater can be disposed of on-site.

*(d) the likelihood of transporting sediment or debris from the site onto a road or public place;*

The initial section of the driveway is sealed. Should gravel start being tracked onto the road the road authority could require additional works.

*(e) the likelihood of generating dust; and*

There is potential for dust to be generated however there are no dwellings nearby. A standard condition requiring the driveway be maintained to avoid dust is recommended.

*(f) the nature of the proposed surfacing.*

A gravel surface is proposed which is considered suitable for an agricultural use.

Accordingly, the Performance Criteria is satisfied with standard conditions.

## 5. REFERRALS

*Senior Technical Officer*


To assess the application against the Parking and Sustainable Transport Code and the Road and Railway Assets Code.

## 6. REPRESENTATIONS

Two (2) representations were received during the statutory public exhibition period between 19 May and 2 June 2021.

Representors were also provided an additional 14-day period to view the amended proposal and either update, retain or withdraw original representations. Both responded in this time: one representor updated their representation and the other withdrew their representation as their queries had been addressed.

All concerns of the representors are summarised below:

Representors' concerns	Planning response
Confusion as to whether the earthworks and outbuildings (one 40ft shipping container and two 20ft shipping containers joined by a roof) undertaken and installed in recent months within the proposed development area are permanent and/or form part of this proposal.	<p>These works and development are not exempt from requiring Planning approval. Compliance can either be approached via permit condition (if approved) or separate to the DA process (if refused).</p>  <p><b>Figure 3.</b> Earthworks and temporary outbuildings</p>
Querying proposed external building colour(s).	The proposed exterior building surface is uniformly Colorbond 'Woodland Grey'.

Concerns of fire risk to adjoining, especially due to proximity to boundaries (a 9m buffer is not adequate to meet bushfire risk management standards).	The Bushfire Prone Areas Code does not apply to this application; therefore, Council cannot consider this issue. Bushfire risk for new buildings is assessed under the <i>Building Act 2016</i> after planning approval is obtained.
Concerns that the development will compromise or prejudice the potential for efficient future urban subdivision. Specifically: <ul style="list-style-type: none"> <li>• A large industrial-scale outbuilding could future fetter adjoining residential use/development.</li> <li>• The proposed siting would prevent the construction of a future access road in the preferred location.</li> </ul>	See Discretion 1 response above.  Council's Senior Technical Officer has advised that the building location would not prohibit a future road access at the common boundary of numbers 182 and 170 Boyer Road. A future road may however have to deviate from the common boundary near the proposed outbuilding.

## 7. CONCLUSION

The proposed Outbuilding (Agricultural Use) at 182 Boyer Rd, Bridgewater satisfies the relevant provisions of the Tasmanian Planning Scheme - Brighton, and as such is recommended for approval.

### **RECOMMENDATION:**

That: A. Pursuant to the *Tasmanian Planning Scheme - Brighton*, Council approves application DA 2021/134 for Outbuilding (Agricultural Use) at 182 Boyer Rd, Brighton, 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*.

### Amended Plans

3. Prior to issue of a Building Permit pursuant to the Building Act 2016 amended plans must be submitted to, and approved by, Council's Manager Development Services, showing the size of the outbuilding reduced from 435.8 square metres to approximately 297.3 square metres as shown in the amended plans prepared by GC Design, Job No: 20-001 (Rev. C, 05/07/2021).

### Existing Temporary Outbuildings

4. All temporary outbuildings (including shipping containers) must be removed from the site within three (3) months of the date of this permit, or as otherwise agreed by Council's Manager Development Services.

In the alternative, a separate application for development to retain the existing temporary buildings (including shipping containers) must be submitted to Council for assessment within 28 days of the date of this permit, or as otherwise agreed by Council's Manager Development Services.

### Amenity

5. The proposed colours and materials for the walls and roof (Colorbond 'Woodland Grey') are approved. Any variation in the colours and materials must be submitted to and approved by the Council's Manager Development Services.
6. The building is not to be used for commercial, industrial, or habitable purposes.

### Services

7. 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

8. 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) Drained to an approved stormwater system; and
  - (c) Vehicular passing areas 6 metres wide (total) x 20 metres long every 200 metres.

or as otherwise required by an approved Bushfire Plan.

9. 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.

### Stormwater

10. 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*.

### Soil and Water Management

11. 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.
12. 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

13. 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.

14. 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, wastewater, 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.
15. 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.
16. 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.
17. The developer must make good and/or clean any footpath, road surface or other element damaged or soiled by the development to the satisfaction of the Council's Municipal Engineer.

**THE FOLLOWING ADVICE APPLIES TO THIS PERMIT:**

- A. This permit does not imply that any other approval required under any other legislation or by-law has been granted.
- B. The subdivision concept plans submitted in support of the outbuilding do not approve subdivision.
- C. This planning approval shall lapse at the expiration of two (2) years from the date of the commencement of planning approval if the development for which the approval was given has not been substantially commenced. Where a planning approval for a development has lapsed, an application for renewal of a planning approval for that development shall be treated as a new application.

**DECISION:**

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

**CARRIED**

**VOTING RECORD**

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



The meeting closed at 6.00pm.

Confirmed:

\_\_\_\_\_

(Mayor)

Date:

\_\_\_\_\_ 21 September 2021 \_\_\_\_\_