



Brighton Council

**MINUTES OF THE PLANNING AUTHORITY MEETING
OF THE BRIGHTON COUNCIL HELD
IN THE COUNCIL CHAMBER, COUNCIL OFFICES
OLD BEACH AT 5.50 P.M. ON TUESDAY,
12TH OCTOBER 2021**

PRESENT: Cr Gray (Chairperson); Cr Curran (Deputy Mayor); Cr De La Torre;
Cr Geard; Cr Jeffries; Cr Owen and Cr Whelan

IN ATTENDANCE: Cr Garlick; Mrs J Banks (Governance Manager) and Mr D Allingham
(Manager Development Services)

1. Acknowledgement of Country

2. Apologies

Cr Owen moved, Cr Whelan seconded that Cr Murtagh be granted leave of absence.

CARRIED

VOTING RECORD

In favour	Against
Cr Curran	
Cr De La Torre	
Cr Geard	
Cr Gray	
Cr Jeffries	
Cr Owen	
Cr Whelan	

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.

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 Development Application - DA 2021 / 00231 for Outbuilding at 48 Haskell Road, Brighton:

Author: Richard Cuskelly – Planning Officer

Applicant:	Another Perspective
Subject Site:	48 Haskell Road, Brighton
Proposal:	Outbuilding
Planning Scheme:	Tasmanian Planning Scheme – Brighton
Zoning:	General Residential
Codes:	Nil
Local Provisions:	Nil
Use Class:	Residential
Discretions:	8.4.2 Setbacks and building envelope for all dwellings

Representations:	<p>1 representation was received. The representor raised the following issues:</p> <ul style="list-style-type: none">• Unreasonable amenity impact from suburban residential density adjoining low-density rural residential land• Proximity to on-site wastewater management system• Stormwater management• Unreasonable noise from dog barking• Visual impact
Recommendation:	Approval with conditions

1. STATUTORY REQUIREMENTS

The purpose of this report is to enable the Planning Authority to determine application DA 2021 / 00231.

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 site is a 1383m² internal lot within the Brighton Army Camp residential estate (see Figure 1 below). It is burdened by several drainage, pipeline and services easements appurtenant to both Council and TasWater.

The site has already been developed by a single dwelling (not yet shown by aerial photography).

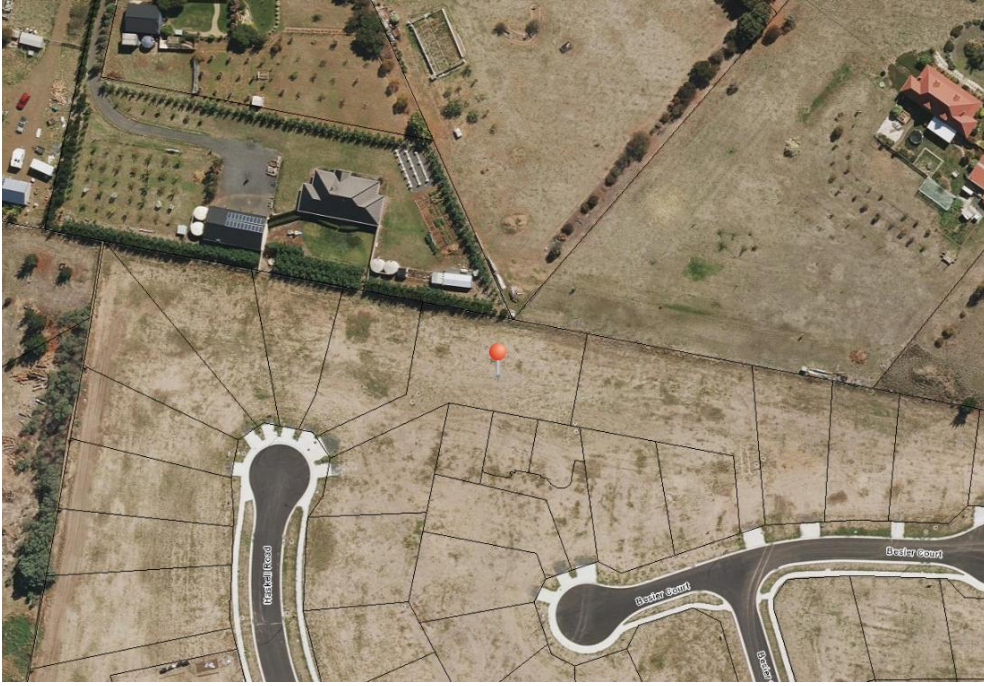


Figure 1. Aerial image of site and surrounds

The site is zoned General Residential and is within a bushfire-prone area. The rear of the site adjoins Rural Living (Area A) zoned land to the north that is also affected by the Urban Rural Interface Specific Area Plan (see Figure 2 below).



Figure 2. Zoning (Red = General Residential Zone; Brown = Rural Living (A) Zone and Urban Rural Interface Specific Area Plan)

3. PROPOSAL

Proposed is an 80m² (8x10m) outbuilding with a maximum height above natural ground level of 4m. The outbuilding is intended as a residential garage, hence the proposed extension of the concrete driveway.

The application is supported by the attached site, elevation, drainage, and soil and water management plans.

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 Residential under the Scheme. In the General Residential Zone, the Residential Use Class has 'No Permit Required' status.

Compliance with Performance Criteria

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

Clause 8.4.2 A3/P3 – Setbacks and building envelope for all dwellings

Objective:	
The siting and scale of dwellings:	
(a)	provides reasonably consistent separation between dwellings and their frontage within a street;
(b)	provides consistency in the apparent scale, bulk, massing and proportion of dwellings;
(c)	provides separation between dwellings on adjoining properties to allow reasonable opportunity for daylight and sunlight to enter habitable rooms and private open space; and
(d)	provides reasonable access to sunlight for existing solar energy installations.
Acceptable Solution:	Performance Criteria:
<p>A3 – A dwelling, excluding outbuildings with a building height of not more than 2.4m and protrusions that extend not more than 0.9m horizontally beyond the building envelope, must:</p> <p>(a) be contained within a building envelope (refer to Figures 8.1, 8.2 and 8.3) determined by:</p> <p>(i) a distance equal to the frontage setback or, for an internal lot, a distance of</p>	<p>P3 – The siting and scale of a dwelling must:</p> <p>not cause an unreasonable loss of amenity to adjoining properties, having regard to:</p> <p>(a)</p> <p>(i) reduction in sunlight to a habitable room (other than a bedroom) of a dwelling on an adjoining property;</p>

<p>4.5m from the rear boundary of a property with an adjoining frontage; and</p> <p>(ii) projecting a line at an angle of 45 degrees from the horizontal at a height of 3m above existing ground level at the side and rear boundaries to a building height of not more than 8.5m above existing ground level; and</p> <p>(b) only have a setback of less than 1.5m from a side or rear boundary if the dwelling:</p> <p>(i) does not extend beyond an existing building built on or within 0.2m of the boundary of the adjoining property; or</p> <p>(ii) does not exceed a total length of 9m or one third the length of the side boundary (whichever is the lesser).</p>	<p>(ii) overshadowing the private open space of a dwelling on an adjoining property;</p> <p>(iii) overshadowing of an adjoining vacant property; or</p> <p>(iv) visual impacts caused by the apparent scale, bulk or proportions of the dwelling when viewed from an adjoining property;</p> <p>(b) provide separation between dwellings on adjoining properties that is consistent with that existing on established properties in the area; and</p> <p>(c) not cause an unreasonable reduction in sunlight to an existing solar energy installation on:</p> <p>(i) an adjoining property; or</p> <p>(ii) another dwelling on the same site.</p>
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The outbuilding is proposed within the building envelope stipulated under Acceptable Solution sub-clause A3 (a) (see Figure 3 below).

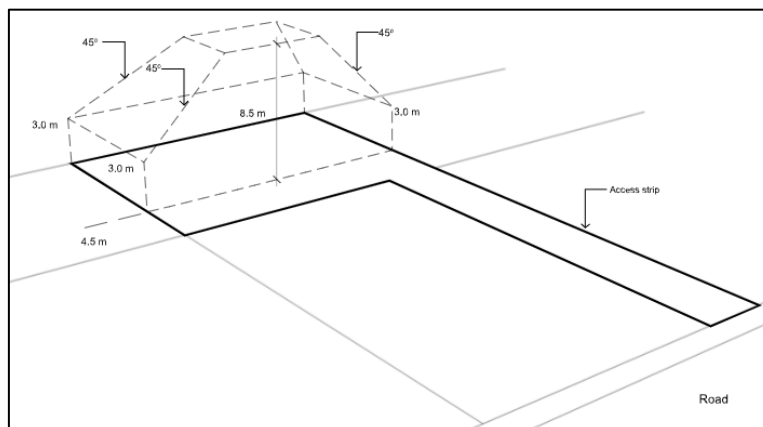


Figure 3. Building envelope for internal lots as required by clause 8.4.2 A3(a)

However, the proposed outbuilding is setback 0.3m from the west side boundary. It is also 9m in length, which is slightly over one third of the 25.47m long side boundary. Therefore, Acceptable Solution sub-clause A3 (b) is not met, and assessment against the performance criteria is relied upon.

The outbuilding as proposed will not unreasonably overshadow a habitable room, private open space or solar panels on adjoining property. The building is also of a size and design where appearance is not considered to result in unreasonable loss of visual amenity.

The minimal side boundary setback between dwellings and/or outbuildings on adjoining properties is also consistent with that existing in the area. The adjoining lot to the west side boundary in question (50 Haskell Rd) has a similar sized outbuilding approved with very minimal rear and side boundary setbacks.

Accordingly, the proposal is considered to meet Performance Criteria 8.4.2 P3.

5. Referrals

Plumbing Inspector & Senior Environmental Health Officer

- To investigate any issue(s) with wastewater management as flagged within the representation received (see also Section 6 below).

Animal Control Officer

- To investigate any issue(s) with dog barking nuisance as flagged within the representation received.

6. Representations

One representation was received during the statutory public exhibition period between 7 September and 21 September 2021.

The concerns of the representor are summarised and responded to below:

Representor's concerns:	Planning Response:
The noise and physical encroachment associated with residential development at a General Residential Zone density is resulting in unreasonable loss of amenity for those in the adjoining Rural Living Zone.	<p>It is acknowledged that the gradual staged development of large residential estates can result in a difficult transition for nearby residents in nearby lower-density rural residential areas.</p> <p>However, this land has been earmarked for suburban residential development for some time (i.e. appropriately zoned residential since the Brighton Planning Scheme 2000), and the adjoining Rural Living Zone A land is</p>

	subject to the Urban Rural Interface Specific Area Plan in the current Planning Scheme.
<p>The on-site wastewater management on adjoining Rural Living zoned land adjoining to the north could negatively impact on residences on Haskell Rd. Converting to a reticulated public sewer connection would mitigate this.</p> <p>Historical issues with process also raised.</p>	<p>Council's Senior Environmental Health Officer has confirmed that the on-site wastewater system in question is reported (via test reports from the accredited maintenance provider) to be operating in an approved manner posing no risk to neighbouring property. Council's Plumbing Inspector has advised that the representor may apply to TasWater for a sewer connection if they wish.</p> <p>Note that this may require creation of easements over neighbouring properties to facilitate.</p> <p>Council's Senior Environmental Health Officer will advise separately whether the historical issue raised requires investigation.</p>
Potential stormwater impact.	<p>The relevant recommended permit condition is copied below:</p> <p><i>Stormwater drainage from the proposed development drain to a legal point of discharge 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.</i></p>
Unreasonable noise from dog barking.	Not relevant to this application. Issue referred to Council's Animal Control Officer to follow-up.
The back area of the proposed outbuilding should be fenced so the building remains unobtrusive.	The visual impact of the outbuilding proposed is not considered unreasonable when viewed from adjoining lots. The site is fenced, and a vegetative buffer is well established on the neighbouring lot to the rear. The owner of 48 Haskell Rd has

	<p>indicated that it is their intention to install a new rear fence in the future.</p> <p>The construction of side and rear fences is regulated by the <i>Boundary Fences Act 1908</i>. That Act determines that the construction of dividing fences is a matter between adjoining landowners.</p>
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7. Conclusion

The proposal for an Outbuilding at 48 Haskell Road, Brighton, satisfies all relevant provisions of the Tasmanian Planning Scheme - Brighton, and as such is recommended for approval.

8. Recommendations

That: A. Pursuant to the *Tasmanian Planning Scheme - Brighton*, Council approves application DA 2021 / 00231 for an Outbuilding at 48 Haskell Road, 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*.

Amenity

3. The outbuilding is to be used for domestic storage only. It is not to be used for commercial, industrial, or habitable purposes.

Services

4. 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

5. 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.
6. 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) Surfaced with a material to resist abrasion from traffic and to minimise the entry of water. The surfacing material must be spray seal, asphalt, concrete, or other approved material; and
 - (b) Drained to an approved stormwater system;

Or as otherwise required by an approved Bushfire Plan.

Stormwater

7. Stormwater drainage from the proposed development must drain to a legal point of discharge 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

8. Before any work commences install temporary run-off, erosion and sediment controls and maintain these 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

9. 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.

10. 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.
11. 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.
12. 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.
13. 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. Please contact your private building surveyor to ascertain what approval is required under the *Building Act 2016*.
- B. This permit does not imply that any other approval required under any other legislation or by-law has been granted.
- C. This planning approval shall lapse at the expiration of two (2) years from the date of the commencement of planning approval if the development for which the approval was given has not been substantially commenced. Where a planning approval for a development has lapsed, an application for renewal of a planning approval for that development shall be treated as a new application.

DECISION:

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

CARRIED

VOTING RECORD

In favour	Against
Cr Curran	
Cr De La Torre	
Cr Geard	
Cr Gray	
Cr Jeffries	
Cr Owen	
Cr Whelan	

The meeting closed at 6.05pm.

Confirmed: _____
(Mayor)

Date: _____ 19 October 2021