



# Brighton Council

**MINUTES OF THE PLANNING AUTHORITY MEETING  
OF THE BRIGHTON COUNCIL HELD  
IN THE COUNCIL CHAMBER, COUNCIL OFFICES  
OLD BEACH AT 5.30 P.M. ON TUESDAY,  
13 SEPTEMBER 2022**

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

IN ATTENDANCE: Cr Garlick; Mrs J Banks (Governance Manager); Mr C Pearce-Rasmussen (Manager Asset Services) and Mrs J Blackwell (Senior Planner)

## **1. Acknowledgement of Country**

## **2. Apologies**

Cr De La Torre had requested leave of absence.

*Cr Owen moved, Cr Murtagh seconded that Cr De La Torre and Cr Jeffries be granted leave of absence.*

**CARRIED**

### **VOTING RECORD**

In favour	Against
Cr Curran	
Cr Geard	
Cr Gray	
Cr Murtagh	
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.

*Cr Whelan declared an interest in Item 5.1.*

### 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.

*Cr Whelan had declared an interest in the following item and left the meeting at 5.37pm.*

#### 5.1 Development Application DA 2022 / 00119 for Dwelling& Outbuilding (to be used as a Temporary Dwelling) at 7A Jordan Downs Drive, Brighton

Author: Andres Perez-Roca (Planning Officer)

Applicant:	Duo Design
Subject Site:	7A Jordan Downs Drive, Brighton
Proposal:	Dwelling & Outbuilding (to be used as a Temporary Dwelling)
Planning Scheme:	<i>Tasmanian Planning Scheme – Brighton</i> (the planning scheme)
Zoning:	11.0 Rural Living Zone
Codes:	C2.0 Parking and Sustainable Transport Code

	C3.0 Road and Railway Assets Code
<b>Local Provisions:</b>	Nil
<b>Use Class:</b>	Residential (No Permit Required)
<b>Discretions:</b>	C2.6.1 Construction of parking areas
<b>Representations:</b>	One (1) representation was received. The representor raised the following issue: <ul style="list-style-type: none"> <li>Alleged issues around the acquisition of a portion of the subject site.</li> </ul>
<b>Attachments:</b>	Attachment 1 - Assessment documents
<b>Recommendation:</b>	Approval with conditions

## 1. STATUTORY REQUIREMENTS

The purpose of this report is to enable the planning authority to determine development application DA 2022/00046.

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 LUPPA.

This report details the reasons for the officer's 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 5,000m<sup>2</sup> internal lot with access to Jordan Downs Drive, Brighton (see Figure 1 below).



Figure 1. An aerial image of the site (highlighted in red) and its surrounds

The site and surrounding land are zoned Rural Living (see Figure 2 below).

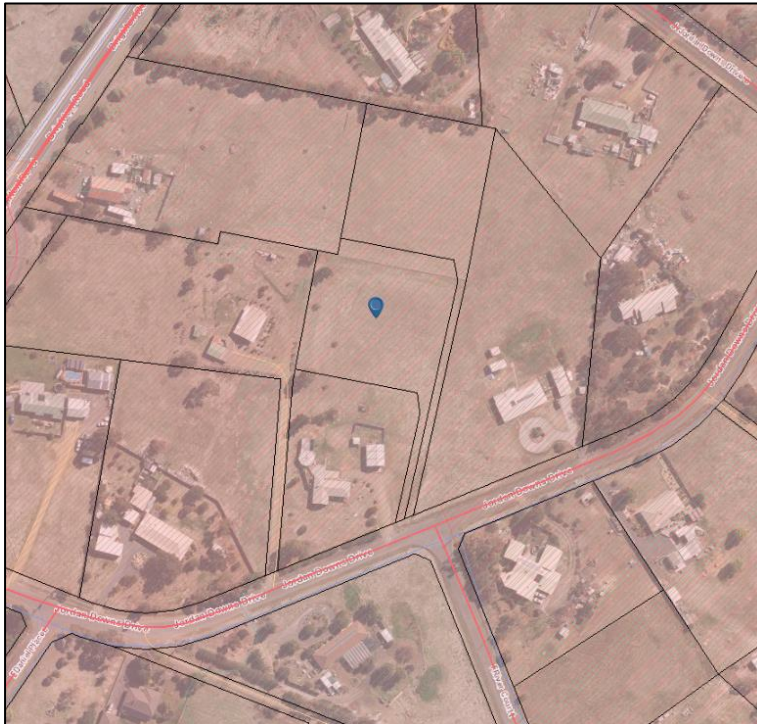


Figure 2. Zoning (Rural Living Zone in light pink)



Most of the site is affected by 'Priority Vegetation Area Overlay', and the entire site is affected by a 'Bushfire-Prone Areas Overlay' (see Figure 3 below).



Figure 3. Overlays (Priority vegetation area highlighted in green lines; bushfire-prone areas highlighted in brown lines)

The entire site is affected by an Urban-Rural Interface Specific Area Plan.

The site is subject to a variable width Right of Carriageway in favour of the land at 7B Jordan Downs Drive, Brighton.

### 3. PROPOSAL

The proposal seeks planning approval to develop a dwelling and an outbuilding –to be used as a Temporary Dwelling– (see Figure 4).

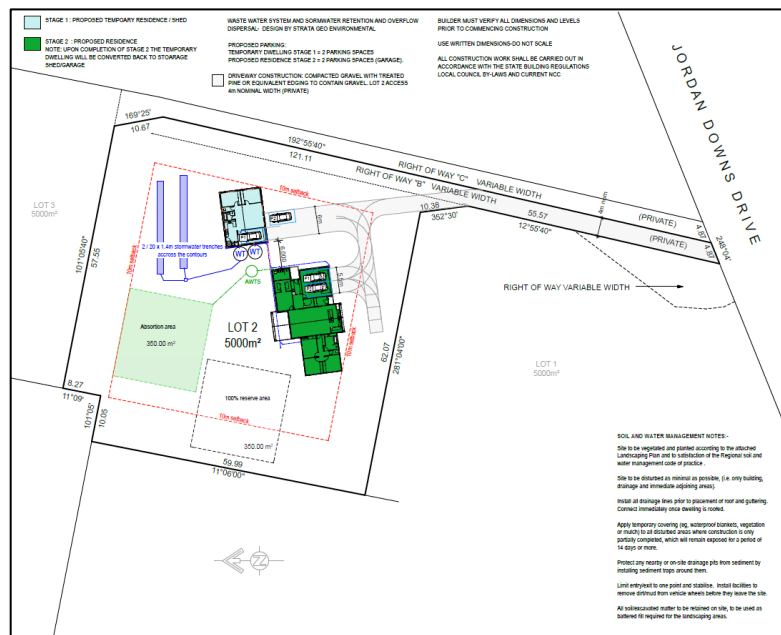


Figure 4. Site plan

The floor plan for the dwelling states that it is 236.85m<sup>2</sup> and the floor plan for the outbuilding states that it is 108m<sup>2</sup>.

The dwelling is comprised of four (4) bedrooms (master with an ensuite and robes), a bathroom (with an independent toilet), a double garage, a dedicated laundry room and open plan dining, kitchen and living areas. Moreover, the dwelling includes an unroofed alfresco and porch.

The outbuilding is proposed to be used as a temporary residence while the permanent dwelling is developed, and it is comprised of two (2) bedrooms, a bathroom, a single garage, and dining, kitchen and living areas.

The elevations for the dwelling show that it is up to 5.512m in height above the natural ground level (NGL) at its highest point.

The elevations for the outbuilding show that it is up to 3.943m in height above the NGL at its highest point.

The buildings are separated by up to approx. 75m from the property's frontage, by up to 10m from a property's side or rear boundary, and by more than 200m from Agriculture or Rural-zoned land.

It is proposed that the driveway is surfaced with compacted gravel and has a minimum width of 4m.

#### 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 code 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 (for a single dwelling) under the planning scheme. This Use Class is 'No Permit Required' in the Rural Living Zone.

The proposal provides for residential use and development in a rural setting where services are limited.

**Compliance with Performance Criteria**

The proposal meets all relevant planning scheme's Acceptable Solutions except for the following:

**C2.6.1 Construction of parking areas**

<b>Objective:</b>	
That parking areas are constructed to an appropriate standard.	
<b>Acceptable Solution</b>	<b>Performance Criteria</b>
<b>A1</b> All parking, access ways, manoeuvring and circulation spaces must: <ul style="list-style-type: none"> <li>(a) be constructed with a durable all weather pavement;</li> <li>(b) be drained to the public stormwater system, or contain stormwater on the site; and</li> </ul>	<b>P1</b> 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: <ul style="list-style-type: none"> <li>(a) the nature of the use;</li> <li>(b) the topography of the land;</li> </ul>

(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.	(c) the drainage system available;  (d) the likelihood of transporting sediment or debris from the site onto a road or public place;  (e) the likelihood of generating dust; and  (f) the nature of the proposed surfacing.
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The proposed driveway is surfaced with compacted gravel. Thus, the proposal does not meet the Acceptable Solution in clause C2.6.1 A1 and relies on the Performance Criteria in clause C2.6.1 P1.

The plans show that the driveway will be developed for the use of the proposed dwelling on site and, as such, the nature of the use is unlikely to create unreasonable vehicular traffic that requires the driveway to be sealed by any of the materials listed in clause C2.6.1 A1(c). Moreover, the site is relatively flat. Consequently, the proposed surface and topography significantly contribute to minimising the likelihood of stormwater running off to adjoining properties, debris or sediment being transported by vehicles from the driveway onto Jordan Downs Drive, or dust generation. It is recommended that the following conditions be included on any planning permit approved:

*“The driveway must be drained to minimise surface runoff over adjoining land to the satisfaction of Council’s Municipal Engineer and in accordance with the requirements of the Building Act 2016.”; and*

*“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 destabilisation of the soil on site or on adjacent properties to the standard required by Council’s Municipal Engineer.”*

Subject to the inclusion of the above conditions, the Performance Criteria are satisfied.

## 5. REFERRALS

### *Council’s Development Engineer*

Council’s Development Engineer was consulted regarding this proposal. This officer considers that the proposal can satisfy the applicable standards of the Parking and Sustainable Transport Code and the Road and Railway Assets Code with conditions and that the proposal will not generate stormwater issues provided that the stormwater-related conditions on any planning permit issued be observed.



## 6. REPRESENTATIONS

One (1) representation was received during the statutory public exhibition period between 30 July 2022 and 15 August 2022.

The representor's concern is summarised below and a planning response to this concern is provided:

Representor's concern	Planning Response
Alleged issues around the ownership of the subject site which is currently in the hands of solicitors.	Any "dispute of ownership" around the subject site must be resolved via different actions/ mechanisms than the planning system.

## 7. CONCLUSION

The proposal satisfies all relevant provisions of the Planning Scheme. Thus, it is recommended for approval with conditions.

## 8. RECOMMENDATIONS

That:

- A. Pursuant to the *Tasmanian Planning Scheme – Brighton*, Council approves application DA 2022/00119 for Dwelling & Outbuilding (to be used as a Temporary Dwelling) at 7A Jordan Downs Drive, 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, endorsed drawings and conditions of this permit and must not be altered or extended without the further written approval of Council.
- (2) Where a conflict between the application for planning approval, endorsed drawings and conditions of this permit, the latter prevails.
- (3) 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*.

### *Use*

- (4) The temporary dwelling is approved as ancillary to the residential use only and must not be used for any other purpose unless in accordance with a permit issued by Council or as otherwise permitted by Council's Planning Scheme.

- (5) Temporary occupancy is permitted only in the temporary dwelling during construction of the permanent dwelling and will lapse fourteen (14) days after issue of the occupancy permit for the permanent dwelling. Further use of the temporary dwelling will need to be approved under a separate planning application. Further use of the temporary dwelling must not be extended or intensified unless in accordance with a permit issued by Council or as otherwise permitted by Council's Planning Scheme.
- (6) After the Dwelling is constructed or permission for the temporary occupancy ceases, whichever occurs first, the Outbuilding must be used for domestic storage only. It must not be used for commercial, industrial, or habitable purposes unless otherwise approved by a planning permit and in accordance with Council's planning scheme.

#### *Amenity*

- (7) All external metal building surfaces must be clad in non-reflective pre-coated metal sheeting or painted to the satisfaction of the Manager Development Services.
- (8) No vegetation other than that necessary for the construction of the building, associated access and services is to be cleared without the approval of Council.

#### *Services*

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

#### *Parking and Access*

- (10) At least two (2) car parking spaces must be provided on the land at all times for the use of the development, in accordance with Standards Australia (2004) Australian Standard AS 2890.1 - 2004 – Parking Facilities Part 1: Off-Street Car Parking; Standards Australia, Sydney.
- (11) The internal driveway and areas set-aside for parking and associated access and turning must be provided in accordance with Standards Australia (2004): Australian Standard AS 2890.1 - 2004 – Parking Facilities Part 1: Off-Street Car Parking; Standards Australia, Sydney and to the satisfaction of Council's Municipal Engineer, and must include all of the following:
  - (a) Constructed with a durable all-weather pavement.
  - (b) Minimum carriageway width of 4 metres.or as otherwise required by an approved Bushfire Plan.

- (12) The internal driveway and areas set-aside for parking and associated access and turning must be designed, constructed, and maintained to avoid dust or mud generation, erosion and sediment transfer off site or de-stabilisation of the soil on site or on adjacent properties to the standard required by Council's Municipal Engineer.

#### *Stormwater*

- (13) 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*.
- (14) Prior to or in conjunction with the building and plumbing applications, submit engineering design drawings for the capture and disposal of stormwater on site. These drawings must be prepared by a qualified civil engineer.
- (15) The driveway must be drained to minimise surface runoff over adjoining land to the satisfaction of Council's Municipal Engineer and in accordance with the requirements of the *Building Act 2016*.
- (16) The stormwater detention system and access road disposal must continue to be maintained to ensure stormwater is conveyed so as not to create any nuisance to adjacent or downstream properties.

#### *Wastewater*

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

#### *Soil and Water Management*

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

#### *Construction amenity*

- (20) The 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.

- (21) 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.
- (22) 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.
- (23) 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.
- (24) 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 approvals (if any) are 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 Curran moved, Cr Geard seconded that the recommendation be adopted.*

**CARRIED**

**VOTING RECORD**

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

*Cr Whelan rejoined the meeting 5.41pm.*

The meeting closed at 5.41pm.

Confirmed: \_\_\_\_\_  
(Mayor)

Date: \_\_\_\_\_ 20 September 2022