



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,
11 OCTOBER 2022**

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

IN ATTENDANCE: 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 Owen moved, Cr Murtagh seconded that Cr Jeffries be granted leave of absence.

CARRIED

VOTING RECORD

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

3. Public Question Time and Deputations

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

4. Declaration of Interest

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

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

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

There were no declarations of interest.

5. Council Acting as Planning Authority

In accordance with the provisions of Part 2 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 2022 / 00169 for Multiple Dwellings (2) at 34 Fouche Avenue, Old Beach

Author: Andres Perez-Roca (Planning Officer)

Authorised: David Allingham (Manager Development Services)

Applicant:	Pinnacle Drafting & Design
Subject Site:	34 Fouche Avenue, Old Beach
Proposal:	Multiple Dwellings (2)
Planning Scheme:	<i>Tasmanian Planning Scheme – Brighton</i> (the planning scheme)
Zoning:	8.0 General Residential
Codes:	C2.0 Parking and Sustainable Transport Code C3.0 Road and Railway Assets Code
Local Provisions:	Nil
Use Class:	Residential (Permitted)
Discretions:	8.4.2 Setbacks and building envelope for all dwellings (P3) 8.4.6 Privacy for all dwellings (P3)
Representations:	One representation was received. The representor raised the following issue: <ul style="list-style-type: none"> Concerns related to increased residential density
Recommendation:	Approval with conditions

1. STATUTORY REQUIREMENTS

The purpose of this report is to enable the planning authority to determine development application DA 2022 / 00169.

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'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 AND SURROUNDS

The site is an 802m² internal lot with an existing access to Fouche Avenue, Old Beach (see Figure 1 below).



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

The site and adjoining land are zoned General Residential (see Figure 2 below).



Figure 2. Zoning (General Residential Zone highlighted in red)

The site is not affected by overlays or local provisions. Yet, it is burdened by a variable width drainage easement parallel to the property's access in favour of Brighton Council. There is also a pipeline and services easement in favour of TasWater that was created over the above drainage easement.

3. PROPOSAL

The proposal seeks planning approval to develop two units on the site (see Figure 3 below).

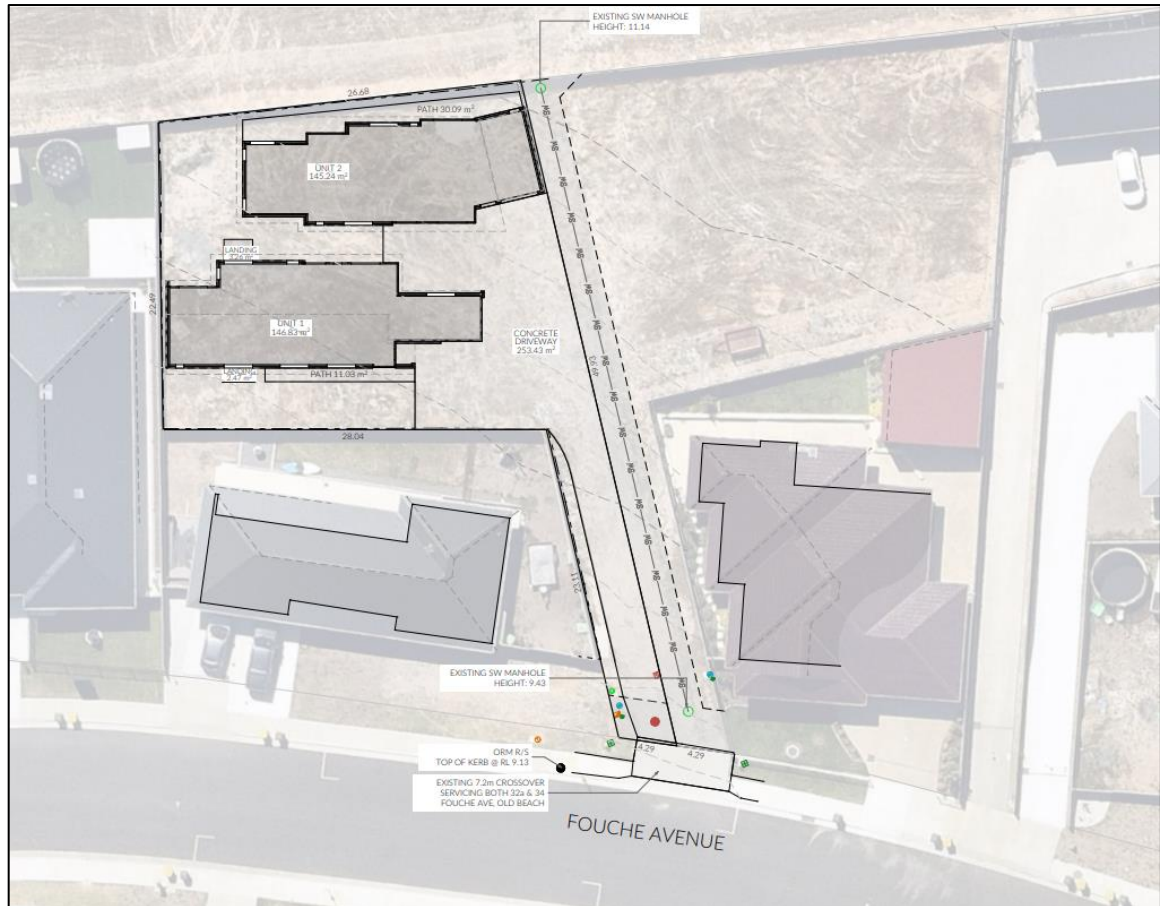


Figure 3. Location plan

Each unit has three bedrooms (master with ensuite and walk-in robe), and open plan dining/kitchen/living, single garage and storage area. Unit 1 has a floor area of 146.83m², whilst unit 2 has a floor area of 145.24m². Five car parking spaces are to be provided on site, with parking, access ways, manoeuvring and circulation spaces to be concreted.

The proposal is accompanied by a civil plan showing how the applicant intends to manage stormwater from the proposed development and a sewer and water plan.

No buildings are proposed within any easements burdening the site.

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 (Permitted).

The proposal provides for residential use and development where full infrastructure services are available.

Compliance with Performance Criteria

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

8.4.2 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;

<p>(b) provides consistency in the apparent scale, bulk, massing and proportion of dwellings;</p> <p>(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</p> <p>(d) provides reasonable access to sunlight for existing solar energy installations.</p>	
Acceptable Solutions	Performance Criteria
<p>A3</p> <p>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 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>P3</p> <p>The siting and scale of a dwelling must:</p> <p>(a) not cause an unreasonable loss of amenity to adjoining properties, having regard to:</p> <p>(i) reduction in sunlight to a habitable room (other than a bedroom) of a dwelling on an adjoining property;</p> <p>(ii) overshadowing the private open space of a dwelling on an adjoining property;</p> <p>(iii) overshadowing of an adjoining vacant property; and</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>

Unit 1 does not comply with the building envelope required by the Acceptable Solution in clause 8.4.2 A3 (a) (see Figure 4 below). Further it has a setback less than 1.5m from the western boundary, and a wall length of 7.85m, which exceeds one third the length of the western boundary, being 22.69m, and cannot satisfy 8.4.2 A3 (b)(ii).

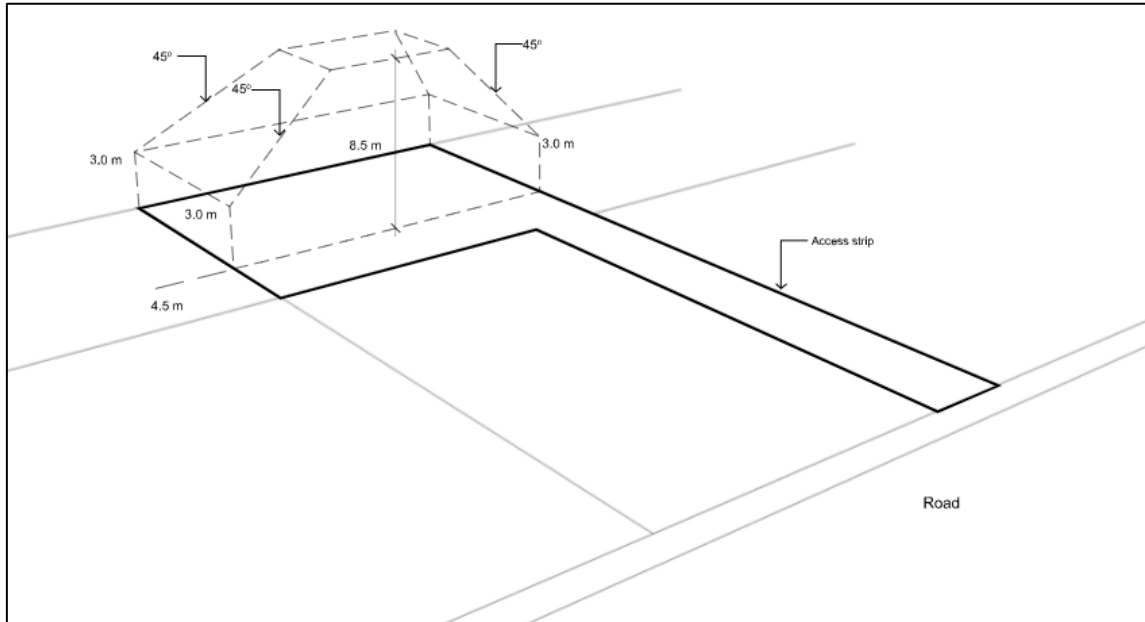


Figure 4. Building envelope for Internal lots as required by clause 8.4.2 A3(a)

Unit 2 is also outside the building envelope, as it has a proposed setback of 0.19m from the site's eastern side boundary thereby extending within 0.2m of this boundary, which does not satisfy 8.4.2 A3(b)(i).

Consequently, the proposal relies on Performance Criteria in clause 8.4.2 P3.

It can be inferred from shadow diagrams provided (see Figure 5 below) that the proposed units will not cause an unreasonable reduction in sunlight or overshadow a habitable room (other than a bedroom), private open space or solar panels on any adjoining property.

It can be argued that the visual impact from the proposed units in relation to the size of surrounding dwellings is not unreasonable, given that each unit is single storey with low pitched roofs. The maximum building height above natural ground level is 3.765m.

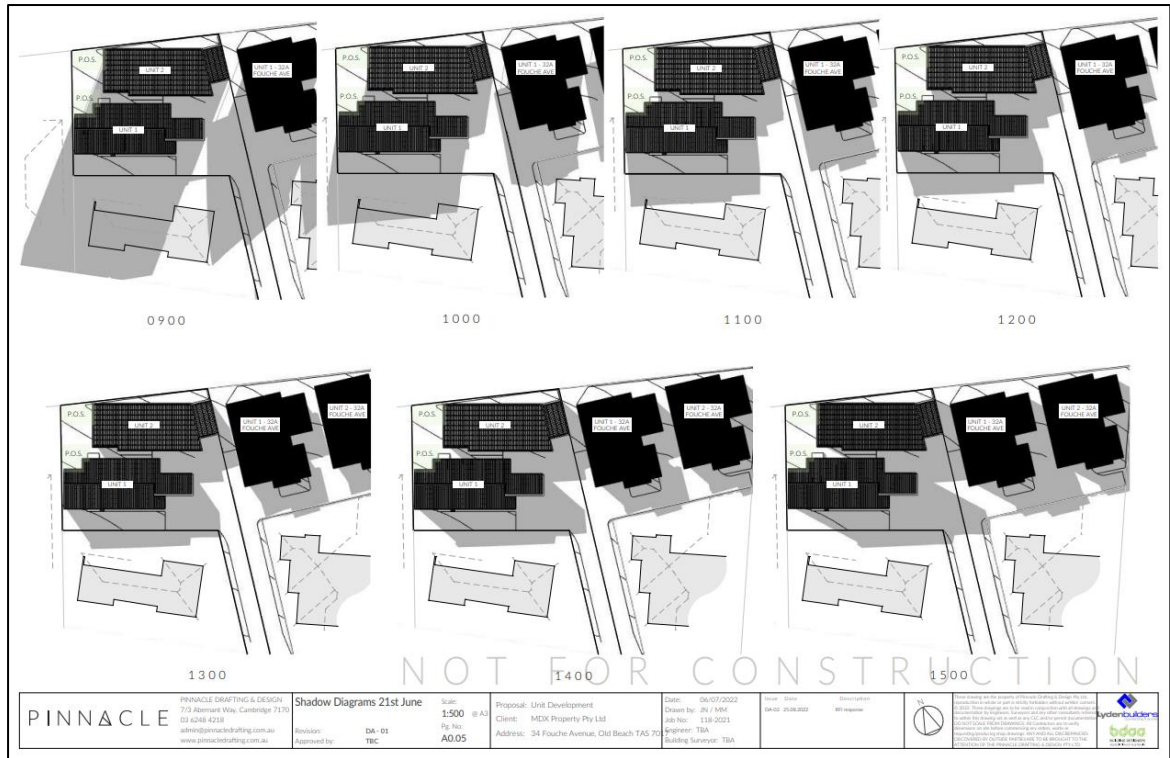


Figure 5. Hourly shadow diagrams

Lastly, while both units are within 1.5m from a side boundary, their separation from dwellings on adjoining properties is considered consistent with that on established properties in the area, as shown in aerial images of the site and surroundings.

Accordingly, it is considered that the proposal complies with the Performance Criteria in clause 8.4.2 P3.

8.4.6 Privacy for all dwellings

Objective:	
That parking areas are constructed to an appropriate standard.	
Acceptable Solutions	Performance Criteria
<p>A3</p> <p>A shared driveway or parking space (excluding a parking space allocated to that dwelling) must be separated from a window, or glazed door, to a habitable room of a multiple dwelling by a horizontal distance of not less than:</p> <p>(a) 2.5m; or</p>	<p>P3</p> <p>A shared driveway or parking space (excluding a parking space allocated to that dwelling), must be screened, or otherwise located or designed, to minimise unreasonable impact of vehicle noise or vehicle light intrusion to a habitable room of a multiple dwelling.</p>

<p>(b) 1m if:</p> <p>(i) it is separated by a screen of not less than 1.7m in height; or</p> <p>(ii) the window, or glazed door, to a habitable room has a sill height of not less than 1.7m above the shared driveway or parking space, or has fixed obscure glazing extending to a height of not less than 1.7m above the floor level.</p>	
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Since a car parking space for unit 2 is proposed within 1m of the window for bedroom 2 of unit 1, the proposal cannot meet the Acceptable Solutions in clause 8.4.6 A3(a) or (b) and relies on the Performance Criteria in clause 8.4.6 P3.

A car parking space for unit 2 is proposed within 1m of the window for bedroom 2 of unit 1; however, this car parking space and window are separated by a privacy screen (see Figure 6 below).



Figure 6. Privacy screen (shown within red lines)

It is considered that the privacy screen shown in Figure 4 can act as an adequate barrier for vehicle noise and vehicle light intrusion from the above car parking space to the window for bedroom 2 of unit 1. Provided that a condition be included on an eventual planning permit requiring this privacy screen to be developed before a Certificate of Occupancy is issued for the units, the proposal complies with the Performance Criteria in clause 8.4.6 P3.

5. REFERRALS

Council's Development Engineer

Council's Development Engineer was consulted regarding this proposal. That officer considers that the proposal can satisfy the applicable standards of the Parking and Sustainable Transport Code and the Road and Railway Assets Code, and that the proposal will not generate stormwater issues provided that the stormwater-related conditions on any planning permit issued be observed. Comments have been incorporated into the officer's report, where necessary.

TasWater

The application was referred to TasWater, and TasWater has issued a Submission to Planning Authority Notice (SPAN) Reference No. TWDA 2022/01092-BTN, dated 25/07/2022. A copy of the SPAN will be attached to any planning permit issued.

6. REPRESENTATIONS

One representation was received during the statutory public exhibition period between 14 and 29 September 2022.

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

Representors' concerns	Planning Response
<p>Concerns related to increased residential density.</p> <p>The representor indicated that they would not object to the proposal if it was a single dwelling on the site.</p>	<p>The site is zoned General Residential. In this zone, multiple dwellings are permitted. The proposal accords with the density requirements of Clause 8.4.1 A1 of the planning scheme (i.e., each unit has a site area exceeding 325m²).</p> <p>The proposal can also comply with the relevant Performance Criteria as demonstrated above.</p>

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 / 00169 for Multiple Dwellings (2) at 34 Fouche Avenue, Old Beach, 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*.

Easements

- (4) Before the use commences, the sealed plan for each site must be amended to create reciprocal rights of carriageway along any portions of the driveway shared by the properties at 32A and 34 Fouche Avenue. The cost of creating this easement shall be at the developer's full cost.

Amenity

- (5) 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.

Landscaping

- (6) Prior to commencement of use, all trees and landscaping must be planted and installed in accordance with the approved Landscaping Plan to the satisfaction of the Council's Manager Development Services. Evidence showing compliance with this condition must be submitted to and approved by the Manager Development Services within 30 days of planting.
- (7) Replacement trees and landscaping in accordance with the approved Landscaping Plan must be planted if any is lost. All landscaping must continue to be maintained to the satisfaction of Council.

Privacy

- (8) Before the use commences, the privacy screen separating car parking space 'U2' from window 'W06' of unit 1 must be installed to the satisfaction of the Council's Manager Development Services.

Private Open Space

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

Services

- (10) 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.

TasWater

- (11) The use and/or development must comply with the requirements of TasWater, as detailed in the form Submission to Planning Authority Notice, Reference No TWDA 2022/01092-BTN, dated 25/07/2022, as attached to this permit.

Parking and Access

- (12) At least five (5) car parking spaces must be provided on the land at all times for the use of the development, including at least two (2) car parking spaces per dwelling and at least one (1) designated for visitor parking, in accordance with Standards Australia (2004) Australian Standard AS 2890.1 - 2004 – Parking Facilities Part 1: Off Street Car Parking; Standards Australia, Sydney.
- (13) Unless approved otherwise by the Council's Municipal Engineer, all parking, access ways, manoeuvring and circulation spaces 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 include the following:
- (a) Constructed with a durable all-weather pavement.
 - (b) Drained to an approved stormwater system.
 - (c) Surfaced by concrete.
 - (d) All fencing is to be constructed outside the clearance sweep zones required for vehicles to undertake turning manoeuvres.
 - (e) The driveway must maintain a 0.3m clearance from the kerb to any fixed object, such as a fence.
 - (f) Have car parking spaces delineated by line marking or other clear physical means and identify to which unit they belong and the designated visitor parking space.
- (14) All areas set-aside for parking and associated turning and access must be completed before the use commences and must continue to be maintained to the satisfaction of the Council's Municipal Engineer.

Access to Road

- (15) The existing reinforced concrete vehicle access from the road carriageway to the property boundary must be maintained in accordance with the standards shown on standard drawings TSD-R09-v1 Urban Roads Driveways and TSD-RF01-v1 Guide to Intersection and Domestic Access Sight Distance Requirements prepared by the IPWE Aust. (Tasmania Division), to the satisfaction of the Council's General Manager.
- (16) The existing concrete apron is to be preserved and form the access to the development. During construction it is to be protected from damage, cracking or marking.

- (17) A road opening permit is to be applied for, fee paid, and permit issued for any works occurring in the road reservation.

Stormwater

- (18) 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

- (19) 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.
- (20) 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

- (21) The development must only be carried out between the following hours unless otherwise approved by the Council's Manager Development Services:

Monday to Friday	7:00 a.m. to 6:00 p.m.
Saturday	8:00 a.m. to 6:00 p.m.
Sunday and State-wide public holidays	10:00 a.m. to 6:00 p.m.

- (22) All works associated with the development of the land shall be carried out in such a manner so as not to unreasonably cause injury to, or prejudice or affect the amenity, function, and safety of any adjoining or adjacent land, and of any person therein or in the vicinity thereof, by reason of:

- (a) Emission of noise, artificial light, vibration, odour, fumes, smoke, vapour, steam, ash, dust, 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.

- (23) Any accumulation of vegetation, building debris or other unwanted material must be disposed of by removal from the site in an approved manner. No burning of such materials on site will be permitted unless approved in writing by the Council's Manager Development Services.
- (24) Public roadways or footpaths must not be used for the storage of any construction materials or wastes, for the loading/unloading of any vehicle or equipment; or for the carrying out of any work, process or tasks associated with the project during the construction period.
- (25) The developer must make good and/or clean any footpath, road surface or other element damaged or soiled by the development to the satisfaction of the Council's Municipal Engineer.

THE FOLLOWING ADVICE APPLIES TO THIS PERMIT:

- A. 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 Owen moved, Cr De La Torre seconded that the recommendation be adopted.

CARRIED

VOTING RECORD

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

The meeting closed at 5.35pm.

Confirmed: _____

(Mayor)

Date: _____ 18 October 2022