



Brighton Council

**MINUTES OF THE PLANNING AUTHORITY MEETING
OF THE BRIGHTON COUNCIL HELD IN THE COUNCIL CHAMBERS,
COUNCIL OFFICES, 1 TIVOLI ROAD, OLD BEACH
AT 5.30 P.M. ON TUESDAY, 1 OCTOBER 2024**

1. Acknowledgement of Country

2. Attendance

Cr L Gray (Chairperson); Cr B Curran; Cr A De La Torre; Cr P Geard; Cr G Irons; Cr T Murtagh; Cr P Owen and Cr M Whelan.

IN ATTENDANCE: Cr J McMaster; Mr J Dryburgh (Chief Executive Officer); Mr D Allingham (Director Development Services); Ms J Banks (Director, Governance & Regulatory Services); Mr L Wighton (Acting Director Asset Services); Mr B White (Planning Officer)

3. Apologies

All members were present.

4. Public Question Time & Deputations

There was no requirement for Public Question Time.

5. Declaration of Interest

In accordance with the requirements of Part 2 Regulation 8 of the *Local Government (Meeting Procedures) Regulations 2015*, the chairperson of a meeting is to request Councillors to indicate whether they have, or are likely to have, a pecuniary interest or conflict of interest in any item on the Agenda.

In accordance with Section 48(4) of the *Local Government Act 1993*, it is the responsibility of councillors to then notify the general manager, in writing, the details of any interest(s) that the councillor has declared within 7 days of the declaration.

Cr De La Torre declared an interest in Item 6.1

6. 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 6 on this agenda, inclusive of any supplementary items.

Cr De La Torre had declared an interest in the following item and left the meeting at 5.34pm.

6.1 Development Application SA 2023/0019 - Subdivision (3 lots plus balance) at 10 Alanah Court, Old Beach, 31 and 89 Baskerville Road, Old Beach

Author: Planning Officer/Senior Planner

Authorised: Director, Development Services (D Allingham)

Applicant:	Lark & Creese
Subject Site:	10 Alanah Court, Old Beach, 31 & 89 Baskerville Road, Old Beach
Proposal:	Subdivision (three lots plus balance)
Planning Scheme:	Tasmanian Planning Scheme - Brighton
Zoning:	General Residential & Rural
Codes:	<ul style="list-style-type: none"> • Old Beach Quarry Specific Area Plan • Parking and Sustainable Transport Code • Road and Railways Assets Code • Bushfire-prone Areas Code • Natural Assets Code
Local Provisions:	N/A
Use Class:	Residential
Discretions:	<ul style="list-style-type: none"> • 8.6.1 A2/P2 - General Residential Zone - Lot Design - Frontage • 20.5.1 A1/P1 - Rural Zone - Lot Design & Frontage

	<ul style="list-style-type: none"> • C2.6.2 A1.1/P1 - Design and layout of parking areas (Parking and Sustainable Transport Code) • C7.7.2 A1/P1.2 - Subdivision within a priority vegetation area (Natural Assets Code) • C13. 6.1 A1/P1 - Provision of hazard management areas (Bushfire Prone Areas Code)
Representations:	<p>3 representations were received. The representors raised the following issues:</p> <ul style="list-style-type: none"> • Stormwater disposal impacts on properties • Natural Values (Tasmanian Devils) • Future development (on the lots and adjacent land) • Future subdivision design/density of the balance lot
Recommendation:	Approval with conditions

1. STATUTORY REQUIREMENTS

The purpose of this report is to enable the Planning Authority to determine application SA 2023/19.

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 proposal encompasses three titles located at 10 Alanah Court, Old Beach (C/T 184468/11), 31 Baskerville Road, Old Beach (C/T 143522/7) and 89 Baskerville Road, Old Beach (C/T 49158/1).

The site subject to a three lot plus balance subdivision is 10 Alanah Court, Old Beach. It is sized approximately 3.24 hectares (ha) and shaped irregularly (see Figure 1). The three lots are proposed in the area bounded by green and zoned General Residential while the proposed turning head sized 700 square metres (m²) and the balance lot, which is zoned Rural, is situated within the area bounded by blue and zoned Rural (see Figure 1).

Future developments on the proposed lots are highly likely to be influenced by overland flow and affect the neighbouring lands.

31 Baskerville Road is included in the proposal in order to facilitate infrastructure works for sewer connection.

89 Baskerville Road forms part of the application as it is required to support the stormwater management of the proposed subdivision by directing the overflow water into its bushland.

The site is partially within the Old Beach Quarry Specific Area Plan (refer figure 2)). However, the SAP is not applicable as it does not relate to subdivision. The site is fully within the Bushfire-Prone Areas Code overlay (Figure 3). The Rural Zone portion of the site is affected by a priority vegetation area (Figure 4). The proposal includes vegetation clearance to construct the extension of the road and turning head.

The site is burdened by a Drainage and Pipeline and services easement.



Figure 1: Site Map (source: Listmap)

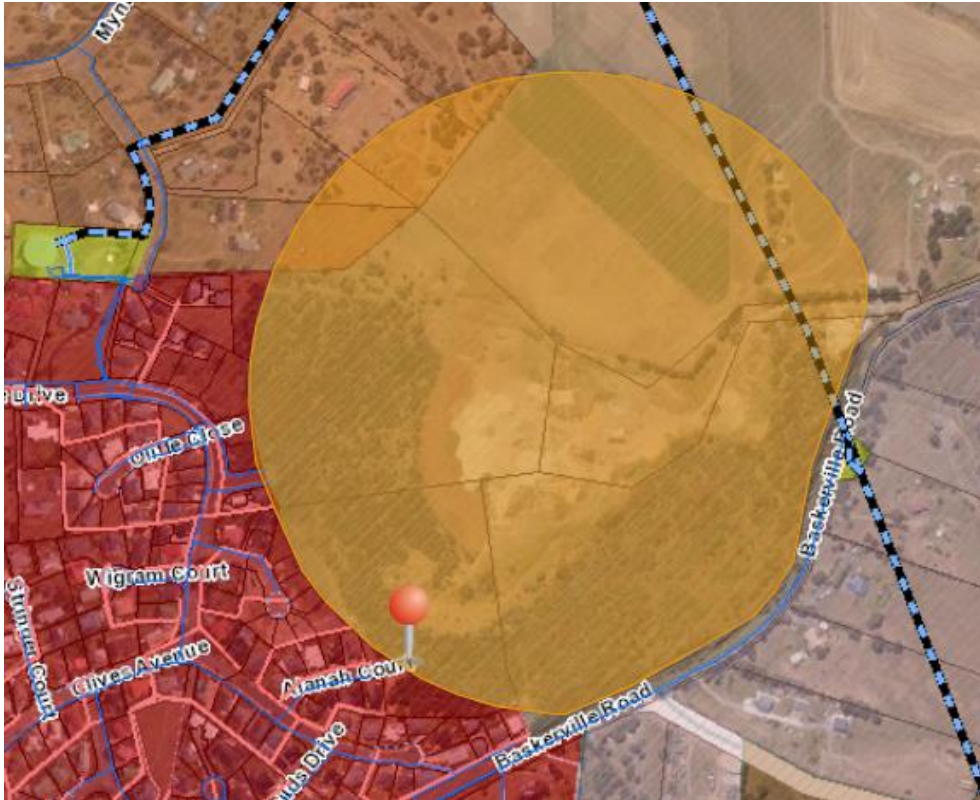


Figure 2: Old Beach Quarry Specific Area Plan (Source: Listmap)

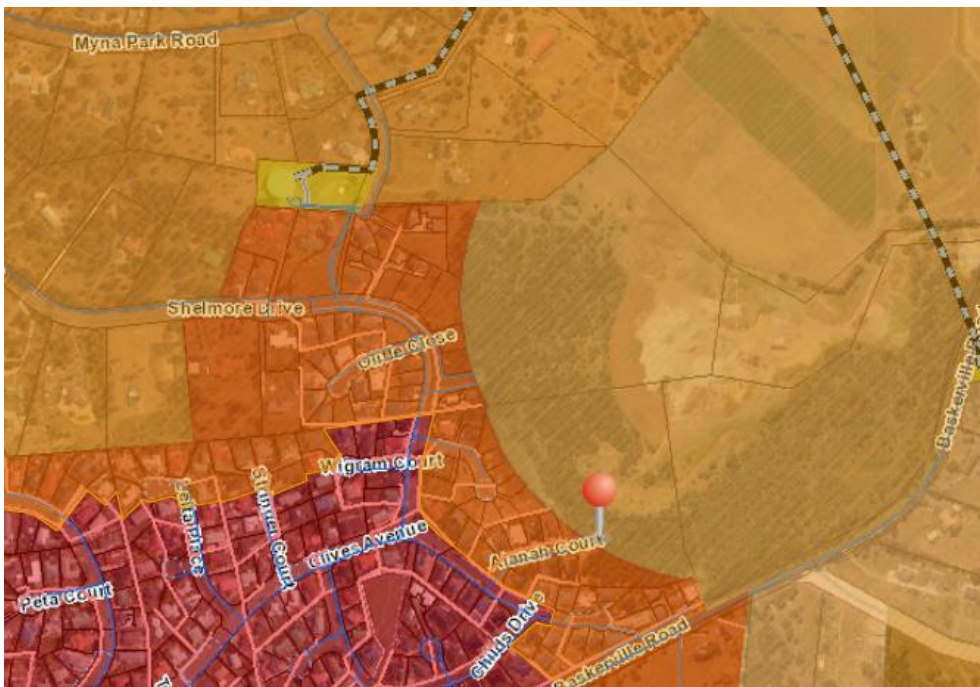


Figure 3: Bushfire Prone Areas Code (source: Listmap)

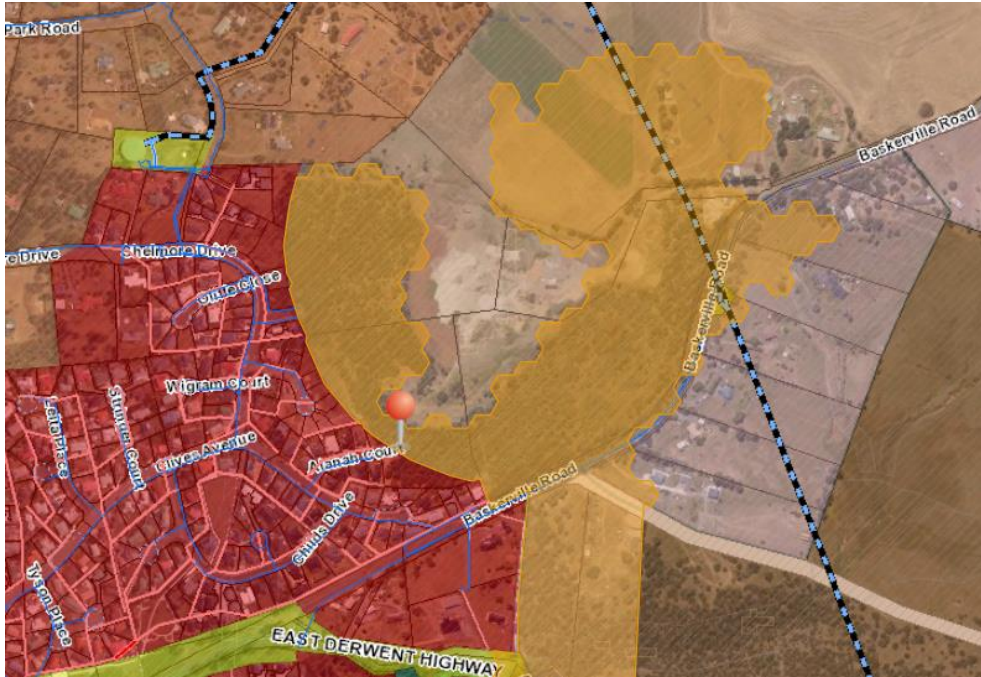


Figure 4: Natural Values Overlay (Priority Vegetation) (Source: Listmap)

3. PROPOSAL

- The proposal seeks to subdivide 10 Alanah Court, Old Beach from one lot into three lots plus balance (see Figure 5).
- Lots 1, 2, and 3 within the General Residential zone are sized 783, 923, and 993 square metres (m²) respectively and the balance rural zoned lot is 2.97 hectares (ha).
- No development is proposed within the drainage and pipeline and services easement.
- The application is supported by proposal plans including subdivision plans, bushfire hazard report, stormwater assessment, and civil design drawings.
- A Natural Values Assessment, and an addendum assessing the significance of burrowing habitat, has been submitted after the public notification period in response to representations relating to natural values.
- The proposal includes an extension to the existing road of approximately 80m to provide for vehicular access and turning which extends onto the rural zoned balance lot.
- Each of the proposed general residential lots have access to a reticulated water supply within Alanah Court and can have gravity sewer disposal to an access chamber at the rear of 31 Baskerville Rd.
- Sewer and water connections are to be provided to Lots 1 to 3. Connections are not required to the balance lot as this is zoned Rural and has no requirement for services to be provided in this Zone.

Stormwater Management

- All proposed lots will require a 3.0m wide drainage easement for sewer and stormwater drainage. The proposal relies upon connecting into the existing access chamber located above 31 Baskerville Rd and the downstream network having capacity.
- The land is currently undeveloped being comprised of open bushland.
- The proposal includes a stormwater assessment completed by the design engineer. The assessment provides hydrological analysis for the drainage needed and evaluates the post-development stormwater runoff conditions.
- No stormwater connection is required to the balance lot as it is situated in the Rural Zone which has no requirements for services to be provided.
- The proposal was referred to Council’s Development Officer/Engineer, who considers that the proposed stormwater assessment can be accepted with conditions ensuring the further development of an engineered stormwater solution and a receipt of contribution towards infrastructure upgrades across Baskerville Rd and into 26 Baskerville Rd.

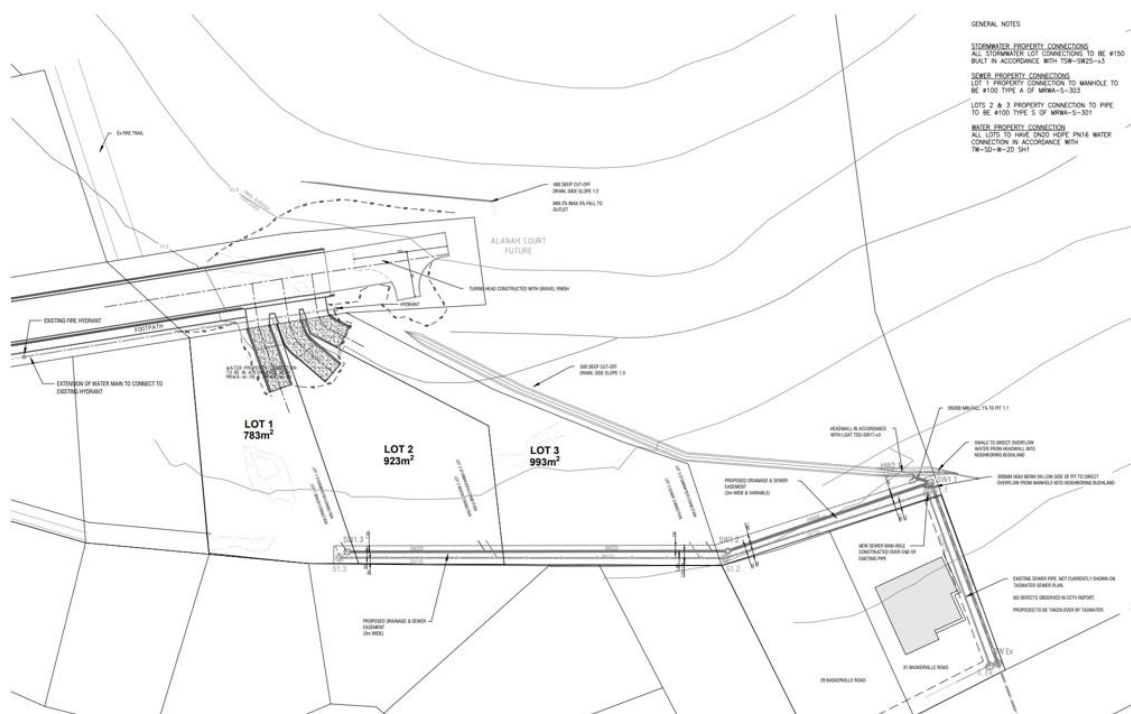


Figure 5. Proposed plan of subdivision

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 proposed development is for subdivision, which, pursuant to clause 6.2.6 of the Scheme, is not required to be categorised into a use class:

6.2.6 Notwithstanding sub-clause 6.2.1 of this planning scheme, development which is for subdivision, a sign, land filling, retaining walls or coastal protection works does not need to be categorised into one of the Use Classes.

Notwithstanding this, the site is within the General Residential Zone and Rural Zone, and future development of the sites will be assessed against the provisions of this zone.

Compliance with Performance Criteria

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

Clause 8.6.1 A2/P2 Lot Design - Frontage

Objective:	
<p>That each lot:</p> <p>(a) has an area and dimensions appropriate for use and development in the zone;</p> <p>(b) is provided with appropriate access to a road;</p> <p>(c) contains areas which are suitable for development appropriate to the zone purpose, located to avoid natural hazards; and</p> <p>(d) is orientated to provide solar access for future dwellings.</p>	
Acceptable Solution	Performance Criteria
<p>A2</p> <p>Each lot, or a lot proposed in a plan of subdivision, excluding for public open space, a riparian or littoral reserve or Utilities, must have a frontage not less than 12m.</p>	<p>P2</p> <p>Each lot, or a lot proposed in a plan of subdivision, excluding for public open space, a riparian or littoral reserve or Utilities, must be provided with a frontage or legal connection to a road by a right of carriageway, that is sufficient for the intended use, having regard to:</p> <p>(a) the width of frontage proposed, if any;</p> <p>(b) the number of other lots which have the land subject to the right of carriageway as their sole or principal means of access;</p> <p>(c) the topography of the site;</p> <p>(d) the functionality and useability of the frontage;</p> <p>(e) the ability to manoeuvre vehicles on the site; and</p> <p>(f) the pattern of development existing on established properties in the area, and is not less than 3.6m wide.</p>

Lots 2 and 3 are proposed to have a frontage of 5m and 7m each. Accordingly, the proposal is not able to satisfy the acceptable solution. Therefore, assessment against the performance criteria is relied upon.

Although all the proposed lots have a frontage more than 3.6m, the steeply sloping nature of the lots require widening of the access to accommodate retaining walls and ensure driveways are of an appropriate grade.

As discussed in Clause C2.6.2 A1.1/P1 – Design and layout of parking areas below, it is considered that there is sufficient ability to manoeuvre vehicles and that access can be constructed in accordance with Australian Standards.

Accordingly, the PC is satisfied with conditions outlined under Clause C2.6.2 A1.1/P1.

Clause 20.5.1 Lot Design

Objective:	
To provide for subdivision that:	
(a) relates to public use, irrigation or Utilities; or	
(b) facilitates use and development for allowable uses in the zone.	
Acceptable Solution	Performance Criteria
A1	P1
Each lot, or a lot proposed in a plan of subdivision, must:	Each lot, or a lot proposed in a plan of subdivision, must:
(a) be required for public use by the Crown, a council or a State authority;	(a) have sufficient useable area and dimensions suitable for the intended purpose, excluding Residential or Visitor Accommodation, that:
(b) be required for the provision of Utilities or irrigation infrastructure;	(i) requires the rural location for operational reasons;
(c) be for the consolidation of a lot with another lot provided each lot is within the same zone; or	(ii) minimises the conversion of agricultural land for a non-agricultural use;
(d) be not less than 40ha with a frontage of no less than 25m and existing buildings are consistent with the setback and separation distance required by clause 20.4.2 A1 and A2	(iii) minimises adverse impacts on nonsensitive uses on adjoining properties; and
	(iv) is appropriate for a rural location; or

	<p>(b) be for the excision of a dwelling or Visitor Accommodation existing at the effective date that satisfies all of the following:</p> <p>(i) the balance lot provides for the sustainable operation of a Resource Development use, having regard to:</p> <p>a. not materially diminishing the agricultural productivity of the land;</p> <p>b. the capacity of the balance lot for productive agricultural use; and</p> <p>c. any topographical constraints to agricultural use;</p> <p>(ii) an agreement under section 71 of the Act is entered into and registered on the title preventing future Residential use if there is no dwelling on the balance lot;</p> <p>(iii) the existing dwelling or Visitor Accommodation must meet the setbacks required by subclause 20.4.2 A2 or P2 in relation to setbacks to new boundaries;</p> <p>(iv) it is demonstrated that the new lot will not unreasonably confine or restrain the operation of any adjoining site used for agricultural use; and</p> <p>(c) be provided with a frontage or legal connection to a road by a right of carriageway, that is sufficient for the intended use, having regard to:</p> <p>(i) the number of other lots which have the land subject to the right of carriageway as their sole or principal means of access;</p> <p>(ii) the topography of the site;</p> <p>(iii) the functionality and useability of the frontage;</p> <p>(iv) the anticipated nature of vehicles likely to access the site;</p>
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	<p>(v) the ability to manoeuvre vehicles on the site;</p> <p>(vi) the ability for emergency services to access the site; and</p> <p>(vii) the pattern of development existing on established properties in the area.</p>
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The balance lot will have an area less than 40ha and a frontage to Alanah Court less than 25m, being the width of the road extension onto the site. Accordingly, the AS cannot be satisfied and the PC must be addressed.

The application is assessed under P1(a) above. Other than the construction of the road extension and turning head to facilitate the 3 lot subdivision in the General Residential Zone, which forms part of the site, there are no changes proposed to the use or development of the balance lot. As such, it is considered that the site will continue to operate in its current manner, with no additional conversion of the agricultural land proposed. The Old Beach Quarry Specific Area Plan protects the site from residential development by prohibiting residential uses within the mapped overlay.

The application shows a road width extension of Alanah Court onto the site, which will provide a sole legal connection as required by P1(c), which is wide enough for access by emergency service vehicles. Standard conditions requiring preparation and certification of engineering design are included in this assessment for consideration.

Accordingly, it is considered that the PC can be satisfied.

Clause C2.6.2 A1.1/P1 – Design and layout of parking areas

Objective:	
That parking areas are designed and laid out to provide convenient, safe and efficient parking.	
Acceptable Solution	Performance Criteria
<p>A1.1</p> <p>Parking, access ways, manoeuvring and circulation spaces must either:</p> <p>(a) comply with the following:</p> <ul style="list-style-type: none"> (i) have a gradient in accordance with <i>Australian Standard AS 2890 – Parking facilities, Parts 1-6</i>; (ii) provide for vehicles to enter and exit the site in a forward direction 	<p>P1</p> <p>All parking, access ways, manoeuvring and circulation spaces must be designed and readily identifiable to provide convenient, safe and efficient parking, having regard to:</p> <ul style="list-style-type: none"> (a) the characteristics of the site; (b) the proposed slope, dimensions and layout; (c) useability in all weather conditions;

<p>where providing for more than 4 parking spaces;</p> <p>(iii) have an access width not less than the requirements in Table C2.2;</p> <p>(iv) have car parking space dimensions which satisfy the requirements in Table C2.3;</p> <p>(v) have a combined access and manoeuvring width adjacent to parking spaces not less than the requirements in Table C2.3 where there are 3 or more car parking spaces;</p> <p>(vi) have a vertical clearance of not less than 2.1m above the parking surface level; and</p> <p>(vii) excluding a single dwelling, be delineated by line marking or other clear physical means; or</p> <p>(b) comply with <i>Australian Standard AS 2890-Parking facilities, Parts 1-6.</i></p>	<p>(d) vehicle and pedestrian traffic safety;</p> <p>(e) the nature and use of the development;</p> <p>(f) the expected number and type of vehicles;</p> <p>(g) the likely use of the parking areas by persons with a disability;</p> <p>(h) the nature of traffic in the surrounding area;</p> <p>(i) the proposed means of parking delineation; and</p> <p>(j) the provisions of <i>Australian Standard AS 2890.1:2004 - Parking facilities, Part 1: Off-street car parking</i> and <i>AS 2890.2 -2002 Parking facilities, Part 2: Off-street commercial vehicle facilities.</i></p>
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The proposed design does not demonstrate compliance with A1.1(a)(i) of the acceptable solution and thus, the assessment against the performance criteria is relied upon.

The site is steep with the subdivision lots being proposed for the lower side of Alanah Court. The proposal plans showing retaining walls and crash barriers to be constructed as part of the access driveways for lots 2 and 3.

Council's Development Engineer has considered that the application documents did not specifically demonstrate compliance with the acceptable solution. In assessing the proposal against the performance criteria, the council officer concluded that the proposed accesses to each lot are able to be constructed to meet AS2890 such that they can provide convenient, safe and efficient parking, at a time when future residential development is considered.

Accordingly, it is considered that the proposal can satisfy the performance criteria with a standard condition requiring the provision of detailed engineering design and associated certification from a suitably qualified person.

Accordingly, the PC is satisfied with conditions.

Clause C7.7.2 A1/P1.1 & P1.2 - Subdivision within a priority vegetation area

Objective:	
That:	
<p>(a) works associated with subdivision will not have an unnecessary or unacceptable impact on priority vegetation; and</p> <p>(b) future development likely to be facilitated by subdivision is unlikely to lead to an unnecessary or unacceptable impact on priority vegetation.</p>	
Acceptable Solution	Performance Criteria
<p>A1</p> <p>Each lot, or a lot proposed in a plan of subdivision, within a priority vegetation area must:</p> <p>(a) be for the purposes of creating separate lots for existing buildings;</p> <p>(b) be required for public use by the Crown, a council, or a State authority;</p> <p>(c) be required for the provision of Utilities;</p> <p>(d) be for the consolidation of a lot; or</p> <p>(e) not include any works (excluding boundary fencing), building area, bushfire hazard management area, services or vehicular access within a priority vegetation area.</p>	<p>P1.1</p> <p>Each lot, or a lot proposed in a plan of subdivision, within a priority vegetation area must be for:</p> <p>(a) subdivision for an existing use on the site, provided any clearance is contained within the minimum area necessary to be cleared to provide adequate bushfire protection, as recommended by the Tasmania Fire Service or an accredited person;</p> <p>(b) subdivision for the construction of a single dwelling or an associated outbuilding;</p> <p>(c) subdivision in the General Residential Zone or Low Density Residential Zone;</p> <p>(d) use or development that will result in significant long term social and economic benefits and there is no feasible alternative location or design;</p> <p>(e) subdivision involving clearance of native vegetation where it is demonstrated that on-going pre-existing management cannot ensure the survival of the priority vegetation and there is little potential for long-term persistence; or</p> <p>(f) subdivision involving clearance of native vegetation that is of limited scale relative to the extent of priority vegetation on the site.</p>

	<p>P1.2</p> <p>Works association with subdivision within a priority vegetation area must minimise adverse impacts on priority vegetation, having regard to:</p> <p>(a) the design and location of any works, future development likely to be facilitated by the subdivision, and any constraints such as topography or land hazards;</p> <p>(b) any particular requirements for the works and future development likely to be facilitated by the subdivision;</p> <p>(c) the need to minimise impacts resulting from bushfire hazard management measures through siting and fire-resistant design of any future habitable buildings;</p> <p>(d) any mitigation measures implemented to minimise the residual impacts on priority vegetation;</p> <p>(e) any on-site biodiversity offsets; and</p> <p>(f) any existing cleared areas on the site.</p>
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The proposal involves vegetation clearance within a priority vegetation area for the proposed road and turning head, which does not satisfy the acceptable solution.

The required clearance area is approximately 2150 square metres (m²) and is located within the General Residential Zone and Rural Zone. The proposal is able to satisfy P1.1(c) and (f) as the application is for subdivision of general residential zoned land with clearance being of a limited scale relative to the extent of priority vegetation on the site.

However, the road extension and turning head constitute works. Therefore, assessment against the performance criteria in P1.2 is required.

A Natural Values Assessment (Summers, 2024) (see Attachment 3) has determined that the area required for vegetation clearance can satisfy the performance criteria given that the proposed works will occur in the minimum area necessary to construct a turning area to comply with Tas Fire Service regulations.

The assessment also identified dens within the clearance area which may be occupied by either the Eastern quoll and/or Tasmanian Devil. It also notes that whilst there may be a loss of potential foraging habitat for various species as outlined in the report, apart from the Eastern quoll and Tasmanian Devil, the works will only result in disturbance and not a significant loss of core or priority denning habitat.

A further assessment (see Attachment 4) of the den was undertaken by setting trial cameras from 20.8.2024 to 29.8.2024 which showed no obvious signs of activity from the species in question. It was concluded that this was not a natal den and was not significant.

The Natural Values Assessment also notes that within the study site a declared weed and a Weed of National Significance has been identified under Tasmania’s Weed Management Act 1999. It is recommended that a condition requiring a weed management plan prepared by a suitably qualified person be submitted to and approved by Council’s Director Development Services prior to commencement of works, to restrict the spread of the weed from the site.

Accordingly, the PC is satisfied with conditions.

Clause C13.6.1 A1/P1 Provision of Hazard Management Areas

Objective:	
That subdivision provides for hazard management areas that:	
(a) facilitate an integrated approach between subdivision and subsequent building on a lot;	
(b) provide for sufficient separation of building areas from bushfire-prone vegetation to reduce the radiant heat levels, direct flame attack and ember attack at the building area; and	
(c) provide protection for lots at any stage of a staged subdivision	
Acceptable Solution	Performance Criteria
A1	P1
(a) TFS or an accredited person certifies that there is an insufficient increase in risk from bushfire to warrant the provision of hazard management areas as part of a subdivision; or	A proposed plan of subdivision shows adequate hazard management areas in relation to the building areas shown on lots within a bushfire-prone area, having regard to:
(b) The proposed plan of subdivision:	(a) the dimensions of hazard management areas;
(i) shows all lots that are within or partly within a bushfire-prone area, including those developed at each stage of a staged subdivision;	(b) a bushfire risk assessment of each lot at any stage of staged subdivision;
(ii) shows the building area for each lot;	(c) the nature of the bushfire-prone vegetation including the type, fuel load, structure and flammability;
(iii) shows hazard management areas between bushfire-prone vegetation and each building area that have dimensions	(d) the topography, including site slope;

<p>equal to, or greater than, the separation distances required for BAL 19 in Table 2.6 of Australian Standard AS3959:2018 Construction of buildings in bushfire-prone areas; and</p> <p>(iv) is accompanied by a bushfire hazard management plan that addresses all the individual lots and that is certified by the TFS or accredited person, showing hazard management areas equal to, or greater than the separation distances required for BAL 19 in Table 2.6 of Australian Standard AS3959:2018 Construction of buildings in bushfire-prone Areas; and</p> <p>(c) if hazard management areas are to be located on land external to the proposed subdivision the application is accompanied by the written consent of the owner of that land to enter into an agreement under section 71 of the Act that will be registered on the title of the neighbouring property providing for the affected land to be managed in accordance with the bushfire hazard management plan.</p>	<p>(e) any other potential forms of fuel and ignition sources;</p> <p>(f) separation distances from the bushfire-prone vegetation not unreasonably restricting subsequent development;</p> <p>(g) an instrument that will facilitate management of fuels located on land external to the subdivision; and</p> <p>(h) any advice from the TFS.</p>
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The applicant has submitted a Bushfire Assessment for the site prepared by a suitably qualified person. As part of that assessment, it recommends a 20m Hazard Management Area of the Rural zoned balance lot. However, the proposal does not satisfy A1(c) as written consent agreeing to enter into a Part 5 Agreement has not been received from the owner of the land.

The Part 5 Agreement will extend on to the balance lot 4. Therefore, it is considered reasonable that written agreement can be obtained from the landowner to comply with A1(c). It is proposed that a condition be included on any permit approved, requiring written consent to be submitted to Council’s Director Development Services prior to commencement of any works, in satisfaction of the acceptable solution.

5. Other Matters

5.1. Referrals

Development Officer/Engineer

The proposal was referred to Council’s Development Engineer for assessment. The officers’ comments are included in this report where applicable.

TasWater

TasWater have reviewed the proposal and have issued a Submission to Planning Authority Notice reference number TWDA 2023-01014-BTN dated 18th June 2024, which is to form part of any permit issued.

TasNetworks

The proposal was referred to TasNetworks, who have advised that based on the information provided, the development is not likely to adversely affect TasNetworks' operations.

5.2. Public Open Space

Requirements for public open space no longer sit in the planning scheme.

However, Council has powers and responsibilities under the Local Government (Buildings and Miscellaneous) Act 1993 in relation to public open space. Further guidance is provided by Council's Public Open Space Policy.

These provisions enable Council to

- a) Require a subdivider to provide to Council up to 5% of land being subdivided; or
- b) Require a subdivider to make a contribution cash-in-lieu of the provision of land, either in part or in whole.

In this instance, there is no land that is suitable for quality open space and a cash-in-lieu contribution is required for 5% of the unimproved value of the land contained in lots 1-3.

6. Representations

Three (3) representations were received during the statutory public exhibition period between 22nd June 2024 and 8th July 2024. The representations are summarised in Table 1.

TABLE 1: SUMMARY OF REPRESENTATIONS	
Issue Raised	Officer's Response
<p>Stormwater disposal impacts on properties</p> <p>The representors raised stormwater disposal concerns and the ability for the downstream system to cope with minor and major events.</p>	<p>The design proposed was accompanied with a stormwater report. The report quantified overland flow volumes and reaffirmed Council officers' understanding of the stormwater network capacity.</p> <p>Conditions are included in the draft permit requiring a detailed stormwater design which considers the downstream network to be submitted to and approved by Council's Municipal Engineer prior to commencement of any works. This will provide certainty for neighbouring and downslope properties.</p>

<p>Natural Values (Tasmanian Devils)</p> <p>The representors raised concerns regarding the impact of the proposed vegetation clearance on the habitat of the threatened flora/fauna.</p>	<p>A natural values assessment has been provided by a suitably qualified person in accordance with the requirements set out under the planning scheme. The assessment notes that there is potential for threatened fauna (Tasmanian Devils) in the area to be cleared.</p> <p>A further assessment determined that the den identified in the NVA was not significant.</p>
<p>Future development (on the lots and adjacent land) potentially resulting in overshadowing issues</p>	<p>Future development applications will be assessed against the provisions of the planning scheme in force at the time.</p>
<p>Future subdivision design/density of the balance lot</p>	<p>The balance lot is currently zoned Rural and as such is not able to be subdivided to residential densities without first obtaining approval for rezoning via a planning scheme amendment. Such an application will provide opportunities for further consultation.</p>

A summary of the representations was provided to the Applicant for comment. The applicant has subsequently provided a Natural Values Assessment in response to the representations relating to natural values. This is included in Attachment 3 & 4.

It is considered that the contents of that assessment do not require re-advertising the proposal.

7. Conclusion

The proposal for **Subdivision (three lots plus balance) at 10 Alanah Court, Old Beach, 31 & 89 Baskerville Road, Old Beach** in Tasmania, satisfies the relevant provisions of the Tasmanian Planning Scheme - Brighton, and as such is recommended for approval.

RECOMMENDATION:

That pursuant to the *Tasmanian Planning Scheme - Brighton*, Council approve application SA 2023/19 for **Subdivision (three lots plus balance) at 10 Alanah Court, Old Beach, 31 & 89 Baskerville Road, Old Beach** in Tasmania, 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, the Natural Values Assessment (dated September 2024) and with the conditions of this permit and must not be altered or extended without the further written approval of Council.
- (2) Where a conflict occurs between the application for planning approval, the 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*.

Vegetation Protection

- (4) No vegetation is to be cleared or removed from the site other than that within the development disturbance area shown on plan and necessary for the building construction, associated vehicular access, underground service installation and bushfire hazard management areas without prior approval from the Director Development Services.
- (5) Prior to the carrying out of any works approved or required by this permit, the subdivider must submit a Weed Management Plan to be approved by Council's Director Development Services. The Weed Management Plan must:
 - a) detail the measures to be adopted to remove and limit the spread of weeds listed in the Weed Management Act 1999, and
 - b) how the site is to be managed during construction,
 - c) incorporate the management prescription measures outlined in the Natural Values Assessment by D Summers dated July 2024.

Advice: This condition requires further information to be submitted and approved by Council's Municipal Engineer pursuant to s60(2) of the Land Use Planning and Approvals Act 1993.

Bushfire Hazard Management

- (6) The development must be carried out in accordance with the Bushfire Hazard Report prepared by Lark & Creese dated 21st December 2023.
- (7) Prior to Council sealing the final plan of survey the developer must provide certification from a suitably qualified person that all the requirements of the bushfire hazard management plan have been complied with.
- (8) Prior to the carrying out of works approved or required by this permit, written consent from the landowner agreeing to enter into a Part 5 Agreement must be submitted to Council's Director Development Services.

Advice: This condition requires further information to be submitted and approved by Council's Municipal Engineer pursuant to s60(2) of the Land Use Planning and Approvals Act 1993.

- (9) Prior to the sealing of the final plan of survey an agreement pursuant to Part 5 of the *Land Use Planning and Approvals Act 1993* must be entered into. The Part 5 Agreement must require:

- a) establishment and management of a Hazard Management Area in the in a minimal fuel condition within the Balance Lot (Lot 4) to the east and north of Lot 3, in accordance with the Bushfire Hazard Management Plan prepared by Lark and Creese dated 20/06/2023 and Tasmania Fire Service guidelines, and in accordance with the Bushfire Hazard Report certified by N M Creese dated 20th June 2023.
- b) The developer is responsible for the establishment of the hazard management area.
- c) Ongoing management of the Hazard Management Area is the responsibility of the owner of Lot 4.

Agreements

- (10) Agreements made pursuant to Part 5 of the *Land Use Planning and Approvals Act 1993* must be prepared by the applicant on a blank instrument form to the satisfaction of the Council and registered with the Recorder of Titles. The subdivider must meet all costs associated with the preparation and registration of the Part 5 Agreement.

Transfer of Reserves

- (11) All roads or footways must be shown as “Road” or “Footway” on the Final Plan of Survey and transferred to the Council by Memorandum of Transfer submitted with the Final Plan of Survey.

Public Open Space

- (12) 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 must be made to the Council prior to sealing the Final Plan of Survey. The cash contribution amount is to be equal to 5% of the value of the land being subdivided [i.e., Lots 1, 2, and 3] in the plan of subdivision at the date of lodgement 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.

- (13) 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.

Easements

- (14) Easements must be created over all drains, pipelines, wayleaves, and services in accordance with the requirements of Councils Municipal Engineer. The cost of locating and creating such easements shall be at the developer's full cost.

- (15) An easement must be provided over the proposed open drain on the balance lot and across the property at 89 Baskerville Road to the satisfaction of Council's Municipal Engineer.

Covenants

- (16) Covenants or other 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 or 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 Council's Director Development Services.

Final plan

- (17) 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.
- (18) 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.
- (19) 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.
- (20) The subdivider must pay any Titles Office lodgement fees direct to the Recorder of Titles.

Engineering Design

- (21) The subdivision must be designed and constructed in accordance with the:
 - (a) Tasmanian Subdivision Guidelines October 2013.
 - (b) Tasmanian Standard Drawings By IPWEA Tas Division.
 - (c) Tasmanian Municipal Standard Specification by IPWEA Tas Division.

as published by the Local Government Association of Tasmania (LGAT) and to the satisfaction of Councils Municipal Engineer.

- (22) Before any works associated with the development of the land commences, engineering design drawings, to the satisfaction of Councils Municipal Engineer must be submitted to and approved by Council.

Advice: The engineering drawings submitted with the application are considered to be concept plans and may require alterations prior to consideration for approval.

Advice: This condition requires further information to be submitted and approved by Council's Municipal Engineer pursuant to s60(2) of the Land Use Planning and Approvals Act 1993.

- (23) Engineering design drawings are to be prepared by a qualified and experience civil engineer or other person approved by Councils 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) all drainage required by this permit to drain the allotments and measures to protect adjoining allotments from concentrated overland flow,
 - (f) requirements from the bushfire hazard plan,
 - (g) location of existing trees and desired clearance from road edge,
 - (h) location of TasWater infrastructure,
 - (i) any other work required by this permit.
- (24) Approved engineering design drawings will remain valid for a period of 2 years from the date of approval of the engineering drawings.
- (25) 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 on completion of subdivision construction works. The appointed consulting engineer shall be the primary contact person for all matters concerning the subdivision.

Services

- (26) 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 proposed subdivision or development. Any work required is to be specified or undertaken by the authority concerned.
- (27) Property services must be contained wholly within each lot served or an easement provided in accordance with the requirements of the responsible authority and to the satisfaction of Council's Municipal Engineer.
- (28) Services for lot 3 are to be extended to the lot proper.

Roadworks

- (29) The existing public road must be extended to the end of the proposed turning head and include:
 - (a) Kerb and channel both sides,
 - (b) Full depth pavement construction and asphalt seal (including the turning head),
 - (c) concrete footpath on the southern side extending from the existing path to the proposed turning head; and
 - (d) stormwater drainage.
- (30) A concrete vehicle access must be provided to the property boundary of Lots 1 to 3.
- (31) A vehicle access to the boundary of the Balance Lot must be provided to the satisfaction of Council's Municipal Engineer.
- (32) The access driveway for lot 3 is to be constructed for the full length of the access strip to the lot proper.
- (33) Vehicle accesses must be in accordance with Council's standard drawings, Australian Standard AS 2890.2, Parking facilities - Part 2: Off-Street, commercial vehicle facilities, for the types of vehicles likely to use the site and to the satisfaction of Council's Municipal Engineer.

Sewer & Water

- (34) Lots 1 to 3 must be connected to a reticulated potable water supply.
- (35) Lots 1 to 3 must be connected to a reticulated sewerage system.
- (36) The development must meet all the required conditions of approval specified by TasWater Amended Submission to Planning Authority notice TWDA 2023/01014-BTN dated 18/06/2024.

Telecommunication and Electrical Reticulation

- (37) Electrical and telecommunication services must be provided to Lots 1 to 3 in accordance with the requirements of the responsible authority and to the satisfaction of Councils Municipal Engineer.
- (38) Prior to sealing the final plan of survey, the developer must submit to Council:
- (a) A "Provision of Telecommunication Infrastructure – Confirmation of final payment or Certificate of Practical Completion of Developers Activities" from NBN Co.
- (b) Written advice from TasNetworks confirming that all conditions of the agreement between the owner and the authority have been complied with and that future owners will not be liable for network extension or upgrade costs other than individual property connections at the time each lot is further developed.

Stormwater

- (39) The developer is to provide a piped stormwater property connection to Lots 1 to 3 capable of servicing the entirety of each lot by gravity in accordance with Council standards and to the satisfaction of Council's Municipal Engineer.
- (40) The piped stormwater system within the subdivision must be able to accommodate a storm with a 5% AEP when the land serviced by the system is fully developed.
- (41) The existing public stormwater system downstream of the proposed subdivision must be upgraded to accommodate increased flows from the proposed subdivision for up to a 5% AEP rainfall event or, where approved by Council's Municipal Engineer the developer must make a financial contribution to Council in lieu of undertaking the works.

Unless approved otherwise by Councils Municipal Engineer, works must include:

- a) Upgrading of the existing piped stormwater from the southeastern corner of the subject property to the southern side of Baskerville Road;

Alternatively, the developer is to make a financial contribution to Council for the upgrade of the pipe.

- b) Piping of the open drain from the southern side of Baskerville Road across the northeastern corner of 26 Baskerville Road;
- c) Upgrading of the open drain/watercourse along the eastern boundary of 26 Baskerville Road and 1426 East Derwent Highway;

Alternatively, the developer is to make a financial contribution to Council equivalent to the cost of upgrading the open drain/creek.

The value of any financial contribution is to be based on a cost estimate provided by the supervising engineer with the engineering design plans and approved by Councils Municipal Engineer.

Advice: *The stormwater system downstream of the proposed subdivision has insufficient capacity to accommodate increased flows from the developed subdivision.*

- (42) A cut off drain must be provided along the northeastern boundary of lot 3 with a dispersed overflow across 89 Baskerville Road, to be contained within a drainage easement.
- (43) The subdivision must incorporate an overland flow paths to accommodate a 1% AEP (plus climate change) rainfall event.
- (44) Stormwater from the proposed subdivision must be treated prior to entering the existing public stormwater system to:
 - (a) Standard Stormwater Treatment Requirements specified in Table 3 Water Quality Treatment Targets in DEP AND LGAT TASMANIAN STORMWATER POLICY GUIDANCE AND STANDARDS FOR DEVELOPMENT 2021 V1.

Alternatively;

The developer may make a financial contribution to Brighton Council for the provision of stormwater treatment in accordance with *Council Policy 6.1 Stormwater Quality Control Contributions*.

- (45) An updated Stormwater Management Report must be submitted to Council's Municipal Engineer in conjunction with the engineering design plans for approval. The Stormwater Management Report must be prepared and certified by a suitably qualified person, in accordance with section 2.6.2 of *DEP & LGAT (2021). Tasmanian Stormwater Policy Guidance and Standards for Development. Derwent Estuary Program and Local Government Association of Tasmania (Hobart, Australia)* and include calculations, design, construction and maintenance details of stormwater treatment, detention, and conveyance. The report must clearly demonstrate that the requirements of this permit are met and that adjacent and downstream properties will not be adversely impacted by the stormwater system. Once approved the updated Stormwater Management Report will form part of this permit.

Advice: *General Manager's consent is required for connection to the public stormwater system in accordance with the Urban Drainage Act. Providing the planning permit conditions are met General Managers Consent will be granted.*

Advice: *This condition requires further information to be submitted and approved by Council's Municipal Engineer pursuant to s60(2) of the Land Use Planning and Approvals Act 1993.*

Erosion and Sediment Control

- (46) An Erosion and Sediment Control Plan (here referred to as a 'ESCP') prepared in accordance with the guidelines Erosion and Sediment Control, The fundamentals for development in Tasmania, by the Derwent Estuary Programme and Tamar Estuary and Esk Rivers Program, must be approved by Council's Director Development Services before development of the land commences. The ESCP shall form part of this permit when approved.
- (47) Temporary run-off, erosion and sediment controls must be installed in accordance with the approved ESCP and must be maintained at full operational capacity to the satisfaction of Council's Director Development Services until the land is effectively rehabilitated and stabilised after completion of the development.
- (48) The topsoil on any areas required to be disturbed must be stripped and stockpiled in an approved location shown on the detailed ESCP 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.
- (49) 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

- (50) The developer must make good any damage to the road frontage of the development site including road, kerb and channel, footpath, and nature strip to the satisfaction of Council's Municipal Engineer.
- (51) The road frontage of the development site including road, kerb and channel, footpath, and nature strip, should be:
- (a) Surveyed prior to construction, photographed, documented and any damage or defects be noted in a dilapidation report to be provided to Council's Asset Services Department prior to construction.
- (b) Be protected from damage, heavy equipment impact, surface scratching or scraping and be cleaned on completion.

In the event a dilapidation report is not provided to Council prior to commencement, any damage on completion, existing or otherwise, may be deemed a result of construction activity and require replacement or repair to the satisfaction of Council's Municipal Engineer.

Advice: This condition requires further information to be submitted and approved by Council's Municipal Engineer pursuant to s60(2) of the Land Use Planning and Approvals Act 1993.

- (52) Works associated with 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
- (53) 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.
- (54) 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 General Manager.
- (55) 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.

Survey pegs

- (56) Survey pegs are to be stamped with lot numbers and marked for ease of identification.
- (57) Prior to the works being taken over by Council, evidence must be provided from a registered surveyor that the subdivision has been re-pegged following completion of substantial subdivision construction work. The cost of the re-peg survey must be included in the value of any security.

Maintenance and Defects Liability Period

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

As Constructed Drawings

- (60) Prior to the works being placed on the maintenance and defects liability period “as constructed” drawings and data for all engineering works provided as part of this approval must be provided to Council to the satisfaction of the Council’s Municipal Engineer. These drawings and data sheets must be prepared by a qualified and experienced civil engineer or other person approved by the Municipal Engineer in accordance with Council’s Guidelines for As Constructed Data.

THE FOLLOWING ADVICE APPLIES TO THIS PERMIT:

- A. If any condition in this permit requires that further documents are to be submitted and approved, you will need to submit the relevant documentation to development@brighton.tas.gov.au for assessment pursuant to s60 of the *Land Use Planning and Approvals Act 1993*.

Where building approval is also required, it is recommended that documentation is submitted well before submitting documentation for building approval to avoid unexpected delays.

- B. This permit does not imply that any other approval required under any other legislation or by-law has been granted.
- C. This permit does not take effect until all other approvals required for the use or development to which the permit relates have been granted.
- D. Please contact Council to understand the requirements for vegetation clearing.
- E. 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.
- F. No works on or affecting any Council road reservation are to be commenced until the Brighton Council has issued a WORKS IN ROAD RESERVATION PERMIT. Application for the issue of the necessary works permit is to be made to the Brighton Council Asset Services Department prior to the proposed date of commencement of any works.
- G. 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 Irons moved, Cr Owen seconded that the recommendation be adopted.

CARRIED

VOTING RECORD

<u>In favour</u>	<u>Against</u>
Cr Curran	Cr Murtagh
Cr Geard	Cr Whelan
Cr Gray	
Cr Irons	
Cr Owen	

Cr De La Torre rejoined the meeting at 6.07pm

6.2 Planning Scheme Amendment to correct minor errors in the South Brighton Specific Area Plan

Author: Director, Development Services (D Allingham)

File Reference	RZ 2024/02
Type of Application:	S40D(b) of <i>Land Use Planning and Approval Act 1993</i>
Applicant:	Brighton Council
Subject Site:	Various
Owner:	Various
Planning Instrument	Tasmanian Planning Scheme – Brighton
Proposal	To amend the Brighton Local Provisions Schedule ordinance in the BRI-S11.0 South Brighton Specific Area Plan as follows: a. Amend the wording of BRI-S11.7.1 Building and Works A1(c).

1. Executive Summary

The South Brighton Specific Area Plan (SAP) came into effect on 24 May 2024 after being approved by the Tasmanian Planning Commission (TPC). Since its approval, one minor error has been identified in the drafting.

The error relates to the wording in clause BRI-S11.7.1 Building and Works A1(c):

Building and works must:

.....

(c) be on a lot, excluding a balance lot, that has been created by an approved subdivision under this Specific Area Plan.

The current wording will unintentionally result in future development applications being discretionary on lots created by two subdivisions which were approved prior to the SAP coming into effect. These subdivisions are at 1 Dylan St (9 lots) and 33 Elderslie Road (109 lots).

A modification to the wording is proposed as follows:

Building and works must:

.....

(c) be on a lot, excluding a balance lot, that has been created after the date this Specific Area Plan first came into effect.

The modification refers only to lots “created” and removes the reference to a subdivision approval. A lot is created when a title is registered. As no titles have been registered for these two subdivisions prior to the effective date of the South Brighton SAP, future development applications on new lots can satisfy the Acceptable Solution, as intended.

No other modifications to the South Brighton SAP are proposed and the proposed draft amendment to the LPS satisfies the LPS Criteria.

Given the simplicity of the draft planning scheme amendment, the planning authority also requests that the Tasmanian Planning Commission exempt the proposed amendment from public exhibition in accordance with Section 40I(2)(b)(ii) of the *Land Use Planning and Approvals Act 1993* (the Act). It is submitted that the public interest will not be prejudiced by the draft amendment not being publicly exhibited.

It is recommended that the Planning Authority certify the draft amendment to the LPS.

2. Legislative and Policy Content

The purpose of this report is for the Planning Authority to consider whether to, of its own motion, prepare a draft amendment of an LPS as described in this report.

The amendment request is made under section 40D(b) of the *Land Use Planning and Approvals Act 1993* (the Act). The provisions of the Act establish the test of whether a planning scheme amendment is reasonable or not.

Section 40F(1) of the Act requires the Planning Authority to consider the LPS criteria, contained in s.34 of the Act, when approving or refusing an amendment.

The planning authority also requests that the Tasmanian Planning Commission exempt the proposed amendment from public exhibition in accordance with Section 40I(2)(b)(ii) of the Act as the amendment is to fix an error in the wording of a clause that would unintentionally make all development applications discretionary. It is submitted that the public interest will not be prejudiced by the draft amendment not being publicly exhibited.

This report details the reasons for the officer's recommendation. The Planning Authority is not bound to adopt the recommendations in this report. The Planning Authority can either: (1) adopt the recommendation; or (2), vary the recommendation by adding, modifying, or removing recommended reasons 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 2005*.

3. Risk and Implications

There is no risk to initiating the planning scheme amendment.

Not initiating the planning scheme amendment will create unnecessary discretions for a number of future development applications that relate to social and affordable housing.

4. Planning Scheme Amendment Proposal

It is proposed to modify clause BRI-S11.7.1 Building and Works A1(c) of the South Brighton SAP as follows:

Existing

Building and works must:

.....

(c) be on a lot, excluding a balance lot, that has been created by an approved subdivision under this Specific Area Plan.

Proposed:

Building and works must:

.....

(c) be on a lot, excluding a balance lot, that has been created after the date this Specific Area Plan first came into effect.

5. Rationale for the amendment

The South Brighton Specific Area Plan (SAP) came into effect on 24 May 2024 after being approved by the Tasmanian Planning Commission (TPC). Since its approval, a minor error has been identified in the drafting.

The error relates to the wording in clause BRI-S11.7.1 Building and Works A1(c):

Building and works must:

.....

(c) be on a lot, excluding a balance lot, that has been created by an approved subdivision under this Specific Area Plan.

The intent of clause BRI-S11.7.1 Building and Works is to ensure that buildings and works are located so that they don't preclude the efficient utilisation of the land as set out in the South Brighton Development Framework as per Figure BRI-S11.2 in the South Brighton SAP.

However, the current wording will unintentionally result in future development applications being discretionary on lots created by two subdivisions which were approved prior to the SAP coming into effect. The subdivisions are:

- Permit SA2015/00011) - 9-lot subdivision at 1 Dylan St that has been approved prior to the South Brighton SAP being approved.
- Permit SA2023/00010)- A 109-lot subdivision at 33 Elderslie that was submitted prior to the effective date of the South Brighton SAP being approved. As per s.51(3) of the Act, this subdivision was approved in accordance with the provisions of the planning scheme as in effect on the day on which the application became valid.

Both of these subdivisions are consistent with the Development Framework.

The current wording of clause BRI-S11.7.1 Building and Works A1(c) means that future development applications, on lots created under these two subdivision approvals, will not be able to meet the Acceptable Solution because they will not be *“on a lot, excluding a balance lot, that has been created by an approved subdivision under this Specific Area Plan.”*

This will mean that any development application for building and works on future lots created by these two subdivisions will need to be unintentionally assessed under the corresponding Performance Criteria and will likely lead to unnecessary delays and complications.

The proposed draft amendment refers only to lots “created” and removes the reference to a subdivision approval. A lot is created when a title is registered. As no titles have been registered for these two subdivisions prior to the effective date of the South Brighton SAP, future development applications on the land, once lots are created, will be able to satisfy the Acceptable Solution, as intended.

Site Location & Context

The draft planning scheme amendment relates to all the land in the South Brighton SAP area (see Figure 1).



Figure 1. Land subject to South Brighton Specific Area Plan highlighted in blue.

6. Planning Assessment

Section 40D (b) of the Act allows a planning authority to prepare a draft amendment of an LPS of its own motion.

Section 40F (1) of the Act requires that, where a planning authority has prepared a draft amendment of an LPS (under Section 40D(b), it must be satisfied the draft amendment of an LPS meets the LPS criteria under Section 34 of the Act.

The LPS criteria is provided under Section 34 of the Act, and Section 34(2) is addressed below where relevant to the proposed amendment.

It should be noted that the proposed draft amendment is to correct a minor error in the already effective South Brighton SAP which was determined under draft amendment application **AM-BRI-RZ 2023-05**. The strategic rationale for the South Brighton SAP as set out in **AM-BRI-RZ 2023-05** remains the same and is referred to in the assessment below. There are no strategic or policy changes proposed as part of this draft amendment.

Table 4.1 provides an assessment of the proposed amendment against the criteria.

Table 4-1 Assessment against S34

Criteria	Assessment
a) Contains all the provisions that the SPPs specify must be contained in an LPS	The proposed amendments accords with the structure and contents of the LPS.
b) Is in accordance with Section 32	Section 32 of the Act sets out the contents of the LPSs. The changes to the zoning and overlays are all provisions that apply to the LPS. The section 32(4) test for the use of a SAP is consistent with the rationale set out in AM-BRI-RZ 2023-05 .
c) Furthers the objectives set out in Schedule 1	The proposed amendments meet with the objectives in Schedule 1 as set out in Table 2 below.
d) Is consistent with each State policy	The proposed draft amendment is consistent with State Policy as it only addresses a minor error in the South Brighton SAP.
da) Satisfies the relevant criteria in relation to the TPPs	There is no current adopted TPPs

<p>e) As far as practical, is consistent with the regional land use strategy, if any, for the regional area in which is situated the land to which the relevant planning instrument relates</p>	<p>It was determined that the South Brighton SAP was consistent with the Southern Tasmanian regional land use strategy (STRLUS) under AM-BRI-RZ 2023-05. The South Brighton SAP continues to be consistent with STRLUS if the proposed modification is approved.</p>
<p>f) Has regard to the strategic plan, prepared under section 66 of the Local Government Act 1993, that applies in relation to the land to which the relevant planning instrument relates</p>	<p>The proposed draft planning scheme amendment is consistent with the Brighton Strategic Plan 2023-2033.</p>
<p>g) As far as practical, is consistent and coordinated with any LPSs that apply to the municipal areas adjacent to the municipal area to which the relevant planning instrument relates.</p>	<p>The site is not adjacent to another municipal area.</p>
<p>h) Has regard to the safety requirements set out in the standards prescribed under the Gas Safety Act 2019</p>	<p>The proposed amendment relates to land situated outside of the declared pipeline corridor, and, as such, will not affect the safety requirements of the Act.</p>

Objectives of LUPAA

Schedule 1 of LUPAA sets out the objectives to be furthered by the Act, provides an assessment of the proposed amendment against the objectives of the RMPS and the planning process established by the Act.

Table 2 – RMPS Objective Assessment

Objective	Response
Part 1	
<p>(a) to promote the sustainable development of natural and physical resources and the maintenance of ecological processes and genetic diversity</p>	<p>N/A</p>
<p>(b) to provide for the fair, orderly and sustainable use and development of air, land and water</p>	<p>The amendment is to modify an error in the planning scheme ordinance to make for a more fair and orderly development pathway.</p>
<p>(c) to encourage public involvement in resource management and planning</p>	<p><i>The proposed draft planning scheme amendment is to fix a minor error and will improve the South Brighton SAP to make for a more efficient approval pathway on</i></p>

	<i>two lots. There will be no public interest in this planning scheme amendment and it is requested that the TPC exempt the draft amendment from public exhibition.</i>
(d) to facilitate economic development in accordance with the objectives set out in paragraphs (a), (b) and (c); and	The proposed amendment will provide a more efficient approval pathway for development on two approved subdivisions which will facilitate housing development in time of a housing crisis.
(e) to promote the sharing of responsibility for resource management and planning between the different spheres of Government, the community and industry in the State	The proposed draft amendment is minor and does not require broader responsibility.
Part 2	
(a) to require sound strategic planning and coordinated action by State and local government	The proposed amendment is to resolve an error that will improve strategic planning outcomes.
(b) to establish a system of planning instruments to be the principal way of setting objectives, policies and controls for the use, development and protection of land.	The proposed amendment better aligns the South Brighton SAP with the planning system as it provides a more consistent approvals pathway.
(c) to ensure that the effects on the environment are considered and provide for explicit consideration of social and economic effects when decisions are made about the use and development of land.	Previously addressed.
(d) to require land use and development planning and policy to be easily integrated with environmental, social, economic, conservation and resource management policies at State, regional and municipal levels	Previously addressed.
(e) to provide for the consolidation of approvals for land use or development and related matters, and to co-ordinate planning approvals with related approvals	The draft amendment provides for a more streamlined approvals pathway.
(f) to promote the health and wellbeing of all Tasmanians and visitors to Tasmania by ensuring a pleasant, efficient and safe working, living and recreational environment for all	Previously addressed.

Tasmanians and visitors to Tasmania	
(g) to conserve those buildings, areas or other places which are of scientific, aesthetic, architectural or historical interest, or otherwise of special cultural value	There are no buildings or areas of interest within the subject site.
(h) to protect public infrastructure and other assets and enable the orderly provision and coordination of public utilities and other facilities for the benefit of the community	The draft amendment has no impact on the delivery of public infrastructure.
(i) to provide a planning framework which fully considers land capability.	Previously addressed.

7. Relevant Issues

7.1 Section 40I (2) Application

The planning authority also requests that the Tasmanian Planning Commission exempt the proposed amendment from public exhibition in accordance with Section 40I(2)(b)(ii) of the Act as the amendment is to fix an error in the wording of a clause that would unintentionally make all development applications discretionary. It is submitted that the public interest will not be prejudiced by the draft amendment not being publicly exhibited.

The proposed amendment will only impact 33 Elderslie Road and 1 Dylan St. Both owners have consented to the proposed amendment (see attachment B & C respectively)

8. Conclusion

The proposed draft planning scheme amendment is for the purpose of fixing a minor error in the drafting of clause BRI-S11.7.1 Building and Works A1(c) in the South Brighton SAP contained in the Brighton LPS.

The error has unintentional consequences for two subdivisions that were approved prior to the South Brighton SAP becoming effective. Neither subdivision impacts the efficient delivery of the Development Framework set out in the South Brighton SAP.

The proposed modification resolves the error and provides for a more streamlined approval pathway, which was always the intention of the clause.

The planning authority requests that the TPC dispense of the public exhibition requirements under s. 40I (2) of the Act. The public interest will not be prejudiced given the small modification. Both landowners that will be impacted by the amendment have provided consent to the amendment.

RECOMMENDATION:

- A. That in accordance with s40D(b) of the *Land Use Planning and Approvals Act 1993* that the planning authority, of its own motion, prepare a draft amendment of an LPS, to be known as draft amendment RZ 2024-02, by amending the planning scheme ordinance in relation to the South Brighton Specific Area Plan.
- B. That in accordance with Section 40F(2)(a) of the *Land Use Planning and Approvals Act 1993*, Council considers that draft amendment RZ 2024-02 satisfies the provisions of Section 34 of the *Land Use Planning and Approvals Act 1993*.
- C. That in accordance with Section 40F(3) of the *Land Use Planning and Approvals Act 1993*, the draft amendment RZ 2024-02 be certified by instrument in writing affixed with the common seal of the Council; and
- D. That in accordance with Section 40F(4) of the *Land Use Planning and Approvals Act 1993*, a certified copy of draft amendment RZ 2024-02 be given to the Tasmanian Planning Commission within seven (7) days.
- E. That in accordance with Section 40FA(1) of the *Land Use Planning and Approvals Act 1993*, a copy of the draft amendment RZ 2024-02 be provided to relevant agencies and those state service, or State authorities, that the planning authority considers may have an interest in the draft amendment.
- F. That in accordance with Section 40I(2)(b)(ii) of the *Land Use Planning and Approvals Act 1993*, Council is to request approval from the Commission to dispense with the public exhibition required by Section 40G(1) of the *Land Use Planning Act 1993*.
- G. That if consent to dispense with public exhibition pursuant to Section 40I(2)(b)(ii) of the *Land Use Planning and Approvals Act 1993* is not received from the Commission, that in accordance with Section 40G(1) of the *Land Use Planning and Approvals Act 1993*, draft amendment RZ 2024-02 be placed on public exhibition as soon as practicable.

DECISION:

Cr Whelan 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 Irons	
Cr Murtagh	
Cr Owen	
Cr Whelan	

Meeting closed: 6.10pm

Confirmed: _____
(Chair)

Date: 15 October 2024
