

Resource Planning and Development Commission

Land Use Planning and Approvals Act 1993 and Resource Planning and Development Commission Act 1997

Decision and Reasons for Decision

BRIGHTON PLANNING SCHEME 2000

Draft Amendment **02/09**
Permit No **SUB 09/06**

The applications are to:

- Amend the plans to rezone 12 Mayfield Crescent, Bridgewater (CT 6709/996) from Recreation to Residential; and
- Grant a permit for a 3 lot subdivision of 12 Mayfield Crescent, Bridgewater.

Delegation

At its meeting on 15 June 2009 and pursuant to Section 8 of the *Resource Planning and Development Commission Act 1997*, the Commission delegated to Mr Robin Nolan:

1. its powers and functions under sections 40, 41, 41A, 41B, 42(1), 42(2), 43G, 43H and 43I of the *Land Use Planning and Approvals Act 1993* in relation to Draft Amendment RZ 02/09 to the Brighton Planning Scheme 2000 and Permit Number SUB 09/06; and
2. in connection with the exercise of those powers in performance of those functions, its powers under Part 3 of the *Resource Planning and Development Commission Act 1997*.

Date and Place of Hearing: Thursday 23 July 2009
Brighton Council Chambers, Tivoli Road,
Gagebrook.

Representations Mr M Taylor and Mrs J Taylor

**Attendance at the Hearing
Council and Applicant:** Mr J Drybourgh represented the Brighton Council as
planning authority and applicant.

Representors: Mr M Taylor and Mrs J Taylor

Issues Raised in the representation

The following issues were raised in the representation.

- Loss of public land designated for recreational purposes.
- Future development facilitated by the draft amendment and permit will result in a loss of scenic amenity and devalue the representors' properties.

- Concerns regarding the potential for consolidation of the proposed lots which may allow for a multiple dwelling development on the site.
- Reduction of habitat for native fauna.

Council's response to the representations

Council's report considered the representation in the context of the draft amendment and permit. Council's recommendation was that there is no valid reason for changing the original decision to rezone the subject land from Recreation to Residential.

In relation to the permit, Council recommended the inclusion of an additional condition preventing the consolidation or adherence of the proposed lots.

Commission's assessment of the draft amendment

The draft amendment

The draft amendment is to rezone 12 Mayfield Crescent, Bridgewater, from Recreation to Residential.

Site and Locality

The site is located on the north western banks of the Jordon River overlooking where it meets the Derwent River at Green Point. From the site there are extensive views to the south incorporating Mt Wellington and the eastern and western shores of the Derwent River. The site comprises a grassed 1729m² irregular shaped block. The site's western boundary fronts Mayfield Crescent. Adjacent land to the north is zoned Residential and predominantly developed with single detached dwellings. The site abuts Crown land on its eastern and southern boundaries which are zoned Recreation. The adjacent Crown land forms a network of public open space in the form of a linear reserve along the foreshore containing a gravelled surface bicycle/walking track.

Relevant provisions of the scheme

The scheme objectives for recreation and leisure resources at clause 2.7 are stated as:

- (a) *To promote appropriate sporting and recreation facilities for a changing population base.*
- (b) *To maximise community access to recreation facilities.*
- (c) *To maintain, conserve and manage areas of recreation land use.*
- (d) *Open space linkages within the urban areas and along the foreshore and watercourse areas will encourage their longer-term development and usage for recreation activity.*
- (e) *Development of prominent ridgelines and highly visible elevated areas together with locations adjacent important watercourses and vegetation habitat are those that are discouraged in the Scheme.*

The purpose of the Recreation zone at clause 6.9.1 is stated as:

- (a) *To recognise areas for public recreation and open space.*
- (b) *To protect and conserve areas of significance where appropriate.*

The permitted uses in the zone, as listed in the table of use or development at table 6.9.1, are community services (public park or playground), natural and cultural values management and utilities (reticulated services). Discretionary uses are sports and

recreation, tourist accommodation, tourist operation, permitted uses not meeting the condition and undefined use or development.

The scheme objectives for residential resources are provided in clause 2.2 and stated as:

- (a) *To encourage and facilitate opportunities for diversity in residential type, choice and affordability commensurate with Brighton's quality of lifestyle and environment.*
- (b) *To promote Brighton as an independent suburb within the regional metropolitan context.*
- (c) *To establish residential growth within existing settlement areas serviced with infrastructure.*
- (d) *To ensure that the future patterns of residential development protect and enhance the natural and man-made assets of the Municipality.*
- (e) *To encourage infill within the existing townships and suburbs as a consolidation of services and to provide definable communities with strong interconnectivity.*
- (f) *To discourage the loss of existing housing stock by conversion to or redevelopment for non-residential uses.*
- (g) *Concentration of new residential development remains within the green field sites of Tivoli Green and Compton and for continued growth of Old Beach and Brighton – Pontville. Other areas will concentrate on the infill of existing developed areas within the service capabilities of the local area.*

The purpose of the Residential zone at clause 6.2.1 is stated as:

- a) *To ensure sufficient land is available to meet anticipated demand for residential use in the next 5 years.*
- b) *To protect residential amenity by reducing the potential for land use conflicts between residential uses and other uses.*
- c) *To allow for a range of housing types within the zone, subject to meeting performance guidelines, so as to satisfy different housing needs within the community.*
- d) *To restrict non-residential uses to those that are compatible with maintaining residential amenity and servicing local needs.*
- e) *A broad range of residential options should be accommodated subject to the maintenance of satisfactory levels of amenity for new and existing development.*

Permitted use and development as listed in the table of use or development at clause 6.2.3 are community services (public park or play ground), natural and cultural values management, residential (if not more than 2 dwellings) and utilities (reticulated services). Discretionary uses include residential (where not permitted) and tourist accommodation.

The status of subdivision in the Residential zone is as follows.

Subdivision

6.2.5 *Subdivision is a Permitted development in accordance with Section 58 of the Act, where it complies with the following:-*

- (a) *to consolidate existing lots, provided such subdivision complies with the zone purpose;*

- (b) *to adjust boundaries between existing lots, provided such subdivision complies with the zone purpose, only changes the shared boundaries between lots and results in each of the new lots having substantially the same shape, size and orientation as each of the original lots;*
 - (c) *to provide for public services and utilities; or*
 - (a) *to provide for public open space.*
- 6.2.6 *Strata division is a Permitted development in accordance with Section 58 of the Act, where carried out as part of a previously approved use or development.*
- 6.2.7 *Subdivision or strata division that does not comply with Clauses 6.2.5 or 6.2.6 is a Discretionary development in accordance with Section 57 of the Act.*

Subdivision standards for the Residential zone at clause 6.2.8 include:

- minimum lot size of 400m²;
- average lot size of 550m² where three or more lots are created;
- minimum frontage of 3.6 metres; and
- building envelope with minimum dimensions of 10m x 15m clear of any easements, the front boundary setback or any other title restrictions.

Consideration of issues raised by the Representors

Loss of public land designated for recreational purposes.

The representors objected to the loss of the site as public land designated for recreational purposes. Concerns were also expressed regarding the cumulative impact associated with the incremental loss of public land over time.

Council's submission was that they have undertaken a strategic assessment of public open space that is owned and maintained by Council and determined that the site is surplus to the recreational needs of the community.

Council's strategic approach to recreation requirements is supported. In consideration of the scheme and zone objectives for recreation use they do not readily support retention of the site for recreation purposes. Whilst the site fronts the Crown land riparian area to the Jordan River that is zoned recreation, the site is not part of the open space network. With Residential zoning of the site, there remains an extensive frontage of Crown land to Mayfield Crescent that is in the Recreation zone.

The location and characteristics of the site are consistent with the scheme and zone objectives for residential use.

Loss of scenic amenity and devaluation of the representors' properties.

The representors raised objections to the rezoning on the basis that it facilitates residential development and that would result in the loss of scenic amenity which will detrimentally impact the value of their properties. Submissions made by the representors were that the site was set aside for the use and development of a church. The church failed to eventuate and the land was left vacant, providing an uninterrupted southerly outlook currently

experienced by the representors which they claim adds value to their properties at 6 and 8 Mayfield Crescent.

The zoning history of the site is not entirely clear. It was zoned Residential but notated as a church site in the 1977 planning scheme. The recreation zoning in the current 2000 planning scheme has not been explained but could have been because of Council ownership.

The Commission accepts that future development of the subject land facilitated by the draft amendment may contribute to a loss of scenic amenity for surrounding properties. However, building in the Residential zone must be sited within the building envelope as depicted in Figure 6.2.1 of the planning scheme. The topography of the site, that slopes downhill from the existing dwellings, will allow development that does not overshadow existing residential sites. The development standards for the zone (eg 5 metre front setback, 3 metre side and rear setback and 8 metre height limit), should provide sufficient vertical visual separation between the existing and any future dwelling sited within the building envelope. Applications involving development outside the building envelope are considered discretionary thereby subject to statutory public notification and third party appeal rights. The combination of these development standards should provide suitable amenity protection for surrounding properties from residential development on the site.

Consolidation of proposed lots allowing for multiple dwelling development on the site.
The representation contended that there was nothing to prevent the lots from being consolidated and developed for high density residential use.

Council submitted that land in Bridgewater was experiencing development pressure and that this was evident by the number of multiple dwellings currently being constructed. Council also concurred that the representors' concern on the matter was justified considering subdivision for the purpose of consolidating existing lots is permitted in the Residential zone.

The development standards in the Residential zone state that the maximum site coverage permitted for a house is 40% and a consolidated larger lot is more likely to attract a multiple dwelling development rather than the smaller lots restricting future development to single detached dwellings. However the draft amendment demonstrates consistency with the planning scheme objectives that encourage urban infill and consolidation. The rezoning facilitates residential use and development of the site in accordance with the decision guidelines and standards for the Residential zone which require the protection of residential amenity of neighbours.

Reduction of habitat for native fauna.

The representors contended that future use and development facilitated by the rezoning will adversely impact on native fauna.

The site has been substantially modified from any natural state and presents as a grassed area providing limited habitat. The extensive areas of Crown land adjacent to the site would adequately accommodate any displaced native fauna caused by future use and development associated with the draft amendment.

Commission's assessment of the s.43A permit

The s.43A permit is for a three lot subdivision (2 lots and balance lot) at 12 Mayfield Crescent, Bridgewater. The application fails to meet the basic requirements for an application.

The planning scheme sets out the requirements for an application including:

Clause 3.2 specifies the information that must accompany an application.

Clause 3.2.4 allows some variation on the requirements where Council is satisfied certain information is not relevant to the assessment of a proposal.

Clause 3.4 identifies the matters that Council must take into consideration in the assessment of an application.

The reports to Council on the initiation of the draft amendment and assessment of the permit, and report on the representation at the close of public notification showed little regard to complying with the requirements for an application or Council's assessment as specified in the planning scheme. In particular there was nothing to satisfy clause 3.2.2 or that 3.2.4 had been exercised to allow certain information to be omitted. To demonstrate this point there was nothing to constitute a plan of subdivision that would allow reasonable assessment against the requirements of the planning scheme or the *Local Government (Building and Miscellaneous Provisions) Act 1993*.

Application of State Policies

State Coastal Policy 1996

The draft amendment provides for residential development based on an existing town. The site is adjacent to a Crown land reserve network along the foreshore that provides adequate protection for coastal features, aquatic environments and provides separation from coastal hazards. The draft amendment is assessed as being prepared in accordance with the Policy.

State Policy on Water Quality Management 1997

The site is within the sewerage area and stormwater can be appropriately managed. The draft amendment is assessed as being prepared in accordance with the Policy.

NEPMs

The national Environmental Protection Measures are not applicable to the draft amendment.

Schedule 1 Objectives

Part 1 objectives

- a) *to promote the sustainable development of natural and physical resources and the maintenance of ecological processes and genetic diversity;*

The site has been significantly modified from its original riparian habitat. The draft amendment is assessed as not a threat to ecological processes or genetic diversity.

- (b) *to provide for the fair, orderly and sustainable use and development of air, land and water;*

