

5.2 AMENDMENT APPLICATION:

PLANNING SCHEME AMENDMENT & PLANNING PERMIT APPLICATION - SECTION 40K REPORT

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| File Reference: | 2023 / 0004 - RZ |
| Type of Report | Section 40(K) of <i>Land Use Planning and Approvals Act 1993</i> |
| Applicant: | Brighton Council |
| Owner: | Various |
| Location: | <ul style="list-style-type: none">• 38, 40, 42, 44, 44A, 46, 48, 48A, 48B and 48D, 50, 52, 54, 56, 58, 60, 60A, 62, 62A – E, 64, 66, 68, 70, and 72 Racecourse Road, Brighton• 10 - 15, 14A,14B, 16, 16A,16B, 18A - F, 19 – 26, 26A, 20A, 20B, 28, 30 Burrows Avenue, Brighton• 2, 6, 8, 8A, 10, 14, 16, and 18 Brooke Street, Brighton• 3, 5, 15, 17, 19, 21, 23, and 25 Morrison Street, Brighton• 40, 42, 44, 52, 54, 60, 64, 70, 72, and 74 Elderslie Road, Brighton• Subdivision road (C/T 150382/2) (cnr Racecourse and Cartwright Street) |
| Zoning: | General Residential |
| Planning Instrument: | Tasmanian Planning Scheme - Brighton |
| Date Advertised: | 22 nd March 2023 to 24 th April 2023 |
| Decision Required: | 29 th May 2023 |
| Attachments | Attachment A – TasWater Submission to Planning Authority Notice |

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| | Attachment B- Representation (by way of informal petition) |
| Representations: | 47 including petition and TasWater Submission to Planning Authority Notice |
| Recommendations: | <ul style="list-style-type: none"> • Advise the Tasmanian Planning Commission that 47 representations were received following the exhibition of draft amendment RZ 2023/004 to the Tasmanian Planning Scheme – Brighton • Advise the Tasmanian Planning Commission that no modification to amendment RZ 2023/004 is considered necessary to the initial S report |

1. Executive Summary

The report considers the exhibition period regarding a planning scheme amendment application to insert the Burrows Avenue Specific Area Plan (SAP) over:

- 38, 40, 42, 44, 44A, 46, 48, 48A, 48B and 48D, 50, 52, 54, 56, 58, 60, 60A, 62, 62A – E, 64, 66, 68, 70, and 72 Racecourse Road, Brighton
- 10 - 15, 14A, 14B, 16, 16A, 16B, 18A - F, 19 – 26, 26A20A, 20B, 28, 30 Burrows Avenue, Brighton
- 2, 6, 8, 8A, 10, 14, 16, and 18 Brooke Street, Brighton
- 3, 5, 15, 17, 19, 21, 23, and 25 Morrison Street, Brighton
- 40, 42, 44, 52, 54, 60, 64, 70, 72, and 74 Elderslie Road, Brighton

Pursuant to Section 40D(b) of the *Land Use Planning and Approvals Act 1993* ('the Act') Council, at its planning authority meeting on 14th March 2023, agreed to initiate a draft planning scheme amendment to insert the Burrows Avenue Specific Area Plan in the Local Provisions Schedule of the Tasmanian Planning Scheme – Brighton. At that time Brighton Council certified the draft amendment as meeting the LPS criteria (s34) under the Act.

The amendment application was then exhibited for a period of twenty-eight (28) days (s40H) between 22nd March 2023 to 24th April 2023, which was extended to accommodate Easter public holidays.

A petition containing 58 signatures was received at the Council offices on Monday 24th April 2023.

A Submission to Planning Authority Notice was received from TasWater.

This report is required by section 40K of the Act to be submitted to the Commission in relation to the representations received during advertising.

It is considered that the representations to the draft amendment does not raise matters that warrant its modification.

2. Legislative requirements

In accordance with s.40H the planning authority must exhibit the draft amendment for twenty eight (28) days.

Following exhibition, the planning authority must consider any representations and provide a report to the Commission. The report must include [section 40K]:

- (a) a copy of each representation, including any agreed to be accepted after the end of the exhibition period;
 - (b) the planning authority's views on the merit of each representation;
 - (c) a recommendation as to whether the draft amendment should be modified to take into account the representation and the effect on the LPS as a whole in implementing the recommendation; and
 - (d) a statement as to whether the planning authority is satisfied that the draft amendment meets the LPS criteria; and
- € any other recommendations in relation to the draft amendment.

The planning authority has 35 days from the close of the exhibition period to forward its report to the Commission.

3. The Representations and Response

TasWater provide a Submission to Planning Authority Notice (Attachment A). That Notice advised that “TasWater does not object and has no formal comments for the Tasmanian Planning Commission in relation to this matter and does not require to be notified of nor attend any subsequent hearings.”

A petition was received on 24th April 2023. The petition was split into two parts, with Part 1 seeking that Council address residential infrastructure in the SAP area through its capital works program and Part 2 responding to the representation. It appears that 11 signatures (one of which was repeated) related to Part 1 only and are not relevant to this assessment. The remaining 46 signatures are considered applicable to Part 2. The petition statement for Part 2 is replicated below. The whole of the document is provided as Attachment A.

In the interest of natural justice, council officers determined to accept the signatories to the petition as a representation under s40J, given the document did not comply with the

requirements of s. 57(2) of the *Local Government Act* 1993 ("LGA"). Section 57(2) of LGA outlines all the information a petition must include, being:

(2) A person lodging a petition is to ensure that the petition contains –

- (a) a clear and concise statement identifying the subject matter and the action requested; and*
- (b) in the case of a paper petition, a heading on each page indicating the subject matter; and*
- (c) in the case of a paper petition, a brief statement on each page of the subject matter and the action requested; and*
- (d) a statement specifying the number of signatories; and*
- (e) at the end of the petition –*
 - (i) in the case of a paper petition, the full name, address and signature of the person lodging the petition; and*
 - (ii) in the case of an electronic petition, the full name and address of the person lodging the petition and a statement by that person certifying that the statement of the subject matter and the action requested, as set out at the beginning of the petition, has not been changed.*

Representation 1 -

Part 2

We the undersigned also wish to be heard as representors against the proposed draft Planning Scheme amendment known as the burrows Avenue Specific Area Plan (RZ 2023-004).

We wish to make the following points against the amendment: -

- This amendment is a direct result of Council not providing adequate, safe and effective infrastructure in our part of the community over many decades.*
- The amendment seeks to treat our properties differently to any other similar zoned property in Tasmanian because of the Council's failure to provide basic infrastructure in the past.*
- The amendment will not satisfy its proposed purpose as will be a significant deterrent to multiple dwelling developments and will subsequently be a limitation to improved infill growth.*
- The amendment will significantly decrease the property value of developable land as it will force developers to provide infrastructure which should have been provided by the Council.*
- The amendment will do nothing to provide much needed infrastructure in our area.*

Section 40K Response

This amendment is a direct result of Council not providing adequate, safe and effective infrastructure in our part of the community over many decades.

The existing subdivision pattern is more consistent with what is usually seen in low density or rural living zones that do not require the same level of urban infrastructure. Given that the majority of the land continues to be developed at reasonably low densities it has not been a priority for Council to provide this infrastructure. The whole premise of this planning scheme amendment is for the infrastructure to be improved in the area as the demand for infrastructure increases with the increased development.

The amendment seeks to treat our properties differently to any other similar zoned property in Tasmanian because of the Council's failure to provide basic infrastructure in the past.

Part of the justification for the proposed amendment is that the existing subdivision pattern is unique compared to similar zoned properties in Tasmania.

The existing layout in the SAP area does not encourage subdivision given the narrow frontages and deep lots. This has resulted in an increase in multiple dwelling developments, reduced green spaces and landscaping on private land, increased hard surfaces for parking and turning areas, lack of public infrastructure and a need for additional public open space.

If the land were favourable to subdivision, approvals under LUPAA would allow Councils to require infrastructure upgrades such as kerb and channel, footpaths and stormwater infrastructure via permit conditions, where the subdivision will increase demand and/or a need for such infrastructure. TASCAT recently affirmed this right to condition for these matters in *Beauty Point Trading Pty Ltd v West Tamar Council* [2023] TASCAT 67.

When approving subdivision applications, Council also has the ability under the *Local Government (Building and Miscellaneous Provisions) Act 1993* to require a developer to either provide a portion of land to be subdivided as public open space or, alternatively, payment in lieu of such a requirement.

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| | <p>However, it remains unclear whether there is a mechanism within the Tasmanian Planning Scheme – Brighton or the <i>Local Government (Building and Miscellaneous Provisions) Act 1993</i> to require upgrades or payment in lieu for permit applications regarding multiple dwellings when a ‘permitted use’ in a zone.</p> <p>As mentioned above, the developers of the land in the SAP are possibly able to develop multiple dwellings, with no financial contribution required, and little consideration of each development’s impact on the wider community, including a requirement for Public Open Space contributions, which can be used to mitigate the amenity and streetscape impacts of the repetitive and comparable infill development currently being undertaken in the SAP area.</p> |
| <i>The amendment will significantly decrease the property value of developable land as it will force developers to provide infrastructure which should have been provided by the Council.</i> | Property values are not a planning consideration, however it would be expected that a development that provides the infrastructure required under the SAP would benefit financially from providing a serviced and more attractive dwelling. |
| <i>The amendment will do nothing to provide much needed infrastructure in our area.</i> | The proposed amendment will require any new development to provide the necessary infrastructure that will help meet the infrastructure needs in the area. It will also provide the certainty and impetus for council to consider upgrades earlier than may have been originally planned. |

3. Conclusion

The representations received do not raise matters that warrant the modification of the proposed Burrows Avenue Specific Area Plan.

It is recommended that the Planning Authority agrees to forward this report and the representations to the Tasmanian Planning Commission for determination.

4. Options:

- a) To adopt the recommendation; or
- b) To adopt an alternative recommendation satisfying the provisions of section 40K of the Act, with a full statement of reasons as determined by Council.

5. Recommendation

It is recommended that Council resolves to:

- a) Pursuant to Section 40K(1) of the *Land Use Planning and Approvals Act 1993*, provide this report and the relevant attachments regarding draft amendment RZ 2023/ 004 to the Tasmanian Planning Commission.
- b) Pursuant to section 40K(1) of the *Land Use Planning and Approvals Act 1993*, advise the Tasmania Planning Commission that two (2) representations were received during the exhibition of draft amendment RZ 2023/ 004 that related to the draft amendment.
- c) Pursuant to section 40K (2)(a) of the *Land Use Planning and Approvals Act 1993*, provide to the Tasmanian Planning Commission a copy of the representations that were received during the advertising of draft amendment RZ 2023/ 004.
- d) Pursuant to section 40K (2)(c) of the *Land Use Planning and Approvals Act 1993*, advise the Tasmanian Planning Commission that the representations received during advertising do not warrant modifications to draft amendment RZ 2023/ 004 as detailed in this report.
- e) Pursuant to section 40(K)(2)(d) of the *Land Use Planning and Approvals Act 1993* advise the Tasmanian Planning Commission that the planning authority is satisfied that the draft amendment of the LPS meets the LPS Criteria.

DECISION: