



*The City with Spirit*

## NOTICE OF MEETING

Notice is hereby given that a **Planning Authority Committee** meeting of the Devonport City Council will be held in the Aberdeen Room, Level 2, parnaple centre, 137 Rooke Street, Devonport on Monday 11 April 2022, commencing at 5:15 PM.

**The meeting will be open to the public and live streamed from 5:15 PM.**

## QUALIFIED PERSONS

In accordance with Section 65 of the *Local Government Act 1993*, I confirm that the reports in this agenda contain advice, information and recommendations given by a person who has the qualifications or experience necessary to give such advice, information or recommendation.

Matthew Atkins  
GENERAL MANAGER

**06 04 2022**

**Agenda for a Planning Authority Committee meeting of the Devonport City Council  
held on Monday 11 April 2022, in the Aberdeen Room, Level 2, paranaple centre,  
137 Rooke Street, Devonport at 5:15 PM**

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**ATTENDEES**

		<b>Apology</b>
Chair	Cr A Rockliff (Mayor)	
	Cr J Alexiou	
	Cr P Hollister	
	Cr S Milbourne	
	Cr L Murphy	
	Cr L Perry	

**ACKNOWLEDGEMENT OF COUNTRY**

Council acknowledges and pays respect to the Tasmanian Aboriginal community as the traditional and original owners and continuing custodians of this land.

**IN ATTENDANCE**

All persons in attendance are advised that it is Council policy to record Council Meetings, in accordance with Council's Digital Recording Policy. The audio recording of this meeting will be made available to the public on Council's website for a minimum period of six months. The meeting is also being live streamed via YouTube.

**1 APOLOGIES****2 DECLARATIONS OF INTEREST**

### **3 DELEGATED APPROVALS**

#### **3.1 PLANNING APPLICATIONS APPROVED UNDER DELEGATED AUTHORITY**

Author: **Jennifer Broomhall, Planning Administration Officer**

Endorser: **Kylie Lunson, Development Services Manager**

#### **RECOMMENDATION**

That the list of delegated approvals be received.

Planning applications approved under delegated authority 25 October 2021 – 3 April 2022.

#### **ATTACHMENTS**

1. Delegated Approvals [**3.1.1** - 4 pages]

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## 4 DEVELOPMENT REPORTS

### 4.1 PA2021.0166 - 49 WENVOE STREET DEVONPORT - RESIDENTIAL (SINGLE DWELLING)

Author: **Alex Mountney, Land Use Planning Coordinator**

Endorser: **Kylie Lunson, Development Services Manager**

#### RECOMMENDATION

That the Planning Authority, pursuant to the provisions of the *Tasmanian Planning Scheme - Devonport* and Section 57 of the *Land Use Planning and Approvals Act 1993*, approve application PA2021.0166 for Residential (single dwelling) subject to the following conditions:

1. The Use and Development is to proceed generally in accordance with the endorsed plans referenced as Proposed Residence - Project No. P18084 - Issue Date 19/10/21 - Revision A by n + b. A copy of which is attached and forming part of this permit.
2. The new driveway works are to be constructed generally in accordance with the Tasmanian Standard Drawing TSD-R09 V3.
3. A permit to work within the road reserve must be sought and granted prior to any works being undertaken within the road reserve.
4. The developer is to provide a suitable stormwater connection to the Council's reticulated stormwater system on Formby Road and is to demonstrate that the connection can service the proposed development. The proposed onsite stormwater disposal system will not be supported by Council.

Note: The following is provided for information purposes.

The development is to comply with the requirements of the current National Construction Code. The developer is to obtain the necessary building & plumbing approvals & provide the required notifications in accordance with the *Building Act 2016* prior to commencing building or plumbing work.

The amenity of the area must not be detrimentally affected by the use or development through the:

- a) Transport of materials, goods or commodities to or from the land; or the
- b) Emission of noise, dust, odour, artificial light, vibration, fumes, smoke, vapour, steam, soot, ash, wastewater or any waste products.

No burning of any waste materials (including cleared vegetation) is to be undertaken on site. Any waste material is to be removed and disposed of at a licensed refuse waste disposal facility.

In regard to conditions 2-4 the applicant should contact Council's Infrastructure & Works Department – Ph 6424 0511 with any enquiries.

Enquiries regarding other conditions can be directed to Council's Development Services Department – Ph 6424 0511.

## RELEVANCE TO COUNCIL'S PLANS & POLICIES

Council's Strategic Plan 2009-2030:

- Strategy 2.1.1 Apply and review the Planning Scheme as required, to ensure it delivers local community character and appropriate land use
- Strategy 2.1.2 Provide consistent and responsive development assessment and compliance processes

## SUMMARY

The purpose of this report is to enable Council's Planning Authority Committee to make a decision regarding PA2021.0166.

## BACKGROUND

Planning Instrument:	<i>Tasmanian Planning Scheme – Devonport 2020</i>
Address:	49 Wenvoe Street, Devonport
Applicant:	Nicholas Brandsema
Owner:	Anthony Smith & Sandra Edwards
Proposal:	Residential (single dwelling)
Zoning:	General Residential
Decision Due:	11/04/2022

## SITE DESCRIPTION

The site is identified by certificate of title 18398/1 with the property address of 49 Wenvoe Street, Devonport. The site is rectangular in shape with an area of 696m<sup>2</sup>. The property is undeveloped and is quite steep, falling from west to east with a gradient of approximately 20%. The site is surrounded by an established dwelling to the north and vacant land to the east and south. Figure 1 is a copy of the property's Title, Figure 2 is an aerial image of the site and Figure 3 is a photo of the site.

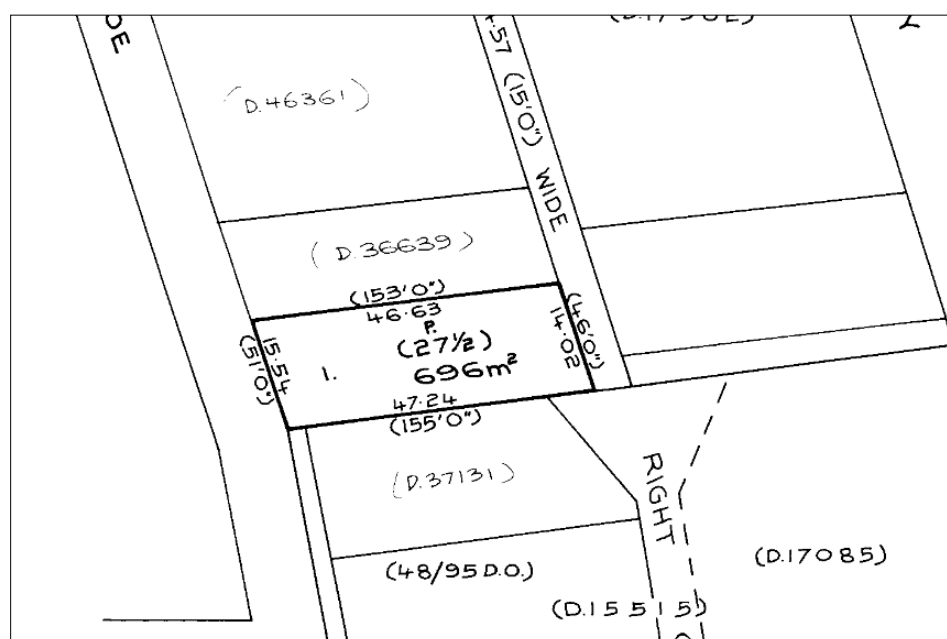


Figure 1 – Title Plan CT 189398/1 (The List, 1982)



**Figure 2 - Aerial image of the site (DCC, 2021)**



**Figure 3 – Photo of site looking west towards Wenvoe Street (DCC, 2022)**

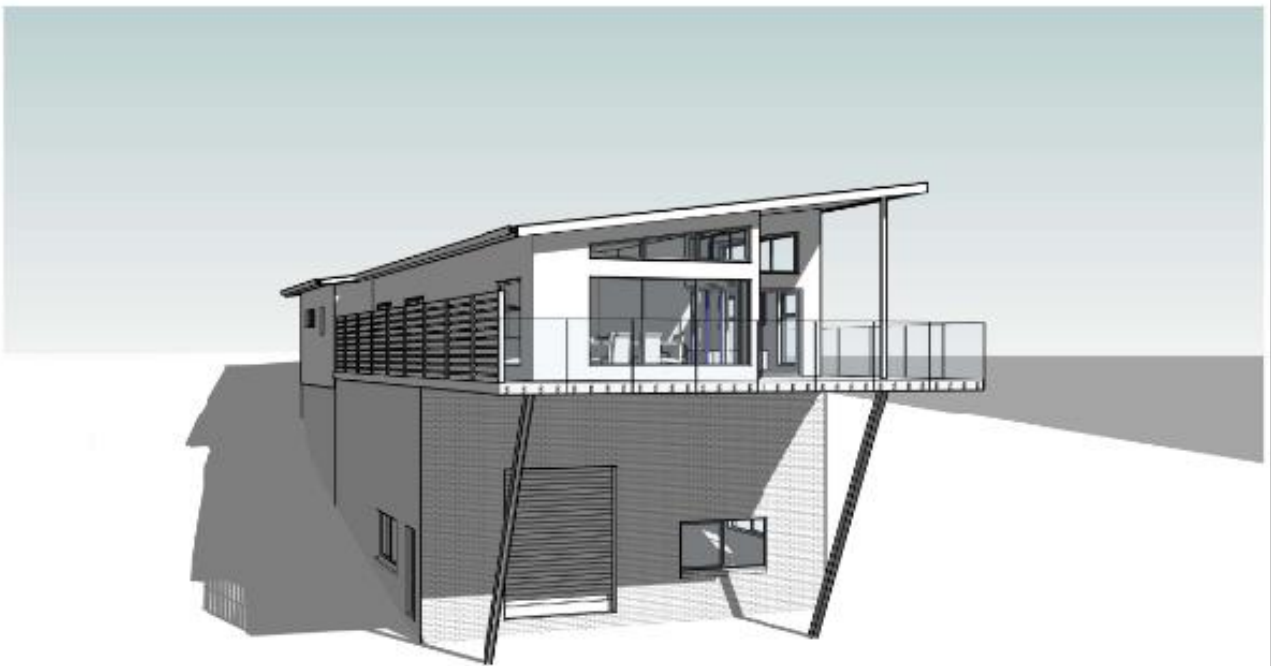






### **NORTH/EAST ELEVATION**

Scale



### **SOUTH/EAST ELEVATION**

Scale

**Figure 6 – Visual renders (n + b, 2021)**



**Figure 7 – Visual renders (n + b, 2021)**

### **PLANNING ISSUES**

The land is zoned General Residential under the *Tasmanian Planning Scheme - Devonport 2020*.

The purpose of the zone is to provide for residential use or development that accommodates a range of dwelling types where full infrastructure services are available or can be provided, to provide for the efficient utilisation of available social, transport and other service infrastructure, to provide for non-residential use that primarily serves the local

community and does not cause an unreasonable loss of amenity through scale, intensity, noise, activity outside of business hours, traffic generation and movement, or other off site impacts and to provide for visitor accommodation that is compatible with residential character.

A single dwelling falls under the use class Residential and does not require a planning permit in the General Residential Zone provided the proposal complies with all relevant development standards and codes contained within the planning scheme. In instances where the applicable standards cannot be met the proposal must be assessed against the corresponding performance criteria to determine if a permit pathway can be achieved.

In this case, the dwelling cannot satisfy the setbacks and building envelope standard prescribed within the General Residential Zone and the heritage standards under the Local Historic Heritage Code. The relevant standards where the performance criteria are invoked are reproduced below along with comments.

## General Residential Zone

### 8.4.2 Setbacks and building envelope for all dwellings

Objective:	<p>The siting and scale of dwellings:</p> <ul style="list-style-type: none"> <li>(a) provides reasonably consistent separation between dwellings and their frontage within a street;</li> <li>(b) provides consistency in the apparent scale, bulk, massing and proportion of dwellings;</li> <li>(c) provides separation between dwellings on adjoining properties to allow reasonable opportunity for daylight and sunlight to enter habitable rooms and private open space; and</li> <li>(d) provides reasonable access to sunlight for existing solar energy installations.</li> </ul>
<p><b>Acceptable Solutions</b></p> <p><b>A3</b></p> <p>A dwelling, excluding outbuildings with a building height of not more than 2.4m and protrusions that extend not more than 0.9m horizontally beyond the building envelope, must:</p> <ul style="list-style-type: none"> <li>(a) be contained within a building envelope (refer to Figures 8.1, 8.2 and 8.3) determined by:             <ul style="list-style-type: none"> <li>(i) a distance equal to the frontage setback or, for an internal lot, a distance of 4.5m from the rear boundary of a property with an adjoining frontage; and</li> <li>(ii) projecting a line at an angle of 45 degrees from the horizontal at a height of 3m above existing ground level at the side and rear boundaries to a building height of not more than 8.5m above existing ground level; and</li> </ul> </li> <li>(b) only have a setback of less than 1.5m from a side or rear boundary if the dwelling:             <ul style="list-style-type: none"> <li>(i) does not extend beyond an existing building built on or within 0.2m of the boundary of the adjoining property; or</li> <li>(ii) does not exceed a total length of 9m or one third the length of the side boundary (whichever is the lesser).</li> </ul> </li> </ul>	<p><b>Performance Criteria</b></p> <p><b>P3</b></p> <p>The siting and scale of a dwelling must:</p> <ul style="list-style-type: none"> <li>(a) not cause an unreasonable loss of amenity to adjoining properties, having regard to:             <ul style="list-style-type: none"> <li>(i) reduction in sunlight to a habitable room (other than a bedroom) of a dwelling on an adjoining property;</li> <li>(ii) overshadowing the private open space of a dwelling on an adjoining property;</li> <li>(iii) overshadowing of an adjoining vacant property; or</li> <li>(iv) visual impacts caused by the apparent scale, bulk or proportions of the dwelling when viewed from an adjoining property;</li> </ul> </li> <li>(b) provide separation between dwellings on adjoining properties that is consistent with that existing on established properties in the area; and</li> <li>(c) not cause an unreasonable reduction in sunlight to an existing solar energy installation on:             <ul style="list-style-type: none"> <li>(i) an adjoining property; or</li> <li>(ii) another dwelling on the same site.</li> </ul> </li> </ul>

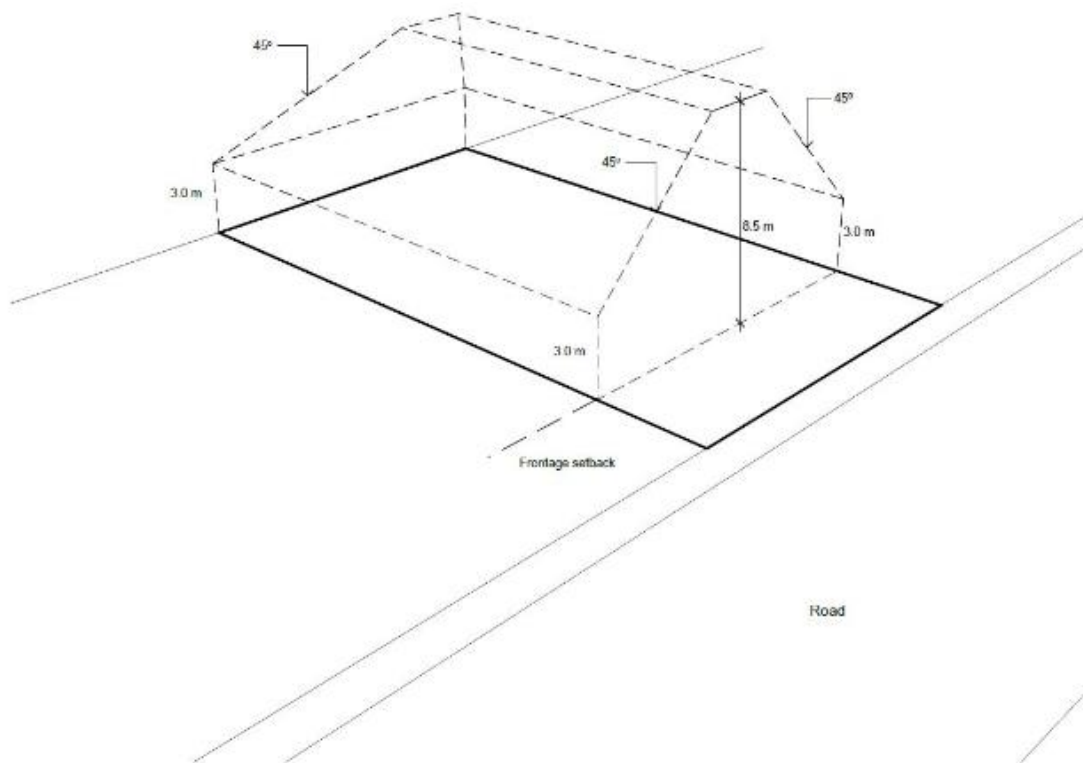


Figure 8.1 Building envelope as required by clause 8.4.2 A3(a) and clause 8.5.1 A2(a)

### Reason why the acceptable solutions cannot be satisfied:

The proposed dwelling cannot satisfy 8.4.2 A3 (a) as the eastern half of the dwelling falls outside the acceptable building envelope as highlighted in Figures 8 and 9. In addition, the dwelling cannot meet 8.4.2 A3 (b) as the southern side setback is 1m and the wall length is greater than 9m.

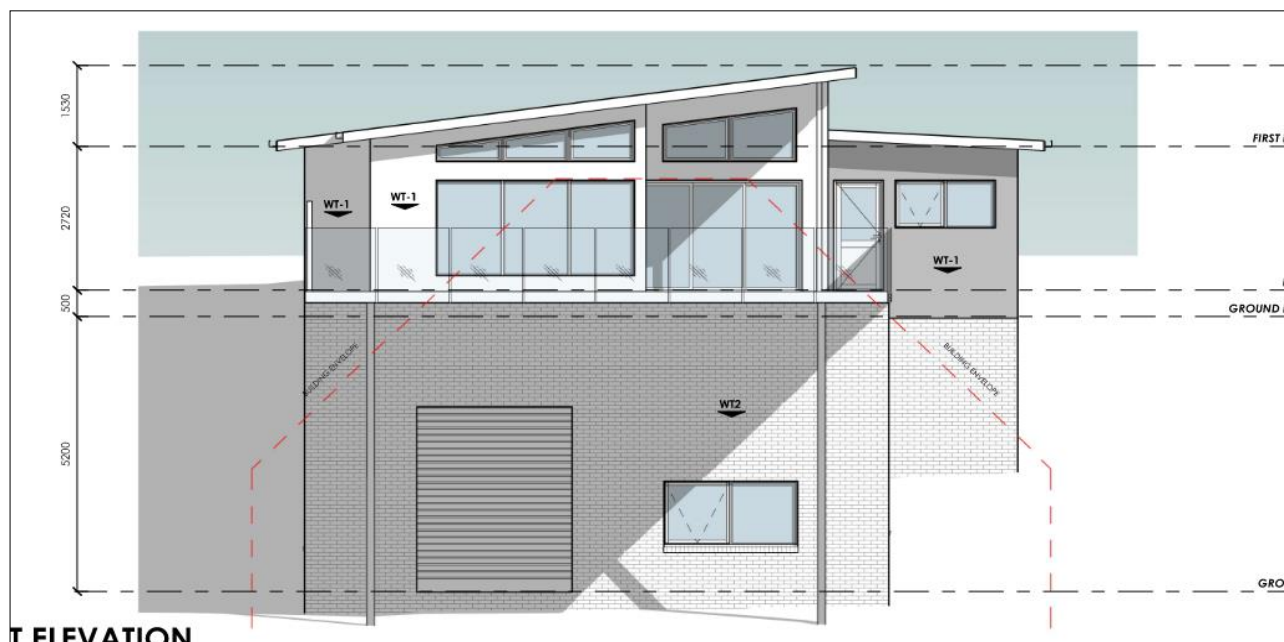


Figure 8 – East elevation with acceptable building envelope shown in red (n + b, 2021)

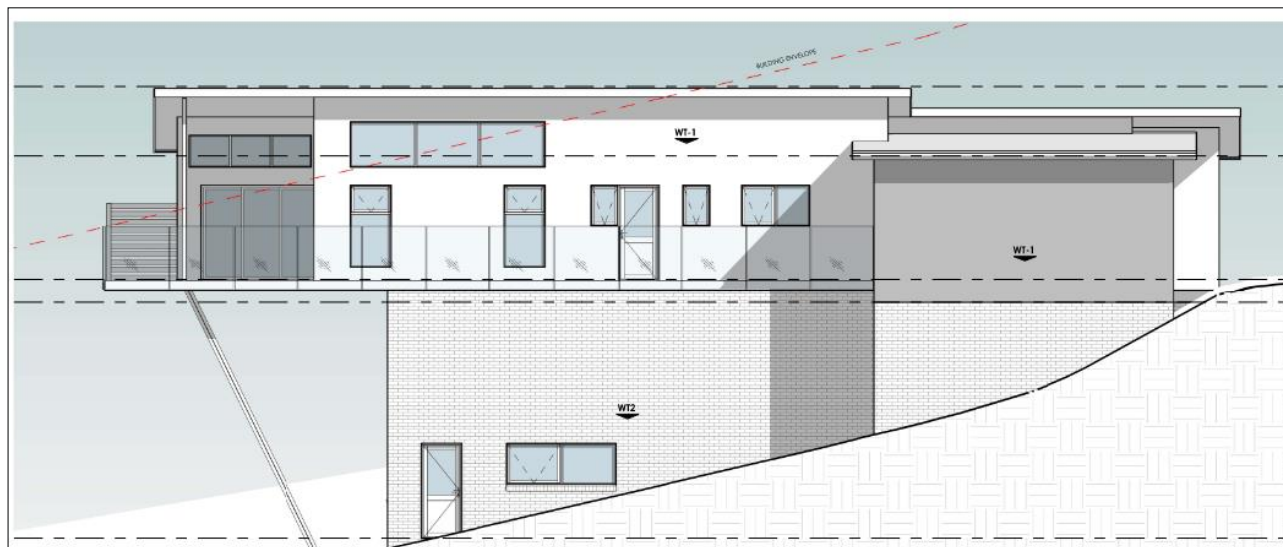
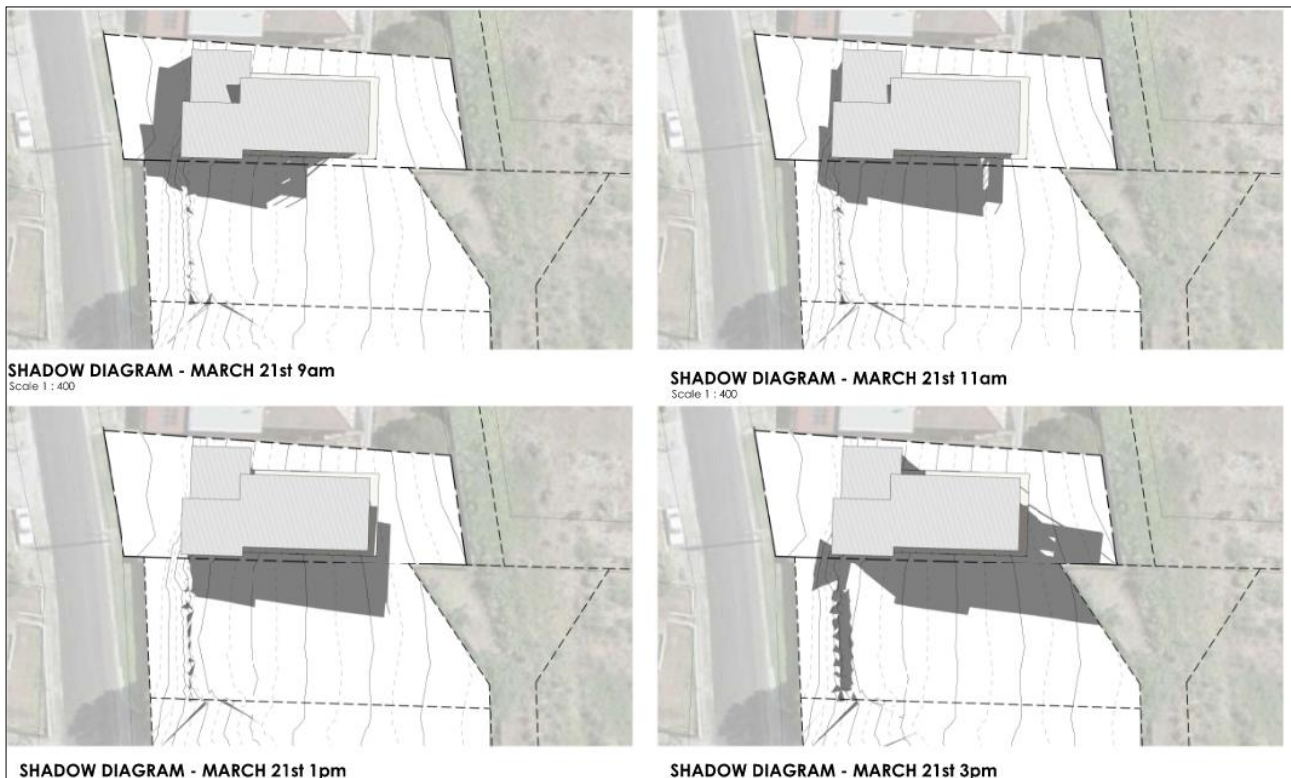


Figure 9 – North elevation with acceptable building envelope shown in red (n + b, 2021)

### Performance Criteria Evaluation:

The dwelling's height, bulk, and scale will have a considerable overshadowing impact on the adjoining vacant lot to the south – 51 Wenvoe Street. The applicant has provided shadowing diagrams of the proposal reproduced below in Figures 10 and 11. The shadowing diagrams have been done for March and June. For reference, June is the worst-case scenario for shadows as the sun is at its lowest point and daylight hours are reduced in contrast to the summer months.





**Figure 10 – Shadowing diagrams in March (n + b, 2021)**



**Figure 11 – Shadowing diagrams in June (n + b, 2021)**

Without a split-level design, it is difficult to achieve compliance with the acceptable building envelope due to the site's topography. The developers have provided the following rationale to support the envelope intrusion:

## PLANNING APPLICATION FOR 49 WENVOE STREET DEVONPORT

We refer to your reply, in regard to our application for our planning application, of 49 Wenvoe Street Devonport.

Our house has been designed to have access onto Wenvoe Street. Due to the topographic constraints the property we have lowered the house as much as possible, while still being able have vehicle access from Wenvoe Street. We believe it is important to have 2 vehicle parking spaces available (as required under the planning scheme) to avoid congestion on Wenvoe Street.

It has been designed, to have a single level living area, open plan, wider doorways, walk in showers, basically anything, to future proof our home as we age, also to take advantage of the Mersey River, Bass strait views and surrounds. We have kept the design of the house, within the perimeter boundary and screening requirements.

We however acknowledge, we are outside the envelope, due to the slope of the block. Many of the homes along Wenvoe Street are consistent with our proposed design, elevated, fair and reasonable and all the living areas are on the North/Eastern Side, of most of these homes. Many of the homes, would also be above the envelope.

Presently at 47 Wenvoe Street, situates, a 3 storey house, which is directly on our boundary. This house already shadows our blocks 49 and 51. This house would be above the envelope. Please find attached shadow diagrams, showing the affect this dwelling, is having on both blocks. This is before any future dwelling is built.

The shadow diagrams are two-dimensional and show the extent of overshadowing on the ground surface. The proposed house will extend over the ground surface, which will mitigate the overshadowing caused by 47 Wenvoe Street. Similarly, it is expected that, taking account of the predominant housing form on the lower side of Wenvoe Street (i.e. floor levels extending over the slope), it is highly likely that any future dwelling at No. 51 is capable of being designed to mitigate the overshadowing from the proposed dwelling whilst also mitigating its impact on No. 53.

Our intention is to downsize, from our 1225sm block, to something with less maintenance. By combining 49 and 51 we will not be achieving this.

Our blocks are of prime Real Estate, close to town with views of the Mersey River, Bass Straight and surrounds. By consolidating 2 blocks into 1, we would be losing considerable prime Real Estate.

We have no intention of selling 51 Wenvoe street, within the foreseeable future. Should council require written confirmation of this, we are prepared to have this documented.

We would appreciate it, if you would reconsider our original application.

Anthony and Sandra Smith  
53 Wenvoe Street  
Devonport Tas 7310  
0455501144/ 0438448882

**Figure 12 – Supporting letter from the developers (A & S Smith, 2022)**



In response to P3 (a)(iii), no plans have been approved or sought for the vacant lot. This lot will likely be developed for a residential purpose in the future. However, it is not the current intention of the landowners who also own 49 (application site) and 53 Wenvoe Street. It is thought that future development on the vacant lot will be able to consider the dwelling's location (subject to approval) to achieve a suitable outcome. For example, future development will likely emphasise constructing living areas towards the rear of the site to achieve greater sunlight compared to building higher up the lot.

Regarding P3 (a)(iv), the visual impacts of the dwelling when viewed from adjoining properties will be prominent, however tolerable. The adjoining property to the north will not be detrimentally impacted as their living areas and windows face north and east towards the Mersey River. The southern side of the dwelling will incorporate a deck that has been screened to mitigate privacy concerns for overlooking if the vacant lot is developed.

The proposed dwelling is consistent with the built form of the surrounding development. The dwelling will have a comparable scale to that of the dwelling to the immediate north - 47 Wenvoe Street. Council's building records indicate this dwelling has a height of approximately 9m - 9.5m at its highest point above natural ground level. The proposed dwelling will have a height around 10m at its highest point. The boundary setbacks of the proposal are greater than that of this adjoining dwelling and therefore appropriate building separation is satisfied.

This proposal will impact no existing solar installations and therefore P3 (c) is satisfied.

Clause 5.6.4 of the planning scheme states:

*"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."*

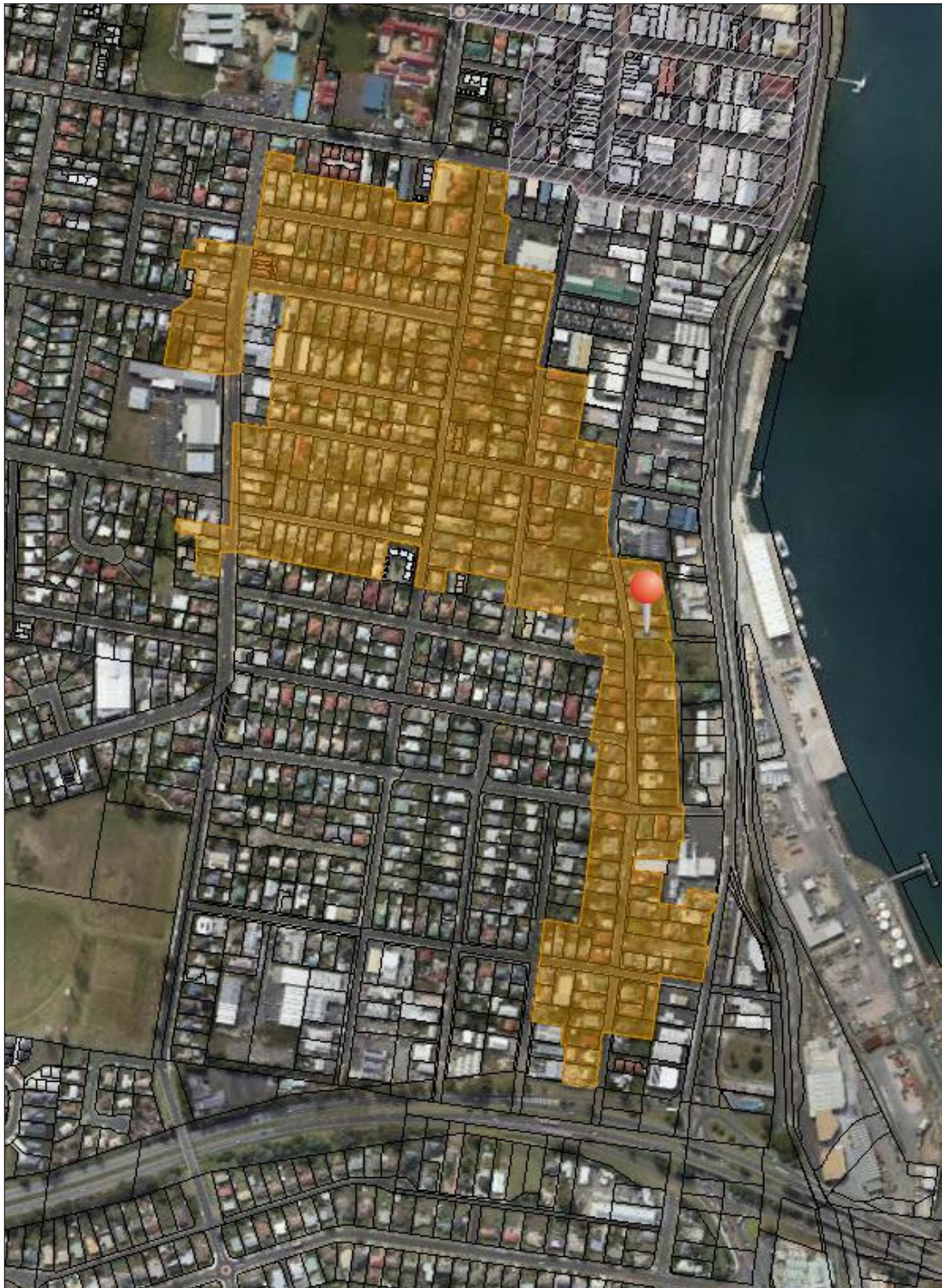
The objectives for the development standard have been examined and compliance can be achieved. The dwelling will have a setback from Wenvoe Street that satisfies the acceptable solutions and is positioned no closer to the frontage than the existing residential development. The bulk and scale of the dwelling is substantial. However due to the slope of the site and the scale of existing dwelling to the north, consistency with surrounding development is achieved. The proposal will not interfere with natural light to habitable rooms or private open spaces of existing residential development. The vacant lot to the south will be burdened, however considered design will allow satisfactory development in the future.

Overall, the application has merit for approval against the performance criteria and consideration of the development standard objective.

All other General Residential zone standards have been assessed as satisfying the acceptable solutions and no further comment has been provided.

### C6.0 Local Historic Heritage Code

The property is mapped within the Wenvoe and Hiller Street Local Heritage Precinct – Reference Number DEV-C6.2.2. A map of this heritage precinct is shown as Figure 13.



**Figure 13 – Map of the Wenvoe and Hiller Street Heritage Precinct with the property location identified by the pin marker (The List, 2021)**

The planning scheme provides the following summary of the Wenvoe and Hiller Street Heritage Precinct.

*“This precinct is the major surviving heritage housing area of Devonport and is of very high heritage significance. Wenvoe Street is the main street through the area. The street rises to the west from Steele Street through an industrial area with the first residential buildings near Turton Street. As the street steeply rises a group of very fine houses are located on the slopes with good views and aspect to the north-east. At the southern end of the street are a group of houses and cottages extending into Elizabeth Street, a number of which were relocated from Zeehan. The street contains a wide range of buildings of value and a number of major properties.*

*Macfie Street has also been impacted by industrial development at its northern end. As the street rises steeply heading west to Turton Street a group of two storey timber buildings are located on the high side with an early house at No. 27. The hill is topped by No. 44, a substantial two storey brick house. It is distinctive, as it is the most imposing building in the area with extensive views to the river and Bass Strait. Another significant house is at No. 47 again taking advantage of the extensive views.*

*Hiller Street is located on the ridge and is comparatively level. However, houses on the eastern side are set down with the western houses set slightly above street level. The block between Steele and Turton Streets contains the finest group of buildings in the precinct with examples of various styles and fine decorative treatments. This area forms the core of the Wenvoe and Hiller Street Local Heritage Precinct.*

*The streets oriented east-west generally have smaller scale buildings. Harold Street was a late subdivision from the lands around Pebble Lodge and contains a high consistency of buildings, a number of which are now altered and have non-characteristic fencing styles. While the street is wider than the other cross streets, the buildings are modest and representative of the wider development of early Devonport.*

*Archer Street contains several unusual and fine buildings from several periods and a good collection of buildings of local heritage interest. It is a narrower street that typifies the pattern of early subdivision and development of the ridge area.*

*Turton Street has a very high consistency of local heritage interest buildings that make up the basic housing stock of the area.*

*Henry Street is an example of a more modest subdivision with small lot sizes and good consistent housing stock.*

*Smith Street is the least coherent street containing a small number of contributory buildings. The other houses are however good examples of later development and provide a good setting for the more significant buildings.*

*The key characteristics of this Local Heritage Precinct are:*

- (a) its consistent building form and scale;*
- (b) the contrasts between larger properties in the north-south streets and the more regular rows of smaller houses in the east-west cross streets;*
- (c) the regular relationship of most houses to the street frontage; and*

*(d) the predominant late 19th century and early 20th century style of the buildings."*

Development standard C6.7.3 of the Code is relevant to this application and is reproduced below.

**C6.7.3 Buildings and works, excluding demolition**

<b>Objective:</b>	That development within a local heritage precinct or a local historic landscape precinct is sympathetic to the character of that particular precinct.
<b>Acceptable Solutions</b>	<b>Performance Criteria</b>
<p><b>A1</b></p> <p>Within a local heritage precinct or local historic landscape precinct, building and works, excluding demolition, must:</p> <ul style="list-style-type: none"> <li>(a) not be on a local heritage place;</li> <li>(b) not be visible from any road or public open space; and</li> <li>(c) not involve a value, feature or characteristic specifically part of a local heritage precinct or local historic landscape precinct listed in the relevant Local Provisions Schedule.</li> </ul>	<p><b>P1.1</b></p> <p>Within a local heritage precinct, design and siting of buildings and works, excluding demolition, must be compatible with the local heritage precinct, except if a local heritage place of an architectural style different from that characterising the precinct, having regard to:</p> <ul style="list-style-type: none"> <li>(a) the streetscape or townscape values identified in the local historic heritage significance of the local heritage precinct, as identified in the relevant Local Provisions Schedule;</li> <li>(b) the character and appearance of the surrounding area;</li> <li>(c) the height and bulk of other buildings in the surrounding area;</li> <li>(d) the setbacks of other buildings in the surrounding area; and</li> <li>(e) any relevant design criteria or conservation policies for the local heritage precinct, as identified in the relevant Local Provisions Schedule.</li> </ul>

**Reason why the acceptable solutions cannot be satisfied:**

The proposed dwelling cannot satisfy C6.7.3 A1 (b) as it will be visible from Wenvoe Street and Formby Road.

**Performance Criteria Evaluation:**

The house will have a modern design and is not immediately adjoined by development with identified heritage value. The dwelling will have a double garage facing Wenvoe Street which is compatible with other dwelling development in the area. The dwelling will have a single storey profile when viewed from Wenvoe Street and not interrupt the existing streetscape. The proposal has building setbacks which are compatible with existing residential development in the precinct. Lastly, there are no design criteria or conservation policies prescribed under the Local Historic Heritage Code and the proposal can be positively supported against the performance criteria.

### C15.0 Landslip Hazard Code

The property is mapped within a low landslip hazard area. No further analysis is required under this Code as the development is exempt per C15.4 (d) which states:

*"development on land within a low or medium landslip hazard band that requires authorisation under the Building Act 2016."*

For reference, the dwelling will require authorisation under the *Building Act 2016*

### C16.0 Safeguarding of Airports Code

The site is mapped within the Airport obstacle limitation area. The limitation area for the property is 110m AHD. As the development is well below this threshold it is exempt under this Code.

## **COMMUNITY ENGAGEMENT**

On 28/02/2022, Council received an application for the above development. Under Section 57(3) of the *Land Use Planning and Approvals Act 1993*, the Planning Authority must give notice of an application for a permit. As prescribed at Section 9(1) of the *Land Use Planning and Approvals Regulations 2014*, the Planning Authority fulfilled this notification requirement by:

- (a) Advertising the application in *The Advocate* newspaper on 9/03/2022;
- (b) Making a copy of the proposal available in Council Offices from the 9/03/2022;
- (c) Notifying adjoining property owners by mail on 8/03/2022; and
- (d) Erecting a Site Notice for display from the 08/03/2022.

The period for representations to be received by Council closed on 23/03/2022.

## **REPRESENTATIONS**

One representation was received within the prescribed 14 day public scrutiny period required by the *Land Use Planning and Approvals Act 1993*.

The representation was received from the landowners of 47 Wenvoe Street. This property adjoins the site to the immediate north and contains an existing residence. Table 1 below summarises the concerns made in the representation along with comment.

A full copy of the representation is appended as **Attachment 2**.

Concerns raised in representation	Officer comment
The home design is not consistent with the area. Most homes within the locality were built prior to the 1960s.	It is agreed that most homes within this locality were constructed in the early-mid 1900s as it is one of the municipality's early settlement areas. The application has been assessed against the applicable design requirements of the Local Historic Heritage Code. Without any design criteria or conservation outcomes, the planning authority is limited in its ability to request design changes. The dwelling has been assessed as meeting the General Residential development standards and the dwelling is of a similar scale to that of



	the existing dwelling at 47 Wenvoe Street.
Disproportionate design. No effort has been made to limit the height of the top floor which protrudes directly from street level toward the east. Most other homes in Wenvoe Street are stepped with the topography which provides for normal design proportions.	The Wenvoe Street frontage will not be impacted by the dwelling proposal. A split-level design could achieve fewer impacts, however the design has been assessed as consistent with the established dwelling at 47 Wenvoe Street.
The current design will have substantial impact on our privacy, the planned location and intentional elevation of the living room and balcony will have clear views into our existing dining/living areas plus looking directly down into what is currently a very private back yard.	Upon site inspection, it was noted that over half of the dwelling at 47 Wenvoe Street is constructed along the shared side boundary between the properties. There are limited windows along this dwelling's elevation with the only unfrosted window located on the south-east corner of the top level. The proposal will have a similar footprint to this dwelling, albeit slightly elevated. The proposed deck and living areas are setback a minimum of 3m to the northern side boundary as per the acceptable privacy standards prescribed in development standard 8.4.6 – <i>Privacy for all dwellings</i> .
Impact on property value to our home.	Not relevant to the planning determination.
Land stability/subsidence concerns, noting large excavation has occurred east of the property along Formby Road.	As mentioned earlier in the report, the site is mapped within a low landslip hazard band. The application is exempt under the Landslip Hazard Code as authorisation is required for the work under the <i>Building Act 2016</i> . The planning scheme contains no consideration for land subsidence and there are no identified restrictions on the subject lot preventing development. Engineering certification will be required as part of the applicable building and plumbing permit process.

**Table 1 – Summary of representation concerns and officer comment**

Overall, the representation is recommended to be noted by the planning authority, but it does not raise any issues that warrant alteration or subsequent conditions to the proposal.

### **FINANCIAL IMPLICATIONS**

No financial implications are predicted, unless an appeal is made against the Council's decision to the Tasmanian Civil and Administrative Tribunal. In such an instance, legal counsel will likely be required to represent Council. The opportunity for such an appeal exists as a result of the Council determining to either approve or refuse the permit application.

**RISK IMPLICATIONS**

In its capacity as a planning authority under the *Land Use Planning and Approvals Act 1993* (LUPAA), Council is required to make a determination on this application for a discretionary planning permit. Due diligence has been exercised in the preparation of this report and there are no predicted risks associated with a determination of this application.

**CONCLUSION**

The proposal has been assessed against the requirements of the planning scheme. All relevant standards can be satisfied whether acceptable solutions or performance criteria. Approval with conditions is recommended.

**ATTACHMENTS**

1. Application - PA2021.0166 - 49 Wenvoe Street [**4.1.1** - 38 pages]
2. Representation - PA2021.0166 - 49 Wenvoe Street [**4.1.2** - 3 pages]

## 4.2 PA2021.0193 - 547 FORTH SIDE ROAD FORTH SIDE - RECYCLING AND WASTE DISPOSAL (EXPANSION TO AREA OF A LEVEL 2 ACTIVITY)

Author: **Emma Pieniak, Planning Officer**

Endorser: **Kylie Lunson, Development Services Manager**

### RECOMMENDATION

That the Planning Authority, pursuant to the provisions of the *Tasmanian Planning Scheme – Devonport 2020* and Section 57 of the *Land Use Planning and Approvals Act 1993*, approve application PA2021.0193 and grant a Permit to use and develop land identified as 547 Forthside Road, Forthside for the following purposes:

- Recycling and Waste Disposal (expansion to area of a Level 2 Activity)

Subject to the following conditions:

#### PART A

1. The Use and Development is to proceed generally in accordance with the submitted plans referenced as:
  - a. Forthside Inert Landfill – Environmental Effects Report by Treloar Transport - Version 1, dated 2/7/20; and
  - b. Landslide Risk Assessment by Tasman Geotechnics Pty Ltd, Ref. TG21159/1 - 01report, dated 29/10/21.

Copies of which are attached and endorsed as documents forming part of this Planning Permit.
2. The person/s responsible for the activity must ensure adherence to the recommendations as detailed in Part 6 of Tasman Geotechnics report, Ref. TG21159/1.
3. The person/s responsible for the activity must comply with the conditions contained in Schedule 2 of Permit Part B, which the Board of the Environment Protection Authority (EPA) requires the planning authority to include in the permit, pursuant to section 25(5) of the *Environmental Management and Pollution Control Act 1994*.

#### PART B

4. Environment Protection Authority *Permit Conditions – Environmental No. 10044*, a copy of which is attached and endorsed forming part of this Planning Permit. (Copy of EPA permit conditions is appended to this report as **Attachment 3**).

Note: The following is provided for information purposes.

Any development is to comply with the requirements of the current National Construction Code. The developer is to obtain the necessary building and plumbing approvals and provide the required notifications in accordance with the *Building Act 2016* prior to commencing building or plumbing work.

The person/s responsible for the activity should be aware of obligations under the *Threatened Species Protection Act 1995* with regards to both vegetation and animals, such as Wedge Tail Eagles.



Enquiries regarding Permit PART B must be directed to the Environmental Protection Authority.

Enquiries regarding other conditions can be directed to Council's Development Services Department – Ph 6424 0511.

### RELEVANCE TO COUNCIL'S PLANS & POLICIES

Council's Strategic Plan 2009-2030:

- Strategy 2.1.1 Apply and review the Planning Scheme as required, to ensure it delivers local community character and appropriate land use
- Strategy 2.1.2 Provide consistent and responsive development assessment and compliance processes

### SUMMARY

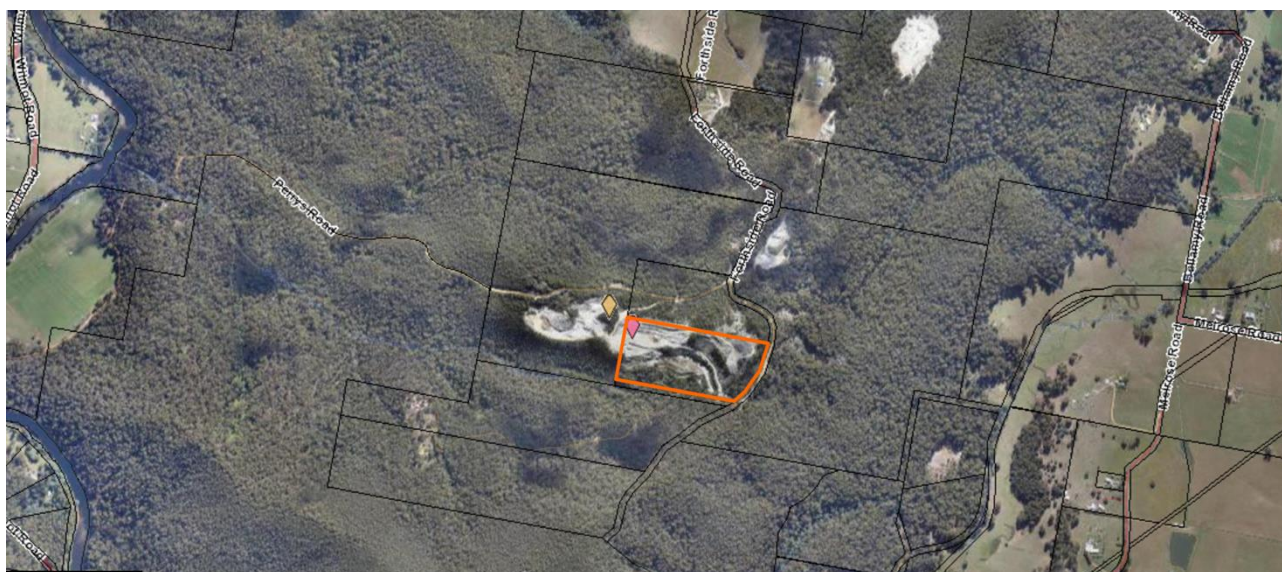
The purpose of this report is to enable Council's Planning Authority Committee to make a decision regarding planning application PA2021.0193.

### BACKGROUND

Planning Instrument:	<i>Tasmanian Planning Scheme – Devonport 2020</i>
Address:	547 Forthside Road, Forthside
Applicant:	Kentish Construction & Engineering Co Pty Ltd
Owner:	Mr JR Treloar & Mrs AI Treloar
Proposal:	Recycling and Waste Disposal (expansion to area of a Level 2 activity)
Existing Use:	Recycling and Waste Disposal
Zoning:	Rural Zone
Decision Due:	21/04/2022

### SITE DESCRIPTION

The 8.152ha. subject site (CT242032/1) forms part of a larger site area which both quarry and inert landfill activities are approved. The site is within an undulating and heavily vegetated area known as Porcupine Hill with grazing activities and limited residential development nearby. The Forth River is situated west of the site, with two tributary creeks feeding into the river. The subject site and surrounding area are illustrated in Figure 1.

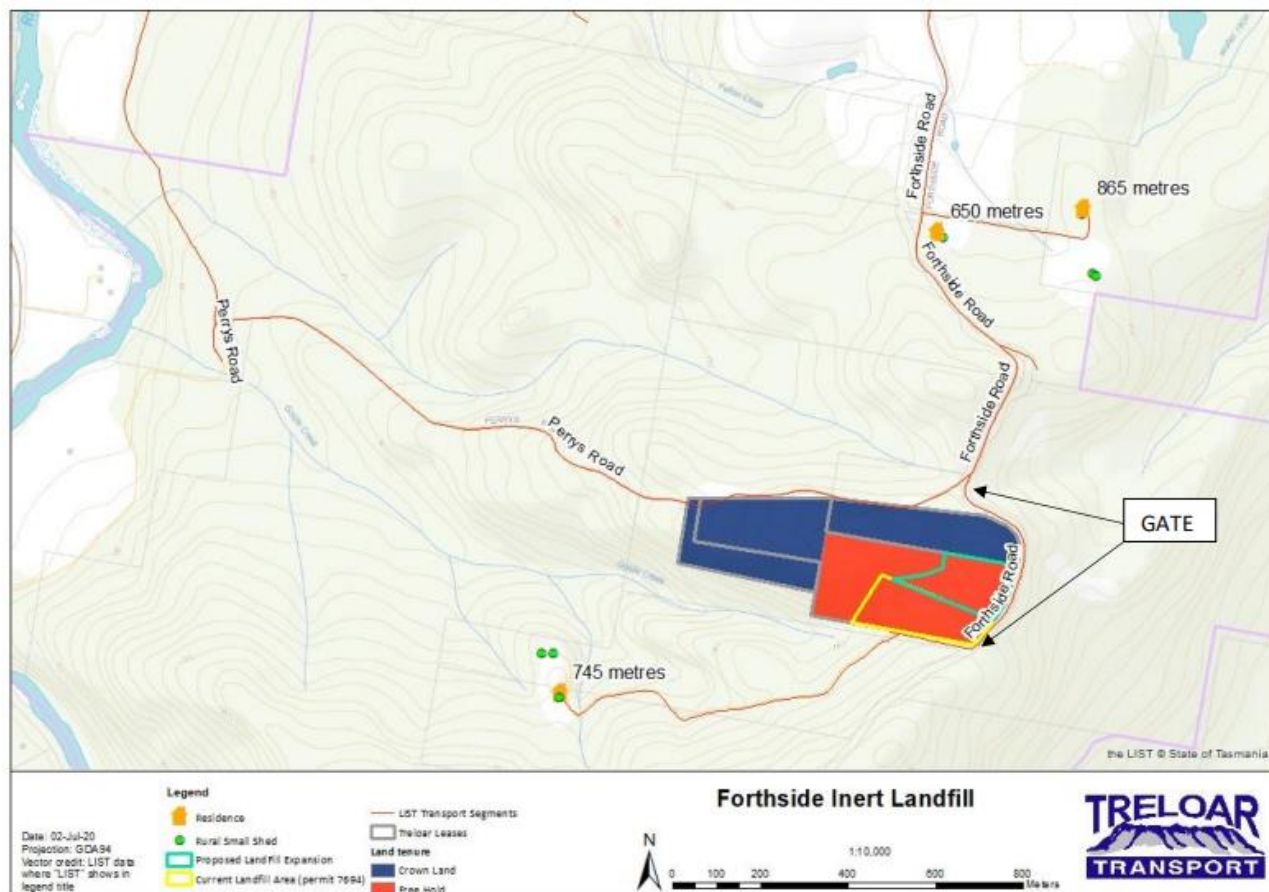


**Figure 1 – Aerial view (LISTmap)**

## APPLICATION DETAILS

The applicant is seeking approval for an expansion to the laydown area of an existing inert landfill activity associated with EPN7694 (PA2010.0206). The proposal will not increase the amount of landfill accepted, however it will increase the area of operations by approximately 50%. The operation's processes mostly soil, rock, earth, clay; concrete, bricks; timber; and steel.

The full application is appended to this report as **Attachment 1**. The area for inert landfill is illustrated in Figure 2.



## PLANNING ISSUES

The land is zoned Rural under the *Tasmanian Planning Scheme – Devonport, 2020*.

The purpose of the Rural Zone is:

- 20.1.1 To provide for a range of use or development in a rural location:
  - (a) where agricultural use is limited or marginal due to topographical, environmental or other site or regional characteristics;
  - (b) that requires a rural location for operational reasons;
  - (c) is compatible with agricultural use if occurring on agricultural land;
  - (d) minimises adverse impacts on surrounding uses.
- 20.1.2 To minimise conversion of agricultural land for non-agricultural use.
- 20.1.3 To ensure that use or development is of a scale and intensity that is appropriate for a rural location and does not compromise the function of surrounding settlements.

A Waste and Recycling Disposal use is discretionary within the Rural zone. The proposed use requires discretion under Part 20.3 of the zone. Further discretion is invoked under the Landslip Hazard Code and is discussed further in this report.

### 20.3.1 Discretionary use

<b>Objective:</b> That the location, scale and intensity of a use listed as Discretionary: <ul style="list-style-type: none"> <li>(a) is required for operational reasons;</li> <li>(b) does not unreasonably confine or restrain the operation of uses on adjoining properties;</li> <li>(c) is compatible with agricultural use and sited to minimise conversion of agricultural land; and</li> <li>(d) is appropriate for a rural location and does not compromise the function of surrounding settlements.</li> </ul>	
Acceptable Solutions	Performance Criteria
<b>A1</b> A use listed as Discretionary, excluding Residential, is for an alteration or extension to an existing use, if: <ul style="list-style-type: none"> <li>(a) the gross floor area does not increase by more than 30% from that existing at the effective date; and</li> <li>(b) the development area does not increase by more than 30% from that existing at the effective date.</li> </ul>	<b>P1</b> A use listed as Discretionary, excluding Residential, must require a rural location for operational reasons, having regard to: <ul style="list-style-type: none"> <li>(a) the nature, scale and intensity of the use;</li> <li>(b) the importance or significance of the proposed use for the local community;</li> <li>(c) whether the use supports an existing agricultural use;</li> <li>(d) whether the use requires close proximity to infrastructure or natural resources; and</li> <li>(e) whether the use requires separation from other uses to minimise impacts.</li> </ul>
<b>A2</b> No acceptable solutions.	<b>P2</b> A use listed as Discretionary must not confine or restrain existing use on adjoining properties, having regard to: <ul style="list-style-type: none"> <li>(a) the location of the proposed use;</li> <li>(b) the nature, scale and intensity of the use;</li> <li>(c) the likelihood and nature of any adverse impacts on adjoining uses;</li> <li>(d) whether the proposed use is required to support a use for security or operational reasons; and</li> <li>(e) any off site impacts from adjoining uses.</li> </ul>

<p><b>A4</b></p> <p>No Acceptable Solution.</p>	<p><b>P4</b></p> <p>A use listed as Discretionary, excluding Residential, must be appropriate for a rural location, having regard to:</p> <ul style="list-style-type: none"> <li>(a) the nature, scale and intensity of the proposed use;</li> <li>(b) whether the use will compromise or distort the activity centre hierarchy;</li> <li>(c) whether the use could reasonably be located on land zoned for that purpose;</li> <li>(d) the capacity of the local road network to accommodate the traffic generated by the use; and</li> <li>(e) whether the use requires a rural location to minimise impacts from the use, such as noise, dust and lighting.</li> </ul>
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The subject site has obtained approval for inert landfill and quarry activities and adjoins a parcel of land which has approval for quarry and forestry activities. The typography and vegetation within the surrounding area of the site do not readily translate to land suited to agricultural industries or similar. The nature of the proposed use lends itself to being located away from produce growing and residential development to limit detriment from noisy machinery and dust. The subject site is suitably distanced from other uses which may be impacted by anticipated emissions. The application seeks to provide additional area to the inert landfill operations already approved for the site and does not anticipate an increase to the volume of materials accepted.

It is considered the proposal can satisfy the performance criteria as it is a suitable scale and intensity for the site and will not impact upon surrounding properties from operating agricultural or other uses.

## **C15.0 Landslip Hazard code**

### **15.5.1 Use within a landslip hazard area**

<p><b>Objective:</b></p> <p>That uses, including critical, hazardous or vulnerable use, can achieve and maintain a tolerable risk from exposure to a landslip for the nature and intended duration of the use.</p>	
<b>Acceptable Solutions</b>	<b>Performance Criteria</b>
<p><b>A1</b></p> <p>No Acceptable Solution.</p>	<p><b>P1.1</b></p> <p>A use, including a critical use, hazardous use, or vulnerable use, within a landslip hazard area achieve and maintain a tolerable risk from exposure to landslip, having regard to:</p> <ul style="list-style-type: none"> <li>(a) the type, form and duration of the use; and</li> <li>(b) a landslip hazard report that demonstrates that:</li> </ul>

	<ul style="list-style-type: none"> <li>i. any increase in the level of risk from landslip does not require any specific hazard reduction or protection measure; or</li> <li>ii. the use can achieve and maintain a tolerable risk for the intended life of the use.</li> </ul> <p><b>P1.2</b></p> <p>If landslip reduction or protection measures are required on land beyond the boundary of the site, the consent in writing of the owner of that land must be provided for that land to be managed in accordance with the landslip reduction or protection measures.</p>
<p><b>A3</b></p> <p>No Acceptable Solution.</p>	<p><b>P3</b></p> <p>In addition to the requirements in clause C15.5.1 P1.1, a hazardous use within a landslip hazard area must achieve and maintain a tolerable risk, having regard to:</p> <ul style="list-style-type: none"> <li>(a) the impact on the ability of the use to respond to a landslip event;</li> <li>(b) the impact on ability of the use to function and maintain service during the landslip and recovery period;</li> <li>(c) any interruption to the operation of the critical use in locations external to the immediate impact of the landslip event;</li> <li>(d) the creation of risk to the health or safety of people from damage or disruption to: <ul style="list-style-type: none"> <li>i. a water supply service;</li> <li>ii. an energy supply; or</li> <li>iii. the drainage and treatment of waste water;</li> </ul> </li> <li>(e) any advice contained in a landslip hazard report; and</li> <li>(f) any advice from a State authority, regulated entity or a council.</li> </ul>

The proposed Waste and Recycling Disposal use is classified as a hazardous use in accordance with definitions of term at 15.3. The application was accompanied with a Landslip Hazard Risk Assessment prepared by a suitably qualified professional. The risk to landslip as a result of the proposal had been deemed low or tolerable and can be contained within the property boundaries.



The performance criteria are satisfied and the report prepared by Tasman Geotechnics, including recommendations, will be endorsed to form part of any planning permit issued.



**Figure 3 – Aerial view showing Landslip hazard bands**

### COMMUNITY ENGAGEMENT

On 10/03/2022, Council received an application for the above development. Under Section 57(3) of the *Land Use Planning and Approvals Act 1993*, the Planning Authority must give notice of an application for a permit. As prescribed at Section 9(1) of the *Land Use Planning and Approvals Regulations 2014*, the Planning Authority fulfilled this notification requirement by:

- (a) Advertising the application in *The Advocate* newspaper on 12/01/2022;
- (b) Making a copy of the proposal available in Council Offices from the 12/01/2022;
- (c) Notifying adjoining property owners by mail on 10/01/2022; and
- (d) Erecting a Site Notice for display from the 11/01/2022.

The period for representations to be received by Council closed on 25/01/2022.

### REPRESENTATIONS

One representation was received within the prescribed 14 day public scrutiny period required by the *Land Use Planning and Approvals Act 1993*. The representation as summarised has concerns regarding existing and proposed operations within the property including water run-off, land shaping, weed management, threatened fauna and consultation methods.

- The applicant has applied for further planning permission for an expansion to an existing Level 2 activity for referral and conditioning from the Environmental Protection Authority (EPA), which is standard procedure. The Environment Protection Notice forming Permit Part B includes conditions and requirements as deemed appropriate by the EPA. These conditions provide ongoing measures to

ensure landfill operation within the site will adhere to the relevant policies developed by the EPA and include water management, land shaping and weed management.

- There are no requirements under the Tasmanian Planning Scheme – Devonport 2020 which requires any assessment or report on threatened flora or fauna, or specifically Wedge Tail Eagles. The Ecological Values report prepared by North Baker in 2017 is considered applicable as no nests within proximity of the site were sighted during this period, in which the landfill operations had commenced under PA2010.0206. A note on the permit will draw the owner/operators attention to obligations under the *Threatened Species Protection Act 1995*.
- The representor did not qualify as an adjoining property for notification under Section 57 of LUPAA as the subject site and their property are separated by a road reserve. The presence of a physical public notice on the nearest road frontage of the subject site achieved the purpose of advertising the proposal for a planning application.

A complete version of the representation is appended to this report as **Attachment 2**.

## DISCUSSION

The application has been referred to the Environmental Protection Authority and internally to Council's development review staff. Feedback received has been included as conditions and notes where appropriate.

## FINANCIAL IMPLICATIONS

No financial implications are predicted, unless an appeal is made against the Council's decision to the Tasmanian Civil and Administrative Tribunal. In such instance, legal counsel will likely be required to represent Council. The opportunity for such an appeal exists as a result of the Council determining to either approve or refuse the permit application.

## RISK IMPLICATIONS

In its capacity as a planning authority under the *Land Use Planning and Approvals Act 1993* (LUPAA), Council is required to make a determination on this application for a discretionary planning permit. Due diligence has been exercised in the preparation of this report and there are no predicted risks associated with a determination of this application.

## CONCLUSION

The application satisfies the relevant acceptable solutions or performance criteria under the *Tasmanian Planning Scheme – Devonport 2020* and a permit can be issued, subject to conditions.

## ATTACHMENTS

1. Application - PA2021.0193 - 547 Forthside Road [**4.2.1** - 166 pages]
2. Representation - PA2021.0193 - 547 Forthside Road [**4.2.2** - 2 pages]
3. EPA Permit conditions Part B - PA2021.0193 - 547 Forthside Road [**4.2.3** - 19 pages]

## **5 CLOSURE**