



# SPECIAL COUNCIL MEETING MINUTES

Monday 2 October 2023  
Council Chambers, St Helens

John Brown, General Manager  
Break O'Day Council  
2 October 2023

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## CONTENTS

### CONTENTS 4

AUDIO RECORDING OF ORDINARY MEETINGS OF COUNCIL .....	5
OPENING 5	
ACKNOWLEDGEMENT OF COUNTRY.....	5
10/23.1.0 ATTENDANCE .....	5
10/23.1.1 Present .....	5
10/23.1.2 Apologies.....	5
10/23.1.3 Leave of Absence .....	5
10/23.1.4 Staff in Attendance .....	6
10/23.2.0 PUBLIC QUESTION TIME.....	6
10/23.3.0 DECLARATION OF INTERESTS OF A COUNCILLOR OR CLOSE ASSOCIATE .....	6
10/23.9.0 NOTICES OF MOTION .....	7
10/23.9.1 Rescission Motion – DA 276-22 .....	7
10/23.4.0 PLANNING AUTHORITY .....	12
10/23.4.1 DA 276-22 Residential - Construction of Dwelling Additions & Alterations, Garage, Deck and Additional Crossover .....	12

## AUDIO RECORDING OF ORDINARY MEETINGS OF COUNCIL

As determined by Break O’Day Council in March 2019 all Ordinary, Special and Annual General Meetings of Council are to be audio recorded and a link will be available on the Break O’Day Council website where the public can listen to audio recordings of previous Council Meetings.

*In accordance with the Local Government Act 1993 and Regulation 33 of the Local Government (Meeting Procedures) Regulations 2015, these audio files will be retained by Council for at least six (6) months and made available for listening online within seven (7) days of the scheduled meeting. The written minutes of a meeting, once confirmed, prevail over the audio recording of the meeting and a transcript of the recording will not be prepared.*

## OPENING

*The Mayor welcomed Councillors, staff and community members and declared the meeting open at 10.00am.*

## ACKNOWLEDGEMENT OF COUNTRY

*We acknowledge the Traditional Custodians of the land on which we work and live, the Palawa people of this land Tasmania, and recognise their continuing connection to the lands, skies and waters. We pay respects to the Elders Past, present and future.*

### 10/23.1.0 ATTENDANCE

#### 10/23.1.1 Present

Mayor Mick Tucker  
Deputy Mayor Kristi Chapple  
Councillor Gary Barnes  
Councillor Ian Carter  
Councillor Janet Drummond  
Councillor Liz Johnstone  
Councillor Barry LeFevre  
Councillor Vaughan Oldham  
Councillor Kylie Wright

#### 10/23.1.2 Apologies

Nil

#### 10/23.1.3 Leave of Absence

Nil

## 10/23.1.4 Staff in Attendance

General Manager, John Brown  
Corporate Services Officer, Rebecca Wood  
Manager Infrastructure and Development Services, David Jolly  
Corporate Services Coordinator, Angela Matthews  
Governance Officer, Molli Brown  
Development Services Coordinator, Jake Ihnen  
Planning Officer, Alex McKinlay

## 10/23.2.0 PUBLIC QUESTION TIME

Three (3) people in the gallery.

Nil

## 10/23.3.0 DECLARATION OF INTERESTS OF A COUNCILLOR OR CLOSE ASSOCIATE

*Section 48 or 55 of the Local Government Act 1993 requires that a Councillor or Officer who has an interest in any matter to be discussed at a Council Meeting that will be attended by the Councillor or Officer must disclose the nature of the interest in a written notice given to the General Manager before the meeting; or at the meeting before the matter is discussed.*

*A Councillor or Officer who makes a disclosure under Section 48 or 55 must not preside at the part of the meeting relating to the matter; or participate in; or be present during any discussion or decision making procedure relating to the matter, unless allowed by the Council.*

Nil

## 10/23.9.0 NOTICES OF MOTION

### 10/23.9.1 Rescission Motion – DA 276-22

#### RECOMMENDED MOTION:

That Council rescind the following Council Decision:

#### 18 September 2023 Council Meeting

**09/23.6.4.211** Moved: Clr B LeFevre/ Seconded: Clr V Oldham

After due consideration of the application received and Pursuant to Section 57 of the *Land Use Planning & Approvals Act 1993* and the *Break O’Day Interim Planning Scheme 2013* that the application for RESIDENTIAL - CONSTRUCTION OF DWELLING ADDITIONS & ALTERATIONS, GARAGE, DECK AND ADDITIONAL CROSSOVER on land situated at 5 BAYVIEW AVENUE, BINALONG BAY described in Certificate of Title 60263/35 be APPROVED subject to the following conditions:

1. Development must be carried out in accordance with the approved plans and documents listed as follows, except as varied by conditions on this Planning Permit.

Approved Plans / Documents			
Plan / Document Name	Reference Number	Prepared By	Dated
Site Plan	A001-Sk01	Zuri Creative Studio	16/03/2023
Ground Floor Plan	DA710 - DA02	Zuri Creative Studio	06/10/2022
First Floor Plan	DA711 - DA03	Zuri Creative Studio	05/07/2023
Roof Plan	DA712 - DA02	Zuri Creative Studio	06/10/2022
Elevations 01	DA720 - DA02	Zuri Creative Studio	06/10/2022
Elevations 02	DA721 - DA02	Zuri Creative Studio	06/10/2022
Solar Study	DA731 - DA03	Zuri Creative Studio	05/07/2023
5 Bay View Avenue Stormwater Report	Project Number 22.196	6ty <sup>o</sup>	05/07/2023
On-Site Wastewater Disposal Assessment and Design	Reference No. GL23090Ab	GEOTON	08/03/2023

2. The garage is approved for non-habitable residential use only.
3. The areas shown to be set aside for vehicle access and car parking must be:
  - a. completed before the use of the development;
  - b. provided with space for access turning and manoeuvring of vehicles on-site to enable them to enter and leave the site in a forward direction;
  - c. drained in a manner that will not cause stormwater nuisance.
4. All roof drainage must be connected to existing water storage tanks and overflow directed to the kerb which requires a new connection to be made in accordance with standard drawing TSD-SW29-v3.
5. The new crossover must be constructed in accordance with standard drawing TSD-R09-v3.

6. An application must be submitted to obtain a Works Permit prior to undertaking any work on the stormwater connection and/or the crossover.
7. During the period of construction, works on the site must not result in a concentration of flow onto other property, or cause ponding or other stormwater nuisance.
8. All runoff from the proposed driveway must be disposed of within the confines of the property by means that will not result in soil erosion or other stormwater nuisance. Soakage drains must be of sufficient size to absorb stormwater runoff.
9. The driveway must be constructed in a manner that ensures sediment is neither tracked nor eroded across the property boundary.
10. Effluent disposal is subject to a technical assessment and issue of a Plumbing Permit by Council's *Plumbing Permit Authority*.
11. The location of the absorption area, specifically the boundary setbacks, is consistent with AS 1547 appendix R or, is determined on the basis of a rigorous risk assessment in accordance with AS 1547 – 2012; and, the designer inspect the construction of the absorption area and provide to Council certification that the absorption area has been designed in accordance with AS1547 – 2012, and constructed strictly in accordance with the approved design plan and boundary setbacks.
12. The existing septic tank and trench system must be demolished, treated with lime and backfilled. A report by a suitably qualified practitioner in relation to the required work is to be obtained before the issue of an Occupancy Permit.
13. Use of the development must not create a nuisance as defined by the *Environmental Management and Pollution Control Act 1994*.
14. Native vegetation must not be removed outside that necessitated by the proposed development (this includes the clearing of vegetation to retain or expand views or vistas) unless consented to by Council.
15. All underground infrastructure including all forms of water, storm water, power, gas and telecommunication systems must be located prior to the commencement of any on-site excavation and / or construction works. Any works to be undertaken within 2 metres of any Council owned infrastructure must be done in consultation with Council's Works Operations Manager.
16. All building wastes are to be removed to the appropriate waste disposal facility to prevent an environmental nuisance being caused outside of the works site.

**FOR** Councillor B LeFevre, Councillor V Oldham, Councillor K Chapple, Councillor M Tucker  
**AGAINST** Councillor L Johnstone, Councillor Janet Drummond, Councillor I Carter, Councillor K Wright  
**TIED VOTE – MOTION LOST**



**SUBMISSION IN SUPPORT OF MOTION:**

At the Council Meeting on 18 September 2023 the General Manager explained that Council had failed to determine the Application as a Lost Motion which in this case did not provide a refusal of the Development Application it had simply failed to determine the Application. The General Manager then explained that given this that a Motion to Refuse the application was required and that the grounds for refusal needed to be included in the Motion.

Mayor Tucker asked if any Councillors who voted against the motion would like to bring another motion, he asked that they please put this forward with the planning grounds on which they wish to refuse the motion.

No further motion was provided

The General Manager advises that this matter of a Rescission Motion relates to a decision which was made by the Council since the last Election at its meeting of 18 September 2023 and an Absolute Majority is required

In accordance with the Local Government (Meeting Procedures) Regulations 2015, Regulation 18(3) the General Manager reports as follows:

- (a) The General Manager advises that should the proposed motion be resolved in the affirmative it would overturn the previous decision in its entirety.

The proposed motion if resolved in the affirmative by an Absolute Majority would overturn the previous decision in its entirety.

- (b) The Decision made by Council at its meeting on 18 September 2023 is as follows

**18 September 2023 Council Meeting**

**09/23.6.4.211** Moved: Clr B LeFevre/ Seconded: Clr V Oldham

After due consideration of the application received and Pursuant to Section 57 of the Land Use Planning & Approvals Act 1993 and the Break O’Day Interim Planning Scheme 2013 that the application for RESIDENTIAL - CONSTRUCTION OF DWELLING ADDITIONS & ALTERATIONS, GARAGE, DECK AND ADDITIONAL CROSSOVER on land situated at 5 BAYVIEW AVENUE, BINALONG BAY described in Certificate of Title 60263/35 be APPROVED subject to the following conditions:

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Elevations 01      DA720 - DA02 Zuri Creative Studio      06/10/2022  
Elevations 02      DA721 - DA02 Zuri Creative Studio      06/10/2022  
Solar Study          DA731 - DA03 Zuri Creative Studio      05/07/2023  
5 Bay View Avenue Stormwater Report      Project Number 22.196      6tyo      05/07/2023  
On-Site Wastewater Disposal Assessment and Design      Reference No. GL23090Ab      GEOTON  
08/03/2023

2. The garage is approved for non-habitable residential use only.
3. The areas shown to be set aside for vehicle access and car parking must be:
  - a. completed before the use of the development;
  - b. provided with space for access turning and manoeuvring of vehicles on-site to enable them to enter and leave the site in a forward direction;
  - c. drained in a manner that will not cause stormwater nuisance.
4. All roof drainage must be connected to existing water storage tanks and overflow directed to the kerb which requires a new connection to be made in accordance with standard drawing TSD-SW29-v3.
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9. The driveway must be constructed in a manner that ensures sediment is neither tracked nor eroded across the property boundary.
10. Effluent disposal is subject to a technical assessment and issue of a Plumbing Permit by Council's Plumbing Permit Authority.
11. The location of the absorption area, specifically the boundary setbacks, is consistent with AS 1547 appendix R or, is determined on the basis of a rigorous risk assessment in accordance with AS 1547 – 2012; and, the designer inspect the construction of the absorption area and provide to Council certification that the absorption area has been designed in accordance with AS1547 – 2012, and constructed strictly in accordance with the approved design plan and boundary setbacks.
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13. Use of the development must not create a nuisance as defined by the Environmental Management and Pollution Control Act 1994.
14. Native vegetation must not be removed outside that necessitated by the proposed development (this includes the clearing of vegetation to retain or expand views or vistas) unless consented to by Council.

15. All underground infrastructure including all forms of water, storm water, power, gas and telecommunication systems must be located prior to the commencement of any on-site excavation and / or construction works. Any works to be undertaken within 2 metres of any Council owned infrastructure must be done in consultation with Council's Works Operations Manager.

16. All building wastes are to be removed to the appropriate waste disposal facility to prevent an environmental nuisance being caused outside of the works site.

**FOR** Councillor B LeFevre, Councillor V Oldham, Councillor K Chapple, Councillor M Tucker  
**AGAINST** Councillor L Johnstone, Councillor Janet Drummond, Councillor I Carter, Councillor K Wright

**TIED VOTE – MOTION LOST**

- (c) advice as to whether or not that previous decision, or that part of that previous decision, directed that certain action be taken; and

*The General Manager advises that the failure of Council to make a determination in relation to the Development Application DA 276-22 resulted in no direction that a certain action be taken.*

- (d) if that previous decision, or that part of that previous decision, directed that certain action be taken, advice as to whether or not that action has been wholly or substantially carried out.

The General Manager advises that there has been no action has been wholly or substantially carried out

#### **DISCUSSION:**

- Council Chapple and Councillor LeFevre indicate that they support the rescission of the motion.
- The General Manager advised that following the decision made at the Council Meeting on the 18th September 2023, legal advice has been obtained. This advice indicated that because there was a tied vote, it is technically lost. This means that a rescission of the motion is required to enable Council to reconsider this planning item.

#### **COUNCIL DECISION:**

**10/23.9.1.229**      Moved: Clr K Chapple/ Seconded: Clr B LeFevre

**CARRIED UNANIMOUSLY**

## 10/23.4.0 PLANNING AUTHORITY

Pursuant to Section 25 of the Local Government (Meeting Procedures) Regulations 2015 the Mayor informed the Council that it was now acting as a Planning Authority under the Land Use Planning and Approvals Act 1993.

### 10/23.4.1 DA 276-22 Residential - Construction of Dwelling Additions & Alterations, Garage, Deck and Additional Crossover

<b>FILE REFERENCE</b>	DA 276-22
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#### OFFICER'S RECOMMENDATION:

After due consideration of the application received and Pursuant to Section 57 of the *Land Use Planning & Approvals Act 1993* and the *Break O'Day Interim Planning Scheme 2013* that the application for RESIDENTIAL - CONSTRUCTION OF DWELLING ADDITIONS & ALTERATIONS, GARAGE, DECK AND ADDITIONAL CROSSOVER on land situated at 5 BAYVIEW AVENUE, BINALONG BAY described in Certificate of Title 60263/35 be APPROVED subject to the following conditions:

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On-Site Wastewater Disposal Assessment and Design	Reference No. GL23090Ab	GEOTON	08/03/2023

2. The garage is approved for non-habitable residential use only.
3. The areas shown to be set aside for vehicle access and car parking must be:
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16. All building wastes are to be removed to the appropriate waste disposal facility to prevent an environmental nuisance being caused outside of the works site.

## ADVICE

1. Use or development which may impact on Aboriginal cultural heritage is subject to the *Aboriginal Relics Act 1975*. If Aboriginal relics are uncovered during works then an Aboriginal site survey is required to determine the level of impact and the appropriate mitigation procedures.

2. Activities associated with construction works are not to be performed outside the permissible time frames listed:

Mon-Friday 7 am to 6 pm

Saturday 9 am to 6 pm

Sunday and public holidays 10 am to 6 pm

## INTRODUCTION:

The applicant is seeking approval for the development of dwelling additions & alterations, garage, deck and additional crossover for residential purposes on the subject site at 5 Bay View Avenue, Binalong Bay. Submitted plans demonstrate that the proposed development is further intended to be serviced by the provision of an internal driveway in conjunction with an additional crossover and the installation of an Aerated Wastewater Treatment System (AWTS). Stormwater generated by the roofed areas of both the existing dwelling and the proposed development will be directed to three 14,000L tanks with subsequent overflow being disposed into a new kerb connection point via a charged line. Additionally, a fourth tank/5500L garden water tank located along the western side boundary will be installed to capture stormwater generated by the forecourt and driveway areas with subsequent overflow then being discharged into a 20m long and 0.4m wide dispersion trench.

## DISCUSSION:

- Councillor Chapple indicated that she moved the motion to obtain a decision.
- Councillor LeFevre said he supports the Planning Officer's recommendation, noting that there are extensive conditions.
- Councillor Drummond noted that she still has concerns about the following:
  - o The Low Density Residential Zone and wanting to maintain the integrity of the planning scheme. She noted the development is equal to 26.4% of the site and that this is quite extensive.
  - o The rear and side setbacks are very small, getting as close as 0.2 and 0.8m in some places.
  - o She does not agree with comments about past decisions being included as it encourages us to consider decisions on the basis that it has been done before and does not maintain the integrity of the planning scheme.
  - o The run off of stormwater given the layout of the land being developed.
- The Planning Officer advised that he understood Councillor Drummond's point about comparing the proposal to other applications in the area, but noted that there are substantial developments in the Binalong area and also noted that if the property was under 1000m squared then 30% coverage would be allowed.
- With regards to stormwater, a report was prepared and it was reviewed by both the Development Services Coordinator and Council's Engineer and approved by both.
- Councillor Wright indicate that she shares the concerns of Councillor Drummond including site coverage and the integrity of the planning scheme, she said she fears that this sets a

precedent for other larger buildings than what there should be. She also noted the small setbacks.

- The Planning Officer reiterated that while he understands that the boundary setbacks are quite reduced in some sections those were predominantly with the water tanks, the dwelling addition itself is just over two (2) metres from the boundary.
- Councillor Carter said he has similar concerns to both other Councillors, but does not want it to impact one (1) application. He indicated that he will not oppose the individual application but would like to have serious discussions about discretionary applications.
- Councillor Johnstone noted that she is concerned about the integrity of the planning scheme. She noted that she has previously raised that we have a planning scheme which outlines issues such as setbacks and that we don't stick with it. She also noted that, when talking about homes in Binalong Bay of larger sizes, they were under a previous planning scheme and there is a reason this has changed.
- The General Manager clarified that this has been assessed under the Interim Planning Scheme. The Planning Officer advised yes it was.
- Mayor Tucker clarified that the block being a fraction smaller (approximately 7 square metres) the application actually ticks all the boxes. The Planning Officer said yes that is correct.
- Mayor Tucker reiterated that because the block is slightly larger it actually makes it less acceptable.
- Councillor LeFevre said he has faith in our Planning Officers. He noted that they are the experts and that we should go with their recommendation.
- Councillor Drummond agreed that our Planning Officers do have that skill but noted that Councillors make up the Planning Authority and it comes to this table to have a decision made. It is still up to us as Councillors to ask questions.
- Mayor Tucker reiterated that yes we have every right to question it. He noted that he finds it contradictory that if the site was smaller it would not be a problem.
- Councillor Drummond said we had many discussions about the Low Density Residential Zone and noted that people buy into this zone with certain expectations and then we allow acceptable solutions within the planning scheme. We need to revisit what this is and not compare to previous developments.

#### **COUNCIL DECISION:**

**10/23.9.1.230**

Moved: Clr K Chapple/ Seconded: Clr B LeFevre

After due consideration of the application received and Pursuant to Section 57 of the *Land Use Planning & Approvals Act 1993* and the *Break O'Day Interim Planning Scheme 2013* that the application for RESIDENTIAL - CONSTRUCTION OF DWELLING ADDITIONS & ALTERATIONS, GARAGE, DECK AND ADDITIONAL CROSSOVER on land situated at 5 BAYVIEW AVENUE, BINALONG BAY described in Certificate of Title 60263/35 be APPROVED subject to the following conditions:

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2. Activities associated with construction works are not to be performed outside the permissible time frames listed:  
  
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#### **CARRIED**

**FOR** Councillor LeFevre, Councillor Oldham, Councillor Carter, Councillor Barnes, Councillor Chapple, Councillor Tucker

**AGAINST** Councillor Johnstone, Councillor Drummond , Councillor Wright

*The Mayor advised the Council that it had now concluded its meeting as a Planning Authority under Section 25 of the Local Government (Meeting Procedures) Regulations 2015.*

Mayor Tucker thanked everyone for their attendance and declared the meeting closed at 10.18am.

.....  
**MAYOR**

.....  
**DATE**