



25 June 2024

Timothy Donovan
Kingborough Council
15 Channel Highway
KINGSTON TAS 7050

Dear Timothy,

**FURTHER INFORMATION -
3643 CHANNEL HIGHWAY, BIRCHS BAY**

I am writing regarding DA-2021-700 which relates to the land at 3643 Channel Highway, Birchs Bay and the adjoining road reservation (Channel Highway). A further information request was issued by the planning authority on the 1st of July 2022.

APPLICATION DOCUMENTATION

The following list is a complete list of the documents that form the application, as amended as a result of the requests for further information. Please note that previously submitted documents may be superseded by updated versions or are no longer relevant.

- Folio text and plan CT 106893-3
- Kingborough Council Application Form, 03.06.2022
- Crown Landowner Consent Granted 3643 Channel Highway Birchs Bay, Department of State Growth, 3rd June 2022
- Plans and Elevations, Designful, 24.06.2024
 - COVER PAGE 2121-00
 - EXISTING SITE PLAN 2121-10
 - PROPOSED SITE PLAN 2121-10A
 - PROPOSED - NETTING LOCATIONS 2121-10B
 - PROPOSED - TREE PROTECTION ZONES 2121-10C
 - PROPOSED FLOOR PLAN 2121-02
 - PROPOSED ROOF PLAN 2121-03
 - PROPOSED ELEVATIONS 01 2021-04
 - PROPOSED ELEVATIONS 02 2021-05
 - PROPOSED SECTIONS 2021-06
- Site and Soil Evaluation Report Onsite Wastewater Assessment, 3643 Channel Highway, Birchs Bay, Doyle Soil Consulting, November 2021 (Amended June 2024)
- 3643 Channel Highway, Birchs Bay Bushfire Report, Phillip Cullen, 13/06/2022

- Please note that this report is not required for planning approval, and since its commission, the location of the dwelling has been altered. The findings for the hazard management are therefore indicative for the purpose of this application to demonstrate a BAL 12.5 hazard management area can be achieved within the lot and outside certain overlays. An amended bushfire report would be required for building approval.
- Farm Management Plan, RMCG, 26.04.2022
- Arboriculture Assessment, Tree Pioneers, 15/06/2024
- Cover Letter, Ireneinc Planning and Urban Design, 25 June 2024

CROWN CONSENT

- Crown consent for the lodgement of this application has previously been provided to the applicant on the 3rd of June 2022.
- The plans that have occurred are wholly contained within the private land, and the proposed use and development in the Channel Highway have not altered.
- There has been no substantial change to the description of the use since consent was granted.
- No additional works or developments are proposed on Crown Land, please note that the structures within Crown Land that support the nets will not be removed as part of this application, however, the nets will be detached from these structures to be relocated. Detachment of the nets does not constitute works or development.
- For the above reasons, the consent is still considered valid.

PROPOSAL DESCRIPTION

The below provides a revised description of the use and development:

Use

- The proposal is the change to the use of land as a cherry orchard, which is an agricultural use within the use class Resource Development and no permit required use status in the Rural Resource Zone. The changes to the use are as follows:
 - Removal of 829 linear metres of cherry orchard within the southeastern corner of the property. An arboricultural assessment of the trees has found that the coastal conditions in this area contribute to a poor growing environment.
 - Planting of 1350 linear metres of cherry orchard toward the northwestern half of the property, further away from the coastline.
 - Reconfiguration of the netting structure to only cover the area of the amended cherry orchard.
- The proposal is for the use of a single dwelling within the Residential use class, located within the southeastern corner of the property. The description of the use is as follows:
 - Three bedrooms and 2.5 bathrooms
 - 2 x car parking spaces

- Change to the use of the existing access point off Channel Highway to agricultural and residential, and a new accessway from the existing access point wholly contained within the property boundaries. The access will run along the north/northeastern boundary.
- The residential use will occupy an area/ curtilage of 3251m², which covers the majority of the dwellings required hazard management area whilst ensuring most of the HMA is located outside of the Waterway and Coastal Protection Area. It is noted that a portion of the hazard management area overlaps the cherry orchard to be retained, which is permissible in accordance with 2.2.3.2(f) of AS 3959:2018.
- A gravity-fed septic system to service the use. The wastewater system is located outside the Waterway and Coastal Protection Area.

Works and Development

- Removal of 829 linear metres of cherry orchard within the southeastern corner of the property.
- Planting of 1350 linear metres of cherry orchard toward the northwestern half of the property, further away from the coastline.
- Reconfiguration of the netting structure to only cover the area of the modified cherry orchard.
- Upgrade of the existing northeastern access point
- Development of new access along the north/northeastern boundary that provides a trafficable width of 4m wide and 125m in length. A hardstand area and firefighting supply are proposed at the end of the access as per requirements for bushfire hazard management.
 - None of the nearby native trees in the crown land have tree root protection zones that encroach into the title boundary and as such none of the trees will be impacted by the creation of the driveway.
- Development of a single dwelling that is:
 - Maximum building height of 6m
 - A building footprint of 221m² and two deck areas that total 50m²
 - Excavation under 1m to provide for the carport and terrace area and retaining walls of under 1m around this area.
 - A masonry wall dividing the carport and the terrace is proposed at a height of 1.5m (0.7m above ground level).
 - Development of a roofed carport with no external walls of 36m². Retaining will be required to support the garage, to allow for vehicles to enter at grade.

The dwelling design has a central elongated core with a peaked roof, that runs northeast/southwest for a length of 30m. There is an extrusion of the central core of 40m² to the southeast that houses the living area, which then provides access to the decks. The extrusion and carport also have the same pitched rooves. The building has a material palette of Colourbond metal wall cladding and roofing in 'monument', and vertical timber wall cladding (Bal 29 compliant).

The setbacks of the dwelling from the boundaries are as follows:

- 21m from the northeast

- 23.4m from the southeast
- 80m from the frontage
- 206m from the southwest
- A wastewater system with a design loading of 600L/day based on the occupancy of five residents is proposed between the dwelling and the southeast boundary. A 100 per cent reserve area is recommended with sufficient room on the property to provide this within the required setbacks and outside the Waterway and coastal protection area. The setbacks are as follows:
 - 11.4m from the southeast boundary
 - 10m from the northeast boundary
 - 43m from the nearest highwater mark (over 27m from surface water as per wastewater report)

RESPONSE TO FURTHER INFORMATION REQUEST

In response to the letter received from Council on 1st of July 2024 requesting further information in response to the proposed development at 3643 Channel Highway, Birchs Bay, the following responses are provided.

1. Please clarify if the driveway and crossover in the far north-eastern corner is proposed or existing. The site plan submitted with the drawing set says, 'Existing driveway/ crossover to be upgraded', while the site plan in the Farm Management Plan says 'Proposed driveway entry point'.

To clarify, the driveway within the site along the northeastern boundary is proposed, however, the access point to Channel Highway is existing. The farm management plan does reference a former plan, which has now been superseded however, the latest proposed plan has a lesser impact, and the findings of the report are still considered relevant. For clarification, however, the note regarding the proposed driveway entry point has been redacted.

2. While it is acknowledged a Farm Management Plan has been submitted with the application, it is considered the proposal does not fit the Rural Resource Zone Purpose Statements ...,

A response to the zone purpose statements has been provided in the following section, along with further consideration of the proposed use in the Rural Resource Zone.

...it is noted the cherry orchard is contained within net structures which extend up to the north-eastern boundary, and would be impacted by the proposed driveway. Details of re-construction of these supporting structures, or how this will be managed must be provided.

The majority of the net structure will be retained, with the area impacted by the dwelling proposed to be reconfigured. All retained and proposed cherry trees will be contained within a netted area. Please refer to the attached plans provided by Designful.

... the Farm Management Plan states there will be a net gain in the number of cherry trees as a result of infill plantings. Details and location of infill plantings must be provided...

The proposal is for the Removal of 829 linear metres of cherry trees within the southeastern corner of the property and the planting of 1350 linear metres of cherry trees toward the northwestern half of the property, further away from the coastline. An arboricultural assessment has found that:

The cherry trees growing in the area proposed for development appear to be smaller in height and have a smaller trunk size compared to the other trees. They also have significantly more deadwood present in their canopy. The number of buds present of these trees are significantly fewer than elsewhere on the farm. The extension growth between buds is shorter in length compared to trees elsewhere. The farm is tree lined along the coast at all parts of the site except for this Eastern boundary. The exposed eastern section of the site presents a hostile environment for tree growth. This section of the site has less protection for crops. Exposure to wind and salt spray are among elements which are contributing to a poor growing environment.

The proposed plan to relocate the position of the crops to a more protected and viable area is sound. It will allow for the building to shield crops from harsh coastal environment.

3. It is acknowledged that amended plans have been submitted which show a proposed access along the eastern boundary of the subject lot. However, Council's records indicate that there are trees adjacent to the subject site within the Environmental Management Zone and it would appear that some of these trees may be impacted upon as a result of the proposed access road.

To verify the potential impact of the development on trees, determine whether any of these trees are of high conservation value or a priority species and demonstrate compliance with planning scheme requirements, please provide a tree plan for all trees within 15m of the proposed development in accordance with the attached guidelines, including:

- an amended site plan and amended engineering drawings including a tree plan and accompanying table of trees as per Section 1 of the attached guidelines; and*
- an arborist assessment where required as per Section 3 of the attached guidelines.*

The arboriculture assessment has determined that none of the native trees within the adjoining crown land have tree protection zones within the private property boundary, as such no trees will be impacted by the development. Please refer to the Tree Plan and Arboriculture report for details confirming this.

KINGBOROUGH INTERIM PLANNING SCHEME

RURAL RESOURCE ZONE

Clause 8.2 Categorising Use or Development & Clause 26.2 Use Table

The proposal is for changes to the existing agricultural use, and use of part of the land for a single dwelling.

Use Class	Use	Definition	Status in Rural Resource Zone
Residential	Single Dwelling	means a dwelling on a lot on which no other dwelling is situated, or a dwelling and an ancillary dwelling on a lot on which no other dwelling is situated.	Discretionary - only if single dwelling
Resource Development	Agricultural use (Cherry Orchard)	means use of the land for propagating, cultivating or harvesting plants or for keeping and breeding of animals, excluding pets. It includes the handling, packing or storing of plant and animal produce for dispatch to processors. It includes controlled environment agriculture, intensive tree farming and plantation forestry.	No permit required

Zone Purpose Statements & Use Standards

In accordance with clause 8.10.2, in determining an application for a permit for a discretionary use the planning authority must have regard to the purpose of the applicable zone insofar as each such purpose ...is relevant to the particular discretion being exercised.

In this instance, the discretionary use for consideration is for a single dwelling. It is also noted that the zone has use standards that directly assess whether a proposed sensitive use does not unreasonably convert agricultural land or conflict with or fetter non-sensitive use, and ensure that discretionary non-agricultural uses do not unreasonably confine or restrain the agricultural use of agricultural land.

26.1.1 Zone Purpose Statements

26.1.1.1 To provide for the sustainable use or development of resources for agriculture, aquaculture, forestry, mining and other primary industries, including opportunities for resource processing.

As detailed within the accompanying farm management plan, and as acknowledged by Council, the size of the title and lack of reliable irrigation water resources renders the site unsuited to supporting an independent agricultural enterprise.

Nonetheless, the proposal is for a single residential dwelling that is intended to be scaled and sited to allow for the agricultural use of the land to continue. The house curtilage has since been further minimised, and has been designed in a manner that ensures the existing agricultural use of the land can be protected and even expanded, with a net increase in cherry trees of 521 linear metres.

26.1.1.2 To provide for other use or development that does not constrain or conflict with resource development uses.

The proposed residential dwelling will not conflict with the existing rural resource use of the site as follows.

The proposed dwelling is sited towards the southeastern boundary. Its location is strategically positioned to ensure that the remainder of the land can be infill planted with cherry trees, as demonstrated within the accompanying site plan and the farm management plan. The location of the dwelling and access will maximise the available space for additional cherry trees to be planted across the centre of the site which will result in a net increase in cherry trees, and act as a screen of the remainder of the orchard from the exposed coastline.

Siting the dwelling more centrally within the site, as suggested by Council with the RFI letter dated 3rd of July 2022, is deemed to be of overall detriment to the agricultural functioning of the land by reducing the available space for planting and the fragmentation of the orchard. As previously detailed within the letter provided by RMCG, by inserting a dwelling in the centre of the agricultural use of the site, the contiguous area available for planting is substantially reduced.

It is determined that the proposed siting will best promote and protect the agricultural use/potential of the site. As such, the overall siting of the dwelling allows for increased planting of cherry trees to ensure the proposal enhances, not constrains, the agricultural use of the site.

Details of the netting for the protection of the cherry orchard, as well as the location of infill tree plantings, have been provided on plans by Designful.

26.1.1.3 To provide for non-agricultural use or development, such as recreation, conservation, tourism and retailing, where it supports existing agriculture, aquaculture, forestry, mining and other primary industries.

The residential dwelling will allow for some onsite management of the orchard, thereby supporting the agricultural function of the land.

26.1.1.4 To allow for residential and other uses not necessary to support agriculture, aquaculture and other primary industries provided that such uses do not:

(a) fetter existing or potential rural resource use and development on other land;

(b) add to the need to provide services or infrastructure or to upgrade existing infrastructure;

(c) contribute to the incremental loss of productive rural resources.

a) The proposed residential use will not fetter the existing or potential rural resource use and development on other land as follows. The site is surrounded by several titles ranging in size and shape, all of which comprise residential dwellings. The following table provides details of the land within the immediate context of the site:

ADDRESS	SITE DETAILS
3624 CHANNEL HWY	<ul style="list-style-type: none"> • 1.12ha • Residential use • Minor grazing, no apparent cropping or horticulture
3612 CHANNEL HWY	<ul style="list-style-type: none"> • 8816m² • Residential dwelling • Minor grazing, no apparent cropping or horticulture
3638 CHANNEL HWY	<ul style="list-style-type: none"> • 3.92ha • Residential dwelling • Dam • Minor grazing land, no apparent cropping or horticulture
3657 CHANNEL HWY	<ul style="list-style-type: none"> • 1.02ha • Residential dwelling • Dam with pontoon, likely used recreationally. • Minor grazing, no apparent cropping or horticulture
17 JETTY RD	<ul style="list-style-type: none"> • 1.2ha • Residential dwelling • Orchard (undefined trees)
3644 CHANNEL HWY	<ul style="list-style-type: none"> • 18.59ha • Residential dwelling • Orchard (undefined trees) • 4 dams likely utilised for irrigation • Woodland (Eucalyptus obliqua wet forest)
Road reserve	<ul style="list-style-type: none"> • Crown road reserve
Coastal foreshore reserve	<ul style="list-style-type: none"> • NRE Crown land

The only lot within proximity to the site that supports a large-scale agricultural enterprise is 3644 Channel Highway (northwest of the site). Whilst this land is suitable for agricultural purposes due to its access to water irrigation, substantial size, and management facilities, the land itself is host to a sensitive use building (residential dwelling). Due to the separation of the site from this property by the highway, in tandem with the existing sensitive use at 3644 Channel Highway, it is considered highly unlikely that the proposal will fetter the agricultural potential of this land.

The majority of the other adjoining lots comprise of smaller rural living/lifestyle acreage properties, none of which have any evident or significant agricultural output.

Of particular notability is 17 Jetty Road, directly south of the site. Whilst this lot is a marginally smaller lot than the subject site, it is demonstrative of how a residential dwelling can coexist with and support a small-scale orchard.

As a result, it is considered that the proposal is cognisant of the adjoining lot uses and will not fetter their agricultural use.

b) All sewerage, water and stormwater will be managed onsite. No additional services or upgrades to road infrastructure are required as a result of the proposal.

c) The proposal will not result in a loss of productive potential but will instead allow for a net increase of cherry trees to be planted, to provide for increased viability and productivity of the land. The dwelling is positioned on a portion of the site where cherry trees are less viable due to exposure to salt spray and strong winds. By infill planting more centrally to the site, the overall productivity of the lot can be increased, and the new dwelling provides a screen for the remainder of the orchard from these harsh coastal conditions.

26.1.1.5 To provide for protection of rural land so future resource development opportunities are no lost.

As identified within the farm management plan and addendum by RMCG, the land is not viable to function as a standalone agricultural operation. Due to the land size, its dissection from broader agricultural use from the highway, and its bordering along the coastline, the sites' ability to form part of a larger agricultural enterprise is unlikely.

Nonetheless, the land is intended to retain its rural use as a cherry orchard. A small portion of the cherry trees will be removed to accommodate for the proposed dwelling and access, however, as per the arborist report provided by Tree Pioneers, the dwelling is sited in an area where the trees are least viable/productive. The resultant infill planting will be more appropriately located away from the coast, to allow for a net increase in cherry trees. The siting of the dwelling will ensure that the residential use is closer to the boundary, to allow for a greater density of rural resources across the remainder of the site. The proposal will result in an overall net increase of productive crops onsite.

26.1.1.6 To ensure development respects and protects the natural and landscape values on the land.

Whilst the site is mapped under the Biodiversity Protection Area overlay, this has been broadly applied to the greater region. Given that the entirety of the site has already been cleared for agricultural use, its biodiversity value is considered to be low. No native vegetation requires clearance to accommodate the dwelling. Furthermore, as detailed within the attached Arborist report, no natural values on adjoining Crown land will be impacted by the proposal. Whilst the proposal does not meet the required setbacks from the Environmental Management Zone, the proposed residential use is not considered to be any more impactful to the adjoining natural values than the existing agricultural use of the site.

Regarding landscape values, the proposed residential development is considered to be cognisant of the broader rural lifestyle setting. The dwelling will be situated towards the rear of the site to minimise its visibility from the highway. Not only will the cherry trees be retained across the central and northern portion of the site, but the existing mature hedge along the boundary will be maintained ensuring the existing landscape values are maintained.



Figure 1: mature vegetation along site frontage (source: googlemaps, 2024)

Whilst this area is not readily accessible by the public, the house will likely be perceptible from the waterfront by boat. Due to substantial tree coverage along a portion of the boundary adjoining the coast, as well as the location of several other residential properties within proximity of the waterfront, the dwelling will not unreasonably alter the broader scenic landscape value of the area. The building has adopted colours and materials with low light reflectivity that blend with the natural landscape.

The Farm Management Plan, RMCG, 26.04.2022 provides a comprehensive response to 26.3.1 Sensitive Use (including residential use) and 26.3.3 Discretionary Use. The findings of that report have found that the proposal satisfies these clauses.

In summary, the farm management plan, addendum, and arborist report have all determined that the proposed dwelling and upgraded access do not convert, confine or restrain existing or potential agricultural use on the site or on adjacent land.

Road and Railway Access Code

As the proposal includes a change of use of the existing access point which will intensify the use of the access point with minor upgrades proposed, the road and railway code applies. No level crossings are proposed and the Channel Highway in this section is a Category 5 Road with a speed limit of 80km/h.

The following clauses are therefore not relevant to the proposal:

- E5.5.1 Existing Road Accesses and Junctions A1/P1 and A3/P3
- E5.5.2 Existing level crossings

- E5.6.1 Development adjacent to roads and railways
- E5.6.2 Road accesses and junctions
- E5.6.3 New level crossings

E5.5.1 Existing road accesses and junctions

Objective: To ensure that the safety and efficiency of roads is not reduced by increased use of existing accesses and junctions.

A2

The annual average daily traffic (AADT) of vehicle movements, to and from a site, using an existing access or junction, in an area subject to a speed limit of more than 60km/h, must not increase by more than 10% or 10 vehicle movements per day, whichever is the greater.

RESPONSE

A2

This portion of Channel highway is classified as a Category 5 State Road subject to a speed limit of 80km/h. The proposal is for a single residential dwelling, which will generate less than the required 10 vehicle movements per day (as per the RTA guide to traffic generating developments). The proposal therefore complies with A2.

E5.6.4 Sight distance at accesses, junctions and level crossings

Objective: To ensure that accesses, junctions and level crossings provide sufficient sight distance between vehicles and between vehicles and trains to enable safe movement of traffic.

A1

Sight distances at:

- (a) an access or junction must comply with the Safe Intersection Sight Distance shown in Table E5.1; and
- (b) rail level crossings must comply with AS1742.7 Manual of uniform traffic control devices - Railway crossings, Standards Association of Australia.

RESPONSE

A1

At 80km/h the safe intersection sight distance in meters is 175m as per Table E5.1. Looking north and south of the access, the sight distances satisfy the requirements, as below:



Figure 2: Sight distances from access (source: the LISTmap, 2024)

WATERWAY AND COASTAL PROTECTION AREA CODE

The proposed driveway will require works within the extent of the Waterway and Coastal Protection Area. The following assessment is provided for the access.



Figure 3: extent of waterway and coastal protection area (hatched blue lines) (source: the listmap, 2024)

E11.7.1 Buildings and Works

Objective: To ensure that buildings and works in proximity to a waterway, the coast, identified climate change refugia and potable water supply areas will not have an unnecessary or unacceptable impact on natural values.

A1

Building and works within a Waterway and Coastal Protection Area must be within a building area on a plan of subdivision approved under this planning scheme.

P1

Building and works within a Waterway and Coastal Protection Area must satisfy all of the following:

- (a) avoid or mitigate impact on natural values;
- (b) mitigate and manage adverse erosion, sedimentation and runoff impacts on natural values;
- (c) avoid or mitigate impacts on riparian or littoral vegetation;
- (d) maintain natural streambank and streambed condition, (where it exists);
- (e) maintain in-stream natural habitat, such as fallen logs, bank overhangs, rocks and trailing vegetation;
- (f) avoid significantly impeding natural flow and drainage;
- (g) maintain fish passage (where applicable);
- (h) avoid landfilling of wetlands;
- (i) works are undertaken generally in accordance with Waterways and Wetlands Works Manual (DPIWE, 2003) and Tasmanian Coastal Works Manual (DPIPWE, December, 2010), and the unnecessary use of machinery within watercourses or wetlands is avoided.

RESPONSE

A1

The proposed access is not within a building area, thereby requiring assessment against the performance criteria.

P1

- a) The access is proposed to be located within an existing modified area, and will not impact on any nearby natural values. Notably, the tree root protection zones of the nearby native trees are some way from the access and measures to ensure the trees are protected during construction have been included in the arboricultural report.
- b) Any potential impacts from erosion, sedimentation and runoff can be managed under a permit condition.
- c) The access works will not result in any impacts on riparian or littoral vegetation.
- d) Not applicable as no changes to natural streambank or streambed conditions will result from the upgraded access.
- e) Not applicable as no changes to instream habitats will result from the proposal.
- f) Not applicable as no significant changes to natural flow and drainage will occur from the proposal.
- g) Not applicable as no changes to fish passage will result.
- h) No landfilling of wetlands is proposed.
- i) Works can be undertaken in accordance with the above, where required.

The proposal is deemed to satisfy the relevant requirements.

A1

Development must involve no new stormwater point discharge into a watercourse, wetland or lake.

RESPONSE

A1

No new stormwater point will be discharged into the adjoining bay, thereby complying.

If you have any further queries in relation to any of the above, please contact Ireneinc Planning and Urban Design on 6234 9281.

Yours sincerely,



Michela Fortini
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IRENEINC PLANNING & URBAN DESIGN