



# Brighton Council

MINUTES OF THE **PLANNING COMMITTEE MEETING**  
OF THE BRIGHTON COUNCIL HELD  
IN THE COUNCIL CHAMBER, COUNCIL OFFICES  
GAGEBROOK AT 5.45 P.M. ON TUESDAY,  
10<sup>TH</sup> MAY, 2010

**PRESENT:** Cr Gray (Chairperson); Cr Foster; Cr Garlick; Cr Geard and Cr Taylor.

**IN ATTENDANCE:** Cr Jeffries; Cr Owen; Cr Williams; Mrs J Banks (Manager Governance & Human Services) and Mr J Dryburgh (Senior Planner).

## 1. APOLOGIES:

*Cr Geard moved, Cr Garlick seconded that Cr Curran be granted leave of absence.*

**CARRIED**

### VOTING RECORD

In favour	Against
Cr Foster	
Cr Garlick	
Cr Geard	
Cr Gray	
Cr Taylor	

## 2. QUESTION TIME & DEPUTATIONS:

*There was no requirement for question time.*

## 3. DECLARATION OF INTEREST:

In accordance with Part 5, Section 48 of the *Local Government Act 1993*, the Chairman of a meeting is to request Councillors to indicate whether they have, or are likely to have an interest in any item on the agenda; and

Part 2 Regulation 8 (7) of the Local Government (Meeting Procedures) Regulations 2005, the Chairman of a meeting is to request Councillors to indicate whether they have, or are likely to have, a pecuniary interest in any item on the agenda.

Accordingly, Councillors are requested to advise of any interest they may have in respect to any matter appearing on the agenda, or any supplementary item to the agenda, which the Council has resolved to deal with, in accordance with Part 2 Regulation 8 (6) of the Local Government (Meeting Procedures) Regulations 2005.

*There were no declarations of interest.*

#### **4. COUNCIL ACTING AS PLANNING AUTHORITY:**

In accordance with the provisions of Part 2 Regulation 25 of the Local Government (Meeting Procedures) Regulations 2005, the intention of the Council to act as a planning authority pursuant to the *Land Use Planning and Approvals Act 1993* is to be noted. In accordance with Regulation 25, the Council will act as a planning authority in respect to those matters appearing under Item 4. on this agenda, inclusive of any supplementary items.

#### **4.1 JOINT LAND USE PLANNING INITIATIVE: PHASE TWO: ENDORSEMENT OF HERITAGE MANAGEMENT PLAN:**

**FILE REFERENCE:** 0979

**AUTHOR:** Senior Planner  
(Mr J Dryburgh)

**DATE:** 3 May 2011

#### **DISCUSSION**

The second phase of the Joint Land Use Planning Initiative, (JLUPI), involving Brighton Council along with those of Southern Midlands, Derwent Valley, and Central Highlands was essentially completed in 2010.

The documents included the following:

- The Settlement Strategy for the four-Council area.
- The Highland Lakes Settlement Strategy.
- The Bagdad-Mangalore Structure Plan.
- The Heritage Management Plan for the four-Council area.

Whilst the Settlement Strategies and the Bagdad-Mangalore Structure Plan have been finalised, the Heritage Management Plan has not.

In early 2010 Council considered reports on the results of the public consultation for the drafts of the documents, including the Heritage Management Plan.

There were then some delays in finalising the Heritage Management Plan document, and a final consolidated proof of the document was not provided to Council until the end of 2010.

The Heritage Management Plan has been modified in accordance with the wishes of the Councils involved.

Amongst other uses, it will provide guidance for the development of the heritage-related provisions for the new planning scheme. As Councillors are aware, these will now be drafted as part of the broader Southern Tasmania Regional Planning Project, which has supplanted this last phase of the JLUPI project.

The JLUPI Heritage Management Plan now constitutes an important body of work that has relevance to all Councils.

It is noted that it was written at a time when it was assumed the State's reviews of the *Historic Cultural Heritage Act 1995* and the *Aboriginal Relics Act 1975*, and development of an associated standard planning scheme code, (aka; schedule), were intended to be shortly completed. Whilst this has not eventuated, the document nevertheless remains highly relevant, and even quite instructive should these initiatives gather pace again. The development of a standard heritage code for planning schemes may well fall to the three individual regional planning projects around the State, in which case the JLUPI Heritage Management Plan will provide good direction to those that wish to use it.

The primary outcome of the Heritage Management Plan with regard to Brighton Council is the recommendation that Brighton Council updates, and improves its Pontville heritage precinct. Council has already undertaken this work, with changes to the Pontville Village Overlay and the Heritage Schedule via a draft planning scheme amendment having already been on public notice. Heritage consultant Graeme Corney undertook the heritage assessment of Pontville.

The Heritage Management Plan will act as a useful supporting document for the approval process of the Pontville Village draft amendment at the Tasmanian Planning Commission.

It is recommended that Council endorse the document.

## **RECOMMENDATION**

That Council endorse the Joint Land Use Planning Initiative – Heritage Management Plan, July 2010.

## **DECISION:**

*Cr Geard moved Cr Foster seconded that the recommendation be adopted.*

**CARRIED**

**VOTING RECORD**

<b>In favour</b>	<b>Against</b>
Cr Foster	
Cr Garlick	
Cr Geard	
Cr Gray	
Cr Taylor	

**4.2 DRAFT PLANNING SCHEME AMENDMENT – PONTVILLE VILLAGE OVERLAY ORDINANCE & MAP – SECTION 39 REPORT:**

**FILE REFERENCE:** RZ 09/07

**AUTHORS:** Planning Officer & Senior Planner  
(Miss J Farmer & Mr J Dryburgh)

**APPROVED:** Senior Planner  
(Mr J Dryburgh)

**Applicant:** Brighton Council

**Owner:**

**Location:** Pontville

**Application no.:** RZ 09/07

**Zoning:**

**Date received:** NA

**Date advertised:** NA

**Decision required** NA

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**Background:**

This draft amendment was previously certified by Council in December 2009. However following public exhibition and a hearing, the amendment was altered to a substantial degree by the Tasmanian Planning Commission. Subsequently, the Commission directed that the amendment be publically exhibited for three weeks and during this period one (1) representation was received. This representation is discussed in detail below.

The purpose of the draft amendment is to update and improve the planning scheme provisions relating to the Pontville area. Council recently commissioned a report for this purpose the *Pontville Village Heritage Protection Overlay 2009* prepared by Graeme Corney. The Report recommends several amendments to the Brighton Planning Scheme 2000.

Firstly, the Plan creates four distinct Heritage Protection Areas:

- **Heritage Protection Area 1** - "All development is prohibited unless exempt";
- **Heritage Protection Area 2** - "All buildings must be located below the vista view field";
- **Heritage Protection Area 3** - "New houses are prohibited";
- **Heritage Protection Area 4** - "Archaeologically sensitive area, all development is prohibited unless exempt".

The Plan also recommends minor changes to the Pontville Village Overlay boundary to reflect the findings of the Report.

Secondly, the Report recommends additional clauses for the Pontville Village Overlay ordinance to reflect the changes and additions to the Plan. The changes include adding specific inclusion of the protection of views and vistas under Clause 7.7.1, which defines the purpose of the Overlay. Clause 7.7.1 has also been modified to further define the purpose of the Overlay and how that applies to Pontville's cultural landscape.

The changes to the Overlay provisions also include the addition of Decision Guideline (f) under Clause 7.7.2, which requires compliance with the proposed Heritage Protection Areas.

Thirdly, the Report recommends additional listings to Schedule 9 (Heritage Schedule) of the Scheme and the improvement of some of the heritage descriptions of sites, resulting from the study of Pontville. Descriptions of many of the sites have been enhanced and are improved in terms of accuracy and detail. The following properties are additional to the present list of heritage properties under Schedule 9 of the Scheme in Table S9.1- Register of Places of Cultural Significance:

- Pontville War Memorial Reserve (PID1793989)
- Former Police Pound/ Old Gaol Ruins (PID7248025)
- Former Service Station (258 Midland Highway)

Some of the previously listed entries in Schedule 9 contained incomplete or inaccurate addresses, which made the properties difficult to identify correctly. This opportunity should be taken to update these property details under Schedule 9 of the Scheme. The affected properties and the updated details are:

- Cottage ( 21 Weily Park Road/PID7296799)
- Cottage (621 Millvale Road/PID7721345)
- Pig & Whistle (50 Briggs Road/PID5016896)

- Bridge Piers (Pontville Bridge, Midland Highway)
- Lythgo's Store (253 Midland Highway/PID7804271)
- The Barrack's Cottage (249 Midland Highway/PID7569785)
- St George's (2 Briggs Road/PID5016888)
- St Matthew's (231 Midland Highway/PID7561046)
- St Mark's (1 Kimberley Street/PID5019704)

Fourthly, minor refining of the Overlay boundary is proposed, which occurs in three places. The boundary is adjusted near the Catholic Church at 195 Midland Highway to incorporate the identified view lines of the Church. A similar boundary change is proposed to incorporate view lines relating to the Uniting Church at 247 Midland Highway. These modifications are very minor and only restrict building in small sections of Heritage Listed sites where building would most likely not have been approved under previous heritage provisions.

A second modified boundary includes the inclusion of a section of vacant land that is part of the parcel of land the northern cricket ground is located on. The purpose of including this piece of land is that it fronts the Highway and is both on either side by the Overlay. As such, any development on the area would impact upon the adjacent heritage values.

Finally, in addition to the recommendations provided in the Corney Report, it is considered appropriate to remove references to the National Trust and Register of the National Estate within all the heritage site listings under the Heritage Schedule (Schedule 9). These references do not represent any planning trigger under LUPAA or the Planning Scheme. As such, for the sake of clarity and lack of confusing or unnecessary information it is only considered appropriate to show if a property is listed under the Tasmanian Heritage Register (THR). If a site is listed on the THR Council will be required to obtain a Works Application and refer it to the Tasmanian Heritage Council

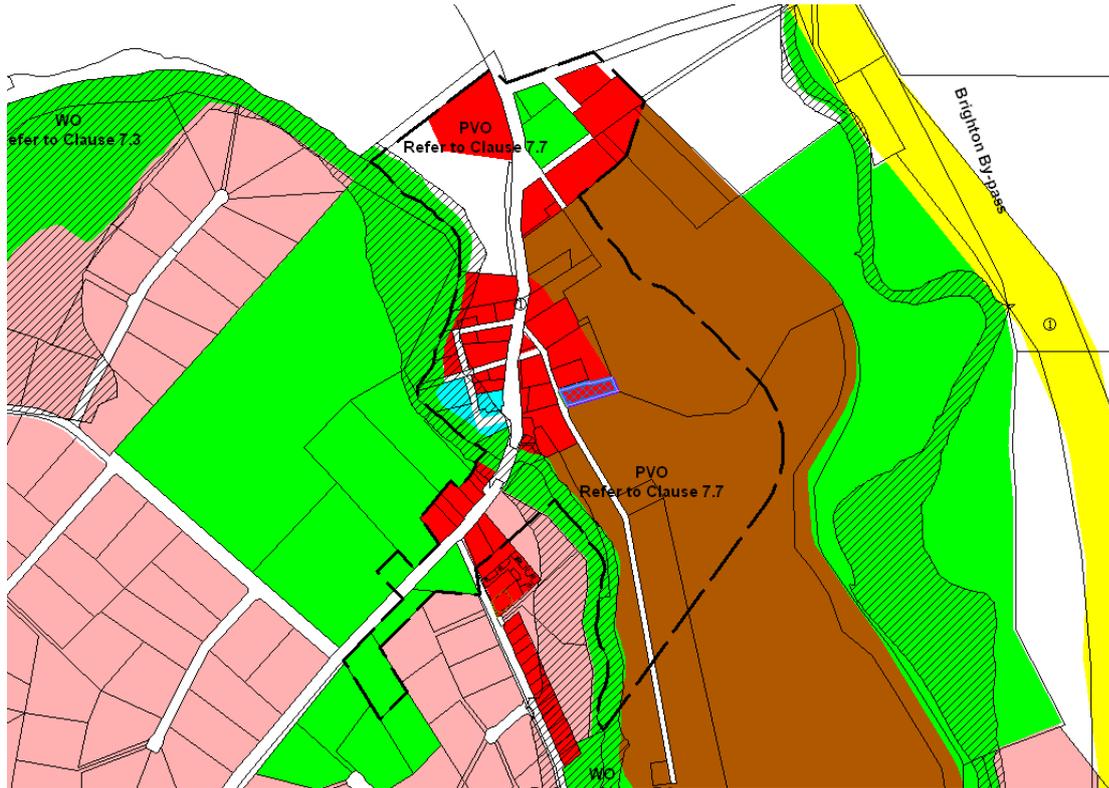


Figure 1: Location Map showing the boundary of the current Pontville Village Overlay

**Consultation:**

The Draft Amendment was exhibited in accordance with Section 38 of the Act and Section 6 of the Land Use Planning and Approvals Act Regulations 2004 between the 30<sup>th</sup> of January 2010 and the 19<sup>th</sup> of March 2010.

Following direction from the Tasmanian Planning Commission that the amendment must be altered to a substantial degree, the Draft Amendment was altered and readvertised in accordance with Section 38 of the Act and Section 6 of the Land Use Planning and Approvals Act Regulations 2004 between the 2<sup>nd</sup> of February 2011 and the 28<sup>th</sup> of February 2011.

One (1) representation was received in relation to the proposed planning scheme ordinance amendment.

Several minor alterations to the draft amendment are proposed in response to the issues raised in the representation and further analysis of the draft amendment and its likely operation and implications. These minor alterations do not significantly alter the intent of the draft amendment but are considered to improve the clarity and operation of the relevant sections of the Planning Scheme.

The issues raised in the representation are as follows:

Issue	Comment
<p><b>Representation 1.</b></p>	
<p>The Uniting Church property (247 Midland Highway) is almost wholly covered by HPA 1, which prohibits further development.</p>	<p>The intent of HPA 1 is to prohibit all new development other than extremely inconsequential normally exempt developments or those which are necessary for the ongoing conservation of a heritage site. The proposed Heritage Protection Areas are based on a combination of the recommendations in the principal report prepared by Heritage expert Graeme Corney and supplemented by the JLUPI Heritage Management Plan Report.</p> <p>A small section of land behind the church at 247 Midland Highway and across the southern section of the adjoining lot, which forms part of the same site, is deliberately excluded from HPA1 to allow some minor development potential in an area and of a scale that is compatible with the heritage values of the site.</p> <p>It would be possible to construct a small addition to the rear of the church and to development the southern area of the adjoining lot.</p> <p>Internal alterations to a building are provided for within the exemptions listed under Part 5 of the Planning Scheme and because “use” is not considered “development” there will remain the possibility for a change of use of the site and internal alterations to facilitate it.</p> <p>The representor, who is considering changing the use of the site to a restaurant, makes the point that some development associated with the change of use to a restaurant would be difficult or impossible under the Pontville Village Overlay.</p>

	<p>This is a reasonable concern, which conflicts with the desire to protect the vista of the church, when viewed from the highway.</p> <p>It is considered that a small compromise can occur with limited impact on the heritage values of the site. As such, it is recommended that the splayed area excluded from the HPA1 be increased to allow for sensitive development that may be associated with a change of use of the site. This increase in the splayed HPA1 boundary should not however, significantly impact upon the vista of the church, which is the fundamental reason for severely restricting development on the site.</p> <p>The recommended change can be viewed by comparing the plan endorsed under Section 35 with the plan submitted for endorsement under Section 39.</p>
<p>The vista view field in HPA 2 is not defined in the Scheme therefore makes it application void.</p>	<p>The term "vista view field" is not definable spatially on the map. The "vista view field" is a three dimensional concept and depends on the topography of the land, each application would need to be determined by Council with an assessment of a heritage consultant on an individual basis.</p> <p>However, the representation does raise the need to provide greater clarity regarding the "vista view field."</p> <p>It is proposed to add a clause to the proposed Pontville Village Overlay after Clause 7.7.1 as follows:</p>

	<p><b>Definitions</b></p> <p>7.7.2</p> <p><i>Vista view field</i></p> <p><i>The vista view field is a three dimensional area that provides a view. The borders of the vista view field to be preserved are to be defined by an approved heritage consultant. The heritage consultant shall consider reflectivity and form of proposed development especially near the edge of the view field to ensure the vista of the country side is not only retained but remains prominent.</i></p> <p>The above Clause will be put in table form, as definitions are elsewhere in the Scheme, and the rest of the Overlay provisions renumbered accordingly.</p>
<p>Prohibition on houses within HPA 3 is poorly thought out.</p>	<p>As discussed above, the proposed Heritage Protection Areas were based on a combination of the recommendations in the principal report prepared by a Heritage expert Graeme Corney and supplemented by the JLUPI Heritage Management Plan Report.</p> <p>The primary goal is to preserve existing heritage values, not to facilitate future development.</p>
<p>S7.7.5 refers to an “allotment” which is not defined in the Scheme.</p>	<p>This is a reasonable concern and it is recommended the word “allotment” be changed to “lot” to ensure consistency with the rest of the Scheme.</p>
<p>S7.7.7 purports to make normally exempt minor developments require a Permitted permit, but due to HPA1 and HPA4 they would actually be prohibited.</p>	<p>This is not the case, as HPA1 and HPA4 state that “all development is prohibited unless exempt.” As such, a development that is “exempt” (defined under Part 5 of the Scheme) could be granted a permit under Section 58 of the Act, provided it can be categorised within Clause 5.1 (d), (f) or (j).</p>

	<p>It is considered that this section will function appropriately.</p> <p>However, the section could be further clarified by the addition of the words “or provided for under Clause 7.7.8” after the word exempt in 7.7.4 (a) and (d). To read as follows:</p> <p style="padding-left: 40px;"><i>(a) HPA1 – All development is Prohibited unless exempt or provided for under Clause 7.7.8.</i></p> <p>And</p> <p style="padding-left: 40px;"><i>(d) HPA4 – Archaeologically sensitive area, all development is prohibited unless exempt or provided for under Clause 7.7.8.</i></p> <p>This minor change in wording does not change the intent or operation of the draft amendment, but provides for greater clarity.</p>
<p>S9.6 purports to prevent repair and maintenance of a building in certain circumstances.</p>	<p>The intention of S9.6 is to allow the repair and maintenance of buildings to be exempt from planning approval provided the works are undertaken with either the same or similar materials as the original structure.</p> <p>The exemption facilitates ease of repair and maintenance, provided the works are consistent with the existing character of the site.</p> <p>It is however, recommended that the word “significantly” be inserted before “modified or changed.” This minor change recognises that repair and maintenance may in certain cases result in minor changes to external appearance. An example is that a new roof will look different to an old roof, or that the original colour may no longer be available. Clause S9.6 would read:</p>

	<p><i>A permit is not required for repair or routine maintenance of a place of cultural significance, subject to the repairs or routine maintenance being undertaken to the same details and specifications and with the same or similar materials as the original structure so that the appearance is not significantly modified or changed.</i></p>
<p>Despite attempting to prohibit development on the Uniting Church site through HPA1, it is still discretionary given S9.8.</p>	<p>There is an argument both ways in regard to this representation. On the one hand it is generally accepted within planning that the specific overrides the general. Clearly in this case the Pontville Village Overlay is more specific than the Heritage Schedule and as such, where inconsistency occurs, the Overlay shall take precedence.</p> <p>On the other hand, Clause 8.1 of the Scheme states that where inconsistency occurs schedules shall prevail over zone and overlay provisions. Given that this is clearly stated it is considered that the representation is correct in its assumption.</p> <p>However, it is also worth considering the intent of the Schedule overriding the Overlay in this case. Any use or development would have to satisfy Clause S9.8 (a) to (d). It would allow use or development only in extremely rare cases where the survival of the heritage item is dependent on the development or use and no adverse impacts occur. Any proposal would need to satisfy all four specific and onerous criteria to be approved.</p>
<p>The proposed additional listing notes which refer to trees for the Uniting Church property are incorrect.</p>	<p>The proposed additional listing of the trees is based around a number of considerations, including the value of the trees to the community and the importance to the community as a local landmark.</p>

	<p>Graeme Corney has recommended that a tree, which is older than 50 years of age, is of a mature height and can be considered important to the community is listed. Therefore the importance of retaining the trees should be considered by Council.</p>
<p>Adaptive reuse of the Uniting Church property should be encouraged rather than preventing the site from being used at all.</p>	<p>The intention is not to prevent the Uniting Church site from being used, but rather to preserve the heritage significance and values of the property.</p> <p>A change of use of this site could occur as could some minor development in specific areas of the site, including at the rear of the church. Further potential is provided by the proposed modification of the HPA1 boundary in this area.</p> <p>It is considered that the draft amendment provided for as much potential development as possible without damaging the heritage values of the site.</p>

During this assessment it has also become apparent that there could be confusion regarding the ability of Council to develop necessary utilities or create parks or playgrounds within Pontville in the HPAs. On the one hand it could be argued there is scope for this to occur under Clause S9.8, which in many cases may be correct. However, the requirement that the conservation of a heritage site must be dependent on the use or development could create confusion.

It is recommended that a Clause be added to 7.7.4 to state that applications for Utilities and Community Services (public park or playground) be discretionary in all HPAs.

**Other issues:**

Section 39(2) of the Act provides that a Planning Authority (Council) must, within 35 days after the public notification period has closed, forward to the RPDC this report on representations received to the draft amendment.

The report is required to provide a statement on each representation and such recommendations in relation to the draft amendment as the authority considers necessary, or state that no representations were received.

The report may include any recommendations concerning the exhibited draft amendment the Council considers necessary, including any other information in support of its recommendations.

**Assessment:**

The issues raised in the representations have been addressed and several modifications are considered necessary to the draft amendment. The recommended alterations have been discussed in detail above.

In summary, most of the modifications involve minor rewording of ordinance to facilitate clarity and consistency with the rest of the Planning Scheme. However, one suggested change is an alteration to the boundary of the HPA1 within the Pontville Village Overlay. This alteration is considered minor and would allow a slight increase in the change of use and development potential on the site with extremely limited impact off site or on important vistas to the heritage site itself.

**Options:**

1. To adopt the recommendation; or
2. To adopt an alternative recommendation, with a full statement of reasons as determined by Council.

**RECOMMENDATION:**

**That in accordance with Section 39 (2) of the Land Use Planning and Approvals Act 1993 Council resolves to:**

- A. Advise the Tasmanian Planning Commission that one (1) representation was received following exhibition of draft amendment RZ 09-07 to the Brighton Planning Scheme 2000; and
- B. Advise the Tasmanian Planning Commission that the following modifications to draft amendment RZ 09-07 are necessary:

**Pontville Village Overlay Ordinance and Map**

1. The following clause added and subsequent clauses renumbered accordingly:

***Definitions***

*7.7.2 The following table lists terms that may be used in this Schedule. A term listed in the first column, under the heading "General Term", has the meaning set out beside that term in the second column, under the heading "Definition"*

<b>General Term</b>	<b>Definition</b>
<b>Vista view field</b>	<i>The vista view field is a three dimensional area that provides a view. The borders of the vista view field to be preserved are to be defined by an approved heritage consultant. The heritage consultant shall consider reflectivity and form of proposed development especially near the edge of the view field to ensure the vista of the country side is not only retained but remains prominent.</i>

2. The following clause modified for operational clarification to add the words “or provided for under Clause 7.7.8” at (a) and (d) and to add the words “(excepting that applications for Utilities and Community Services (public park or playground) are Discretionary in all HPAs)”. Please note that this clause is now 7.7.5 rather than 7.7.4 and that 7.7.7 is now 7.7.8 due to the renumbering required for the addition of the definition Clause 7.7.2.

*7.7.5 Provisions for heritage protection areas (excepting that applications for Utilities and Community Services (public park or playground) are discretionary in all HPAs):*

- (a) HPA 1 – All development is Prohibited unless exempt or provided for under Clause 7.7.8.*
- (b) HPA 2 – All buildings must be located below vista view-field.*
- (c) HPA 3 – New houses are Prohibited.*
- (d) HPA 4 – Archaeologically sensitive area, all development is prohibited unless exempt or provided for under Clause 7.7.8.*

3. The following clause modified for operational clarification and consistency throughout the Planning Scheme to replace the word “allotment” with “lot.” Please note that this clause is now 7.7.6 rather than 7.7.5 due to the renumbering required for the addition of the definition Clause 7.7.2.

*7.7.6 More than one dwelling per lot is Prohibited within the Pontville Village Overlay.*

4. The boundary of HPA1 be modified over the property known as 247 Midland Highway as shown on the Pontville Village Overlay Plan (attached).

**Schedule 9 Heritage Schedule**

1. The following clause be modified for the purposes of operational clarity to add the word “significantly” between the words “not” and “modified,” as follows:

**Exemptions**

S9.6 A permit is not required for repair or routine maintenance of a place of cultural significance, subject to the repairs or routine maintenance being undertaken to the same details and specifications and with the same or similar materials as the original structure so that the appearance is not significantly modified or changed.

**DECISION:**

*Cr Foster moved, Cr Geard seconded that the recommendation be adopted.*

**CARRIED**

**VOTING RECORD**

In favour	Against
Cr Foster	
Cr Garlick	
Cr Geard	
Cr Gray	
Cr Taylor	

**4.3 PLANNING UPDATE:**

**FILE REFERENCE:**

**AUTHOR:** Senior Planner  
(Mr J Dryburgh)

The Senior Planner, James Dryburgh provided Committee with an update on planning issues within the municipality.

**RECOMMENDATION:**

That the report be received.

**DECISION:**

*Cr Geard moved, Cr Garlick seconded that the reports be received and that the Senior Planner be asked to advise the Tribunal that Council accepts the amendments to the developments in Euston Place and Killarney Road, Bridgewater as tabled and discussed at the mediation meeting.*

**CARRIED**

**VOTING RECORD**

In favour	Against
Cr Foster	
Cr Garlick	
Cr Geard	
Cr Gray	
Cr Taylor	

The meeting closed at 6.15 p.m.

Confirmed: \_\_\_\_\_  
(Mayor)

Date: \_\_\_\_\_  
17<sup>th</sup> May 2011