



Brighton Council

MINUTES OF THE **PLANNING COMMITTEE MEETING**
OF THE BRIGHTON COUNCIL HELD
IN THE COUNCIL CHAMBER, COUNCIL OFFICES
GAGEBROOK AT 5.30 P.M. ON TUESDAY,
9TH AUGUST, 2011

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

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

1. APOLOGIES:

All members were present.

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 REGIONAL MODEL PLANNING SCHEME PROCESS:

FILE REFERENCE: 0780

AUTHOR: Senior Planner
(Mr J Dryburgh)

BACKGROUND:

The purpose of this report is to seek Council's position regarding using the planning directive process to progress the regional model planning scheme required under the Memorandum of Understanding for the Southern Tasmania Regional Planning Project.

Twelve Southern Councils, including Brighton, are partners in the Southern Tasmania Regional Planning Project. The Project outcomes are as follows:

- A regional land use strategy
- An infrastructure investment plan
- A model planning scheme
- Individual council draft planning schemes, substantially aligned to the model planning scheme.

Council has endorsed the land use strategy and participants in the process are now at the stage of preparing the model regional planning scheme.

DISCUSSION:

The Tasmanian planning legislation allows the Minister to issue planning directives in relation to a range of planning matters. Once a directive is issued, a planning authority is bound by it and must comply with it. An example of a planning directive is Planning Directive No.1, which requires planning authorities to use the Planning Scheme Template for Tasmania.

A draft planning directive is lodged with the TPC who then forwards it on to the Minister. The Minister then decides whether or not to direct the TPC to assess the directive. If it is to be assessed the TPC places the directive on public exhibition then considers representations before deciding on its recommendation to the Minister and under what terms.

There are many advantages to using the planning directive process for the regional model planning scheme, but put most broadly, it would ensure the greatest consistency between each Council's planning scheme and the most efficient route to each Council having a new approved scheme.

In effect, the directive process would allow all the elements of the new schemes that are to be common for all southern councils to be assessed and approved under one process, rather than twelve separate processes. This is obviously efficient, but it also ensures that individual schemes do not deviate from their intended consistency with one another, unless it is for an intended local reason.

Reasons in favour of using the directive process:

- The regional process is expected to wind up once draft schemes are ready for submission, and as such, the regional view may not be adequately represented at hearings;
- Lack of statutory protection for regional provisions, other than the broad requirement for consistency;
- Potential for lack of continuity in Commission Panel membership across the region for individual scheme assessment;
- The loss of regional consistency;
- Loss of a fully effective regional strategy;
- Resources are pooled and all councils represented in the process of developing the regional elements of the schemes, meaning there will actually be greater control and self-determination for local government in the preparation of provisions;
- A structured and objective hearing process to resolve competing views; and
- Greater consistency will lead to simpler and better dispute resolution.

Reasons against using the directive process:

- Risk of delaying draft interim planning schemes (this risk is considered minor);
- Council may not like all of the provisions created by the planning directive. However, this should be negated by Council's Senior Planner representing Council on the Technical Reference group for the project, as has been the case to date. There is also scope within the directive to allow for "mandatory" and "optional" common provisions; and
- The Minister may choose not to direct an assessment of the draft Planning Directive. However, this is highly unlikely given this is the process most likely to achieve the Minister's most desired outcome of consistency of planning scheme provisions with schemes across the region.

RECOMMENDATION:

That Council advise the Lord Mayor, in his capacity as Chairman of the Southern Tasmania Regional Planning Project Steering Committee, of the following:

1. Council expresses its in-principle support for progression of a regional model planning scheme via a regional planning directive process.
2. In Council's view, this approach is required to ensure consistency of planning schemes across the region, which is required under the MoU for the Project.
3. Council suggests that there is great benefit in the Lord Mayor seeking to brief the Minister for Planning on the desirability of the using the planning directive process as the most effective means of progressing consistency in planning schemes across the region.

DECISION:

Cr Geard moved, Cr Garlick seconded that the recommendation be adopted.

CARRIED

VOTING RECORD

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

4.2 APPLICATION FOR PLANNING APPROVAL – SIDE AND REAR BOUNDARY FENCE ON A PLACE OF HERITAGE SIGNIFICANCE, 14 NIELSEN ESPLANADE, BRIDGEWATER:

FILE REFERENCE: Nielsen/14

AUTHOR: Planning Officer
(Miss A Beyer)

APPROVED: Senior Planner
(Mr J Dryburgh)

Applicant: Rock Property

Owner: Medkes Development Pty Ltd

Location: 14 Nielsen Esplanade, Bridgewater

Application no.: DA 2011/119

Zoning: Residential- Brighton Planning Scheme 2000 (the planning scheme)

Date accepted: 16 June 2011

Date advertised: 22 June 2011

Decision required 27 July 2011 (Extension of time granted until 16 August 2011)

Proposal:

The purpose of this report is to consider an application made before Council for the construction of a 1.8 metre high timber paling side and rear boundary fence on the heritage listed property known as 'Fairfield'. The proposed fencing is intended to extend the full length of the western and northern (rear) property boundaries of Lot 2 associated with the recent 3 lot subdivision at 14 Nielsen Esplanade approved under application reference SA2010/52. Lot 2 contains the 'Fairfield' dwelling and associated outbuildings that form an equally important part of the original estate. The fencing is also intended to extend along a small portion of the eastern property boundary.

Given the site is heritage listed under both the Tasmanian Heritage Register (State listing) and Schedule 9 of the Planning Scheme (Local listing), the exemption Clause for side and rear boundary fencing that would ordinarily apply to these types of developments does not apply in this case as Cause 5.1 excludes places of cultural significance from all mentioned exemptions.

A Works Application was recently lodged with Council and approved by the Tasmanian Heritage Council associated with the site works required for the extension and widening of Nielsen Esplanade and construction of a cul-de-sac head in accordance with permit condition 34 of SA2010/52. The roadwork's required to facilitate the realization of the subdivision triggered the removal of four mature Radiata pine trees which form part of the landscape setting associated with 'Fairfield.' The Tasmanian Heritage Council approved the works application in their Notice of Heritage Decision subject to conditions. The conditions relating explicitly to the fencing component required that the fence be constructed from untreated hardwood timber. The recommendations and conditions made within the Notice of Heritage Decision will form part of conditions approval of this permit.

Due to the complexity of heritage issues surrounding the site including a decision of the then Resource Planning and Development Commission to rezone the land from Recreation to Residential and a subsequent appeal relating to Works Application (SA2009/49) recommending the subdivision and rezoning be refused due to an unacceptable degree of adverse impacts on the cultural heritage values of the place. This decision was appealed by the applicant and a replacement Notice of Decision was issued for an approval subject to conditions and advice as per a consent agreement agreed upon by both parties.

As part of the appeal, a Skeletal Conservation Plan was prepared by Heritage Architect and Consultant Graeme Corney which has been required in subsequent approvals to be implemented unless where details are found to be in conflict with the conditions of future approvals given by the Tasmanian Heritage Council. This Conservation Plan was intended to assist the owners with understanding its heritage values and to make commitments to the long term care of those heritage values. The then RPDC issued an approval for the rezoning and in its decision, noted that a key matter for heritage is the setting and the protection of the curtilage of buildings within this setting. The principal view of the setting is from the Midland Highway causeway to Woods Point and the prominence of this in relation to the river that can be retained by houses being setback from the water. This setback was achieved through a required riparian open space reserve which extends 30 metres inland from the HWM along the entire southern property boundary (RZ2008/04).

Given the complexity of the heritage values of the site, the application in question was referred to Graeme Corney for an independent heritage appraisal. A Works Application was also lodged with the Tasmanian Heritage Council whom have issued conditional approval.

Site and Locality:

The subject site known as Lot 2 of subdivision SA2010/52 forms the curtilage required to retain the estate values associated with Fairfield. This plan has not yet been sealed to date therefore the application will be required to be considered in accordance with the parent allotment which constitutes a land area of 4.2 hectares.

The subject land is a large residential allotment located on the foreshore of the Derwent River. The allotment extends to the High Water Mark of the Derwent River foreshore. The land is clear of vegetation excepting the riparian reserve which contains exotic grasses and is partly infested with weeds. The land is relatively flat and adjoins the well-established urban area of Bridgewater to the north and west. Eddington Park adjoins the site to the east and the proposed subdivision would provide a 30 metre open space reserve which would connect to the Park therefore allowing for a linear pathway along the foreshore which is consistent with Council's intent to provide this recreation facility and works are well underway through most sections of Bridgewater.

The site contains a heritage listed property known as 'Fairfield' which is one of several farms that once made up the district of Bridgewater. The property contains a Victorian weatherboard house, outhouse, garage, workers cottage and fowl house. The house is in excellent condition as considered in previous heritage appraisals. The estate is considered to have low heritage significance, however, it is the overall environment that is formed by the combination of the items on site that is important and warrants preservation. Farm fencing, sheep pens and the openness of the spaces are examples of aspects that are of low individual significance but in combination contribute to the farm environment. A 'no-build' zone is located across Lot 1 and 2 as per the Skeletal Plan prepared by the heritage consultant which aims to protect the view lines to the house from Gunn Street and the Midland Highway causeway.

In terms of infrastructure provision, the site is fully serviced with sewer, water and stormwater infrastructure.

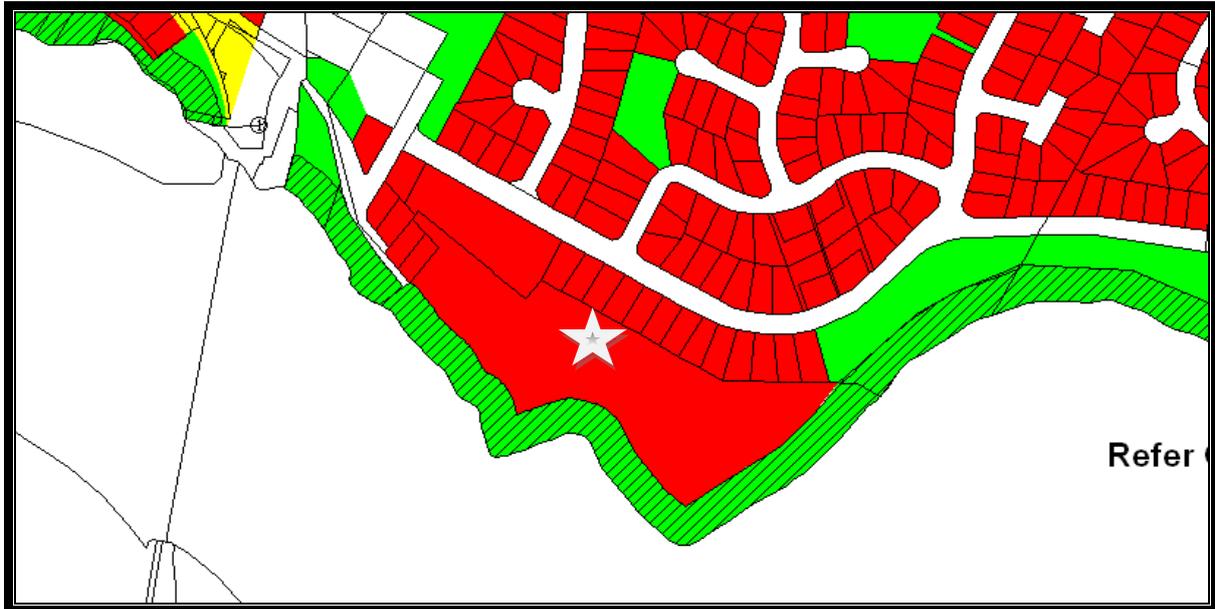


Plate 1: The subject site highlighted is located within the Residential Zone.

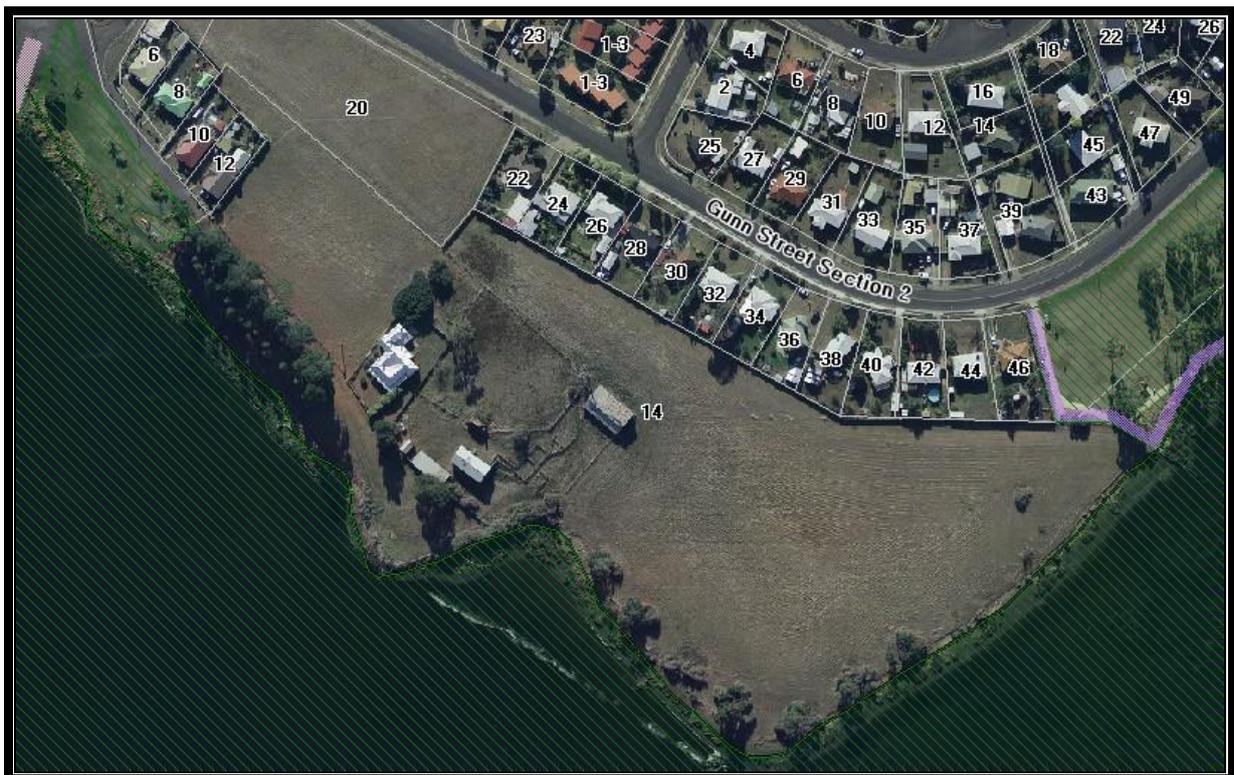


Plate 2: An aerial view of the subject site denotes the location of 'Fairfield'.

Background:

The site has had a complex history since 2008 when land ownership changed hands and an application to rezone the land to facilitate subdivision began. A combined Planning Scheme Amendment and Development Application was lodged pursuant to section 43A of the *Land Use Planning and Approvals Act 1993* to rezone the land from Recreation to Residential and to subdivide the land into 26 residential allotments.

Following the public exhibition period, Council recommended refusal of the draft amendment. The former RPDC considered the amendment appropriate in terms of the suitability of the site for residential use and the limitation of Recreation zoning where there is no intention to acquire for public open space purposes.

The permit for the subdivision of the land was refused as the Tasmanian Heritage Council refused the subdivision on the basis the development would have an unacceptable adverse impact on the cultural heritage values of the place. The RPDC refusal was based on the fact that a new subdivision design was required to accommodate the Heritage Council’s concerns, namely the retention of a large curtilage around the farm estate.

Subsequent to the refusal of the original subdivision application through the combined planning scheme amendment/ development application process, a new development application was lodged in 2009 for a three lot subdivision (SA2009/46). The proposal was advertised in accordance with the Act and representations were received. The representors’ raised concern over the zone boundary as per the RPDC decision and this prompted this issue to be adequately addressed.

Consultation:

This application was subject to the 14 day statutory notification period (22 June 2011 to the 5 July 2011) as the proposal was a discretionary application on the basis of the heritage listing. One representation was received outlining the following concerns:

<i>Issues Raised</i>	<i>Planning response</i>
Representor 1:	
<p>I strongly object to a 1.8 metre paling fence being erected on this property as there is a ‘No Build Zone’ on Lot 1 that is purely for a vista off Gunn Street. The ‘No Build Zone’ would have no significance if a paling fence was built across it.</p>	<p>Heritage Architect and Consultant Graeme Corney was involved in the assessment of this application given he prepared the Skeletal Conservation Plan for ‘Fairfield’. Mr Corney has advised that in his opinion, the proposal in its current form is not acceptable from a heritage perspective. He suggests that the section of the fence located adjacent to the ‘No Build Zone’ be reduced in height to 1.2 metres or be constructed from post and rail materials. Graeme’s advice is considered reasonable as it will prevent the proposed</p>

	<p>fencing from obstructing the pedestrian visual corridor currently maintained to the dwelling from Gunn Street and is considered a suitable compromise between the conflicting values of the site.</p>
<p>A paling fence erected on this property would not be in keeping with the Planning Scheme Schedule 9.</p> <p>As the author in the December 2010 planning report for 14 Nielsen Esplanade states:</p> <p>“the proposed subdivision layout will allow for the retention of the main residence and outbuildings which will ensure the values of the estate will remain. The land associated with the site will be large and this is to preserve the ‘farm’ feel of the site’.</p> <p>I can honestly say that I have never seen a farm with a paling fence; this is why I believe Schedule 9(a), (b) and (c) are not being adhered to.</p>	<p>The property is not functioning as a farm any longer due to the urbanization of the area. The land has since been rezoned to Residential therefore fencing and associated residential development will be a common element particularly on Lots 1 and 3 of the subdivision plan SA2010/52. The intent of the large curtilage provided around the ‘Fairfield’ dwelling is to retain the farm setting. Given the zoning of the land and that the site is not functioning as a farm it is unreasonable to prohibit side and rear boundary fencing to provide privacy to what is a residential property.</p>
<p>Brighton Council’s planning author for 14 Nielsen Esplanade in December 2010 also reports:</p> <p>‘A community environment would be set at the water edge however the view from Bridgewater Bridge and Gunn Street to the residence would be retained in line with the recommendations made by the TPC’.</p> <p>It was in fact Graeme Corney who made these recommendations in his Skeletal Conservation Plan dated 3 April 2009, which was later directed to be adhered to at a hearing at RMPAT on the 26 May 2009. There have been many plans put forward by the owners which all have the ‘No Build Zone’ on them after Graeme</p>	<p>On 6 December 2008, the Heritage Council refused to grant a works permit for proposed subdivision permit 08/04. This refusal was appealed to the RMPAT, the result of which was a consent decision (Goodsell v THC[2009] TAS RMPAT 105- decision dated 26 May 2009) that replaced the refusal with a valid works permit. On July 2009, the then RPDC gave notice of its decision regarding Scheme Amendment RZ04/08 and Subdivision Permit 08/04 for a 26 lot subdivision. The RPDC approved the scheme amendment, which resulted in a rezoning of the land in question to Residential, but refused the subdivision application proposing 26 lots. The heritage works permit for application no. 3136 lapsed on the 13 July 2011, such date being two years from the date when Council received notice of the permit and there being no substantial</p>

<p>Corney's skeletal plan was written.</p>	<p>commencement of the 26 lot subdivision because planning approval was refused by the RPDC per the notification on 1 July 2009. Accordingly, the 'No Build Zone' associated with the 26 lot subdivision and its related heritage works approval never came into existence.</p>
<p>I attended the RPDC hearing on the 29 April 2009 where it was discussed and agreed that the 'No Build Zone' be kept for a viewing point off Gunn Street, so that this piece of heritage could still be viewed, and all those that attended believed this was important to the community. It does not make sense for the THC to follow Graeme Corneys Skeletal Conservation Plan by making the owners spend money doping up the workers cottage and keeping the rest of the Heritage buildings if it is all to be fenced off so that the only way that it can be seen is on the Bridgewater causeway.</p>	<p>Further to the above response, the heritage works permit for application number 3136 was never acted upon and has since lapsed.</p>
<p>If the fence is erected even though it will be breaching the RPDC, RMPAT direction and Council's Planning Scheme who will be maintaining this fence? As is it well known a paling fence will not last for ever and a day. This concerns me as I have been told by the THC that the owners plan to erect the paling fence and on sell the property as they do not wish to spend anymore money on Lot 2.</p>	<p>On 21 December 2010 Council granted approval for a three-lot subdivision of the site, the details of which are set out in SA2010/52. On December 1 2010 the THC approved a works permit for the three lot subdivision proposed by SA2010/52. It can be confirmed that it clearly shows a 'No Build Zone' in the north-eastern corner of lot 1. The purpose of the no build zone is to preserve the line of sight to the 'Farifield' property from nearby Gunn Street. This 'No Build Zone' does not yet formally exist because SA2010/52 has not been sealed and registered at the Land Titles Office.</p> <p>The Planning Scheme does not provide guidance on the maintenance of infrastructure. This is an issue that will need to be managed by the owner or any future own of the property. The <i>Boundary Fences Act 1908</i> sets out the law in Tasmania relating to erecting and repairing boundary fences. If</p>

	neighbouring properties are not divided by a 'sufficient' fence, or the fence needs repairing, the neighbours are legally required to erect or repair the fence. This legislation sits outside of Council's jurisdiction and is rather a civil matter.
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Risk Implications:

Section 63A of the Act provides that a planning authority that fails to take all reasonable steps to ensure that its planning scheme is complied with may be liable to a fine of up to \$50,000.

Financial Implications:

No financial implications are foreseeable.

Other Issues:

This report details the basis and reasons for the recommendation. An alternative decision by Council will require a statement of the reasons for the decision in order to maintain the integrity of the planning approval process and to comply with the intent of the Judicial Review Act 2000. In addition, section 25 of the Local Government (Meeting Procedures) Regulations 2005 provides that the General Manager is to ensure that the reasons for a decision by a Council acting as a planning authority are recorded in the minutes of the meeting.

Assessment:

The objectives of the planning Strategic Plan

The Council's Strategic Plan provides for a future with practical and effective land use strategies that will be achieved by focusing on the following key area¹: -

- 1. A land use and development strategy to provide a long-term approach that produces sustainable and measurable economic, environmental (built and "green") and social benefits for the municipal area and the region.*

The proposed fencing would not necessarily provide for further economic development gains in the Municipality, however it will have positive social impacts through providing a form of privacy to the owners of 'Fairfield' and future development of the remainder of the site. The property also has a wider ranging social benefit to the community associated with its heritage significance and aesthetic contribution to the setting of the area. Conditional approval will ensure the fencing will retain these values.

¹ Brighton Council: *Strategic Plan 2006 – 2016*, Brighton Council, Gagebrook, 2006.

Objectives of the Resource Management and Planning System of Tasmania

Section 5 of the Act provides that Council is obliged to further the Objectives of the Resource Management and Planning System of Tasmania (RMPS) set out in Schedule 1 of the Act when determining an application for planning approval. The Objectives of the RMPS are –

- a) to promote the sustainable development of natural and physical resources and the maintenance of ecological processes and genetic diversity; and
- b) to provide for the fair, orderly and sustainable use and development of air, land and water; and
- c) to encourage public involvement in resource management and planning; and
- d) to facilitate economic development in accordance with the objectives set out in paragraphs (a), (b) and (c); and
- e) to promote the sharing of responsibility for resource management and planning between the different spheres of Government, the community and industry in the State.

The proposal would have negligible impacts on the environment and natural values of the area given the land is of poor quality and devoid of vegetation and contained within an existing urban settlement. No effluent would be discharged into the Derwent as the site is fully serviced with water, sewer and stormwater reticulation. The proposal represents the fair, orderly and sustainable use and development of air, land and water as the fencing is an ancillary component of residential development and will further the amenity of the site for the occupants. The application has encouraged community involvement in accordance with the public notifications provisions of the Act. Lastly, all relevant bodies have been consulted throughout the application process.

State Policies

State Policies are made under the State Policies and Projects Act 1993. Section 13C provides that a Council is bound by a State Policy and Section 13(1) provides that if a planning scheme is inconsistent with a State Policy the planning scheme is void to the extent of that inconsistency.

Clause 3.3 (a) of the planning scheme requires Council to take into consideration any State planning policies before granting or refusing planning approval.

State Coastal Policy 1996

The State Coastal Policy 1996 (Coastal Policy) came into operation on 10 October 1996. This Policy applies to the coastal zone, which includes all State waters and land within 1 km from the High Water Mark (HWM).²

² *State Coastal Policy Validation Act 2003*

The subject land is located within 1 km from the HWM of the Derwent Estuary and the Coastal Policy applies to the land.

Three main principles guide Tasmania's State Coastal Policy:

- Natural and cultural values of the coast shall be protected.
- The coast shall be used and developed in a sustainable manner.
- Integrated management and protection of the coastal zone is a shared responsibility.

The following provisions of the Coastal Policy are of relevance to the assessment of this development application, bearing in mind that no structures are proposed at this stage:

2.1.3 Siting, design, construction and maintenance of buildings, engineering works and other infrastructure, including access routes within the coastal zone will be sensitive to the natural and aesthetic qualities of the coastal environment.

2.4.2 Urban and residential development in the coastal zone will be based on existing towns and townships. Compact and contained planned urban and residential development will be encouraged in order to avoid ribbon development and unrelated cluster developments along the coast.

2.4.3 Any urban and residential development in the coastal zone, future and existing, will be identified through designation of areas in planning schemes consistent with the objectives, principles and outcomes of this policy.

In this instance, the development is on land zoned Residential under the Planning Scheme and is situated adjacent to an established residential area characterised by average sized allotments supporting modest dwellings taking advantage of the coastal setting. The visual or environmental ramifications on the coast would be minimal because the development would retain separation from the coast by way of a foreshore reserve that has been dedicated as public open space therefore minimising visual impacts.

The proposal will be contained within an area suitably zoned for such development thereby maximising efficiencies in the use of land as a resource and existing infrastructure, which results in greater sustainable outcomes.

For the aforementioned reasons, the proposal is considered to accord with the provisions of the Coastal Policy.

State Water Quality Policy 1997

The State Policy on Water Quality Management 1997 (Water Quality Policy) came into operation on 27 September 1997. The Policy identifies stormwater management as a priority where stormwater pollution may impact the water quality objectives of receiving waters. The development proposal includes a major residential redevelopment, access roads and associated infrastructure and site disturbance will be in excess of 250 square metres.

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The risk of sediments being transported into surface waters such that environmental harm might be caused during development is considered acceptable, in accordance with regional guidelines for best practice. A Soil and Water Management Plan is not required due to the limited land disturbance likely to be generated from the proposal. It is on this basis, that the proposal is considered consistent with the State Policy on Water Quality Management.

The State Policy on the Protection of Agricultural Land 2009

The subject land is not agricultural in nature therefore the PAL Policy does not apply to the land.

NEPM'S

None of the NEPM's are considered relevant to the assessment of this development application.

Planning Scheme

The application is for a subdivision of the land in question which is a 'discretionary' development pursuant to Clause 6.7.6 of the Brighton Planning Scheme 2000 and shall be assessed in accordance with Section 57 of the Land Use Planning and Approvals Act 1993.

Scheme Objectives

Clause 3.3(b) of the planning scheme requires Council to take into consideration the planning scheme Objectives before granting or refusing planning approval. In addition, Clause 3.3(c) of the planning scheme requires Council to take into consideration the purpose of the zone and all other provisions of this planning scheme including the decision guidelines for each zone before granting or refusing planning approval.

Clause 2.2 of the Planning Scheme stipulates the Residential Objectives of the Scheme as being based on the following:

- (a) *To encourage and facilitate opportunities for diversity in residential type, choice and affordability commensurate with Brighton's quality of lifestyle and environment.*
- (b) *To promote Brighton as an independent suburb within the regional metropolitan context.*
- (c) *To establish residential growth within existing settlement areas serviced with infrastructure.*
- (d) *To ensure that the future patterns of residential development protect and enhance the natural and man-made assets of the Municipality.*
- (e) *To encourage infill within the existing townships and suburbs as a consolidation of services and to provide definable communities with strong interconnectivity.*
- (f) *To discourage the loss of existing housing stock by conversion to or redevelop for non-residential use.*

- (g) *Concentration of new residential development remains within the green fields sites of Tivoli Green and Compton and for continued growth of Old Beach and Brighton-Pontville. Other areas will concentrate on the infill of existing develop areas within the service capabilities of the local area.*

The aforementioned criteria aim to facilitate further intensification and consolidation of development serving a residential function on land that is suitably zoned. The proposed development is consistent with Objectives a), b), e), and f) in that the proposal would utilise existing available residential land, maximise the use of existing facilities and infrastructure services and will foster a residential use.

Objective c) requires development to be adequately serviced with infrastructure. The proposal would not impact upon these considerations.

Objective d) requires consideration to be given to the protection of natural and man-made values within the Municipality. Fundamentally, natural values contribute to the surrounding character. The proposal has been considered with input from state heritage advisers and a reputable heritage architect. This has ensured the best outcome has been achieved to preserve the heritage values of the site.

Objective g) sets an urban growth boundary through containment of residential expansion. The proposal would conform to this provision as the development would provide for the infill development of the Bridgewater area.

The proposal is considered to accord to the prescribed objectives for the Residential zone.

Zone Requirements

The subject site is located within the Residential Zone. Clause 6.2.1 details the Purpose of the Residential Zone in which the following is to be facilitated by development:

- (a) *To ensure sufficient land is available to meet anticipated demand for residential use in the next five years.*
- (b) *To protect residential amenity by reducing the potential for land use conflicts between residential uses and other uses.*
- (c) *To allow for a range of housing types within the zone, subject to meeting performance guidelines, so as to satisfy different housing needs within the community.*
- (d) *To restrict non-residential uses to those that are compatible with maintaining residential amenity and servicing local needs.*
- (e) *A broad range of residential options should be accommodated subject to the maintenance of satisfactory levels of amenity for new and existing development.*

Consideration a) is not applicable in this instance as the proposal is not for subdivision or infill development.

Considerations b) through e) relate to the built form and use of the land. The proposal is considered to enhance the use of the land as it would preserve the privacy of the occupants and is considered of an acceptable built form given the fencing is of a standard height for an urban area and would not restrict the view corridors from the Gunn Street public vantage point. Consideration d) is not relevant to this application and due respect is maintained under consideration e) as the fencing would enhance the amenity for the property through the protection of privacy.

Furthermore, pursuant to section 6.2.2, in addition to the matters listed in Clause 3.3 of the Planning Scheme, Council must also consider the following matters before deciding on an application:

- (a) the building appearance from public streets and adjoining sites is visually compatible with surrounding development;*
- (b) the siting and design of the development protect amenity of neighbours, minimise overshadowing and overlooking, enable passive surveillance without unreasonably diminishing privacy, and contribute to residential character and usability of private open space;*
- (c) issues relevant to multi-unit houses are addressed adequately;*
- and*
- (d) the design and siting of lots and buildings optimises solar access and water usage, minimises waste and contributes to efficient use of energy and water.*

The abovementioned provisions are particularly relevant in this instance as the fencing has the potential to jeopardize the view corridors held towards the property from Gunn Street. Consideration a) relies on the protection of the streetscape and subject to appropriate conditions, the existing level of amenity afforded to pedestrians from Gunn Street would be maintained.

The proposal would be unlikely to trigger any unreasonable loss of amenity through overshadowing or overlooking as side and rear boundary fencing is a common ancillary component of residential development. The fencing height is also standard for urban allotments. The siting of the fencing along the western property boundary has raised concern due to the potential to obscure a large proportion of the existing dwelling. The 'No Build Zone' came into existence based on a Conservation Plan prepared by Graeme Corney. Mr Corney has indicated that the proposed fencing is not in keeping with his conservation plan insofar as maintaining the site lines are concerned and potential conditions of approval have been recommended including reducing the height of the fence or converting the section of fence in the no build zone to post and rail materials. These recommendations in consideration with the THC decision will be discussed in more detail below. The proposal is therefore considered consistent with consideration b).

Consideration c) and d) are not applicable to the assessment of this development application.

Other relevant issues are addressed in detail below.

Use or Development Standards

Height

Clause 6.2.9(c) (i) of the Scheme prescribes a maximum building height of 8 metres. The proposed boundary fencing would reach a maximum height of 1.8 metres, which is well within the permitted requirements of the Scheme.

Overlays

Waterway Overlay

The parent title is exposed to the Waterway Overlay and is subject to the provisions detailed under section 7.3 of the Planning Scheme. The Purpose of the Waterway Overlay is prescribed as follows:

- (a) *To control erosion, pollution, undesirable changes in stream hydrology, and to protect the natural drainage functions and botanical, zoological and landscape values of streams, rivers or wetlands.*
- (b) *To protect water catchment areas where water is to be used for human consumption.*
- (c) *To promote sustainable catchment management practices.*
- (d) *To identify areas which may be subject to periodic inundation.*

Clause 7.3.3 of this Overlay states that for all applications within the Waterway Overlay, a minimum setback of 30 metres shall be required from the nearest bank of a waterway, area of inundation or wetland. The proposed fencing would be setback 30 metres from the HWM as it reflects the boundaries of Lot 2 as identified on subdivision plan SA2010/52 which made provision for a 30 metre riparian reserve.

Clause 7.3.6 goes further to state that a discretionary permit in accordance with section 57 of the Act is required for all other use and development within the Waterway Overlay. Clause 7.3.7 goes further still to state that a permit must only be issued for development located within the Waterway Overlay between the 1 in 20 year and 1 in 100 year flood levels where the building density does not exceed one habitable building per hectare below the 1 in 100 year flood level and the lowest habitable floor area is not below the 1 in 100 year flood level. The proposed fencing does not constitute a habitable building and is not located within either flood level overlay and therefore is acceptable.

Schedules

The proposed development is subject to a number of Schedules within the Planning Scheme and will be individually addressed as follows:

Schedule 5: Coastal and River Foreshore Development

Clause 3.3(g) of the Scheme requires Council to take into consideration whether any part of the land is likely to become subject to inundation before granting or refusing planning approval.

The land is located close to the Derwent River, with part of the land forming the High Water Mark.

The purpose of the Coastal and River Foreshore Development Schedule pursuant to S5.1 of the Planning Scheme is prescribed as follows:

The purpose of the Coastal and River Foreshore Development Schedule is to control development that may cause environmental harm to foreshore areas and the waters of the Jordan or Derwent Rivers. [Amend. RZ03/04A effective 6/12/04]

Clause S5.2 states that development that may cause harm to the foreshore areas and the waters of the Derwent River shall be required to comply with the provisions of this schedule. The proposed fencing is not considered to have any impact upon the environmental values of the coastal environment due to the fencing being setback 30 metres from the HWM in accordance with the requirements of Clause S5.3.

Schedule 9: Heritage Schedule

'Fairfield' (14 Nielsen Esplanade) is listed under Table S9.1 as being a heritage item of local significance. The property is also listed on the Tasmanian Heritage Register as being a place of state significance. The Purpose of the Schedule is detailed as follows:

- (a) *To conserve and enhance places of cultural significance.*
- (b) *To conserve and enhance those values that contribute to the cultural significance of a place, including natural, indigenous and cultural values.*
- (c) *To ensure that development does not adversely affect the cultural significance of a place.*
- (d) *To conserve places of cultural significance by allowing a use or development that would otherwise be Prohibited, where it is demonstrated that the use or development will assist with the conservation of the cultural significance of the place.*

Clause S9.7 states that use or development of a place of cultural significance is discretionary. Accordingly the proposal was rendered discretionary on this basis. The Decision Guidelines provided under S9.5 specify the matters Council must consider before deciding on an application and are detailed as follows:

- (a) *the cultural significance of the place and whether the proposal will adversely affect the cultural significance;*
- (b) *any applicable heritage study and any applicable conservation policy;*
- (c) *whether the location, bulk, form or appearance of the proposed building will adversely affect the cultural significance of the place;*
- (d) *whether the location, bulk, form and appearance of the proposed building is in keeping with the character and appearance of adjacent buildings and cultural significance of the place;*
- (e) *whether the demolition, removal or external alteration will adversely affect the cultural significance of a place;*
- (f) *whether the proposed works will adversely affect the cultural significance of a place;*

- (g) *whether the proposed subdivision or consolidation will significantly adversely affect the cultural significance of a place;*
- (h) *whether the proposed subdivision or consolidation may result in development that will significantly adversely affect the cultural significance of a place;*
- (i) *whether the proposed advertising sign will significantly adversely affect the cultural significance of a place;*
- (j) *whether the pruning, lopping or development will significantly adversely affect the health, appearance or cultural significance of a tree specified on a place;*
- (k) *any advice sought and/or received from the Tasmanian Heritage Council or the Aboriginal Heritage Office; and*
- (l) *the articles of the Australia ICOMOS Burra Charter, 1999.*

The building is of heritage significance because its townscape associations are regarded as important to the community's sense of place and important to the community as a local landmark. The value of the buildings as such is considered of low heritage value, it is the overall environment that is formed by the combination of these items that is important and warrants preservation.

Fairfield is of historic heritage significance because of its ability to demonstrate the principal characteristics of a single storey weatherboard late Victorian domestic building. The site has been a working farm and the evidence is apparent with the animal yards, fencing and outbuildings and it is therefore desirable to retain as much of the setting as practicable should future development be proposed. The original access to the house has been retained and this is consistent with the setting.

The difficulty Council is presented with in this case is the conflicting advice received by the THC and Graeme Corney. The Heritage Council itself sees no issue with the fence and have issued an approval for the fencing. The officer's report makes the following appraisal of the proposal:

A new 1.8m paling fence is proposed to the rear and side boundaries of Lot 2, which contains Fairfield. There are already sections of timber paling fence around the homestead and this type of fence is reasonable, given that there is likely to be future residential development on three sides. There is an existing old timber picket fence to the river frontage of Fairfield and this also wraps around the corner facing Nielsen Esplanade. There is a notation on the plan submitted which reads "Fence at front of Fairfield to remain as is until further conservation works undertaken". The submission suggests that a post and rail fence would be more appropriate than a paling fence in this location. However with the subdivision approved, it felt that a post and rail fence would not provide adequate separation between Fairfield and the proposed residential development.

The THC have considered the proposal an acceptable response as it would have a minor impact on the visual corridor maintained from the Gunn Street vantage point and the community association with the place would not be eroded through the inclusion of the fence as the fencing would not create a visual barrier, primarily as Gunn Street is elevated from the 'Fairfield' property. The Notice of Decision recommends that the fencing be constructed from untreated hardwood timber only as this is considered the most sympathetic building material.

However, Graeme Corney was engaged by Council for an independent heritage assessment as he was involved with the preparation of the Skeletal Conservation Plan. Mr Corney advised that the 'No Build Zone' was intended to protect the public views to Fairfield. He further stated that a pedestrian's view of the house from Gunn Street will be impeded and that the permit should be conditioned to either (a) a post and wire fence or approved rural type fence be constructed to the boundaries that are within the 'No Build Zone'; or (b) the fences in the 'no build zone' be of a maximum height of 1.2 metres. Mr Corney's appraisal contravenes the Tasmanian Heritage Council's recommendation and Notice of Decision. Mr Corney's advice is considered reasonable and it is recommended that a reduction in the height of the fence adjoining the 'No Build Zone' be adopted.

The reduction in the fencing height raises some concern as the intent of boundary fencing is to provide residents with a private curtilage around the dwelling and this is a reasonable element found within urban areas. In this case, the reduction in a portion of the fence's height along the western boundary would not reduce the occupant's level of amenity afforded by the fencing as the rear curtilage of the dwelling would remain private.

The proposal is considered consistent with the Decision Guidelines as appropriate conditions will ensure the fencing would not affect the cultural significance of the site and due consideration has been had to the Conservation Plan prepared for the site. On this basis the proposal warrants approval under Schedule 7 of the Scheme.

Amenity

Clause 3.3(e) of the Planning Scheme requires Council to take into consideration the character of the locality, the existing and future amenities of the neighbourhood and the effects of the development on the amenity of the area. Subject to appropriate conditions, the application would result in a positive outcome by allowing the occupants to be afforded with a level of privacy without jeopardizing the heritage values of the property, namely maintenance of the view corridor extending from Gunn Street.

Services

The site is full serviced with water, sewer, stormwater power and telecommunications infrastructure as mentioned previously within this report and the fencing would not require connections to these assets.

Traffic and Access:

Clause 3.3(o) of the Scheme requires Council to take into consideration the accessibility of the site, its relationship to major roads, the capacity of the existing streets and roads in the locality and the effect of the development on such capacity when considering the application. Clause 3.4(g) of the Scheme requires Council to take into consideration the layout of roads, having regard to their function and relationship to existing roads.

The proposed fencing would not trigger any increased demand on site for access or car parking facilities.

Engineering assets

As the application was for fencing only, therefore the proposal did not require input from Council's Engineering Department.

Conclusion:

Approval is sought for a 1.8 metre high paling boundary fence to extend the length of the western and northern property boundaries to separate the recently subdivided allotments from 'Fairfield'. The fencing would be located on a site of cultural significance therefore rendering the application discretionary. One representation was received stating that proposal should be rejected on the grounds that fencing would undermine the previous heritage conservation intentions made throughout previous applications.

The most pressing concern was with regard to the fence conflict with the site lines to 'Fairfield' from Gunn Street and rendering a previously enforced 'No Build Zone' ineffective. Whilst the 'No Build Zone' does not yet technically exist as the subdivision has not been lodged with the Land Titles Office, the reasons for requiring the zone are relevant planning considerations to the assessment of this application.

The objections against the fence are understood as the 'No Build Zone' was imposed on the previous subdivision SA2010/52 and formed part of the approved documentation. The reasons for imposing this 'No Build Zone' stem from the recommendations set out in detail in a Skeletal Conservation Plan prepared by heritage architect Graeme Corney. Mr Corney was consulted after the Tasmanian Heritage Council approved the fencing without modifications. Mr Corney recommended that the permit be conditioned to either lower the height of the fence to 1.2 metres or construct the portion of fencing from post and rails. Mr Corney's advice is supported as it will assist in preventing a visual barrier being created between the dwelling from Gunn Street to the dwelling and the modification represents a compromise between the conflicting values for the site.

Accordingly, the proposal warrants conditional approval.

Options:

1. Issue a written approval specifying the conditions (if any) imposed upon the use or development in accordance with the recommendation; or
2. Issue a written approval providing alternative or additional conditions (if any) imposed upon the use or development; or
3. Issue a written refusal for the use or development stating the reasons for refusal.

RECOMMENDATION:

That the application submitted in accordance with Part 3 of the Local Government (Building and Miscellaneous Provisions) Act 1993 and Part 4 of the Land Use Planning and Approvals Act 1993 for land at 14 Nielsen Esplanade, Bridgewater, described in Folio of the Register Volume 159715 Folio 1, to be developed by side and rear boundary fencing and associated works be approved subject to the following conditions:

General

- (1) The use or development must be carried out substantially in accordance with the application for planning approval, the endorsed drawings and with the conditions of this permit and must not be altered or extended without the further written approval of Council.
- (2) This permit shall not take effect and must not be acted on until 15 days after the date of receipt of this letter or the date of the last letter to any representor, whichever is later, in accordance with section 53 of the *land Use Planning And Approvals Act 1993*.

Amenity

- (3) All external metal building surfaces must be clad in non-reflective pre-coated metal sheeting or painted to the satisfaction of the Council's Senior Planner.
- (4) The fencing must be constructed from untreated hardwood timber and must not be painted.
- (5) The section of fencing abutting the 'No Build Zone' as shown on the Site Plan (revision number 3) must be reduced in height to 1.2 metres as a maximum in order to maintain the view lines from Gunn Street to the satisfaction of the Council's Senior Planner.

Services

- (6) The developer must pay the cost of any alterations and/or reinstatement to existing services, Council infrastructure or private property incurred as a result of the development. Any work required is to be specified or undertaken by the authority concerned.

Construction amenity

- (7) The development must only be carried out between the following hours unless otherwise approved by the Council's Municipal Engineer:
- Monday to Friday 7:00 a.m. to 6:00 p.m.
 - Saturday 8:00 a.m. to 6:00 p.m.
 - Sunday and State-wide public holidays 10:00 a.m. to 6:00 p.m.
- (8) All works associated with the development of the land shall be carried out in such a manner so as not to unreasonably cause injury to, or prejudice or affect the amenity, function and safety of any adjoining or adjacent land, and of any person therein or in the vicinity thereof, by reason of:
- (a) Emission of noise, artificial light, vibration, odour, fumes, smoke, vapour, steam, ash, dust, waste water, waste products, grit or otherwise.
 - (b) The transportation of materials, goods and commodities to and from the land.
 - (c) Obstruction of any public footway or highway.
 - (d) Appearance of any building, works or materials.
- (9) Any accumulation of vegetation, building debris or other unwanted material must be disposed of by removal from the site in an approved manner. No burning of such materials on site will be permitted unless approved in writing by the Council's Municipal Engineer.
- (10) Public roadways or footpaths must not be used for the storage of any construction materials or wastes, for the loading/unloading of any vehicle or equipment; or for the carrying out of any work, process or tasks associated with the project during the construction period.
- (11) The developer must make good and/or clean any footpath, road surface or other element damaged or soiled by the development to the satisfaction of the Council's Municipal Engineer.

THE FOLLOWING ADVICE APPLIES TO THIS PERMIT:

- A. This permit does not imply that any other approval required under any other legislation or by-law has been granted.
- B. You are advised that all works must be carried out in accordance with the Notice of Heritage Decision issued by the Tasmanian Heritage Council for Works Application number 3855.

- C. This planning approval shall lapse at the expiration of two (2) years from the date of the commencement of planning approval if the development for which the approval was given has not been substantially commenced. Where a planning approval for a development has lapsed, an application for renewal of a planning approval for that development shall be treated as a new application.

DECISION:

Cr Garlick 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 SOUTHERN REGION ON FUTURE REGIONAL PLANNING STRUCTURE:

FILE REFERENCE: 0780

AUTHOR: Senior Planner
(Mr J Dryburgh)

BACKGROUND

The purpose of this report is that the STCA Board are seeking a determination of Local Government's position with regard to the preferred nature of an on-going regional planning structure for Southern Tasmania.

The two major outputs of the Southern Regional Planning Project are:

- A regional land use planning strategy; and
- A suite of draft planning schemes across the region, with a high degree of commonality and in alignment with the regional strategy.

The twelve Southern Councils and the State Government will each have a considerable stake in both of these outputs, particularly in their on-going monitoring and further development.

The pending Regional Strategy has always been recognised as just the first iteration and it will need to evolve progressively into the future. Therefore, the twelve Councils will need a system through which to act collectively with respect to future modifications and additions to the Strategy.

The new planning schemes will also be subject to a process of continual amendment, just as planning schemes are now. Any amendment or addition to the regional model provisions ought to be considered by the region acting as a whole. Furthermore, the proposed modification of any regional-standard provisions that have been elevated to statutory '*common provisions*' must, by law, have the collective input of Councils (refer section 30J(9) of the *Land Use Planning & Approvals Act 1993*). Again, a system needs to exist to facilitate the collective input of Councils.

It is also assumed that the State will have a desire to take a hand in both the further development of regional strategy and the common planning scheme provisions - other than the statutory assessment and approval functions of the Tasmanian Planning Commission.

In short, there is a need for some form of regional planning system. This is recognised in the Project MoU, which provides that State and Local Government should determine an agreed structure for such a system.

Whilst the Project MoU provides that State and Local Government should agree on the shape of a regional planning structure, no meaningful discussions have yet been held between the State Government and the STCA. It is not clear how far thinking has evolved within the State bureaucracy.

It is considered timely for the STCA Board to provide its views to the Minister, and to request to be substantively involved in determining the shape of the future regional planning structure, as provided by the MoU.

The STCA Board has therefore developed and endorsed a series of principles to guide the shaping of a regional planning structure.

DISCUSSION

A summary of the recommended principles endorsed by the Board of the STCA are as follows:

- There should be only one regional planning structure to monitor and maintain both the Southern Regional Strategy and the Capital Cities Plan, with the Capital City Plan being a more-detailed subset of the Regional Strategy.

- The regional planning structure should provide for the equal involvement of both State and Local Government, recognising the legitimate planning responsibilities of both spheres of government and the fact that it is at the regional level where the two spheres overlap.
- The regional planning structure's role should primarily be to:
 1. Set regional policy and develop regional land use planning policy and strategy.
 2. Propose amendments to planning scheme provisions that are common across the region, or derived from new or amended regional land use planning strategy.
 3. Provide a regional view of proposed amendments to planning scheme provisions common across the region put forward by third parties, and to applications for projects of regional or state significance.
- The regional planning structure should provide a mechanism whereby the endorsement of Councils is necessary for outputs.
- The regional planning structure should not be a statutory approvals mechanism. This function should remain separate and independent from it, as it should be from any State-level policy setting body.
- The regional planning structure should be sufficiently robust to provide for the transparent and accountable resolution of the sometimes opposing, but legitimately held, policy objectives of Local and State Government.
- The regional planning structure should be free to formulate regional policy and strategy, subordinate only to Federal & State legislation, State Planning Policies and State Planning Directives.
- Councils, as local Planning Authorities, should be free to set local planning policy and create local land use planning strategy (where not in conflict with regional or State policy or strategy).
- State agencies should be incorporated into the system. Their internal processes should be arranged to facilitate their input and their land use planning related activities bound by regional planning outcomes.
- Local Governments should be bound by the system. Their internal processes should be arranged to facilitate their input with respect to regionally significant strategic planning policy.

- Major infrastructure providers (in addition to State Agencies) should be engaged and committed to the outcomes. This includes Southern Water, Transend, Hydro Tasmania, etc.
- In line with shared responsibility for the ongoing maintenance and improvement of the Southern Tasmania Regional Land Use Strategy, local government in the region recognises the need to contribute resources to support a regional planning system.

RECOMMENDATION

That Council advise the Southern Tasmania Councils Association Board that it endorses the above principles

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	

4.4 PLANNING UPDATE:

FILE REFERENCE:

AUTHOR: Senior Planner
(Mr J Dryburgh)

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

RECOMMENDATION:

That the report be received.

DECISION:

Cr Geard moved, Cr Taylor seconded that the report be received.

CARRIED

VOTING RECORD

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

The meeting closed at 6.20 p.m.

Confirmed: _____
(Mayor)

Date: _____
16th August 2011