



# Brighton Council

MINUTES OF THE **PLANNING AUTHORITY MEETING**  
OF THE BRIGHTON COUNCIL HELD  
IN THE COUNCIL CHAMBER, COUNCIL OFFICES  
OLD BEACH AT 5.30PM ON TUESDAY,  
12<sup>TH</sup> JUNE, 2018

**PRESENT:** Cr Gray (Chairperson) Cr Owen; (Deputy Chairperson);  
Cr Foster; Cr Geard; Cr Higgins; Cr Jeffries and Cr  
Williams.

**IN ATTENDANCE:** Mrs J Banks (Governance Manager) and Mr D  
Allingham (Senior Planner).

## 1. APOLOGIES:

*Cr Jeffries moved, Cr Owen seconded that Cr Curran and Cr Garlick be granted leave of absence.*

**CARRIED**

## VOTING RECORD

In favour	Against
Cr Foster	
Cr Geard	
Cr Gray	
Cr Jeffries	
Cr Higgins	
Cr Owen	
Cr Williams	

## 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 2015, 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 2015.

*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 2015, 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 APPLICATION UNDER BRIGHTON INTERIM PLANNING SCHEME 2015 – SA 2018 / 00011 – 20 MAGNOLIA COURT & 141 BRIGHTON ROAD, BRIGHTON – BOUNDARY ADJUSTMENT:**

Type of Report	Planning Authority - For Decision
Application No:	SA 2018 / 00011
Address:	20 Magnolia Court & 141 Brighton Road, Brighton
Applicant:	Rogerson & Birch Surveyors
Proposal:	Boundary Adjustment
Zone:	General Residential Zone & General Business Zone
Representations:	Five (5)
Discretions:	1. Subdivision
Author:	Richard Cuskelly (Planning Officer)

#### **1. Executive Summary**

- 1.1. Planning approval is sought for a boundary adjustment between 20 Magnolia Court & 141 Brighton Road, Brighton.
- 1.2. The application is discretionary due to the application being for subdivision and not a minor boundary adjustment.

- 1.3. Five (5) representations were received. It is considered that the issues raised in the representations do not warrant modification of the application.
- 1.4. The key planning issue is future use of the site and sewer and stormwater servicing.
- 1.5. The proposal is recommended for approval subject to various standard conditions.
- 1.6. The final decision must be made by the Planning Authority or by full Council acting as a planning authority due to the receipt of representations via the public exhibition period for the development application.

## **2. Legislative & Policy Content**

- 2.1. The purpose of this report is to enable the Planning Authority to determine application SA 2018 / 00011.
- 2.2. This determination must be made no later than 19 June 2018, which has been extended beyond the statutory timeframe with the consent of the applicant.
- 2.3. The relevant legislation is the Land Use Planning and Approvals Act 1993 (LUPAA). The provisions of LUPAA require a planning authority to take all reasonable steps to ensure compliance with the planning scheme.
- 2.4. This report details the reasons for the officer recommendation. The Planning Authority must consider this report but is not bound to adopt the recommendation. Broadly, the Planning Authority can either: (1) adopt the recommendation, or (2) vary the recommendation by adding, modifying or removing recommended reasons and conditions or replacing an approval with a refusal (or vice versa). Any alternative decision requires a full statement of reasons to comply with the Judicial Review Act 2000 and the Local Government (Meeting Procedures) Regulations 2005.
- 2.5. This report has been prepared with appropriate regard to the State Policies that apply under the State Policies and Projects Act 1993.
- 2.6. This report has been prepared with appropriate regard to Council's Strategic Plan and other Council policies, and the application is not found to be inconsistent with these. Nevertheless, it must be recognised that the planning scheme is a regulatory document that provides the overriding consideration for this application. Matters of policy and strategy are primarily a matter for preparing or amending the planning scheme.

## **3. Risk & Implications**

- 3.1. Approval or refusal of this application will have no direct financial implications for the Planning Authority.

- 3.2. Council has identified that the existing stormwater system has limited capacity. Future provision of a second connection to the proposed larger lot off Magnolia Court by providing an easement through the Hotel site was proposed by Council officers to allow for the full development of the new lot if needed in the future. A relevant condition is recommended below and expanded on in Council’s Senior Technical Officer’s attached Engineering Report.

**4. Relevant Background and Past Applications**

- 4.1. The applicant states in their covering letter that the intent of this application is to facilitate potential multiple dwelling development. At the time of writing, Council had received an application for 13 multiple dwellings, which is on hold following a request for further information.
- 4.2. Past planning applications for both sites are listed below (note that no dwelling development ever commenced on 20 Magnolia Court):

DA 2015 / 00241	20 Magnolia Court, Brighton	Dwelling ...	Approved
DA 2014 / 00191...	20 Magnolia Court, Brighton	Dwelling	Approved

DA 2009 / 00089	141 Brighton Road, Brighton; 28 Mi...	12 additional motel units, retail, offices & additional parking ...	Approved
DA 2008 / 00145	141 Brighton Road, Brighton; 28 Mi...	Accommodation reception and TOTE agency	Approved
SA 2008 / 00051	141 Brighton Road, Brighton; 28 Mi...	Boundary Adjustment	Approved
DA 2007 / 00324	141 Brighton Road, Brighton; 28 Mi...	alterations and additions to hotel	Approved
DA 2007 / 00155	141 Brighton Road, Brighton; 28 Mi...	New bottle shop	Approved

- 4.3. Under the Brighton Planning Scheme 2000, the land was split zoned as shown in Figure 2 below. However, the entirety of 141 Brighton Rd was zoned General Business when the Brighton Interim Planning Scheme 2015 (BIPS 2015) was declared. The owner of the land recently approached Council to apply for an Urgent Amendment (UA) to restore the previous zoning. The UA was approved by the Tasmanian Planning Commission (TPC).

**5. Site Detail**

- 5.1. 20 Magnolia Court is an undeveloped 1223m<sup>2</sup> lot with 16.06m frontage to Magnolia Court. The land is zoned General Residential and a drainage easement runs within the rear boundary.
- 5.2. 141 Brighton Road is a 2.368ha lot with an established hotel operation and significant frontage to Brighton Road. The portion of the land associated with the Hotel (including vehicle parking and access) is zoned General Business, whilst the undeveloped portion to the west is zoned General Residential (see Figure 2 below).
- 5.3. The land on both sites slopes gently to the east.



Figure 1. Aerial image: 20 Magnolia Court (small lot to the west) & 141 Brighton Road (large lot to the east)

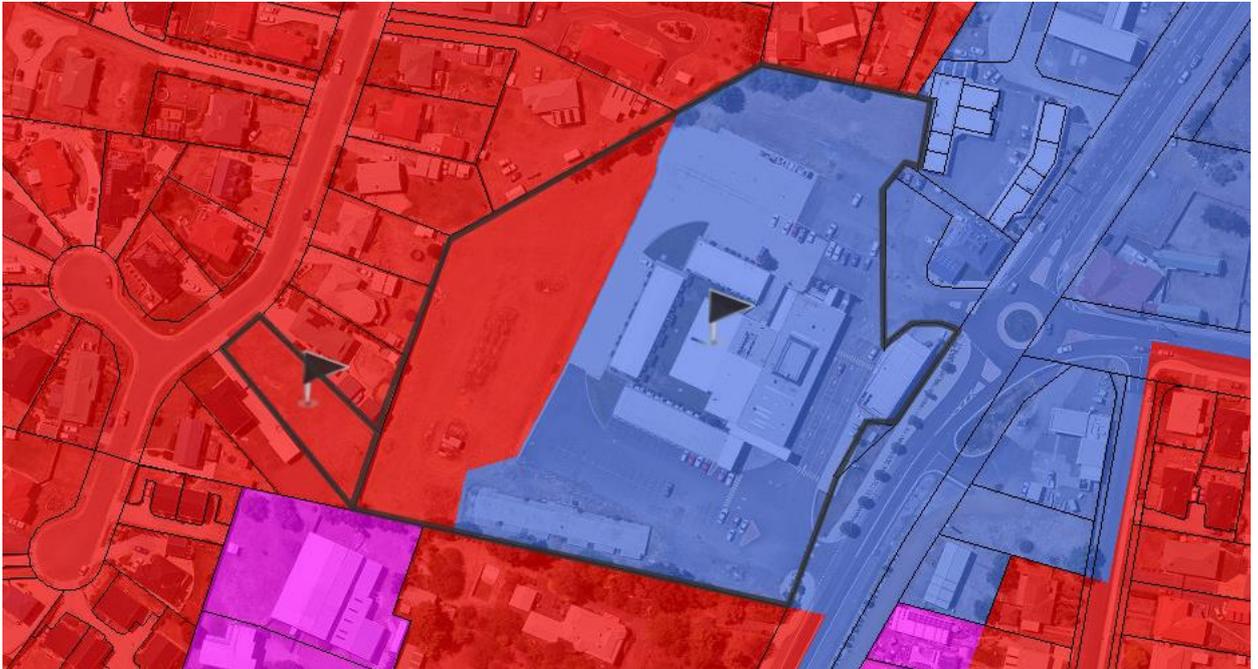


Figure 2. Zoning: General Residential (Red), General Business (Blue) and Light Industrial (Purple)

## 6. Proposal

6.1. To relocate the lot boundary separating 20 Magnolia Court and 141 Brighton Road to match the existing General Residential and General Business zone boundary. The boundary adjustment will result in:

- Lot 1 - A vacant 7,029m<sup>2</sup> lot with a 16.06m frontage to Magnolia Ct, entirely within the General Residential Zone.

- Lot 2 – A 1.787ha lot contains the Brighton Hotel, entirely within the General Business Zone.

6.2. New sewer and stormwater connections required.

**7. Assessment against planning scheme provisions**

7.1. The following provisions are relevant to the application:

- General Residential Zone (10)
- General Business Zone (21)
- Stormwater Management Code (E7)

7.2. The application satisfies the following applicable Acceptable Solutions:

- 10.6 - General Residential Zone subdivision standards
- 21.5 - General Business Zone subdivision standards
- E7.7.1 A3 - Stormwater drainage and disposal

7.3. The following discretions are invoked:

Discretion		Acceptable Solution	Proposed
1	Subdivision	None	Boundary adjustment

Discretion 1 – Subdivision

7.3..1. The application does not meet the definition of a minor boundary adjustment, and therefore defaults to discretionary status under clause 9.7.2. Under clause 8.10.2 in determining an application for discretionary use the planning authority must have regard to the Zone Purpose.

7.3..2. The Zone Purpose for the General Residential Zone is:

10.1.1.1 To provide for residential use or development that accommodates a range of dwelling types at suburban densities, where full infrastructure services are available or can be provided.

10.1.1.2 To provide for compatible non-residential uses that primarily serve the local community.

10.1.1.3 To provide for the efficient utilisation of services.

The proposed boundary adjustment provides for a larger residential lot at Lot 1. Under the General Residential Zone lot size requirement in Table 10.1, a lot must be a maximum of 600m<sup>2</sup>, unless it will be developed by multiple dwellings, retirement villages or residential aged care facilities, or non-residential use. Lot 1 is located close to existing services and public transport and is considered an appropriate location for these uses. A condition requiring a Part 5 Agreement that the land be developed in accordance with these uses is recommended.

7.3..3. The Zone purpose for the General Business Zone is:

21.1.1.1 To provide for business, community, food, professional and retail facilities serving a town or group of suburbs.

21.1.1.2 To ensure the major centres provide for a range of convenience and goods and services as well as some community services and facilities for the municipal area and surrounds.

21.1.1.3 To provide a focus for employment at the municipal level primarily in retailing, but complemented by a range of office based employment mainly in professional and personal services.

21.1.1.4 To facilitate residential use above ground floor level.

21.1.1.5 To ensure development is highly accessible by public transport, walking and cycling.

21.1.1.6 To provide for a mix of retail and office based employment servicing the local area including a supermarket and a range of specialty shops.

21.1.1.7 To provide a safe, comfortable and pleasant environment for workers, residents and visitors through the provision of high quality urban spaces and urban design.

Lot 2 will continue to be used for the current Brighton Hotel and bottleshop which is consistent with the Zone purpose.

**8. Concerns raised by representors**

8.1. The following table summarises the issues raised by the representors.

Issue	Response
<u>Impact of multiple dwelling development:</u>	Specifics of the potential future use of the lot (i.e. for multiple dwellings) are not considered as part of this application, apart

<p>No details have been provided on the proposed number of dwellings.</p> <p>Magnolia Court is a very congested and narrow street, and traffic and the parking issues will be exacerbated by units.</p> <p>Cars and work vehicles are often parked on both sides of the road. Many of them park on the footpath, which is a hazard.</p> <p>Emergency service access (e.g. fire truck) to the site would be very difficult; especially of a weekend, or evening.</p> <p>Suggestion made that access be via the round-about on Brighton Rd via the Hotel carpark.</p> <p>Possible negative impact on neighbourhood amenity from new multiple dwellings, both due to long construction period noise levels and loss of privacy.</p>	<p>from the intention to provide multiple dwellings in the future making the maximum General Residential Lot size subdivision standard non-applicable (see recommended permit condition regarding Part 5 Agreement, below).</p> <p>These concerns cannot be considered under this application (boundary adjustment only) but will be closely considered as part of any future development application for multiple dwellings, or other use.</p> <p>The concern raised of vehicles parking on the footpath will be followed up separately to this application process.</p>
<p>Why is the developer permitted to make this application when there is an existing incomplete accommodation development on 141 Brighton Rd?</p>	<p>A Development Application can override a previous approval. In this instance, the 12 motel units approved by DA2009/89 is entirely within the part of the site zoned General Business Zone.</p>
<p>Why has the developer not been advised they are breaking the Local Government (Building and Miscellaneous Provisions) Act 1993?</p>	<p>This concern relates to a private covenant that exists on Sealed Plan 110994, which applies to 20 Magnolia Court, restricting multiple dwelling development.</p> <p>The applicant has been made aware of this covenant, though Council is not party to it, and do not have a head of power to enforce it.</p>
<p><u>Servicing:</u></p> <p>When the Magnolia Court Subdivision was planned, the sewage and stormwater was calculated for one residence per allotment. This has been allowed to be changed and</p>	<p>The application was referred to TasWater as the relevant sewer authority for any conditions on the development (see Referrals below).</p> <p>Council has identified that the existing stormwater system has limited capacity.</p>

<p>has caused a problem with the sewerage system on the Eastern boundary.</p> <ul style="list-style-type: none"> <li>a. The applications proposal of joining into the existing Sewerage pipe at number four will only exacerbate the current problem...</li> <li>b. My proposal is the pipes be run in the opposite direction and connect along with the proposed additional Storm Water connection to Brighton Rd.</li> </ul>	<p>Future provision of a second connection to the proposed larger lot off Magnolia Court by providing an easement through the Hotel site was proposed by Council officers to allow for the full development of the new lot if needed in the future. The proposed stormwater connection to the existing main to the east will need to be limited to the existing connection size, or DN150.</p> <p>Any future intensive development of the lot will most likely require on site detention of stormwater to limit flows to those that can be accommodated by the existing main and/or an additional stormwater connection to Brighton Road through the proposed easement.</p>
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**9. Discussion**

9.1. Referrals

TasWater

TasWater’s Submission to Planning Authority Notice, Reference: TWDA 2018/00443-BTN (Amended), dated 26<sup>th</sup> April 2018, includes conditions on the proposed development.

Council’s Senior Technical Officer

The full Engineering Report from Council’s Senior Technical Officer, Leigh Wighton, is attached. Response to technical representations are above.

**10. Conclusion**

- 10.1. The proposal effectively splits the lots to align with the zone boundary between the General Business Zone and General Residential Zone. Lot 1 will need to be developed by multiple dwellings, retirement village or residential aged care facilities, or non-residential use to satisfy the lot size standards in the scheme.
- 10.2. The main concerns from the representors relate to future use of the site which will be assessed as part of any future application.
- 10.3. The proposed use and development of a single dwelling in the 20 Magnolia Court & 141 Brighton Road, Brighton, satisfies the relevant provisions of the Brighton Interim Planning Scheme 2015, and as such is recommended for conditional approval.

**RECOMMENDATION:**

That pursuant to the Brighton Interim Planning Scheme 2015, Council approve application SA 2018 / 00011 for a boundary adjustment in the General Residential Zone between 20 Magnolia Court & 141 Brighton Road, Brighton, for the reasons outlined in the officer's report, and a permit containing the following conditions be issued:

*General*

1. The subdivision layout 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 permit 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.

*Easements*

3. Easements must be created over all drains, pipelines, wayleaves and services in accordance with the requirements of the Council's Municipal Engineer. The cost of locating and creating the easements shall be at the subdivider's full cost.
4. Unless approved otherwise by Council's Municipal Engineer a Drainage Easement in the benefit of Lot 1 and/or Brighton Council is to be provided over Lot 2 along its southern boundary to allow for the drainage of Lot 1 to the public stormwater system in Brighton Road.

*Part 5 Agreement*

5. Prior to the sealing of the final plan of survey Council must enter into an agreement pursuant to Part 5 of the Land Use Planning and Approvals Act 1993 in respect of Lot 1, that the owner agrees with the Brighton Council that:
  - i. the land must be developed by multiple dwellings, retirement village or residential aged care facilities, or non-residential use.
  - ii. future development, including hardstand, is to be limited to the portion of land that can be serviced by gravity to the stormwater property connection.
  - iii. future development of the lot will require stormwater flows to be limited by means of on-site detention to the available spare capacity of the public stormwater system.
6. Agreements made pursuant to Part 5 of the Land Use Planning and Approvals Act 1993 must be prepared by the applicant on a blank instrument form to the satisfaction of the Council and registered with the Recorder of Titles. The subdivider must meet all costs associated with the preparation and registration of the Part 5 Agreement.

***Final plan***

7. A final approved plan of survey and schedule of easements as necessary, together with two (2) copies, must be submitted to Council for sealing for each stage. The final approved plan of survey must be substantially the same as the endorsed plan of subdivision and must be prepared in accordance with the requirements of the Recorder of Titles.
8. Prior to Council sealing the final plan of survey, security for an amount clearly in excess of the value of all outstanding works and maintenance required by this permit must be lodged with the Brighton Council. The security must be in accordance with section 86(3) of the Local Government (Building & Miscellaneous Provisions) Council 1993. The amount of the security shall be determined by the Council's Municipal Engineer in accordance with Council Policy 6.3 following approval of any engineering design drawings and shall not be less than \$5,000.
9. All conditions of this permit, including either the completion of all works and maintenance or payment of security in accordance with this permit, must be satisfied before the Council seals the final plan of survey for each stage. It is the subdivider's responsibility to notify Council in writing that the conditions of the permit have been satisfied.
10. The subdivider must pay any Titles Office lodgment fees direct to the Recorder of Titles.

***Engineering***

11. The subdivision must be carried out in accordance with the Tasmanian Subdivision Guidelines October 2013 (**attached**).
12. Engineering design drawings, to the satisfaction of the Council's Municipal Engineer, must be submitted to and approved by Council before any works associated with development of the land commence.
13. Engineering design drawings are to be prepared by a qualified and experienced civil engineer, or other person approved by Council's Municipal Engineer, in accordance with the Tasmanian Subdivision Guidelines October 2013, and must show –
  - a) all existing and proposed services required by this permit;
  - b) all existing and proposed roadwork required by this permit;
  - c) measures to be taken to provide sight distance in accordance with the relevant standards of the planning scheme;
  - d) measures to be taken to limit or control erosion and sedimentation;
  - e) any other work required by this permit.
14. Approved engineering design drawings will remain valid for a period of 2 years from the date of approval of the engineering drawings.

***Water quality***

15. A soil and water management plan (here referred to as a 'SWMP') prepared in accordance with the guidelines Soil and Water Management on Building and Construction Sites, by the Derwent Estuary Programme and NRM South, must be approved by Council's Municipal Engineer before development of the land commences.
16. Temporary run-off, erosion and sediment controls must be installed in accordance with the approved SWMP and must be maintained at full operational capacity to the satisfaction of Council's Municipal Engineer until the land is effectively rehabilitated and stabilised after completion of the development.
17. The topsoil on any areas required to be disturbed must be stripped and stockpiled in an approved location shown on the detailed soil and water management plan for reuse in the rehabilitation of the site. Topsoil must not be removed from the site until the completion of all works unless approved otherwise by the Council's Municipal Engineer.
18. All disturbed surfaces on the land, except those set aside for roadways, footways and driveways, must be covered with top soil and, where appropriate, re-vegetated and stabilised to the satisfaction of the Council's Municipal Engineer.

***Property Services***

19. The subdivider must pay the cost of any alterations and/or reinstatement to existing services, Council infrastructure or private property incurred because of the proposed subdivision works. Any work required is to be specified or undertaken by the authority concerned.
20. Any existing services shared between lots are to be separated to the satisfaction of Council's Municipal Engineer.
21. Property services must be contained wholly within each lots served or an easement to the satisfaction of the Council's Municipal Engineer or responsible authority.

***Stormwater***

22. The developer must provide a new stormwater property connection to service Lot 1 to the satisfaction of Council's Municipal Engineer.
23. The existing redundant stormwater connection to Lot 1 is to be capped and sealed to the satisfaction of Council's Municipal Engineer.

***Telecommunications and electrical reticulation***

24. Electrical and telecommunications services must be provided to each lot in accordance with the requirements of the responsible authority and to the satisfaction of Council's Municipal Engineer.

**TasWater**

25. The development must meet all required Conditions of approval specified by TasWater Submission to Planning Authority Notice, TWDA 2018/00443-BTN, dated 26/04/2018.

**Construction Amenity**

26. The development must only be carried out between the following hours unless otherwise approved by the Council's General Manager:

- Monday to Friday 7:00 AM to 6:00 PM
- Saturday 8:00 AM to 6:00 PM
- Sunday and State-wide public holidays 10:00 AM to 6:00 PM

27. All subdivision works associated with the development of the land must be carried out in such a manner so as not to unreasonably cause injury to, or unreasonably 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 from activities or equipment related to the use or development, including noise and vibration, which can be detected by a person at the boundary with another property; and/or
- b) transport of materials, goods or commodities to or from the land; and/or
- c) appearance of any building, works or materials.

28. Any accumulation of vegetation, building debris or other unwanted material must be disposed of by removal from the land in an approved manner. No burning of such materials on-site will be permitted unless approved in writing by the Council's General Manager.

29. 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 subdivision during the construction period.

**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. This permit does not take effect until all other approvals required for the use or development to which the permit relates have been granted.
- C. A covenant on the title restricts multiple dwelling development. The development approved by this permit may not be able to proceed without the written approval of the vender or other owners in the subdivision.
- D. The owner is advised that an engineering plan assessment and inspection fee of 1% of the value of the approved engineering works, or a minimum of \$286.00, must be paid to Council in accordance with Council's fee schedule.

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

**CARRIED**

**VOTING RECORD**

<b>In favour</b>	<b>Against</b>
Cr Foster	
Cr Geard	
Cr Gray	
Cr Jeffries	
Cr Higgins	
Cr Owen	
Cr Williams	

The meeting closed at 6.05pm

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

Date: \_\_\_\_\_  
19<sup>th</sup> June 2018