

File No: SF7105

30 March 2020

The Executive Commissioner
Tasmanian Planning Commission
GPO Box 1691
HOBART TAS 7001

Dear Sir

Amendment 63 - Modification to Clause 9 by the Addition of Clause 9.5

At its meeting on 20 March 2020 Council initiated Amendment 63 to the Launceston Interim Planning Scheme to make a procedural modification to Clause 9 by the addition of Clause 9.5 to address the situation where the zone of an access strip or infrastructure line is different to the zone of the main part of the site.

Council also at this meeting determined to make a submission to the Commission to request that under Section 37 (1) of the *Land Use Planning and Approvals Act 1993*, the provision relating to public advertising be dispensed with.

The purpose of the amendment is to:

1. Provide certainty to owners and developers for the use and development for properties where the access has a different zone; and
2. Limit the need for scheme amendments to allow use and development of such lots.

This aligns with Section 37(1) (v) of the *Land Use Planning and Approvals Act 1993* which allows for the making of procedural changes to the planning scheme.

It is the view of the Council that the amendment clarifies and simplifies the scheme and allows for a use and development to be possible on land irrespective of the zone of the access and land over which services are to be provided. The amendment will align with provisions of other Interim Schemes across the state.

I have attached

1. The certified Amendment
2. A copy of the Council report and Minute.

I would be happy to provide further explanations or clarification of this request if required.

Yours sincerely



Richard Jamieson
MANAGER CITY DEVELOPMENT

9.3 Amendment 63 - Add Clause 9.5 - Access Across Land in Another Zone - Launceston Interim Planning Scheme 2015**FILE NO:** SF7105**AUTHOR:** Catherine Mainsbridge (Senior Town Planner)**GENERAL MANAGER:** Leanne Hurst (Community and Place Network)

DECISION STATEMENT:

To decide whether the Planning Authority will determine to:

1. initiate and certify Amendment 63 to add Clause 9.5 - Access Across Land In Another Zone to Part C Special Provisions of the Launceston Interim Planning Scheme 2015.
2. make a submission to the Tasmanian Planning Commission that, in the opinion of the Planning Authority, the Commission has the power to dispense with the requirements relating to the public exhibition of Amendment 63 in accordance with section 37 (1) of the *Land Use Planning and Approvals Act 1993*.

RECOMMENDATION:

That Council:

1. pursuant to the former section 34(1)(b) of the *Land Use Planning and Approvals Act 1993*, initiates Amendment 63 to the Launceston Interim Planning Scheme 2015 to insert an additional Special Provision to Part C Special Provisions with Clause 9.5 - Access Across Land In Another Zone.
 2. pursuant to the former section 35(1) of the *Land Use Planning and Approvals Act 1993*, certifies the draft amendment (ECM Document Reference Number 4257485).
 3. directs the General Manager Community and Place Network to arrange for a submission to be made to the Tasmanian Planning Commission to the effect that, in the opinion of the Planning Authority, the Commission has the power to dispense with the requirements relating to the public exhibition of Amendment 63 in accordance with former section 37(1) of the *Land Use Planning and Approvals Act 1993*.
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Note: Councillors are advised that under Schedule 6 - Savings and transitional provisions of the *Land Use Planning and Approvals Amendment (Tasmanian Planning Scheme Act) 2015* - Parts 2A and 3 of the *former provisions* remain in force until a Local Planning Schedule comes into effect for the municipal area and this application assessment and recommendation has therefore been made under those transitional provisions.

9.3 Amendment 63 - Add Clause 9.5 - Access Across Land in Another Zone - Launceston Interim Planning Scheme 2015 ...(Cont'd)

REPORT:

1. Introduction

The proposed amendment seeks to add an additional special provision to Part C Special Provisions - 9.5 Access Across Land In Another Zone to allow the planning authority at its discretion to approve an application to utilise an access or the provision of infrastructure over land that has a different zone to the main part of the site and is prohibited by the provisions of the different zone.

2. Background

There are a number of properties within the Launceston municipality which are internal lots relying on a right of carriageway over an adjoining lot which may be subject to a different zone. Any use or development must also be assessed and comply with the zone provisions for any part of a property or adjoining property it relies on for the use. This would require assessment of the zone provisions for an access on adjoining property which may prohibit the use or development of the site.

The standard clause also relates to infrastructure provisions crossing a zone that may be prohibit the development in the different zone.

The majority of interim Planning Schemes across Tasmania have this Clause or a similar version within their Planning Schemes. Launceston was the first Interim Scheme to be endorsed and this clause had not been included in the template at the time of commencement. The clause that is proposed to be included within the Launceston Interim Planning Scheme 2015 is consistent with the Clause proposed within the draft Tasmanian Planning Scheme.

The amendment would:

1. Provide certainty to owners and developers for the use and development for properties where the access has a different zone; and
2. Limit the need for scheme amendments to allow use and development of such lots.

This report provides an assessment of the requirements of the Act relevant to the proposed amendment and the proposal to make a request to the Commission that it dispenses with the requirements relating to the public exhibition of the draft amendment.

3. Draft Amendment

The draft amendment seeks to add the following to Part C Special Provisions:

9.3 Amendment 63 - Add Clause 9.5 - Access Across Land in Another Zone - Launceston Interim Planning Scheme 2015 ...(Cont'd)

9.5 Access and Provision of Infrastructure Across Land in Another Zone

If an application for use or development includes access or provision of infrastructure across land that is in a different zone to that in which the main part of the use or development is located, and the access or infrastructure is prohibited by the provisions of the different zone, the planning authority may at its discretion approve an application for access or provision of infrastructure over the land in the other zone, having regard to:

- (a) whether there is no practical and reasonable alternative for providing the access or infrastructure to the site;
- (b) the purpose and provisions of the zone and any applicable code for the land over which the access or provision of infrastructure is to occur; and
- (c) the potential for land use conflict with the use or development permissible under the planning scheme for any adjoining properties and for the land over which the access or provision of infrastructure is to occur.

3.1 Scheme Operation

In determining an application for a permit for use or development the planning authority must have regard to the purpose and provisions of the applicable zone. This includes all properties which the application may impact.

The Clause to be included in the Special Provisions will only relate to properties where the access has a different zone to the location of use and/or development or where infrastructure provisions cross another zone. The amendment does not change the structure or objective of any zone or code. It improves the functionality and operations of the scheme and increases the likelihood that development will occur in line with the scheme intent.

4. Requirements of the *Land Use Planning and Approvals Act 1993* (the Act)

The application is required to be determined in accordance with sections 34(1) and 35(1) of the Act.

34. Amendment of planning scheme

- (1) *A planning authority may –*
 - (a) *in response to a request under section 33; or*
 - (b) *of its own motion –*
initiate an amendment of a planning scheme administered by it.
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9.3 Amendment 63 - Add Clause 9.5 - Access Across Land in Another Zone - Launceston Interim Planning Scheme 2015 ...(Cont'd)

35. Certification of draft amendments by planning authorities

- (1) After preparing a draft amendment of a planning scheme, the planning authority must determine whether the draft amendment meets the requirements specified in section 32 and –*
 - (a) if satisfied that it does, certify the draft amendment as so meeting those requirements; or*
 - (b) if not so satisfied, proceed to modify the draft amendment until it does meet those requirements and then certify the modified draft amendment as so meeting those requirements.*
- (2) For the purposes of subsection (1), the planning authority must certify the draft amendment by instrument in writing affixed with the common seal of the planning authority.*
- (3)*
- (4) Within 7 days after certifying under subsection (1) that the draft amendment of a planning scheme meets the requirements specified in section 32, the planning authority must give a copy of the draft amendment and the instrument containing that certification to the Commission.*

The matters which the Planning Authority must consider when making a decision whether to initiate and certify the draft amendment are listed in section 32 of the Act and are set out in the subsequent sections of this report.

In addition to the recommendation to initiate the amendment, a second recommendation is made. It is recommended that Council makes a submission to the Commission that the draft amendment satisfies the relevant requirements of section 37(1) of the Act to dispense with the requirements of section 38, and also sections 39, 40 and 41 relating to the making of representations, consideration by the Commission and modification or rejection of the draft amendment before approval.

Section 37(1) of the Act states the following:

37. Power of Commission to dispense with certain requirements

- (1) Where, on the submission to the Commission of a draft amendment of a planning scheme, the Commission is satisfied that -*
 - (a) the draft amendment is for the purpose of -*
 - (i) the correction of any error in the planning scheme; or*
 - (ii) the removal of any anomaly in the planning scheme; or*
 - (iii) clarifying or simplifying the planning scheme; or*
 - (iv) removing any inconsistency between the planning scheme and any Act; or*
 - (v) making procedural changes to the planning scheme; or*
 - (vi) amending the planning scheme to bring it into conformity with the model planning scheme framework; or*

9.3 Amendment 63 - Add Clause 9.5 - Access Across Land in Another Zone - Launceston Interim Planning Scheme 2015 ...(Cont'd)

- (via) the removal or amendment of any local provision of the scheme that is, under section 30EA, inconsistent with another provision; or*
- (vib) ensuring the effective operation of a planning purposes notice; or*
- (vic) ensuring that the local provisions of the scheme are consistent with one another and any planning directive, to the extent that the directive applies in relation to the scheme; or*
- (vid) enabling an alteration of the zoning of land to which an interim planning scheme applies, or has applied, so that the zoning that applied to the land before the interim planning scheme applied (the former zoning) may become the zoning that most closely corresponds to the former zoning; or*
- (vie) implementing an agreed amendment; or*
- (vii) for any other prescribed reason; and*
- (b) the public interest will not be prejudiced - the Commission may, by notice in writing given to the planning authority, dispense with the requirements of sections 38, 39, 40 and 41 in relation to the draft amendment and give its approval to the draft amendment in accordance with section 42.*

The relevant requirements of section 37(1) are addressed in a subsequent section of this report.

PART A: Considerations for the Amendment**5. Assessment****5.1 City of Launceston Corporate Strategic Plan 2014-2024**

The City of Launceston Corporate Strategic Plan 2014-2024 (the Plan) seeks to provide direction to the range of operations Council undertakes in their role as the major provider of services and facilities for the City of Launceston. The Plan essentially indicates the actions and strategies that the Council will implement to deliver on the Greater Launceston Plan goals. The relevant Strategic Priorities are addressed below.

Strategic Priority 2 - We facilitate prosperity by seeking out and responding to opportunities for growth and renewal of our regional economy

The draft amendment will facilitate the development of appropriately zoned land which might otherwise be restricted by the zoning of their access and infrastructure provisions crossing another zone. The amendment will allow the development of a lot which may currently be restricted due to access over an adjoining property.

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Strategic Priority 3 - We are a progressive leader that is accountable to our governance obligations and responsive to our community.

The draft amendment will allow decisions to be evidence based and transparent so that we can be 'ethical, fair and impartial in complying with and enforcing the law' by providing a clear path as to how to deal with potential conflicting zone requirements. The draft also ensures the focus on continuous improvement in efficiency and processing of applications.

Strategic Priority 7 - We are a city planning for our future by ensuring our approach to strategic land use, development and infrastructure investment is coordinated, progressive and sustainable.

The draft amendment directly meets the priority by clarifying the application of the land-use planning system to provide certainty for development and economic investment and to stimulate development and remove a regulatory impediment.

5.2 Northern Regional Land Use Strategy

Section 30O(1) of the Act requires the amendment to be, as far as practicable, consistent with the Strategy. The Northern Regional Land Use Strategy was amended and declared by the Minister for Planning on 27 June 2018 pursuant to section 30C(3) of the Act. The regional land use strategy is a policy framework that guides land use, development and infrastructure decisions across the northern region by State and Local Government and other relevant infrastructure providers. The regional land use strategy provided significant guidance for the preparation of the Scheme.

The amendment does not seek to alter the intended outcomes of the scheme nor the degree to which it aligns with this strategy.

5.3 Section 32 of the Act

When making a decision whether to initiate and certify an amendment to a planning scheme, sections 33(2B) and 35(1) of the Act requires the Planning Authority to consider and determine whether it meets the following requirements listed in section 32:

32. *Requirements for preparation of amendments*

- (1) *A draft amendment of a planning scheme, and an amendment of a planning scheme, in the opinion of the relevant decision-maker within the meaning of section 20(2A) -*
 - (a-d)
 - (e) *must, as far as practicable, avoid the potential for land use conflicts with use and development permissible under the planning scheme applying to the adjacent area; and*
 - (ea) *must not conflict with the requirements of section 30O; and*
 - (f) *must have regard to the impact that the use and development permissible under the amendment will have on the use and development of the region as an entity in environmental, economic and social terms.*

9.3 Amendment 63 - Add Clause 9.5 - Access Across Land in Another Zone - Launceston Interim Planning Scheme 2015 ...(Cont'd)

These requirements are addressed below.

5.3.1 Land Use Conflict

The proposed amendment does not seek to modify the underlying zone provisions, which seek to avoid the potential for land use conflict. This amendment is solely about clarifying which zone should apply to the access of a site with a different zone and for allowing the provisions of infrastructure to cross another zone through a discretionary application which may otherwise be prohibited.

5.3.2 Section 300

The relevant sub-sections (1) and (2) in section 300 of the Act allow for an amendment to the Scheme to occur for the purposes of inserting or removing a local provision provided that the amendment:

- is, as far as practicable, consistent with the regional land use strategy;
- is not directly or indirectly inconsistent with a common provision in the Scheme;
- does not revoke or amend an overriding local provision;
- does not result in a conflicting local provision.

The proposed amendment is consistent with the regional land use strategy, as discussed in section 5.2.

The proposed amendment seeks only to clarify the zoning of an access when it is different to the zone of that part of the site supporting a proposed use and/or development, and to allow for infrastructure provisions to cross through another zone to provide services within our municipality.

The proposed amendment therefore will not be inconsistent or in conflict with any other relevant local or common provision in the Scheme. It will not revoke or amend an overriding local provision.

5.3.3 Regional Impact

The proposed amendment will not adversely impact the use and development of the region in environmental, economic and social terms. In reality, any impact will be to facilitate development in accordance with the intents of the planning scheme. The current provisions are not clear and do not provide a clear pathway for future land use. It is clearly desirable to ensure that land available for use and development is not prevented from doing so by an administrative mechanism in the scheme itself.

9.3 Amendment 63 - Add Clause 9.5 - Access Across Land in Another Zone - Launceston Interim Planning Scheme 2015 ...(Cont'd)

5.4 Objectives of the Resource Management and Planning System

5.4.2 Schedule 1 – Part 1

(a) to promote the sustainable development of natural and physical resources and the maintenance of ecological processes and genetic diversity; and

The amendment has no impact on the planning outcomes.

(b) to provide for the fair, orderly and sustainable use and development of air, land and water; and

The amendment will facilitate a fair and orderly approach for use and development of the city.

(c) to encourage public involvement in resource management and planning; and

The matter subject to the amendment is solely to do with clarifying the zoning of an access where it differs for that of the site proposed for use and or development and to allow the provision of infrastructure to cross through another zone without prohibiting the development.

(d) to facilitate economic development in accordance with the objectives set out in paragraphs (a), (b) and (c); and

The draft amendment is designed to remove an administrative problem that is preventing the beneficial use and development of land. The amendment purposes to facilitate economic development in a manner that is consistent with Objectives (a), (b) and (c).

(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 purpose of the amendment is to provide a clear pathway to facilitate use and/or development of land where the access and provision of services has a different zone.

9.3 Amendment 63 - Add Clause 9.5 - Access Across Land in Another Zone - Launceston Interim Planning Scheme 2015 ...(Cont'd)

Schedule 1 – Part 2

(a) to require sound strategic planning and co-ordinated action by State and local government; and

The proposed amendment has been assessed as consistent with Council's Strategic Plan, the Northern Regional Land Use Strategy, the Scheme and Objectives in Schedule 1 of the Act.

(b) to establish a system of planning instruments to be the principal way of setting objectives, policies and controls for the use, development and protection of land; and

The Act sets out an established process which enables planning scheme amendments to be lawfully considered. The proposed amendment will not substantially alter the functionality of the Scheme.

(c) to ensure that the effects on the environment are considered and provide for explicit consideration of social and economic effects when decisions are made about the use and development of land; and

The proposed amendment provides clarification of the operation of the scheme and will assist the consideration of social and economic effects of decisions regarding use and development of land.

(d) to require land use and development planning and policy to be easily integrated with environmental, social, economic, conservation and resource management policies at State, regional and municipal levels; and

All relevant regional and state policies have been considered in this report.

(e) to provide for the consolidation of approvals for land use or development and related matters, and to co-ordinate planning approvals with related approvals; and

This objective is not relevant to the draft amendment.

(f) to promote the health and wellbeing of all Tasmanians and visitors to Tasmania by ensuring a pleasant, efficient and safe environment for working, living and recreation; and

The amendment will help promote appropriate land use within the city for residents and visitors to the city.

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(g) to conserve those buildings, areas or other places which are of scientific, aesthetic, architectural or historical interest, or otherwise of special cultural value; and

The amendment will assist the consideration and conservation of such places where conflicting zones may apply.

(h) to protect public infrastructure and other assets and enable the orderly provision and co-ordination of public utilities and other facilities for the benefit of the community; and

The amendment does not specifically deal with this objective other than to clarify a zoning conflict where it might occur.

(i) to provide a planning framework which fully considers land capability.

This objective is not relevant to the draft amendment.

State Legislation and Policies**State Policy on the Protection of Agricultural Land 2009**

The amendment has no impact on this policy.

State Policy on Water Quality Management 1997

The amendment has no impact on this policy.

5.5.3 State Coastal Policy 1996

The amendment has no impact on this policy.

5.5.4 National Environmental Protection Measures

National Environmental Protection Measures (NEPMs) are automatically adopted as State Policies. They outline common environmental objectives for managing the environment. Current NEPMs include:

- National Environmental Protection (Used Packaging Materials) Measure
 - National Environmental Protection (Ambient Air Quality) Measure
 - National Environmental Protection (Movement of Controlled Waste Between States and Territories) Measure
 - National Environmental Protection (National Pollutant Inventory) Measure
 - National Environmental Protection (Assessment of Site Contamination) Measure
 - National Environmental Protection (Diesel Vehicle Emissions) Measure
 - National Environmental Protection (Air Toxics) Measure
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9.3 Amendment 63 - Add Clause 9.5 - Access Across Land in Another Zone - Launceston Interim Planning Scheme 2015 ...(Cont'd)

The NEPMs are either not applicable or will not be impacted upon by the draft amendment.

5.5.5 *Gas Pipelines Act 2000*

The amendment has no impact on this Act.

PART B: Requirements relating to Public Exhibition of the Amendment

5.6 Section 37(1) of the Act

In order to satisfy section 37(1) of the Act, a draft amendment is required to be for one of the purposes listed under sub-section (a)(i)-(vie) and is required to comply with sub-section (b) requiring that the public interest is not to be prejudiced. These matters are addressed separately below.

5.6.1 Purpose of the Amendment

The relevant provisions in section 37 (1)(a) of the Act include:

- (a) *the draft amendment is for the purpose of -*
 - ...
 - (iii) *clarifying or simplifying the planning scheme;*
 - (v) *making procedural changes to the scheme*

Clarifying or Simplifying the Scheme

The draft amendment will clarify a procedural matter in the scheme by introducing a clause to cover a possible zoning conflict between a site and its access or the provision of infrastructure.

The proposed clause is common in a number of other interim schemes within the state and is also proposed within the Tasmanian Planning Scheme and therefore not extraordinary to the states planning system.

Currently the zone conflict can prohibit an appropriate use and/or development of land. The amendment will allow for an application to be appropriately considered on its merits against the main zone of the site.

5.6.2 Public Interest

The public interest will not be prejudiced because the matter solely relates to the access or provision of services to the site. The zone currently applying to the site proper remains.

9.3 Amendment 63 - Add Clause 9.5 - Access Across Land in Another Zone - Launceston Interim Planning Scheme 2015 ...(Cont'd)

6. Conclusion

It is recommended that the Planning Authority initiates and certifies an amendment to the Launceston Interim Planning Scheme 2015 to provide clarity where the zoning of an access or the provision of infrastructure crosses another zone.

The amendment is considered to meet all the relevant objective of the Act. It is also recommended that because the proposed amendment satisfies the relevant requirements in section 37(1) of the Act, the Planning Authority makes a submission to the Tasmanian Planning Commission dispensing with the need for public advertising of the amendment.

ECONOMIC IMPACT:

No significant economic impacts have been identified.

ENVIRONMENTAL IMPACT:

No significant environmental impacts have been identified.

SOCIAL IMPACT:

No significant social impacts have been identified.

STRATEGIC DOCUMENT REFERENCE:

Launceston Interim Planning Scheme 2015
Land Use Planning and Approvals Act 1993
City of Launceston Corporate Strategic Plan 2014-2024
Northern Regional Land Use Strategy

BUDGET & FINANCIAL ASPECTS:

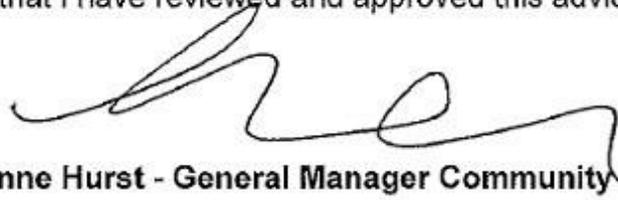
Not considered relevant to this report.

**9.3 Amendment 63 - Add Clause 9.5 - Access Across Land in Another Zone -
Launceston Interim Planning Scheme 2015 ...(Cont'd)**

DISCLOSURE OF INTERESTS:

The officer has no conflict of interest in this item.

I certify that I have reviewed and approved this advice and recommendation.



Leanne Hurst - General Manager Community and Place Network

ATTACHMENTS:

1. Instrument - Amendment 63 - Launceston Interim Planning Scheme 2015 (*distributed electronically*)
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9.3 Amendment 63 - Add Clause 9.5 - Access Across Land in Another Zone - Launceston Interim Planning Scheme 2015**FILE NO:** SF7105**AUTHOR:** Catherine Mainsbridge (Senior Town Planner)**GENERAL MANAGER:** Leanne Hurst (Community and Place Network)

DECISION STATEMENT:

To decide whether the Planning Authority will determine to:

1. initiate and certify Amendment 63 to add Clause 9.5 - Access Across Land In Another Zone to Part C Special Provisions of the Launceston Interim Planning Scheme 2015.
2. make a submission to the Tasmanian Planning Commission that, in the opinion of the Planning Authority, the Commission has the power to dispense with the requirements relating to the public exhibition of Amendment 63 in accordance with section 37(1) of the *Land Use Planning and Approvals Act 1993*.

RECOMMENDATION:

That Council:

1. pursuant to the former section 34(1)(b) of the *Land Use Planning and Approvals Act 1993*, initiates Amendment 63 to the Launceston Interim Planning Scheme 2015 to insert an additional Special Provision to Part C Special Provisions with Clause 9.5 - Access Across Land In Another Zone.
 2. pursuant to the former section 35(1) of the *Land Use Planning and Approvals Act 1993*, certifies the draft amendment (ECM Document Reference Number 4257485).
 3. directs the General Manager Community and Place Network to arrange for a submission to be made to the Tasmanian Planning Commission to the effect that, in the opinion of the Planning Authority, the Commission has the power to dispense with the requirements relating to the public exhibition of Amendment 63 in accordance with former section 37(1) of the *Land Use Planning and Approvals Act 1993*.
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Mrs L Hurst (General Manager Community and Place Network), Mr R Jamieson (Manager City Development) and Mrs C Mainsbridge (Senior Town Planner) were in attendance to answer questions of Council in respect of this Agenda Item.

**9.3 Amendment 63 - Add Clause 9.5 - Access Across Land in Another Zone -
Launceston Interim Planning Scheme 2015 ...(Cont'd)**

DECISION: 19 March 2020

MOTION

Moved Councillor D H McKenzie, seconded Councillor D C Gibson.

That the Motion, as per the Recommendation to Council, be adopted.

CARRIED 11:1

**FOR VOTE: Mayor Councillor A M van Zetten, Deputy Mayor Councillor D C Gibson,
Councillor J Finlay, Councillor A E Dawkins, Councillor N D Daking, Councillor D H
McKenzie, Councillor K P Stojansek, Councillor R I Soward, Councillor P S Spencer,
Councillor J G Cox and Councillor A G Harris**

AGAINST VOTE: Councillor T G Walker

**The Mayor, Councillor A M van Zetten, announced that Council no longer sits as a
Planning Authority.**