

SOUTH GIPPSLAND SHIRE COUNCIL

Special (Emergency) Meeting of Council

New Governance Actions and the Appointment of the
Acting Chief Executive Officer

Open Minutes of Special Meeting of Council

8 May 2019

Council Chambers, Leongatha

Commenced at 11.04am



minutes



*South Gippsland
Shire Council*

Come for the beauty, Stay for the lifestyle



MISSION

South Gippsland Shire will be a place where our quality of life and sense of community are balanced by sustainable and sensitive development, population and economic growth.

Privacy

Council is required to keep minutes of each Council meeting. The minutes contain details of proceedings which may include personal information about community members disclosed as part of presentations, submissions and questions. The minutes of Council meetings are a public record and can be inspected by members of the public.

Council undertakes audio recordings of Council Meetings as a contribution to good governance and accuracy of minutes. An audio recording of this meeting is being made for the purpose of verifying the accuracy of minutes of the meeting. In some circumstances the recording may be disclosed, such as where Council is compelled to do so by court order, warrant, and subpoena or by any other law such as the Freedom of Information Act 1982. It should be noted that other people present at the meeting may be recording the meeting and Council has limited power to regulate this. Council has developed a policy to regulate recordings, "*Sound Recording of Council Meetings*".

A copy of this policy is located on Council's website www.southgippsland.vic.gov.au.

PRESENT

COUNCILLORS:	<p>Cr Don Hill, Mayor Cr Alyson Skinner, Deputy Mayor Cr Ray Argento Cr Rosemary Cousin Cr Steve Finlay Cr Frank Hirst Cr Aaron Brown</p>
NOT PRESENT:	<p>Cr Jeremy Rich Cr Andrew McEwen</p> <p>Tim Tamlin, Chief Executive Officer Faith Page, Director Corporate and Community Services Anthony Seabrook, Director Infrastructure Services Bryan Sword, Director Development Services</p>
OFFICERS:	<p>Rick Rutjens, Manager Executive Support and Community Information June Ernst, Coordinator Council Business Natasha Berry, Corporate and Council Business Officer Jodi Cumming, Corporate and Council Business Officer</p>

SOUTH GIPPSLAND SHIRE COUNCIL

Special (Emergency) Meeting of Council
Wednesday 8 May 2019
Council Chambers, Leongatha
commenced at 11.04am

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Tim Tamlin
Chief Executive Officer

1. PRELIMINARY MATTERS

1.1. LIVE STREAMING COUNCIL MEETING DISCLAIMER

This Council Meeting is being streamed live, recorded and published in accordance with Council's *Live Streaming in Council Meetings Policy*.

To those present in the gallery today, by attending a public meeting of the Council you are consenting to your image, voice and comments being recorded and published.

Anyone who is invited to read out a question or a presentation will be recorded and their voice, image and comments will form part of the live stream and recording.

The Chair and/or the CEO have the discretion and authority at any time to direct the termination or interruption of live streaming. Such direction will only be given in exceptional circumstances where deemed relevant. Circumstances may include instances where the content of debate is considered misleading, defamatory or potentially inappropriate to be published.

Attendees are advised that they may be subject to legal action if their actions results in inappropriate and/or unacceptable behaviour and/or comments.

Today's Meeting is being streamed live as well as recorded and published on Council's website.

Thank you

1.2. WELCOME

Please ensure Mobile phones remain 'off' during the Council Meeting.

This Special (Emergency) Council Meeting has been called by the Mayor to deal with two urgent items that Council considers cannot be delayed until the next Ordinary Meeting of Council 29 May 2019 as:

1. Council seeks to commence improvement of its governance actions prior to the Minister's decision on the potential suspension of Council; and
2. The Mayor was not in a position to call the meeting for the 'Appointment of the Acting Chief Executive Officer' within the seven days required notice, as the selection process required a longer timeframe than initially anticipated.

1.3. OPENING PRAYER

We pray to God to guide us so that the thoughts we have and the decisions made this day, are in the best interests of the people of the South Gippsland Shire.

Amen

1.4. ACKNOWLEDGEMENT OF TRADITIONAL CUSTODIANS

The South Gippsland Shire Council respectfully acknowledges the Traditional Custodians of this Land, Elders past and present, their Spirits and Ancestors.

1.5. REQUESTS FOR LEAVE OF ABSENCE

MOVED: Cr Skinner

SECONDED: Cr Argento

COUNCILLOR COUSIN WITH LEAVE OF ABSENCE GRANTED FOR ALL MEETINGS OF COUNCIL UP UNTIL THE ORDINARY COUNCIL MEETING 29 MAY 2019.

CARRIED UNANIMOUSLY

1.6. APOLOGY

Councillor Andrew McEwen

1.7. DECLARATION OF CONFLICT OF INTEREST FOR COUNCILLORS

Any interest that a Councillor or staff member has deemed to be significant and has disclosed as either a direct or an indirect interest is now considered to be a conflict of interest. Conflict of interest legislation is in sections 77A, 77B, 78, 78A-D and 79 of the Local Government Act 1989 (the Act). This legislation can be obtained by contacting the Council's Corporate & Community Services Directorate (Council Business) or by accessing the Victorian Legislation and Parliamentary Documents website at www.legislation.vic.gov.au.

An interest may be by close association, financial, conflicting duties or receipt of gifts. If a Councillor or staff member discloses any interest in an item discussed at any Council Meeting (whether they attend or not) they must:

- Complete a disclosure of interest form prior to the Meeting (forms are available from Council Business Department at South Gippsland Shire Council).
- Advise the Chair of the interest immediately before the particular item is considered (if attending the Meeting).
- Leave the Council Chamber or Meeting room while the item is being discussed and during any vote taken (if attending the Meeting).

The Councillor or staff member will be advised to return to the Council Chamber or Meeting room immediately after the item has been considered and the vote is complete.

Councillors should check the Minutes of the Council Meeting to ensure their disclosure is recorded accurately. Councillors are not required to disclose conflict of interest in relation to matters only considered at Meetings they do not attend. Detailed information is available in *Conflict of Interest – A Guide for Councillors – October 2012*.

Nil

1.8. DECLARATION OF CONFLICT OF INTEREST FOR STAFF

Sections 80B and 80C of the Local Government Act 1989 require members of Council staff who have delegated functions and/or provide advice to Council or a Special Committee to disclose conflicts of interest. If Council staff have written, provided information/advice or approved a Council Report and have a conflict of interest, it is the responsibility of that staff member to disclose the interest.

Guidance to identifying and disclosing a conflict of interest is contained in the Victorian State Government, Department of Transport, Planning and Local Infrastructure – *Conflict of Interest – A Guide for Council Staff – October 2011*.

Nil

Note: The Mayor, Cr Hill noted that because of the nature of the Special Meeting, Item 2.2 APPOINTMENT OF ACTING CHIEF EXECUTIVE OFFICER, the Mayor asked the Executive Leadership Team not to be in attendance [at the Meeting] so that it is not obvious who has applied or not, should they be required to leave the Meeting with a Conflict of Interest.

2. COUNCIL REPORTS

2.1. NEW GOVERNANCE ACTIONS

Prepared on behalf of the Mayor and Councillors

EXECUTIVE SUMMARY

Council has reviewed the Monitor's report and been asked by the Minister to identify how Council has responded to the findings of the Monitor's report.

Council has drafted a detailed response to the Minister by way of Council's submission and in this submission document of 130 pages Council has identified actions that need to be taken by Council to implement further good governance actions above and beyond anything as called for within the Monitor's Report.

These actions will be called.

THE SOUTH GIPPSLAND SHIRE GOOD GOVERNANCE ACTION PLAN and will include the following:

- Part 1: SOUTH GIPPSLAND SHIRE'S COMMITMENT TO THE SEVEN PILLARS FOR GOOD GOVERNANCE, and:
- Part 2: ACTIONS TAKEN AND PROPOSED FOR GOOD GOVERNANCE

The '*South Gippsland Shire Good Governance Action Plan*' is part of the Council Submission to the Minister for Local Government and as such the document will not be available until released publically by the Minister at a future date.

RECOMMENDATION

That Council:

1. Re-endorses the Mayor and the direction of Council and commits to work civilly and respectfully for the benefit of the whole community;
2. Notes that it has not received any formal bullying complaints in this term of office;
3. Embraces a zero tolerance policy for bullying or inappropriate behaviours and committed to use councillors code of conduct policy in all such situations;
4. Directs the Chief Executive Officer to prepare a review of Local Law No.3 2010 and suggest any proposed change in line with suggestion of the Municipal Monitor and bring a report back to a Council Meeting two

months after the Minister has publically released the '*Municipal Monitor's Report*' along with a recommendation of a timeline to comply with the Local Government Act 1989.

5. Requests the Chief Executive Officer to prepare a proposed program of training and support in alignment with the issues identified by the '*Municipal Monitor Report's*' findings and the proposed '*South Gippsland Shire Good Governance Action Plan*', noting that the Municipal Monitors Report and the proposed '*South Gippsland Shire Good Governance Action Plan*' will be made available when the documents are publically released by the Minister; and
6. Directs the Chief Executive Officer to prepare a proposal including terms of reference and budget for the establishment of a Good Governance and Integrity Audit Committee with the establishment of a Good Governance and Integrity Advisor.

Cr Skinner moved a Motion different from the Recommendation.

MOVED: Cr Skinner

SECONDED: Cr Cousin

THAT COUNCIL:

1. **ENDORSES THE INTENT OF SOUTH GIPPSLAND GOOD GOVERNANCE ACTION PLAN 8 MAY 2019.**
2. **BRINGS THE SOUTH GIPPSLAND GOOD GOVERNANCE ACTION PLAN TO COUNCIL FOR FORMAL ADOPTION ONCE RELEASED.**
3. **REQUESTS THE CHIEF EXECUTICE OFFICER (CEO) TO PREPARE A PROPOSED PROGRAM OF TRAINING AND SUPPORT TO IMPLEMENT THE GOOD GOVERNANCE ACTION PLAN, INCLUDING INTEGRATION INTO THE COUNCIL PLAN AND BUDGET.**

CARRIED

FOR: Councillor Skinner, Hirst, Hill, Cousin, Argento and Finlay.

AGAINST: Councillor Brown

REPORT

The Mayor and Councillors have been preparing a detailed submission to the Minister for Local Government in response to the 'Show Cause' letter Council received based on the '*Municipal Monitor's Report*' (Report).

In considering the Report, the Mayor and Councillors have identified areas where improvement can be made to their governance actions. This report seeks to commence some of these governance actions. As the Report has not yet been made public, further details in regard to the '*South Gippsland Shire Good Governance Action Plan*' cannot be incorporated into this Council report at this stage.

Council's submission to the Minister's letter is to be submitted on or by Thursday 9 May 2019.

CONSULTATION

The Mayor and Councillors have been meeting over the past month to consider the Report and Minister's letter and how they should address the concerns raised.

RESOURCES

Resources required to implement these actions will be funded through current budget allocations and/or through further reports presented to Council on the means to implement them in the future.

RISKS

There is a risk of Council being suspended by the Minister for Local Government if due consideration and responsive actions are not given to addressing the concerns raised in the Report and the Minister's 'show cause' letter.

STAFF DISCLOSURE

Nil

ATTACHMENTS

Nil

REFERENCE DOCUMENTS

Council Policy

Documents are available on Council's website: www.southgippsland.vic.gov.au
Councillor Code of Conduct (C14)

External Documents

MAV Good Governance Guide

LGV Conflicts of Interest Guide

Municipal Monitor's Report (Confidential Document at the time of publication)

Legislative Provisions

Local Government Act 1989

2.2. APPOINTMENT OF ACTING CHIEF EXECUTIVE OFFICER

Prepared on behalf of the Mayor and Councillors

EXECUTIVE SUMMARY

The Local Government Act 1989 (the Act), section 94(1A) provides:

The Council must make a permanent appointment to the position of Chief Executive Officer (CEO) as soon as is reasonably practicable after a vacancy in the position occurs.

The Act, s.94 (4A) also makes provision for Council to appoint a person to act in the role of Chief Executive Officer (CEO) for a period not exceeding 12 months whilst it is undertaking the recruitment process to fill the vacancy created by the cessation of the current CEO's tenure on 24 June 2019.

Council is seeking to appoint a person to undertake the role of CEO in an acting capacity from 25 July 2019 for no longer than a 12 month term.

It will also be necessary for Council to transfer its existing delegations to the person acting as CEO to ensure the continuation of the business of the Council.

RECOMMENDATION

That Council:

1. Appoints <NAME> to act in the position of Acting Chief Executive Officer (CEO) for South Gippsland Shire Council for the period commencing on 25 June 2019 and ending no later than 24 June 2020.
 - a. For all candidates this appointment is subject to a satisfactory:
 - i. Police Check; and
 - ii. Agreement on Key Performance Indicators.
 - b. For external applicants this appointment is subject to satisfactory:
 - i. Reference checks;
 - ii. Psychometric testing; and
 - iii. Qualification and employment verification checks.
2. The proposed total remuneration for the Acting Chief Executive Officer under the new contract will be made public within 14 days after the

passing of the resolution as per s.94(6) of the Local Government Act 1989.

3. Transfers all delegations made by Council to the current Chief Executive Officer to the acting Chief Executive Officer, effective from 25 June 2019.

MOVED: Cr Skinner

SECONDED: Cr Argento

THAT:

1. **THE SPECIAL MEETING OF COUNCIL BE CLOSED TO CONSIDER THE APPLICANTS PURSUANT TO LOCAL GOVERNMENT ACT 1989, SECTION 89(2)(a) – PERSONNEL MATTER; AND**
2. **AFTER THE MATTER HAS BEEN DISCUSSED AND A DECISION IS MADE COUNCIL WILL OPEN THE MEETING AGAIN TO ADVISE THE RESULTS OF THAT DISCUSSION.**

CARRIED UNANIMOUSLY

The Mayor adjourned the Meeting for 5 minutes in order to clear the room for the closed session.

The Open Session of the Special Meeting resumed at 11.51 am.

Cr Brown returned to the Special Meeting at 11.52 am.

Councillor Argento moved a Motion different from the Recommendation.

MOVED: Cr Argento

SECONDED: Cr Hirst

THAT COUNCIL:

1. **APPOINTS BRYAN SWORD TO ACT IN THE POSITION OF ACTING CHIEF EXECUTIVE OFFICER (CEO) FOR SOUTH GIPPSLAND SHIRE COUNCIL FOR THE PERIOD COMMENCING ON 25 JUNE 2019 AND ENDING NO LATER THAN 24 JUNE 2020.**
 - a. **FOR ALL CANDIDATES THIS APPOINTMENT IS SUBJECT TO A SATISFACTORY:**
 - i. **POLICE CHECK; AND**
 - ii. **AGREEMENT ON KEY PERFORMANCE INDICATORS.**

- b. FOR EXTERNAL APPLICANTS THIS APPOINTMENT IS SUBJECT TO SATISFACTORY:**
 - i. REFERENCE CHECKS;**
 - ii. PSYCHOMETRIC TESTING; AND**
 - iii. QUALIFICATION AND EMPLOYMENT VERIFICATION CHECKS.**
- 2. THE PROPOSED TOTAL REMUNERATION FOR THE ACTING CHIEF EXECUTIVE OFFICER UNDER THE NEW CONTRACT WILL BE MADE PUBLIC WITHIN 14 DAYS AFTER THE PASSING OF THE RESOLUTION AS PER S.94(6) OF THE LOCAL GOVERNMENT ACT 1989.**
- 3. TRANSFERS ALL DELEGATIONS MADE BY COUNCIL TO THE CURRENT CHIEF EXECUTIVE OFFICER TO THE ACTING CHIEF EXECUTIVE OFFICER, EFFECTIVE FROM 25 JUNE 2019.**
- 4. AUTHORISE THE MAYOR TO MAKE THE RESOLUTION PUBLIC.**

CARRIED

FOR: Councillors Hirst, Skinner, Argento, Cousin, Finlay and Hill.
AGAINST: Councillor Brown

REPORT

The tenure for the current CEO ends on 24 June 2019. The recruitment process for a new CEO has not progressed to a stage where a suitable candidate can be appointed effective 25 June 2019. Council is required under s.94(1) of the Act to appoint a natural person to be its Chief Executive Officer.

At the 24 April 2019 Ordinary Council Meeting, an Urgent Item of business was resolved as follows:

“That Council:

1. *APPOINT AN ACTING CHIEF EXECUTIVE OFFICER (CEO) FOR A PERIOD OF ONE YEAR COMMENCING ON 25 JUNE 2019, AND*
2. *INVITE EXPRESSIONS OF INTEREST IN THE ACTING CEO ROLE FROM APPROPRIATELY EXPERIENCED AND QUALIFIED SOUTH GIPPSLAND SHIRE COUNCIL EMPLOYEES, AS DETERMINED BY THE CEO EMPLOYMENT AND REMUNERATION COMMITTEE (the Committee), AND*
3. *THE COMMITTEE RECOMMEND A PREFERRED APPOINTMENT TO A SPECIAL MEETING OF COUNCIL TO BE CALLED BY THE MAYOR FOR WEDNESDAY 8 MAY 2019.”*

One internal application was received from the current CEO, Tim Tamlin. The Mayor, on behalf of the Committee, advised Mr Tamlin, Staff and the Media that:

“The Committee had determined not to appoint him to fill the acting position.”

Further the Mayor advised in the communique that:

“The Committee has recommended that the Mayor, in conjunction with the Independent Chair, source suitably qualified applicants at the earliest possible opportunity to fill the acting CEO role. The Committee anticipate remaining on schedule to appoint an applicant either internal or external by the Special Council Meeting next Wednesday, 8 May 2019.”

The Mayor has called the Special Meeting for 8 May 2019, to appoint an acting CEO. This has been deemed urgent as the Mayor was not in a position to call the meeting for the appointment of the Acting CEO within the seven days required notice, as the selection process required a longer timeframe than initially anticipated.

CONSULTATION

The CEO Employment and Remuneration Committee has been involved in the consultation associated with the appointment of the Acting CEO.

A communique was distributed by the Mayor to the CEO, staff and the public on 1 May 2019 that the CEO, Tim Tamlin, was the only applicant and that the Committee had determined not to appoint him to fill the acting position.

RESOURCES

Resources to fund the Acting CEO's position are contained in Annual Budgets. Council is required to determine the remuneration/package with the successful applicant, taking current funding arrangements into consideration.

RISKS

Section 94 of the Act requires Council to appoint a natural person to be its CEO. Council is not in a position at this stage to make an appointment for a CEO to commence tenure from 25 June 2019. To avoid being in breach of the Act, Council aims to appoint an Acting CEO for a maximum term of 12 months, in accordance with s.94(4A).

Council needs to ensure due diligence employment checks are carried out and satisfied. Failure to do these checks may result in an unsuitable person being appointed to lead the organisation.

STAFF DISCLOSURE

Nil

ATTACHMENTS

Nil

REFERENCE DOCUMENTS

Council Policy

Documents are available on Council's website: www.southgippsland.vic.gov.au

CEO Employment & Remuneration Policy (C71)

Human Rights Policy (C52)

Council Policy

Employment Probity Policy (CE19)

Legislative Provisions

Local Government Act 1989

3. MEETING CLOSED

NEXT MEETING

The next Ordinary Meeting of Council open to the public will be held on Wednesday, 29 May 2019 commencing at 2pm in the Council Chambers, Leongatha.

The Special Meeting of Council closed at 12.03pm.

Confirmed this 26th day of June 2019

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Mayor, Cr Hill