

SOUTH GIPPSLAND SHIRE COUNCIL

Additional Council Meeting

to hear, consider and decide on submissions to the revised Local Law No.2 2020 – Meeting Procedures and the Common Seal.

18 November 2020
Virtual Meeting
Commencing at 11.00am

Administrators
Julie Eisenbise, Chair
Christian Zahra, Deputy Chair
Rick Brown



agenda



*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.



SOUTH GIPPSLAND SHIRE COUNCIL

Notice is hereby given that an Additional Council Meeting of the South Gippsland Shire Council will be conducted as a virtual meeting held on 18 November 2020, commencing at 11.00am

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Kerryn Ellis
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*.

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.

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

Thank you

1.2. WELCOME AND OPEN VIRTUAL COUNCIL MEETING VIA LIVE STREAM

Please ensure mobile phones are set to 'silent' during the Council Meeting.

Over the past months the Federal and State Governments have been increasingly clear in their directives about social gatherings. To that end Council has taken the unprecedented step of closing its doors to the public for this Council Meeting.

This Council Meeting will be conducted virtually (an on-line meeting) and does not include an open gallery. The virtual and livestreaming of an Open Council Meeting is made in accordance with the *Local Government Act 2020*, section 394 that prescribes Administrators are able to participate in the Meeting by electronic means of communication and section 395(1)(a) that 'Meetings may be closed to the public during the prescribed period.'

Access to the live stream through Council's Internet will be the 'open' component of this Meeting.

The safety of the community and staff and the continuation of vital services remain Council's highest priority.

RECOMMENDATION

That Council:

1. Not allow members of the public to attend the 18 November 2020 Additional Council Meeting in person;
2. Notes that this Council Meeting is being conducted as a virtual meeting, conducted by electronic means of communication pursuant to section 394 of the *Local Government Act 2020*. The 'Minister's Good Practice Guideline MGP-1: Virtual Meetings' have been used to ensure that local government decision making can continue in line with COVID-19 Pandemic requirements;
3. Notes that the 18 November 2020 Additional Council Meeting remains 'open' via the livestream on the Internet, in keeping with section 395 of the *Local Government Act 2020*; and
4. Notes that this decision is made to protect the health and wellbeing of all people required to be in attendance.

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

1.6. APOLOGIES

1.7. DECLARATION OF CONFLICT OF INTEREST FOR ADMINISTRATORS

The *Local Government Act 2020 (the Act)*, Division 2 sets out the requirements relating to Conflict of Interest. Disclosure of a conflict of interest in respect of a matter to be considered at a Council Meeting is required under section 130(1)(a) and specifically applies to a relevant person being a Councillor (Administrator), member of a delegated committee who is not a Councillor and a member of Council staff.

Council's *Governance Rules (C82)(the Rules)*, clause 3.0 Disclosure of a Conflict of Interest at a Council Meeting sets out the prescribed manner required to disclose a conflict of interest at South Gippsland Shire Council.

The *Rules* require a Councillor (Administrator) and/ or staff member who has a conflict of interest in a matter being considered at a Council Meeting to announce before the matter is considered and disclose this in a written notice to the Chief Executive Officer. The details included in the disclosure, explain the nature conflict of interest, whether it is classified as general or material, the name of the relevant person(s) and their relationship to them.

Failure to comply with disclosures of conflict of interest (s.130) may be subject to penalty points and/ or other disciplinary measures depending on the nature of the conflict.

The *Local Government Act 2020* can be accessed from the Victorian Legislation and Parliamentary documents website at www.legislation.vic.gov.au
Council's *Governance Rules (C82)* can be accessed from [Council's Policies](#) webpage.

1.8. DECLARATION OF CONFLICT OF INTEREST FOR STAFF

The *Local Government Act 2020 (the Act)*, Division 2 sets out the requirements relating to Conflict of Interest. Disclosure of a conflict of interest in respect of a matter to be considered at a Council Meeting is required under section 130(1)(a) and specifically applies to a relevant person being a Councillor (Administrator), member of a delegated committee who is not a Councillor and a member of Council staff.

Council's *Governance Rules (C82)(the Rules)*, Chapter 5, clause 7, 8 and 9 sets out the prescribed manner required for staff to disclose a conflict of interest when:

- *Preparing Reports for Meetings*
- *Exercising Delegated Power*
- *Exercising a Statutory Function*

Council staff must immediately upon becoming aware of a conflict of interest provide a written notice to the Chief Executive Officer disclosing the conflict of interest, explain the nature of the conflict and how it will be managed. Upon becoming aware and declaring a conflict of interest, a staff member may not exercise a power or perform a function in the matter. All prepared reports will record that staff member(s) have considered a conflict of interest and include if any, the details of a disclosure.

Failure to comply with disclosures of conflict of interest (s.130) may be subject to penalty points and/ or other disciplinary measures depending on the nature of the conflict.

The *Local Government Act 2020* can be accessed from the Victorian Legislation and Parliamentary documents website at www.legislation.vic.gov.au
Council's *Governance Rules (C82)* can be accessed from [Council's Policies](#) webpage.

2. COUNCIL REPORTS

2.1. REVISED LOCAL LAW NO.2 2020 - HEAR, CONSIDER AND DECIDE ON SUBMISSION

Performance & Innovation Directorate

Council Plan

Objective 4 - Customer Focused Organisation - Strategy 4.2 Review and implement Council plans, policies and practices aligned with the Local Government Act 2020 and the Commission of Inquiry recommendations

Objective 4 - Customer Focused Organisation - Strategy 4.4 Build on leadership, governance, financial sustainability, shared values and cultural capabilities within the organisation

The consideration and determination of community submissions to the proposed revised changes in Local Law No 2 2020, endeavours to enhance the governance framework of Council's decision making. These are fundamental aspects required in the new principles based Local Government Act 2020 and in addressing recommendations made by the Commission of Inquiry.

EXECUTIVE SUMMARY

At the 23 September 2020 Council Meeting, Council endorsed the proposed rescission of numerous clauses and amendment of some retained clauses in the *Local Law No.2 2020 – Processes of Municipal Government – Meeting Procedures and Common Seal* (Proposed Revised Local Law 2020).

The changes aim to provide greater clarity for the community, Council and Council staff on clauses to be retained and/or amended in the Proposed Revised Local Law 2020, following the adoption of the *Governance Rules 2020 (C82)*, including the *Election Period Policy (C30)* (Governance Rules). The Governance Rules now direct the majority of meeting procedures for Council and Council Committees.

A formal s.223 public submission process has been undertaken following the Government Gazettal on 1 October 2020 through to 5pm on Thursday 29 October 2020, in accordance with the *Local Government Act 1989* (1989 Act). One submission, from Mr Hope was received by the close of submissions. The submission is contained in **Attachment [2.1.1]**. Mr Hope has indicated his desire to be heard in regard to the submission.

It is proposed that the recommendations be considered in parts, in order to first hear Mr Clive Hope's submission in suspended session, prior to considering and deciding on the submission. Administrators received a copy of the submission on 4 November 2020 to allow them time to consider the submission in advance of this meeting.

This report incorporates references to the *Local Government Act 1989* and the *Local Government Act 2020*, as there is a transition period between the two Acts. At this point in time both Acts contain sections applicable to this report.

RECOMMENDATION

That Council:

1. **Suspends Standing Orders for Mr Clive Hope to be heard in regard to his submission;**
2. **Resumes Standing Orders to consider and decide on Mr Clive Hope's submission;**
3. **Considers Mr Clive Hope's submission contained in Attachment [2.1.1] and determine that the following changes be included in the revised *Local Law No.2 2020 – Processes of Municipal Government – Meeting Procedures and Common Seal* :**
 - a. **Amend clause 105(a) to be 'Any person, including a Councillor, who has been called to order and fails to comply with the Chair's direction, is guilty of an offence.'**
 - b. **Amend clause 109(a) to be 'A person issued with an infringement notice may pay the penalty in accordance with payment options specified in the infringement notice.'**
 - c. **Amend clause 109(b) to be 'To avoid prosecution, the penalty indicated must be paid by the due date in the infringement notice.'**
and
 - d. **Amend clause 109(c) to be 'A person issued with an infringement notice may elect to have the matter of the infringement heard and determined in the Court, in accordance with the Infringements Act 2006.'**
4. **Acknowledges appreciation to the Submitter for the submission and advises of Council's decision.**

REPORT

The Governance Rules were adopted by Council at the 26 August 2020 Council meeting. In accordance with s.60 of the *Local Government Act 2020*, (2020 Act) the Governance Rules have been adopted to replace the majority of meeting procedures contained within *Local Law No.2 2020 – Processes of Municipal Government – Meeting Procedures and Common Seal* (Local Law 2020).

Redundant clauses in the Proposed Revised Local Law 2020 were presented for Council to consider for repeal on 23 September 2020. Several clauses were also retained and/or amended; predominantly to allow for the continuation of penalties and infringements to be applied as required. These penalties could not be captured in the Governance Rules.

Council endorsed the proposed changes at the 23 September 2020 Council meeting and commenced the required statutory community consultation

process following the government gazettal on 1 October 2020, in accordance with s.223 of the *Local Government Act 1989*, (1989 Act).

The public consultation process was held between 1 and 29 October 2020. One submission was received from Mr Clive Hope. The submission is contained in **Attachment [2.1.1]**. Mr Hope has elected to speak to the submission.

Council is asked to hear, consider and decide on the submission. Officer responses have been provided to give context to Council’s consideration of the submission.

Submission	Response	Recommendation
<p>Para105(a) is not clearly worded and is open to a couple of interpretations. I suggest that the following wording is clearer:- ‘Any person including a Councillor who has been called to order by the Chair and fails to comply with the Chair’s lawful direction is guilty of an offence.’</p>	<p>The submitter’s proposed wording seeks to clarify the offence. The suggested inclusion of the word ‘lawful’ is considered an unnecessary addition, as an unlawful direction would not be valid. The inclusion of the word could, in itself, give rise to unnecessary complications in a legal challenge. Further consideration has been given to the clause to determine if greater clarity can be provided to the intent of the offence.</p>	<p>Amend Clause 105(a). From: ‘Any person who has been called to order including any Councillor who fails to comply with the Chair’s direction will be guilty of an offence.’ To: ‘Any person, including a Councillor, who has been called to order and who fails to comply with the Chair’s direction, is guilty of an offence.’</p>
<p>109(a) Should also refer to payments online and in person.</p>	<p>Clause 109(a) would become too prescriptive and detailed by the inclusion of different types of payment options. Clause 109(a) could be improved by removing the prescriptive details and outlining that payment options would be provided in the infringement notice. This ensures the clause remains contemporary over time in line with the</p>	<p>Amend Clause 109(a) from: ‘A person issued with an infringement notice may pay the penalty indicated to the Chief Executive Officer, South Gippsland Shire Council, Private Bag 4, Leongatha, 3953’. To: ‘A person issued with an infringement notice may pay the penalty in accordance with payment options</p>

	<i>Infringement Act 2006</i> . This is also the current practice for other types of Council local law infringements.	specified on the infringement notice.'
109(b) is an incorrect statement.	<p>Clause 109(b) is a valid statement. The requirement for a penalty payment under the <i>Infringements Act 2006</i> is to be made at least 21 days from the issuing of the infringement notice.</p> <p>While the clause is valid, further consideration has been given to the wording of to reduce the prescriptive detail for the time allocation within the local law. This would allow an issuing Officer flexibility to consider the circumstances and other extenuating factors when setting a payment due date. The time frames in the <i>Infringements Act 2006</i> may also be modified in future, so reducing the prescriptive wording will allow the clause to remain contemporary over time.</p>	<p>Amend Clause 109(b)</p> <p>From: 'To avoid prosecution, the penalty indicated must be paid within 28 days after the day in which the infringement notice is issued.'</p> <p>To: 'To avoid prosecution, the penalty indicated must be paid by the due date in the infringement notice.'</p>
109(c)(d) & (e) incorrect to state disregard notice when these alternatives are provided for in the notice pursuant to the Infringements Act	The <i>Infringement Act 2006</i> allows for a person to; have the matter heard by a court, to request an internal review and/or to seek a payment plan. These points are the substance of clauses 109(c)(d) and (e). Consideration has been given to rewording	<p>No change to clauses 109(d) and (e). Clause 109 (d) A person issued with an infringement notice may seek a payment plan in accordance with the Infringements Act 2006.</p> <p>No change to clauses 109(e).</p>

	<p>clause 109(c) to address the submitters concern with disregarding the notice when other avenues are available.</p>	<p>Clause 109(e) A person issued with an infringement notice may request an internal review in accordance with the Infringements Act 2006.</p> <p>Amend Clause 109(c) From: 'A person issued with an infringement notice is entitled to disregard the notice and defend the prosecution in court in accordance with the Infringements Act 2006.' To: 'A person issued with an infringement notice may elect to have the matter of the infringement heard and determined in the Court, in accordance with the <i>Infringements Act 2006</i>.'</p>
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The recommended amendments seek to address concerns raised and suggestions provided in the submission. It is also considered that the final Revised Local Law will be more contemporary over the longer term by removing some elements of prescriptive text.

Council may, or may not determine to make changes to the Proposed Revised Local Law in response to the submission. Any changes made will be incorporate into a final revised version to be presented to Council for adoption.

CONSULTATION / COMMUNITY ENGAGEMENT

Council has sought public submissions on the Proposed Revised Local Law 2020 through a formal s.223 public submission process in accordance with the *Local Government Act 1989*. Notices were placed in the 1 October 2020 Victorian Government Gazette, local newspapers, on Council's website, and to recipients of In-The-Know. Hard copies were made available upon request, due to the required closure of Council's Customer Service Centre due to the COVID-19 pandemic restrictions.

One submission was received. Administrators were provided with a copy of the submission in the first week of November, providing additional time to consider the content of the submission prior to this meeting.

The submitter has been provided with an opportunity to be heard in regard to the submission.

RESOURCES / FINANCIAL VIABILITY

There are no financial implications associated with the submissions or consultation process.

RISKS

The repeal of redundant sections of the Proposed Revised Local Law 2020 aims to remove the risk of confusion as to the applicability of the 'Governance Rules (C82)' versus the 'Local Law No 2 2020'. The Rules are required under the 2020 Act to contain the meeting procedures for Council. There are clauses in the Proposed Revised Local Law 2020 that require retention and/or amendment to allow for penalties and infringements to be issued, when required. These cannot be applied under the Rules.

The Proposed Revised Local Law 2020 and the Rules, in part, addresses requirements from the *Commission of Inquiry Report into South Gippsland Shire Council 2019* raised by the Minister for Local Government being:

"During the period of administration, the Council reviews and implements improved council policies and processes, with a focus on councillors' induction and training, the Councillor Code of Conduct and meeting procedures."

The consultation for the Proposed Revised Local Law 2020 has provided an opportunity for the community to be engaged in the review process. Council may, or may not, amend the *Local Law No.2 2020 – Processes of Municipal Government – Meeting Procedures and Common Seal – Revised November 2020* as a result of considering the public submission.

STAFF DISCLOSURE

All officers involved in the preparation of this report have considered and determined that they do not have a conflict of interest in the matter.

ATTACHMENTS

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

1. S223 Local Law No 2 2020 Revision November 2020 - Submission Mr Clive Hope [2.1.1 - 1 page]

REFERENCE DOCUMENTS

Council's Good Governance Framework

Pillar 3. Decision Making

Council Policy / Strategy / Plans

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

Governance Rules (C82)

Local Law No. 2 2020, Processes of Municipal Government (Meeting Procedures and Common Seal)

Legislative Provisions

Local Government Act 1989

Local Government Act 2020

3. MEETING CLOSED

NEXT MEETING

The next Additional Council Meeting open to the public will be held on Wednesday, 25 November 2020 commencing at 2 pm.