

SOUTH GIPPSLAND SHIRE COUNCIL

# Council Meeting Agenda

17 May 2023

**Council Meeting No. 482  
Council Chambers, Leongatha  
Commencing at 2:00 pm**



# agenda



*South Gippsland  
Shire Council*

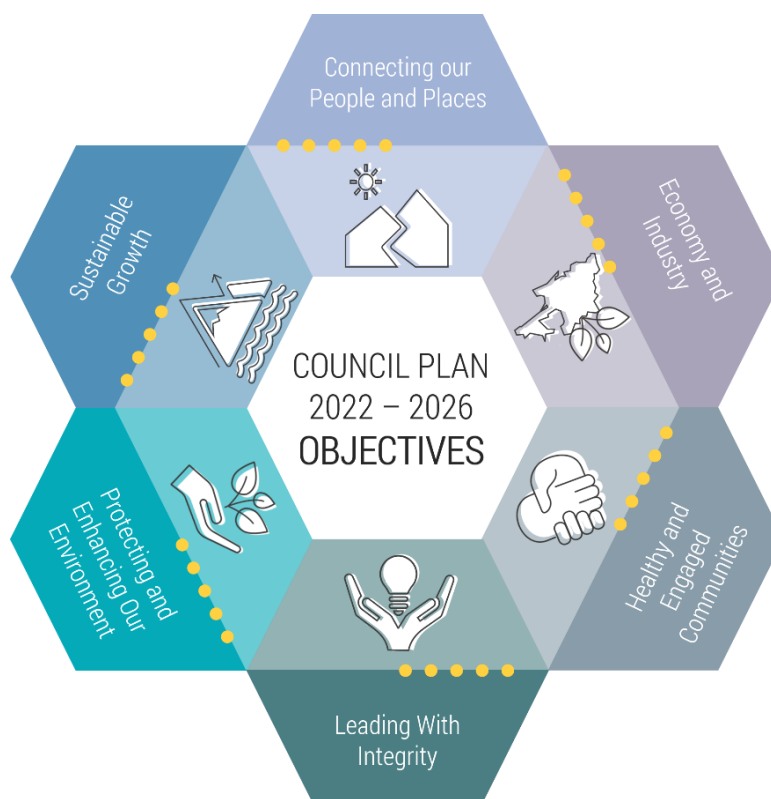
*Come for the beauty, Stay for the lifestyle*

## OUR COUNCIL VISION

***We care deeply about our people, the land and future of South Gippsland.***

***Our vision is to support the whole Shire in creating economic, environmental and social prosperity for this and future generations.***

The Council Agenda relates to the Strategic Objectives of the *Council Plan 2022-2026* indicated in this diagram:



### 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.

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A copy of the *Policy* is located on Council's website - [Link](#).

## SOUTH GIPPSLAND SHIRE COUNCIL

Notice is hereby given that Council Meeting No. 482 of the  
South Gippsland Shire Council will be held on 17 May 2023  
in the Council Chambers, Leongatha, Council Chambers, Leongatha commencing at  
2:00 PM

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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.

Access to the live stream through Council's Internet is an option to view the 'open' component of a Council Meeting. Link to the Live Stream on Council's website: [Live Streaming | Live Streaming | South Gippsland Shire Council](#)

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 TO THE COUNCIL MEETING**

#### ***Public Questions***

In accordance with *Governance Rules (C82)*, clause 56.4(d) the placement of public questions has now closed. Questions must be received prior to the commencement of the Council Meeting and placed in the receptacle at Governance Officers table. Questions received after the commencement of the Meeting will be considered at the next Council Meeting.

### **1.3. OPENING PRAYER**

As we gather here from diverse backgrounds and beliefs, may we hold privilege with good care and trust. As we deliberate and discuss, may we be wise in our discernment, fair in our decisions and visionary in our planning. May we be guided by our common goal of a strong and united South Gippsland.

#### **1.4. ACKNOWLEDGEMENT OF TRADITIONAL CUSTODIANS**

We acknowledge the Bunurong and Gunaikurnai people as the Traditional Custodians of South Gippsland and pay respect to their Elders, past, present, and future, for they hold the memories, traditions, culture, and hopes of Aboriginal and Torres Strait Islander people of Australia.

#### **1.5. APOLOGIES**

**Councillor Michael Felton**

#### **1.6. CONFIRMATION OF MINUTES**

##### **RECOMMENDATION**

**That the Minutes of the South Gippsland Shire Council Meeting No. 481, held on 19 April 2023 in the Council Chambers, Leongatha be confirmed.**

## 1.7. DECLARATION OF CONFLICTS OF INTEREST FOR COUNCILLORS

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, 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 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 (s.127 and s.128), 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](http://www.legislation.vic.gov.au).

Council's *Governance Rules (C82)* can be accessed from [Council's Policies](#) webpage.

**Councillor Mohya Davies has declared a material conflict of interest in Agenda Item 3.2. Planning Application 2022/269 - 570 Soldiers Road Fish Creek - Use and Development of Land for Rural Industry (Winery) & Use and Development of Land for Dwelling, as a family member is the planning consultant on the matter.**

**Councillor Clare Williams has declared a material conflict of interest in Agenda Item 10.1 Award Contract CON/356 - Venus Bay Tourism Precinct - Jupiter Boulevard and Centre Road, as she is part owner of a company that has submitted a tender.**

**Councillor Clare Williams has declared a general conflict of interest in Agenda Item 10.2 2022/23 Community Grants - Round 2, as she is a member of a Committee that applied for a community grant application.**

**Councillor John Schelling has declared a reasonable apprehension of bias or actual bias in Agenda Item 10.2 2022/23 Community Grants - Round 2, as he signed a letter in support of a community grant application.**

**Councillor Nathan Hersey has declared a reasonable apprehension of bias or actual bias in Agenda Item 10.2 2022/23 Community Grants - Round 2, as he signed a letter in support of a community grant application.**

**Councillor Michael Felton has declared a reasonable apprehension of bias or actual bias in Agenda Item 10.2 2022/23 Community Grants - Round 2, as he signed a letter in support of a community grant application.**

**Councillor Jenni Keerie has declared a material conflict of interest in Agenda Item 10.2 2022/23 Community Grants - Round 2, as she is a Manager of an organisation that has submitted an application.**

**Councillor Jenni Keerie has declared a reasonable apprehension of bias or actual bias in Agenda Item 10.2 2022/23 Community Grants - Round 2, as she is a Manager of an organisation that provided a letter in support of a community grant application.**

**Councillor Jenni Keerie has declared a reasonable apprehension of bias or actual bias in Agenda Item 10.2 2022/23 Community Grants - Round 2, as she signed a letter of support to a community grant application.**



## 1.8. DECLARATION OF CONFLICTS 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, 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 the prescribed manner required for staff to disclose a conflict of interest when:

- Preparing Reports for Meetings
- Exercise of Delegated Power
- Exercise of 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](http://www.legislation.vic.gov.au).

Council's *Governance Rules (C82)* can be accessed from Council's Policies webpage.

## 2. OBJECTIVE - LEADING WITH INTEGRITY

### 2.1. ORGANISATIONAL AND FINANCIAL PERFORMANCE REPORT - JULY 2022 TO MARCH 2023

Directorate:	Performance and Innovation
Department:	Governance

#### Council Plan

*Objective - Leading with Integrity*

*Council's governance is strengthened by regular organisational performance reporting against the Council Plan 2022-2026 Measures and Annual Initiatives.*

#### EXECUTIVE SUMMARY

The purpose of this report is for Council to consider the Organisational and Financial Performance Report for the time period of 1 July 2022 to 31 March 2023 (**Attachment [2.1.1]**) which includes the financial and organisational performance against the Adopted Budget and highlights progress of the 2022/23 Annual Initiatives for the *2022-2026 Council Plan* (Council Plan). This report has been prepared in accordance with s.97 and s.98 of the *Local Government Act 2020* and the *Planning and Reporting Regulations 2020*.

Council endorsed the 2022/23 Annual Initiatives (Annual Initiatives) as part of the *2022-2026 Council Plan* at the 29 June 2022 Council Meeting. The Council Plan outlines the strategic objectives, priorities, major initiatives and measure of success indicators for the next four years. These Annual Initiatives further the implementation of activities to progress the achievement of the Council Plan Objectives and Strategies for the 2022/23 financial year. The Annual Initiatives are also captured in Section 1 of the *Budget 2022/23-2025/26* (Budget), through which they are funded.

Significant highlights during the period include 92 per cent of the Annual Plan initiatives for 2022/23 are either target achieved or on-track as at end of March 2023.

The results in the financial summary:

- The **operating** surplus as at 31 March 2023 is favourable to forecast by \$8.0M. The favourable variance is largely due to the timing of capital grants received for various projects \$4.3M, and funding related to storm

events \$3.2M, as well as an underspend of \$1.5M on materials and consumables, related to timing of the contracted payment for garbage and recycling collection and various projects

- **Capital works** expenditure is tracking at \$21.2M as compared to the year to date forecast of \$20.7M.

**Operating and Capital** forecast changes for this Financial year were approved at the 15 March 2023 Council Meeting as per the Organisation and Financial Performance Report July 2022 – December 2022.

This **Attachment [2.1.1]** will be presented to Council's Audit and Risk Committee following Council's endorsement.

## **RECOMMENDATION**

**That Council:**

1. **Receives and notes the Organisational Performance Report (Attachment [2.1.1]) for the period July 2022 to March 2023;**
2. **Publishes the Organisational Performance Report (Attachment [2.1.1]) to Council's website;**
3. **Presents the Organisational Performance Report (Attachment [2.1.1]) to the Audit and Risk Committee;**
4. **Notes the operating surplus of \$8.1 million as at 31 March 2023; and**
5. **Endorses the forecast changes for operating and capital.**

## **REPORT**

### ***Section 1 of the Organisational Performance Report***

Council endorsed the *2022/23 Annual Initiatives* (Annual Initiatives) as part of the *2022-2026 Council Plan* (Council Plan) at the 29 June 2022 Council Meeting.

The Council Plan includes key strategic objectives, priorities, major initiatives and a series of indicators called 'Measures of Success' (Indicators).

The six Strategic Objectives of the *2022-2026 Council Plan* are:

- Connecting Our People and Places
- Economy and Industry
- Healthy and Engaged Communities

- Leading with Integrity
- Protecting and Enhancing our Environment
- Sustainable Growth

Annual Initiatives are developed annually and include significant activities that progress the achievement of the objectives and priorities in the Council Plan. These Annual Initiatives are adopted each year in the Budget. The current Annual Initiatives are in the *2022/23 Budget* adopted at the 29 June 2022 Council Meeting. For connectivity, they are also captured each year as an update to the Council Plan. Progress against these Annual Initiatives and performance indicators are monitored and reported to Council within each Quarterly Performance Report.

The alignment of the Council Plan, Organisational Performance Report and Council Agenda topics in Council Meetings all outline the various activities and initiatives that work towards achieving the Council Plan strategic objectives and priorities.

The Organisational Performance Report – July 2022 to March 2023 **Attachment [2.1.1]** has been prepared and is presented to Council for consideration.

### ***Discussion***

This report provides an overview of the major activities undertaken by Council in the second quarter of the 2022/23 financial year (1 July 2022 to 31 March 2023).

Significant highlights during the period include 81 per cent of the Annual Plan initiatives for 2022/23 are either target achieved or on-track as at end of March 2023.

### **Financial Performance Report**

Section 97 of the *Local Government Act 2020* (Quarterly budget report) states that:

*“That Council:*

- 1. As soon as practicable after the end of each quarter of the financial year, the Chief Executive Officer must ensure that a quarterly budget report is presented to Council at a Council meeting which is open to the public.*
- 2. A quarterly budget report must include:*
  - a. A comparison of the actual and budget results to date; and*

- b. *An explanation of any material variations; and*
- c. *any other matters prescribed by the regulations."*

Council each year sets an Annual Budget within the framework of a 10-year Long-Term Financial Plan. Guidance is provided by the Long-Term Financial Strategies when developing annual and longer-term budgets. The financial integrity of the budgeted financial statements in the annual and forward budgets can be assessed by reference to financial performance indicators.

Throughout the course of the financial year the actual financial performance is managed by:

1. Comparing year-to-date actual financial performance with the year-to date budgets;
2. Monitoring the financial impact of changes made to budget projections on the forecast financial results at year end; and
3. Monitoring the longer-term financial ramifications against the originally adopted Long-Term Financial Plan.

The financial performance indicators that were used to develop the annual and long-term budgets are used to monitor projected financial outcomes at year-end as well as the longer-term financial ramifications. At the end of the financial year, comprehensive financial statements and performance statements are produced, subject to external audit and included in the Annual Report.

Section 2 of the Organisational Performance Report (**Attachment [2.1.1]**) contains detailed reporting in relation to financial performance (refer to):

### ***Section 2 - Financial Performance Overview and Progress***

This section of **Attachment [2.1.1]** provides an overview of Operating performance and expenditure on the Capital Works statement. It also provides details of Council's cash position and outstanding debtors.

### ***Section 3 - Financial Statements***

This section of **Attachment [2.1.1]** lists the following financial statements (including variance commentary) as at 31 March 2023:

- Balance Sheet
- Cash Flow Statement

#### **Section 4 – Annual Year to Date Financial Analysis**

This section of **Attachment [2.1.1]** provides key financial sustainability indicators for the adopted budget and the full year forecast.

#### **CONSULTATION / COMMUNITY ENGAGEMENT**

The Organisational Performance Report (**Attachment [2.1.1]**) will be communicated to Council's Audit and Risk Committee in June 2023.

#### **RESOURCES / FINANCIAL VIABILITY**

The 2022/23 Annual Initiatives are funded through the *2022/23 Annual Budget*.

#### **RISKS**

The Organisational Performance Report ensures the organisation remains in budget and also mitigates the risk of annual initiatives not being monitored throughout the financial year. These activities are priority actions required by Council. Inadequate monitoring of their progress may result in activities not within budget, not being achieved, or without understanding the reasons for any delay or budget constraints.

#### **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 at the following [LINK](#).*

1. Organisational Performance Report - 1 July 2022 to 31 March 2023 [**2.1.1** - 54 pages]

#### **REFERENCE DOCUMENTS**

##### **Council's Good Governance Framework**

Pillar 8. Monitoring & Performance Review

##### **Council Policy / Strategy / Plans**

*Documents are available on Council's website at the following [LINK](#).*

Annual Budget

Council Plan 2022-2026

##### **Legislative Provisions**

Local Government Act 2020

Local Government Better Practice Guide – Performance Framework Indicator Workbook

Local Government (Planning and Reporting) Regulations 2020

## 2.2. AUDIT AND RISK COMMITTEE - 7 MARCH 2023 MEETING MINUTES

Directorate:	Performance and Innovation
Department:	Innovation, Digital and Technology

### Council Plan

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

*Council's risk management and governance is strengthened by effectively monitoring and reporting on the activities and advice provided by the Audit and Risk Committee.*

### EXECUTIVE SUMMARY

The purpose of this report is to present the draft minutes of the Audit and Risk Committee meeting held on 7 March 2023 (**Attachment [2.2.1]**) are provided to Council for consideration.

Audit and Risk Committee members at the meeting included:

- Ms Jen Johanson (Audit Committee Chair)
- Mr Mick Jaensch
- Ms Marilyn Kearney
- Cr Sarah Gilligan (Council member)
- Cr. Jenni Keerie (Council member)
- The Mayor Cr Nathan Hersey (ex-officio observer)

### RECOMMENDATION

**That Council notes the draft Audit and Risk Committee Minutes – 7 March 2023 (Attachment [2.2.1]).**

### REPORT

The matters considered by the Audit and Risk Committee at the 7 March 2023 meeting are contained in **Attachment [2.2.1]**.

## **CONSULTATION / COMMUNITY ENGAGEMENT**

The draft Audit and Risk Committee Minutes for 7 March 2023 (**Attachment [2.2.1]**) have been circulated to the Audit and Risk Committee for feedback which is included in the attached, and will be formally accepted by the Committee at the next meeting.

## **RESOURCES / FINANCIAL VIABILITY**

Budget allowances for Council's three Independent Audit and Risk Committee Members' attendance fees are included within Council's current and forward budgets.

## **RISKS**

Council must establish an Audit and Risk Committee under s.53 of the *Local Government Act 2020*. The Committee supports Council in discharging its oversight responsibilities as set out in the Audit and Risk Committee Charter, including risk management.

## **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 at the following [LINK](#).*

1. Final Draft Meeting Minutes - Audit Risk Committee - March 2023 [**2.2.1** - 18 pages]

## **REFERENCE DOCUMENTS**

### **Council's Good Governance Framework**

Pillar 7. Risk & Compliance

### **Council Policy / Strategy / Plans**

*Documents are available on Council's website at the following [LINK](#).*

Audit and Risk Committee Charter Policy (C08)

Audit and Risk Committee Charter and Terms of Reference

### **Legislative Provisions**

Local Government Act 2020



## 2.3. DOCUMENTS SEALED, CONTRACTS VARIED, AWARDED OR EXTENDED BY CEO - 13 MARCH 2023 TO 12 APRIL 2023

Directorate:	Performance and Innovation
Department:	Financial Strategy, Risk and Procurement

### Council Plan

*Objective - Leading with Integrity*

*Council's transparency of financial decisions made and overall financial sustainability is strengthened by regularly reporting on documents sealed, contracts awarded, varied or extended under the CEO's delegation.*

### EXECUTIVE SUMMARY

This report documents the following actions undertaken by the Chief Executive Officer (CEO) which occurred during the period from 13 April 2023 to 12 May 2023. Council's *Procurement Policy (C32)* requires the CEO to report to Council any of the following actions undertaken to the next appropriate Meeting:

- Documents sealed;
- Contracts awarded after a public tender process within the CEO's delegation; and
- Contracts varied or extended by the CEO which exceeded the CEO's delegation.

### RECOMMENDATION

**That Council receives and notes this report.**

### REPORT

#### Documents Sealed

Under the *Local Government Act 2020* (the Act), s.14 states that each Council is a body corporate with perpetual succession; and must have a common seal. Sealing a document makes it an official document of Council as a corporate body. Documents that require sealing include agreements, leases or any other contractual or legally binding document that binds Council to another party.

Use of the Local Law No. 2 2020, Part 9, clause 107(h)(iv) – Common Seal of Council, states that if the Chief Executive Officer (CEO) uses the Common Seal

in a manner prescribed by sub-clause (c), this means on the authority of a Council resolution, then Council must be advised of such use on a regular basis.

In accordance with the Local Law No. 2 2020, Part 9, clause 107(h)(iv), the following are presented to Council as documents sealed during the period from 13 March 2023 to 12 April 2023.

1. Lease Agreement between South Gippsland Shire Council and Leongatha Children's Centre Inc for the land situated at 13 Symmons Street, Leongatha. Seal applied 12 April 2023.

Section 173 Agreements are prepared in accordance with s.173 of the *Planning and Environment Act 1987*, allowing Council to enter into agreements relating to the use or development of land, conditions to which the land may be used or developed or any matter that relates to planning or planning schemes in Victoria. Section 174 of the *Planning and Environment Act 1987* requires that such an agreement be under seal and must bind the owner to the covenants specified in the agreement.

In accordance with the Local Law, Instrument of Delegation and *Planning and Environment Act 1987*, the following are presented to Council as documents sealed during the period from 13 March 2023 to 12 April 2023.

Nil

### **Contracts Awarded, Varied or Extended**

In accordance with Council's Procurement Policy where contracts are awarded under delegation, varied or extended, they are required to be reported to the next practicable Council Meeting.

1. Contracts awarded by Council after a public tender process, signed by the CEO between 13 March 2023 to 12 April 2023.
  - a. Nil.
2. Contracts awarded after a public tender process within the CEO's delegation between 13 March 2023 to 12 April 2023.
  - a. CON/351 for the Design and Construction of New Toilet Block Baromi Park Mirboo North was awarded to Landmark Engineering Pty Ltd, trading as Modus Australia signed by the CEO 14 March 2023.
  - b. CON/353 for the Design, Supply & Install of Electric Vehicle Charging Stations Across South Gippsland (Collaborative Procurement initially

CON2023 1530) was awarded to RACV Solar Pty Ltd, trading as RACV Solar, signed by the CEO 29 March 2023.

- c. CON/361 for the Korumburra Rail Precinct Carpark Stage 1 was awarded to All Waste Solutions Pty Ltd, trading as AWS Civil, signed by the CEO 29 March 2023.
3. Contract variations approved by the CEO between 13 March 2023 to 12 April 2023
- a. CON/330 for the Design and Construction of AFL Sports Floodlighting at Four Locations was awarded to ACE Earthmoving (VIC) Pty Ltd and commenced in September 2022. Variations which exceed the contingency allowance are recommended to include a fifth location at Korumburra Recreation Reserve. A Contract Variation of \$302,928.75 (excluding GST) was approved by CEO after consultation with the Mayor on 16 March 2023.
  - b. CON/324 for the Leongatha Municipal Office Refurbishment was awarded to Beachley Constructions Pty Ltd and commenced in July 2022. Variations which exceed the contingency allowance are recommended for necessary structural works. A Contract Variation of \$117,700 (excluding GST) was approved by CEO after consultation with the Mayor on 23 March 2023.
4. Contract extensions approved by the CEO between 13 March 2023 to 12 April 2023
- a. Nil

#### **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**

Nil

#### **REFERENCE DOCUMENTS**

##### **Council's Good Governance Framework**

Pillar 3. Decision Making

##### **Council Policy / Strategy / Plans**

*Documents are available on Council's website at the following [LINK](#).*

Governance Rules (C82)

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

Procurement Policy (C32)

**Legislative Provisions**

Local Government Act 1989

Local Government Act 2020

Planning and Environment Act 1987

## 2.4. SUMMARY OF STRATEGIC BRIEFINGS - 13 MARCH 2023 TO 12 APRIL 2023

Directorate:	Performance and Innovation
Department:	Governance

### Council Plan

*Objective - Leading with Integrity*

*Council's transparency and governance is strengthened by regularly reporting on summaries of briefings held, that assist Council to make informed decisions in Council Meetings on behalf of the community.*

### EXECUTIVE SUMMARY

Council, in its requirement to give effect to the overarching governance principles and supporting principles of the *Local Government Act 2020, section 9(2)(i), s.9(3)(b) and s.58*, aims to assist the transparency of Council decisions, actions and information through the provision of public summaries of information. The types of information summarised are usually strategic briefing and public presentations to items that will subsequently come before Council for a future decision. The information is summarised so that it is accessible, understandable, relevant and timely.

The information provided in this report is recorded from sessions held between 13 March and 12 April 2023.

### RECOMMENDATION

**That Council receives and notes this report.**

### REPORT

Meeting Title	Details
<b>Wednesday 15 March 2023</b>	
<b>Council Meeting Agenda Topic Discussion – 15 March 2023</b>	<p><b>Councillors Attending:</b> Mohya Davies, Sarah Gilligan, Nathan Hersey, Jenni Keerie, John Schelling, Adrian Darakai and Clare Williams.</p> <p><b>Conflict of Interest:</b> Councillor John Schelling left the meeting at 9.54am with a declared general conflict of interest in Agenda Item 5.1. Planning Application 2021/135 - Proposed</p>

Meeting Title	Details
	Use and Development of a Service Station and Convenience Restaurant at 8418 South Gippsland Highway in Korumburra as his employer is a competitor of the applicant. Cr Schelling returned to the meeting at 10.16am.
<b>2023/24 Budget/Council Plan</b>	<p><b>Councillors Attending:</b> Mohya Davies, Sarah Gilligan, John Schelling, Clare Williams, Adrian Darakai, Nathan Hersey, Michael Felton and Jenni Keerie.</p> <p><b>Conflict of Interest:</b> Nil disclosed.</p>
<b>Coal Creek Community Park and Museum</b>	<p><b>Councillors Attending:</b> Mohya Davies, Sarah Gilligan, John Schelling, Clare Williams, Adrian Darakai, Nathan Hersey and Jenni Keerie.</p> <p><b>Conflict of Interest:</b> Nil disclosed.</p>
<b>Wednesday 22 March 2023</b>	
<b>2023/24 Budget/Council Plan</b>	<p><b>Councillors Attending:</b> Mohya Davies, Scott Rae, Sarah Gilligan, Nathan Hersey, Jenni Keerie, Michael Felton, John Schelling, Clare Williams and Adrian Darakai.</p> <p><b>Conflict of Interest:</b> Nil disclosed.</p>
<b>Wednesday 29 March 2023</b>	
<b>2023/24 Budget/Council Plan</b>	<p><b>Councillors Attending:</b> Mohya Davies, Scott Rae, Sarah Gilligan, John Schelling, Clare Williams, Adrian Darakai, Nathan Hersey, Michael Felton and Jenni Keerie.</p> <p><b>Conflict of Interest:</b> Nil disclosed.</p>
<b>Wednesday 5 April 2023</b>	
<b>Youth Strategy</b>	<p><b>Councillors Attending:</b> Mohya Davies, Scott Rae, Nathan Hersey, Jenni Keerie, John Schelling, Adrian Darakai and Clare Williams.</p> <p><b>Conflict of Interest:</b> Nil disclosed.</p>
<b>Planning Application 2022/269 570 Use and Development for a dwelling and Winery 570 Soldiers Road, Fish Creek</b>	<p><b>Councillors Attending:</b> Scott Rae, Nathan Hersey, Jenni Keerie, John Schelling, Adrian Darakai and Clare Williams.</p> <p><b>Conflict of Interest:</b></p>

Meeting Title	Details
	Councillor Mohya Davies has a declared material conflict of interest in briefing item Planning Application 2022/269 570 Use and Development for a dwelling and Winery 570 Soldiers Road, Fish Creek as a family member is a planning consultant on the matter. Cr Davies removed herself from the briefing and was not present at the commencement and duration of the briefing.
<b>General Local Law</b>	<p><b>Councillors Attending:</b> Mohya Davies, Scott Rae, Nathan Hersey, Jenni Keerie, John Schelling, Michael Felton, Adrian Darakai and Clare Williams.</p> <p><b>Conflict of Interest:</b> Nil disclosed.</p>
<b>Development Plan Overlay DPO5 - 18A Davis Street and Grundy Avenue Nyora - future subdivision of 60 residential lots</b>	<p><b>Councillors Attending:</b> Mohya Davies, Scott Rae, John Schelling, Clare Williams, Adrian Darakai, Nathan Hersey, Michael Felton and Jenni Keerie.</p> <p><b>Conflict of Interest:</b> Nil disclosed.</p>
<b>Wednesday 12 April 2023</b>	
<b>Council Meeting Agenda Topic Discussion – 19 April 2023</b>	<p><b>Councillors Attending:</b> Mohya Davies, Scott Rae, Sarah Gilligan, Nathan Hersey, Jenni Keerie, Michael Felton, John Schelling, Adrian Darakai and Clare Williams.</p> <p><b>Conflict of Interest:</b> Ms Kerryn Ellis, Chief Executive Officer left the room at 10.06am with a declared a material conflict of interest in Confidential Agenda Item 11.2. PERSONAL INFORMATION - Chief Executive Officer Performance Review - April 2023, as the matter relates directly to her role. Kerryn Ellis returned to the meeting at 10.30am.</p>
<b>Developer Contributions</b>	<p><b>Councillors Attending:</b> Mohya Davies, Scott Rae, Sarah Gilligan, Nathan Hersey, Jenni Keerie, Michael Felton, John Schelling, Adrian Darakai and Clare Williams.</p> <p><b>Conflict of Interest:</b> Nil disclosed.</p>

## **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**

Nil

## **REFERENCE DOCUMENTS**

### **Council's Good Governance Framework**

Pillar 3. Decision Making

### **Council Policy / Strategy / Plans**

*Documents are available on Council's website at the following [LINK](#).*

Governance Rules (C82)

Public Transparency Policy (C75)

### **Legislative Provisions**

Local Government (South Gippsland Shire Council) Act 2019

Local Government Act 1989

Local Government Act 2020



### 3. OBJECTIVE - SUSTAINABLE GROWTH

#### 3.1. PLANNING APPLICATION 2022/269 - 570 SOLDIERS ROAD FISH CREEK - USE AND DEVELOPMENT OF LAND FOR RURAL INDUSTRY (WINERY) & USE AND DEVELOPMENT OF LAND FOR DWELLING

Directorate:	Economy and Community
Department:	Planning and Building Services

#### Council Plan

##### *Objective - Sustainable Growth*

*This application does not meet the objectives of the Council Plan for the provision of a development that will diversify agricultural industries and support the local economy due to discrepancies in the application material and lack of genuine need for a dwelling on the land to support the proposed agricultural activity.*

#### EXECUTIVE SUMMARY

The purpose of this report is for Council to consider and determine this planning application, which seeks approval for the use and development of the land for a winery and use and development of the land for a dwelling at 570 Soldiers Road Fish Creek.

The application is being presented to Council for a decision as six (6) objections have been received to the proposal. The key issues/themes raised by the objectors relate to siting of the buildings, agriculture activity on the land and the impact the proposal may have on the surrounding area.

Having considered the application against the relevant provisions of the South Gippsland Planning Scheme and having considered the matters under s.60 of the *Planning and Environment Act 1987*, this assessment finds that the application is inconsistent with the relevant policy objectives as it fails to satisfactorily justify the need for a dwelling on the land and, therefore, the proposal should not be supported.

#### RECOMMENDATION

**That Council issue a Notice of Refusal for the use and development of the land for a winery and dwelling at 570 Soldiers Road Fish Creek on the following grounds:**

- 1. The proposal is not consistent with the objectives of Clause 14.01-1S and Clause 35.07 of the South Gippsland Planning Scheme as the proposal would result in the loss of productive agricultural land.**
- 2. The proposal is not consistent with the objectives of Clause 14.01-1L-01 of the South Gippsland Planning Scheme which seeks to avoid dwellings that are for rural residential or lifestyle purposes as the proposal does not demonstrate that the dwelling is genuinely required to carry out a long-term agricultural activity on the land.**

## **REPORT**

### **BACKGROUND**

The application seeks approval for the use and development of the land at 570 Soldiers Road Fish Creek for a dwelling and winery.

The subject land is within the Farming Zone (FZ) and is affected by the Significant Landscape Overlay (SLO) Schedule 3, partially affected by the Environmental Significance Overlay (ESO) Schedule 5, and partially affected by the Bushfire Management Overlay (BMO) of the South Gippsland Planning Scheme.

The land is located on the corner of Soldiers Road and Waratah Road Fish Creek. The land is an 'L' shaped lot of 20.4 hectares in area, currently divided into three paddocks, with a small paddock set up for weaning of calves.

The land is undulating, with the northern portion of the land being higher than the southern road frontages. There are three functioning dams and a natural creek running through the property. There is existing access from Soldiers Road. There is some native vegetation along the creek, however there has been significant loss of live vegetation, including many dead trees, leading to significant soil erosion along the creek bed.

There has been some native vegetation planting along the north east boundary, and the applicant is proposing further planting along that boundary as a buffer between the subject site and neighbouring property.

In addition, the creek has been fenced off and vegetation replaced along the creek bed to prevent further erosion. The owners are proposing to revegetate the land in a north/south axis towards two of the dams.

The subject land is currently vacant, with low scale cattle grazing occurring. There are two existing agricultural buildings on the land that are partially constructed, and deemed to be illegal buildings due to both the planning permit and building permits being expired. Further, the buildings were not constructed in accordance with the approved plans.

The existing buildings on site previously had a planning permit and building permit for agricultural sheds, however one of those buildings has been partially constructed to be used as a dwelling.

The current application proposes to make alterations to the existing building for the use of a dwelling (likely to require significant demolition of the existing structure). The other building is proposed to be re-located, altered and used for the manufacture and processing of wine for the rural industry (winery).

There was a previous planning application for the subject land (2020/95) that sought approval for the modified building to be used as a dwelling. Council subsequently refused that application, and Council's decision was upheld at VCAT with no permit granted. The application proposed herein is similar to the previous application, however there are sufficient differences between both applications such that the current proposal is not considered to be a repeat application.

The current planning application (2022/269) was supplied with an Agricultural Land Management Plan, staging plan, viticulture assessment and winemaking advice for proposed wine making and why a dwelling is required on the land.

The current planning application also includes a different dwelling design to the previous application; the application plans were amended to reduce the height of the existing building to single storey, in line with the ridge height of the adjoining dwelling directly to the east, eliminating the need for a planning permit under the Significant Landscape Overlay – Schedule 3. The proposed application plans have been provided in **Attachment [3.2.1]** – Application Plans.

### ***The Proposal***

This application seeks permission to use and develop the land for the purposes of winery and a dwelling. It provides for the repurposing of the two (2) existing partially constructed buildings in the north-eastern portion of the property.

It is proposed to relocate the existing hay shed for the purposes of a winery. The proposed plans show the winery would:

- be positioned parallel to the rear boundary (along its long axis);
- have minimum setbacks of approximately seven metres from the northern boundary;
- 38.184 metres from the eastern boundary; and
- 55.157 metres from the neighbouring dwelling at 550 Soldiers Road;
- be setback more than 500 metres from Soldiers Road;

- have a maximum floor to ceiling height of approximately 6.49 metres;
- be partially benched into the ground with the assistance of modest earthworks;
- have a maximum building height of 7.29 metres above Natural Ground Level (NGL);
- maintain the same rectangular footprint of 214sqm (20m x 10.7m) as the existing structure, but modified to include hard-stand flooring; fully lined and insulated corrugated iron walls, two (2) roller shutter doors and separate pedestrian access (on its southern side) and a functional and accessible internal layout both fit for purpose and relevant accessibility requirements;
- the material indicates that the winery would comprise a workshop area, wine production and processing area with associated equipment, barrel and wine storage, and plant and equipment storage- an internal layout plan has not been proceeded as part of the plans.

It is proposed to construct a new single storey dwelling by converting the existing partially constructed building in the northeast corner of the property. The proposed dwelling would:

- Be retained in the same location as the existing structure;
- maintain the existing building footprint of approximately 228.35sqm (22.3m x 10.24m);
- have minimum setbacks of 41.996 metres from the rear northern boundary, 34.792 metres from the eastern boundary and 49.190 metres from the neighbouring dwelling at 550 Soldiers Road;
- reducing the overall building height, including a maximum ridge level height of 56.74m Australian Height Datum (AHD) and:
  - a maximum building height of 6.7 metres above NGL;
  - include a new external timber deck, ramp for safe and functional accessibility;
- The materials and colours are the walls of recycled galvanised corrugated iron walls and a Colorbond "Pale Eucalypt" roof;
- be setback more than 500 metres from Soldiers Road.

- The proposed dwelling consists of two (2) bedrooms and a study with open plan kitchen, living and dining area, as well as an ensuite and main bathroom.

The application was accompanied with an agricultural land management plan, viticulture assessment, staging plan, land capability assessment and associated plans to support the application. The total land area to be utilised for vineyards is 4.3ha, which would equate to approximately 17,200 vines in total (around 4,000 vines p/ha).

In addition to the winery, the proposal seeks to use the land for grazing animal production and biodiversity regeneration on the parts of the land not identified for use as part of the winery/vineyards. Livestock numbers would vary due to the land sharing arrangement with a neighbouring farm, with a total of 78 head of cattle (48 dairy heifer replacements plus 30 beef steers). Occasionally, in winter there would be up to 55 dry dairy cows placed on the land (owned by a neighbour) where there are no other stock on the land at that time. It is intended that at the end of the staging plan for the vineyard establishment that there would be no more than 16 Angus beef steers or heifer weaners on the land at any given time. The abovementioned stocking details are not currently provided in the agricultural land management plan and were supplied separately following the Submissions Hearing on 5 April 2023.

The proposed revegetation and biodiversity management would cover up to 6.4ha on the subject land. This would include revegetation and erosion management within the waterways/creek beds, the provision of stock proof fencing, and provision of revegetation areas separate to the waterways where required.

### ***Planning Controls***

A Planning Permit is required pursuant to Clause 35.07 Farming Zone of the South Gippsland Planning Scheme for:

- Use of the land for dwelling and winery (as the Section 1 condition is not met for the dwelling).
- 35.07-4 Buildings and works associated with a use in Section 2 (winery and dwelling).
- 35.07-4 Buildings and works less than 100 metres from a dwelling not in the same ownership.

As the proposed dwelling design forming part of this application was amended, the development no longer requires planning approval under the Significant Landscape Overlay – Schedule 3. The proposed buildings and works are not

located within part of the site affected by the Environmental Significance Overlay – Schedule 5 or the Bushfire Management Overlay.

### **Assessment**

A detailed assessment of the application against relevant sections of the *Planning and Environment Act 1987* and the relevant matters of the *South Gippsland Planning Scheme* are discussed in **Attachment [3.2.2]** - Delegate Report Assessment.

The following considerations are relevant to the assessment of this application:

- Appropriateness of the dwelling within the context of the site and surrounds;
- Whether the proposal is consistent with the relevant policies and provisions of the planning scheme;
- Whether a dwelling is required on the land in conjunction the proposed agriculture use; and
- Whether the matters noted as part of the previous VCAT order have been suitably addressed as part of the revised proposal.

### **CONSULTATION / COMMUNITY ENGAGEMENT**

The application was advertised to the immediately adjoining and adjacent owners and occupiers and a site notice displayed on the subject site as well as the objectors to the previous planning applications.

Six (6) objections were received (**Confidential Attachment [11.1.1]** - Submissions). Without repeating each of these objections here, the key concerns raised in the submissions related to:

- concerns regarding the illegal buildings existing on site;
- the previous VCAT decision and its relevance to the current planning application;
- the proposal not being consistent with the provisions of the Farming Zone;
- there being limited justification for a dwelling on the land;
- whether the proposal still requires planning approval under the Significant Landscape Overlay – Schedule 3; and
- that the existing buildings on site should be demolished.

### **Referrals**

The application was referred to the relevant authorities both internally and externally, who have consented to the proposal subject to conditions which will be included on any permit that may be issued. It is noted that Agriculture Victoria did highlight as part of their response that the proposal's justification for a dwelling seemed contrary to the purpose of the Farming Zone and the strategic objective of the South Gippsland Planning Scheme (however they are not a determining or recommending authority under the referral provisions of the scheme).

### **RESOURCES / FINANCIAL VIABILITY**

Should Council issue a Notice of Decision to grant a Planning Permit for the proposal, any objector may elect to appeal to the Victorian Civil and Administrative Tribunal (VCAT) to review Council's decision. Should Council determine to refuse to grant a permit for the proposal, the permit applicant may elect to appeal to the VCAT to review Council's decision.

There is a cost to Council to attend VCAT Hearings.

### **RISKS**

Should Council fail to decide on this application at this meeting, there is a risk that the applicant may appeal to VCAT against Council's failure to determine the application within statutory timeframes. Such an appeal affects Council's reputation and opens Council to a potential costs claim for its failure to determine.

### **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 at the following [LINK](#).*

1. Application plans - Planning Application 2022/269 - 570 Soldiers Road Fish Creek [3.1.1 - 60 pages]
2. Delegates Report - Planning Application 2022/269 - 570 Soldiers Road Fish Creek [3.1.2 - 14 pages]

### **CONFIDENTIAL ATTACHMENTS**

<p>The consideration of confidential information in a closed session of Council is in accordance with s.66(2)(a) and s.66(5)(a) and (b) of the <i>Local Government Act 2020</i>.</p>
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**Confidential Attachment [11.1.1] – PERSONAL INFORMATION - Planning Application 2022/269 - 570 Soldiers Road Fish Creek - Use and Development of Land for Rural Industry (Winery) & Use and Development of Land for Dwelling –** is designated confidential information pursuant to the *Local Government Act 2020*, s.3(1)(f) - personal information, being information which if released would result in the unreasonable disclosure of information about any person or their personal affairs.

The grounds for designation have been made to protect the privacy of an individual's personal information.

#### **REFERENCE DOCUMENTS**

##### **Council's Good Governance Framework**

Pillar 1. Direction & Leadership

Pillar 3. Decision Making

##### **Legislative Provisions**

Planning and Environment Act 1987



## 3.2. PROPOSED SALE AND CREATION OF ROAD - PART 3 BRENNAN STREET MIRBOO NORTH

Directorate:	Sustainable Infrastructure
Department:	Infrastructure Planning

### Council Plan

*Objective - Sustainable Growth*

*The sale of land and creation of road will align the road boundary and allow the future widening of Burchell Lane, Mirboo North, in accordance with the public acquisition overlay within the planning scheme.*

### EXECUTIVE SUMMARY

The purpose of this report is to propose the commencement of the statutory process to create a road reserve over part of 3 Brennan Street, Mirboo North and create a lot from the remaining section to sell to the adjoining landowner for consolidation.

### RECOMMENDATION

**That Council:**

- 1. In accordance with Section 35 (8) of the Subdivision Act 1998, creates a road reserve over part 3 Brennan Street, Mirboo North being 527 square metres and creates a lot of the remaining land being 124 square meters shown in Plan 1;**
- 2. Commence statutory procedures to sell Lot 1 on Plan 1 being 124 square metres in accordance with Section 114 of the Local Government Act 2020, for not less than a valuation obtained for the land which is made not more than six months prior to the sale to the adjoining landowners for consolidation;**
- 3. Gives public notice with respect to proposal 2 on Council's website and in local newspapers in the edition week commencing 22 May 2023 in accordance with CE84 Community Engagement for Property Proposals Policy (Guidelines) on the proposal (item 1) inviting written submissions to be received by 5pm Wednesday 21 June 2023;**
  - a. If submissions are made to the public notice:**

- b. Authorise the Chief Executive Officer to fix the time, date, and place of a meeting for the hearing for persons who wish to be heard in support of their submissions;
  - c. Receives a further report to consider submissions and determine the outcome at the next available Council meeting.
4. If no submissions are received to the public notice, implement the proposal in Recommendation item 2.

## REPORT

Burchell Lane lies parallel to the main street of Mirboo North and is currently unsealed.

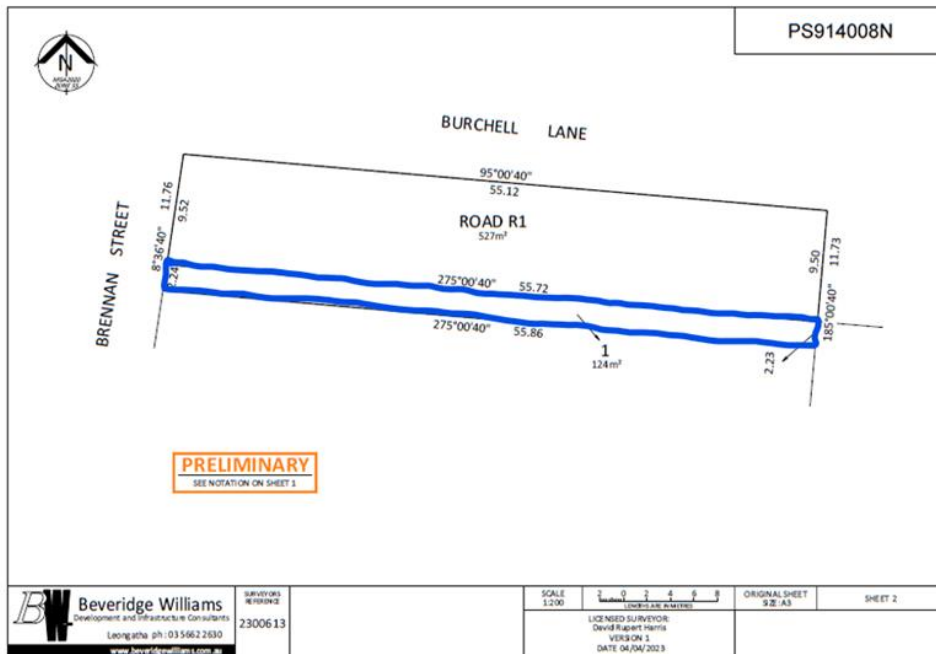
**Figure 1 – View of 3 Brennan St on corner of Burchell Lane**



In 1985, the former Shire of Mirboo purchased 3 Brennan Street, Mirboo North to assist with future plans of widening Burchell Lane, Mirboo North to improve access within the growth area of town. The South Gippsland Shire Planning Scheme contains a Public Acquisition Overlay (PAO) to enable Council to acquire road reserve along the section of Burchell Lane between Brennan Street and Peters Street.

Council has recently been contacted by the owner of 5 Brennan Street, Mirboo North requesting to purchase a portion of the land of 3 Brennan Street, Mirboo North as shown in **Figure 2**.

Figure 2 - Plan displaying the portion of land to sell in blue



After consultation with Council’s Strategic Planners, selling the portion of land will still allow for the widening of Burchell Lane to assist future development and this will also align the existing PAO within Burchell Lane as shown in **Figure 4**. The area shown orange in **Figure 3** aligns with the existing road reserve width in parts of Burchell Lane, Mirboo North. The sale of the land shown blue and consolidation with 5 Brennan Street, Mirboo North will help align the road reserve boundaries.

Figure 3 - Annotated image of Cnr. Brennan St and Burchell Lane



**Figure 4 - Showing example of Public Acquisition Overlay along Burchell Lane in orange and the lot to be created and sold in blue.**



This property matter does not propose that the road will be sealed.

### **CONSULTATION / COMMUNITY ENGAGEMENT**

Staff have consulted an Independent Certified Practising Valuer to determine the market value of the land. The valuation has been included in **Confidential Attachment [11.2.1]**.

The prospective purchaser/adjoining landowner has advised in writing of their acceptance of the sale price.

The community engagement process calls for public submissions on the proposal to sell the portion of land to the owner.

### **RESOURCES / FINANCIAL VIABILITY**

The applicant will pay for the consolidation fee, certification fee, and title plan.

Council will receive the income from the sale of part of the land.

## RISKS

The creation of road will allow for future widening of Burchell Lane, Mirboo North. Without widening the road, Council cannot make it a compliant standard width and this may affect the increasing urban density within Mirboo North.

Council can choose not to subdivide 3 Brennan Street and retain the small strip of land but it would be a nuisance area to maintain and mow in the future.

## 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 this matter.

## CONFIDENTIAL ATTACHMENTS

The consideration of confidential information in a closed session of Council is in accordance with s.66(2)(a) and s.66(5)(a) and (b) of the *Local Government Act 2020*.

**Confidential Attachment [11.2.1] – Valuation – Part of 3 Brennan Street, Mirboo North** – is designated confidential information pursuant to the *Local Government Act 2020*, s.3(1)(c) - land use planning information, being information that if prematurely released is likely to encourage speculation in land values.

The grounds for designation have been made as the information, if prematurely released, may impact Council's financial position.

## REFERENCE DOCUMENTS

### **Council's Good Governance Framework**

Pillar 3. Decision Making

### **Council Policy / Strategy / Plans**

Community Engagement for Property Proposals Policy (CE84)

Community Engagement Policy (C06)

### **Legislative Provisions**

Local Government Act 2020

Subdivision Act 1988

#### **4. NOTICES OF MOTION AND/OR RESCISSION**

Nil

#### **5. COUNCILLOR REPORTS**

##### **5.1. REQUESTS FOR LEAVE OF ABSENCE**

##### **5.2. COUNCILLOR UPDATES**

## 6. URGENT OR OTHER BUSINESS

There are two basic parts to this section of the Agenda:

### 1. Urgent Business

Normally no motion should be debated by Councillors unless the matter is already included as an item on the Agenda. However, in some circumstances it is possible to raise urgent motions.

Council's Governance Rules 2020 (clause 22 - Urgent Business) adopted on 19 October 2022, allows for where a situation has not been provided for under the Governance Rules, the Council may determine the matter by resolution.

Established practice has provided for urgent motions to be raised at Council provided the matter cannot be dealt with at the next Council Meeting or by Officers under delegation.

It is necessary for the Councillor wishing to raise a matter of urgent business to raise a motion similar to the following:

'That consideration of (the issue) be dealt with as a matter of urgent business and Councillor....be allowed a 'short period' to indicate the reason(s) why the matter should be considered as a matter of urgent business.' If the Chairperson accepts the motion as meeting the urgent business criteria, normal meeting procedures in Council's Governance Rules 2020 (clause 22) will apply.

If the motion to accept the item as a matter of urgent business is passed by Council, the motion relating to the specific issue can then be put and debated in the normal way.

### 2. Other Business

This provides an opportunity for Councillors to raise items of general interest to the Council and the community. It may relate to an up and coming event or the outcomes of a recent meeting with a Minister etc.

## 7. PUBLIC QUESTIONS

### 7.1. PETITIONS AND JOINT LETTERS

Petitions and Joint Letters are written requests that have been signed by a number of community members. According to the *Governance Rules (C82)*, *clause 57*, members of the community may submit a valid petition or joint letter to a Councillor or to Council addressed to the Chief Executive Officer.

At the Meeting a petition or joint letter is presented, Council will consider a motion to receive it, the matter itself will not be considered unless determined as urgent business.

The Councillor presenting the petition or joint letter is responsible for ensuring that they are familiar with the contents and purpose of the petition or joint letter and that it does not contain language disrespectful to Council.

The requirements of the lead petitioner are detailed in the *Governance Rules (C82)*, *clause 57*.

Source: [Governance Rules \(C82\)](#) – adopted 19 October 2022.



## 7.2. ANSWERS TO PREVIOUS QUESTIONS ON NOTICE

Answers to previous questions taken on notice at a former Council Meeting, are included in the Minutes of this Meeting.

Background material submitted with a question will not be recorded in the Council Meeting Minutes.

A submitter will receive a letter outlining the response to a question after the Minutes have been produced.

Source: [Governance Rules \(C82\)](#) – adopted 19 October 2022.

**Questions received from Mr John McCombe at the 19 April 2023 Council Meeting were taken on notice. Responses to questions are provided in this Agenda.**

### **Question 1**

**Is there any sensible reason why council should not release a staff 'tree' to inform the public about staff numbers in particular areas of the administration?**

### **Response**

Staff numbers are publicly available annually in Council's Annual Report and Budget documents. Currently each Annual Report from 2006/07 and Council's Budget documents from 2003/04 are available on Council's website.

### **Question 2**

**Its accepted Council is a corporate entity, so why are there ELT staff with the seemingly inappropriate title 'Director', who are answerable to the CEO?**

### **Response**

Pursuant to section 44 (1) of the *Local Government Act 2020* (Act), Council must appoint a natural person to be its Chief Executive Officer (CEO) in accordance with its Chief Executive Officer Employment and Remuneration Policy under section 45. The Act is clear on the roles and responsibilities of the Chief Executive Officer. Section 46(3) of the Act states the responsibility of the CEO includes establishing and maintaining an organisational structure for the Council and being responsible for all staffing matters, including appointing directing, managing and dismissing members of Council staff. The Act is silent on the titles of the positions the Chief Executive Officer sets within the organisation.

### **Question 3**

**Is a staff member designated as a 'Director' entitled to additional remuneration because of the title?**

**Response**

All Council officers are appointed to a position with the remuneration commensurate to the role and benchmarked across the sector. These positions ensure Council has the ability to provide the many services available across the municipality.

### 7.3. SUBMITTED PUBLIC QUESTIONS

All community member questions for Council Meetings are to be written and submitted to the Governance Team by 9.00am on the Monday morning preceding the Council Meeting to allow time for a response to be prepared, where possible, for the Council Meeting. All reasonable attempts will be made to answer pre-submitted questions at the Meeting. When further time is required to prepare an answer, questions may be taken on notice and responses will be provided at the next Council Meeting.

On the day of the Meeting, questions on the prescribed form must be received prior to the commencement of the Council Meeting by 2.00pm and placed in the receptacle at the Governance Officers table. These questions will be taken on notice, included in the Minutes and responses provided at the next Council Meeting.

Public Question Time in Council Meetings is to be used for matters that are relevant to the business or functions of Council and are clear and legible. Questions may not be allowed where the question(s) is deemed to be:

- Related to a matter beyond or outside the powers of Council;
- Trivial or frivolous;
- Defamatory, indecent, abusive or objectionable;
- Derogatory or designed to embarrass a Councillor, a member of Council staff or a member of the community;
- Related to subject matter previously received and responded to;
- Related to a matter already considered and resolved upon by Council;
- Breach Council's confidentiality obligations; and/or
- Illegible, vague or not make sense.

A person may submit a maximum of three (3) questions for any one Council Meeting, this includes a combined total of three (3) questions for related parties or groups. The total word count of all questions submitted is to be 100 words or fewer.

Background material submitted with a question will not be read out or recorded in the Council Meeting Minutes.

The CEO retains the discretion, in consultation with the Mayor, to not refer questions to Council meetings if there is a more effective or appropriate way to respond to the matters raised. Answers to questions from a member of the community who is present in the gallery will be read out at the Council Meeting by the CEO or Mayor.

Source: [Governance Rules \(C82\)](#) – adopted 19 October 2022.

## 8. CLOSED SESSION

The *Local Government Act 2020* (the Act), section 66 provides that if a council or delegated committee determines that a meeting is to be closed to the public to consider confidential information, the Council or delegated committee must record in the minutes of the meeting that are available for public inspection –

- a) the ground or grounds for determining to close the meeting to the public by reference to the grounds specified in the definition of ***confidential information*** in section 3(1); and
- b) an explanation of why the specified ground or grounds applied.

The Act defines ***confidential information*** in s.3(1)(a)-(l), and includes information that may prejudice or impact; commercial negotiations, the security of Council, land use planning, law enforcement, legal privilege, personal information, private commercial information, confidential meeting information, internal arbitration, Councillor conduct panel information and information specified under s.77 of the previous *Local Government Act 1989*.

Once confidential information has been considered and decided in a closed session of a Council Meeting, a further resolution to resume open Council is required.

### RECOMMENDATION

That Council pursuant to section 66(5)(a) and (b) of the *Local Government Act 2020* close the Council Meeting to the public to consider the following confidential information:

1. Per s.3(1)(g) Agenda items 10.1 – Award Contract CON/356 - Venus Bay Tourism Precinct - Jupiter Boulevard and Centre Road, designated as private commercial information,
  - a. being information provided by a business, commercial or financial undertaking that –
    - i. Relates to trade secrets; or
    - ii. If released, would unreasonably expose the business, commercial or financial undertaking to disadvantage; and
  - b. The grounds for designation have been made as the information is deemed commercial-in-confidence to protect the privacy of the contractors tender information submitted for consideration.

- 2. Per s.3(1)(f) Agenda item 10.2 – 2022/23 Community Grants - Round 2, designated as personal information,**
  - a. being information which if released would result in the unreasonable disclosure of information about any person or their personal affairs; and**
  - b. The grounds for designation have been made to protect the privacy of an individual's personal information.**

## **9. MEETING CLOSED**

### **NEXT MEETING**

The next Council Meeting open to the public will be held on Wednesday, 28 June 2023 commencing at 2pm in the Council Chambers, Leongatha.