

SOUTH GIPPSLAND SHIRE COUNCIL

# Council Meeting Minutes

15 May 2024

**Council Meeting No.494  
Council Chambers, Leongatha  
Commenced at 2:00 pm**



*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.

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

Access to the live stream is available on Council's website – [Link](#).

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

**PRESENT**

COUNCILLORS:	Councillor Clare Williams, Mayor Councillor Nathan Hersey, Deputy Mayor Councillor Michael Felton Councillor Mohya Davies Councillor Scott Rae Councillor Jenni Keerie Councillor John Schelling Councillor Adrian Darakai
NOT PRESENT:	Councillor Sarah Gilligan Councillor Michael Felton
OFFICERS:	Kerry Ellis, Chief Executive Officer Tony Peterson, Director Sustainable Infrastructure Allison Jones, Director Performance and Innovation Renae Littlejohn, Director Future Communities Rhys Matulis, Coordinator Governance Natasha Berry, Corporate and Council Business Officer

## SOUTH GIPPSLAND SHIRE COUNCIL

Council Meeting No.494 Wednesday 15 May 2024  
Council Chambers, Leongatha, commenced at 2:00pm

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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 Sarah Gilligan, Councillor Michael Felton**

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

##### **RECOMMENDATION**

**That the Minutes of the South Gippsland Shire Council Meeting No.493, held on Wednesday 17 April 2024 in the Council Chambers, Leongatha be confirmed.**

##### **RESOLUTION**

**MOVED:** Councillor Davies

**SECONDED:** Councillor Hersey

**That the Minutes of the South Gippsland Shire Council Meeting No.493, held on Wednesday 17 April 2024 in the Council Chambers, Leongatha be confirmed.**

**CARRIED UNANIMOUSLY**

## 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 Nathan Hersey has declared a conflict of interest in Agenda Item 3.3 Planning Scheme Amendments DEVPLN/2022/2 - 99 Bena Road Korumburra – Residential Subdivision Development Plan as he owns land adjacent to site which may suffer traffic impacts.**



## 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.

**Ms Renae Littlejohn, Director Future Communities has declared a direct material interest in Agenda Item 3.1 Nyora Supermarket VCAT Appeal as she owns property adjacent to the subject site.**

## 2. OBJECTIVE - LEADING WITH INTEGRITY

### 2.1. Q3 ORGANISATIONAL & FINANCIAL PERFORMANCE REPORT & CAPITAL WORKS UPDATE

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 to seek Council consideration of the Organisational Performance Report for the time period of 1 July 2023 to 31 March 2024 (**Attachment [2.1.1]**) which includes the financial and organisational performance against the Adopted Budget and highlights progress of the 2023/24 Annual Initiatives for the 2022-2026 Council Plan (Council Plan).

#### RECOMMENDATION

**That Council:**

- 1. Receives and notes the Organisational Performance Report for the period July 2023 to March 2024 (Attachment [2.1.1]);**
- 2. Approves the changes to the Full Year Approved Forecast;**
- 3. Endorses the capital forecast changes to enable delivery of the committed capital works program; and**
- 4. Communicates the Organisational Performance Report (Attachment [2.1.1]) to the Audit and Risk Committee.**

**RESOLUTION**

**MOVED:** Councillor Keerie

**SECONDED:** Councillor Davies

**That Council:**

- 1. Receives and notes the Organisational Performance Report for the period July 2023 to March 2024 (Attachment [2.1.1]);**
- 2. Approves the changes to the Full Year Approved Forecast;**
- 3. Endorses the capital forecast changes to enable delivery of the committed capital works program; and**
- 4. Communicates the Organisational Performance Report (Attachment [2.1.1]) to the Audit and Risk Committee.**

**CARRIED UNANIMOUSLY**

[Link to next Agenda Item.](#)

## **REPORT**

The role of Council is to provide leadership for the good governance of the Shire. This is achieved, in part, by establishing strategic directions articulated in a four-year Council Plan and supported by an adopted Budget that contains the first (annual) financial year and subsequent three financial years. These requirements are legislated under s.90 and 94 of the *Local Government Act 2020* (the Act).

Council endorsed the 2023/24 Annual Initiatives (Annual Initiatives) as part of the 2022-2026 Council Plan at the 28 June 2023 Council Meeting. The Council Plan outlines the strategic objectives, priorities, major initiatives and measure of success indicators for the next four years.

### **2023/24 Annual Initiatives**

Council adopted 34 annual initiatives for 2023/24, Council is currently on track to achieve a 100% competition rate (increase from 97%). A breakdown of the annual initiatives by status is below:

- 5 – Target Achieved (increase of 3)
- 29 – On Track (decrease of 2)

#### Target Achieved

Quarter 3 for 2023/24 has been positive with an increase in initiatives with Target Achieved, these are:

- Continue the annual contribution (second year of three-year commitment) to Event Gippsland's event acquisition fund to support, attract and deliver events to South Gippsland.
- Commence the development of a Strategic Plan for Coal Creek Community Park and Museum.
- Complete the review of the General Local Law 2014 and develop the General Local Law 2024.
- Council meets its legislative requirements for financial performance reporting via the 2022/23 Annual Report process and unqualified VAGO Audit.
- Develop and adopt Council's 2023/24 Advocacy Priority Projects.

#### Capital Works

Capital expenditure to 31 March of \$19.4 million is 17 per cent behind the forecasted amount of \$23.3 million. This can be attributed to various factors including adverse weather conditions affecting the Road rehabilitation program, heritage permit processes impacting the Korumburra Rail Precinct

redevelopment project, as well as a delayed commencement of the Korumburra Streetscape project.

### Notable Budget Adjustments

The following are some of the more significant budget adjustments to the 2023/24 capital works program cost centres.

#### **Property - Buildings - \$380K Favourable**

\$380K - Community Hub - Korumburra	Savings identified.
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#### **Infrastructure - Waste - \$48K Favourable**

\$48K - Mirboo North Transfer Station Retaining Wall Upgrade	Savings identified.
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#### **Infrastructure – Other Infrastructure - \$1.15M Favourable**

\$1.15M - Korumburra Commercial Streetscape	The Korumburra Streetscape works have recently commenced in Commercial Street, following a delay whilst coordinating with South Gippsland Water renewal works. As a result, it is proposed to carry-forward a further \$1.15M of expenditure and loan draw-downs until 2024/25.
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The budget adjustments outlined in this report will align more closely with the Capital Works Program to be delivered in 2023/24. If the budget is not adjusted during the financial year, this may impact the ability to deliver projects and/or adversely affect end of year reporting.

### **Quarter 3 Financial Review**

In principle after conducting a significant mid-year review of budgets, the Q3 review is not as substantial due to the earlier adjustments. However, some changes were identified, resulting in an increase in operating surplus by \$0.1 million, according to the Income Statement.

The Management Accounting cash result, which removes non-cash items and includes cash items that are excluded, is adjusted favourably by \$0.5 million due to the \$0.1M operating savings and \$0.4M capital savings identified during budget discussions resulting in a positive impact on the cash result for the current financial year.

### **CONSULTATION / COMMUNITY ENGAGEMENT**

The Organisational Performance Report will be communicated to Council's Audit and Risk Committee.

### **RESOURCES / FINANCIAL VIABILITY**

The 2023/24 Annual Initiatives are funded through the 2023/24 Annual Budget.

## **RISKS**

The Organisational Performance Reports ensure 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. SGSC Organisational Performance Report - July to March 2024 [2.1.1 - 30 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 (Planning and Reporting) Regulations 2020

## 2.2. DOCUMENTS SEALED, CONTRACTS VARIED, AWARDED OR EXTENDED BY CEO - 13 MARCH 2024 TO 12 APRIL 2024

Directorate:	Performance and Innovation
Department:	Financial Strategy

### 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 March 2024 to 12 April 2024. 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.**

### RESOLUTION

**MOVED:** Councillor Schelling

**SECONDED:** Councillor Davies

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

**CARRIED UNANIMOUSLY**

[Link to next Agenda Item.](#)

## 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 2024 to 12 April 2024.

1. South Gippsland Shire Council's *General Local Law 2024*. Seal applied 3 April 2024.

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 2024 to 12 April 2024.

1. Section 173 Agreement between South Gippsland Shire Council and the owners of 44 Brownes Road, Kongwak and 1278 Korumburra-Wonthaggi Road, Kongwak for a two lot subdivision and boundary realignment. Seal applied 26 March 2024.
  2. Section 173 Agreement between South Gippsland Shire Council and the owner of 8A Louise Simon Court, Leongatha for a two lot subdivision. Seal applied 26 March 2024.
  3. Section 173 Agreement between South Gippsland Shire Council and the owners of 70 Dollar Road, Dumbalk and 162 Dollar Road, Dumbalk for the construction of a cattle underpass between the two properties. Seal applied 27 March 2024.
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**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 2024 to 12 April 2024.
    - a. Nil
  2. Contracts awarded after a public tender process within the CEO's delegation between 13 March 2024 to 12 April 2024.
    - a. CON/397 for the Shingler Street Leongatha Road Rehabilitation awarded to Hugh Patrick Pty Ltd, trading as BJs Earthmoving Pty Ltd, signed by the CEO 21 March 2024.
  3. Contract variations approved by the CEO between 13 March 2024 to 12 April 2024.
    - a. CON/369 for the Construction of Cell 5 (Stage 1) at Koonwarra Landfill was awarded to Goldsmith Civil and Environmental Pty Ltd on 20 September 2023. Variations which exceed the contingency allowance are recommended to allow for additional excavations, testing, designs and constructions at the site. A Contract Variation of \$512,728.77 (excluding GST) was approved by CEO after consultation with the Mayor on 15 March 2024.
    - b. CON/372 for the Provision of Environmental Auditing, GITA and Third Party CQA Services to Cell 5 Koonwarra Landfill (Stage 1) was awarded to Bajwa EnviroConsult Pty Ltd on 1 September 2023. Variations which exceed the contingency allowance are recommended to allow for site assessments, testing and supervision. A Contract Variation of \$106,867.00 (excluding GST) was approved by CEO after consultation with the Mayor on 18 March 2024.
    - c. CON/349 for the Korumburra Football Netball Club Changerooms was awarded to Beachley Constructions Pty Ltd July 2023. Variations which exceed the contingency allowance are recommended to allow for upgrades to existing services and design amendments. A contract Variation of \$295,964.00 (excluding GST) was approved by CEO after consultation with the Mayor on 9 April 2024.
  4. Contract extensions approved by the CEO 13 March 2024 to 12 April 2024.
-

- a. CON/380 for the Provision of Bituminous Surfacing and Associated Services was awarded to Primal Surfacing Pty Ltd. The Contract was for an initial one-year term with a provision for a further one-year extension upon mutual agreement. An extension of one-year has been approved, signed by the CEO 10 April 2024.

## **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

## 2.3. SUMMARY OF STRATEGIC BRIEFINGS - 13 MARCH TO 12 APRIL 2024

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 2024.

### RECOMMENDATION

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

### RESOLUTION

**MOVED:** Councillor Keerie

**SECONDED:** Councillor Davies

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

### CARRIED UNANIMOUSLY

[Link to next Agenda Item.](#)

## REPORT

Meeting Title	Details
<b>Wednesday 13 March 2024</b>	
<b>Council Meeting Agenda Topic Discussion – 20 March 2024</b>	<p><b>Councillors Attending:</b> Mohya Davies, Scott Rae, Clare Williams, John Schelling, Adrian Darakai, Sarah Gilligan, Nathan Hersey and Jenni Keerie.</p> <p><b>Conflict of Interest:</b> Ms Kerryn Ellis, Chief Executive Officer has declared a material conflict of interest in Confidential Agenda Items 12.1. CEO Employment &amp; Remuneration Committee - February 2024 and 12.2 CEO Contract of Employment as the matters relate to her employment and remuneration in her current role as Chief Executive Officer. Ms Ellis left the meeting at 9:59am, when the matter was discussed and returned at 10:01am.</p>
<b>Organisational Performance Report</b>	<p><b>Councillors Attending:</b> Mohya Davies, Scott Rae, Clare Williams, John Schelling, Adrian Darakai, Sarah Gilligan, Nathan Hersey and Jenni Keerie.</p> <p><b>Conflict of Interest:</b> Nil disclosed.</p>
<b>Municipal Association of Victoria</b>	<p><b>Councillors Attending:</b> Mohya Davies, Scott Rae, Clare Williams, John Schelling, Adrian Darakai, Sarah Gilligan, Nathan Hersey and Jenni Keerie.</p> <p><b>Conflict of Interest:</b> Nil disclosed.</p>
<b>Council Plan and Budget Briefing</b>	<p><b>Councillors Attending:</b> Mohya Davies, Scott Rae, Clare Williams, John Schelling, Adrian Darakai, Sarah Gilligan, Nathan Hersey, Michael Felton and Jenni Keerie.</p> <p><b>Conflict of Interest:</b> Nil disclosed.</p>
<b>Wednesday 20 March 2024</b>	
<b>Council Meeting Agenda Topic Discussion – 20 March 2024</b>	<p><b>Councillors Attending:</b> Mohya Davies, Scott Rae, Clare Williams, John Schelling, Sarah Gilligan, Nathan Hersey and Jenni Keerie.</p> <p><b>Conflict of Interest:</b></p>

Meeting Title	Details
	<p>Ms Kerryn Ellis, Chief Executive Officer has declared a material conflict of interest in Confidential Agenda Items 12.1. CEO Employment &amp; Remuneration Committee - February 2024 and 12.2 CEO Contract of Employment as the matters relate to her employment and remuneration in her current role as Chief Executive Officer. The CEO was an apology on this meeting day.</p>
<p><b>Impact of Bushfire on Regional Growth Findings</b></p>	<p><b>Councillors Attending:</b> Mohya Davies, Scott Rae, Clare Williams, John Schelling, Sarah Gilligan, Nathan Hersey and Jenni Keerie.</p> <p><b>Conflict of Interest:</b> Nil disclosed.</p>
<p><b>Myli Library</b></p>	<p><b>Councillors Attending:</b> Mohya Davies, Scott Rae, Clare Williams, John Schelling, Adrian Darakai, Sarah Gilligan, Nathan Hersey and Jenni Keerie.</p> <p><b>Conflict of Interest:</b> Nil disclosed.</p>
<p><b>Council Plan and Budget Briefing</b></p>	<p><b>Councillors Attending:</b> Mohya Davies, Scott Rae, Clare Williams, John Schelling, Adrian Darakai, Sarah Gilligan, Nathan Hersey, Michael Felton and Jenni Keerie.</p> <p><b>Conflict of Interest:</b> Councillor Nathan Hersey left the briefing at 12:57pm returned at 12:58pm as he has a conflict of interest in matter discussed in respect of the Korumburra Agricultural and Pastoral Society as he is a member on the Executive.</p>
<p><b>Wednesday 27 March 2024</b></p>	
<p><b>Landcare South Gippsland</b></p>	<p><b>Councillors Attending:</b> Scott Rae, Clare Williams, John Schelling, Adrian Darakai, Nathan Hersey and Jenni Keerie.</p> <p><b>Conflict of Interest:</b> Nil disclosed.</p>
<p><b>Community Presentations – Radical Soil Care</b></p>	<p><b>Councillors Attending:</b> Scott Rae, Clare Williams, John Schelling, Adrian Darakai, Nathan Hersey and Jenni Keerie.</p> <p><b>Conflict of Interest:</b> Nil disclosed.</p>
<p><b>Community Presentations – Fish</b></p>	<p><b>Councillors Attending:</b></p>

<b>Meeting Title</b>	<b>Details</b>
<b>Creek Football Netball Club</b>	Scott Rae, Clare Williams, John Schelling, Adrian Darakai, Nathan Hersey and Jenni Keerie. <b>Conflict of Interest:</b> Nil disclosed.
<b>Wednesday 3 April 2024</b>	
<b>Councillor Policies</b>	<b>Councillors Attending:</b> Scott Rae, Clare Williams, John Schelling, Adrian Darakai, Nathan Hersey, Michael Felton and Jenni Keerie. <b>Conflict of Interest:</b> Nil disclosed.
<b>Renewable Energy Impact and Readiness Study</b>	<b>Councillors Attending:</b> Scott Rae, Clare Williams, John Schelling, Adrian Darakai, Nathan Hersey, Michael Felton and Jenni Keerie. <b>Conflict of Interest:</b> Nil disclosed.
<b>Planning Briefing</b>	<b>Councillors Attending:</b> Scott Rae, Clare Williams, John Schelling, Nathan Hersey, Michael Felton and Jenni Keerie. <b>Conflict of Interest:</b> Councillor Nathan Hersey left the briefing with a Conflict of Interest in the Bena Road Item at 11:15am and returned at 11:20 am.
<b>Fish Creek Streetscape Design</b>	<b>Councillors Attending:</b> Scott Rae, Clare Williams, John Schelling, Adrian Darakai, Nathan Hersey and Jenni Keerie. <b>Conflict of Interest:</b> Nil disclosed.
<b>Wednesday 10 April 2024</b>	
<b>Agenda Topic Discussion – 17 April 2024</b>	<b>Councillors Attending:</b> Mohya Davies, Scott Rae, Clare Williams, John Schelling, Nathan Hersey, Michael Felton and Jenni Keerie. <b>Conflict of Interest:</b> Nil disclosed.
<b>Industrial Land Supply Strategy</b>	<b>Councillors Attending:</b> Mohya Davies, Scott Rae, Clare Williams, John Schelling, Nathan Hersey, Michael Felton and Jenni Keerie. <b>Conflict of Interest:</b> Councillor Clare Williams has a declared material conflict of interest in respect of one parcel of land

Meeting Title	Details
	discussed in briefing on <i>Industrial Land Supply Strategy</i> Cr Williams left the meeting at 11:00am, when the matter was discussed and returned at 11:04am.
<b>Ripple Landing Drainage Investigations</b>	<b>Councillors Attending:</b> Mohya Davies, Scott Rae, Clare Williams, John Schelling, Nathan Hersey, Michael Felton and Jenni Keerie. <b>Conflict of Interest:</b> Nil disclosed.

**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 Act 2020

## 2.4. S6 INSTRUMENT OF DELEGATION - MEMBERS OF STAFF

Directorate:	Performance and Innovation
Department:	Governance

### Council Plan

*Objective - Leading with Integrity*

*Ensuring that the authorising environment for Council staff to undertake their duties is up to date and that no Council staff undertake duties that they are not authorised to perform is in keeping with Leading with Integrity.*

### EXECUTIVE SUMMARY

The purpose of this report is to recommend that Council adopts an updated Instrument of Delegation (**Attachment [2.4.1]**) to replace s148B with s149B Power to apply to the Tribunal for a declaration. This amendment is due to s148B being a typographical error, as informed by Lawyers at Maddocks. The provision is delegated to relevant staff in the Planning and Building Services.

### RECOMMENDATION

**That Council resolves that, in the exercise of the powers conferred by s.11(1) of the *Local Government Act 2020* and the other legislation referred to in the attached Instrument of Delegation (Instrument of Delegation) Council to Members of Staff (Attachment [2.4.1]):**

- 1. There be delegated to the members of Council staff holding, acting in or performing the duties of the officers or positions referred to in (Attachment [2.4.1]) the powers, duties and functions set out in that instrument, subject to the conditions and limitations specified in that Instrument of Delegation;**
- 2. The Instrument of Delegation Attachment [2.4.1] to staff comes into force immediately that the common seal of Council is affixed to the Instrument of Delegation;**
- 3. On the coming into force of the Instrument of Delegation (Attachment [2.4.1]): all previous delegations from Council to members of Council staff (other than the Instrument of Delegation to the Chief Executive Officer) are revoked; and**
- 4. The duties and functions set out in the Instrument of Delegation Attachment [2.4.1]: must be performed, and the powers set out in the**



**Instrument of Delegation must be executed, in accordance with any guidelines or policies that Council may adopt.**

**RESOLUTION**

**MOVED:** Councillor Keerie

**SECONDED:** Councillor Davies

**That Council resolves that, in the exercise of the powers conferred by s.11(1) of the *Local Government Act 2020* and the other legislation referred to in the attached Instrument of Delegation (Instrument of Delegation) Council to Members of Staff (Attachment [2.4.1]):**

- 1. There be delegated to the members of Council staff holding, acting in or performing the duties of the officers or positions referred to in (Attachment [2.4.1]) the powers, duties and functions set out in that instrument, subject to the conditions and limitations specified in that Instrument of Delegation;**
- 2. The Instrument of Delegation Attachment [2.4.1] to staff comes into force immediately that the common seal of Council is affixed to the Instrument of Delegation;**
- 3. On the coming into force of the Instrument of Delegation (Attachment [5.4.1]): all previous delegations from Council to members of Council staff (other than the Instrument of Delegation to the Chief Executive Officer) are revoked; and**
- 4. The duties and functions set out in the Instrument of Delegation Attachment [2.4.1]: must be performed, and the powers set out in the Instrument of Delegation must be executed, in accordance with any guidelines or policies that Council may adopt.**

**CARRIED UNANIMOUSLY**

[Link to next Agenda Item.](#)

## **REPORT**

The allocation of delegations to the Chief Executive Officer or other employees contributes to the effective functioning of Council. It is important to update delegations to reflect changes in personnel / legislation and improvements recommended by legal advisors to ensure decisions made are valid. The current version of the Instrument of Delegation has been in place since 18 October 2023.

The updated Instrument of Delegation (**Attachment [2.4.1]**) has been edited to replace s148B with s149B Power to apply to the Tribunal for a declaration. This amendment is due to s148B being a typographical error, as informed by Lawyers at Maddocks. The provision is delegated to relevant staff in the Planning and Building Services.

## **CONSULTATION / COMMUNITY ENGAGEMENT**

Nil

## **RESOURCES / FINANCIAL VIABILITY**

Nil

## **RISKS**

Failure to update an Instrument of Delegation could result in the decisions of delegated Officers being declared invalid or unenforceable.

## **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. S6 Instrument of Delegation - Members of Staff [2.4.1 - 139 pages]

## **REFERENCE DOCUMENTS**

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

Pillar 4. Structure, Systems & Policies

### **Legislative Provisions**

*Local Government Act 2020*

**Ms Renae Littlejohn, Director Future Communities left the Council Meeting at 2:13pm with a declared direct material interest in Agenda Item 3.1 Nyora Supermarket VCAT Appeal as she owns property adjacent to the subject site.**

### 3. OBJECTIVE - SUSTAINABLE GROWTH

3.1. NYORA SUPERMARKET VCAT APPEAL	
Directorate:	Future Communities
Department:	Planning and Building Services

#### **Council Plan**

*Objective - Sustainable Growth*

*A new commercial facility within an appropriately zoned area will support the continued growth and diversification of Nyora, providing the community with access to goods and services, local employment opportunities, and supporting the local economy.*

#### **EXECUTIVE SUMMARY**

The purpose of this report is provide an update on the recent Application for Review to Victorian Civil and Administrative Tribunal against conditions included in Planning Permit 2020/438 and to obtain consent from Council to provide Officers with the appropriate delegation to negotiate an acceptable outcome at the upcoming Victorian Civil and Administrative Tribunal Hearing.

Planning Permit Application 2020/438 29-32 Davis Street Nyora - Develop land with a supermarket and six associated shops, was considered during the Council meeting on 13 December 2023, resulting in the issuance of a Notice of Decision to Grant a Planning Permit on 18 December 2023. Subsequently, on 15 January 2024, following the stipulated notice period for objectors to lodge an appeal, the planning permit was officially issued.

Following these proceedings, the property owners, represented by their appointed consultant, have lodged an Application for Review with the Victorian Civil and Administrative Tribunal (VCAT). This appeal aims to challenge several conditions of the permit. The appellants seek amendments to certain conditions and the removal of others.

The appeal has been placed on the Major Cases list, with a Compulsory Conference scheduled for 29 May 2024, and a formal hearing set for 24-25 July 2024, spanning two days.

This report seeks support from Council to allow Officers the appropriate delegation to negotiate an outcome at the upcoming VCAT Hearing.

### **RECOMMENDATION**

**That Council authorises Officers to negotiate outcomes at the upcoming Victorian Civil and Administrative Tribunal (VCAT) Hearing and consents to conditions being amended or deleted where Council Officers consider it appropriate and generally in accordance with Table 1 contained within this report.**

### **RESOLUTION**

**MOVED:** Councillor Keerie

**SECONDED:** Councillor Schelling

**That Council authorises Officers to negotiate outcomes at the upcoming Victorian Civil and Administrative Tribunal (VCAT) Hearing and consents to conditions being amended or deleted where Council Officers consider it appropriate and generally in accordance with Table 1 contained within this report.**

**CARRIED UNANIMOUSLY**

[Link to next Agenda Item.](#)

## REPORT

Council officers have conducted a comprehensive review of the conditions under dispute and have concluded that certain conditions may be suitably amended or removed. However, there are conditions which council officers deem essential for inclusion in the permit, and these will be advocated for during the VCAT proceedings. **Table 1** below contains a list of the contested conditions along with an evaluation of their suitability for amendment or deletion:

**Table 1: Contested Conditions and Recommended Council Position**

CONDITION CONTESTED	APPELLANT REQUEST	COUNCIL OFFICER RECOMMENDATION
<b>Condition 1</b> <b>(f) A revised supermarket 'entrance' from Davis Street that incorporates an articulated and more visually prominent design outcome.</b>	Vary: The planning outcome that is sought by this condition is unclear and uncertain.	Support amendment subject to proposed wording.
<b>(i) The internal layout of the medical centre illustrated with a notation stating the medical centre will have a maximum of three (3) practitioners at any one time.</b>	Delete: The requirement to show the internal layout of the medical centre is not necessary. See also review of Condition No. 11 below.	Don't support deletion. Alternative wording could be supported.
<b>(j) Suitable line-marking with 'no parking' adjoining the curved landscape beds which have been designed to facilitate the 19-metre service vehicle swept paths.</b>	Vary: Whilst the intention of this condition would appear to be clear, its drafting could be expressed in another way and be better refined.	Support amendment subject to proposed wording.
<b>(k) Details and location of any Electric Vehicle Charging Stations.</b>	Delete: No Electric Charging Stations are proposed.	Support amendment to the condition rather than deletion.
<b>(o) The building signs clearly dimensioned including area, materials and nominated as being non-illuminated.</b>	Delete: No signage is proposed as part of the permit that has been granted.	Don't support deletion. Alternative wording could be supported.

<p>(r) <b>The provision of a suitable screen provided along the southern side of the loading bay area to the extent possible whilst maintaining suitable swept paths for a 19-metre service vehicle.</b></p>	<p>Vary: The word <i>minimum</i> is sought to be inserted before the word <i>extent</i>.</p>	<p>Support amendment subject to suitable wording.</p>
<p>(s) <b>Any proposed outdoor seating and furniture clearly identified on the plans.</b></p>	<p>Delete: No outdoor seating and furniture is proposed.</p>	<p>Support deletion.</p>
<p>(t) <b>A lighting plan showing how the car park and public entrances will be lit during hours of operation, and after hours lighting of the car park being reduced to avoid unreasonable amenity impacts on adjoining uses (but maintained to an adequate level to maintain surveillance and increase safety). The plan must include details of all external lighting, including sensor lighting as addressed in Condition 8 of this Permit.</b></p>	<p>Vary: As drafted, the preparation and approval of a Lighting Plan (as drafted) could be in the form of a separate condition rather than be listed as a Condition 1 amended plans condition.</p>	<p>Support conversion to a separate condition.</p>
<p>(u) <b>Extent of excavation and any retaining walls clearly illustrated.</b></p>	<p>Delete: No excavation or retaining walls are required. Alternatively, this requirement could be included within Condition No. 13.3 – Engineering Plans.</p>	<p>Support deletion subject to inclusion on in the engineering condition.</p>
<p>(w) <b>Details of any screening required to prevent overlooking from the first floor of the proposed development;</b></p>	<p>Vary: The requirement and details for screening at the first-floor level of the proposed building is unclear.</p>	<p>Support amendment subject to suitable wording.</p>
<p>(x) <b>The construction of a footpath, kerb/channel along the development's abuttal with Davis Street, along with the associated widening of Davis Street with a bituminous seal and a suitable pavement in accordance with engineering plans approved by</b></p>	<p>Delete: This condition appears to replicate the requirement of Condition No. 1 (a) and the conditions sought to be imposed by the</p>	<p>Do not support deletion. Support variation subject to intent of the condition being retained.</p>

<b>Council and Department of Planning and Transport.</b>	Department of Transport and Planning;	
<b>(y) The construction of a footpath from the north-east corner of the site along the west side of Davis Street, extending to the existing footpath and pedestrian crossing at the intersection of Davis Street and Mitchell Street / Grundy Avenue.</b>	Delete: This condition to be unfair and unreasonable.	<b>Do not support deletion.</b>
<b>(z) Any land forming widening of the laneway to be transferred to Council as "Road".</b>	Vary/Delete: The drafting of this condition is unclear and uncertain. Please refer to Condition No. 15.	<b>Do not support deletion. Support variation subject to intent of the condition being retained.</b>
<b>(aa) Revised southern and western elevations with improved façade treatments which create an improved visual appearance to the satisfaction of Council.</b>	Vary: The planning and design outcome(s) sought by this condition are vague and uncertain.	<b>Support amendment subject to proposed wording.</b>
<b>(bb) The provision of suitable pedestrian access doors to the northern façade of the proposed north facing shops.</b>	Vary: The planning outcome(s) sought by this condition are not clear and certain.	<b>Support amendment subject to proposed wording.</b>
<b>(cc) The offset of any veranda posts shown to be in accordance with Council's Footpath Trading Code, and any outdoor furniture being in accordance with Council's Permanent Outdoor Furniture Style Guide.</b>	Vary: The practical implications sought by this condition are unclear having regard to the documents that have been cited.	<b>Support amendment subject to proposed wording and intent of condition being retained.</b>
<b>(dd) Sustainability and energy efficiency practices and initiatives being implemented.</b>	Delete: As drafted, this is not an amended plans condition.	<b>Support deletion subject to no initiatives being proposed.</b>
<b>(ff) The provision of a separate roof plan, with any roof top plant and equipment clearly illustrated and suitably screened.</b>	Delete: This condition is replicated in Condition No. 1 (v).	<b>Do not support deletion. Suggest deletion of Condition 1 v) and incorporate those requirements into this condition.</b>

<p><b>(gg) A detailed landscape plan, including a planting schedule of all proposed trees, shrubs and ground covers.</b></p>	<p>Vary/Delete: As drafted, the preparation and approval of a Landscape Plan (as sought) could be in the form of a separate new condition rather than being listed as a Condition 1 amended plans condition.</p>	<p><b>Do not support deletion. Support inclusion as a separate condition subject to additional wording.</b></p>
<p><b>(hh) The following notation included on the plans:</b></p> <p><b>i. Prior to commencement of any works on the subject site, Crown Allotments 25 &amp; 26 Section 6 Township of Nyora Parish of Lang Lang East are to be consolidated into one parcel of land.</b></p>	<p>Conditions i-v inclusive should operate as separate conditions on the permit rather than being notations on the plans. The requirement to consolidate the two (2) land parcels will be achieved by Condition No. 7;</p>	<p><b>Don't Support deletion.</b></p>
<p><b>ii. Prior to occupation and operation of the supermarket / shops, the section of footpath required to be constructed adjoining the unnamed laneway is to be vested to Council at no cost to Council.</b></p>	<p>This requirement is already covered by Condition No. 1 (z);</p>	<p><b>Don't Support deletion.</b></p>
<p><b>iii. Prior to occupation and operation of the supermarket / shops, Davis Street immediately adjoining the subject site is to be upgraded to the satisfaction of Council and Department of Planning and Transport with a suitable footpath, kerb / channel / nature strip and bitumen to connect to the existing bitumen along the site frontage.</b></p>	<p>The scope and extent of this condition is uncertain and unclear. See Condition 1 (x) above;</p>	<p><b>Don't Support deletion.</b></p>



<p><b>iv. Prior to occupation and operation of the supermarket / shops, the unmade laneway immediately adjoining the northern boundary of the site is to be constructed to the satisfaction of Council in accordance with engineering plans approved by Council.</b></p>	<p>This condition replicates the outcome sought by Condition No. 1 (z);</p>	<p><b>Don't Support deletion.</b></p>
<p><b>v. If required as part of the approved engineering plans for the proposed access arrangements from Davis Street, the applicant must at no cost to Council or adjoining property owner to the south of the subject site, construct a new crossover and footpath immediately adjoining the south-east corner of the subject site.</b></p>	<p>The obligations of this condition could be imposed as a separate permit condition.</p>	<p><b>Don't Support deletion.</b></p>

<p><b>Condition No. 5</b>  <b>Prior to the commencement of works, the owner must enter into an agreement with the responsible authority under section 173 of the Planning and Environment Act 1987. The section 173 agreement must provide for the following:</b></p> <p><b>a) A cash contribution toward the future upgrade (to a two-way carriageway) of the unnamed laneway between the western boundary of the subject site and Hanley Street.</b></p> <p><b>The agreement must be registered on the title to the land under section 181 of the Act. The owner must pay the responsible authority's costs of the preparation, negotiation, review, execution and registration of the section 173 agreement required by this condition before the agreement is registered at the Land Titles Office.</b></p>	<p>Delete: This condition is vague, uncertain and unreasonable in terms of the owner making an unquantified cash contribution to Council for the upgrade of the unnamed laneway where the owner is required to vest land in the Council and fully construct the unnamed laneway in accordance with the conditions of the permit.</p>	<p><b>Don't support deletion. Support amendment to ensure upgrade of the laneway is suitably funded.</b></p>
<p><b>Condition No. 6</b>  <b>Once the development has started it must be continued and completed in a timely manner to the satisfaction of the Responsible Authority.</b></p>	<p><i>Delete: The expiry conditions operate to control the commencement and completion of the development.</i></p>	<p><b>Don't Support deletion.</b></p>

<p><b>Condition No. 11</b> No more than (3) medical practitioners may operate from the subject site at any one time.</p>	<p><b>Vary:</b> The words <i>....unless with the written permission of the Responsible Authority</i> are sought to be added to the condition to provide administrative flexibility through a secondary consent process.</p>	<p><b>Don't Support variation.</b></p>
<p><b>Condition No. 13.1</b> Prior to the approval of the engineering plans, the applicant shall submit for approval by the Responsible Authority, a revised Traffic Layout Plan (TLP) for the approved development detailing, both during and post construction:</p> <ul style="list-style-type: none"> <li>a. Turning movements for a minimum 19-metre semi-trailer to be able to enter the development from Davis Street and exit the development in a forward direction via the unnamed laneway situated to the north of the proposed development, and existing the site via Davis Street.</li> <li>b. The internal and external turning movements for all other expected vehicles, entering and exiting in a forward direction.</li> <li>c. All required line-marking (both internal and external to the development). Upon approval of the TLP, these plans will be endorsed as part of this permit.</li> </ul>	<p><b>Vary:</b> The drafting of this condition should cross reference and be consistent with the Parking and Traffic Management Plan (PTMP) required by Condition No. 3.</p>	<p><b>Support amendment subject to proposed wording and intent of condition being retained.</b></p>

<p><b>Condition No. 13.2 (b)</b> Prior to the approval of the engineering plans, the applicant shall submit for approval by the responsible Authority, a detailed Storm Water Management Plan (SWMP) for the approved development, detailing in concept how, both during and post construction:</p> <p>b. Any polluted runoff from the site will be treated and directed to an approved sewer connection to ensure no impact on Council’s drainage system;</p>	<p>Delete/Vary: The requirement to discharge stormwater into a reticulated sewerage system is not in accordance with best practice stormwater design pursuant to Clause 53.18 of the scheme. It is unknown if the relevant Water Authority would provide its permission to enable such a discharge into its reticulated sewer system</p>	<p>Support deletion.</p>
<p><b>Condition No. 13.4</b> Prior to the use commencing, or the issue of any Occupancy Permits, all civil engineering and stormwater drainage works as shown on the approved engineering plans must be constructed to the satisfaction of the Responsible Authority.</p>	<p>Vary: Remove reference to the words Occupancy Permits.</p>	<p>Support amendment.</p>
<p>Department of Transport &amp; Planning</p> <p><b>Condition No. 24.1</b> The Davis Street shoulder, adjacent to the site must be widened and sealed to the satisfaction of the Head Transport for Victoria prior to the use of the development.</p> <p><b>Condition No. 24.2</b> The shoulder must be designed to include kerb and channel to the satisfaction of the Head Transport for Victoria.</p>	<p>Vary: The scope and extent of these conditions are unclear and uncertain.</p>	<p>Support amendment subject to Consent from DTP and agreement on proposed wording.</p>

Ongoing discussions with the applicant for review are underway to explore potential common ground regarding the wording of proposed amendments to contested conditions. This dialogue is integral to the VCAT application process.

The main issue at hand is that Officers lack the delegation to negotiate outcomes at the upcoming VCAT Hearing, as the decision was made directly by Council. This report serves to apprise Councillors of the conditions currently under review and seeks authorisation to empower Officers to negotiate outcomes at upcoming VCAT Hearing.

Additionally, it has been acknowledged that this procedural limitation could potentially impede future Council decisions subject to Appeal. Therefore, Officers are actively exploring avenues to ensure that for forthcoming Council Reports for Planning Application Decisions, scope is provided to grant Officers the necessary delegation, thereby facilitating a timely and efficient appeal process.

### **CONSULTATION / COMMUNITY ENGAGEMENT**

All objectors to the original application are required to be served a copy of the Application for Review by the appellant. This has been conducted in line with the service requirements directed by VCAT. All objectors are able to provide a 'Statement of Grounds' in response to conditions being contested directly to the Tribunal who will consider these as part of forming a position on the conditions.

### **RESOURCES / FINANCIAL VIABILITY**

Given the Application for review is in relation to conditions being contested, there is a cost to council to attend VCAT hearings and it is important to limit these costs to matters of disagreement wherever possible. Council officers consider that there are opportunities for resolution of a number of conditions being contested as detailed in the **Table 1** to this report.

### **RISKS**

Should Council fail to grant consent to Council's Officers to negotiate amendments or deletion of conditions whether it is considered reasonable and appropriate, there is a risk that the Victorian Civil and Administrative Tribunal will amend or delete conditions in favour of the appellant. Further, as part of the Compulsory Conference process, Council officers are required to attend with a level of delegation that can sign consent orders so that matters can be suitably settled.

### **STAFF DISCLOSURE**

Ms Renae Littlejohn, Director Future Communities has declared a direct material interest in item Planning Application 2020/438 29-32 Davis Street Nyora - Develop land with a supermarket and six associated shops VCAT Appeal, as she owns property adjacent to the subject site.

### **ATTACHMENTS**

Nil

### **REFERENCE DOCUMENTS**

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

Pillar 1. Direction & Leadership

Pillar 3. Decision Making

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**Council Policy / Strategy / Plans**

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

South Gippsland's Planning Scheme

**Legislative Provisions**

Planning and Environment (Planning Schemes) Act 1996

Planning and Environment Act 1987

**Renae Littlejohn returned to the Council Meeting at 2:16pm.**

### 3.2. IMPACT OF BUSHFIRE ON REGIONAL GROWTH (FOSTER & MIRBOO NORTH)

Directorate:	Future Communities
Department:	Planning and Building Services

#### Council Plan

*Objective - Sustainable Growth*

*This report relates to the Council Plan by considering bushfire risk in the sustainable growth for Foster and Mirboo North as well as more generally throughout the municipality.*

#### EXECUTIVE SUMMARY

The purpose of this report is to consider adoption of the bushfire assessment work that has been undertaken for Foster and Mirboo North. This work is intended to inform planning decisions and provide a key input into the preparation of revised structure plans for both towns.

#### RECOMMENDATION

**That Council adopts the Foster and Mirboo North Bushfire Assessment Summaries (Attachment [3.2.1]) and Planning Recommendations, which also include proposed bushfire policy for all of the municipality (Attachment [3.2.2]).**

#### RESOLUTION

**MOVED:** Councillor Davies

**SECONDED:** Councillor Keerie

**That Council adopts the Foster and Mirboo North Bushfire Assessment Summaries (Attachment [3.2.1]) and Planning Recommendations, which also include proposed bushfire policy for all of the municipality (Attachment [3.2.2]).**

#### CARRIED

**Councillor Clare Williams called for a Division.**

**FOR:** Councillors Keerie, Davies, Hersey and Williams.

**AGAINST:** Councillors Schelling, Rae and Darakai.

#### CARRIED

[Link to next Agenda Item.](#)

## **REPORT**

### **Background**

The planning system prioritises the protection of human life over all other policy considerations (Clause 71.02-3 of Victoria Planning Provisions). The “Impact of Bushfire on Regional Growth” project for Foster and Mirboo North was funded by the Victorian Planning Authority (VPA) as part of their Streamlining for Growth program (2019/2020). The Gippsland Regional Growth Plan (2014) identifies four centres where growth in South Gippsland should be focused. Two of these centres, Mirboo North and Foster, are subject to urban fire risk considerations. The bushfire work was commissioned in order to underpin revised structure plans for both towns, providing a bushfire risk assessment and planning recommendations.

Council adopted the Mirboo North Structure Plan Refresh in 2017 which sought to revise the town’s Framework Plan for growth in the planning scheme. Updating the Framework Plan was not possible because of significant changes to the planning system in relation to bushfire.

Amendment VC140 (gazetted 12 December 2017) made changes to State bushfire policy in response to the 2009 Victorian Bushfires Royal Commission, introducing additional bushfire requirements at Clause 13.02-1S. Of particular interest, the Clause specifies the following:

*Not approving any strategic planning document, local planning policy, or planning scheme amendment that will result in the introduction or intensification of development in an area that has, or will on completion have, more than a BAL-12.5 rating under AS 3959-2009.*

The Foster Structure Plan is currently being updated. This bushfire work is critical for reviewing the town’s Framework Plan which guides urban growth.

### **Project Purpose**

The purpose of the project was to prepare bushfire reports with land use and development recommendations that ensures the Mirboo North Structure Plan Refresh and Foster Structure Plan, and the planning scheme amendments for their implementation, properly assess bushfire risk, and include appropriate bushfire protection measures. This involves responding to State policy for bushfire at Clause 13.02-1S.

### **Summary of Findings**

The bushfire assessments for Foster found that it has a moderate bushfire risk and is appropriate for moderate growth. Mirboo North, by contrast, was found to have a high bushfire risk and only appropriate for limited growth. It concluded



that both town framework plans need to be revised and additional planning controls applied to better address bushfire risk.

Of particular concern, is that it raised the question of how much further development (population, property and risk) should be directed to Mirboo North given the bushfire risk. This must be considered in the context that settlements, like Mirboo North, generally provide people with greater protection from bushfire than locations outside settlements.

The proposed changes to the Framework Plans to address bushfire concerns are minimal and contemplate some additional growth to the south-east of Mirboo North, and directing urban growth to the south as well as retaining a portion to the west of the settlement. In Foster, the low density and rural living expansion areas are proposed for removal or replacement with urban growth areas.

### **Implementation**

The findings of the reports are intended for use in the updating of Foster and Mirboo North's Framework Plans in the South Gippsland Planning Scheme. The assessment also recommends:

- Applying additional restrictions to the northern part of Mirboo North (Type B area) to provide more robust building construction;
- Applying additional restrictions to Foster's highest risk urban area (Type D area) to restrict subdivision; and
- Removing Bushfire Management Overlay schedules in most areas as they are outdated (reflecting low threat vegetation rather than forest vegetation present in the area).

Other measures to consider in the area to address bushfire risk are:

- Restricting further subdivision in higher bushfire risk Rural Living Zone and Low Density Residential Zone areas to restrict additional population;

Requiring Development Plans before subdivision for key development sites at the edge of settlements and in areas adjacent to hazards, to ensure bushfire protection measures are provided to improve the town's bushfire resilience using the Development Plan Overlay;

- Applying the Restructure Overlay and associated controls to three properties in Mirboo North's highest risk area to encourage consolidation and discourage additional dwellings/accommodation; and
- Rezoning one Rural Living Zone area in Foster to Farming Zone that is also subject to other environmental constraints (flooding).

The reports also propose general bushfire policy that is relevant to all areas of South Gippsland Shire, not just Foster and Mirboo.

### **CONSULTATION / COMMUNITY ENGAGEMENT**

Consultation with the Country Fire Authority (CFA) was an important input into this work, as required in Clause 13.02 of the Planning Scheme. Consultation with relevant internal departments (biodiversity and emergency management) was also undertaken.

The implementation of this work as part of revising the Mirboo North and Foster Structure Plans and their implementation via planning scheme amendments will involve community engagement in the future. This engagement will occur via a range of processes including formal exhibition of any proposed changes to existing planning scheme provisions. Following normal process, landowners affected by proposed changes will be advised of the amendment, and can make submissions to Council. Any issues raised in submissions which cannot be resolved must be referred to an independent planning panel for review before a final decision is made by Council and the Minister for Planning to approve new bushfire controls.

### **RESOURCES / FINANCIAL VIABILITY**

Using the best available bushfire information in planning and decision-making will assist in mitigating resource and financial implications from bushfires into the future.

### **RISKS**

Bushfire is a significant risk for the settlements of Foster and Mirboo North. Strategic planning for these towns can mitigate the potential risk to the existing and future population and property from loss and damage as well as the associated burden this presents to Council in future work including emergency relief.

### **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. Foster Bushfire Report - Risk Assessment Summary & Planning Recommendations [3.2.1 - 23 pages]
2. Mirboo North Bushfire Report - Risk Assessment Summary & Planning Recommendations [3.2.2 - 35 pages]

## REFERENCE DOCUMENTS

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

Pillar 1. Direction & Leadership

Pillar 3. Decision Making

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

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

South Gippsland's Planning Scheme

### **Legislative Provisions**

Planning and Environment (Planning Schemes) Act 1996

Planning and Environment Act 1987

**Councillor Nathan Hersey left the Council Meeting at 2:28pm with a declared conflict of interest in Agenda Item 3.3 Planning Scheme Amendments DEVPLN/2022/2 - 99 Bena Road Korumburra – Residential Subdivision Development Plan as he owns land adjacent to site which may suffer traffic impacts.**

### **3.3. PLANNING SCHEME AMENDMENTS DEVPLN/2022/2 - 99 BENA ROAD KORUMBURRA – RESIDENTIAL SUBDIVISION DEVELOPMENT PLAN**

Directorate:	Future Communities
Department:	Planning and Building Services

#### **Council Plan**

*Objective - Sustainable Growth*

*A Development Plan for the subject site must be assessed against the South Gippsland Planning Scheme, with particular reference to the Development Plan Overlay – Schedule 6, to ensure the application is consistent with those requirements.*

#### **EXECUTIVE SUMMARY**

An application for a Development Plan expected to accommodate 170 residential lots and 1.5ha of residential aged care in eight stages at 99 Bena Road, Korumburra has been presented to Council seeking approval. The proposal does not meet the South Gippsland Planning Scheme’s requirements. It is recommended that the Development Plan not be approved. It has been subject to an application at Victorian Civil and Administrative Tribunal (VCAT) and generated interest from the community as well as referral authorities.

#### **RECOMMENDATION**

**That Council:**

- 1. Refuse application DEVPLN/2022/2 for a Development Plan at 99 Bena Road, Korumburra because it does not comply with the South Gippsland Planning Scheme and Council’s requirements.**
- 2. Grant Council Officers delegation to consent to an alternative Development Plan, either through a further application or future Victorian Civil and Administrative Tribunal (VCAT) Application for Review, if the following matters are appropriately addressed to Officer’s satisfaction:**
  - Stormwater Management.**
  - Bushfire Risk and Management.**

- **Topographical considerations.**
- **Updates to the Development Plan including information, dimensions and notations.**
- **Traffic, access and connectivity to the broader area.**
- **Off-site development infrastructure.**
- **Biodiversity.**

## **RESOLUTION**

**MOVED:** Councillor Keerie

**SECONDED:** Councillor Davies

**That Council:**

- 1. Refuse application DEVPLN/2022/2 for a Development Plan at 99 Bena Road, Korumburra because it does not comply with the South Gippsland Planning Scheme and Council's requirements.**
- 2. Grant Council Officers delegation to consent to an alternative Development Plan, either through a further application or future Victorian Civil and Administrative Tribunal (VCAT) Application for Review, if the following matters are appropriately addressed to Officer's satisfaction:**
  - **Stormwater Management.**
  - **Bushfire Risk and Management.**
  - **Topographical considerations.**
  - **Updates to the Development Plan including information, dimensions and notations.**
  - **Traffic, access and connectivity to the broader area.**
  - **Off-site development infrastructure.**
  - **Biodiversity.**

**CARRIED UNANIMOUSLY**

## REPORT

### Proposal

The application is for a Development Plan expected to yield 170 residential lots and 1.5ha area of residential aged care in eight stages at 99 Bena Road, Korumburra (refer to **Attachment [3.3.2]**). The land is currently used for grazing (zoned General Residential Zone 1) and is located at the western edge of the town on the southern side of Bena Road, opposite Mountain Ash Drive.

An approved Development Plan is required at this site prior to any subdivision taking place. The subdivision layout that is provided in the application is indicative, and future subdivision applications for the site must be generally in accordance with the Development Plan (refer to 'Concept Plan').

### Context

The land at 99 Bena Road, Korumburra is an important land parcel in the context of Korumburra's western growth front. Korumburra is the second largest town in the municipality and is identified as the second most important location for housing growth in the municipality. The town's western growth front is the location with most potential for population growth, and, as such, is strategically important for the region. This parcel of land is one of the most substantial parcels for development, and approving a Development Plan at this location will have implications for the whole DPO6 corridor extending to Jumbunna Road.

State policy aims to encourage an overall residential density of 15 dwellings per net developable hectare. Even with a lower development rate as suggested in the proposed subdivision layout for this application (approximately 10 dwellings per net developable hectare), the DPO6 area south of Bena Road could be expected to yield approximately 400 dwellings which could accommodate an additional 1,000 people<sup>1</sup>. This could be expected to increase Korumburra's population by up to 25%<sup>2</sup>.

### Application History

The original Development Plan application was received in June 2022. The application did not respond to the requirements of the Development Plan

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<sup>1</sup> Based on assumption that average household size would be the same as for 99 Bena Road Korumburra's Statistical Area Level 1 (SA1) (#20503108904) in for Census 2021. A lower development rate is considered appropriate given the steep topography across the site and number of landowners at the southern section of the DPO6 area. Note that this does not include the existing Botanic Development in DPO6 north of Bena Road (approximately 90 dwellings) or the adjoining growth area where the DPO7 applies south of Jumbunna Road (approximately 20ha) which could accommodate additional population.

<sup>2</sup> Based on Korumburra's existing population defined by 2021 Census figure for Urban Centres and Localities (UCL215045).

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Overlay Schedule 6 affecting the land and did not respond to concerns raised by council officers in pre-application advice provided. In June 2023, the applicant applied to the Victorian and Civil Administrative Tribunal (VCAT) to review the application. In February 2024, VCAT directed that Council decide on the application at its ordinary Council meeting in May 2024. This report provides a recommendation on the latest version of the application, which was received by Council on 5 April 2024 (refer to **Attachments [3.3.1 to 3.3.11]**).

### **Planning Controls**

The land is currently zoned General Residential ([GRZ](#)) and the [Development Plan Overlay](#) – Schedule 6 ([DPO6](#)) applies. The land is also within a designated Bushfire Prone Area.

The proposal triggers the need for a Development Plan in response to Clause 43.04-2 of the South Gippsland Planning Scheme. The DPO specifies that a permit may not be granted to use or subdivide land until a Development Plan has been prepared to the satisfaction of the Responsible Authority.

### **Site History**

The land was rezoned to GRZ and the DPO6 applied to the land as part of [Amendment C66 to the South Gippsland Planning Scheme](#) on 5 December 2013. This involved a public consultation and independent planning panel process. More information about this process is set out in:

- The [Panel report](#) which made recommendations regarding Amendment C52 (as well as Amendments C66, C70 and C71) released on 8 November 2012; and
- The [Ordinary Council Meeting minutes for 23 October 2013](#) which resolved to adopt Amendment C66 and submit it to the Minister for approval.

### **Overview of Issues**

A number of issues were raised in Council's further information letters dated 25 September 2023 (in response to original application) and 8 March 2024 (in response to the February 2024 revised application). While Council has sought to work with the applicant to address these issues, a number of key issues remain outstanding. Some of these are reflected and underpinned by referral authorities and community concerns. In assessing the latest application against the South Gippsland Planning Scheme, it is considered that the application should be refused due to the extent and importance of the outstanding issues.

An overview of the key issues under the following headings is provided below:

- Development Plan area;
- Stormwater and drainage;

- Earthworks;
- Open space;
- Traffic;
- On-site and off-site infrastructure;
- Biodiversity and vegetation;
- Bushfire risk;
- Soil contamination;
- Superlot access; and
- Plan details

### ***Development Plan Area***

The DPO6 specifies that a Development Plan, if not provided for the full DPO6 area, *'must represent a logical land development unit bounded by roads, natural features or the boundaries of the DPO map area'*. Strategic justification must be provided for the Development Plan's boundaries. The proposal provides no justification other than specifying that the Development Plan applies to the extent of the landowner's property. While it is not considered that this requirement is met, it is recognised that the property is one of the largest parcels in the DPO6 area which almost extends to a drainage line (natural feature) and that the applicant has provided a concept for the full DPO6 extent (though without any underpinning technical work).

Whilst it would be ideal that this Development Plan incorporated all the remaining land within DPO6 from Bena Road down to Jumbunna Road, if the remaining issues identified below were addressed, the Development Plan could reasonably be approved for this single parcel of land.

### ***Stormwater & Drainage***

The proposed stormwater management plan / report (refer to **Attachment [3.3.6]**) does not appear to be practical. Drainage is a fundamental element of subdivision design which cannot be set aside to a later stage (i.e. subdivision permit). This is particularly important given the site's complexity, and the need for adequate space to capture and treat stormwater.

The proposal fails to address how the stormwater from the north-west catchment can be appropriately treated, suggesting that it is diverted to the start of the south-west treatment train, being the sediment pond in the south-west corner of the property. This requires extremely deep pipes (minimum seven metres underground) which is not practical from a construction and long-term maintenance perspective, and remains questionable in terms of outright viability.



The proposed management for the south-west catchment itself is also a concern as portions of the catchment appear to be located below the inlet level for the sediment basin. Council officers and the West Gippsland Catchment Management Authority (CMA) share concerns in relation to how the proposed wetland will be implemented on such steep terrain, and would prefer a single wetland system to address stormwater in the southern catchment, including that generated by other (southern) land parcels outside of 99 Bena Road, but within the DPO6 (affects southern properties in DPO6 area).

Further, the report does not demonstrate how water quality outcomes can be achieved in the north-east catchment by the implementation of a gross pollutant trap alone. If the intent is to overtreat the remainder of the site catchment, it needs to be demonstrated and modelling results documented for review by Council's engineers.

### ***Earthworks***

99 Bena Road is affected by a significant proportion of land with very steep slopes (>20%) which poses a significant challenge to development. The proposal relies on significant changes to topography; specifically, a four-metre cut off the top of the hill in response to the area's steep topography.

While the proposal includes a Slope Stability Assessment (refer to **Attachment [3.3.9]**), this assessment does not respond to the DPO6 requirements. It is based on previous plans with a significantly different layout, that does not consider the large cut now proposed. The report's risk levels tend to align with the current conditions on-site rather than the proposed development. It is expected that the proposed development would significantly change the risk matrix, since stormwater will be concentrated rather than dispersed with most sites expected to have significant retaining walls and cut and fill. The report provides no detail as to whether building envelopes or other controls are likely to be needed at subdivision stage.

It is unclear whether the significant cut is feasible, with the broader area known to have a rocky soil composition and limited geo-technical investigations having been undertaken in the area where significant cut is proposed. The soil sampling taken at the top of the hill only gives an indication of conditions to 1.3 metres below ground whereas a cut of approximately 4 metres is proposed in this location. Accordingly, this has potential implications on the ability to provide for necessary infrastructure during construction, as well as having an impact on future maintenance of installed infrastructure.

### ***Traffic***

The Traffic Impact Assessment (refer to **Attachment [3.3.7]**) does not demonstrate how existing and future safety risks will be addressed. Instead, it is limited to recorded safety incidents. The report concluded that there are currently no serious safety concerns with the existing road network adjacent to

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the site based on casualty crash data. It also concluded that the proposal will provide a safe and connected walking and cycling network, without addressing existing safety issues.

The report does not appropriately consider providing safe connections through to the town centre via Bena/George/Radovick/Jumbunna Road intersection, especially for pedestrians and cyclists who suffer discontinuities in their networks under the current proposals. The intersection is currently poor, especially in terms of pedestrian and cycling outcomes. While the latest plans proposed some minor changes, these do not adequately address the intersection's issues. The intersection is expected to come under additional pressure from the extra traffic and should be addressed by some form of proposed developer contribution spending.

Council, the Department of Transport and Planning (DTP) and community members are aware that Whitelaw Road and its intersections with both Jumbunna Road and the South Gippsland Highway pose safety concerns that will rise given the increasing development in the DPO6 area. This has been raised with the applicant; however, these future safety risks have not been addressed in the report. This should consider future user requirements, management of additional movements with poor sight lines and high travel speeds meeting a gravel road in poor condition.

### ***Open Space***

Defining the open space areas is a key issue that needs to be addressed at the Development Plan stage. The application does not adequately consider the needs for open space and recreational facilities on the western side of Korumburra given the area's full development potential.

The proposed public open space at 99 Bena Road includes land within the 30-metre waterway buffer and affected by stormwater management assets which should both be designated for drainage purposes (that is, not creditable public open space). Council does not accept public open space that is needed for drainage purposes because it limits its land use and development potential. Ideally some open space would be provided, even undeveloped, at an earlier stage than stage five so that residents of the earlier stages have access to public open space.

When considered in context with the balance of the land affected by the DPO6, public open space would ideally be provided at the south-eastern corner of 99 Bena Road as suggested by Council, so that a larger open space can be developed across the property's boundary. If developed well with careful consideration for site levelling and drainage, this would provide the optimal public open space location to cater for the area's growth, with added flexibility for use and development of recreational facilities. West Gippsland CMA is willing to consider conceding the requirement to protect the eastern most

waterway if one larger wetland is proposed to cater for stormwater in this catchment area (refer to **Attachment [3.3.12]**). Alternatively, a cash contribution could be considered more appropriate for 99 Bena Road, with these funds being used to contribute to acquiring an area larger than 5% of the property to the south

### ***On-site & Off-site Infrastructure***

Costings for on-site and off-site infrastructure have not been provided. The proposal gives little indication of the development's impact off-site in relation to traffic and social infrastructure. This is expected to assess the suitability of the development's proposed staging, and to inform Council's use of the development contributions received as development occurs.

### ***Biodiversity & Vegetation***

The application does not explain how the proposal addresses biodiversity considerations including whether any vegetation will be retained on site. The Department of Energy, Environment and Climate Action (DEECA) and the community raised several concerns in relation to biodiversity to which the applicant has not responded (refer to **Attachment [3.3.12]** and **Confidential Attachment [11.1.1]**). It is expected that the existing ten trees on-site will be lost given their location in relation to the proposed layout including drainage infrastructure. Vegetation off-site, such as in the road reserve, is also likely to be affected.

### ***Bushfire Risk***

More detailed planning is needed to address bushfire risk, including siting and location of vulnerable uses (aged care) and adequate defendable space for end-state vegetation.

While a bushfire assessment (refer to **Attachment [3.3.3]**) was provided in the last set of application documents, it is not clear that it addresses all of the Country Fire Authority's (CFA) concerns and adequately responds to the Planning Scheme. The assessment largely excludes consideration of the superlot where the aged care is proposed. It suggests this area should be developed last, though it is identified as stage one.

The vegetation classifications do not appear to be accurate. For example, it is expected that the end-state of vegetation at the drainage reserve, as specified by West Gippsland CMA and expected by Council, will be Woodland or Forest rather than 'native grasses' as referred to in the Bushfire Assessment. This classification is expected to increase the amount of defendable space required, impacting the Development Plan layout. Ideally this would be dealt with at Development Plan stage to make clear the impact on the public open space, road reserve and private land's built form and land management.

**Soil Contamination**

The Preliminary Site Investigation (refer to **Attachment [3.3.10]**) recommended soil sampling to verify the soil condition at the site and screen for potential presence of contaminants of potential concerns in the soil. These results should ideally be provided at Development Plan stage to provide confidence that soil contamination has not occurred from the potential use and storage of chemicals on-site or downhill from the former railway corridor, though it is accepted that this element could also be addressed as part of a future planning application prior to any subdivision being approved

**Superlot Access**

Road access should be provided along the boundary or at the southern end of the proposed aged care to the rest of the development. This is expected for emergency access, and so that residents have access to the proposed public open space. It cannot be assumed that this land will be developed by Carinya lodge in the future with access provided at the southern end. This also futureproofs the plan in case the Development Plan is amended in the future to provide residential development at the superlot.

**Plan Details**

Further detail is needed on the Development Plan to appropriately respond to DPO6 requirements before it is approved. It should show staging (without detail of the proposed lot layout on the subdivision layout plan) and proposed infrastructure upgrades. It should also include notes such as 'ensure infrastructure (such as road widths and footpaths) is provided to Council's requirements' as well as provide more certainty to the private landowner adjoining the superlot to the east that no more than 26 dwellings are accommodated on-site, and that future built form provides a sensitive interface (e.g. fencing provided at developer cost, ResCode requirements applied to built form). The plan should also make clear that the remaining DPO6 land outside the logical land unit is subject to future Development Plan approval.

**CONSULTATION / COMMUNITY ENGAGEMENT**

Formal notification commenced in September 2023 via letters to affected landowners, signs on site, email updates to interested parties and a dedicated webpage. A community meeting was held on 8 April 2024. Letters were sent to landowners affected by the DPO, adjoining landowners and other landowners in the vicinity, particularly along Whitelaw and Bena Roads. Council's [webpage](#) was updated with details of the VCAT process (including VCAT orders), revised plans and community meeting information.

Formal notice was undertaken with referral authorities such as DTP, South Gippsland Water (SGW), West Gippsland CMA and the CFA.

Council also consulted with internal departments and external referral authorities prior to and following formal notification occurring. This included on-site meetings with DTP. Referral authorities that provided input included DTP, DEECA, Environmental Protection Authority (EPA), CFA, First Peoples – State Relations Group, SGW and West Gippsland CMA. Five submissions were received from referral authorities during the advertising period. A copy of these submissions and other correspondence from referral authorities is provided at **Attachment [3.3.12]**.

During the application's advertising, fifteen submissions were received from the community including residents and businesses and a petition with 42 names (24 separate addresses). Other submissions were provided in response to updated plans (refer to **Confidential Attachment [11.1.1]** for submissions) and concerns raised verbally during the community meeting. Key issues include:

- Lack of supporting stormwater and drainage information, especially given existing drainage issues in the area;
- Concern about traffic impacts, the traffic assessment, inadequate transport planning for the broader area and need for transport infrastructure upgrades to safely manage impacts particularly for cyclists, pedestrians including children going to school and buses, including:
  - Whitelaw Road,
  - Bena Road,
  - Jumbunna Road,
  - Bena Road/George Street/Jumbunna Road intersection;
  - Whitelaw Road/Jumbunna Road intersection;
- Poor response to site conditions (including response to steep slope and ensuring solar orientation of blocks, impact on neighbourhood character);
- Lack of information regarding superlot;
- Interface with adjoining land uses;
- Open space and provision of facilities (playgrounds, shelter, paths, seating, signage, vegetation etc.);
- Need for a broader plan;
- Response to bushfire risk;
- Lack of opportunity for community input and participation;
- Adequate water and sewerage facilities;
- Concern about small lot sizes;
- Loss of farmland; and

- Concerns about impact on local wildlife and noise and light pollution.

### **RESOURCES / FINANCIAL VIABILITY**

Refusal of this application is likely to result in the applicant taking Council's decision to VCAT for review which would impact Council's resources (officer time, potential need for representation and expert reports). If, however, Council approves this application, it is expected that it will have long-term financial implications by creating ongoing costs such as stormwater and drainage or open space issues.

### **RISKS**

Refusal of the application means that it is more likely to take longer before residential development can occur at the subject site, providing additional housing opportunities in the area. There is also a risk to Council's reputation that development in the area is difficult and costly to undertake. The proposed recommendation, however, considers that the risks associated with approving the proposal outweigh these considerations. Key risks are:

- Potential loss of life and property (traffic related), including impact on vulnerable people, through inadequate bushfire planning;
- Safety risks, particularly for pedestrians and cyclists, in areas with existing safety concerns (Whitelaw Road and Bena/ George Road intersection);
- Risk that proposed infrastructure (especially stormwater) and earthworks are not practical;
- Risk of unnecessary damage to biodiversity values;
- Ongoing costs maintaining proposed public land and infrastructure which could be better considered and consolidated;
- Unknown costs from potential issues with contamination and hitting rock (impacting future infrastructure provision).

### **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 DEVPLN/2022/2 Development Plan Report - 99 Bena Road (April 2024) [3.3.1 - 51 pages]
2. Appendices A- D Title, Site Photos, Plans & Cross Sections [3.3.2 - 18 pages]
3. Appendix E - Bushfire Risk Assessment [3.3.3 - 36 pages]

4. Appendix F - Giant Gippsland Earthworm (GGE) Assessment [3.3.4 - 35 pages]
5. Appendix G - Biodiversity Assessment [3.3.5 - 53 pages]
6. Appendix H - Stormwater Management Plan [3.3.6 - 66 pages]
7. Appendix I - Traffic Impact Assessment Report [3.3.7 - 74 pages]
8. Appendix K - Social Infrastructure [3.3.8 - 7 pages]
9. Appendix L - Slope Stability Assessment [3.3.9 - 47 pages]
10. Appendix M - Preliminary Site Investigation (Contamination) Report [3.3.10 - 97 pages]
11. Appendix N - Clause 56 Assessment [3.3.11 - 37 pages]
12. Referral Authority Responses - October 2023 & March 2024 [3.3.12 - 25 pages]

### **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 [11.1.1] – Objections received to date in response to advertised plans, February 2024 Plans & latest plans (2023 & 2024) – 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

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

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

South Gippsland's Planning Scheme

#### **Legislative Provisions**

Planning and Environment (Planning Schemes) Act 1996

Planning and Environment Act 1987

Subdivision Act 1988

**Councillor Nathan Hersey returned to the Council Meeting at 2:33pm.**

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

Nil

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

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

##### **RECOMMENDATION**

**That Councillor Sarah Gilligan be granted leave of Council for Council Meeting 15 May 2024.**

##### **RESOLUTION**

**MOVED:** Councillor Davies

**SECONDED:** Councillor Schelling

**That Councillor Sarah Gilligan be granted leave of Council for Council Meeting 15 May 2024.**

**CARRIED UNANIMOUSLY**

##### **RESOLUTION**

**MOVED:** Councillor Rae

**SECONDED:** Councillor Keerie

**That Councillor Nathan Hersey be granted leave of Council for Council Meeting 21 August 2024.**

**CARRIED UNANIMOUSLY**



## 5.2. COUNCILLOR UPDATES

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**Councillor John Schelling, addressed Council by reporting on attendance at or made comments on:**

- **Mirboo North Community Recovery Meeting.**
  - **Korumburra Coal Creek 50th Birthday Celebrations.**
  - **Opening of Leongatha Rail Trail Market, the market is now located at the Leongatha Railway Station.**
  - **Woorarra walk in bushland to view slender tree fern.**
  - **ANZAC events at Mirboo North, Leongatha and Mt Eccles.**
  - **Foster Arts Music & Drama Association (FAMDA) attendance at the performance of the 'Architect'.**
- 

**The Deputy Mayor, Councillor Nathan Hersey, addressed Council by reporting on attendance at or made comments on:**

- **ANZAC events at Korumburra and Loch.**
  - **Leongatha Depot Thank you breakfast for staff on their recovery efforts following the recent storm event (13 February) as they went above and beyond for the need of the community.**
- 

**Councillor Jenni Keerie, addressed Council by reporting on attendance at or made comments on:**

- **ANZAC events at Poowong, Korumburra and Loch.**
  - **Poowong 150 years celebration event.**
  - **Korumburra Fire Station 125 years celebration event.**
  - **Australian Local Government Women's Association (ALGWA) conference in Warragul.**
  - **Mirboo North Information session.**
  - **Friends of Korumburra Botanic Park, Landcare and South Gippsland's Shire Open Space Team are a great partnership and achieving great outcomes together for the community and the environment.**
- 

**Councillor Scott Rae, addressed Council by reporting on attendance at or made comments on attending:**

- **Volunteer Expo at Foster War Memorial Arts Centre this Saturday.**
-

**Councillor Mohya Davies, addressed Council by reporting on attendance at or made comments on:**

- ANZAC events at Toora, Welshpool and Foster.
- ALGWA conference in Warragul and congratulated Councillor Clare Williams on her appointment as Victorian President of this Association.
- Welshpool Playground development.
- MyLi (My Library) Board Meeting and expressed her appreciation of being a newly appointed Board member.
- FAMDA attendance at the performance of the 'Architect'.
- Prom Coast Centre for Children and her continued appointment as Chair for another 12months.
- Cr Davies Singing & Ukulele group will be performing at the Volunteer Expo at Foster War Memorial Arts Centre this Saturday.
- Fish Creek Tea Cosy Festival commences this weekend.

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**The Mayor, Councillor Clare Williams, addressed Council by reporting on attendance at or made comments on:**

- ANZAC day is a very emotional day and thanked the community groups for putting on events for the community.
- Korumburra Coal Creek 50th Birthday Celebrations.
- Opening of Leongatha Rail Trail Market and noted it is thriving in its new venue.
- Leongatha Citizenship Ceremony was a small event this time round.
- Mirboo North Meeting with Local Government Minister Melissa Horne and discussed the ongoing challenges in the storm recovery efforts.
- ALGWA conference in Warragul, 'Connecting, Thriving and Excelling in Local Government' with other women and helping each other to rise to do the best we can for our communities.
- Facebook Q&A Session for the Budget.
- Thanked members of the Community Infrastructure Advisory Committee (CIAC) for their advice and input over their term.
- Thank you breakfast at the Leongatha Depot for all staff on their recovery efforts following the recent storm event.
- Fish Creek Tea Cosy Festival commences this weekend for a week.
- Candle Light Vigil held at the front of the main building, which aimed to lift the veil on domestic violence in the local area, thank you to those who attended.

## 6. URGENT BUSINESS

This section of the Agenda is for urgent business items:

### 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.

**Nil**

## 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.

**Nil**

## 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.

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

**Nil**

### 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.

**Nil**

## 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.

**Nil**

## **9. MEETING CLOSED**

### **NEXT MEETING**

The next Council Meeting open to the public will be held on Wednesday, 26 June 2024 commencing at 2pm in the Council Chambers, Leongatha.

**The Council Meeting closed at 2.54pm.**

**Confirmed this 26<sup>th</sup> day of June 2024**

**Councillor Clare Williams, Mayor**