



South Gippsland
Shire Council

Come for the beauty, Stay for the lifestyle

COUNCIL MINUTES

**ORDINARY MEETING NO. 401
WEDNESDAY 27 APRIL 2016
COUNCIL CHAMBERS, LEONGATHA
COMMENCED AT 2PM**

PRESENT:

Mayor: Cr Robert Newton

Deputy Mayor: Cr Mohya Davies

Councillors: Nigel Hutchinson-Brooks, James Fawcett, Kieran Kennedy, Lorraine Brunt, Andrew McEwen and Don Hill.

APOLOGY: Councillor Jeanette Harding

OFFICERS:

Mr Tim Tamlin

Chief Executive Officer

Jan Martin

Director Community and Corporate Services

Bryan Sword

Director Development Services

Anthony Seabrook

Director Sustainability and Infrastructure Services

Natasha Berry

Corporate and Council Business Officer

Jodi Cumming

Corporate and Council Business Officer

Rick Rutjens

Coordinator Media & Communications

Paul Stampton

Manager Planning

MISSION

To effectively plan and provide for the social, built, economic and natural environments that ensure the future wellbeing of South Gippsland Communities.

SOUTH GIPPSLAND SHIRE COUNCIL

ORDINARY MEETING NO. 401
WEDNESDAY 27 APRIL 2016
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Tim Tamlin
Chief Executive Officer

SECTION A - PRELIMINARY MATTERS

A.1 WELCOME

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

A.2 OPENING PRAYER

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

Amen

A.3 ACKNOWLEDGEMENT OF TRADITIONAL CUSTODIANS

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

A.4 REQUESTS FOR LEAVE OF ABSENCE

Nil

A.5 APOLOGIES

Councillor Jeanette Harding

A.6 CONFIRMATION OF MINUTES

RECOMMENDATION

That the Minutes of the South Gippsland Shire Council Ordinary Meeting No. 400, held on 23 March 2016 in the Council Chambers, Leongatha be confirmed.

MOVED: Cr Hutchinson-Brooks

SECONDED: Cr Davies

**THAT THE MINUTES OF THE SOUTH GIPPSLAND SHIRE COUNCIL
ORDINARY MEETING NO. 400, HELD ON 23 MARCH 2016 IN THE COUNCIL
CHAMBERS, LEONGATHA BE CONFIRMED.**

CARRIED UNANIMOUSLY

A.7 DECLARATION OF CONFLICT OF INTEREST FOR COUNCILLORS

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

If a Councillor or staff member discloses any interest in an item discussed at any Council Meeting (whether they attend or not) they must:

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

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

Councillors should check the Minutes of the Council Meeting to ensure their disclosure is recorded accurately.

Councillors are not required to disclose conflict of interest in relation to matters only considered at Meetings they do not attend.

Detailed information is available in Conflict of Interest – A Guide for Councillors June 2011.

Nil

Type of Interest		Example of Circumstance
Direct Interest		Reasonably likely that your benefits, obligations, opportunities or circumstances will be directly altered. Reasonably likely to receive a direct benefit or loss measurable in money. Reasonably likely that your residential amenity will be directly affected.
Indirect Interest	Close Association	A member of your family has a direct interest or an indirect interest. A relative has a direct interest. A member of your household has a direct interest.
	Indirect financial Interest	Likely to receive a benefit or loss, measurable in money, resulting from a change to another person's interest. Holding shares in a company or body that has a direct interest (subject to threshold) When a person with a direct interest owes money to you.
	Conflict of Duty	Manager or member of the governing body of an organisation with a direct interest. Trustee for a person with a direct interest. Past dealings in relation to the matter as duty to another person or body.
	Applicable Gift	Gifts valued at \$500 in previous 5 years. Election donations valued at or above \$500 in previous 5 years. Gifts other than election campaign donations that were received more than 12 months before a person became a Councillor are exempt.
	Party to the Matter	Initiated or became party to civil proceedings in relation to the matter.

Privacy

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

Council undertakes audio recordings of Council Meetings as a contribution to good governance and accuracy of minutes. An audio recording of this meeting is being made for the purpose of verifying the accuracy of minutes of the meeting. In some circumstances the recording may be disclosed, such as where Council is compelled to do so by court order, warrant, and subpoena or by any other law such as the Freedom of Information Act 1982. It should be noted that other people present at the meeting may be recording the meeting and Council has limited power to regulate this. Council has developed a policy to regulate recordings, "Sound Recording of Council Meetings". A copy of this policy is located on Council's website www.southgippsland.vic.gov.au. Further information or a copy of the policy or can be obtained by contacting Council's Organisational Development Department (Governance).

A.8 DECLARATION OF CONFLICT OF INTEREST FOR STAFF

Sections 80B and 80C of the Local Government Act 1989 require members of Council staff who have delegated functions and /or provide advice to Council or a Special Committee to disclose conflicts of interest. If Council staff have written, provided information/advice or approved a Council Report and have a conflict of interest it is the responsibility of that staff member to disclose the interest. Guidance to identifying and disclosing a conflict of interest is contained in Department of Planning and Community Development in '*Conflict of Interest A Guide for Council staff*', October 2011.

Nil

A.9 PETITIONS

Petitions (and Joint letters) are written requests that have been signed by a number of community members. According to the Local Law No.3 2010 petitions may be presented to Council by a Councillor. A petition presented to the Council must lay on the table until the next Ordinary Meeting of the Council and no motion, other than to receive the petition, may be accepted by the Chair unless the Council agrees to deal with it earlier.

The lead petitioner or person organising the petition may in presenting the petition to a Councillor at the Council Meeting speak briefly to its contents. At the same meeting a Councillor would accept the petition and introduce it to Council for formal noting and actioning by Council.

The Councillor presenting the petition is responsible for ensuring that they are familiar with the contents and purpose of the petition and that it is not derogatory or defamatory.

Nil

A.10 COUNCILLOR REPORTS

Cr Fawcett addressed Council regarding his attendance at Leongatha ANZAC Parade on Monday 25 April 2016 and commented that Cr Hutchinson-Brooks gave a moving speech on the impact of Post-Traumatic Stress Disorder on men and women who have been to war. Cr Fawcett said it was positive thing that this disorder is now being recognised as well as the physical impacts of war.

Cr Kennedy addressed Council regarding his attendance at:

- **Tarwin Lower ANZAC parade and commented how the attending crowds are growing.**
- **Tour de Tarwin at Easter and commented how it has grown from a small group that 10 years ago raised approximately \$3,000, and this year raised \$120,000 for Emergency Services for Tarwin Lower and the surrounding Districts. Cr Kennedy commented that over 1,000 families participate in this wonderful annual event, which commences at the Venus Bay shops and concludes at the Memorial Hall in Tarwin Lower.**

Cr Kennedy advised that the Bald Hills Annual Community Grants have opened for the year and commented on the opportunity to access funds for the community in that region.

Cr Brunt addressed Council regarding attendance at:

- **Korumburra Bowls Presentation and informed that the Club is very grateful for the assistance from Council in gaining access to funding in order to install 'The best bowling green' from anywhere they have bowled. Cr Brunt commented that the Club members demonstrated such pride in their green, it is a Club that provides a social and community meeting place for all ages and abilities.**
 - **Loch Village, on a day where horse and carriages were trotting through the street, which was arranged with the local Harness Club. Cr Brunt commented that it was a great demonstration of the drive of a small town; energetic and innovative with much community involvement.**
 - **Poowong Family Fun Day and noted that Council supported this event through the Community Grants Program. Cr Brunt commented that it was a well-advertised and organised event with volunteers from Poowong Loch and Nyora joining together. As a result there were over 2,000 people in attendance from various places within and beyond the district.**
-

Cr Davies addressed Council on the range of community events conducted over Easter in South Gippsland which attracted hundreds of people to the area. Cr Davies congratulated the volunteers for helping to make these events happen.

Cr Davies addressed Council regarding attendance at:

- **Annual General Meetings (AGM) in Waratah Bay and Walkerville.**
- **Foster Probus and noted that in attendance with the CEO they presented on how Council operates.**
- **Café Series conducted in partnership with Victorian Local Government Association (VLGA) and Latrobe Women's Health which was a forum that encouraged women to run for Council. Cr Davies acknowledged that former Councillor Mimmie Jackson spoke at this event.**

Cr Davies commented that the opening of the Rail Trail was well covered in the Australian Rail Trails magazine, including a lovely photo of the Mayor and the acknowledgement in the magazine that the Great Southern Rail Trail is a wonderful trail.

Cr Davies addressed Council regarding attendance at:

- **'A Day of Inspiration' which was run by the Southern Women's Business Network. There were 115 people in attendance at the event which was a great opportunity for business and industry to network and she found it inspiring. There were inspirational speakers including Sadhana Smiles, 2013 Telstra Victorian Business Woman of the Year.**
- **Rural Councils Victoria meeting.**
- **Foster and Corner Inlet ANZAC day commemorations.**
- **Opening of ANZAC Art work at Latrobe Regional Library that used World War one stretches, the theme of the installation was 'Co-exist' and was produced in partnership with students from South Gippsland Secondary College, Foster.**
- **Stockyard Gallery Horse Art Project.**

Cr McEwen addressed Council regarding attendance at:

- **Meeniyen ANZAC commemorations.**
- **Southern Women's Business Network Seminar.**
- **Garlic Festival Meeniyen planning meeting for February 2017.**

- **Corner Inlet Social Justice group meeting.**
- **Gippsland Waste Resource Recovery meeting and noted that a draft Plan is expected to be released and distributed for public consultation.**
- **Book Launch at the Waratah Hills Winery, the book was about the impact of World War one on the lives of 100 people who came back from the War. Cr McEwen commented that the content was chilling in how it revealed the damaged lives of many; it demonstrated emphatically that war was not a good thing that it does a lot of damage.**

Cr McEwen commented that the quality accommodation being provided in the local area through AirBnB is attracting more visitors to the area.

Cr Hill addressed Council regarding a Newsletter that he circulated in the school break in his Ward about what he was doing to represent them. Cr Hill suggested that Council could consider a regular, cost effective Ward newsletter for each Ward in order to inform the community of what's going on.

Cr Hutchinson-Brooks addressed Council regarding his walk on the Rail Trail at Koonwarra and in particular the new 'missing link', he noted that there were about 80 people on the trail. Cr Hutchinson-Brooks commented that it will be even better when all the signage has been introduced.

Cr Hutchinson-Brooks also attended the Family Fun day at Poowong and commented that it was an outstanding event put together by the three communities.

Cr Newton addressed Council by reading out a letter from Mantle Mining, which was sent in response to a petition that was sent to them from Council on behalf of the community.

Cr Newton addressed Council regarding attendance at:

- **ANZAC commemorations and commended the staff on the beautiful preparation of the gardens and cenotaphs across the Shire.**

Cr Newton commented that the Rail Trail is attracting people to our local businesses.

Cr Newton addressed Council regarding attendance at:

- **Family Fun day at Poowong, and that the Lions Club were part of the event management and that it was a great event.**
 - **Book Launch, 'Far from Home' written by the Moon Brothers. Cr Newton commented that the book helps us understand the lives of those listed on the Korumburra cenotaph; the history of those from World War 1 and 2 who did not return.**
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SECTION B - NOTICES OF MOTION AND/OR RESCISSION

B.1 NOTICE OF MOTION NUMBER 691 - AN ALTERNATIVE APPROACH TO A \$32 MILLION MUNICIPAL OFFICE COMPLEX

PURPOSE

To request the Officers produce a report on the financial costs and options for alternative scenarios as outlined in this report for Council's consideration by 22 June 2016 Council Meeting.

Initial calculations using figures obtained from engineering team suggest a result under \$5 Million could be achieved thereby allowing \$27 Million to be returned to ratepayers along with a new library and refurbished offices being achieved.

By not building a \$32 Million municipal office complex, Council will be able to investigate a diversified model in coming years and/or reduce staff numbers in a future restructure.

The Chief Executive Officer in a public presentation during 2015 stated the need for the \$32 Million Municipal Office was no longer required.

MOTION

I, Councillor Don Hill, advise that I intend to submit the following motion to the Ordinary Council Meeting scheduled to be held on **27 April 2016**.

'That Council receive a report from officers at the 22 June 2016 Council Meeting exploring the following options:

1. Relocate the Leongatha Library to the Carino's building;
 - a. Move the Engineering Department to the Leongatha depot, investigate the type of building required at the depot to accommodate these staff members and the financial cost of new buildings and fitting out of existing buildings (Carino's and Leongatha Depot) as required. Using a model of 70% (or alternative figures) space required for staffing areas as per the model used in Cardinia Shire Council explore the space requirements in using the existing Smith Street, Leongatha site to house staff as well as additional rooms for community spaces; and
 - b. Cost out a refurbishment of the existing Smith Street, Leongatha site.
2. Relocate the Leongatha Library to Smith Street, Leongatha site:
 - a. Relocate displaced staff to Carino's building, relocate the Engineering Staff from Carino's to the Leongatha Depot.

- b. Investigate type of building required at the Leongatha Depot to accommodate these staff members and the financial cost of new buildings and fitting out of existing buildings (Carino's, Smith Street, Leongatha site and Leongatha depot) as required; and
- c. Using a model of 70% (or alternative figures) space required for staffing areas as per the model used in Cardinia Shire Council explore the space requirements to incorporate additional rooms for community spaces within the Smith Street, Leongatha site or Carino's.'

MOVED: Cr Hill

SECONDED: Cr McEwen

THAT COUNCIL RECEIVE A REPORT FROM OFFICERS AT THE 22 JUNE 2016 COUNCIL MEETING EXPLORING THE FOLLOWING OPTIONS:

- 1. RELOCATE THE LEONGATHA LIBRARY TO THE CARINO'S BUILDING;**
 - a. MOVE THE ENGINEERING DEPARTMENT TO THE LEONGATHA DEPOT, INVESTIGATE THE TYPE OF BUILDING REQUIRED AT THE DEPOT TO ACCOMMODATE THESE STAFF MEMBERS AND THE FINANCIAL COST OF NEW BUILDINGS AND FITTING OUT OF EXISTING BUILDINGS (CARINO'S AND LEONGATHA DEPOT) AS REQUIRED. USING A MODEL OF 70% (OR ALTERNATIVE FIGURES) SPACE REQUIRED FOR STAFFING AREAS AS PER THE MODEL USED IN CARDINIA SHIRE COUNCIL EXPLORE THE SPACE REQUIREMENTS IN USING THE EXISTING SMITH STREET, LEONGATHA SITE TO HOUSE STAFF AS WELL AS ADDITIONAL ROOMS FOR COMMUNITY SPACES; AND**
 - b. COST OUT A REFURBISHMENT OF THE EXISTING SMITH STREET, LEONGATHA SITE.**
- 2. RELOCATE THE LEONGATHA LIBRARY TO SMITH STREET, LEONGATHA SITE:**
 - a. RELOCATE DISPLACED STAFF TO CARINO'S BUILDING, RELOCATE THE ENGINEERING STAFF FROM CARINO'S TO THE LEONGATHA DEPOT.**
 - b. INVESTIGATE TYPE OF BUILDING REQUIRED AT THE LEONGATHA DEPOT TO ACCOMMODATE THESE STAFF MEMBERS AND THE FINANCIAL COST OF NEW BUILDINGS AND FITTING OUT OF EXISTING BUILDINGS (CARINO'S, SMITH STREET, LEONGATHA SITE AND LEONGATHA DEPOT) AS REQUIRED; AND**
 - c. USING A MODEL OF 70% (OR ALTERNATIVE FIGURES) SPACE REQUIRED FOR STAFFING AREAS AS PER THE MODEL USED IN CARDINIA SHIRE COUNCIL EXPLORE THE**

**SPACE REQUIREMENTS TO INCORPORATE ADDITIONAL
ROOMS FOR COMMUNITY SPACES WITHIN THE SMITH
STREET, LEONGATHA SITE OR CARINO'S.**

MOVED: Cr Davies

THAT THE MOTION BE NOW PUT.

**The Mayor ruled that Councillors who have not had the chance to speak
could do so.**

LOST

For: Crs Kennedy, McEwen and Hill.

Against: Crs Fawcett, Brunt, Newton, Davies and Hutchinson-Brooks.

B.2 NOTICE OF MOTION NUMBER 692 – RENAME FEDERAL GOVERNMENT SEAT OF MCMILLAN

PURPOSE

The purpose of this Notice of Motion is to propose that Council support the renaming of the Federal seat of McMillan when the Australian Electoral Commission next undertakes a redistribution of the seat. The name McMillan is not suitable due to the controversial history of its namesake, Mr Angus McMillan. A new name would support and be a practical step towards reconciliation with the traditional owners of the land.

MOTION

We, **Councillors Mohya Davies, Don Hill and Kieran Kennedy** advise that we intend to submit the following motion to the Ordinary Council Meeting scheduled to be held on **27 April 2016**.

‘That Council advocate that the Federal Government seat of McMillan be renamed by:

1. Writing to the Australian Electoral Commission;
2. Writing to each Council in the Electoral Division of McMillan expressing South Gippsland Shire Council’s position and request their support, including:
 - a. Baw Baw Shire Council;
 - b. Cardinia Shire Council;
 - c. Latrobe City Council;
 - d. Bass Coast Shire Council;
3. Writing to Gippsland Local Government Network (GLGN) requesting the collective support of the Gippsland Councils; and
4. Providing a letter of support to Mr Russell Broadbent MP, Mr Chris Buckingham candidate for McMillan and all other candidates for McMillan.’

MOVED: Cr Davies

SECONDED: Cr Kennedy

THAT COUNCIL ADVOCATE THAT THE FEDERAL GOVERNMENT SEAT OF MCMILLAN BE RENAMED BY:

- 1. WRITING TO THE AUSTRALIAN ELECTORAL COMMISSION;**
- 2. WRITING TO EACH COUNCIL IN THE ELECTORAL DIVISION OF MCMILLAN EXPRESSING SOUTH GIPPSLAND SHIRE COUNCIL'S POSITION AND REQUEST THEIR SUPPORT, INCLUDING:**
 - a. BAW BAW SHIRE COUNCIL;**
 - b. CARDINIA SHIRE COUNCIL;**
 - c. LATROBE CITY COUNCIL;**
 - d. BASS COAST SHIRE COUNCIL;**
- 3. WRITING TO GIPPSLAND LOCAL GOVERNMENT NETWORK (GLGN) REQUESTING THE COLLECTIVE SUPPORT OF THE GIPPSLAND COUNCILS; AND**
- 4. PROVIDING A LETTER OF SUPPORT TO MR RUSSELL BROADBENT MP, MR CHRIS BUCKINGHAM CANDIDATE FOR MCMILLAN AND ALL OTHER CANDIDATES FOR MCMILLAN.**

CARRIED

For: Crs Fawcett, Kennedy, Newton, Davies, McEwen, Hill and Hutchinson-Brooks.

Cr Brunt did not exercise her entitlement to vote.

B.3 NOTICE OF MOTION NUMBER 693 – COAL SEAM GAS AND FRACKING IN SOUTH GIPPSLAND

BACKGROUND

There is a growing body of peer reviewed scientific evidence that there are serious risks and consequences involved in Coal Seam Gas (CSG) and fracking operations. There is community angst and opposition because of the risks to water and farming. Twelve communities in South Gippsland have already declared themselves CSG Free with over 90% signing these declarations. This represents 15% of the population.

The Victorian Ombudsman, the NSW Chief Scientist, and the Victorian Parliamentary Report all indicate that there is no regulatory regime capable of ensuring that there are no risks. The peer reviewed evidence is clear that there are serious consequential problems for water quality and contamination, earthquakes, poor health outcomes and social disorder. Two peer reviewed major international studies, one by the eminent Potsdam Institute, suggest that because of leakages of methane the use of CSG gases is worse than burning coal for CO_{2e} gases. With climate change dramatically accelerating there is an increasing recognition that fossil energies are on the wane as company valuations are falling dramatically.

The Victorian Parliamentary and Government Resources Assessment Reports suggest that there are not significant resources in southern Gippsland. Economically profits for the US CSG industry are proven to be illusionary and the CSG and fracking industries are in financial ruin with some \$US300B of now junk bond debt in US alone. CSG has been oversold by boosters economically, socially and environmentally in disregard for proven serious problems and risks and the opinions of the community. There is no social license in southern Gippsland for CSG, fracking and coal mining.

The Victorian economic development strategy gives a prominent place for agricultural fibre and food production, as one of the flagship area for growth. Southern Gippsland is one of the few climate secure areas for farming in southern Australia and even in drought years has relative secure water supplies.

Southern Gippsland produces food and agricultural products to the value of \$1B with some 3,838 jobs (Source: Remplan). Bass Coast has \$123m of agricultural products and 578 jobs and South Gippsland \$0.9b and 3,260 jobs. Agriculture, food manufacturing, tourism and housing construction could also be badly affected. Agriculture & food manufacturing can be affected by adverse impacts on land, water, livestock and brand reputation. Industrialising our landscape would be a significant turn off for tourism. Our housing and construction industry is driven by the 60% all housing being built as second lifestyle homes with 60% of the being in smaller towns and rural areas. This market would be seriously affected by adverse publicity and industrialising landscapes.

We are playing a potential 'game of dice', gambling on unproven marginal potential benefits of CSG against significant risk of permanent losses to production, housing & construction, tourism and critically our brand reputation. A 10% impact would lose \$131m and 447 jobs in South Gippsland. The danger is with health, an industrialised landscape and permanent damage that could occur to aquifers, soil and water quality along with reputational brand damage to tourism and for food from South Gippsland.

A recent report (A literature review, documents 337 references with 117 peer reviewed articles or official reports) on current research by Concerned Health Professionals of New York concludes that:

"...as fracking operations have increased infrequency and intensity, a significant body of evidence has emerged to demonstrate that these activities are inherently dangerous to people and their communities. Risks include adverse impacts on water, air, agriculture, public health and safety, property values climate stability and economic vitality.....A growing body of peer-reviewed studies, accident reports, and investigative articles is now confirming specific, quantifiable evidence of harm and has revealed fundamental problems with drilling and fracking."

Margaret River has already been exempted to protect the value of agricultural production and tourism. Coonawarra and Hunter Valley communities and councils are advocating for such exemptions. Other councils and regions are seeking similar exemptions to protect the existing values of their communities and farming. The Environmental Justice organisation has provided two motions that would protect southern Gippsland from CSG and from tight gas or shale gas.

CONCLUSION

Council voted in February 2016 to support a continued moratorium. This leaves the issue unresolved and does not reflect that even according to the governments own consultant more than 80% of southern Gippsland are totally opposed. The government is considering the Parliamentary Report. Now is the time for Council to show leadership and support a full exemption. Council has failed three times earlier to take strategic leadership. It failed to make a written submission, as requested by the Parliamentary Inquiry. Its level of support in the State Government Survey of Community Satisfaction with Council for community advocacy has been woeful, with net negative scores for years. Now is the opportunity to listen to the community and to provide genuine leadership and advocacy on behalf of it.

PURPOSE

The proposal is for Council to show true leadership on behalf of the community and its future prosperity by advocating to the Minister for Energy and Resources and the State Government for the Minister to exempt all land within the South Gippsland Shire from being subject to any exploration licences that allow a licensee to explore for coal or coal seam gas/coal bed methane and further advocate that the Minister introduce a bill into the Parliament that has the effect of exempting all land within the South Gippsland Shire from being subject to any exploration licences that allow a licensee to explore for coal, coal seam gas/coal bed methane or other unconventional gas.

MOTION

We, **Councillors Andrew McEwen, Don Hill and Kieran Kennedy**, advise that we intend to submit the following motion to the Ordinary Council Meeting scheduled to be held on **27 April 2016**.

‘That Council advocate to the Victorian Government and Minister for Energy and Resources to:

1. Exempt all land within the South Gippsland Shire from being subject to any exploration licences that allow a licensee to explore for coal or coal seam gas/coal bed methane, under section 7 of the Mineral Resources (Sustainable Development) Act 1990; and
2. Request the Minister to introduce a bill into the Parliament that has the effect of exempting all land within the South Gippsland Shire from being subject to any exploration licences that allow a licensee to explore for coal, coal seam gas/coal bed methane or other unconventional gas under the Mineral Resources (Sustainable Development) Act 1990 and the Petroleum Act 1998.’

MOVED: Cr McEwen

SECONDED: Cr Hill

THAT COUNCIL ADVOCATE TO THE VICTORIAN GOVERNMENT AND MINISTER FOR ENERGY AND RESOURCES TO:

- 1. EXEMPT ALL LAND WITHIN THE SOUTH GIPPSLAND SHIRE FROM BEING SUBJECT TO ANY EXPLORATION LICENCES THAT ALLOW A LICENSEE TO EXPLORE FOR COAL OR COAL SEAM GAS/COAL BED METHANE, UNDER SECTION 7 OF THE MINERAL RESOURCES (SUSTAINABLE DEVELOPMENT) ACT 1990; AND**
- 2. REQUEST THE MINISTER TO INTRODUCE A BILL INTO THE PARLIAMENT THAT HAS THE EFFECT OF EXEMPTING ALL LAND WITHIN THE SOUTH GIPPSLAND SHIRE FROM BEING SUBJECT TO ANY EXPLORATION LICENCES THAT ALLOW A LICENSEE TO EXPLORE FOR COAL, COAL SEAM GAS/COAL BED METHANE OR OTHER UNCONVENTIONAL GAS UNDER THE MINERAL RESOURCES (SUSTAINABLE DEVELOPMENT) ACT 1990 AND THE PETROLEUM ACT 1998.**

MOVED: Cr Hutchinson-Brooks

SECONDED: Cr Kennedy

THAT COUNCILLOR SPEAKING TIME BE EXTENDED BY 3 MINUTES.

CARRIED UNANIMOUSLY

The original Motion was LOST.

For: Crs Kennedy, McEwen and Hill.

Against: Crs Fawcett, Brunt, Newton, Davies and Hutchinson-Brooks.

SECTION C - COMMITTEE REPORTS

Nil

SECTION D – PROCEDURAL REPORTS

D.1 REPORT ON ASSEMBLY OF COUNCILLORS: 22 FEBRUARY 2016 – 21 MARCH 2016

Corporate and Community Services Directorate

STAFF DISCLOSURE OF INTEREST

Nil

EXECUTIVE SUMMARY

As part of Council's ongoing efforts to enhance community engagement in Council processes, matters discussed at Councillor Briefing Sessions (other than those matters designated to be of a confidential nature) are reported on at Ordinary Council Meetings.

The matters listed in this report were presented or considered at either an Advisory Committee Meeting, Councillor Strategic Briefing Session or Public Presentation Session from 22 February to 21 March 2016.

Copies of responses to written questions presented and asked, that were not answered at the meetings, will be either provided as an attachment to this report or to a subsequent Council Meeting, as is practicable, to enable the development of a proper and informed response.

Document/s pertaining to this Council Report

- Nil

LEGISLATIVE / ACTION PLANS / STRATEGIES / POLICIES

Local Government Act 1989, Section 3D and Section 80A

COUNCIL PLAN

Outcome:	4.0	A Leading Organisation
Objective:	4.2	Pursue best practice in organisational development and operations of the organisation.
Strategy:	4.2.2	We will monitor corporate governance processes, including risk management and skills development with the aim of ongoing improvement.

REPORT

Meeting Title	Councillors Attending and Disclosures of Conflict of Interest	Matters Discussed
Tuesday 23 February 2016		
Municipal Emergency Management Planning Committee (MEMPC)	Councillor Attending: Nigel Hutchinson-Brooks. Conflict of Interest: Nil disclosed. Matters Discussed:	<ul style="list-style-type: none">• New MEMPC appointments• Review of Terms of Reference• Outcomes of Fire Readiness Victoria (FRV) meeting held in Nunawading• Public Events• Review of Emergency Plans and Subplans timetable• Training Opportunities• Suicide Awareness/ Prevention – establishment of working group (including agencies and other committees)• Emergency Markers in South Gippsland
Wednesday 24 February 2016		
Ordinary Council Agenda Topic Discussion – 24 February 2016	Councillors Attending: Fawcett, Harding, Newton, McEwen and Hutchinson-Brooks. Conflict of Interest: Nil disclosed. Matters Discussed:	<p>Councillors were provided information on Council agenda items for the Ordinary Council Meeting 24 February 2016.</p>

Meeting Title	Councillors Attending and Disclosures of Conflict of Interest	Matters Discussed
Wednesday 24 February 2016		
<p>Public Presentation</p> <p>OPEN SESSION</p>	<p>Councillors Attending: Fawcett, Kennedy, Brunt, Harding, Newton, Davies, McEwen, Hutchinson-Brooks.</p> <p>Conflict of Interest: Nil disclosed.</p>	
<p>Presentations were made to Council by the following community members:</p> <p>Marg Thomas, representing Coal and CSG Free Mirboo North Group addressed Council regarding Council Agenda item E.1 RESPONSE TO PETITION - BAN ON COAL MINING IN THE MIRBOO NORTH REGION and E.4 PARLIAMENTARY INQUIRY INTO UNCONVENTIONAL GAS IN VICTORIA – FINAL REPORT.</p> <p>Brian Hess and Viv Pepper representing Korumburra Round Table addressed Council regarding Council Agenda item E.7 KORUMBURRA ROUNDTABLE - PROGRESS REPORT.</p> <p>Chris Buckingham, Labor Candidate for the seat of McMillan addressed Council regarding Council Agenda item E.4 PARLIAMENTARY INQUIRY INTO UNCONVENTIONAL GAS IN VICTORIA – FINAL REPORT.</p>		
<p>Ordinary Council Agenda Topic Discussion – 24 February 2016</p>	<p>Councillors Attending: Fawcett, Kennedy, Brunt, Harding, Newton, Davies, McEwen, Hutchinson-Brooks and Hill.</p> <p>Conflict of Interest: Nil disclosed.</p> <p>Matters Discussed:</p> <p>Councillors were provided information on Council agenda items for the Ordinary Council Meeting 24 February 2016.</p>	
<p>Executive Update / Discussion</p>	<p>Councillors Attending: Fawcett, Kennedy, Brunt, Harding, Newton, Davies, McEwen, Hutchinson-Brooks and Hill.</p> <p>Conflict of Interest: Nil disclosed.</p> <p>Matters Discussed:</p> <ul style="list-style-type: none"> • Amendment to Briefing Timetable 2 March 2016 • Sth Gippsland / Bass Coast Councillor meeting • Gippsland Ports correspondence • Grant announcement – Wilsons Promontory 	

Meeting Title	Councillors Attending and Disclosures of Conflict of Interest	Matters Discussed
Wednesday 2 March 2016		
Planning Committee	<p>Councillors Attending: Newton, Harding, Fawcett, Hutchinson-Brooks, Hill and McEwen.</p> <p>Conflict of Interest: Cr Nigel Hutchinson-Brooks declared an indirect conflict of interest by conflict of duty under Section 78B of the LGA (1989) in item 5 – C108 <i>Koonwarra Agricultural Commercial Precinct Project</i> as he is a Director of the Company that are consultants to the proponents. Matter discussed under General Business after Cr Hutchinson-Brooks retired from the Chamber.</p> <p>Cr Nigel Hutchinson-Brooks declared an indirect conflict of interest by past close association under Section 78 of the LGA (1989) in item 5 – C89 <i>Walkerville Rezoning (Ansevata Nominees)</i> as a company of which he is a Director has in the past had conversations with the proponents but has not acted for them. Matter subsequently not discussed.</p> <p>Matters Discussed:</p>	<ul style="list-style-type: none">• Minutes of Previous Meetings• Matters Arising from Minutes• Strategic Planning Project List• Planning Applications of Significance• Decisions January 2016• General Business

Meeting Title	Councillors Attending and Disclosures of Conflict of Interest	Matters Discussed
Wednesday 2 March 2016		
Leongatha Streetscape Master Plan – Bair Street Options Discussion	<p>Councillors Attending: Fawcett, Kennedy, Harding, Newton, McEwen, Hill and Hutchinson-Brooks.</p> <p>Conflict of Interest: Nil disclosed.</p> <p>Matters Discussed:</p> <p>Councillors were provided options that would be subsequently presented to the community as part of the project's second round of public consultation.</p>	
Executive Update	<p>Councillors Attending: Fawcett, Kennedy, Harding, Newton, Hill and Hutchinson-Brooks.</p> <p>Conflict of Interest: Nil disclosed.</p> <p>Matters Discussed:</p> <ul style="list-style-type: none"> • Council's Roads Program 	
2nd Draft Budget – annual review Council Plan and Capital Works allocation	<p>Councillors Attending: Fawcett, Kennedy, Harding, Newton, McEwen, Hill and Hutchinson-Brooks.</p> <p>Conflict of Interest: Nil disclosed.</p> <p>Matters Discussed:</p> <p>Councillors prioritised capital/major works initiatives for inclusion in the final Proposed 2016/17 Budget.</p>	
Caravan Park – (Project Update)	<p>Councillors Attending: Fawcett, Kennedy, Harding, Newton, McEwen, Hill and Hutchinson-Brooks.</p> <p>Conflict of Interest: Nil disclosed.</p> <p>Matters Discussed:</p> <p>Councillors were provided an update on Caravan Parks.</p>	

Meeting Title	Councillors Attending and Disclosures of Conflict of Interest	Matters Discussed
Wednesday 2 March 2016		
Bullying and Harassment Awareness Training	<p>Councillors Attending: Fawcett, Kennedy, Harding, Newton, McEwen, Hill and Hutchinson-Brooks.</p> <p>Conflict of Interest: Nil disclosed.</p> <p>Matters Discussed:</p> <p>Councillors undertook Bullying and Harassment Awareness Training to assist in their understanding of, and ability to identify and manage inappropriate behaviour in the workplace.</p>	
Councillor/ CEO Session	<p>Councillors Attending: Fawcett, Kennedy, Harding, Newton, and Hutchinson-Brooks.</p> <p>Conflict of Interest: Nil disclosed.</p> <p>Matters Discussed:</p> <p>Organisation Effectiveness Survey October 2015 & Staff Turnover Data</p>	
2nd Draft Budget – annual review Council Plan and Capital Works allocation	<p>Councillors Attending: Fawcett, Kennedy, Harding, Newton, and Hutchinson-Brooks.</p> <p>Conflict of Interest: Nil disclosed.</p> <p>Matters Discussed:</p> <p>Councillors were provided the opportunity to determine if any amendment was required to the 2013-2017 Council Plan, as the annual review of the four year Council Plan is required under Section 125(7) of the Local Government Act 1989.</p> <p>Councillors were also provided with the new alignment of services by Department under the four Council Plan ‘Outcomes’ following the restructure.</p>	

Meeting Title	Councillors Attending and Disclosures of Conflict of Interest	Matters Discussed
Wednesday 16 March 2016		
Sandy Point Public Amenities Options	Councillors Attending: Fawcett, Kennedy, Harding, Newton, and Hutchinson-Brooks. Conflict of Interest: Nil disclosed. Matters Discussed:	Councillors were provided options for progressing replacement of the existing Sandy Point public amenity facilities and future management responsibilities for the facilities.
Road Flood Mitigation Works	Councillors Attending: Fawcett, Kennedy, Harding, Newton, and Hutchinson-Brooks. Conflict of Interest: Nil disclosed. Matters Discussed:	Councillors were provided a proposed approach to prioritise and fund remedial works to address road sites that are subject to flooding.
Korumburra Town Centre	Councillors Attending: Fawcett, Kennedy, Harding, Newton, and Hutchinson-Brooks. Conflict of Interest: Nil disclosed. Matters Discussed:	Councillors were provided an update on the Korumburra Town Centre.

Meeting Title	Councillors Attending and Disclosures of Conflict of Interest	Matters Discussed
Wednesday 16 March 2016		
Ordinary Council Agenda Topics Discussion	<p>Councillors Attending: Fawcett, Kennedy, Harding, Newton, and Hutchinson-Brooks.</p> <p>Conflict of Interest: Nil disclosed.</p> <p>Matters Discussed:</p> <p>Councillors were provided information on Council agenda items for the Ordinary Council Meeting 23 March 2016.</p>	
<p>Policy Reviews: C65 – Public Participation in Meetings with Council Policy</p> <p>C66 - Councillor Access to and Request for Council Information Policy</p>	<p>Councillors Attending: Fawcett, Kennedy, Harding, Newton, and Hutchinson-Brooks.</p> <p>Conflict of Interest: Nil disclosed.</p> <p>Matters Discussed:</p> <p>Councillors considered two new policies developed to improve governance surrounding public participation in meetings with Council and transparency in Councillors’ requests for access to Council documents.</p>	
Community Budgeting Lunch	<p>Councillors Attending: Fawcett, Kennedy, Brunt, Harding, Newton, Davies and Hutchinson-Brooks and Hill.</p> <p>Conflict of Interest: Nil disclosed.</p> <p>Matters Discussed:</p> <p>Councillors and community budgeting nominees discussed how Council can improve the Community Budgeting 2017/18 project process.</p>	

Meeting Title	Councillors Attending and Disclosures of Conflict of Interest	Matters Discussed
Wednesday 16 March 2016		
Public Presentation OPEN SESSION	Councillors Attending: Fawcett, Kennedy, Brunt, Harding, Newton, Davies and Hutchinson-Brooks and Hill. Conflict of Interest: Nil disclosed.	
Presentations were made to Council by the following community members: Wendy Major , Executive Officer and Maddy Harford Chairperson of SGBCLLEN addressed Council by presenting an update on South Gippsland Bass Coast Local Learning & Employment Network (SGBCLLEN) work and connections to Council. Derrick Ehmke , Executive Officer of the Foundation and Kate Buxton , Executive Officer, Australian Community Philanthropy (ACP) addressed Council by providing an update on the Mirboo North & District Community Foundation and forthcoming National Community Foundations Forum 11 – 13 October 2016. David Armor addressed Council on recent local newspaper articles and concerns regarding the Local Law. Paul Norton addressed Council by raising items regarding clarification of the Recommendation/ Motion from Council Meeting 24 February 2016 Item D.3 REPORT ON ASSEMBLY OF COUNCILLORS: 22 NOVEMBER 2015 – 13 JANUARY 2016 and other governance matters.		

Meeting Title	Councillors Attending and Disclosures of Conflict of Interest	Matters Discussed
Wednesday 16 March 2016		
Ordinary Council Agenda Topics Discussion 23 March 2016	Councillors Attending: Fawcett, Kennedy, Brunt, Harding, Newton, Davies and Hutchinson-Brooks and Hill. Conflict of Interest: Nil disclosed. Matters Discussed: Councillors were provided information on Council agenda items for the Ordinary Council Meeting 23 March 2016.	
Executive Update	Councillors Attending: Fawcett, Kennedy, Brunt, Harding, Newton, Davies and Hutchinson-Brooks and Hill. Conflict of Interest: Nil disclosed. Matters Discussed: <ul style="list-style-type: none">• Long Jetty Grant Application• Media Briefing Council Budget 2016/17	
Wednesday 16 March 2016		
Active Ageing Retiree Advisory Committee (ARAC)	Councillor Attending: Cr James Fawcett Conflict of Interest: Nil disclosed. Matters Discussed: <ul style="list-style-type: none">• Active Ageing Plan purpose• Proposed timeline new plan• Community consultation and role of ARAC	

RECOMMENDATION

That Council:

1. Receive and note this report;
2. Make confidential pursuant to section 77(2)(b) of the Local Government Act 1989 (Act) all matters considered by the Planning Committee at its meeting held on Wednesday 2 March 2016 on the basis that the meeting discussed:
 - a. proposed developments (section 89(2)(e) of the Act); and
 - b. matters which the Council considers would prejudice the Council or any person (section 89(2)(h) of the Act),

until such time as the Council's Chief Executive Officer determines to include an individual matter on an Agenda for an Ordinary or Special Meeting of Council, or when required to undertake a statutory obligation, and this confidentiality then ceases to apply only to that individual matter.

3. Make confidential pursuant to Section 77(2)(b) all matters considered by the Council at its Councillor Briefing held on Wednesday 2 March 2016 in relation to the Council's Draft Budget 2016/17 on the basis that the meeting discussed:
 - a. matters which the Council considers would prejudice the Council or any person, (section 89(2)(h) of the Act),

excluding the release of the Proposed 2016-2017 Budget in an Agenda for an Ordinary or Special Meeting of Council.

MOVED: Cr Kennedy

SECONDED: Cr Brunt

THAT THE RECOMMENDATIONS IN ITEMS D.1, D.2 AND D.3 BE ADOPTED.

Cr McEwen left the Council Meeting at 3.41pm and returned at 3.43pm.

CARRIED UNANIMOUSLY

D.2 DOCUMENTS SEALED AND CONTRACTS AWARDED, VARIED OR EXTENDED BY THE CHIEF EXECUTIVE OFFICER - 20 FEBRUARY 2016 TO 25 MARCH 2016

Corporate and Community Services

STAFF DISCLOSURE OF INTEREST

Nil

EXECUTIVE SUMMARY

This document reports to Council the following actions undertaken by the Chief Executive Officer (CEO) which occurred during the period from 20 February 2016 to 25 March 2016, as required by the Council's Instrument of Delegation to the Chief Executive Officer and Procurement Policy:

- 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.

LEGISLATIVE / ACTION PLANS / STRATEGIES / POLICIES

- Local Government Act 1989 - Section 5 and 186 (the Act)
- Local Law No. 3 2010 Processes of Municipal Government (Meeting Procedures and Common Seal)
- South Gippsland Shire Council Procurement Policy
- South Gippsland Shire Council Instrument of Delegation to the Chief Executive Officer

COUNCIL PLAN

Outcome:	4.0	A Leading Organisation.
Objective:	4.2	Pursue best practice in organisational development and operations of the organisation.
Strategy:	4.2.2	We will monitor corporate governance processes, including risk management and skills development with the aim of ongoing improvement.

REPORT

Documents Sealed

Under the Act, each Council is a body corporate and a legal entity in its own right. Each Council must have a common seal that is an official sanction of that Council.

Sealing a document makes it an official document of Council as a corporate body. Documents that require sealing may include agreements, contracts, leases or any other contractual or legally binding document that binds Council to another party.

Local Law No. 3 2010, Part 9, Section 107 (f) (iv) – The Common Seal of Council, states that ‘If the Chief Executive uses the Common Seal in a manner prescribed by sub-clause (c) then he/she must advise Council of such use on a regular basis.’ Council’s Instrument of Delegation to the CEO also delegates to the CEO the power to ‘use the Common Seal of Council subject to that use being reported to Council.

In accordance with the Local Law and Instrument of Delegation, the following are presented to Council as documents sealed during the period from 20 February 2016 to 25 March 2016.

1. S173 Agreement between South Gippsland Shire Council and the owner of 721 Lees Road, Venus Bay in relation to the development of a single dwelling – Seal Applied 24 February 2016.
2. S173 Agreement between South Gippsland Shire Council and the owner of 1550 Buffalo Waratah Road Tarwin Lower in relation to the use and development of a dwelling and shed – Seal Applied 1 March 2016.
3. S173 Agreement between South Gippsland Shire Council and the owner of 10 Rena Court, Venus Bay in relation to the development of a single dwelling – Seal Applied 16 March 2016.
4. S173 Agreement between South Gippsland Shire Council and the owner of 1 Anderson Avenue, Sandy Point in relation to the development of a single dwelling – Seal Applied 21 March 2016.
5. S173 Agreement between South Gippsland Shire Council and the owner of 14 Sandy Point Road, Sandy Point in relation to the development of a single dwelling – Seal Applied 22 March 2016.

Contracts awarded after a public tender process within the CEO’s delegation

The CEO's delegation from Council allows the CEO to award contracts up to the value of \$250,000 (inclusive of GST), with the exception of:

- Annual WorkCover and Council insurance premiums; and

- Any contract which complies with Council's Procurement Policy and falls within the allocation in the Council adopted Annual Budget which exceeds the value of \$250,000 (inclusive of GST).

Council's Procurement Policy requires recording in the Council Minutes all contracts over the statutory threshold set out in the Act (\$150,000 inclusive of GST for goods and services and \$200,000 inclusive of GST for works) for a public tender which shows the contracts purpose (a brief description of the goods, services and works that is being procured), the successful tenderer, contract length and the total contract price.

Further, Council's Procurement Policy requires 'that Council will not disclose information about procurements below the statutory thresholds, however, to ensure compliance with Council's Procurement Policy, it will be noted in this report that a contract awarded below the statutory threshold has been entered into following a public tender.

The following contracts were awarded between 20 February 2016 and 25 March 2016 under the CEO's delegation following a public tender.

1. Tender RFT/94 Upgrade of Reticulated Power - Circuits 4, 5 & 6, Coal Creek Community Park and Museum Korumburra awarded to S & R Foot Pty Ltd for the lump sum amount of \$182,501.18 including GST and contingency amount.

In addition, Council resolved on 26 August 2015 to delegate to the CEO the power to award capital works contracts specified in the resolution, subject to the preferred tenders being within budget and that Council receive a report detailing the contracts awarded.

There were no contracts awarded by the CEO during the period from 20 February 2016 to 25 March 2016, which relate to the 26 August 2015 resolution.

Contract variations approved by the CEO

Council's Procurement Policy authorises the CEO to approve any necessary variations to a contract which exceeds the CEO's delegation, to allow the proper fulfilment of the contract and to ensure delays to key projects are avoided, following consultation with the Mayor and subject to this variation being reported to the next practicable Council Meeting.

There were no contract variations which exceeded the CEO's delegation, made by the CEO during the period from 20 February 2016 to 25 March 2016.

Contract extensions approved by the CEO

Council's Procurement Policy authorises the CEO to enter into any contract extensions subject to the satisfactory performance of the contractor and the

extension being reported to Council for any contracts which in total exceeds the CEO's delegation.

There were no contract extensions which exceeded the CEO's delegation made by the CEO during the period from 20 February 2016 to 25 March 2016.

RECOMMENDATION

That Council receive and note this report.

NOTE: The recommendation was CARRIED UNANIMOUSLY as part of a single motion, refer to page 28.

D.3 COUNCILLOR EXPENDITURE REPORT - 31 MARCH 2016

Corporate and Community Services

STAFF DISCLOSURE OF INTEREST

Nil

EXECUTIVE SUMMARY

The Councillor Expenditure Report (**Attachment 1**) provides Council with an update on Councillor Expenditure from 1 July 2015 to 31 March 2016.

Document/s pertaining to this Council Report

- **Attachment 1** - Councillor Expenditure Report - 1 July 2015 to 31 March 2016

LEGISLATIVE / ACTION PLANS / STRATEGIES / POLICIES

- Local Government Act - Section 75 Reimbursement of expenses of Councillors
- Councillor Support and Expenditure Policy

COUNCIL PLAN

Outcome:	4.0	A Leading Organisation
Objective:	4.2	Pursue best practice in organisational development and operations of the organisation.
Strategy:	4.2.3	We will make informed decisions and provide opportunities for the community to participate in the decision making process.

REPORT

Background

The Councillor Expenditure Report (**Attachment 1**) provides Council with an update on Councillor Expenditure from 1 July 2015 to 31 March 2016.

FINANCIAL CONSIDERATIONS

The budget provision year-to-date March 2016 for Councillor Expenses was \$219,672. Actual expenses totalled \$238,897 representing a year-to-date variation of \$19,225. Councillor allowance budgets will be in line with actuals by Financial Year-end.

RISKS

Transparency in reporting is a risk management control measure that allows the community and Council to view the financial management and expenditure of Councillors.

RECOMMENDATION

That Council receive and note the Councillor Expenditure Report for the period 1 July 2015 to 31 March 2016.

NOTE: The recommendation was CARRIED UNANIMOUSLY as part of a single motion, refer to page 28.

**Attachment 1
Councillor Expenditure Report - 1 July to 31 March 2016**

Councillor	Councillor Expenditure From 1 July 2015 to 31 March 2016										Total
	Travel Expenditure		Other Expenditure								
	Car	Councillor Car Operating Cost*	Other travel reimbursements**	Mobile Phone / Ipads	Phone/Fax/ Modem	Training & Professional Development***	Councillor Allowance****	Remoteness Allowance	Stationery		
Cr. Robert Newton	Council \$	3,393	\$ 45	\$ 640	\$ -	\$ -	\$ 47,969	\$ -	\$ 67	\$ 52,014	
Cr. Lorraine Bruitt	Council \$	3,545	\$ -	\$ 1,257	\$ -	\$ 1,045	\$ 21,493	\$ -	\$ 14	\$ 27,354	
Cr. Andrew McEwen	Personal \$	-	\$ 6,418	\$ 995	\$ -	\$ 1,243	\$ 21,493	\$ -	\$ 145	\$ 30,294	
Cr. Kieran Kennedy	Council \$	4,055	\$ -	\$ 946	\$ -	\$ 2,892	\$ 21,493	\$ -	\$ -	\$ 29,436	
Cr. Mohya Davies	Council \$	3,953	\$ -	\$ 1,352	\$ -	\$ 1,472	\$ 21,493	\$ -	\$ 279	\$ 28,549	
Cr. Jeanette Harding	Council \$	3,985	\$ -	\$ 523	\$ -	\$ 1,237	\$ 40,577	\$ 400	\$ 69	\$ 46,791	
Cr. Nigel Hutchinson Brooks	Council \$	4,385	\$ -	\$ 371	\$ -	\$ 885	\$ 21,493	\$ -	\$ -	\$ 27,134	
Cr. Don Hill	Personal \$	-	\$ 3,478	\$ 838	\$ 234	\$ -	\$ 21,493	\$ -	\$ 97	\$ 26,140	
Cr. James Fawcett	Personal \$	-	\$ -	\$ 776	\$ -	\$ -	\$ 21,493	\$ -	\$ -	\$ 22,269	
Total Actual (Year to date March 2016)		\$ 23,316	\$ 9,941	\$ 7,748	\$ 234	\$ 8,774	\$ 238,997	\$ 400	\$ 671	\$ 289,981	
Total Budget (Year to date March 2016)		\$ 31,929	\$ 9,000	\$ 11,655	\$ 1,440	\$ 5,376	\$ 219,672	\$ 369	\$ 3,950	\$ 283,391	
Variance		\$ 8,613	\$ 941	\$ 3,907	\$ 1,206	\$ 3,398	\$ 19,225	\$ 31	\$ 3,279	\$ 6,590	

*Car operating costs are for the 9 months ended 31 March 2016 and includes depreciation, insurance and notional interest.

** Travelling expenditure for Councillors using private vehicles is at the prescribed rate of reimbursement. Reimbursements also include actual public transport costs.

*** Training & professional development includes accommodation, conference and parking expenses.

**** Training & professional development expenses of Cr. Kieran Kennedy includes \$2,400 for completing a Diploma of Local Government

***** Councillor Allowance budgets will then be in line with actuals by Financial year-end.

SECTION E - COUNCIL REPORTS

E.1 LEONGATHA STREETScape MASTER PLAN - DRAFT FOR CONSULTATION

Sustainable Communities and Infrastructure Services Directorate

STAFF DISCLOSURE OF INTEREST

Nil

EXECUTIVE SUMMARY

The Leongatha Streetscape Master Plan ("master plan") is a priority project of Council. It aims to enhance Leongatha's town centre as a "place". It intends to improve the amenity, pedestrian use and economic sustainability of the town. The proposed master plan is to be based on best practice urban design and sustainability principles. It presents a valuable opportunity to directly influence the future social and economic vibrancy of Leongatha and South Gippsland. The master plan will guide road and footpath improvements, new landscaping, street furniture, and other upgrades to revitalise Bair Street.

Three options are considered in response to the major themes identified during recent public consultation, which included:

- Green the street, provide more trees
- Make the street more pedestrian friendly, provide more seating
- Fill the empty shops
- Connect railway land to Bair Street, parking on railway land
- Provide angle car parking, reduce the number of traffic lanes

The next phase of public consultation is to present a draft master plan to the community for comment to inform a final design. This report recommends presenting two options included within the draft master plan. These options more closely align to the project objectives and the community and stakeholder feedback.

Document/s pertaining to this Council Report

- **Attachment 1** - Leongatha Streetscape Master Plan - Revitalisation Options A, B and C
- **Attachment 2** - Leongatha Streetscape Master Plan - Draft Master Plan
- **Appendix 1** - Leongatha Streetscape Master Plan - Community Engagement Report

A copy of **Appendix 1 - Leongatha Streetscape Master Plan Community Engagement Report** is available on Council's website: www.southgippsland.vic.gov.au or by contacting 5662 9200.

LEGISLATIVE / ACTION PLANS / STRATEGIES / POLICIES

- Local Government Act 1989
- Disability Act 2006
- Equal Opportunity Act 2010
- Planning and Environment Act 1987

INTERNAL POLICIES / STRATEGIES / DOCUMENTS

- South Gippsland Planning Scheme
- Leongatha CBD Car Parking Strategy 2013
- South Gippsland Shire Council Economic Development and Tourism Strategy 2015-2020
- South Gippsland Shire Council Asset Management Strategy 2013
- South Gippsland Shire Council Paths and Trails Strategy 2010
- South Gippsland Shire Council Recreation Plan. Volume 4: Implementation Plan 2007
- South Gippsland Shire Council Social Community Blueprint 2014-2029

COUNCIL PLAN

Outcome:	1.0	Integrated services and infrastructure
Objective:	3.1	Deliver affordable modern community services and facilities through an integrated approach to planning and infrastructure development.
Strategy:	3.1.1	We will deliver Council and community projects and leverage project funds to attract investment from external sources.
Strategy:	3.1.5	We will encourage sustainable development that promotes the health, well-being and unique character of the community.

CONSULTATION

External

A media release was issued in June 2015 to announce the commencement of the project. The Leongatha Chamber of Commerce was briefed on 3 August 2015 and asked to provide nominations for the Project Reference Group. Other community groups (including the Leongatha Progress Association, the Arts Network, Access and Inclusion Committee, Rotary and the Rail Trail Committee) were also invited to be part of the Project Reference Group.

Wider public consultation occurred during November and December 2015. The attached community engagement report provides details of the engagement process and consultation findings.

(Refer **Appendix 1 - Leongatha Streetscape Master Plan - Community Engagement Report**)

Internal

Council's Engineering, Economic Development, Parks and Gardens, Community Strengthening, Planning and Depot Management teams have provided input to the project.

Council briefings were held on the 17 February and 2 March 2016.

REPORT

Background

The Leongatha Streetscape Master Plan ("master plan") project builds on the recommendations of the Leongatha Street Life Project which was developed through extensive community consultation.

Construction of the Leongatha Heavy Vehicle Alternate Route provides the opportunity to realise the project. The alternate route will result in heavy vehicle traffic being diverted away from Bair Street to Long Street. Ownership of Bair Street will then transfer from VicRoads to Council.

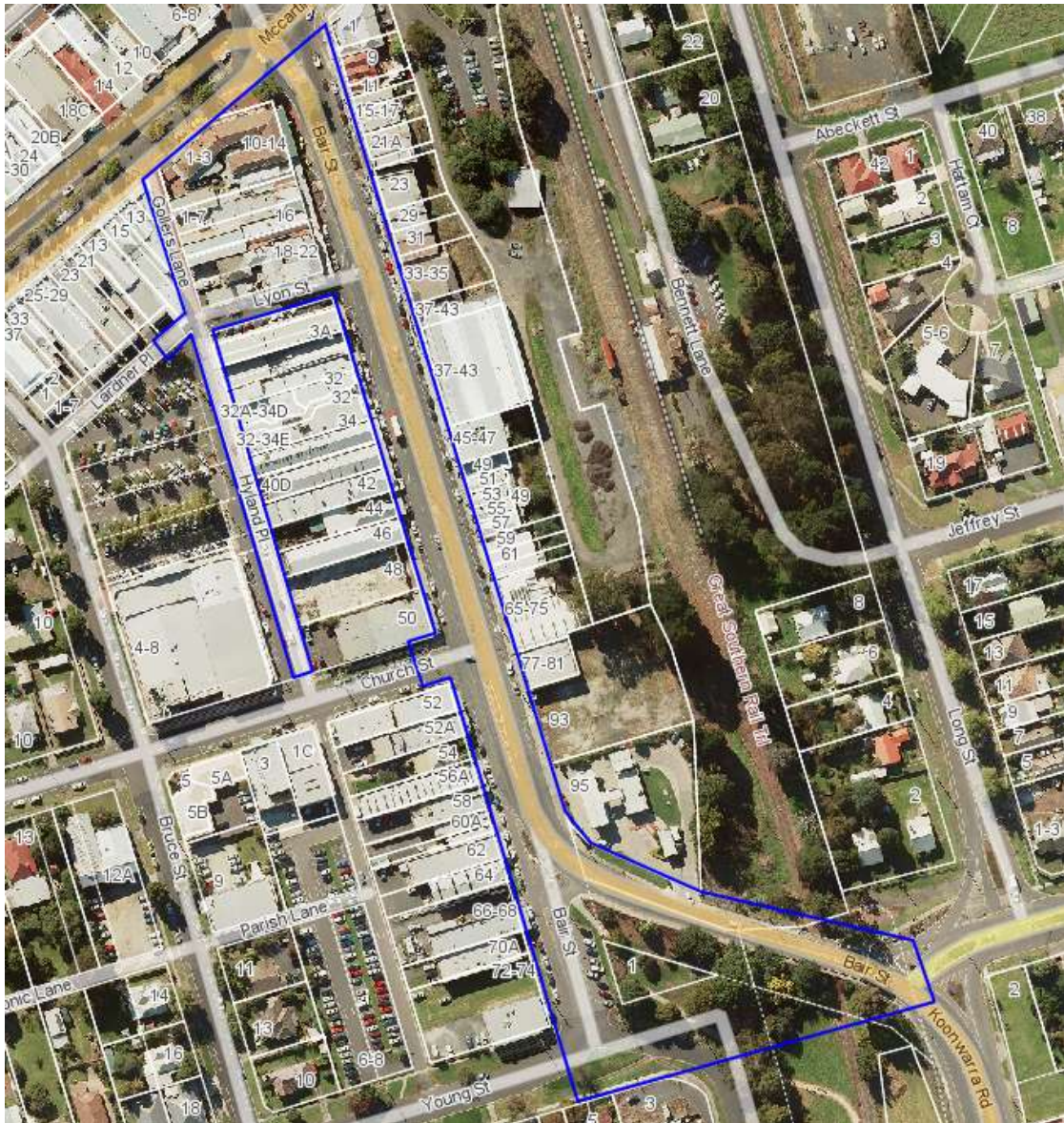
Project

The Leongatha Streetscape Master Plan will guide road and footpath improvements, new landscaping, street furniture, and other upgrades to revitalise Bair Street. The master plan will apply to Bair Street, Lyon Street, Gollers Lane and parts of Church Street, Lardner Place and Horticultural Park (see project study area map overleaf).

The consultancy contract was awarded to MDG Architects in June 2015. The consultants prepared initial ideas for Bair Street's improvement to take to the community as part of the first round of community consultation (November to December 2015).

In response to community input, several options were considered for Bair Street. Two options are proposed for presentation to the community as part of the next round of consultation. This will inform the final master plan.

Project Study Area



Context

Leongatha is a regional centre that services surrounding towns and agricultural areas. Bair Street is one of the town's main streets. Public space in Bair Street is currently occupied by road space, central median with planting, car parking spaces, footpaths and street furniture. Many different groups and individuals have an interest in this public space. This includes Leongatha residents, main street businesses, visitors, rail trail users and tourists.

Globalisation and technology advancements are changing consumer patterns. Consistent with overseas trends, main street retail is facing challenges in regional and metropolitan Australia. A progressive main street design that encourages and facilitates social interaction will more likely provide greater benefits than those which seek to replicate traditional service models. Providing an attractive and inclusive main street is only one ingredient to a successful and vibrant precinct. Retail offering and experience must also compliment the main street design.

Project Objectives

The master plan project aims to enhance Leongatha's town centre as a "place". It intends to improve the amenity, pedestrian use and economic sustainability of the town centre. The proposed master plan is to be based on best practice urban design and sustainability principles. The project will also consider imaginative design solutions, functionality and cost effectiveness.

A review of best practice main street designs has found that main streets should be:

Accessible for all

Main streets that are accessible are good for business. Good access helps everyone including older people, people with prams, people with a disability and delivery people. An accessible main street is one where footpaths are clear and wide, streets are easy to cross and it is easy to find your way around. Clear wayfinding signage, for example, can assist locals and visitors find their way around. Safety can be improved in these areas by slowing traffic using traffic calming measures such as raised areas, narrowing the road space and curving the road alignment.

Green

Main streets that are greener are more attractive, encouraging people to visit. The use of trees and other planting provides places to gather, stop, rest and walk while shaded. Plantings also reduce urban heat island effects, reduces stormwater runoff as well as improving amenity.

Sustainable

Achieving sustainability in streetscape design involves consideration of the construction process including materials used, operation of the streetscape and how users interact with the area. Streetscape plans can incorporate Water Sensitive Urban Design (WSUD), pervious pavement to capture stormwater and the re-use of storm water to irrigate plants. In terms of power they can use solar energy and more energy efficient lighting (e.g. use of LEDs). Streetscape design can promote more sustainable transport options like walking, cycling and public transport (e.g. through provision of bicycle lane, bus lane).

Attractive

Successful streetscapes create an identity for an area and capture the imagination. This has been achieved through the celebration and restoration of architectural heritage. An identity can be created through street furniture, public art, entrance signage, planting and/or type of shops.

Functional

Best practice streetscape designs recommend the use of simple, durable, easy to maintain and easy to replace materials.

Vibrant

The vibrancy of a main street is important to its success. Main street master plan projects can influence this by providing gathering spaces, encouraging temporary use of empty shop fronts and encouraging more residents in main streets using shop-top housing.

Owned and supported by the community

Community (including business) involvement and investment in main streets, while not directly relevant to a main street master plan design, is of vital importance to their success. The entrepreneurial flair and collaboration between businesses can create and maintain an environment that welcomes new investment and change.

Revitalisation Options

Following community consultation three options have been considered and assessed against the project objectives and consultation results. These options are detailed at **Attachment 1** - Revitalisation Options A, B and C.

Bair Street - Revitalisation Option A

Revitalisation Option A proposes to:

1. Provide significant planting along both sides of the street.
2. Provide planting along a widened (from 1.5m to 4m) central median.
3. Provide regular crossing points (at 100m maximum intervals) and seating.
4. Widen footpath (from 4m to 6m) on both sides of Bair Street with picnic tables at the north eastern corner.
5. Provide angle parking on the western side of Bair Street south of Church Street.
6. Provide angle parking on the eastern side of Bair Street at the northern end.

7. Retain parallel parking along the rest of Bair Street.
8. Provide additional gathering spaces at crossing points and intersections.
9. Improve safety by creating a T-intersection at Young Street and a large gathering space linking to the start of the Great Southern Rail Trail.

Bair Street - Revitalisation Option B

Revitalisation Option B proposes to:

1. Provide significant planting along both sides of the street.
2. Only retain central median for a short distance at northern end of Bair Street.
3. Provide raised pedestrian crossings at regular crossing points (at 100m maximum interval) and seating.
4. Widen footpath (6-7m) on both sides of Bair Street with picnic tables at the north eastern corner.
5. Provide angle parking on the western side of Bair Street south of Church Street.
6. Provide alternating angle and parallel parking along the rest of Bair Street.
7. Provide additional gathering spaces at crossing points and intersections.
8. Improve safety by creating a T-intersection at Young Street and a large gathering space linking to the start of the Great Southern rail trail.
9. Modify the taxi rank to provide additional footpath and parking space.

Bair Street - Revitalisation Option C

This option was prepared prior to community consultation in November and December 2015. It reflects a previous plan for Bair Street that proposed angle parking along the length of the street.

This option is not proposed as part of the draft Master Plan because it does not adequately align with the project objectives and does not sufficiently respond to the community feedback about making the street more pedestrian friendly.

While this option provides more car parking spaces, the other revitalisation options are expected to provide more streetscape design benefits and create an offering which will more effectively address shop vacancy.

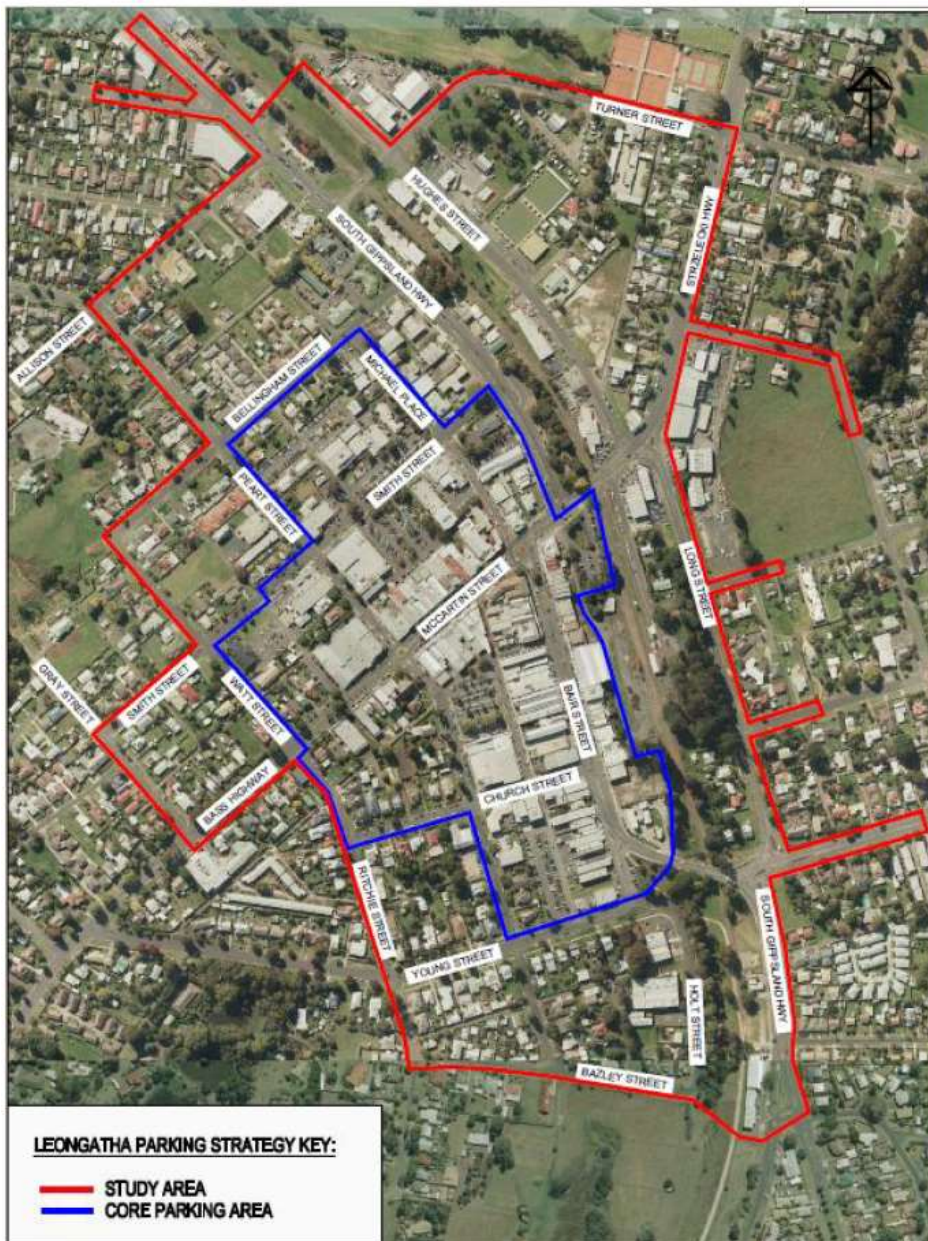
The Leongatha CBD Car Parking Strategy (2013) found that there is sufficient parking within the Leongatha CBD and within the "core parking area"

(outlined in blue on map below) to cater for existing peak parking demand. There are approximately 2,500 car parking spaces in Leongatha's CBD.

Of the 1,466 car parking spaces in the core parking area, approximately 70 per cent are occupied during peak period. There are 1,100 car parking spaces in the CBD outside the core parking area. During peak times there is an occupancy rate of 17 per cent.

Currently 87 car parking spaces are provided in Bair Street. This represents 6 per cent of car parking spaces in the core parking area and 3 per cent of total car parking spaces in Leongatha CBD. Any changes to the number of car parking spaces in Bair Street will have little impact on the number of car parking spaces available in the Leongatha CBD.

Leongatha CBD Car Parking Strategy Study Area & Core Parking Area



Bair Street Precinct Revitalisation Proposals

Lyon Street

Along Lyon Street, the draft Master Plan proposes to:

- Resurface to provide a flush pavement (flat continuous surface like in Gollers Lane).
- Install in-ground planting along the street.
- Reorganise the parking to parallel parking.

Gollers Lane

Along Gollers Lane, the draft Master Plan proposes to:

- Resurface the laneway (though not with road bitumen).
- Install tall thin trees and narrow garden beds (e.g. to provide climbing plants) with enough space for delivery trucks to access the lane and pedestrians to get around them.

Lardner Place

The draft Master Plan proposes to create a small park space with additional seating and greenery at Lardner Place.

Hyland Place

The draft Master Plan proposes tree planting along Hyland Place in kerb outstands.

Horticultural Park

At Horticultural Park, the draft Master Plan proposes to:

- Provide a clearer connection between Bair Street and rail trail – drawing rail trail users into the town centre.
- Extend the park by relocating the angle parking slightly to the west.
- Provide an upgraded gathering space.
- New enlarged play area next to the steps down from Bair Street.

Assessing the Options

The below matrix assesses the master plan options against the project objectives and key messages received during the community consultation. It is evident from this assessment that option A and B more adequately align with the project objectives and key themes identified during public consultation.

Options were assessed on a 0 to 3 basis as follows:-

0 = Not provided, 1 - Partly provided, 2 - Provided, and 3 = Fully provided

Assessing the Options Matrix

Project Objectives	Option A	Option B	Option C
Revitalise the commercial area	2	2	1
Improving the street's image & amenity	2	2	2
Build the town's profile as a tourist destination (may be addressed through more detailed design + Horticultural Park proposal)	1	1	1
Urban design best practice	2	3	1
Maximise the provision of additional open space	2	2	0
Provides informal or formal spaces for events etc.	2	2	1
Community Consultation Key Messages			
<i>Green the street</i>	3	3	2
<i>Provide more seating</i>	3	3	2
<i>Fill the empty shops</i>	2	2	0
<i>Provide angle car parking</i>	1	2	3
<i>Reduce the number of traffic lanes</i>	3	3	3
<i>Make it easier to cross Bair Street</i>	2	3	2
<i>Install a bicycle lane in Bair Street</i>	1	1	0
<i>Make the street more pedestrian friendly</i>	2	3	1
<i>Transform Bair Street into a pedestrian mall</i>	0	1	0
<i>Extend footpaths</i>	3	3	0
<i>Provide al fresco dining</i>	3	3	0
<i>Widen median</i>	3	0	0
<i>Slow traffic</i>	2	3	1
TOTAL	39	42	20

Other Master Plan Options Considered

The Community Engagement Report at **Appendix 1** sets out the options that have been explored for the Master Plan. The main options are presented in **Attachment 1**. The engagement report explains how the draft Master Plan responds to the key messages received during community engagement and why other options were not pursued.

In response to key messages and concerns about car parking, the report encourages the investigation of additional car parking opportunities at 23 Smith Street and as part of the Leongatha Railyards Precinct Project (with the pedestrian link re-instated).

Transforming Bair Street into a Pedestrian Mall

This option was explored in response to community consultation in November and December 2015. Consideration was given to closing different sections of Bair Street to create a pedestrian mall for short sections of the street or making the street one-way traffic only. The consultant team, however, did not recommend any of these proposals proceed because:

- There are no strong attractors in the street (e.g. big department store)
- It would require alternative traffic routes (including Hyland Place and Church Street) which would fail to accommodate the diverted traffic
- It could result in additional challenges for existing businesses
- Broad community expectations that parking spaces will be available on Bair Street

Proposal

Attachment 2 - Draft Master Plan provides the draft master plan proposed for further public consultation. It includes two different revitalisation options for Bair Street which are labelled A and B. These options more closely align to the project objectives and the community and stakeholder feedback.

It is recommended the draft master plan be accompanied by illustrations of the streetscape so that the proposed changes can be better understood. Further information should also be provided regarding weather protection, signage, town entry elements, materials and artwork.

FINANCIAL CONSIDERATIONS

Council has committed \$150k in the 2016/17 proposed annual budget to complete the detailed design of the final Leongatha Streetscape Master Plan.

The detailed design will inform the final project cost. Indicative costings of the draft Master Plan implementation prepared by MDG Landscape Consultants estimate that Revitalisation Option A and B will cost approximately \$4.5 and \$4.8 million respectively.

<i>Break Down of Initial Costing</i>	<i>\$ millions (rounded)</i>
Bair Street West - Revitalisation Option A	0.61
Bair Street East - Revitalisation Option A	2.63
Bair Street West - Revitalisation Option B	0.56
Bair Street East - Revitalisation Option B	2.93
Lyon Street & Gollers Lane	0.34
Lardner Place & Hyland Place	0.36
Horticultural Park	0.77

Option C despite its limited benefits has an estimated cost of \$4.4 million. The current capital works program has an allocation of \$1.667 million to complete the required works in 2017/18. This figure includes receiving fifty percent in grant funding. It is expected that the funding of the Master Plan's implementation will be drawn from Council's capital works budget and grant funding opportunities.

RISKS

There are some economic risks associated with not proceeding with the master plan and not taking the opportunity to improve the street for the future. Community expectation is that Council will invest in the redesign of Bair Street.

There is a risk that grant funding may not be secured to assist Council in delivering the project. Having a Master Plan in place is required to pursue grant funding.

CONCLUSION

The Leongatha Streetscape Master Plan ("master plan") is a priority project of Council. It aims to enhance Leongatha's town centre as a "place". It intends to improve the amenity, pedestrian use and economic sustainability of the town. The proposed master plan is to be based on best practice urban design and sustainability principles. It presents a valuable opportunity to directly influence the future social and economic vibrancy of Leongatha and South Gippsland. The master plan will guide road and footpath improvements, new landscaping, street furniture, and other upgrades to revitalise Bair Street.

Globalisation and technology advancements are changing consumer patterns. Consistent with overseas trends, main street retail is facing challenges in regional and metropolitan Australia. A progressive main street design that encourages and facilitates social interaction will more likely

provide greater benefits than those which seek to replicate traditional service models.

The draft master plan proposed for further public consultation includes two different revitalisation options for Bair Street which are labelled A and B. These options more closely align to the project objectives and the community and stakeholder feedback.

RECOMMENDATION

That Council:

1. Present the community engagement report and draft Leongatha Streetscape Master Plan to the community for two weeks of public exhibition in May 2016.
2. Present the draft Leongatha Streetscape Master Plan along with illustrations and additional design detail regarding:
 - a. Weather protection
 - b. Signage
 - c. Town entry elements
 - d. Materials of construction
 - e. Artwork
3. Investigate the provision of additional car parking at 23 Smith Street, Leongatha and, reinstatement of a pedestrian link as part of the Leongatha Railyards Precinct Project.

MOVED: Cr Hutchinson-Brooks SECONDED: Cr Fawcett

THAT COUNCIL:

- 1. PRESENT THE COMMUNITY ENGAGEMENT REPORT AND DRAFT LEONGATHA STREETScape MASTER PLAN TO THE COMMUNITY FOR TWO WEEKS OF PUBLIC EXHIBITION IN MAY 2016.**
- 2. PRESENT THE DRAFT LEONGATHA STREETScape MASTER PLAN ALONG WITH ILLUSTRATIONS AND ADDITIONAL DESIGN DETAIL REGARDING:**
 - a. WEATHER PROTECTION**
 - b. SIGNAGE**
 - c. TOWN ENTRY ELEMENTS**
 - d. MATERIALS OF CONSTRUCTION**
 - e. ARTWORK**
- 3. INVESTIGATE THE PROVISION OF ADDITIONAL CAR PARKING AT 23 SMITH STREET, LEONGATHA AND, REINSTATEMENT OF A PEDESTRIAN LINK AS PART OF THE LEONGATHA RAILYARDS PRECINCT PROJECT.**

Cr Fawcett left the Council Meeting at 3.44pm and returned at 3.46pm.

Cr Brunt left the Council Meeting at 3.44pm and returned at 3.46pm.

Cr Hill left the Council Meeting at 3.45pm and returned at 3.47pm.

CARRIED UNANIMOUSLY

Attachment 1 Revitalisation Options A, B and C



Attachment 2 Draft Master Plan



E.2 PLANNING APPLICATION 2015-280 FOR USE AND DEVELOPMENT OF A PLACE OF ASSEMBLY (MEMORIAL TREE PARK) AT 16 MILES ROAD JUMBUNNA (BEING CA 39H PARISH OF JUMBUNNA EAST AND L1 TP853074X PARISH OF JUMBUNNA EAST)

Development Services Directorate

STAFF DISCLOSURE OF INTEREST

Nil

EXECUTIVE SUMMARY

The application is to use and develop land in the Farming zone for a Place of Assembly (Memorial Tree Park) for interment of cremated human ashes beneath flowering native trees.

Fifteen (15) submissions were received in relation to the application. Of these, 14 were objections and 1 was a letter of support. Of the objections, one was a petition with 30 signatories.

Objections to the proposal are based on the incompatibility of the proposed use with established uses in the local area and in particular, the potential for loss of amenity to nearby dwellings.

Submissions in support of the proposal refer to the need for such a facility as an alternative form of commemoration within the community.

The application is recommended for refusal for the following reasons:

- The proposal is inconsistent with State and Local policies to protect rural land from unanticipated development.
- The proposed development will lead to the permanent removal of land from agricultural production.
- The proposal will detract from the amenity of adjoining residents
- Loss of amenity is not able to be reduced by conditions on a planning permit.
- The proposal does not demonstrate provision for adequate on-site car parking.

Document/s pertaining to this Council Report

- **Attachment 1** - Locality Plan
- **Attachment 2** - Local Area Maps
- **Attachment 3** - Zone and Overlays

- **Attachment 4** - Proposed Site Plan
- **Attachment 5** - Site Photos
- **Attachment 6** - Farming Zone Decision Guidelines
- **Attachment 7** - Summary of Submissions
- **Confidential Appendix 1** - Copy of Submissions

A copy of **Confidential Appendix 1** has been distributed separately to Councillors and the Executive Leadership Team.

LEGISLATIVE / ACTION PLANS / STRATEGIES / POLICIES

Planning and Environment Act (1987) "the Act"

INTERNAL POLICIES / STRATEGIES / DOCUMENTS

South Gippsland Planning Scheme

COUNCIL PLAN

Outcome:	3.0	Integrated services and infrastructure
Objective:	3.1	Deliver affordable modern community services and facilities through an integrated approach to planning and infrastructure development.
Strategy:	3.1.5	We will encourage sustainable development that promotes the health, well-being and unique character of the community.

CONSULTATION

The application was referred and notified in accordance with section 52 and 55 of the Act.

Notice of the application was sent to landowners and residents adjoining the site. The application was also available for the public to view at Council's office in Leongatha.

Fifteen written submissions to the application were received. Of these, 14 were objections, including a petition containing 30 signatures and one was a letter of support.

The application was referred to West Gippsland Catchment Management Authority for advice regarding works near a waterway.

REPORT

Background

The subject land is 16 Miles Road Jumbunna and comprises 2 lots (being CA 39H Parish of Jumbunna East and L1 TP853074X Parish of Jumbunna East).

The land is approximately 8.4 hectares in area and is currently developed with a single storey dwelling and shed. The land has been previously cleared of native vegetation and developed as grazing pasture. There are two existing dams on the property.

The land is undulating and the subject site is generally elevated above the level of Andersons Inlet Road.

Access to the land is from an existing driveway from Miles Road. Miles Road is an unsealed Council road that connects with Andersons Inlet Road. The land is approximately 9 kilometres from the South Gippsland Highway and 2 kilometres from Korumburra Wonthaggi Road.

Within a 500m radius of the site there are 8 dwellings on rural living sized lots (around 8 hectares). The majority of the land in the local area is maintained for grazing pasture and hay production.

Refer Attachment 1 – Locality Plan

Refer Attachment 2 – Local Area Maps

Refer Attachment 3 – Zone and Overlays

Proposal

The application proposes the staged development of a Place of Assembly (Memorial Tree Park) on the land.

It is proposed that following a funeral service and cremation, ashes of deceased people will be brought to the subject land for burial beneath a tree on the land. People will be able to select from a list, the type of tree they wish to be planted with the ashes. Most trees are flowering, native trees that will be planted as semi-mature plants (with heights of up to 2 metres). The site will be prepared by Memorial Tree Park staff ready for planting. After the tree is planted, a brass plaque carrying the name of the deceased will be placed at the foot of the tree.

The South Gippsland Planning Scheme does not contain a land use definition that specifically describes the proposed use and development of the land.

The proposal is not a cemetery, which is defined in the Planning Scheme as land used to dispose of human remains by burial. It is not a crematorium, which is land used to cremate human remains.

In this case, no bodily human remains or body parts are intended to be interred on the land. Bodily remains are defined in the Cemeteries and Crematoria Act 2003 as a corpse of a human being, including a corpse or a still born child, but does not include (a) body parts; or (b) cremated human remains. Body parts is defined to mean human tissue or a part of a person where that tissue or part is not part of a corpse and includes foetal remains which are not a still born child.

The proposal is not a funeral parlour, which is defined in the Planning Scheme as land used to organise and conduct funerals, memorial services or the like. It includes the storage and preparation of bodies for burial or cremation.

The applicant has submitted that because the proposal involves planting trees, no planning permission is required. However, it is considered that as people who do not otherwise have any reason to visit the land, will be able to visit the land and to gather for religious and cultural activities (burial services), the land use definition that is most appropriate for the proposal is Place of Assembly, which is defined in the Planning Scheme as land where people congregate for religious or cultural activities, entertainment or meetings. This is a use that requires a planning permit in the Farming Zone.

The proposal is not a public cemetery operated in accordance with the Cemeteries and Crematoria Act 2003. The land is private land and it is proposed that a private trust arrangement be put in place to ensure the longevity of the proposal. The Trust would have trustees appointed to take over management duties of both financial and physical upkeep of the park.

Stage 1 of the proposal provides for up to 100 memorial trees to be planted to commemorate deceased people. The applicant intends Stage 1 to test the market. If there is sufficient demand, Stages 2 and 3 may be developed.

Stage 2 would provide for an additional 1500 memorial trees and Stage 3 would provide for planting of a further 3000 memorial trees. In total, the proposed Memorial Park would accommodate 4600 memorial trees.

On-site parking for 8 cars and portable toilets would be provided near the existing dwelling and shed for Stage 1. It is proposed that a larger parking area (with space for up to 20 cars) and permanent toilets would be established for Stage 2 and 3.

In addition to the memorial trees, landscaped gardens would be established within the site to provide screening and separation within the site. Gravel walking paths will be constructed to provide pedestrian access throughout the park.

The park would be open from 9am to 5pm, seven days a week. People would be able to visit the memorial tree at any time during those hours. No formal funerals or memorial services would be permitted in the park.

Three (3) staff would be in attendance on the site during opening hours to maintain all trees and gardens in good condition. Water would be drawn from the dam if required via a pump and spray system. All dead and diseased plants would be disposed of.

Refer Attachment 4 – Proposed Site Plan

Refer Attachment 5 – Site Photos

Discussion

PLANNING SCHEME PROVISIONS

State planning policies

Policy	Policy
<p>13.03-2 Erosion and landslip</p> <p>Objective To protect areas prone to erosion, landslip or other land degradation processes.</p>	<p>18.02-4 Management of the road system</p> <p>Objective To manage the road system to achieve integration, choice and balance by developing an efficient and safe network and making the most of existing infrastructure.</p>
<p>13.04-1 Noise abatement</p> <p>Objective To assist the control of noise effects on sensitive land uses.</p>	<p>18.02-5 Car parking</p> <p>Objective To ensure an adequate supply of car parking that is appropriately designed and located.</p>
<p>14.01-1 Protection of agricultural land</p> <p>Objective To protect productive farmland which is of strategic significance in the local or regional context.</p>	<p>19.02-4 Distribution of social and cultural infrastructure</p> <p>Objective To provide fairer distribution of and access to of social and cultural infrastructure</p>
<p>14.01-2 Sustainable agricultural land use</p> <p>Objective To encourage sustainable agricultural land use.</p>	<p>19.03-2 Water supply, sewerage and drainage</p> <p>Objective To plan for the provision of water supply, sewerage and drainage services that efficiently and effectively meet State and community needs and protect the environment.</p>

Policy	Policy
<p>15.01-5 Cultural identity and neighbourhood character</p> <p>Objective To recognise and protect cultural identity, neighbourhood character and sense of place.</p>	<p>19.03-3 Stormwater</p> <p>Objective To reduce the impact of stormwater on bays and catchments.</p>
<p>17.01-1 Business</p> <p>Objective To encourage development which meet the communities' needs for retail, entertainment, office and other commercial services and provides net community benefit in relation to accessibility, efficient infrastructure use and the aggregation and sustainability of commercial facilities.</p>	

The proposal is consistent with State Planning Policies to support local business and to provide a range of cultural and social infrastructure to provide for community needs. However the proposal is not considered to be consistent with policies to protect agricultural land; reduce noise impacts on sensitive uses; protect neighbourhood character; and to provide on-site parking and manage impacts on the public road system.

Local planning policies

Policy	Policy
<p>21.06-2 Coastal and hinterland landscapes</p> <p>Objective 3 To ensure that hinterland development between settlements responds appropriately to the landscape setting and character</p>	<p>21.11-3 Office and commercial use</p> <p>Objective 1 To encourage businesses which generate employment opportunities and provide goods and services to meet the needs of the community</p>
<p>21.07-2 Land and catchment management</p> <p>Objective 1 To achieve a measurable improvement in the health of the Shire's land and water resources</p>	<p>21.12-1 Transport</p> <p>Objective 1 To maintain a safe and efficient road network across the Shire</p>
<p>21.08-1 Agriculture</p> <p>Objective 1 To maintain a viable and</p>	<p>21.12-1 Waste management and stormwater drainage</p>

sustainable agricultural industry as the corner stone to the Shire's economy and its future wellbeing	Objective 3 To implement stormwater drainage standards that minimises impacts on the environment
21.11-2 Technology and service industry Objective 1 To encourage the location of service industries in towns to support	21.14-1 Community wellbeing Objective 1 To provide a range of services and facilities that meet the needs of a diverse community, including youth, families and older persons

The proposal is considered to be consistent with local planning policies that support commercial and services industry development and the provision of a range of services that contribute to community wellbeing. The proposal is also able to comply with local policies in relation to stormwater drainage and catchment management. However in this case it is considered the proposal is not consistent with local policies to protect rural character and agricultural land and to maintain a safe and efficient road network across the Shire.

Farming Zone

The use of the land for Place of Assembly requires a planning permit in the Farming Zone. Relevant planning scheme decision guidelines are discussed in more detail in **Attachment 6** - Farming Zone Decision Guidelines.

It is considered a Place of Assembly (Memorial Tree Park) may sometimes be a suitable use in the Farming Zone, as the proposal is an extensive use of land that is not suited to more urban environments. However the particular site constraints in this proposal are considered to weigh against the proposal.

In addition, the proposal would permanently remove land from agricultural production and this is not supported without significant justification. In the case of the proposed Memorial Tree Park, it is not considered there is sufficient justification.

Refer Attachment 6 – Farming Zone Decision Guidelines

Environmental Significance Overlay

The proposal would require earthworks to construct paths and parking areas around the property. Some cut and fill would be required to ensure paths met disabled access standards. The extent of cut and fill is not expected to result in significant landslip or erosion risk provided works are undertaken in accordance with appropriate standards.

Public Submissions

A detailed list of issues raised in public submissions is discussed at **Attachment 7** - Summary of Submissions.

Key issues raised by objectors are the amenity impacts on neighbouring properties from noise, traffic and visual intrusion. It is considered that these impacts are not able to be adequately managed by permit conditions.

Issues raised in support of the proposal recognise there may be a need for the proposed facility in the community. While this sentiment is supported, it is considered the subject land does not provide a suitable location for a Memorial Park due to its close proximity to existing dwellings.

Refer Attachment 7 – Summary of Submissions

RISKS

Financial and other risks to consider when assessing the proposal include:

- Determining the appropriate mechanism for securing the land use and land management in perpetuity. It is reasonable for friends and family of the deceased to expect perpetual access to the land to pay their periodic respects. Should the proposed trust arrangement fail or the property is sold, Council may be lobbied to undertake future management of the land. This must be addressed to Council's satisfaction before the application could be supported.
- Determining appropriate planning permit conditions. If Council is of a view to support the application, it is incumbent on Council to protect the local amenity by applying appropriate planning permit conditions. The most logical way would be to limit the number of persons accessing the site at any one time. Due to the nature of the proposal it is impossible to predict the likely patronage and it would be highly insensitive to direct persons away from the site who have travelled to pay their respects.
- Costs associated with the enforcement of permit conditions to limit the number of people on the site, manage noise levels, control parking and other amenity concerns.

CONCLUSION

While the concept of a Memorial Tree Park has broad support in the Farming Zone and by some State and Local Planning Policies, the particular circumstances of the subject land are expected to result in negative amenity impacts on neighbouring dwellings that cannot be managed or reduced by permit conditions.

There are at least 8 dwellings on smaller rural residential style lots within 500 metres of the subject land. The rolling topography of the local area means many of these dwellings have views over the site. It is considered that such a closely settled farming area is not ideally suited to the proposal due to the proximity of dwellings to an activity that will likely have an adverse impact on amenity and be distressing to some.

It is considered that adjoining and nearby residents have a reasonable expectation that the surrounding land will be used and developed for farming and agricultural industries. The impacts on amenity that arise from a Place of Assembly are significantly different and are not able to be easily managed on the site. The site does not have convenient access to major roads, and does not provide good visual and acoustic separation to neighbours. The proposal is therefore considered an inappropriate use of the subject land.

The permanent loss of Farming zoned land is also not supported without significant justification. As the subject land is currently used for limited farming activities and the proposal will prevent future agricultural use of the land, further justification of the merits of the proposal are considered necessary. It is considered that although there may be interest for the type of facility proposed, the subject land is not particularly suited to the proposal to the extent that the change of use from farming is necessitated.

RECOMMENDATION

That Council issue a Notice of Refusal to Grant a Permit for application 2015/280 for the use and development of a Place of Assembly (Memorial Tree Park) at 16 Miles Road Jumbunna (L2 PS66436 Parish of Jumbunna East and CA39H Parish of Jumbunna East) on the following grounds:

1. The development of a Memorial Tree Park on the lot would be inconsistent with State and Local policies, which aim to protect rural land from unanticipated development.
2. The proposed development will lead to the permanent removal of land from agricultural production.
3. The proposed use and development will detract from the amenity of adjoining residents by loss of visual and acoustic privacy and negative perceptions of the proposed use.
4. Impacts associated with loss of amenity are not able to be adequately reduced by conditions on a planning permit.
5. The proposal does not demonstrate provision for adequate on-site car parking.

MOVED: Cr Kennedy

SECONDED: Cr Brunt

THAT COUNCIL ISSUE A NOTICE OF REFUSAL TO GRANT A PERMIT FOR APPLICATION 2015/280 FOR THE USE AND DEVELOPMENT OF A PLACE OF ASSEMBLY (MEMORIAL TREE PARK) AT 16 MILES ROAD JUMBUNNA (L2 PS66436 PARISH OF JUMBUNNA EAST AND CA39H PARISH OF JUMBUNNA EAST) ON THE FOLLOWING GROUNDS:

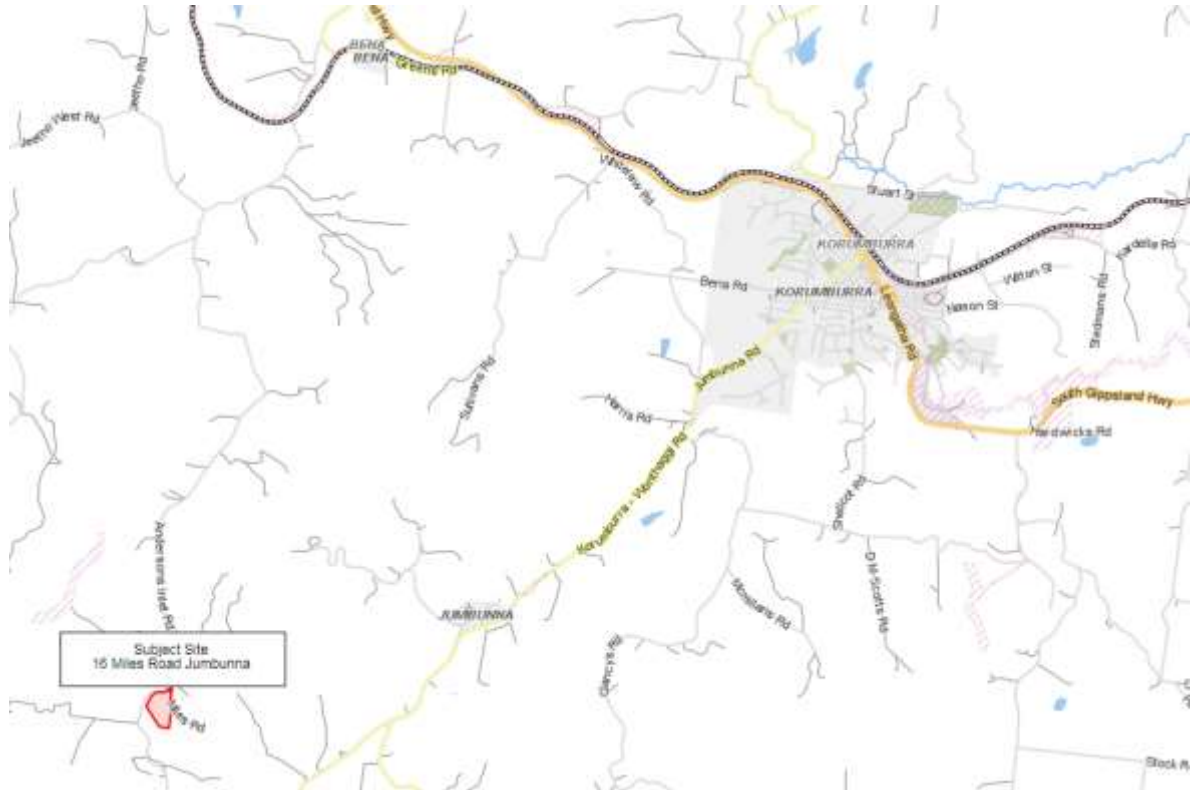
- 1. THE DEVELOPMENT OF A MEMORIAL TREE PARK ON THE LOT WOULD BE INCONSISTENT WITH STATE AND LOCAL POLICIES, WHICH AIM TO PROTECT RURAL LAND FROM UNANTICIPATED DEVELOPMENT.**
- 2. THE PROPOSED DEVELOPMENT WILL LEAD TO THE PERMANENT REMOVAL OF LAND FROM AGRICULTURAL PRODUCTION.**
- 3. THE PROPOSED USE AND DEVELOPMENT WILL DETRACT FROM THE AMENITY OF ADJOINING RESIDENTS BY LOSS OF VISUAL AND ACOUSTIC PRIVACY AND NEGATIVE PERCEPTIONS OF THE PROPOSED USE.**
- 4. IMPACTS ASSOCIATED WITH LOSS OF AMENITY ARE NOT ABLE TO BE ADEQUATELY REDUCED BY CONDITIONS ON A PLANNING PERMIT.**
- 5. THE PROPOSAL DOES NOT DEMONSTRATE PROVISION FOR ADEQUATE ON-SITE CAR PARKING.**

CARRIED

For: Crs Fawcett, Kennedy, Brunt, Davies, McEwen, Hill and Hutchinson-Brooks.

Against: Cr Newton

Attachment 1 Locality Plan



Attachment 2 Local Area Maps



Aerial Photo of Local Area



Attachment 3 Zone and Overlays

ZONE: FARMING (FZ)



PLANNING OVERLAY: ENVIRONMENTAL SIGNIFICANCE OVERLAY SCHEDULE 5 (AREAS SUSCEPTIBLE TO EROSION)



Attachment 4 Proposed Site Plan



**Attachment 5
Site Photos**

View from Stage 1 of the Memorial Tree Park, looking north towards Miles Road



**Attachment 5
Site Photos**

View towards Stage 1 of the Memorial Tree Park, from the existing driveway



View over Stages 2 and 3 from Stage 1



**Attachment 5
Site Photos**

View towards neighbours dwelling at 20 Miles Road from within Stage 1



**Attachment 6
Farming Zone Decision Guidelines**

Clause 35.07 Farming Zone Decision Guidelines

Decision Guideline	Response
The State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.	The proposal is not considered consistent with State and Local Planning Policies to protect agricultural land.
Any Regional Catchment Strategy and associated plan applying to the land.	NA
The capability of the land to accommodate the proposed use or development, including the disposal of effluent.	<p>The land has sufficient area to accommodate on-site parking and on-site effluent disposal for Stage 1 of the proposal. Stage 1 requires 23 car spaces and portable toilets (with no permanent on-site septic system) are proposed.</p> <p>However, as the plans do not demonstrate provision for the estimated on-site parking requirement of 68 spaces, it has not been possible to assess whether the site has sufficient area to accommodate the required amount of parking and on-site effluent disposal area needed for Stages 2 and 3 of the proposal.</p> <p>The land has access to a public road. The land has sufficient area for collection of water for the existing dwelling and proposed memorial park.</p> <p>The land is connected to electricity. The land has 2 dams suitable for providing water for plant growth and maintenance.</p>
How the use or development relates to sustainable land management.	Planting of trees may contribute to sustainable land management.
Whether the site is suitable for the use or development and whether the proposal is compatible with adjoining and nearby land uses.	<p>The site is not considered suitable for the proposed use and development of a Memorial Tree Park.</p> <p>The application does not demonstrate</p>

Decision Guideline	Response
	<p>provision for the estimated amount of car parking. It is considered that the local area does not have capacity with the existing road network to accommodate overflow parking outside of the site. Road reserves in Miles Road and Andersons Inlet Road are not suitable for parking within the road reserve and there are no options such as public transport that may be available in more urban areas.</p> <p>The surrounding land is developed for a range of purposes, including dwellings, extensive grazing and tourism. It is considered the proposal is not compatible with the existing rural residential development that is within relatively close proximity to the land as the proposal does not demonstrate adequate visual and acoustic screening to adjoining and nearby dwellings. A number of dwellings have views towards and over the site that would not be screened by proposed plantings within the site.</p>
<p>How the use and development makes use of existing infrastructure and services.</p>	<p>The proposal utilises the existing road network and the existing driveway on the subject land for access. The land is connected to existing power and telecommunications services. There is no reticulated water or sewerage.</p>
<p>Agricultural issues and the impacts from non-agricultural uses</p>	
<p>Whether the use or development will support and enhance agricultural production.</p>	<p>The land is currently used for limited agricultural production, with some cattle grazing and hay cutting.</p> <p>The proposal is not an agricultural use and would permanently remove land from agricultural production by progressive planting of the proposed Memorial Park. Memorial planting</p>
<p>Whether the use or development will adversely affect soil quality or permanently remove land from agricultural production.</p>	<p>The proposal would not adversely affect soil quality. The proposal would permanently remove land from agricultural production by the planting of</p>

Decision Guideline	Response
	memorial trees and ashes that are intended to be protected from removal by a Trust agreement.
The potential for the use or development to limit the operation and expansion of adjoining and nearby agricultural uses.	The proposal is not expected to significantly affect adjoining and nearby agriculture provided the scale of activity is limited to tree planting, with conditions limiting placement of flowers and other tributes on the land (which may blow onto neighbouring farms and disrupt farming activities).
The capacity of the site to sustain the agricultural use.	NA
The agricultural qualities of the land, such as soil quality, access to water and access to rural infrastructure.	Swan and Volum's agricultural quality assessment of land in South Gippsland indicates the area is within Category 3A which has limited versatility with environmental constraints. The land has some existing dams. The land adjoins two roads (Miles Road and Andersons Inlet Road). The land has an area of 8ha and is currently used for hay cutting and cattle grazing.
Any integrated land management plan prepared for the site.	NA
Environmental issues	
The impact of the proposal on the natural physical features and resources of the area, in particular on soil and water quality.	The proposal is not expected to have a negative impact on soil and water quality. The extent of earthworks required to construct pathways is not likely to result in soil erosion or landslip, subject to appropriate standards of construction being implemented on site.
The impact of the use or development on the flora and fauna on the site and its surrounds.	The proposal would not have a significant impact on the flora and fauna of the area. There are no known species of significance on the land and no native vegetation needs to be removed to establish the Memorial Park.

Decision Guideline	Response
<p>The need to protect and enhance the biodiversity of the area, including the retention of vegetation and faunal habitat and the need to revegetate land including riparian buffers along waterways, gullies, ridgelines, property boundaries and saline discharge and recharge area.</p>	<p>The planting of native trees would generally be expected to improve soil and water quality on the land. It is noted however that the proposal is for a limited range of species, which are not necessarily appropriate to the Ecological Vegetation Class (EVC) of the area.</p> <p>However, as the purpose of the tree planting is not to recreate a natural environment and most closely resembles a private garden (over which no planning controls apply) the range of species is considered appropriate. No weed species are proposed and this could reasonably be enforced as a condition on any planning permit.</p> <p>It is considered reasonable to require supplementary screen plantings to utilise species from the local EVC, which is Damp Forest.</p>
<p>The location of on-site effluent disposal areas to minimise the impact of nutrient loads on waterways and native vegetation.</p>	<p>The land is expected to have sufficient area to accommodate on-site effluent disposal in accordance with appropriate standards, due to the overall size of the land (8ha). However, the location of the effluent disposal system for the proposed toilets for Stages 2 and 3 of the proposal has not been demonstrated on the application and the impact of providing additional on-site car parking on the area available for effluent disposal has not been addressed.</p>
<p>Design and siting issues</p>	
<p>The need to locate buildings in one area to avoid any adverse impacts on surrounding agricultural uses and to minimise the loss of productive agricultural land.</p>	<p>No significant buildings are proposed. The proposed toilets are likely to comprise a relatively small building. It is considered reasonable to require the toilets to be setback from nearby roads and screened from view of the road in order to maintain the open rural character of the area.</p> <p>The location of Stage 1 memorial plantings close to the existing dwelling</p>

Decision Guideline	Response
	<p>at 20 Miles Road raises amenity impacts from noise that are not able to be adequately addressed by conditions on a planning permit.</p> <p>The location of Stage 3 memorial plantings uphill of the existing dwelling at 190 Andersons Inlet Road raises amenity impacts from noise and overlooking that are not able to be adequately addressed by conditions on a planning permit without significantly limiting the extent of the proposed Memorial Park.</p> <p>The proposal utilises the majority of the 8ha site for proposed memorial tree plantings and associated car parking. The proposal does not seek to retain land for agricultural purposes.</p> <p>Subject to conditions on any planning permit to prohibit placement of flowers and other items on memorial trees in order to prevent them blowing onto neighbouring land, the proposal is not expected to significantly affect agricultural activity on surrounding land.</p>
<p>The impact of the siting, design, height, bulk, colours and materials to be used, on the natural environment, major roads, vistas and water features and the measures to be undertaken to minimise any adverse impacts.</p>	<p>The planting of trees on the land will change the current open character of the local area however this is not expected to detract from the amenity of the area. There are existing forested slopes visible from the subject land.</p>
<p>The impact on the character and appearance of the area or features of architectural, historic or scientific significance or of natural scenic beauty or importance.</p>	<p>There are no features of architectural, historic or scientific significance on the land or in the immediate vicinity of the site.</p> <p>The area has scenic beauty as part of a wider rural landscape that includes open paddocks, windbreak planting, wood lots and scattered dwellings and farm infrastructure.</p> <p>The proposal will not significantly detract</p>

Decision Guideline	Response
	<p>from the character or beauty of the area, as it comprises predominantly tree planting and landscaping works.</p>
<p>The location and design of existing and proposed infrastructure including roads, gas, water, drainage, telecommunications and sewerage facilities.</p>	<p>The land is already connected to telecommunications and power facilities. There is no reticulated water or sewerage available to the land.</p> <p>The interim use of temporary toilets for Stage 1 is proposed. Permanent toilets associated with Stages 2 and 3 would need to be connected to on-site effluent disposal facilities in accordance with appropriate standards. The submitted plans do not demonstrate the location of on-site effluent disposal areas for the proposed toilets and so it is not possible to confirm the proposal meets appropriate standards.</p>
<p>Whether the use and development will require traffic management measures.</p>	<p>It is difficult to estimate the amount of traffic likely to be generated by the proposal.</p> <p>The number of people who would attend the initial tree planting will vary. In addition, it would be expected that from time to time people would return to the site to remember their loved one/s.</p> <p>However, having regard to the amount of parking generated by a similar land use (cemetery) it is considered that the amount of parking proposed on the site (28 spaces) may not to be adequate to cater for parking demand at peak times (special days and/or larger family group gatherings). It is considered that additional on-site parking would be needed to accommodate the amount of parking likely to be needed for the majority of tree planting occasions and for returning visitors. However, it is also expected that from time to time, additional parking would be required, for particularly large gatherings. The application does not demonstrate how</p>

Decision Guideline	Response
	<p>this additional parking would be accommodated within the site.</p> <p>Due to the nature of Mile Road and Andersons Inlet Road, there is limited opportunity for safe and convenient overflow parking with the road reserve and it is considered that on those occasions when the parking could not be accommodated within the site it would affect traffic flow along both roads.</p>

**Attachment 7
Summary of Submissions**

Submissions of Objection	Response
<p>There is no demonstrated need for a facility of this type in the local area. There is vacant space in existing cemeteries, including in Korumburra. The Memorial Park will not benefit anyone in the local area.</p>	<p>Whether or not there is a need for the proposal on this land is not a relevant matter for consideration under the provisions of the Planning Scheme.</p> <p>State and Local Planning policies seek to provide for a range of social and communities facilities and the proposal is considered consistent with these policies as it will provide a service to those people who wish to commemorate their loved ones by planting a tree rather than the more traditional headstone and memorial plaques offered by cemeteries.</p>
<p>Local roads (Anderson Inlet Road and Miles Road) are not suitable for the amount of traffic generated by the proposal especially at special times such as Mother's Day, Father's Day, birthdays, Christmas etc; Concern about the intersection of Miles Road and neighbours driveways which are on a bend with limited sight distance; Concern about intersections at both ends of Anderson Inlet Road, which are dangerous; No option for alternative access to the site from Andersons Inlet Road; Access for fire and emergency services would be difficult.</p>	<p>Council's Engineering Department has reviewed the proposal and recommends works in Miles Road to accommodate the proposal. Works would be staged as follows:</p> <p>Prior to Stage 1 - construct an all-weather turning area at the end of Miles Road.</p> <p>Prior to Stage 2 - provide road pavement and shoulders for the full length of Miles Road to ensure adequate width for vehicles to pass.</p> <p>Prior to Stage 3 - provide a bituminous seal from Andersons Inlet Road to the proposed Stage 3 entrance, of adequate width for vehicles to pass.</p> <p>Council's Engineering Department have noted that the intersection of Miles Road and Andersons Inlet Road has adequate sight distance for the volume of traffic expected to be generated for the first stage of the proposal.</p> <p>Council's Engineering Department has acknowledged that it is difficult to predict the volume of traffic likely to be generated by Stages 2 and 3 of the proposal.</p>

Submissions of Objection	Response
<p>Need for on-site car parking.</p>	<p>The proposal includes provision for on-site parking for 8 cars for Stage 1, with an area for Stage 2 and 3 that is large enough for approximately 20 cars.</p> <p>The Planning Scheme does not specify the amount of on-site parking needed for a Memorial Tree Park. The parking requirement for a Place of Assembly is based on the number of people who can use the facility. In this case, the number of people who will use the site is highly variable.</p> <p>While it is possible to limit the number of tree plantings that occur on a daily or weekly basis by conditions on a planning permit, it is not considered reasonable to limit the number of people who may attend tree plantings or who may choose to re-visit the land after the tree is planted. Who will tell a grieving family that they cannot attend the site?</p> <p>Parking demand for a similar land use (a cemetery) was calculated and reported in a VCAT decision: Andersons Creek Cemetery in Manningham Shire 2005. A parking and traffic study undertaken for the proposed cemetery extension for 1050 graves found that parking demand for people attending burial services at the cemetery varied between 8 and 180 spaces. The parking demand for the majority of burial services did not exceed 52 spaces. Average parking demand was 18 spaces, with an 85th percentile parking demand of 22 spaces.</p> <p>Visitor parking to established graves in cemetery was additional to these amounts and for 1050 graves was estimated to be 10 car spaces.</p> <p>Based on this study the amount of parking proposed on the site is not considered adequate for all 3 stages of the proposed Memorial Tree Park.</p>

Submissions of Objection	Response
	<p>It is considered the following parking requirements should be provided:</p> <p>Stage 1: 22 spaces (for people attending tree planting/burials) plus 1 visitor parking space (1 space/100 trees) = 23 spaces</p> <p>Stage 2: 15 visitor spaces (10 spaces/1000 trees) plus 23 stage 1 spaces = 38 spaces</p> <p>Stage 3: 30 visitor spaces (10 spaces /1000 trees) plus 38 stage 1 and 2 spaces = 68 spaces total for full site development of 4600 Memorial trees.</p> <p>The submitted plans proposed significantly less parking than this example. Being in a rural area the proposal may not generate the number of burial services per year as Andersons Road Cemetery, however the number of people attending burial services is not expected to be significantly lower. Being a rural area, there is no public transport and people will rely on private cars to access the site.</p> <p>It is considered unrealistic to require provision for the maximum number of spaces possible. However, it is also noted that it is possible for larger numbers of people to attend the site.</p> <p>While there may be sufficient land within the subject site to accommodate overflow parking needs, the applicant has not demonstrated how larger numbers of vehicles would be managed on the site.</p> <p>As there is limited capacity in the adjoining road network to accommodate overflow parking from the site, occasional large burial events may contribute to traffic management issues and this is not supported.</p>

Submissions of Objection	Response
<p>The proposed Memorial Tree Park is incompatible with adjoining and nearby land uses. Memorial park is out of character in the community, against the spirit and amenity of Moyarra, which is a farming community and lifestyle</p>	<p>The surrounding area has been used and developed for farming and rural residential activities. An agricultural based tourism enterprise (Prom Country Cheese) is also present in the wider area.</p> <p>The proposed Memorial Tree Park is an extensive land use that may not be suited to an urban environment, due to the large land area required. It is considered that the proposal may be suitable use in an appropriate location in the Farming Zone. However, in this case there are at least 8 dwellings on smaller rural residential style lots within 500 metres of the subject land. The rolling topography means many of these dwellings have views over the site.</p> <p>It is considered a closely settled farming area is not ideally suited to the proposal due to the proximity of dwellings to an activity that can be distressing to some.</p> <p>Adjoining and nearby residents have a reasonable expectation that the surrounding land will be used and developed for farming and agricultural industries.</p> <p>The site does not have convenient access to major roads, and does not provide good visual and acoustic separation to neighbours.</p>
<p>The proposal is an inappropriate use of prime farming land.</p>	<p>The land is not considered prime farming land, having an area of only 8ha. The subject land is classified by Swan and Volum in their Assessment of Agricultural Quality of Land in South Gippsland as Class 3A, which is land of limited versatility. However, it is noted the land is currently used for hay cutting and grazing, as is much of the surrounding land.</p> <p>The proposal to permanently remove</p>

Submissions of Objection	Response
	<p>this land from agricultural use is not supported by State and Local Planning Policies without significant justification.</p> <p>In this context, the Department of Health commissioned a study (Estimation of the remaining capacity of Victorian Cemeteries, Department of Health, January 2012) that estimated that by 2035 there would be 60,000 - 75,000 plots remaining in the South Gippsland Shire local government area and an estimated number of deaths over this time period of approximately 6800. The number of plots available in 2010 was estimated at 69,344.</p> <p>Therefore, there is not a strong case that there is a demand for additional burial facilities in the Shire that may otherwise support removal of land from agricultural production.</p>
<p>The proposal does not comply with the purpose of the Farming Zone. The proposed use is better suited to a town where the zoning is more appropriate.</p>	<p>Place of Assembly (Memorial Tree Park) is not a prohibited use in the Farming zone. A planning permit is required for the proposed use.</p> <p>There is no particular land use zone that is specifically set aside for Place of Assembly in the Planning Scheme. It is a use that is permissible in a wide range of zones, subject to a planning permit being granted.</p> <p>A town environment may not necessarily be the most appropriate zone for the proposed use due to the amount of land needed to grow the memorial trees.</p>
<p>Loss of visual privacy to adjoining properties as the proposed Memorial Tree Park will overlook existing homes. The Memorial Tree Park will be visible from adjoining properties. Regular public access will impact unreasonably on enjoyment of the area by neighbours. Large groups of people attending cemetery type events will</p>	<p>The proposed Memorial Tree Park adjoins two properties with dwellings in close proximity to the proposed tree planting areas (20 Miles Road and 190 Andersons Inlet Road).</p> <p>The submitted plans demonstrate screen planting (as distinct from Memorial Trees) will be provided as a</p>

Submissions of Objection	Response
<p>result in a loss of visual privacy on adjoining land. There are no buffers to neighbouring properties.</p>	<p>visual buffer along the property boundary adjacent the existing dwelling at 20 Miles Road Jumbunna. There is some existing vegetation along the boundary adjacent the dwelling at 190 Andersons Inlet Road, however the height of the subject land above the dwelling means that screening will have limited value in that location.</p> <p>Additional forms of screening, such as fences and mounds may be established, however may be of limited value in screening elevated views of the land.</p> <p>In addition, the proposed memorial tree park will be visible to land beyond the immediate neighbours, due to the rolling nature of the topography. A number of houses have distant views towards the site. Impacts on these properties would be expected to be less than for immediately adjoining neighbours; however such views would not be able to be screened by proposed plantings, mounds or fences. Mounds and screen fences may also change the character of the area, which traditionally has open style fencing.</p>
<p>Noise from adjoining farms will affect use of the land for a memorial park;</p>	<p>Noise associated with animals, farm machinery and farming practices occur regularly in the farming zone. However these noises are not expected to be significantly detrimental to the use of the land for a Memorial Tree Park. Noises are often intermittent and visitors to the site are not expected to remain on the land for long periods of time.</p> <p>Occasional inappropriate noise from use and occupation of the nearby dwellings may detract from the desired quiet and reflective atmosphere of a Memorial Park. Similarly, residents may feel constrained in their use of their land by awareness of activities occurring on the proposed Memorial Park and this is</p>

Submissions of Objection	Response
	<p>expected to detract from reasonable use and enjoyment of their land.</p>
<p>Adjoining properties will be affected by noise from the proposal. Large groups attending cemetery type events (noise); No buffers to neighbouring properties (noise)</p>	<p>Adjoining properties may already be affected by a range of noise sources, including animals, farm machinery and farming practices in the local area, as well as traffic noise and domestic noise associated with people living in dwellings.</p> <p>Notwithstanding, the proposed Memorial Tree Park may also be a source of noise. It is difficult to estimate the number of people who could visit the site on any particular day. It is therefore difficult to predict the volume and type of noise that may be generated. It is likely that for long periods of times the site will be quieter than the surrounding rural residential and farming lots. However, it is also possible that on occasion, the level of noise and type of noise on the land may be sufficient to detract from the amenity of neighbours.</p> <p>The type of noise that may be generated by the proposal is also unique in that the noise source is often likely to be voices. This type of noise may not travel as far in the landscape, however may have different impacts on amenity, being associated with a wide range of human emotions.</p> <p>Two dwellings (20 Miles Road and 190 Andersons Inlet Road) are very close to the subject land and it is considered that for people within these dwellings, the impact of noise of the type that may be generated within the Memorial Park may be upsetting.</p> <p>Screen planting has been proposed along the property boundary to 20 Miles Road Jumbunna. However, it is considered screen planting will not sufficiently reduce noise transmission between the different land uses.</p>

Submissions of Objection	Response
	<p>No screen planting is proposed at 190 Andersons Inlet Road.</p> <p>Additional noise buffers such as solid fencing and earth mounds may be considered, however as the existing dwelling at 190 Andersons Inlet Road is below the level of the proposed Memorial Tree Park, the effectiveness of this sort of buffer will be reduced.</p> <p>It is also considered that solid noise buffers may appear out of character with the open rural nature of the area that is currently enjoyed by surrounding residents.</p> <p>It is not considered realistic to limit the number of people able to be present in the Memorial Park through conditions on a planning permit. The number of people will be highly variable and as people visiting the site are likely to be in various stages of grieving, attempting to limit their access to the land may create further disturbance in the area that would add to everyone's discomfort.</p>
<p>Land is not suitable for the proposal, being too wet and too steep to maintain or develop, Land is unable to be meet disability access requirements; No water, sewerage or garbage collection service on the land</p>	<p>The land is not considered to be too wet and steep for development of a Memorial Tree Park. However, parts of the land are likely to be inaccessible to disabled people without earthworks being undertaken to create suitable pathways.</p> <p>Although the land is not connected to reticulated water and sewerage, it is expected there is sufficient area on the land to provide on-site effluent disposal, water storage and garbage storage (for removal off -site), due to the size of the land.</p>
<p>The proposal is a commercial operation.</p>	<p>In itself this is not a relevant matter for consideration in the Planning Scheme.</p> <p>The Planning Scheme supports</p>

Submissions of Objection	Response
	development of new businesses within the Shire.
<p>What arrangements will be in place to ensure that the property will be well maintained in both the short and long term and into perpetuity; Local community has no interest in operating a Trust for on-going management of the facility</p>	<p>The applicant has advised a private Trust would be established to ensure the on-going management of the Memorial Tree Park.</p> <p>The legal mechanism for tying the trust to the land has not been explained in the application.</p> <p>Council can require it be a condition of any planning permit for the owner of the land to enter into a section 173 agreement with Council to ensure the land is used as a Memorial Tree Park.</p> <p>However, this places responsibility on Council to ensure the on-going enforcement of the agreement. It is not clear whether it also imposes some responsibility on Council to ensure people have access to the land if the land is sold.</p> <p>Due to the large number of available burial sites in the Shire, Council does not have clear need to be involved in the provision of cemetery services and adopting this role by default though a planning permit condition is not supported.</p>
<p>Land use may extend to other death related activities such as funeral services and an actual cemetery.</p>	<p>The application proposes that funeral and cremation services would be held off site. Ashes of the deceased would then be brought to the land for burial beneath a tree.</p> <p>No burials or cremation activities are proposed and separate planning permission and approvals under the Cemeteries and Crematoria Act 2003 would be required before the land could be used as a cemetery or as a crematorium.</p> <p>Although the application states that no</p>

Submissions of Objection	Response
	<p>funerals will be held on the land, it is not clear how this would be managed or enforced. Funeral is not a defined land use term in the Planning Scheme, and the common dictionary definition of funeral is:</p> <p><i>A ceremony or service held shortly after a person's death, usually including the person's burial or cremation.</i></p> <p>While it is possible to include planning permit conditions to prevent the use of the land as a cemetery or crematoria (as they are specific land uses and controlled by other legislation), it is not clear how either a planning permit or the applicant would be able to prevent the use of the land for funeral services. The act of burying the ashes is a ceremony. The type of ceremony may vary between individuals, however it is expected to be highly likely that the burial of ashes on the land will be accompanied by a gathering of people and a variety of ceremonial acts, such as saying a prayer, reciting a poem, singing a song, saying a few words.</p> <p>It is considered that this aspect of the proposed use may make some people uncomfortable if they are privy to the proceedings (by overlooking and overhearing) on a regular basis.</p>
<p>People will be affected by having a permanent reminder of death visible on their way past the site, to and from their homes etc.</p>	<p>The only visible works on the land will be trees, landscaping and parking areas. These features are common throughout the environment and are not expected to affect the wellbeing of people travelling past the land. Death is a natural part of the human experience and should be an accepted part of life in the community.</p> <p>However, for people living closer to the land it has been recognised that knowledge of the purpose of the land may adversely affect residential</p>

Submissions of Objection	Response
	<p>amenity. This principle has been upheld by the Supreme Court of South Australia (Payneham and Dudley Park Cemeteries Trust Inc v The Corporation of City of Enfield (No. 1) BC8800300 Unreported 5 July 1998; and by VCAT in Cheltenham and Regional Cemetery Trust v Bayside City Council [2000] VCAT 2350.</p> <p>In these cases it was held that a planning authority can take into account that amenity can be affected not only by what is smelt and seen, but by what is known to exist. It is however, only part of the assessment of amenity and other factors such as the distance from the use and nature of the use must also be considered.</p> <p>It is therefore considered reasonable for people living immediately adjacent the site, with views from their dwellings over the site and within earshot of the land, to be negatively impacted by their understanding of the use of the land as a Memorial Park.</p> <p>In this case the proposal also represents a significant change from the current land use. The land is not public land and does not have a history of public use or as a place of assembly. In particular the land has not been used as a Memorial Park or cemetery in the past and people have not been able to consider whether or not they would be affected by close proximity to such a place in deciding to purchase their land. This is in contrast to many public cemeteries that have been in existence for a long time.</p>
<p>Loss of property value to surrounding properties when the subject land becomes public land</p>	<p>This is not a relevant matter for consideration under the provisions of the Planning Scheme.</p> <p>The land is not publically owned land and it is not proposed that the land will become public land.</p>

Submissions of Objection	Response
The proposal poses a risk to the community from ashes blowing in the wind across properties and homes.	The risk to neighbouring properties from ashes is negligible, as ashes are contained before being interred. Ashes will not scattered to the wind. This could be enforced as a condition of any planning permit.
The proposal presents a security risk to animals, children and property from visitors smoking, dropping rubbish (also placing flowers, toys, photos etc) and scaring animals on adjoining properties.	The application states that no flowers or objects will be permitted to be placed on the land and this could reasonably be enforced as a condition of any planning permit.
More trees on the land will attract foxes and rabbits which will be a risk to families and stock on surrounding properties. Poisons used at the facility to maintain weeds and pests may affect health of visitors and neighbouring families and animals.	<p>The land is in a farming area where pests such as foxes and rabbits are already present. Planting trees is not expected to attract more foxes and rabbits than existing farming practices.</p> <p>Poisons used to maintain weeds and pests are also regularly used on agricultural properties throughout the area. The proposal Memorial Tree Park is not expected to pose a greater risk than existing farming activities.</p>
Proposal threatens the integrity of anyone who calls Moyarra their home and the reputation of the Moyarra area as a strong and proud community.	No information has been provided about how the proposal will threaten the integrity of the community.
What provision will be made for on-site toilets?	<p>The applicant proposes temporary/portable toilets for Stage 1 of the proposal and this is considered adequate, due to the comparatively small size of Stage 1 (100 trees). Prior to Stage 2 commencing it is proposed that permanent toilets and an on-site effluent system would be provided in accordance with appropriate standards.</p> <p>While there may be sufficient area on the site to accommodate on-site effluent for toilets, this has not been demonstrated on the plans submitted with the application.</p>

Submissions of Objection	Response
<p>Consideration needs to be given to the type of tree planted to ensure they are suitable</p>	<p>The types of trees proposed as Memorial Trees are Australian native plants. This is considered acceptable as they are not being planted for environmental values, rather more as a garden environment which is generally not controlled by planning.</p> <p>However it is considered reasonable to require that other types of planting on the land, such as the proposed screen planting, comprise species from the local Ecological Vegetation Class (EVC), which is Damp Forest.</p>
<p>Level of detail submitted with the application is inadequate to make a meaningful assessment, particularly in relation to public amenities (toilets); No operating hours have been specified</p>	<p>Hours of operation will be from 9am-5pm, seven days a week.</p> <p>Portable toilets will be provided for Stage 1 and this is considered acceptable given the relatively small number of people who may attend the site in the early stage of the parks development. It is proposed that permanent toilets would be constructed for Stages 2 and 3 of the Park.</p>
<p>Stormwater will discharge onto surrounding properties</p>	<p>The proposed tree planting and landscaping works are not expected to significantly increase the amount of stormwater run-off discharging onto surrounding properties. The proposed driveways and car parking areas will increase the rate of stormwater run-off and Councils' Engineering Department recommend that stormwater is managed within the boundaries of the site.</p>
<p>Increased light pollution at night will affect people's sleep</p>	<p>No night time use of the land is proposed. The operating hours will be from 9am to 5pm, seven days a week. A limit on the opening hours is a reasonable condition to include on a planning permit if the application was to be supported.</p>

Submission of Support	Response
Please check the addresses of people who have objected as some may live elsewhere	It is noted that a number of objectors live some distance from the subject site and may therefore not be directly affected by the proposed Memorial Park.
There are quite a few who really like the idea of a memorial park	The concept of a Memorial Park is supported by a number of state and local planning policies. However it is considered the location of the proposed Memorial Park is not suitable for the proposed use, as the proposal has the potential to have a detrimental impact on the amenity of nearby residents.

E.3 PLANNING SCHEME AMENDMENT C65 - SHINGLER STREET / GIBSON STREET - GENERAL RESIDENTIAL ZONE 1 - ADOPTION

Development Services Directorate

STAFF DISCLOSURE OF INTEREST

Nil

EXECUTIVE SUMMARY

This report recommends that Council adopt South Gippsland Planning Scheme Amendment C65 and submit the Amendment to the Minister for Planning for approval.

The Amendment proposes to rezone 12ha at 77 Gibson Street, Leongatha from Farming Zone (FZ) to General Residential Zone (GRZ1). It will also apply a Development Plan Overlay (DPO) to approximately 60 ha of land covering the rezoned area and land adjoining to the south and west which is in the same ownership. The land being rezoned is at the intersection of Gibson and Shingler Street. The DPO is to be applied to the entire area identified as 'Urban Expansion' on the western boundary of the township in the 'Leongatha Framework Plan' in the Planning Scheme. Two Environmental Significance Overlays will be removed from the land and their requirements included in the provisions of the DPO Schedule.

The Amendment was exhibited for a month, ending on 31 August 2015. There were 17 submissions received of which 12 objected to aspects of the development, focussing on subdivision design and development contributions. Council resolved at its 28 October 2015 Ordinary Council Meeting to refer the submissions to an Independent Planning Panel. The Panel Hearing was held on 5 February 2016.

The Panel Report has been received and recommends Council adopt the amendment subject to minor changes to the wording of the DPO schedule.

Document/s pertaining to this Council Report

- **Attachment 1** - Amendment C65 Subject Land - Rezoning and Development Plan Overlay areas
- **Attachment 2** - Rezoning and Development Plan Overlay maps for adoption & ESO5 and ESO6 deletion maps for adoption
- **Attachment 3** - Development Plan Overlay Schedule for adoption
- **Appendix 1** - Amendment C65 Panel Report

A copy of **Appendix 1 - Amendment C65 Panel Report** is available on Council's website: www.southgippsland.vic.gov.au or by contacting 5662 9200.

LEGISLATIVE / ACTION PLANS / STRATEGIES / POLICIES

Planning and Environment Act 1987

COUNCIL PLAN

Outcome:	3.0	Integrated Services and Infrastructure
Objective:	3.1	Deliver affordable modern community services and facilities through an integrated approach to planning and infrastructure development.
Strategy:	3.1.3	We will develop an integrated planning approach for our townships and villages, so that facilities are located in areas where they are most appropriate.

CONSULTATION

Exhibition of the amendment was undertaken in accordance with Council's normal requirements. Details of the exhibition process and the 17 submissions received are available in the 28 October 2015 Council Report, which can be viewed on Council's webpage.

REPORT

Background

In December 2012 Council resolved to seek Authorisation from the Minister for Planning to rezone the subject land General Residential Zone 1 and apply a DPO to guide the long term staged subdivision of the township's western growth boundary. The land being rezoned is at the intersection of Gibson and Shingler Street (**Attachment 1**).

Following the completion of negotiations regarding development contributions, authorisation was sought from the Minister for Planning to exhibit the amendment in line with the Council resolution.

Exhibition of the amendment resulted in the receipt of 17 submissions. The submissions were referred to an Independent Planning Panel for consideration. The Panel Report was received at Council on 26 February 2016 and recommends that Council adopt the amendment.

Amendment C65 has been discussed in detail in previous Council Reports on 19 December 2012 and 28 October 2015, which can both be viewed on Council's webpage. These previous reports discuss the strategic justification for the amendment and the 28 October 2015 Council Report provides a detailed response to the issues raised in the submissions to the amendment. This Council Report does not revisit any of the issues previously considered and addresses only the key recommendations and commentary of the Panel Report.

Discussion

The Amendment C65 Panel Report (refer **Appendix 1**) recommends "South Gippsland Planning Scheme Amendment C65 be adopted as exhibited, subject to including the Development Plan Overlay Schedule 9 included in Appendix C of the Panel's report."

In support of its recommendation the Panel concluded that:

"...the Amendment has strong strategic support and is consistent with the Leongatha Framework Plan and the Planning Scheme. The Framework Plan identifies the Amendment site as an 'Urban Expansion Area', an outcome that will be facilitated by the General Residential Zone and Development Plan Overlay.

The Development Plan Overlay Schedule 9 includes comprehensive guidance for preparing the various Development Plans that will be required and it will provide Council with a sound basis on which to manage the development of this area. The Panel also supports Council's commitment to undertaking further consultation with stakeholders before approving future Development Plans. "

The Panel Report provides a concise summarised response to issues raised in the submissions. The following is a summary of the Panel response to the key issues raised in the submissions.

Density of Development

Two submitters objected to the application of the GRZ1 (which allows for township size lots typically under 1,000sqm) and requested that larger lots be created that are more consistent with the Low Density Residential Zone. The aim of the submitters is to protect the 'semi-rural' character of the area.

In response to this request the Panel commented that:

"As Leongatha grows and farming land is developed for urban purposes, it is unavoidable that the character of the town (particularly on the urban fringe) will continue to change. This is not a reason to apply the LDRZ, for which the Planning Scheme already makes extensive provision. The Amendment site has been identified for urban expansion of Leongatha and the Panel is satisfied that the GRZ1 is an appropriate zone to facilitate this."

Upgrading of infrastructure in areas surrounding the subject land

Many of the submitters expressed a concern that extensive and costly road and drainage upgrades will be required in areas surrounding the subject land to support its development and feared that existing landowners in the area (especially those adjoining Worthy Street) might be required to financially contribute to road upgrades.

Council's Panel submission provided extensive commentary on how infrastructure is funded and what infrastructure must be provided by developers. Council informed the Panel that a development contributions agreement has been executed with the owner of the subject land and that any infrastructure upgrades directly required to facilitate the development of the subject land must be met by the developer, including roads, footpaths and drainage directly adjoining the subject land.

The funding and timing of infrastructure provision is not straightforward, especially when land is only at the rezoning stage and detailed subdivision information is not yet available. In response to these uncertainties, Council has included in the DPO Schedule detailed infrastructure planning and costing requirements. The DPO Schedule also allows for public exhibition of plans for infrastructure upgrades required to support development of the subject land, allowing local residents to participate in the infrastructure planning process.

Specifically in relation to stormwater drainage, the DPO Schedule has been amended to include the requirement that "Stormwater Management Planning must specifically consider and respond to stormwater requirements in waterways and easements on public and private land east of Gibson Street and south of Higg Street." Off-site stormwater impacts in the area east of the subject land were discussed in detail at the Panel Hearing. The Panel supports the inclusion of the new requirement in the DPO Schedule as an appropriate response to the level of community concern expressed on this issue.

As a summarising statement in response to the submitter's views on infrastructure funding and provisioning, the Panel commented that:

"Some submitters sought revisions to the DPO9 that would effectively 'quarantine' some landowners from having to contribute to upgrading of off-site infrastructure. Firstly, it is not clear to the Panel that this would be an appropriate use of the DPO, but more fundamentally, the Panel does not have adequate information on which to reach conclusions or make recommendations about the nature and cost of any infrastructure upgrades that will be required by the development or how they should be funded.

This lack of certainty does not mean the Amendment should be abandoned or deferred - it is not necessary to resolve funding issues before the land is rezoned. These issues will be resolved by Council, in consultation with affected parties, as part of the Development Plan and planning permit processes."

The DPO area may have a total development lifespan of 50 years or more. Over such an extended time period it is not possible to provide absolute certainty on required infrastructure upgrading and funding around the subject land. Council has sought to protect itself and the residents in the vicinity of the subject land from these uncertainties by including extensive infrastructure provisions in the DPO Schedule. At this stage in the development process,

the development contributions agreement and the DPO Schedule represent the best long term infrastructure planning outcome Council can achieve at this time.

Other issues

- The DPO schedule has been amended to include specific consultation requirements with VicRoads regarding the preparation of the 'Whole of Site Development Plan' and each Development Plan stage considered by Council before a subdivision of the land is approved. All parties have consented to this change. The amended DPO Schedule wording is underlined in **Attachment 3**.
- The Panel has recommended the DPO Schedule be amended to replace the word 'must' with 'should' in relation to Schedule provisions requiring compliance with Council's Infrastructure Design Manual (IDM). The Panel Report states "The Panel supports flexibility and does not believe that it is in a position to form a view about the final specifications of the proposed road (referring to Collector / Connector Street Level 1 Roads) - this is a matter that will need further analysis during the Development Plan process." Council retains its power to approve or refuse the Development Plan, so the introduction of this added level of discretion is not considered detrimental to the DPO Schedule.
- The Panel supports the use of the DPO Schedule as the appropriate planning tool to guide the long term integrated planning of the area west of Gibson Street. Other options were presented to the Panel by a submitter however these options were not supported by the Panel.
- Submitters expressed concern that additional demand would be placed on existing open space reserves as a result of population increase resulting from the development of the land. The Panel is satisfied that the DPO Schedule's requirements in relation to the provision of open space on the subject land are sufficient to address this concern.
- DELWP and one landowner submitter expressed concern that a requirement for new dwellings adjoining Gibson Street to face the street might result in the loss of existing native vegetation in the road reserve when driveway crossovers are constructed. The Panel noted that vegetation loss might be an outcome however this is preferable to having dwellings backing onto Gibson Street, which would result in backyard fencing being erected along the road frontage.

Options

Council has three main options in determining how it proceeds with Amendment C65. These are:

1. Adopt Amendment C65 in accordance with the Panel Report's recommendations

2. Adopt Amendment C65 in a form that varies some of the requirements of the Panel Report's recommendations.
3. Abandon Amendment C65.

This report recommends that Council adopt Amendment C65 in accordance with the Panel's recommendations. There are no planning grounds supporting a variation to the Panel's recommendation. There is no reason to abandon the Amendment.

Proposal

It is proposed that Council adopt South Gippsland Planning Scheme Amendment C65 in accordance with the Amendment documents in **Attachment 2 and 3** and submit it to the Minister for Planning for approval.

FINANCIAL CONSIDERATIONS

The amendment proponent is responsible for payment of all statutory fees and charges in relation to the processing, adoption and approval of the amendment.

RISKS

There is no risk directly associated with Council adopting the Amendment.

If the Amendment is not adopted, there is a risk that Leongatha will start to run short of land suitable for residential development, especially flat residential land.

CONCLUSION

South Gippsland Planning Scheme Amendment C65 will provide a much needed boost to Leongatha's residential land supply. The land has been identified for many years as an area suitable for residential development. The land provides the opportunity for long term and staged residential growth in accordance with a 'Whole of site development plan' to be prepared for the land.

The Independent Planning Panel supports rezoning 14ha of Farming Zone land to the General Residential Zone 1 and the application of the Development Plan Overlay Schedule to the entire western growth area to coordinate its integrated development over the entire development lifespan of the area.

RECOMMENDATION

That Council adopt South Gippsland Planning Scheme Amendment C65 - Shingler Street / Gibson Street - general residential zone 1 - adoption in accordance with the amendment documents in Attachment 2 and 3 and submit it to the minister for planning for approval.

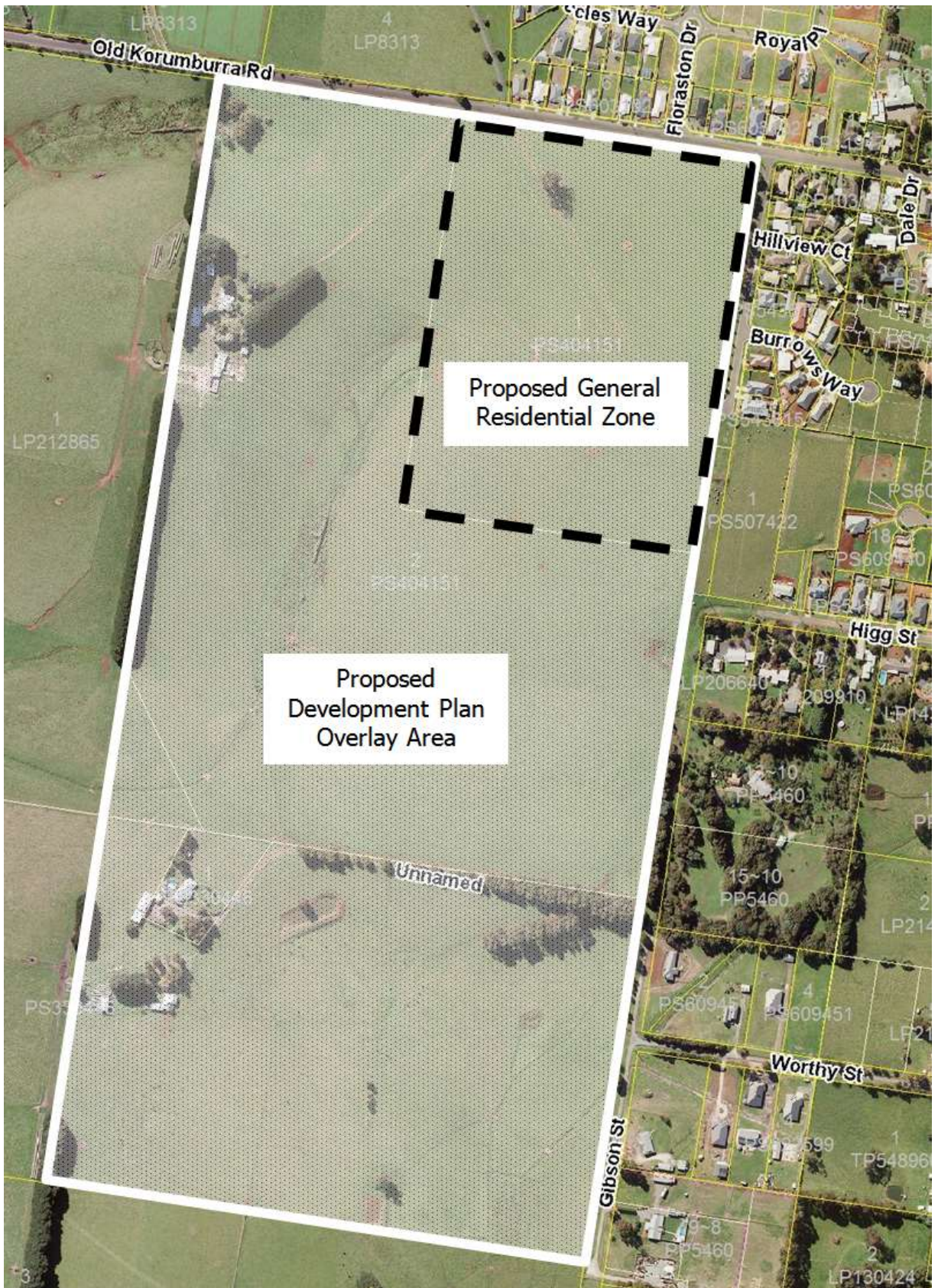
MOVED: Cr Fawcett

SECONDED: Cr Kennedy

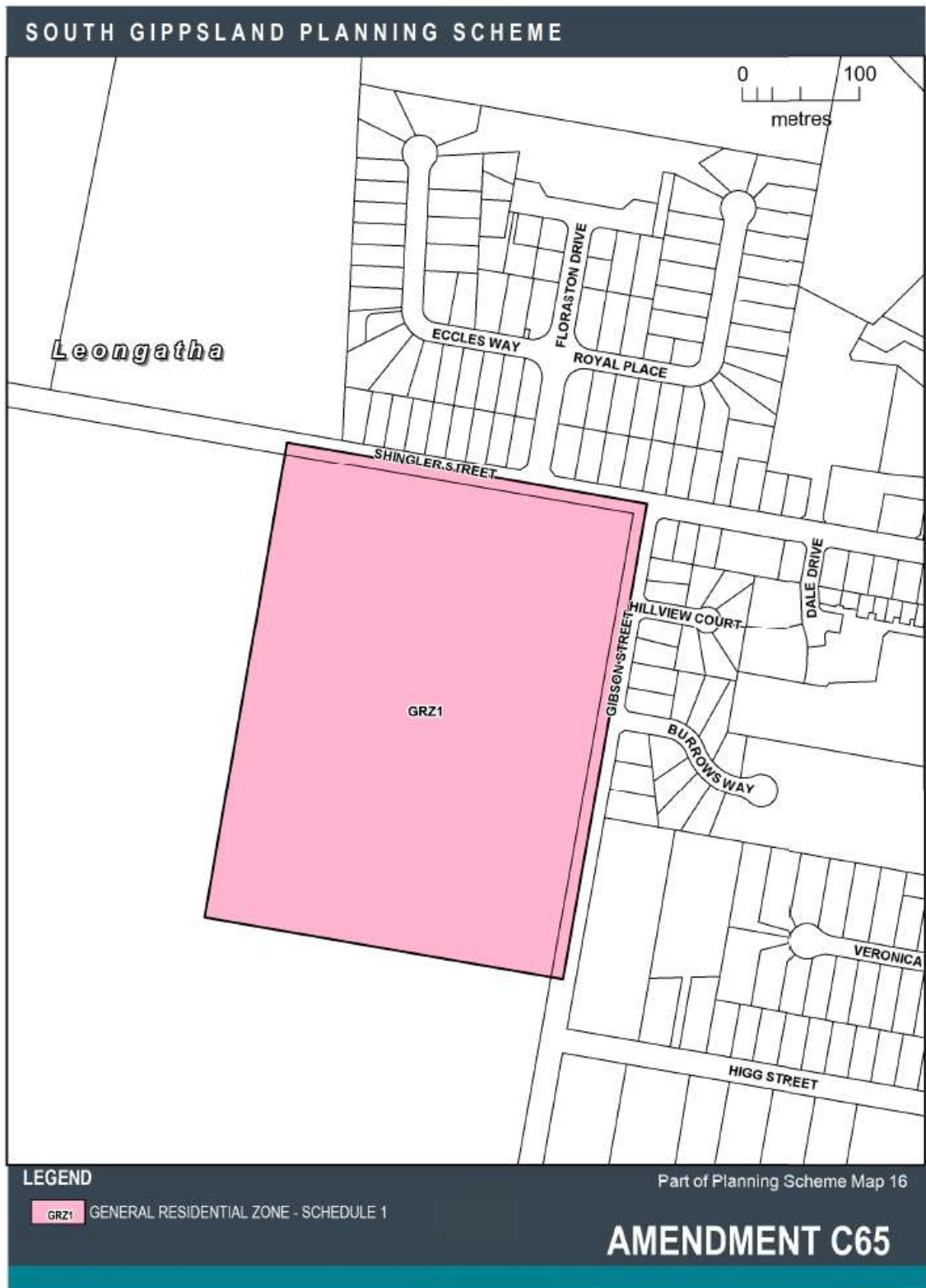
**THAT COUNCIL ADOPT SOUTH GIPPSLAND PLANNING SCHEME
AMENDMENT C65 - SHINGLER STREET / GIBSON STREET - GENERAL
RESIDENTIAL ZONE 1 - ADOPTION IN ACCORDANCE WITH THE
AMENDMENT DOCUMENTS IN ATTACHMENT 2 AND 3 AND SUBMIT IT
TO THE MINISTER FOR PLANNING FOR APPROVAL.**

CARRIED UNANIMOUSLY

Attachment 1
Amendment C65 Subject Land - Rezoning and Development Plan Overlay areas



Attachment 2
Rezoning and Development Plan Overlay maps for adoption and ESO5 and ESO6 deletion maps for adoption



| Planning Mapping Services |
| Planning Information Services |
| Planning |



Department of
Environment, Land,
Water & Planning



001

Attachment 2
Rezoning and Development Plan Overlay maps for adoption and ESO5 and ESO6 deletion maps for adoption



| Planning Mapping Services |
| Planning Information Services |
| Planning |



Department of
Environment, Land,
Water & Planning



002

Attachment 2



| Planning Mapping Services |
| Planning Information Services |
| Planning |

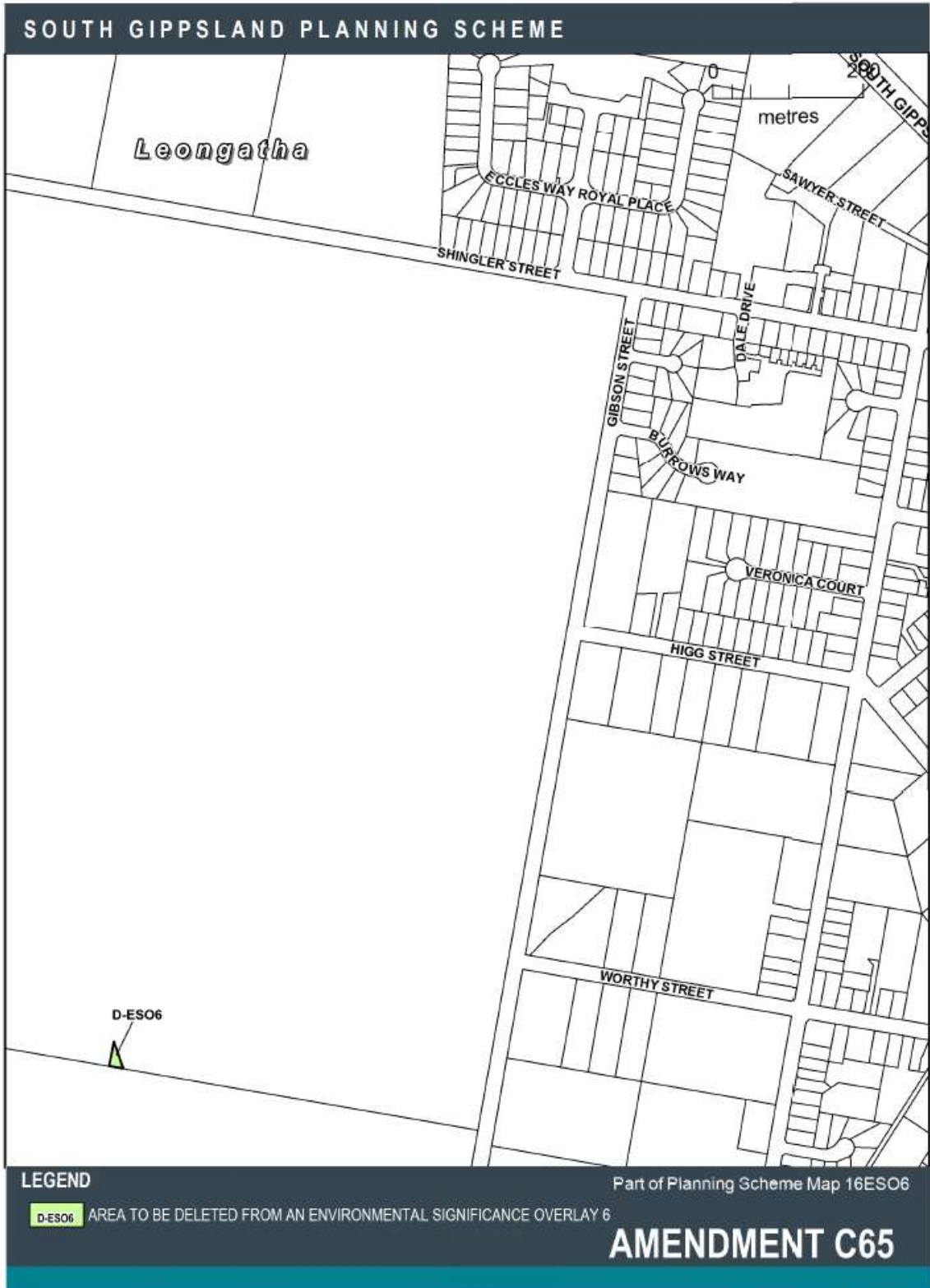


Department of
Environment, Land,
Water & Planning



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Attachment 2
Rezoning and Development Plan Overlay maps for adoption and ESO5 and ESO6 deletion maps for adoption



| Planning Mapping Services |
| Planning Information Services |
| Planning |



Department of
Environment, Land,
Water & Planning



004

Attachment 3 Development Plan Overlay Schedule for adoption

This recommended Development Plan Overlay Schedule 9 is based on the exhibited schedule, but modified to include the changes proposed by Council (and supported by the Panel) and additional changes recommended by the Panel.

The changes are highlighted as follows:

Added by Council

~~Deleted by Council~~

Added by the Panel

~~Deleted by the Panel~~

SCHEDULE 9 TO THE DEVELOPMENT PLAN OVERLAY

Shown on the planning scheme map as DPO9

WESTERN LEONGATHA RESIDENTIAL GROWTH AREA

Situated along the western boundary of Leongatha's urban area, the DPO9 land represents a strategically significant residential development opportunity for the township. Its proximity to the town centre, size, landform and consolidated ownership suits urban residential growth over an extended period of time. The site offers expansive views that capture a 'rural sense of place' and an undulating landform with which a responsive subdivision design can use to achieve a development layout sympathetic to the landform.

The DPO9 has been applied to the entire western 'Urban Expansion Area' identified in the Leongatha Framework Plan and will include (for an extended period of time) both urban and rural zoned land. The DPO9 will guide the integrated development of the entire area as land is rezoned in stages over time as demand requires.

1.0 Requirement before a permit is granted

A permit may be granted before a Development Plan has been prepared to the satisfaction of the Responsible Authority for:

- The use and development of land for agriculture that does not prejudice the future residential use and development of land, or the residential amenity of surrounding areas.
- A fence.
- To remove, destroy or lop vegetation.
- Minor drainage and/or earthworks.

2.0 Conditions and requirements for permits

A planning permit application for the subdivision or development of the land in accordance with the approved Development Plan must include a town planning report prepared by a suitably qualified person demonstrating how the permit application addresses the requirement of the Planning Scheme and the approved Development Plan. The report must specifically demonstrate how the subdivision of land responds to and facilitates the integrated development of the entire DPO9 area.

A planning permit for the residential subdivision of land must include the following permit conditions (unless specifically otherwise agreed to by the Responsible Authority):

- Where subdivision creates lots adjoining Shingler Street (Old Korumburra Road) and Gibson Street, a condition requiring construction of a 2.5m wide shared pathway adjoining the land being subdivided.
- Where the Development Plan identifies minimum lot size and boundary setback requirements on steep sloping land, a permit condition requiring the restrictions are registered on the lot titles to be created by the subdivision via covenant, Section 173 Agreement, restriction on a plan of subdivision or other mechanism as agreed to by the Responsible Authority.
- An appropriate mechanism to identify and apportion development costs of land and services, payable by the developer/landowner commensurate with each stage of development, by way of Section 173 Agreement or alternative means agreed by the Responsible Authority.
- The provision of infrastructure, open space and landscaping maintenance periods in accordance with Council's Infrastructure Design Manual.

Attachment 3 Development Plan Overlay Schedule for adoption

3.0	<p><u>Planning permit applications for each residential subdivision stage must consider the views of VicRoads in regards to the potential impact of additional traffic movements on the major arterial road network.</u></p> <p>Requirements for development plan</p> <p><u>Development Plan Explanatory Note:</u></p> <p>The residential development of the land in DPO9 is anticipated to occur over an extended period of time. Accordingly, flexibility is beneficial for the timing of when highly specific Development Plan information is required to be provided. However to achieve integrated / coordinated development across the entire area it is important that a 'Whole of site Development Plan' be approved to establish key development principles before any smaller stage of the Development Plan is approved. This process will ensure that each stage has appropriate regard to the complete development of the DPO9 land.</p> <p>'Whole of site Development Plan'</p> <p>Before a Development Plan stage is approved, a 'Whole of site Development Plan' must be prepared by the developer and approved by the Responsible Authority.</p> <p><u>Before approving the 'Whole of site Development Plan' the Responsible Authority will seek and consider the views of residents and landowners in the immediate area and other relevant stakeholders.</u></p> <p>The Plan must consider all land in DPO9 and should be guided by Council's Infrastructure Design Manual 'Outline Development Plans' Objectives and Requirements. The Plan must be based on a site analysis and design response and provide / consider (at minimum):</p> <ul style="list-style-type: none">▪ A Traffic Impact Assessment Report addressing the location of Connector Streets across the land, road intersections around the boundaries of the land, how the road network integrates and impacts the existing road network <u>including the major arterial road network</u> (details of road <u>and intersection</u> upgrading that may be required, <u>including concept plans</u>), the provision of road connectivity to the west and south of the DPO9 area, pedestrian / cycle connectivity, costings of off-site infrastructure upgrades. <u>The Report must specifically consider:</u><ul style="list-style-type: none">- Upgrading of Worthy Street (west of Brown Street) to achieve Connector Street access standard and the timing (related to staging) when upgrading will be required.- Traffic impacts on the arterial road network and specifically the intersection of Worthy Street / Bass Highway and Shingler Street / South Gippsland Highway and the timing (related to staging) when any upgrades might be required.▪ A Stormwater Management Plan (SMP) detailing the location / size of drainage reserves, drainage retardation and treatment systems with consideration to WSUD principles. The SMP must consider off site drainage impacts and/or infrastructure upgrades that may be required in a full development scenario and indicate at which stage the requirements are to be carried out. <u>The SMP must specifically consider and respond to stormwater requirements in waterways and easements on public and private land east of Gibson Street and south of Hize Street.</u>▪ The location of active and passive open space addressing (at minimum) the Open Space provisions and requirements of the Planning Scheme and specifically identifying land the developer will provide as a flat 'active open space' area unencumbered by drainage requirements. The active open space reserve should be located on a connector street and have active frontage wherever possible. Details of the staging (timing) of all open space provision is required.▪ Staging details of future land rezoning and / or subdivision stages within rezoned land.▪ An assessment against the residential subdivision provisions of the Planning Scheme.▪ The <u>Whole of site</u> Development Plan may be amended with the written consent of the Responsible Authority <p>Development Plan</p>
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The Development Plan may, to the satisfaction of the responsible authority, be approved in stages. A Development Plan stage must not be approved until the 'Whole of site development plan' has been approved by the responsible authority.

Before approving a Development Plan the Responsible Authority will seek and consider the views of residents and landowners in the immediate area and other relevant stakeholders.

The Development Plan for each stage must show/provide (unless set aside or varied by the Responsible Authority):

General Requirements

- A report demonstrating how the Development Plan stage addresses / responds to the provisions / requirements of the 'Whole of site development plan'.

Land use and subdivision layout

- Dwelling densities are to reflect the opportunities and constraints of the land. Lower densities should generally be provided on land with slopes greater than 10% and higher densities should generally be provided on flatter land and adjacent to open space.
- Where the pre development slope equals or exceeds 10%, larger lots should be created (increasing in size commensurate to the slope of the land). Within these lots building envelopes must be identified and sited to:
 - Minimise earthwork requirements for slab construction dwellings.
 - Avoid the requirement for earthwork retaining walls within 1.0m of a lot boundary.
 - Protect passive solar access to dwellings sited in cuts.
 - Provide additional front setbacks (not less than 7m) where the slope falls predominantly down the length of the lot.

Note: The lot size, building envelope and retaining wall restrictions will be made an ongoing restriction on the lot titles via the planning permit conditions for the subdivision of the land.

- Lots adjoining Shingler Street and Gibson Street must be oriented to front the road. Internally facing subdivisions will not be supported.
- Street network designs promoting passive surveillance of the street network.

Drainage

- A Drainage Management Plan (DMP) addressing The Stormwater Management Plan (SMP) must address all internal and external catchments that may impact on the proposed development.
- The catchment area relevant to each stage is to be identified along with drainage outfall locations, new drainage works, detailed flow and flood levels for the 1% 'Annual ~~Recurrence~~ Interranal Exceedance Probability' (ARI) storm event as a result of development.
- How the subdivision of the land will cater for flooding and waterway enhancement works (including WSUD), including setbacks from waterways and protection of riparian values either side of designated waterways on the land to be rezoned.
- How it is intended to manage deal with the existing waterways and flows that run through the land.
- Any SMP must show how water flow rates will not exceed pre-development levels beyond the boundary of the subject land to the satisfaction of the responsible authority.

Geotechnical Report

- Where land exceeds a slope of 15% a geotechnical report must be prepared by an appropriately qualified person demonstrating the suitability of the land for development. The

Attachment 3 Development Plan Overlay Schedule for adoption

report must provide sufficient detail to ensure environmental, access and amenity issues are appropriately addressed. The report should determine whether building envelopes or other controls are likely to be required at the subdivision stage.

Infrastructure Services

- A comprehensive Traffic Impact Assessment Report identifying the pattern and location of the major arterial road network of the area including;
 - Existing roads
 - Effects to surrounding intersections that might be affected by the proposal
 - Proposed treatments to intersections affected by the development stage under consideration and how they integrate with future and existing road networks
 - The location and details of any required:
 - road widening
 - intersections
 - access points
 - pedestrian crossings or safe refuges
 - cycle lanes
- The main access road from Shingler Street should to the satisfaction of the responsible authority be constructed as Collector/Connector Street Level 1 along its entire length from Shingler Street internally through the site to Worthy Street and the design agreed to in writing by the Responsible Authority.
- All other subdivision roads should ~~must~~ at a minimum be constructed to the specifications included in the Infrastructure Design Manual and agreed to in writing by the Responsible Authority.
- The pattern and location of the internal road system based on a safe and practical hierarchy of roads including safe pedestrian and bicycle connections and crossing points.
- An accessible and integrated network of walking and cycling routes allowing safe and convenient travel to future and existing developments, open spaces and integrated with the established residential area to the east.
- Each Development Plan stage must consider the views of VicRoads in regards to the potential impact of additional traffic movements on the major arterial road network.

Open Space and Landscaping

- The location of open space reserves and details of the provisions of infrastructure/ buildings / works / equipment within open space reserves.
- Details of when open space reserves are to be provided within the staging of the development of the land. Timing of open space provision must accord with anticipated demand with key open space reserves provided by the early to mid-stages of the development of the ODP area and specifically not left to final stages.
- Public open spaces should, to the satisfaction of the Responsible Authority, be:
 - Designed to integrate with other reserves and public areas where possible
 - Designed to provide active frontages and opportunities for visual surveillance to promote safety of users.
 - Located on flatter land and capable of easy drainage.
 - Located in areas not required for stormwater management nor should they contain a slope angle greater than 5%.
- A landscaping plan, prepared by a suitably qualified person, identifying all proposed native vegetation removal and new landscaping with particular regard to the interface with surrounding residential areas, open space and roads.

- The landscape plan must include canopy tree plantings within both the internal and external road network adjoining the development to soften the visual impact of new development when viewed from within and outside the development area.
- The landscape plan must provide a high level of detail where new development is adjoining Shingler Street and Gibson Street and new connector street.

Land Contamination

A limited desktop assessment must be undertaken by an appropriately qualified person of the potential location and forms of land contamination resulting from previous land uses. In any case where contamination is identified, the report will consider the measures to address contamination in areas where sensitive land uses are proposed as necessary. The investigation must consider, but not be limited to, agricultural chemical use and informal land dumping.

Development Contributions

It is the expectation of the Responsible Authority that a developer commitment to provide an appropriate level of developer contributions will be made in association with the residential rezoning and subdivision of land in the DPO9 area. The commitment to developer contributions should preferably occur as part of the rezoning process.

In recognition of the likely extended timelines of the development of the DPO9 land (and likely changes to the planning system across this timeframe in relation to how developer contributions are secured), each Development Plan stage must provide details of how each stage has addressed the provision of developer contributions commensurate to the additional demand on development and community infrastructure resulting from the subdivision of land.

Process and Outcomes

An implementation plan must be submitted as part of each Development Plan stage, indicating the proposed staging of subdivision land release within the Development Plan Stage and the development and timing of infrastructure provision.

E.4 PROPOSED ROAD DISCONTINUANCE - PART OF POUND ROAD, FOSTER

Sustainable Communities and Infrastructure Directorate

STAFF DISCLOSURE OF INTEREST

Nil

EXECUTIVE SUMMARY

This report recommends Council commence the statutory procedures to discontinue an unused portion of Government Road known as Pound Road, Foster. The unused portion of Government Road is currently fenced into Council's abutting property.

If the statutory procedures are successful, Council will then acquire the discontinued part of the Government Road and consolidate it into the adjoining Council owned land to provide a larger parcel of Council land consistent with the surrounding landholdings. Council may then determine to sell or develop the larger consolidated parcel.

Document/s pertaining to this Council Report

- **Attachment 1** – Locality Plan – Pound Road, Foster.
- **Attachment 2** – Road Discontinuance Diagram – Part Pound Road, Foster.

LEGISLATIVE / ACTION PLANS / STRATEGIES / POLICIES

Local Government Act 1989 (Section 206, 223 and Schedule 10 Clause 3(a))

INTERNAL POLICIES / STRATEGIES / DOCUMENTS

- Council's Vision 2020
- Road Discontinuance Procedure

COUNCIL PLAN

Outcome:	4.0	A Leading Organisation.
Objective:	4.1	Improve the financial sustainability of Council, including diversifying revenue streams.
Strategy:	4.1.1	We will explore innovative ways of increasing revenue and reducing expenditure where appropriate.

CONSULTATION

Discussions have been held with the Department of Environment, Land, Water, and Planning (DELWP) regarding the proposal to discontinue the unused portion of Government Road and for Council to purchase it. These discussions are necessary as the unused portion of Government Road is Crown Land and requires DELWP's approval for its discontinuance.

Internal discussions have occurred with various Council departments in order to investigate and understand any strategic planning, asset, and engineering requirements with the road discontinuance procedure, and to determine the area of Pound Road, Foster that must remain open.

REPORT

Background

As part of the Strategic Review of Landholdings Project, a parcel of Council owned land was identified on the corner of Pound Road and South Gippsland Highway, Foster (the Council Land).

Further investigations revealed that the Council Land is:

- Surrounded by a very wide parcel of Government Road with the majority of the area of this Government Road being unused; and
- Possibly a suitable option for relocation of the Foster Depot (subject to consolidation with the surrounding area of unused Government Road).

The boundaries of the Council Land and the whole of the Government Road are identified in **Attachment 1 – Locality Plan – Pound Road, Foster**.

Given that the majority of the Government Road is unused for road purposes, there is an opportunity to discontinue the unused portion of this road and consolidate the discontinued portion with the Council Land in order to make a larger and more consistent parcel of land with the surrounding environment. Council will then have an improved opportunity to either develop or sell the site. The boundary of the unused portion of Government Road proposed to be discontinued is shown with the white dotted line in **Attachment 1** and hatched in **Attachment 2**.

Discussion

The Council Land

The Council Land is surrounded by the South Gippsland Highway and a Government Road known as Pound Road, Foster.

Address / Legal Description	The Council Land is known as 2 Pound Road, Foster. It is described as Lot 1 on TP539568Y and contained in Certificate of Title Volume 7314 Folio 671 (the Land) and Council is the registered proprietor.
Area	It is an irregular parcel of Council Land with an area of 9,396m ² .
Planning	It is contained within a Farm Zone under the South Gippsland Planning Scheme with a Significant Landscape Overlay (SLO).
Use	The Council Land used to be the site of the former "Foster Pound Paddock". When Council stopped using the Land as a pound, it was licenced for grazing purposes. It is currently not subject to a grazing license and not used for any Council purpose.

The Government Road

The Government Road is known as Pound Road, Foster. It is a very large parcel of road with a width exceeding 60 metres. The area of the Government Road is made up as follows:

1. An area of road maintained by Council is classed as an "Access Place / Rural Road" on the Public Road Register. It is formed and gravelled with traffic volumes of less than 50 vehicles per day.
2. A very wide unused area of road that is fenced into the adjoining Land owned by Council.

These areas are shown on the locality map in **Attachment 1** with **Attachment 2** showing the area of the Government Road proposed to be discontinued (hatched) and to be purchased by Council. The hatched area has a total area of 1.906ha.

Road Discontinuance

Sections 206 and 223 and Schedule 10, Clause 3(a) of the Local Government Act 1989 provides Council with the powers to discontinue the unused area of Government Road (portion of Pound Road). If the unused area of Government Road is discontinued, Council will then need to negotiate the purchase of this portion of road with DELWP so ownership can be transferred from the Crown to Council.

Preliminary discussions have already been held with DELWP regarding the purchase of the unused portion of Government Road. As the majority of the unused area of Government Road has already been fenced with the adjoining Council Land, it is expected that a purchase will proceed.

Proposal

It is proposed that Council commence the statutory procedures in accordance with Section 206, 223 and Schedule 10 Clause 3(a) of the Local Government Act 1989 to discontinue the hatched area of Government Road shown in **Attachment 2 – Road Discontinuance Diagram – Part Pound Road, Foster.**

FINANCIAL CONSIDERATIONS

Once negotiations for the purchase of the unused portion of Government Road are complete, a budget adjustment will be requested for the purchase price. An estimate of the valuation has been requested.

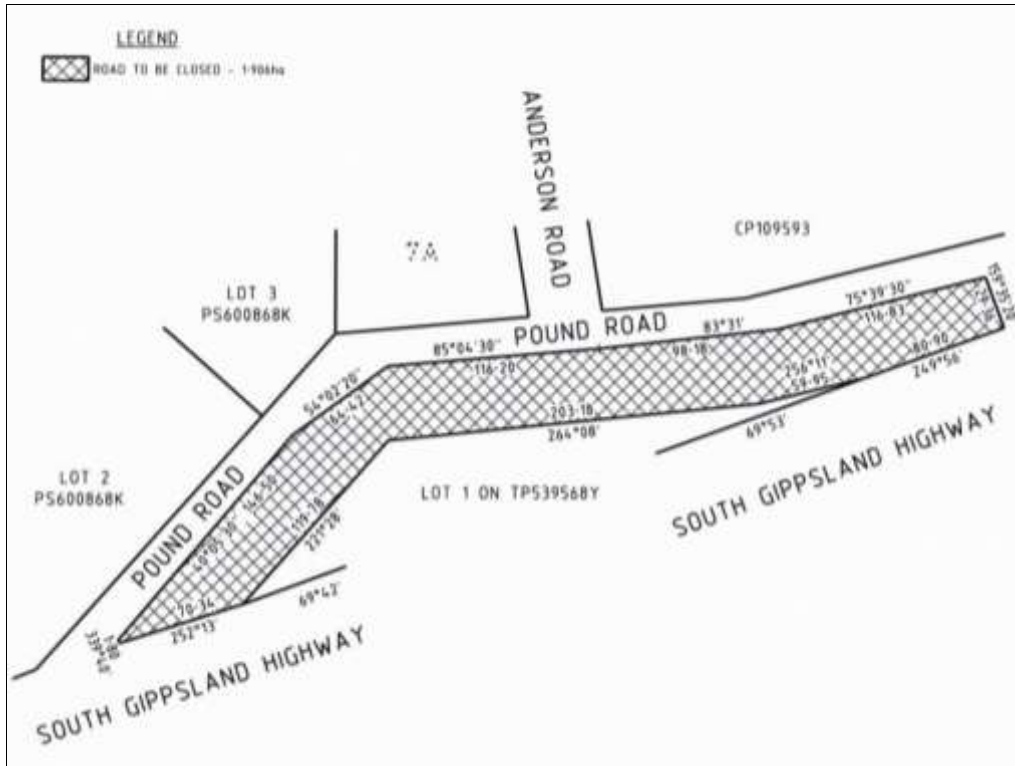
CONCLUSION

The purchase of the unused portion of Government Road and consolidating with the adjoining Council Land will enhance the value and opportunities for future development and/or sale.

RECOMMENDATION

That Council:

1. Commence the statutory procedures pursuant to Sections 206, 223 and Schedule 10 Clause 3(a) of the Local Government Act 1989 to discontinue the area shown hatched (1.906 hectares) on the diagram below being part of the Government Road known as Pound Road, Foster.



2. Give public notice in its Noticeboard section of the local newspapers on Tuesday 3 May 2016 on the proposal (item 1 above) in accordance with Section 223 of the Local Government Act 1989 to commence a public consultation process inviting written submissions from the community by close of business Wednesday 1 June 2016.
3. Authorise the Chief Executive Officer to undertake the administrative procedures necessary to enable the Council to carry out its functions under Section 223 of the Local Government Act 1989 in respect of the proposal (item 1 above).
3. If submissions are received to the public notice, agree that they will be heard, considered, and the decision be determined at the next available Council meeting in closed session.
4. If no submissions are received to the public notice:

- a. **Agree to publish the Road Discontinuance notice in the Victoria Government Gazette.**
- b. **Negotiate with the Department of Environment, Land, Water, and Planning for Council to purchase the land from the road.**
- c. **Consolidate the discontinued road into Council's certificate of title Volume 7314 Folio 671.**

MOVED: Cr Brunt

SECONDED: Cr Davies

THAT THE RECOMMENDATIONS IN ITEMS E.4 AND E.5 BE ADOPTED.

Cr McEwen left the Council Meeting at 4.07pm and returned at 4.09pm.

CARRIED

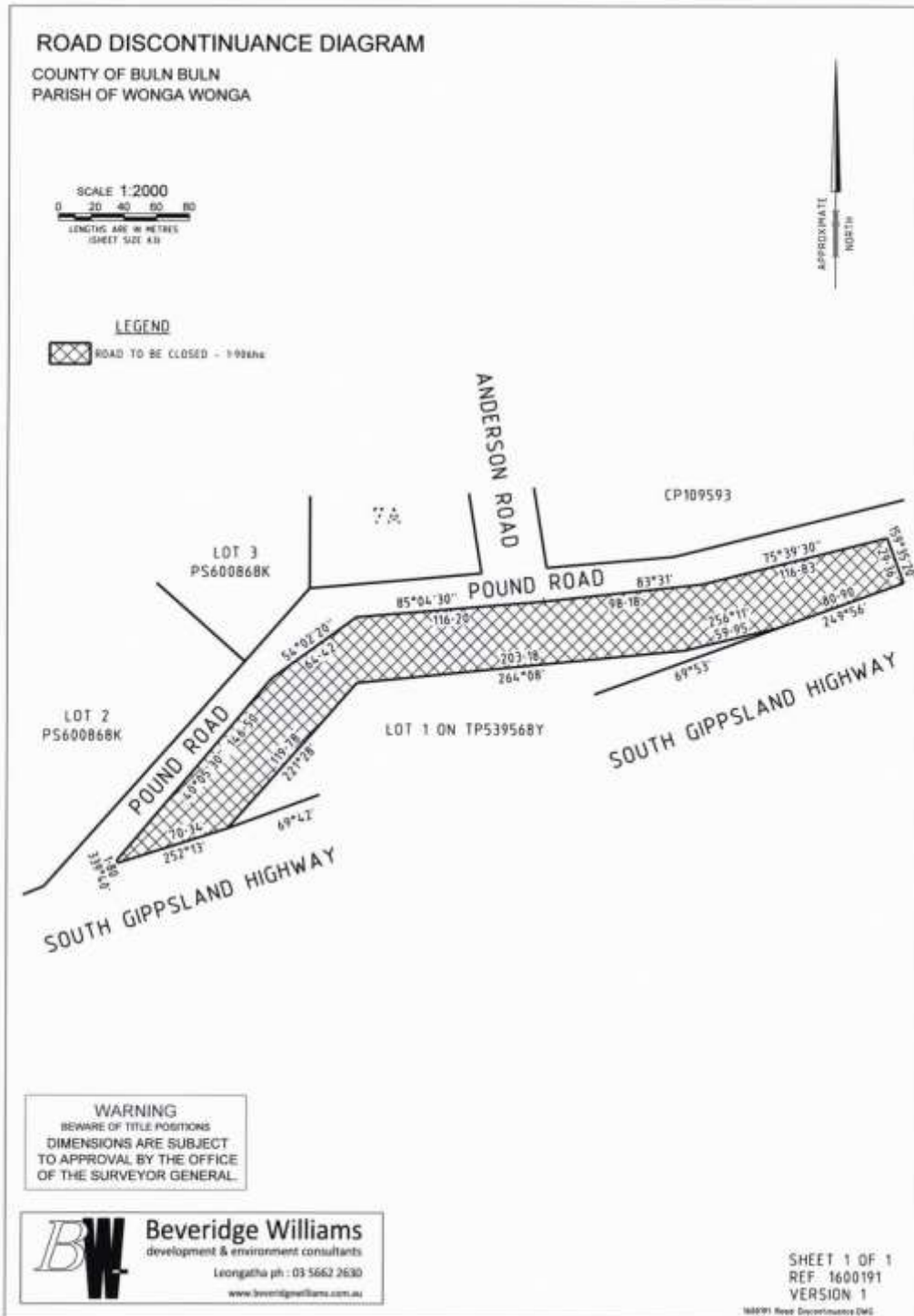
For: Crs Fawcett, Brunt, Newton, Davies, McEwen, Hill and Hutchinson-Brooks.

Against: Cr Kennedy

Attachment 1
Locality Plan – Pound Road, Foster



Attachment 2 Road Discontinuance Diagram – Part Pound Road, Foster



E.5 PROPOSED ROAD DISCONTINUANCE - UNUSED AREA OF THE FORMER ROAD ALIGNMENT OF SANDY POINT ROAD, SANDY POINT

Sustainable Communities and Infrastructure Directorate

STAFF DISCLOSURE OF INTEREST

Nil

EXECUTIVE SUMMARY

This report recommends Council commence the statutory procedures to discontinue an unused area of the former road alignment of Sandy Point Road, Sandy Point.

If the statutory procedures are successful, Council will consolidate the discontinued road with the adjoining Council owned land being 159 Sandy Point Road, Sandy Point (former Sandy Point Transfer Station) in preparation for sale as part of the Strategic Review of Landholdings project.

Document/s pertaining to this Council Report

- **Attachment 1** – Locality Plan – Sandy Point Road, Sandy Point.
- **Attachment 2** – Road Discontinuance Diagram – Unused former alignment of Sandy Point Road, Sandy Point.

LEGISLATIVE / ACTION PLANS / STRATEGIES / POLICIES

Local Government Act 1989 (Sections 206, 223 and Schedule 10 Clause 3)

INTERNAL POLICIES / STRATEGIES / DOCUMENTS

- Council's Vision 2020
- Road Discontinuance Procedure

COUNCIL PLAN

Outcome:	4.0	A Leading Organisation.
Objective:	4.1	Improve the financial sustainability of Council, including diversifying revenue streams.
Strategy:	4.1.1	We will explore innovative ways of increasing revenue and reducing expenditure where appropriate.

CONSULTATION

Internal discussions have occurred with various Council departments in order to investigate and understand any strategic planning, asset, and engineering

requirements with the road discontinuance procedure and consolidation procedure.

REPORT

Background

Council owns 159 Sandy Point Road, Sandy Point which is referred to as Lot 1 on Plan of Subdivision 410266 and has an area of 2,844m² (the Land). The Land used to be the site of the former Sandy Point Transfer Station and is identified in **Attachment 1 – Locality Plan – Sandy Point Road, Sandy Point**. The Land is surrounded by land that is an unused road. The area in question is approximately 4,588m² and used to be the original alignment of the Sandy Point Road (the Road). This subject part of the Road is also identified in **Attachment 1**.

Discussion

The Land has been identified for sale as part of Council's Strategic Review of Landholdings Project. It is proposed for sale in the 2016/17 financial year.

During investigations for the Land, the area of Road was identified. It gives the appearance of being part of the Land. To formalise this appearance, Council can commence a road discontinuance procedure using its powers under Schedule 10, Clause 3 of the Local Government Act 1989. Once discontinued, the land to issue from the discontinued road can be transferred to Council for consolidation with the surrounding Land.

As the Road is not a Government road there is no purchase required from the Crown.

Proposal

It is proposed that Council commence the statutory procedures in accordance with Sections 206, 223 and Schedule 10 Clause 3 of the Local Government Act 1989 to discontinue the area of Road shown in **Attachment 2 – Road Discontinuance Diagram – Unused former alignment of Sandy Point Road, Sandy Point**.

FINANCIAL CONSIDERATIONS

Council has adopted an expenditure budget for the Strategic Review of Landholdings Project. The costs of the discontinuance procedure are within this budget allocation.

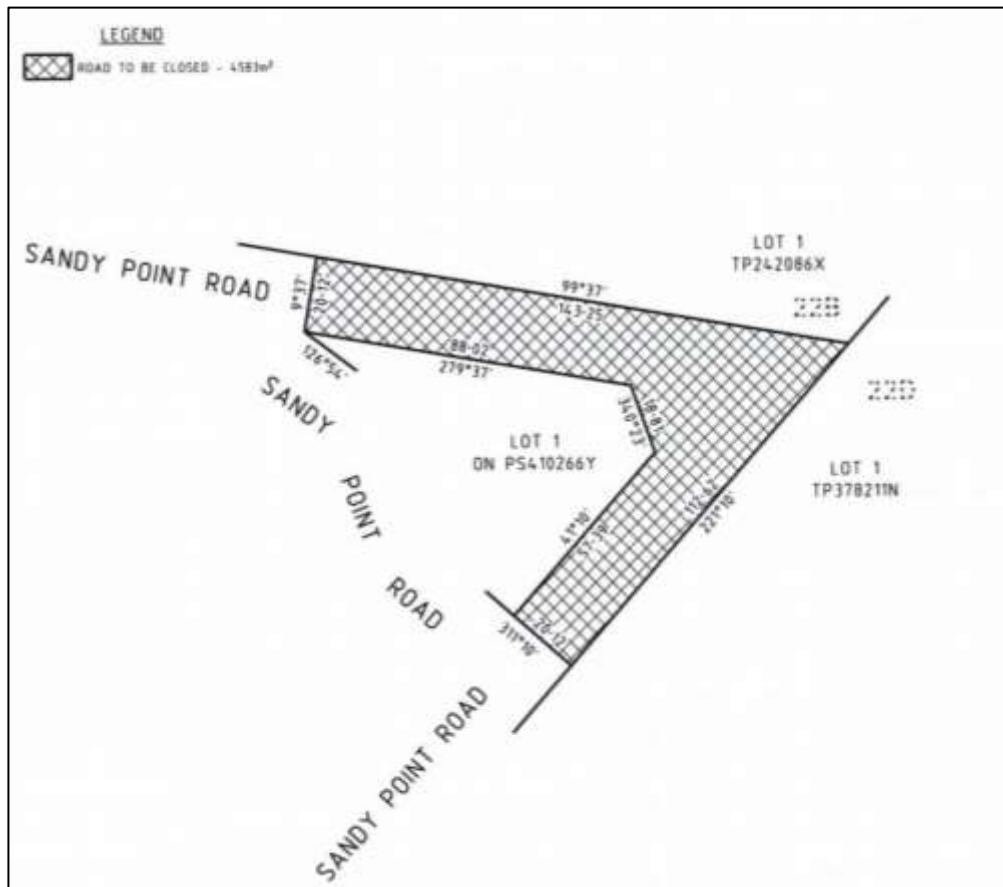
CONCLUSION

The consolidation of the Road with Council's adjoining Land will improve the value and sale.

RECOMMENDATION

That Council:

1. Commence the statutory procedures pursuant to Sections 206, 223 and Schedule 10 Clause 3 of the Local Government Act 1989 to discontinue the area shown hatched (4,583m²) on the diagram below being part of the unused road formerly known as Sandy Point Road, Sandy Point.



2. Give public notice in its Noticeboard section of the local newspapers on Tuesday 3 May 2016 on the proposal (item 1 above) in accordance with Section 223 of the Local Government Act 1989 to commence a public consultation process inviting written submissions from the community by close of business Wednesday 1 June 2016.
3. Authorise the Chief Executive Officer to undertake the administrative procedures necessary to enable the Council to carry out its functions under Section 223 of the Local Government Act 1989 in respect of the proposal (item 1 above).
4. If submissions are received to the public notice, agree that they will be heard, considered, and the decision be determined at the next available Council meeting in closed session.

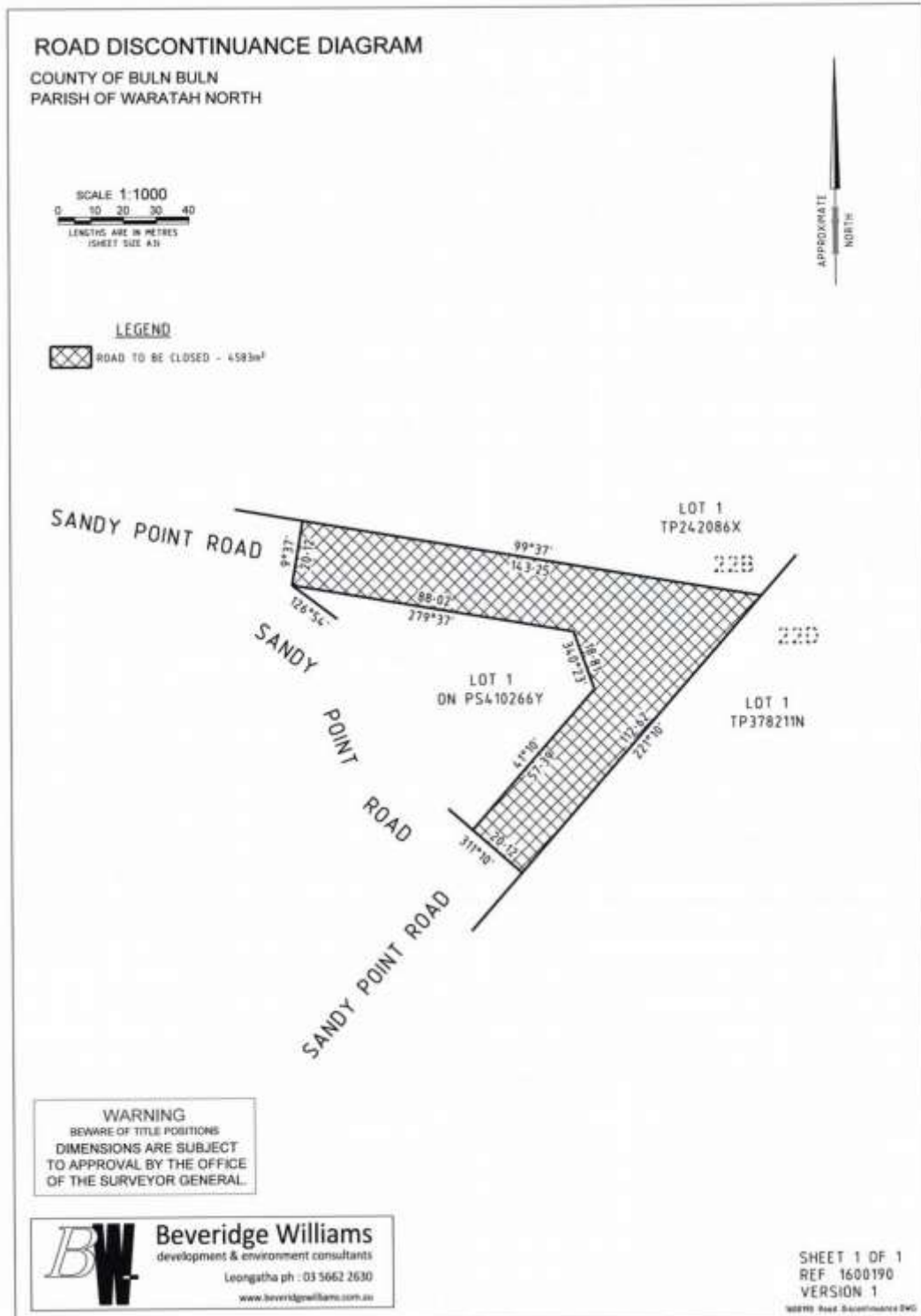
- 5. If no submissions are received to the public notice, agree to publish the Road Discontinuance notice in the Victoria Government Gazette transferring the discontinued road to Council.**
- 6. Once Gazetted, consolidate the discontinued road with Council's adjoining land at 159 Sandy Point Road, Sandy Point being Lot 1 on Plan of Subdivision 410266Y.**

NOTE: The recommendation was CARRIED as part of a single motion, refer to page 113.

Attachment 1
Locality Plan – Sandy Point Road, Sandy Point



Attachment 2 Road Discontinuance Diagram – Unused former alignment of Sandy Point Road, Sandy Point



E.6 POLICY REVIEW: C65 PUBLIC PARTICIPATION IN MEETINGS WITH COUNCIL POLICY AND C66 COUNCILLOR ACCESS TO AND REQUEST FOR COUNCIL INFORMATION POLICY

Corporate and Community Services Directorate

STAFF DISCLOSURE OF INTEREST

Nil

EXECUTIVE SUMMARY

'C65 Public Participation in Meetings With Council Policy' (Public Participation Policy) has been developed as a means of creating a welcoming, respectful and safe environment for members of the public to present directly to Council on matters that are important to them.

'C66 Councillor Access to Council Information Policy' (Access to Information Policy) has been developed to strengthen good governance practices in regard to Councillors' access to Council information and to assist them to avoid potential breaches of legislation.

These two policies are presented to Council for consideration and adoption.

Document/s pertaining to this Council Report

- **Attachment 1** - C65 Public Participation In Meetings With Council Policy
- **Attachment 2** - C66 Councillor Access To And Request For Council Information Policy

LEGISLATIVE / ACTION PLANS / STRATEGIES / POLICIES

- Local Government Act, 1989 – Sections 3D, 3F, 76D, 76E, 77, 79, 79B and 94A
- Reforms Arising From The Local Government Amendment (Improved Governance) Act 2015 – A Guide For Councils
- Charter of Human Rights and Responsibilities Act, 2006 (The Charter)
- Privacy and Data Protection Act, 2014

INTERNAL POLICIES / STRATEGIES / DOCUMENTS

- Local Law No. 3, 2010 – Processes of Municipal Government (Meeting Procedures and Common Seal)
- Councillor Code of Conduct, 2013
- Guidelines for Making and Handling Protected Disclosures and Protected Disclosures Welfare Management Policy

- Human Rights Policy, 2013
- Election Period Policy, 2016
- Fraud Policy, 2014

COUNCIL PLAN

Outcome:	2.0	Closely Connected Communities
Objective:	2.1	Engage and work collaboratively with our community.
Strategy:	2.1.1	We will develop a continually evolving Vision for the Shire that encourages community participation in defining what it wants, needs and can afford, to guide rationalisation, consolidation and achievement of desired future outcomes.
Outcome:	4.0	A Leading Organisation
Objective:	4.2	Pursue best practice in organisational development and operations of the organisation.
Strategy:	4.2.2	We will monitor corporate governance processes, including risk management and skills development with the aim of ongoing improvement.
Strategy:	4.2.3	We will make informed decisions and provide opportunities for the community to participate in the decision making process.

CONSULTATION

Both policies incorporate governance advice arising from recent forums on the Local Government Amendment (Improved Governance) Act 2015 and drawn from good practice policies from various councils including but not limited to Casey, Baw Baw and East Gippsland.

Feedback from presenters gathered over several years has also been used in the development of the Public Participation Policy.

The Executive Leadership Team has reviewed both policies and provided feedback on their content.

The Council reviewed both policies at a briefing session on 16 March 2016.

Background

1. C65 Public Participation in Meetings with Council Policy (Attachment 1**)**

The requirement for a Public Participation Policy has developed over the years as more community members seek opportunities to influence Council decision making. These public participation opportunities are increasingly

being used by individuals and advocacy groups sharing their views with Council on matters that are important to them.

Feedback received from past participants and observers has indicated that their expectations vary widely. Some participants have expected Council to make a decision on the spot, others have been fearful of speaking in public, others have provided new ideas, while others have used the opportunity to broaden community interest in their issue. There have also been some situations where people in the meeting have felt threatened.

The majority of participants have valued the opportunity and their involvement has influenced Council's decisions on matters. These positive outcomes are valued by Council and the community. It is important to enhance the experience of all presenters and observers so they are able to make best use of their time with Council. At the same time unrealistic expectations and/or inappropriate actions need to be minimised.

This policy aims to guide the expectations and requirements of presenters and observers so that a welcoming, respectful and safe environment exists for everyone attending public meetings.

2. C66 Councillor Access To and Request for Council Information Policy (Attachment 2)

The development of a policy to strengthen governance around the interaction between staff and Councillors has been informed by recent legislative reforms to the Local Government Act surrounding Councillor Conduct, increased fines (\$18,200 in 2015) for breaches of the Act and recommendations arising from an internal governance audit.

The Access to Information Policy forms one of the guiding documents to support Councillors as they perform their civic duties. It states that Councillors are able to access relevant Council information to assist them in making informed decisions on matters that are coming before Council. However various pieces of legislation in place mean that Councillors are not entitled to access all Council information. Many of these provisions are listed above under Legislation.

Section 94A of the Act requires the Chief Executive Officer (CEO) to develop, implement and enforce policies and protocol to manage interactions between Councillors and staff. This policy addresses that legislative requirement.

The Access to Information Policy aims to support Councillors to act within the boundaries of their role and avoid improperly directing or influencing staff in the exercise of their duties (section 76E of the Act). It also reinforces the requirement on Councillors to disclose conflicts of interest or conflicting personal interests (sections 79 and 79B of the Act).

Discussion

3. C65 Public Participation in Meetings with Council Policy (Attachment 1)

The Public Participation Policy provides the context within which public participation is encouraged to support informed decision making by Council.

It sets out expected requirements for documentation, supporting materials and behaviour from participants and observers. These are dealt with in detail in the policy.

The policy will provide a framework for the Mayor and Chief Executive Officer (CEO) to effectively manage governance requirements surrounding meetings with the community.

A Frequently Asked Questions brochure is being developed to assist community members and consultants to make the best use of their presentation time.

4. C66 Councillor Access To and Request for Council Information Policy (Attachment 2)

This policy has been developed to assist the CEO, Directors, Mayor, Councillors and staff to manage the interface between the 'Council' and the 'Organisation' in regard to Councillor requests for Council information.

While Councillors are able to access relevant information to assist informed decision making on matters coming before Council, there are limitations on access to information that is being sought for other purposes, including personal interest. It is important for Councillors to be able to articulate at the point of request how the information they seek is pertinent to their role as a Councillor. Information requested for personal interest will be dealt with in the same manner as a normal customer request for service.

The policy provides a consistent set of guidelines to ensure Councillor access to Council information is appropriate. It aims to protect Councillors from allegations of inappropriate or undue influence over Council staff.

The CEO has delegated the three Directors as the Officers authorised to receive requests from Councillors. A Register of Councillor Requests for Information is being established to improve the timely capture and management of Councillors' requests. An update of the previous two weeks' requests will be included in the Councillors' weekly update of summary information (InfoSum). This approach also enhances transparency in regard to information being requested.

Proposal

These two policies are presented to Council for consideration and adoption. They are designed to improve good governance practices to meet changing legislative requirements in the Local Government Act 1989.

FINANCIAL CONSIDERATIONS

There are no financial implications arising from either of these policies.

RISKS

The Public Participation Policy seeks to enhance Council's reputation through better management of public meetings. If meetings are not able to be managed in an orderly, structured and timely manner there is a risk that the opportunity for diverse views to be shared and considered by Council may be unduly limited. This in turn may impact the quality of decisions made by Council.

The Access to Information Policy seeks to enable improved management of Councillor requests for information and thereby increase community confidence and trust in the use of Council documents, particularly those that contain personal information. This in turn supports each individual's rights under Council's Human Rights Policy.

This policy also aims to address matters that may not be explicitly outlined in the Local Government Act 1989. It puts in place procedures that, when followed, will mitigate the likelihood of any breaches of the Act; in particular potential breaches of Section 76D – Misuse of Position, Section 76E – Improper Direction and Improper Influence, or Section 79 – Disclosure of Conflict of Interest by Councillors and of Section 94A – Functions of the Chief Executive Officer by the CEO.

Concurrently the policy recognises the right of Councillors to reasonable and justified access to relevant Council information in order to make informed decisions on matters coming before Council.

CONCLUSION

The Public Participation in Meetings with Council Policy provides a strengthened governance framework for community members and Council to support informed decision making and democratic engagement in meetings.

The Access to Information Policy responds proactively to recent amendments in the Local Government Act 1989 by strengthening Council's governance framework for managing requests for information and associated Councillor and staff interactions.

RECOMMENDATION

That Council:

1. Adopt C65 Public Participation In Meetings With Council Policy (Attachment 1);
2. Adopt C66 Councillor Access To And Request For Council Information Policy (Attachment 2); and
3. Publish both policies on Council's website.

MOVED: Cr Davies


SECONDED: Cr Hill

THAT COUNCIL:

- 1. ADOPT C65 PUBLIC PARTICIPATION IN MEETINGS WITH COUNCIL POLICY (ATTACHMENT 1);**
- 2. ADOPT C66 COUNCILLOR ACCESS TO AND REQUEST FOR COUNCIL INFORMATION POLICY (ATTACHMENT 2); AND**
- 3. PUBLISH BOTH POLICIES ON COUNCIL'S WEBSITE.**

CARRIED UNANIMOUSLY

Attachment 1 C65 Public Participation In Meetings With Council Policy



South Gippsland Shire Council
**PUBLIC PARTICIPATION IN MEETINGS WITH COUNCIL
POLICY**

Policy Number	C65	Directorate	Corporate and Community Services
Council Meeting Agenda Item No.	E.TBC	Department	Innovation & Council Business
Council Meeting Adoption Date	27 April 2016	Primary Author	Corporate and Council Coordinator
Revision Date	March 2020	Secondary Author	Council Business Officer

POLICY OBJECTIVE

This policy aims to provide a welcoming, respectful and safe environment for members of the community to present directly to Councillors on a range of views and issues that are important to them.

It sets out guidelines for the Mayor, Councillors and community members on public participation in meetings and appropriate and respectful behaviour.

It reinforces the value of diversity of thinking while being respectful of differing views and the rights and reputation of others.

LEGISLATIVE PROVISIONS

- Local Government Act, 1989
- Local Law No. 3, 2010 – Processes of Municipal Government (Meeting Procedures and Common Seal)
- Councillor Code of Conduct, 2013
- Reforms Arising From The Local Government Amendment (Improved Governance) Act 2015 – A Guide For Councils
- Guidelines for Making & Handling Protected Disclosures & Protected Disclosures Welfare Management Policy
- Charter of Human Rights and Responsibilities Act, 2006 (The Charter)
- Privacy and Data Protection Act, 2014
- Other relevant Council Policies and guidelines associated with good governance.

REFERENCE MATERIALS

Joske's Law and Procedure at Meetings in Australia 10th Edition

Public Participation in Meetings with Council Policy Page 1 of 9



COUNCIL POLICY

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DEFINITIONS

Various terms used in this Policy are defined in Section 3 of the Local Government Act 1989.

Public	Means community members, representatives of community groups, consultants acting on behalf of Council or community members and media representatives.
Ordinary Meeting	Has the same meaning as defined in Section 83 of the Local Government Act, 1989: "ordinary meetings at which general business of the Council may be transacted";
Special Meeting	Has the same meaning as defined in Section 83 of the Local Government Act, 1989: "special meetings at which the business specified in the notice calling the meeting may be transacted."
Assembly of Council	Has the same meaning as defined in Section 3 of the Local Government Act 1989: "means a meeting of an advisory committee of the Council, if at least one Councillor is present, or a planned or scheduled meeting of at least half of the Councillors and one member of Council staff which considers matters that are intended or likely to be — (a) the subject of a decision of the Council; or (b) subject to the exercise of a function, duty or power of the Council that has been delegated to a person or committee — but does not include a meeting of the Council, a special committee of the Council, an audit committee established under section 139, a club, association, peak body, political party or other organisation."
Chair	A person elected or given the responsibility to preside over the meeting, conduct proceedings in accordance with an Agenda, determine the sense of the meeting, preserve order, adjourn the meeting if necessary, control the voting process, control the time allocation of various aspects of the meeting, declare a meeting open or closed and sign the minutes. Refer Clause 5 in Local Law No.3 2010.
Participants in a meeting	Includes Councillors, Council Staff, members of the Media, public presenters and people observing in the gallery.



COUNCIL POLICY

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POLICY STATEMENT

The *Public Participation in Meetings with Council Policy*:

1. Sets the context for public participation to support informed decision making by Council;
2. Explains the behaviour expected of participants attending Council meetings where public participation is involved;
3. Clarifies inappropriate behaviour and outlines actions that may be taken in response; and
4. Explains the documents, props and devices that may be brought into a meeting.

These policy statements are expanded below.

The Policy supports good governance as per Council's Local Law No.3, 2010 (Local Law), particularly Clauses 100, Engagement of Public and 101, Meetings:

"Council may adopt policies, guidelines and procedures relating to public participation to ensure the smooth and efficient conduct of Council meetings and meetings of Special Committees in accordance with this Local Law." (clause 100)

"Any member of the public or community addressing the Council must extend due courtesy and respect to the Council and the processes under which it operates and must take direction from the Chair whenever called upon to do so.

The Local Law also outlines the penalty points (fines) that can be applied to people who breach the Local Law, including people who are called to order and fail to comply with the Chair's direction.

1. The context within which public participation is encouraged to support informed decision making by Council

1.1 South Gippsland Shire Council is responsible for implementing many diverse programs, policies and regulations set by State and Federal Government, as well as responding to local community needs and managing finances and other resources in the best interest of the Shire and its community. Community involvement is an important aspect in assisting Council to meet these responsibilities.

1.2 Council decisions are made in formally constituted Council Ordinary and Special Meetings and at Special Committees of Council specifically appointed by Council. Public presentations and question times are provided for discussion purposes to inform Council of community views. Decisions are not made at these sessions.

1.3 Council's meeting forums are designed to promote accountable and transparent decision making.



COUNCIL POLICY

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1.4 Public presentation sessions provide Council with the opportunity to hear directly from members of the community at its forums, ensuring that Councillors hear a range of views on key issues.

1.5 Council is committed to considering and respecting human rights in its decision making, in accordance with its Human Rights Policy and the Human Rights Charter. All participants in a meeting have the right to freedom of expression under the Charter of Human Rights and Responsibilities Act, 2006. However speakers' rights are limited in order to *"respect the rights and reputation of other people, or for the protection of public safety and order"* (Section 15 of the Charter).

These limitations are reflected in part under Clause 101 in the Local Law No 3, 2010 that specifically requires: *"any member of the public or community addressing the Council must extend due courtesy and respect to Council and the processes under which it operates and must take direction from the Chair whenever called upon to do so."*

The Local Law No 3, 2010 under Clause 106 further elaborates on Clause 101 where the Chair: *"must not accept any motion, question or statement which appears to the Chair to be derogatory or defamatory to any Councillors, member of staff, ratepayer or member of the public or any organisation (including Council); and must call to order any person who is disruptive or unruly during any meeting."*

1.6 This Policy covers the following specific forums, along with any other general Council forums, where public participation opportunities may in future be provided:

- Ordinary Meetings of Council (General Question Time)
- Special / Emergency Meetings of Council
- Section 223 Hearings to Council
- Strategic Briefing Sessions (Assembly of Councillors)
- Public Presentations Sessions (Assembly of Councillors)
- Other relevant Assemblies of Councillors

1.7 Many matters of community interest raised with Council are outside its powers to resolve, however Council may still be able to advocate on behalf of the community. Members of the public are encouraged to understand and respect these limitations and seek appropriate actions from Council.

1.8 The community is welcome to observe Council's Ordinary and Special Council Meetings unless the meeting, or sections of it, have been closed to the public. Council's other meetings, known as Assemblies of Council (refer to the definition) are conducted in a closed session, however Council may from time to time invite members of the public to attend and present or observe.

1.9 Council will provide fair and equitable opportunities to public presenters where there are opposing or differing views on matters.



COUNCIL POLICY

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1.10 The Chief Executive Officer (CEO) has the discretion to arrange the order of speakers at meetings. Generally people opposing a matter present first, followed by people speaking in support. The CEO can vary this on a case by case basis to ensure Council is provided with the best opportunity to be informed on matters of interest.

2. Behaviour at Council meetings where public participation is involved

2.1 All present at a Council meeting are required to behave in accordance with Council's Local Law No. 3, 2010 – Processes of Municipal Government (Meeting Procedures and Common Seal). Penalty points (fines) may be applied to people who breach the Local Law by behaving inappropriately at Council meetings.

2.2 Council is committed to conducting meetings in a manner that:

- a. Effectively engages community participation;
- b. Is guided by best practice good governance, transparency and accountability;
- c. Provides fair and equitable access to as many Councillors as possible at one time on matters of community interest;
- d. Meets Council's legislated obligations; and
- e. Is in line with Council's other policy statements.

2.3 Behaviours expected and required of participants in all Council meetings include, but are not limited to:

- a. Being quiet during proceedings;
- b. Ensuring that mobile phones and other devices are set to silent.
- c. Respecting and abiding by the protocols of the meeting;
- d. Providing an accurate summary of the matters to be presented when booking a time, and keeping the presentation to only those matters; (additional time allocations can be booked at future sessions if more topics are to be raised than can be managed in the allotted time frame);
- e. Public presentation session held on the 4th Wednesday (10am prior to the Council meeting) will be received on matters relating to the Council agenda only, unless otherwise determined on the day by the Mayor;
- f. The briefing sessions held on the 3rd week of the month from 2pm (and 7pm by appointment) are open to other matters in addition to matters listed on Council's agenda;



- g. Keeping the presentation/questions within the allocated time;
 - i) Public Presentation Days (third week of month) provides 10 minutes for the presenter to present and 5 minutes for clarifying questions from Councillors on the information presented;
 - ii) Public Presentation Sessions on Council Meeting Days (fourth week of month) provides 5 minutes for the presenter to present and 5 minutes for clarifying questions from Councillors on the information presented;
 - iii) Council Ordinary Meeting Public Question Time allows up to five minutes for questions to be asked by a member of the public (Limit of up to 3 questions inclusive of part questions);
 - iv) Section 223 Hearing Sessions will have time allocations specified on a case by case arrangement however as a guide they will be a maximum of 10 minutes to present and 5 minutes for questions. This time may be reduced depending on the number of submitters wishing to be heard and the complexity of the views being put forward.
- h. Being respectful of the decision of the Chair to amend or make changes to the proceedings of a meeting;
- i. Not enter into debate with the Council during the presentation;
- j. Being respectful and extending due courtesy when addressing Council by directing all comments through the Chair and taking direction from the Chair as advised; and
- k. Being respectful towards others present and respecting their right to their own views.

3. Inappropriate behaviour and action that may be taken in response

- 3.1 Council encourages constructive and open dialogue with relevant supporting material to assist it to understand issues important to members of the community. The following paragraphs are designed to ensure a safe and respectful environment is maintained and peaceful and orderly conduct is upheld.
- 3.2 The following guidelines are provided to assist participants' understanding of inappropriate behaviours and actions. Other inappropriate behaviours and actions not specifically listed may also be subject to the restrictions particularly if there are repeated incidents by the same person(s).

Participants in meetings with Council must not:

- a. Disrupt the orderly conduct of the meeting;
- b. Harass others attending the meeting, including Councillors, staff, media and members of the gallery;



COUNCIL POLICY

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- c. Bring in any placards, posters, props or materials other than personal effects unless prior permission has been sought from the Mayor/ Chairperson or CEO through the Council Business team prior to the meeting;
- d. Bring in any props or material that could be deemed harmful, offensive or create an unsafe environment;
- e. Use physical violence or direct verbal abuse at anyone or anything within the meeting;
- f. Act in a way that poses a threat to the safety of others; and/or
- g. Make an accusation or allegation of any type about a Councillor or member of staff, ratepayer or member of the public.

3.3 The CEO and/or Mayor retains the right to stop a presentation or refuse entry to anyone prior to, or during, a meeting whose behaviour or supporting material is likely to create an unsafe environment, cause offence to others, or disrupt the orderly conduct of the meeting.

3.4 Restrictions may be placed on individuals or groups by the CEO who repeatedly (i.e. three or more times) seek to present to Council on the same or similar matter, particularly if the matter is outside Council's power to act, or the matter has already been determined by Council.

3.5 The Local Law No 3 provides for penalties (fines) to be applied to any person who has been called to order and fails to comply with the Chair's reasonable direction.

3.6 The CEO or Council may place longer term restrictions on people whose behaviour in a meeting has been inappropriate, caused offence to others or created an unsafe environment.

4 The documents, props and devices that may be brought into a meeting

4.1 Documents or information that may be used in supporting a presentation or question to Council should meet the following criteria:

- a. Documentation provided must be legible (preferably typed);
- b. Permission is to be sought from the Mayor/Chair or CEO to record (i.e. photography, audio or film) the meeting proceedings;
- c. Permission is to be sought from the CEO, through the Council Business team prior to the meeting, if any props, placards, fliers, audio, video or other supporting materials are intended to be used to support a presentation. Anything deemed unsafe or inappropriate by the CEO will not be allowed;



COUNCIL POLICY

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- d. Documents are to be presented to the Mayor/Chair or CEO through the Council Business team prior to the commencement of a presentation or question time;
- e. Documentation presented is best to relate to actions that are within Council's powers and authority (refer 1.6);
- f. Documentation provided must be respectful of others and not be defamatory or objectionable in language, nature or intent;
- g. Sufficient information is to be provided to the Council Business team, prior to attendance at the meeting to ensure there is clarity around the anticipated information to be discussed or presented;
- h. Documents and/or PowerPoint presentations are to be provided to the Council Business team by 12 noon on the day preceding a meeting with Council. Powerpoint will be pre-loaded to help presenters make the best use of their time;
- i. Where possible questions should be provided to the Council Business team by 12 noon on the day preceding a meeting with Council. This enables Council to develop a proper and informed response.

Any questions that can't be answered in the presentation or Council meeting will be taken on notice so a response can be prepared; and
- j. A limit of 3 questions per Council meeting will apply. Multiple parts to a question will be treated as multiple questions.

RISK ASSESSMENT

If meetings are not able to be managed in an orderly, structured and timely manner there is a risk that the opportunity for diverse views to be shared and considered by Council may be unduly limited.

IMPLEMENTATION STATEMENT

This Policy will be implemented by the Mayor, CEO and the Council Business team in the coordination and management of meetings involving Councillors, Officers and members of the public.

This Policy supports and supplements areas not covered in detail within Council's Local Law No.3 2010. Where incidents occur that are not specifically described in this Policy, the intent of this Policy and the Local Law will apply.

A copy of this Policy will be published on Council's website.

Attachment 2

C66 Councillor Access To And Request For Council Information Policy



South Gippsland Shire Council

COUNCILLOR ACCESS TO COUNCIL INFORMATION POLICY

Policy Number	C66	Directorate	Chief Executive Office
Council Meeting	E. TBA		
Agenda Item No.			
Council Meeting	27 April 2016	Primary Author	CEO
Adoption Date			
Revision Date	March 2020	Secondary Author	Coordinator Corporate & Council Business

POLICY OBJECTIVE

The 'Councillor Access To Council Information Policy' (Policy) provides a consistent set of guidelines to ensure appropriate Councillor access to Council information. It aims to protect Councillors, as they undertake their responsibilities as elected representatives, from allegations of inappropriate or undue influence in respect of Council staff.

The Policy has been developed in accordance with Section 94A of the Local Government Act, 1989 (the Act) that requires the Chief Executive Officer (CEO) to develop, implement and enforce policies and protocol to manage interactions between Councillors and staff.

This Policy applies to the provision by Council staff of any information requested by Councillors, including information of a confidential or sensitive nature to which access may be limited.

LEGISLATIVE PROVISIONS

- Local Government Act, 1989 – Sections 76D, 76E, 79 and 94A
- Freedom Of Information Act, 1982
- Information Privacy Act, 2000
- Privacy and Data Collection Act, 2014
- Charter of Human Rights and Responsibilities Act 2006 (The Charter)
- Human Rights Policy, 2013
- Councillor Code of Conduct, 2010
- Code of Conduct for Staff, 2015
- Election Period Policy, 2016
- Local Law No 3, 2010
- Guidelines for Making and Handling Protected Disclosures Welfare Management Policy, 2015
- Fraud Policy, 2014

DEFINITIONS

CEO / Chief Executive Officer The Chief Executive Officer has the same meaning as defined in Section 3 Local Government Act 1989
"means the person appointed by a Council to be its Chief Executive Officer or any person acting in that position."

Councillor Has the same meaning as defined in Section 3 Local Government Act 1989

COUNCIL POLICY

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"means a person who holds the office of member of a Council."

Councillor Code of Conduct

Has the same meaning as defined in Section 3 Local Government Act, 1989
"means the code of conduct developed by a Council under section 76C".

InfoSum

A confidential weekly internal summary of information provided to Councillors on upcoming events and items of interest that do not warrant a briefing.

POLICY STATEMENT

Council promotes open and honest communication between Councillors and the CEO and his/her delegated Officers, as provided for in the Councillor Code of Conduct and the Act.

This Policy is designed to ensure all Councillors have access to the information they require to make informed strategic policy decisions in the best interests of the community. It provides a workable delineation between the role and functions of Councillors in setting the strategic direction of Council; and the administrative management and implementation of Council's strategic decisions by the CEO.

This Policy will support Councillors to make sure they act within the boundaries of their role, and avoid improperly directing or influencing a member of Council staff in the exercise of their duties, thereby protecting themselves against breaching Section 76E - Improper Direction and Improper Influence, of the Act.

This Policy will also assist Councillors to avoid potential breaches of Section 79 – Disclosure of Conflicts of Interest, of the Act, by clarifying that they must not use their position to seek information for gain or to cause detriment. This requires Councillors to understand their responsibilities and to separate their requests for information sought out of personal interest, from information that is legitimately required in their role as a Councillor.

1. Legislative Context

Councillors must at all times adhere to the provisions of the Local Government Act 1989 relating to confidentiality and/or inappropriate use of information. Section 77 of the Act makes it unlawful for a Councillor or former Councillor to release information that the person knows, or should reasonable know, is confidential information.

Privacy laws apply not only to disclosing personal or health information to persons outside Council, but also to access and use of such information by Councillors and staff. Councillor access to Council documents is to be guided by the principle of what is required for a Councillor to undertake his or her "representative role as a Council". The information must not be used for any other purpose



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Under Privacy and Health Records laws a Councillor can only access personal and/or health information held by Council where:

- a. The Councillor wishes to inspect or use the information for the same purpose or reason for which it was originally collected by Council, for example as part of a planning application which is currently under consideration and for which the information was supplied; or
- b. The Councillor wishes to inspect or use the information for a related purpose permitted by the legislation. This includes where:
 - i. The purpose is related to the original purpose of the collection, and the use or disclosure is within the reasonable expectations of the person to whom the information relates; or
 - ii. The person(s) to whom the information relates consents to the disclosure; or
 - iii. The use or disclosure is required or authorised under law; or
 - iv. The use or disclosure is necessary to lessen or prevent a serious and imminent threat to an individual's life, health, safety or welfare, or a serious threat to public health, public safety or public welfare.

2. Council Officers' Delegated Authority to provide Councillors with Information

The CEO delegates to the following Council Officers authority to deal with Councillors' requests for information:

- Director Corporate & Community Services
- Director Development Services
- Director Sustainable Communities & Infrastructure

3. Councillor Request for Information

A Councillor request for information can be received verbally or in writing; with e-mail being the preferred method.

In making a request, the Councillor will indicate the information required and the reason for seeking the information. The Officer may seek to clarify the relevance of the request to strategic directions being set by Council or agenda matters coming before Council to ensure that relevant, applicable and current information is being sought. Where a Councillor is unsure what information to request, he or she should contact the appropriate delegated Officer for assistance.

If a Councillor knows, or should reasonably know, that the information being requested is for personal interest or may be used for gain or detriment, they should reconsider their request in order not to misuse their position and breach Section 79 of the Act.



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If they determine to pursue such a request for personal interest it will be treated as a request for information from a community member. In this case the Information Privacy Act 2000, the Freedom of Information Act 1982, the Charter of Human Rights and Responsibilities Act 2006, and the Privacy and Data Collection Act 2014 may all apply.

4. Provision of Requested Information

Upon receiving a request, the delegated Officer must determine if the Councillor has a right to access that information; and secondly whether the information should be disseminated to all Councillors, so all Councillors have the same information.

Where a request for information is received that relates to a current matter being considered by Council, all Councillors will be provided with the request and resulting information.

If it is appropriate to provide the information, the delegated Officer is required to:

- a. Advise the Executive Office through the CEO's Executive Assistant for capture in the Register of Councillor Requests;
- b. Ensure the requesting Councillor is provided with access to all relevant and current information;
- c. Ensure the Councillor understands any related issues around confidentiality or other sensitive matters; and
- d. If appropriate, provide any other information necessary to place the information being accessed in context.

In some instances a delegated Officer may arrange a time to view copies of documents with personal and health, or other sensitive information deleted. This viewing will be in the presence of the delegated Officer, or their nominated Officer and the documentation must not be copied, photographed or removed.

If it is not appropriate to provide access to the information requested, the Officer must advise the Councillor of the reasons for this decision and also advise the CEO and the CEO's Executive Assistant for capture in the Register.

5. Administration

The Executive Office will maintain a register of requests and publish the previous fortnight's section of the register in InfoSum weekly. Any questions regarding the register are to be directed to the Executive Office.

Requests for information that relate to information required for disputes between Councillors (such as a Councillor Conduct Panel) are exempt from this Policy.

A Councillor may appeal to the CEO in writing if unhappy with a decision made under this Policy.



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RISK ASSESSMENT

This Policy enables:

- a. Council, Councillors, Delegated Officers and Council staff to understand their requirements and obligations under the Act;
- b. Council to demonstrate its commitment to probity in the management of Councillor requests to access corporate information;
- c. Community confidence and public trust in Council to be maintained or improved;
- d. Council to address matters that may not be explicitly captured in the Local Government Act 1989 and to put in place procedures that, when followed, will mitigate the likelihood of any breaches of the Act; in particular potential breaches of Section 76D – Misuse of Position, Section 76E – Improper Direction and Improper Influence, or Section 79 – Disclosure of Conflict of Interest by Councillors and of Section 94A – Functions of the Chief Executive Officer by the CEO; and
- e. Councillors, Officers and external parties associated with South Gippsland Shire Council, to mitigate the risk of fraud that may be derived through use of documents provided and appropriately manage situations which may be regarded as unethical conduct or behaviour.

IMPLEMENTATION STATEMENT

As soon as practical after adoption of this Policy the CEO will ensure that all Councillors and staff are informed of its requirements.

Staff have a responsibility to refer any departures or deviations from this Policy to their Director and/or the CEO.

Councillors are able to take any concerns they may have regarding Policy implementation to the Mayor and/or the CEO.

The Mayor and CEO will work together to resolve any matters arising from the interface between Councillors and Officers requests.

Any breaches will be dealt with under the relevant provisions of the relevant legislation and/or under the Councillor Code of Conduct.

The Policy will be published on Council's website.

The 'Register of Requests for Information' will be implemented immediately after adoption of the Policy. It will be managed through the Executive Office.



By protecting individuals' right to privacy and reputation, this Policy specifically addresses the requirements of the Charter of Human Rights and Responsibilities Act 2006 and Council's Human Rights Policy.

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Councillor Access To Information Policy

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E.7 COUNCILLOR CONDUCT PANEL REPORT DETERMINATION - INITIATED BY CR FAWCETT, CR DAVIES AND CR BRUNT REGARDING CR HILL

Corporate and Community Services Directorate

STAFF DISCLOSURE OF INTEREST

Nil

EXECUTIVE SUMMARY

Under Section 81M of the Local Government Act 1989, a copy of the decision of a Councillor Conduct Panel (Panel) must be tabled to the next Ordinary Meeting of Council and recorded in the Minutes for that meeting.

Council received a Councillor Conduct Panel Report (Panel Report) on 13 April 2016 in respect of the Councillor Conduct Panel initiated by Cr Fawcett, Cr Davies and Cr Brunt, regarding Cr Hill, on 6 August 2015.

The Panel Report is tabled for Council to receive, note and include in the Minutes of this meeting. The Panel Report is contained in two parts (refer **Attachment 1** and **Confidential Appendix 1**).

Document/s pertaining to this Council Report

- **Attachment 1** - Councillor Conduct Panel Report in part including Reasons from Clause 72 through to Findings Clause 85
- **Attachment 2** – Councillor Conduct Panel Report – Conflict of Interest Legal Advice.
- **Confidential Appendix 1** - Councillor Conduct Panel Report - Determination Clause 1 through to 71.

Confidential Appendix 1 is confidential information on the grounds that it relates to a matter specified under Section 89(2)(h) that Council considers would prejudice the Council or any persons; respective of the Local Government Act 1989.

A copy of **Confidential Appendix 1** has been distributed separately to Councillors and the Executive Leadership Team.

LEGISLATIVE / ACTION PLANS / STRATEGIES / POLICIES

- Local Government Act 1989 (Act), Sections 81J and 81M
- Local Law No. 3 2010 - Processes of Municipal Government

INTERNAL POLICIES / STRATEGIES / DOCUMENTS

- Councillor Code of Conduct 2013

- Anti-Discrimination, Bullying and Harassment Policy 2016

COUNCIL PLAN

Outcome:	4.0	A Leading Organisation
Objective:	4.2	Pursue best practice in organisational development and operations of the organisation.
Strategy:	4.2.1	We will monitor corporate governance processes, including risk management and skills development with the aim of ongoing improvement.

CONSULTATION

As required by the Act, a copy of this report has been provided to the parties involved in the Panel, to Council and to the Minister for Local Government.

REPORT

Background

An application to form a Panel was received on 6 August 2015 and an initial Hearing was held on 11 September 2015.

The Panel resumed the Hearing on 2 December 2015 and again on 19 January 2016.

The Panel Report outlining the Determinations and Findings of the Hearing was received on 13 April 2016.

In accordance with Section 81M of the Act the Panel Report must be tabled at the next Ordinary Meeting of Council.

Proposal

Council is required to note the Panel Report (**Attachment 1** and **Confidential Appendix 1**) and include it in the Council Minutes.

Council, in noting the report, should specifically consider the 'Reasons', the 'Councillor Code of Conduct' review requirements and the 'Findings' sections of the Panel Report. These injunctions are set out commencing in Clause 72 through to and including Clause 85 of the Panel Report in **Attachment 1**.

These clauses require specific actions to be followed by Council and Cr Hill.

Council is to note the findings of the Panel as follows:

Clause 85 The Panel pursuant to s.81J:

- 85.1 (1)(a) makes a finding of misconduct against Cr D Hill.
- 85.2 (1)(c) makes a finding that remedial action is required.
- 85.3 (1)(d) directs the Council to review its Code of Conduct in the light of the Panel's comments in paragraph 84 of this document.
- 85.4 (2)(a) reprimands Cr D Hill.
- 85.5 (3)(b) directs Cr D Hill to attend training for a period of six months directed towards his understanding of Council procedures and practice, improving his communication skills with Councillors and Council Officers and monitoring him in his role as a Councillor with an appropriate mentor.

FINANCIAL CONSIDERATIONS

The Councillor Conduct Panel has incurred unplanned and unbudgeted expenditure and use of Council resources. The full costs of the Panel have not yet been received, however as at the time of writing the report, the costs associated with the Panel are conservatively \$23,000 with an anticipated further \$5,000 to \$8,000 expenditure expected.

RISKS

Council's reputation can be negatively impacted when conflicts arise between Councillors that are not resolved at the earliest point of time. When a conflict escalates to the appointment of a Councillor Conduct Panel then both reputational risks and financial impacts may be compounded.

Demonstrating that an issue has been independently assessed provides transparency to the public in regard to Council's management of Councillor conduct where internal resolution has not been possible.

CONCLUSION

No conclusions are drawn in respect of this Report which has been provided to meet a legislative requirement. Failure to comply with the requirements set out in the Panel Report may be investigated as a breach of the Act.

RECOMMENDATION

That Council notes and implements the Councillor Conduct Panel Report in Attachment 1 and Confidential Appendix 1 in respect of the Panel application lodged by Councillor Fawcett, Councillor Davies and Councillor Brunt regarding Councillor Hill as follows:

"Clause 85, The Panel pursuant to s.81J:

- Clause 85.1 (1)(a) makes a finding of misconduct against Cr D Hill.
- 85.2 (1)(c) makes a finding that remedial action is required.
- 85.3 (1)(d) directs the Council to review its Code of Conduct in the light of the Panel's comments in paragraph 84 of this document.
- 85.4 (2)(a) reprimands Cr D Hill.
- 85.5 (3)(b) directs Cr D Hill to attend training for a period of six months directed towards his understanding of Council procedures and practice, improving his communication skills with Councillors and Council Officers and monitoring him in his role as a Councillor with an appropriate mentor."

MOVED: Cr Fawcett

SECONDED: Cr Brunt

THAT COUNCIL:

- 1. NOTES AND IMPLEMENTS THE COUNCILLOR CONDUCT PANEL REPORT IN ATTACHMENT 1 AND CONFIDENTIAL APPENDIX 1 IN RESPECT OF THE PANEL APPLICATION LODGED BY COUNCILLOR FAWCETT, COUNCILLOR DAVIES AND COUNCILLOR BRUNT REGARDING COUNCILLOR HILL AS FOLLOWS:**

"CLAUSE 85, THE PANEL PURSUANT TO S.81J:

CLAUSE 85.1(1)(A) MAKES A FINDING OF MISCONDUCT AGAINST CR D HILL.

85.2 (1)(C) MAKES A FINDING THAT REMEDIAL ACTION IS REQUIRED.

85.3 (1)(D) DIRECTS THE COUNCIL TO REVIEW ITS CODE OF CONDUCT IN THE LIGHT OF THE PANEL'S COMMENTS IN PARAGRAPH 84 OF THIS DOCUMENT.

85.4 (2)(A) REPRIMANDS CR D HILL.

85.5 (3)(B) DIRECTS CR D HILL TO ATTEND TRAINING FOR A PERIOD OF SIX MONTHS DIRECTED TOWARDS HIS UNDERSTANDING OF COUNCIL PROCEDURES AND PRACTICE, IMPROVING HIS COMMUNICATION SKILLS WITH COUNCILLORS AND COUNCIL OFFICERS AND MONITORING HIM IN HIS ROLE AS A COUNCILLOR WITH AN APPROPRIATE MENTOR."

- 2. AUTHORISE THE CHIEF EXECUTIVE OFFICER TO IMPLEMENT CLAUSE 85.5 OF THE COUNCILLOR CONDUCT PANEL REPORT.**
- 3. RECEIVE AND NOTE THE LEGAL ADVICE IN ATTACHMENT 2 REGARDING CONFLICT OF INTEREST.**

Cr Kennedy left the Council Meeting at 4.26pm and returned at 4.28pm.

CARRIED UNANIMOUSLY

The Mayor adjourned the Council Meeting for 5 minutes.

Attachment 1
Councillor Conduct Panel Report in part including Reasons from Clause 72
through to Findings Clause 85

Reasons

72. A number of matters were canvassed before the Panel which reflect an unsatisfactory relationship between the Councillors concerned. While differences of opinions are

common between Councillors, and can be constructive, they can also mitigate against Councillors properly fulfilling their roles. It is incumbent on the Councillors and the leadership of the Council to address such issues which can be a negative and destructive element. These can also be addressed in a comprehensive and affective mediation process.

73. The issues which the Panel is called upon to determine are:-

73.1 whether Cr Hill's comments in relation to the Rating Differential Strategy on 3 June 2015 and the Minority Reports on the 2014-208 Rating Strategy breached the following clauses of the Code:-

"2.2(b) Act honestly and avoid statements (whether oral or in writing) or actions that will or are likely to misled or deceive a person."

"3.1(b) Treating fellow Councillors with respect, even when disagreeing with their views or decisions."

"3.2(a) Being honest in all dealings with the community, with other Councillors and with Council staff."

(Complaint 3)

73.2 whether the article in the three local newspapers on 2 & 3 June 2015 relating to the location of the Council's Office was in breach of the following clauses of the Code:-

"2.2(b) Act honestly and avoid statements (whether oral or in writing) or actions that will or are likely to misled or deceive a person."

"3.1(e) Acting with courtesy towards Council staff and not displaying intimidatory behaviour"

"3.2(a) Being honest in all dealings with the community, with other Councillors and with Council staff."

(Complaint 1)

73.2 whether at the meeting of 25 March concerning the 2015/16 Budget, Cr Hill made derogatory comments about the Council and the Councillors and was in breach of the following clauses of the Code:-

"2.2(c) Treat all persons with respect and have due regard to the opinions, beliefs, rights and responsibilities of other Councillors, Council officers and other persons."

"2.2(e) Endeavour to ensure that public resources are used prudently and solely in the public interest."

"3.1(e) Acting with courtesy towards Council staff and not displaying intimidatory behaviour"

"3.2(a) Being honest in all dealings with the community, with other Councillors and with Council staff."

(Complaint 2)

74. In relation to Complaint 3, the Panel's conclusion is that Cr Hills' conduct has breached clauses 2.2 and 3.1(b) of the Code.

75. While Cr Hills' motivation for his comments may have been to critically analyse the Report and provide another view, his words went too far. They reflected inappropriately on other Councillors and Council Officers. The email from him to Tim Tamlin and Ian Martin dated 22 September 2015 is evidence of this. A minority view or report is of benefit to the Council if it addresses the facts and issues in question and does not resort to judgements of persons holding a different view or their motivations.

76. Any pressure or aggression Cr Hill may have felt for Cr Fawcett does not justify inappropriate language.
77. The Panel concluded that a breach of paragraphs 2.2(b) and 3.1(b) of the Code has occurred.
78. In relation to Complaint 1 the Panel's conclusion is that Cr Hills' conduct has breached clauses 2.2(b) and 3.2(a) of the Code.
79. Cr Hill stated that he wanted to facilitate a proper debate as to the future location of the Council Offices and he felt that this issue was predetermined. There may well have been a preference for its location by some Councillors and Council Officers, but that is not the same as alleging that the location decision had been made and the money spent on it was wasted. There is a difference between advocating an alternative outcome and questioning the motives and propriety of those with a different view.
80. Cr Hills' letter to the Editor (B38) constituted an appropriate apology for his initial letters.
81. In relation to Complaint 1 the Panel's conclusion is that Cr Hills conduct has breached clauses 2.2(b) and 3.2(a), but that this has been ameliorated by his apology.
82. In relation to Complaint 2 Cr Hill referred to Officers briefly as misleading and incorrect.
83. Cr Hill stated that he was referring to the quality of the information and its analysis, rather than the competence or integrity of the Officers. He stated he believed his factual analysis was correct and he had an obligation to speak out. The terminology used by Cr Hill enables the Panel to conclude that his words and actions constituted a breach of 2.2(c) and 3.1(e) of the Code. It is noted that Cr Hill felt frustrated in not being able to fully expound his views at Council, but this did not provide an excuse for his comments.

Code of Conduct

84. Councillor Code of Conduct is a chance for Council to clearly articulate what it means by good conduct and good governance. It also sets the standards to which Councillors must adhere.

The principles for good conduct are set out in the section 76 B and section 76 BA of the Local Government Act 1989. The Act also defines several other requirements for the conduct of Councillors. However it is not sufficient to simply translate the wording of the act in a Code of Conduct document.

Councillors should be involved in a comprehensive review of the code. An inclusive process for developing the code of conduct allows Councillors to think about what they mean by terms such as 'courtesy' and 'respect'. Councillors can then agree on a common understanding of these and other terms.

Good governance depends on the capacity and willingness of Councillors to behave well and do whatever is necessary to build and maintain good working relationships and Councillors committing to repairing working relationships when they break down.

Consideration should be given to the following issues:

- 1) That Council including the Councillors, review their Councillor Code of Conduct and Meeting Procedures Local Law with a review to simplification and greater clarity in their application.
- 2) The Mayor and Chairs of all council committees ensure that meetings are conducted in a manner in accordance with the adopted Meeting Procedure Local Law and ensure all Councillors and committee members are treated in a consistent manner.
- 3) The Mayor and Chairs of all committees receive annual training in the application of meeting procedures and their importance in achieving good governance outcomes.

Findings

85. The Panel, pursuant to s. 81J:

85.1 (1)(a) makes a finding of misconduct against Cr D Hill.

85.2 (1)(c) makes a finding that remedial action is required.

85.3 (1)(d) directs the Council to review its Code of Conduct in the light of the Panel's comments in paragraph 84 of this document.

85.4 (2) (a) reprimands Cr D Hill.

85.5 (3)(b) directs Cr D Hill to attend training for a period of six months directed towards his understanding of Council procedures and practice, improving his communication skills with Councillors and Council Officers and monitoring him in his role as a Councillor with an appropriate mentor.

Dated: 12 / 4 /2016



.....
Roger Batrouney (Legal Member)
Panel Chairman



.....
Noel Harvey
Municipal Governance Member



South Gippsland Shire Council

COUNCILLOR CODE OF CONDUCT POLICY

Policy Number	C14	Directorate	Corporate Services
Council Item No.	TBA	Department	Governance Services
Council Adoption Date	26 June 2013	Primary Author	David Roche
Revision Date	26 June 2017	Secondary Author	Luke Anthony

POLICY OBJECTIVE

The objective of this Councillor Code of Conduct is to:

1. Have in place an approved Councillor Code of Conduct as required by section 76C of the Local Government Act (the Act) 1989; and
2. Review and replace the Councillor Code of Conduct adopted by Council on 24 November 2010.

This policy should also be read in conjunction with the following other Council Policies:

- Pre-election Policy;
- Councillor Discretionary Funds Policy;
- Communication and Consultation Policy;
- Records Information Management Policy;
- Risk Management Policy;
- Human Rights Policy;
- Information Privacy Policy;
- Information Security Policy;
- Anti – Discrimination, Bullying and Harassment Policy;
- Grievance Policy;
- Occupational Health and Safety Policy;
- Councillor Support and Expenditure Policy;
- Council Use of Term Mayoral Policy;
- Council Use of Logo Policy; and
- Councillor Vehicle Policy.

LEGISLATIVE PROVISIONS

Local Government Act (the Act) 1989

Accident Compensation Act 1985



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Equal Opportunity Act 1985 (Victoria)

Victorian Charter of Human Rights and Responsibilities Act 2006

Occupational Health and Safety Act 2004

Disability Discrimination Act 1992

Racial Discrimination Act 1975

Racial and Religious Tolerance Act 2001 (Vic)

Sex Discrimination Act 1984

Independent Broad-based Anti-Corruption Commission (IBAC) Act 2011

Protected Disclosure Act 2012

Victorian Inspectorate Act 2011

Public Interest Monitor Act 2011

Information Privacy Act 2000 (Vic)

DEFINITIONS

Council – means the South Gippsland Shire Council. Council is a body corporate that can only make decisions at a Council meeting.

Councillors – means the individual persons who are democratically elected to hold the office of member of the South Gippsland Shire Council.

POLICY STATEMENT

1. Introduction

Councillors of the South Gippsland Shire Council (the Council) are committed to working together in the best interests of the people within their municipality and to discharging their responsibilities to the best of their skill and judgment.

Councillors are committed to working together constructively to enable Council to develop and achieve Council's Community Vision 2050 in a manner that is consistent with Council's values of Community Engagement, Openness and Integrity.

The primary role of the Council is to provide leadership for the good governance of the South Gippsland Shire. The role of the Council also includes:

- 1.1 Acting as a representative government by taking into account the diverse needs of the local community in decision making;
- 1.2 Providing leadership by establishing strategic objectives and monitoring their achievement;
- 1.3 Maintaining the viability of the Council by ensuring that resources are managed in a responsible and accountable manner;



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- 1.4 Advocating the interests of the local community to other communities and governments;
- 1.5 Acting as a responsible partner in government by taking into account the needs of other communities; and
- 1.6 Fostering community cohesion and encouraging active participation in civic life.

2. Councillor Conduct Principles

Councillors endorse and agree to the following Councillor Conduct Principles specified in sections 76B and 76BA of the Act:

- 2.1 In carrying out their role as Councillors, Councillors will:
 - a. Act with integrity;
 - b. Impartially exercise his or her responsibilities in the interests of the local community;
 - c. Not improperly seek to confer an advantage or disadvantage on any person; and
 - d. Consider and respect human rights when developing policies and making decisions that affect the community.
- 2.2 In addition, in performing their role as Councillors, Councillors will:
 - a. Avoid conflicts between his or her public duties as a Councillor and his or her personal interests and obligations;
 - b. Act honestly and avoid statements (whether oral or in writing) or actions that will or are likely to mislead or deceive a person;
 - c. Treat all persons with respect and have due regard to the opinions, beliefs, rights and responsibilities of other Councillors, Council officers and other persons;
 - d. Exercise reasonable care and diligence and submit himself or herself to the lawful scrutiny that is appropriate to his or her office;
 - e. Endeavour to ensure that public resources are used prudently and solely in the public interest;
 - f. Act lawfully and in accordance with the trust placed in him or her as an elected representative; and
 - g. Support and promote these principles by leadership and example and act in a way that secures and preserves public confidence in the office of Councillor.

3. Councillor Behaviours

Councillors will adhere to the following principles of behaviour in their general conduct as councillors:



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3.1 Treating all people with courtesy and respect, recognising that there are legitimate differences in opinions, race, culture, religion, language, gender and abilities. This includes:

- a. Treating members of the community with dignity and ensuring that neither offence nor embarrassment are caused;
- b. Treating fellow Councillors with respect, even when disagreeing with their views or decisions;
- c. Debating contentious issues without resorting to personal acrimony or insult;
- d. Ensuring their punctual attendance at Council and committee meetings and briefings and wherever possible remaining in attendance to ensure that the best possible access to information that is required in responsible decision making is obtained;
- e. Acting with courtesy towards Council staff and not displaying intimidatory behaviour; and
- f. A commitment to protecting the health, safety and well-being of all Councillors, staff and the community in line with Occupational Health and Safety, Human Rights and Equal Opportunity Legislation and providing, as far as practicable, a safe Council working environment that is free from bullying and violent behaviour.

3.2 Always acting with integrity and honesty:

- a. Being honest in all dealings with the community, with other Councillors and with Council staff;
- b. Always acting with impartiality and in the best interests of the community as a whole;
- c. Not acting in ways that may damage the Council or its ability to exercise good government;
- d. Exercising reasonable care and diligence in performing their functions as Councillors; and
- e. Complying with all relevant laws, be they Federal, State or Local Laws.

3.3 Recognising that Councillors hold a position of trust and will not misuse or derive undue benefit from these positions:

- a. Councillors will avoid conflicts of interest and comply with the relevant provisions of the Act and this Code of Governance relating to interests and conflicts of interest; and
- b. Councillors will not exercise undue influence on other Councillors, members of Council staff or members of the public to gain or attempt to gain an advantage for themselves.

4. Council decision making



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Councillors are committed to making all decisions impartially and in the best interests of the whole community and acknowledge that effective decision-making is vital to the democratic process and an essential component of good governance. Accordingly Councillors:

- 4.1 Will actively and openly participate in the decision making process, striving to be informed to achieve the best outcome for the community;
- 4.2 Will respect the views of the individual in the debate. However, Councillors will also accept that decisions are based on a majority vote; and
- 4.3 Accept that no Councillor can direct another Councillor on how to vote on any decision.

5. Confidential information

Councillors acknowledge that they will comply with their obligations under s77 of the Act in relation to confidential briefings or information (as defined under the Act) and recognise that this obligation extends to ensuring the safekeeping of confidential information or information that would reasonably be deemed confidential.

6. Access to and use of council information

- 6.1 Councillors will treat Council information appropriately, by:
 - a. Not using information gained by virtue of their position as a Councillor for any purpose than to exercise their role as a Councillor;
 - b. Respecting and following the Council's policies in relation to public comments and communications with the media (refer section 10);
 - c. Not releasing information deemed 'confidential information' in accordance with section 77 of the Act (refer section 5); and
 - d. Recognising the requirements of the Information Privacy Act 2000 regarding the access, use and release of personal information.
- 6.2 Councillors acknowledge that all requests made by Councillors for briefings from Council Officers or access to information on Council files should be registered and reported. This obligation does not apply to requests for clarification / explanation of items on a forthcoming Council agenda. Councillors seeking information / explanation or wishing to provide feedback on a matter should do so through the relevant Director.

7. Use of Council resources (including funds and property)

Council resources are to be used effectively and economically.

- 7.1 Councillors will maintain adequate security over the Council property, facilities and resources provided to us to assist in the performance of our role;
- 7.2 Councillors will not use Council resources, including the services of Council staff, for private purposes, unless legally or properly authorized to do so, and payments are made where appropriate; and



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7.3 Councillors will not use public funds or resources in a manner that is improper or unauthorised.

8. Relationships with Staff

8.1 Councillors will work as part of the Council team with the Chief Executive Officer (CEO) and other members of staff. There must be mutual respect and understanding between Councillors and Officers in relation to their respective roles, functions and responsibilities;

8.2 A Councillor's role is one of advocacy and leadership rather than management and administration. The CEO is responsible for all staff matters; and

8.3 Councillors will be aware of the requirements of Section 76E of the Act and must not seek to improperly direct or influence members of Council staff in the exercise of their duties. It is appropriate to notify the relevant Director when urgent specific issues or particular functions may be required to be undertaken. For non – urgent tasks or Customer Requests raised on behalf of the community or a community member, Councillors will log a Customer Request by calling Customer Service on 03 5662 9229 or use the online facility on Council's website.

9. Gifts

Councillors will not accept gifts either in their role as Councillor or where it could be perceived to influence a Councillor in their role as a Councillor except:

9.1 Where the gift would generally be regarded as only having a token value and could not be perceived to influence our actions as a Councillor.

9.2 Where refusal may cause offence or embarrassment, in which case Councillors will accept the gift on behalf of the Council and the gift becomes the property of the Council.

Councillors will follow Council Policy - "Acceptance of Gifts and Donations".

10. Communication

As representatives of the community, Councillors have a primary responsibility to be responsive to community views and to adequately communicate the attitudes and decisions of Council.

Councillors will endeavour to ensure that the messages they communicate through the media are clear and consistent, and positively portray the Council as a decisive and responsible governing body.

10.1 The Mayor will provide official comment to the media on behalf of Council where the matter is of a political, controversial or sensitive nature. This includes:

- a. State-wide political issues affecting Local Government;
- b. Contentious local issues that impact the community that do not relate directly to the business of Council but to the representation of the community;



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- c. Issues pertaining to policy and Council decisions;
- d. Issues relating to the strategic direction of the Council; and
- e. The Mayor may nominate a portfolio Councillor or other Councillor to make official comment on behalf of the Council, where appropriate.

10.2 The CEO is the official spokesperson for all operational matters pertaining to the South Gippsland Shire Council as an organisation including:

- a. Staffing and structure of the organisation;
- b. Corporate issues relating to service provision or the day-to-day business of Council; and
- c. The CEO may nominate a Council officer spokesperson if appropriate.

10.3 Individual Councillors are entitled to express independent views through the media (including social media), however Councillors will make it clear that any unofficial comment is a personal view, and does not represent the position of the Council as a whole.

11. Conflict of Interest Procedures

11.1 The Council is committed to making all decisions impartially and in the best interests of the whole community. It therefore recognises the importance of fully observing the requirements of the Act in regard to the disclosure of conflicts of interest.

For the purpose of this Code, "direct interest", "indirect interest" and "conflicts of interest", have the meanings specified in the Act.

Councillors will comply with all the provisions of the Act in regard to Conflicts of Interest:

- a. If a Councillor considers that they have a direct or indirect interest in a matter before the Council, a Special Committee of Council or an Assembly of Councillors, they have a conflict of interest;
- b. If a Councillor has a conflict of interest in a matter, they will comply with the requirements of the Act and ensure they disclose the class and nature of the interest and leave the room in which the meeting or assembly is being held during any discussion, debate and vote on the matter; and
- c. If a Councillor has a personal interest in a matter to be considered by the Council or special committee that is not a conflict of interest, and the Councillor considers that their personal interest may be in conflict with their public duty to act impartially and in the interest of the whole community, the Councillor will declare a conflicting personal interest under section 79B of the Act immediately before the matter is considered at the relevant meeting and apply to the Council or Special Committee to be exempted from voting on the matter. At a Council Meeting this exemption is granted only by resolution of Council.



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In addition to the requirements of the Act:

11.2 Councillors will give early consideration to each matter to be considered by the Council, any Special Committee to which Councillors belong or Assembly of Councillors, to ascertain if they have a conflict of interest;

11.3 Councillors will recognise that the legal onus to determine whether a conflict of interest exists, rests entirely with each individual Councillor and that Council officers cannot offer any advice in relation to potential conflicts. If Councillors cannot confidently say that they do not have a conflict of interest, they will declare a conflict of interest and comply with the relevant requirements as if they had a conflict of interest;

11.4 If Councillors consider that they may be unable to vote on a matter because of a conflict of interest, they will notify, as soon as possible, the Mayor or the Committee Chair, depending on whether the matter is to be considered by the Council, a Special Committee or an Assembly of Councillors, as well as the CEO; and

11.5 If a Councillor believes they have a Conflict of Interest or conflicting personal interest they will adhere to 11.1, 11.2, 11.3 and 11.4 above rather than abstain from voting.

12. Councillor Attendance At Events or Functions

12.1 The role of Mayor, in accordance with Section 73 of the Act, is to take precedence at all municipal proceedings within the municipal district.

12.2 In undertaking this role, the Mayor is deemed to be Council's principal Councillor appointed to attend key, strategic external (non-Council) events or functions.

12.3 The Mayor may decide to delegate the attendance of an external event or function to either:

- a. The Deputy Mayor, if Council has chosen to elect a Deputy Mayor, whose role is to deputise for the Mayor in providing a leadership and formal representational presence at civic, ceremonial and public engagements; or
- b. Any other Councillor, as determined by the Mayor.

12.4 While the Mayor is typically Council's key representative, there are many committees (both Council and external) and external bodies where Council has involvement. It is Council's practice to share representation amongst all Councillors, to ensure a manageable workload, by appointing a Councillor(s) to a committee or external body. Where a Councillor has been appointed to a committee or external body, it is expected that that Councillor will be Council's representative at the meetings, functions and events of that committee or external body. Where a Councillor is unable to attend a function, the Councillor where possible, is required to find a suitable replacement Councillor, or where relevant a Council staff member, to attend on their behalf.

12.5 When representing Council at either a Council or external function or event, Councillors are expected to adhere to this Code and not act in ways



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that may damage the Council or commit Council to an action that has not been a decision of Council.

13. Dispute Resolution Procedures

- 13.1 Before commencing any formal dispute resolution process for a dispute arising between two or more Councillors, the parties to any disagreement will endeavour to resolve their differences in a courteous and respectful manner. Councillors will recognise that they have been elected to represent the best interests of the community.
- 13.2 In the event of any dispute occurring where the parties are unable to resolve interpersonal conflicts that adversely affect the operation of the Council, the parties to the dispute agree to work together to try to resolve the dispute and will agree to the appointment of a mediator nominated by the CEO and acceptable to the parties, or failing agreement, nominated by the President of the Municipal Association of Victoria and appointed by the CEO, if they are unable to resolve the dispute within three working days.
- 13.3 If a mediator is appointed, all parties agree to cooperate with the dispute resolution process and use their best endeavours to assist the mediator when requested.
- 13.4 In the event that a dispute cannot be resolved through application of these processes, it may be referred to a Councillor Conduct Panel.
- 13.5 If the dispute relates to an apparent offence under the Act it should be referred to the Minister for Local Government and not the subject of an application to a Councillor Conduct Panel.
- 13.6 The dispute resolution procedure is not intended to resolve differences in policy or decision making, which are appropriately resolved through debate and voting in Council and Committee meetings.

14. Allegations of Breaches of the Code

- 14.1 From a Councillor or Councillors.

Refer to Section 12 Dispute Resolution Procedures under this Code.

- 14.2 Between Councillors and staff.

The CEO has sole responsibility for the management of Council staff. In the event of a Councillor wishing to lodge a complaint against a member of Council staff, this complaint must be lodged with the CEO. Where the complaint is about the CEO, the complaint must be lodged with the Mayor. It will be dealt with in accordance with the procedures outlined in the Staff Anti – Discrimination Bullying and Harassment Policy and Grievance Policies.

Where a staff member has a complaint in respect of a Councillor, the complaint must be made to the CEO who will, if deemed appropriate, discuss the matter with the Mayor. Where the Mayor deems a breach of the Councillor Code of Conduct has occurred the Mayor will progress the matter in accordance with the Dispute Resolution Procedures, outlined in Section 13 above. Where the complaint involves the Mayor, the CEO will assume the responsibilities of the Mayor for the purpose of this clause.



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14.3 Allegations of Breaches of the Code by a Councillor(s) and complaints regarding a Councillor(s) from residents or the community.

The allegation or complaint will be referred to the Mayor (unless the allegation relates to the Mayor) for initial investigation and determination of appropriate action and / or possible referral to Council's Protected Disclosure Officer to be dealt with under the Protected Disclosure Act 2012.

If the allegation or complaint relates to the Mayor, the matter should be referred to the CEO in the first instance, and the CEO will in turn either refer the matter to Council which will deal with the matter in accordance with the Dispute Resolution Procedures, or to Local Government Victoria.

14.4 Other bodies to which complaints may be referred.

Complaints and allegations about improper conduct and detrimental actions by Councillors can also be made to the Victorian Ombudsman.

Complaints and allegations about serious corrupt conduct can be made to the Independent Broad-based Anti-corruption Commission (IBAC). Complaints and allegations can also generally be made to the Local Government Inspectorate.

15. Penalties / Sanctions

Breaches of the Code can lead to investigation, sanctions and action under the Act or any other relevant legislation.

RISK ASSESSMENT

Council, through adopting this Councillor Code of Conduct is:

- Complying with the requirements of Section 77C of the Act;
- Reducing the risk of legislative non – compliance of the Act more broadly by Councillors, by clearly outlining the expectations and legislative requirements of Councillors; and
- Providing a clear means of managing allegations of breaches of the Code by Councillors or complaints against Councillors.

IMPLEMENTATION STATEMENT

Council will implement this policy by:

- Providing a copy of the Code to all Councillors;
- Making a copy of the Code available for inspection at the Council Office and on Council's website;
- Communicating the Code to all staff following adoption by Council; and
- Following the procedures outlined in Section 13 Dispute Resolution Procedures and Section 14 Allegations of Breaches of the Code when required.

13. Dispute Resolution Procedures

13.1 Before commencing any formal dispute resolution process for a dispute arising between two or more Councillors, the parties to any disagreement will endeavour to resolve their differences in a courteous and respectful manner. Councillors will recognise that they have been elected to represent the best interests of the community.

13.2 In the event of any dispute occurring where the parties are unable to resolve interpersonal conflicts that adversely affect the operation of the Council, the parties to the dispute agree to work together to try to resolve the dispute and will agree to the appointment of a mediator nominated by the CEO and acceptable to the parties, or failing agreement, nominated by the President of the Municipal Association of Victoria and appointed by the CEO, if they are unable to resolve the dispute within three working days.

13.3 If a mediator is appointed, all parties agree to cooperate with the dispute resolution process and use their best endeavours to assist the mediator when requested.

13.4 In the event that a dispute cannot be resolved through application of these processes, it may be referred to a Councillor Conduct Panel.

13.5 If the dispute relates to an apparent offence under the Act it should be referred to the Minister for Local Government and not the subject of an application to a Councillor Conduct Panel.

13.6 The dispute resolution procedure is not intended to resolve differences in policy or decision making, which are appropriately resolved through debate and voting in Council and Committee meetings.

Attachment 2 Councillor Conduct Panel Report – Conflict of Interest Legal Advice

Advice



Maddocks

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To Tim Tamlin
South Gippsland Shire Council
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Date 22 April 2016

Subject Councillor Conduct Panel Report

- Questions**
1. Will any (and, if so, which) of the Councillors involved in the Councillor Conduct Panel (CCP) application concerning Cr Don Hill (the Application) have a conflict of interest when the CCP's Determination is tabled and Council considers a recommendation to implement aspects of the CCP's directions?
 2. If Cr Hill exercises his right to apply to the Victorian Civil and Administrative Tribunal (VCAT) for a review of the CCP's decision, must Council continue to implement the relevant directions of the CCP?

Summary of advice *Below is a summary of our advice. Please read it in conjunction with the detailed advice that follows.*

1. None of the Councillors involved in the Application is likely to have a conflict of interest when the CCP's Determination is tabled, because of s 79C(1)(j)(ii) of the *Local Government Act 1989 (the LGA)*.
2. Unless VCAT orders a stay of the CCP's decision, Council is, strictly speaking, required to implement those aspects of the CCP directions which it is capable of implementing. Having said this, a more desirable course would be to defer implementation until the outcome of any VCAT application is known. Such a deferral should only occur with Cr Hill's concurrence.

Contact Our Ref: MRH:6808235
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{6808235: 15727478_1}

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Affiliated offices around the world through the
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Partner


Mark Hayes

Detailed analysis

Background

1. The Application was initiated by Crs J Fawcett, C Brunt and M Davies. They alleged that Cr Hill had committed various acts of misconduct.

The CCP has now published its Determination and Reasons. A copy of the Determination and Reasons have been forwarded to us.

The CCP has made a finding of misconduct against Cr Hill. It has directed that Council review its Councillor Code of Conduct. It has also reprimanded Cr Hill, and directed him to attend some training.

2. At its meeting on 27 April next, Council will receive the Determination. A copy of the supporting Reasons will also be made available to Councillors confidentially.

Council will be asked to authorise the Chief Executive Officer to implement those aspects of the CCP's directions that are relevant to it.

3. Apart from Crs Fawcett, Brunt, Davies and Hill, Crs K Kennedy and A McEwen participated in the CCP hearing. The latter two Councillors appeared as witnesses.

4. There is a possibility that Cr Hill may apply to VCAT for a review of the CCP's decision.
-

Legal analysis

1. Whether a Councillor has a conflict of interest in any matter before Council or a Special Committee of which he or she is member, or before an Assembly of Councillors, will depend upon whether he or she has a direct or indirect interest in the matter.¹ What amounts to a direct interest is described in s 77B. What amounts to an indirect interest is outlined in ss 78, 78A, 78B, 78C, 78D and 78E.

Clearly, Cr Hill has a direct interest in the outcome of the CCP Determination. If its directions are implemented by Council, he will, for instance, need to undertake specified training. To this extent his 'circumstances' will be 'directly altered'.

The Applicants (Crs Fawcett, Brunt and Davies) might also have a direct interest in the outcome of the CCP Determination. They have been vindicated in the allegations that they have made. Publication of this of this vindication could directly alter their circumstances. Alternatively, their status as Applicants means that they have an indirect interest under s 78D. In *Stuart v Price*², the Magistrates' Court held that disciplinary proceedings qualified as 'civil proceedings' for the purposes of this provision and that the section is capable of applying even when such proceedings have concluded.

The position of Crs Kennedy and McEwen is less clear. Despite the willingness of Magistrate Holzer in *Stuart v Price* to interpret the concept of 'interested party' broadly, there remains doubt as to whether these Councillors have an indirect interest under s 78D. It is doubtful whether the treatment of their evidence in the Reasons will directly alter their circumstances and give rise to a direct interest under s 77B, given that the Reasons will be a Confidential Attachment to a Report and that the decision which Council is being called upon to make will not affect their credibility as witnesses. For the reasons which follow, we need

¹ See generally s 77A(1) of the LGA.

² [2011] VMC

not pursue this. Even assuming that, like Crs Fawcett, Brunt, Davies and Hill, Crs Kennedy and McEwen have a direct or an indirect interest in the matter no conflict of interest will exist.

2. Section 79C(1) of the LGA provides that, in the circumstances specified, a direct or indirect interest will not qualify as a conflict of interest. More specifically, a Councillor:

is taken to not have a conflict of interest ... if the matter only relates to –

...

- (j) the conduct of a Councillor with respect to—
 - (i) an internal dispute that involves the Councillor;
 - (ii) an allegation of misconduct or serious misconduct (as defined in section 81A) by the Councillor...

So, this provision operates as an exemption. If a Councillor can bring himself or herself within its terms, no conflict of interest is taken to exist and so the obligations under ss 79 and 80A are inapplicable.

We think that s 79C(i)(j)(ii) probably applies to all Councillors who had a role in the CCP hearing. We say this because:

- 2.1 there was an allegation of misconduct against Cr Hill; and
- 2.2 the relevant item of business only relates to the conduct of Cr Hill with respect to that allegation.³

It is true that the allegation of misconduct has become a finding of misconduct. It is also true that a Recommendation will accompany the tabling of the CCP's Determination, authorising its Chief Executive Officer to implement those aspects of the directions capable of being implemented by Council. It is to be remembered, however, that, in *Stuart v Clarkson*⁴, the Magistrate was prepared to give s 79C(i)(j) a wide meaning and to give effect to what he described as the 'underlying philosophy' of the provision. He said:

What might be described as to the underlying philosophy of the insertion of s.79C can again perhaps be illustrated by a reference to the relevant second reading speech.

"The Act lists a number of matters where councillors are not considered to have conflicts of interest. The bill adds an additional matter to this list, in regard to a councillor conduct matter that relates to an internal dispute involving the councillor or an allegation of misconduct or serious misconduct by the councillor. **The amendment protects a councillor's right to defend their own actions in a Council or committee meeting that is considering their conduct as a councillor.**"⁵

His Honour was prepared to construe the provision in a 'practical and effective' way.⁶ It would be surprising if the provision was limited to cases of deliberation before an allegation of misconduct or serious misconduct had been determined. Consistent with the apparent purpose of the provision, there would be a serious policy issue to be confronted if a Councillor found to have engaged in misconduct or serious misconduct was precluded from responding to the finding (or, for that matter, applicant Councillors were prevented from responding to the findings of a CCP).

³ See *Stuart v Clarkson* (unreported, Magistrates' Court Victoria, Case No. B11682667, Magistrate M Smith).

⁴ (unreported, Magistrates' Court Victoria, Case No. B11682667, Magistrate M Smith).

⁵ (unreported, Magistrates' Court Victoria, Case No. B11682667, Magistrate M Smith) at [35].

⁶ (unreported, Magistrates' Court Victoria, Case No. B11682667, Magistrate M Smith) at [34].

In the circumstances, then, we think that s 79C(1)(j)(ii) is likely to apply. The net result is that no Councillor who participated in the CCP hearing will have a conflict of interest in the relevant item of business at the 27 April meeting.

3. Councillor Hill has a right to apply to VCAT for a review of the CCP's decision. Such a right is conferred by s 81Q of the LGA, and preserved by s 247(4) of the *Local Government Amendment (Improved Governance) Act 2015*.

An application for review to VCAT does not, without more, stay a CCP's decision. In other words, the CCP decision stands until it is disturbed by VCAT. At least this is so unless VCAT itself makes an order staying the operation of the CCP decision. All of this is clear from s 50 of the *Victorian Civil and Administrative Tribunal Act 1998*.

That said, there is little utility in organising training for Cr Hill if an application for review is initiated. The sensible course would be defer organising or continuing that training until the outcome of the VCAT decision is known. This should be done with Cr Hill's concurrence.

A review of the Councillor Code of Conduct is in a slightly different position. Because of s 76C(1) of the LGA, the Councillor Code of Conduct will require review anyway. That review can take into account the CCP's direction.

Contact

Please contact Mark Hayes on 03 9258 3533 or email mark.hayes@maddocks.com.au if you have any other queries.

SECTION F - URGENT OR OTHER BUSINESS

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

1. Urgent Business

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

The Meeting Procedure Local Law No.3 (Clause 46) allows for where a situation has not been provided for under the Local law, 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 ordinary meeting of Council 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 Councillorbe 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 Local law 3 will apply.

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

2. Other Business

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

MOVED: Cr Fawcett

SECONDED: Cr Davies

THAT ITEM F.1 NOTICE OF MOTION 694 – COUNCIL SUPPORT AND EXPENDITURE POLICY – COUNCIL DETERMINATION OF WHAT IS ACCEPTABLE TO THE COMMUNITY BEYOND THE MINIMUM TOOLKIT BE DEALT WITH AS A MATTER OF URGENT BUSINESS:

- 1. TO PROVIDE IMMEDIATE GUIDANCE TO COUNCILLORS AND OFFICERS IN DETERMINING WHAT IS ACCEPTABLE TO THE COMMUNITY IN REGARDS TO USING COUNCIL RESOURCES TO PRODUCE PERSONALISED WARD NEWSLETTERS; AND**
- 2. TO PREVENT ANY FURTHER UNNECESSARY EXPENDITURE BEING INCURRED BEFORE THE NEXT COUNCIL MEETING.**

CARRIED

For: Crs Fawcett, Brunt, Newton, Davies and Hutchinson-Brooks.

Against: Crs Kennedy, Hill and McEwen.

F.1 NOTICE OF MOTION 694 – COUNCIL SUPPORT AND EXPENDITURE POLICY – COUNCIL DETERMINATION OF WHAT IS ACCEPTABLE TO THE COMMUNITY BEYOND THE MINIMUM TOOLKIT

PURPOSE

To provide guidance to Councillors in determining what Council determines to be acceptable to the community in regards to using Council resources to produce personalised ward newsletters.

DISCUSSION

The Councillor Support and Expenditure Policy was adopted on 25 March 2015. The policy objective is to provide for reimbursement of expenses and provision of resources and facilities support for the Mayor and Councillors of the South Gippsland Shire Council that is consistent with industry standards and supports the attraction and retention of Councillors from a wide cross section of people. The policy refers to a "minimum toolkit" which includes access to fax/copier/printing at Council offices.

The Policy Statement, part 3. states that this policy is based on accountability, transparency and community acceptance. The last two points of part 3. Read as follows:

- Providing flexibility to determine what Council can afford to provide beyond the minimum toolkit and what is acceptable to the community; and
- Ensuring the details and range of benefits provided to Councillors by Council is clearly stated and fully transparent and acceptable to the local community.

Recently an individual Councillor has determined that it is appropriate to produce 5,000 double sided colour photo copies of a ward newsletter in accordance with this policy. The total cost of printing the 5,000 "ward newsletters" was \$990 for the photocopying and \$57.75 for the paper totalling \$1,047.75

MOTION

I, **Councillor James Fawcett**, advise that I intend to submit the following motion to the Ordinary Council Meeting scheduled to be held on **27 April 2016**.

‘That Council:

1. Determines that Council resources to provide personalised ward newsletters is not acceptable to the local community and will not be provided; and

2. Undertakes a review of the councillor support and expenditure policy in the next three months
3. Considers the following words to be included in the policy as part of the review:
 - a. "A Councillor should seek authorisation from the Council through the Mayor prior to using public funds or resources for any purpose that is not a standard/regular practice or likely to incur expenditure that may not be deemed an acceptable use by the broader community."

MOVED: Cr Fawcett

SECONDED: Cr Davies

THAT COUNCIL:

1. **DETERMINES THAT COUNCIL RESOURCES TO PROVIDE PERSONALISED WARD NEWSLETTERS IS NOT ACCEPTABLE TO THE LOCAL COMMUNITY AND WILL NOT BE PROVIDED; AND**
2. **UNDERTAKES A REVIEW OF THE COUNCILLOR SUPPORT AND EXPENDITURE POLICY IN THE NEXT THREE MONTHS**
3. **CONSIDERS THE FOLLOWING WORDS TO BE INCLUDED IN THE POLICY AS PART OF THE REVIEW:**

"A COUNCILLOR SHOULD SEEK AUTHORISATION FROM THE COUNCIL THROUGH THE MAYOR PRIOR TO USING PUBLIC FUNDS OR RESOURCES FOR ANY PURPOSE THAT IS NOT A STANDARD/REGULAR PRACTICE OR LIKELY TO INCUR EXPENDITURE THAT MAY NOT BE DEEMED AN ACCEPTABLE USE BY THE BROADER COMMUNITY".

CARRIED

For: Crs Fawcett, Brunt, Newton, Davies and Hutchinson-Brooks.

Against: Crs Kennedy, Hill and McEwen.

SECTION G – GENERAL QUESTION TIME

G.1 QUESTION TIME

Meg Knight addressed Council by asking a question if she could provide an update on behalf of the Yanakie Progress Association regarding a water plan for Yanakie.

Ms Knight supplied an update to Council on the Yanakie Progress Association actions.

G.2 ANSWERS TO PREVIOUS QUESTIONS ON NOTICE

At the Ordinary Council Meeting 23 March 2016 questions were taken on notice, responses are now provided.

Noted.

Question 1

Wilma Western addressed Council by asking a question relating to an item in Section A – signing of ‘Refugee Welcome Zone Declaration’. The question relates to a request to Council to write and request of the Minister of Immigration and Border Protection to expedite the transfer of 12,000 Syrian refugees.

Response

Council have responded to the request by sending a letter to the Minister of Immigration and Border Protection.

Noted.

Paul Norton lodged written questions to Council and responses are now provided.

Question 1

Can Mr Tamlin give a simple explanation as the process that Mr Tamlin used to report as to how D3 report to assembly of Council 24 February 2016 as to how the recommendation Page 37 agenda became the formal motion?

Response

Officer recommendations are listed at the conclusion of each Council report in the Council Agenda. Most times in a Council Meeting it is the Officer’s recommendation that is moved by a Councillor.

However, Councillors do not have to move the officer recommendation.

On the day of Ordinary Council Meeting 24 February 2016, Cr Fawcett chose not to move the officer recommendation and moved a new motion in its place and this was seconded by Cr Davies. This new motion became the motion before the Chair and was displayed on screen.

The original moving of a motion shouldn’t be confused with moving an amendment. A motion once it has been moved and seconded may be amended by omitting parts or adding part, provided the substantive nature of the motion is retained. Councillors are guided by the Local Law No.3 2010 – Meetings Procedures, however the difference of moving the officer recommendation or moving a new motion can lead to confusion.

Question 2

How much water potable water is any did council use out of the 'stand pipe' of councils Yarragon road department of for road construction for and including the months November 2015 and March 2016.

Response

The 'stand pipe' being referred to is a 'hydrant' and Council is awaiting South Gippsland Water to provide a current meter reading. Once the reading is received, Council will be able to provide water usage data from the previous meter reading to the current meter reading.

Question 3

Did council use water for road construction from South Gippsland water waste treatment of Begg Street Leongatha if so what grade of water that is potable or wastewater and of what amount for months of November 2015 to and including March 2016.

Response

Council has not used any water from the waste water treatment plant in Begg Street, Leongatha for the months of November 2015 through to March 2016. The use of treated waste water for road construction is subject to a number of strict conditions. Complying with these conditions makes the use of treated waste water a non-viable option.

Question 4

If recycled waste water can or is used for Road construction what are the E.coli levels have to be and does council always test water used for road construction excepting of course potable water.

Response

Recycled waste water is not used for road construction. Council does utilise recycled storm water on occasions.

Question 5

Is in fact Mr Tamlin and or Mr Seabrook can confidently claim that water within the above time frames (question 2) as of councils sustainable water use as marked in light as AT2.

Response

Council is unsure of the meaning of this question.

Question 6

Is Councillors and Mr Seabrook happy with VicRoads only removing the two tree out of the I believe 12 trees marked off.

Response

This matter was discussed at the Leongatha Heavy Vehicle Alternate Route meeting with VicRoads on 9 April 2016. The logic behind the removal of the two nominated trees is as follows:

- *The tree situated near the Salvation Army site impacts on the alignment of the new shared path.*
- *The tree further north along Long Street is too close to the road, and also impacts on the adjacent house.*

All present at the meeting were of the view that there was no need for the removal of any further trees. This view is supported by Council's Parks & Gardens Coordinator, who confirmed that these trees are in a healthy condition.

The Mayor adjourned the Council Meeting for 15 minutes.

MATTERS NOT PROVIDED FOR

Under clause 46 of the Local Law, Council consider Item F.1 as an Urgent Motion and not an Urgent Notice of Motion. An Urgent Notice of Motion is prohibited under Clause 82. Council acknowledge that the motion in F.1 is not valid.

As such using Clause 46 Matters Not Provided For:

MOVED: Cr Fawcett

SECONDED: Cr Kennedy

COUNCIL MOVES THAT:

- 1. F.1 IN ITS CURRENT FORM AS A NOTICE OF MOTION IS INVALID.**
- 2. F.1 BE ALTERED TO REMOVE THE REFERENCE TO NOTICE OF MOTION AND INSTEAD REFER TO IT AS A MOTION OF URGENT BUSINESS.**
- 3. F.1 BE RECONSIDERED BY COUNCIL IN ITS NEW FORM.**

CARRIED UNANIMOUSLY

MOVED: Cr Fawcett

SECONDED: Cr Kennedy

THAT ITEM F.1 MOTION OF URGENT BUSINESS – COUNCIL SUPPORT AND EXPENDITURE POLICY – COUNCIL DETERMINATION OF WHAT IS ACCEPTABLE TO THE COMMUNITY BEYOND THE MINIMUM TOOLKIT BE DEALT WITH AS A MATTER OF URGENT BUSINESS:

- 1. TO PROVIDE IMMEDIATE GUIDANCE TO COUNCILLORS AND OFFICERS IN DETERMINING WHAT IS ACCEPTABLE TO THE COMMUNITY IN REGARDS TO USING COUNCIL RESOURCES TO PRODUCE PERSONALISED WARD NEWSLETTERS; AND**
- 2. TO PREVENT ANY FURTHER UNNECESSARY EXPENDITURE BEING INCURRED BEFORE THE NEXT COUNCIL MEETING.**

CARRIED

For: Crs Fawcett, Kennedy, Brunt, Newton, Davies and Hutchinson-Brooks.

Against: Crs Hill and McEwen.

F.1 MOTION OF URGENT BUSINESS – COUNCIL SUPPORT AND EXPENDITURE POLICY – COUNCIL DETERMINATION OF WHAT IS ACCEPTABLE TO THE COMMUNITY BEYOND THE MINIMUM TOOLKIT

PURPOSE

To provide guidance to Councillors in determining what Council determines to be acceptable to the community in regards to using Council resources to produce personalised ward newsletters.

DISCUSSION

The Councillor Support and Expenditure Policy was adopted on 25 March 2015. The policy objective is to provide for reimbursement of expenses and provision of resources and facilities support for the Mayor and Councillors of the South Gippsland Shire Council that is consistent with industry standards and supports the attraction and retention of Councillors from a wide cross section of people. The policy refers to a "minimum toolkit" which includes access to fax/copier/printing at Council offices.

The Policy Statement, part 3. states that this policy is based on accountability, transparency and community acceptance. The last two points of part 3. Read as follows:

- Providing flexibility to determine what Council can afford to provide beyond the minimum toolkit and what is acceptable to the community; and
- Ensuring the details and range of benefits provided to Councillors by Council is clearly stated and fully transparent and acceptable to the local community.

Recently an individual Councillor has determined that it is appropriate to produce 5,000 double sided colour photo copies of a ward newsletter in accordance with this policy. The total cost of printing the 5,000 "ward newsletters" was \$990 for the photocopying and \$57.75 for the paper totalling \$1,047.75

MOTION

I, **Councillor James Fawcett**, advise that I intend to submit the following motion of urgent business to the Ordinary Council Meeting scheduled to be held on **27 April 2016**.

‘That Council:

1. Determines that Council resources to provide personalised ward newsletters is not acceptable to the local community and will not be provided; and

2. Undertakes a review of the councillor support and expenditure policy in the next three months
3. Considers the following words to be included in the policy as part of the review:
 - a. "A Councillor should seek authorisation from the Council through the Mayor prior to using public funds or resources for any purpose that is not a standard/regular practice or likely to incur expenditure that may not be deemed an acceptable use by the broader community."

MOVED: Cr Fawcett

SECONDED: Cr Davies

THAT COUNCIL:

1. **DETERMINES THAT COUNCIL RESOURCES TO PROVIDE PERSONALISED WARD NEWSLETTERS IS NOT ACCEPTABLE TO THE LOCAL COMMUNITY AND WILL NOT BE PROVIDED; AND**
2. **UNDERTAKES A REVIEW OF THE COUNCILLOR SUPPORT AND EXPENDITURE POLICY IN THE NEXT THREE MONTHS**
3. **CONSIDERS THE FOLLOWING WORDS TO BE INCLUDED IN THE POLICY AS PART OF THE REVIEW:**

"A COUNCILLOR SHOULD SEEK AUTHORISATION FROM THE COUNCIL THROUGH THE MAYOR PRIOR TO USING PUBLIC FUNDS OR RESOURCES FOR ANY PURPOSE THAT IS NOT A STANDARD/REGULAR PRACTICE OR LIKELY TO INCUR EXPENDITURE THAT MAY NOT BE DEEMED AN ACCEPTABLE USE BY THE BROADER COMMUNITY".

MOVED: Cr Fawcett

THAT THE MOTION BE NOW PUT.

CARRIED

For: Crs Fawcett, Kennedy, Brunt, Newton, Davies and Hutchinson-Brooks.

AGAINST: Crs Hill and McEwen.

CLOSED SESSION

Consideration of confidential matters under the Local Government Act 1989, Section 89(2).

According to Section 89 of the Local Government Act 1989 (the Act), Council may consider items in closed session. There must be a resolution to move 'In Committee' stating the reasons why the matter(s) need to be considered in this way. The reasons provided for within the Act are matters concerning personnel, personal hardship, industrial issues, contracts, proposed developments, legal advice or any other matter that Council considers would be prejudicial, to it or any other person.

Once 'In Committee' discussions and debate have concluded, a further resolution to resume open Council is required.

Nil

SECTION H - MEETING CLOSED

NEXT MEETING

The next Ordinary Council Meeting open to the public will be held on Wednesday, 25 May 2016 commencing at 2pm in the Council Chambers, Leongatha.

The Meeting closed at 6.06pm.

CONFIRMED:.....

COUNCILLOR ROBERT NEWTON – MAYOR

Date:.....