

Councillor Don Hill left the Council Meeting at 3.34pm with a declared direct conflict of interest with respect of Council Reports Item E.5 PROPOSED ROAD OPENING / DECLARATION OF A SECTION OF UNUSED GOVERNMENT ROAD OFF GILES STREET IN THE TOWNSHIP OF MIRBOO NORTH, PARISH OF MIRBOO as he owns land adjoining the unused road and is the applicant.

E.5 PROPOSED ROAD OPENING / DECLARATION OF A SECTION OF UNUSED GOVERNMENT ROAD OFF GILES STREET IN THE TOWNSHIP OF MIRBOO NORTH, PARISH OF MIRBOO

Sustainable Communities and Infrastructure Directorate

STAFF DISCLOSURE OF INTEREST

Nil

EXECUTIVE SUMMARY

This report recommends Council commence the statutory procedures to declare a section of unused government road to the south of Giles Street, Mirboo North and Parish of Mirboo, open to public traffic to allow the applicant legal access to their property.

Document/s pertaining to this Council Report

- **Attachment 1** – Survey Plan of Proposed Road Opening.
- **Attachment 2** – Aerial Plan of Proposed Road Opening.
- **Confidential Appendix 1** – Road Opening Request (January 2016).

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 to Councillors and the Executive Leadership Team.

LEGISLATIVE / ACTION PLANS / STRATEGIES / POLICIES

- Local Government Act 1989 (Sections 204(2), 207A(c) and 223)
- Road Management Act 2004
- Road Management Plan 2013
- Planning and Environment Act 1987

INTERNAL POLICIES / STRATEGIES / DOCUMENTS

- Vision 2020
- Road Opening Procedure
- Infrastructure Design Manual
- Public Road Register

COUNCIL PLAN

Outcome:	3.0	Integrated Services and Infrastructure
Objective:	3.1	Deliver affordable modern community facilities through an integrated approach to planning and infrastructure development

CONSULTATION

- Council will place a public notice of the proposed declaration in its Noticeboard section of the local newspapers and on Council's website week commencing 27 June 2016, in accordance with Section 223 of the Local Government Act 1989, and send letters to adjoining property owners.
- The submission period is 28 days from publication and will close at 5.00pm on Monday 27 July 2016.
- If submissions are received to the public notice, they will be heard at a Special Committee of Council in closed session and the decision determined at the next available Ordinary Council Meeting in open session.
- If no submissions are received to the public notice, a further notice will be published of the road opening in the Victorian Government Gazette.

REPORT

Background

Council has received an application from an adjoining land owner of the unused Government road in question, requesting the opening of approximately 211 metres of unused and unmade government road reserve (being an area of 4,263m²) to the south of Giles Street, Mirboo North. The section of unused government road requested to be opened to public traffic will allow the applicant legal access to their property being L1 TP394262.

Having no reasonable access means the property owner is unable to get farm machinery into their property to work the farm, operate the irrigation equipment, or manage weed control.

The property in question has recently been purchased by the applicant and access to the main area of the applicant's farm was previously gained through vacant land on Giles Street. This property has now been sold and will not be available for the applicant to access the main area of their farm.

Access from the western side to the eastern side of the property is restricted by a major gully and swamp. Whilst the section of unused road proposed to be opened also has a gully to be crossed, this can be achieved by installing a large culvert, or possibly a small bridge. The applicant will need to contact the West Gippsland Catchment Management Authority to obtain any necessary approvals and permits to work in waterways.

The road to be opened is currently unconstructed and will need to be constructed. The new road will be classified as 'Access Place - Urban' in accordance with Council's Road Hierarchy.

The road to be constructed shall be formed and gravelled incorporating a 4.0 metre wide carriageway with 1.5 metre wide shoulders and table drains to suit.

A portion of the road also has an Agricultural Licence (1509282) with the Department of Environment, Land, Water, and Planning (DELWP) covering it which is held with another property owner. This existing licence will need to be revoked prior to the road being opened.

Refer to [Attachment 1 – Survey Plan](#) and [Attachment 2 – Aerial Plan](#) of the proposed road opening.

Discussion

Council has the power under the Local Government Act 1989 Section 204 to:

- “1. Declare a road in its municipal district to be a public highway; and*
- 2. Declare a road that is reasonably required for public use to be open to public traffic.”*

The declaration made under Section 204 requires Council to use a Section 223 Submission Process.

Both the Road Management Act and Local Government Act require Council to publish a notice of its declaration to open a road in the Government Gazette.

Although Council has delegated its power to declare a road under the Road Management Act to staff, it is considered desirable that Council make both declarations together, namely declaring the land as a road and declaring the road open to public traffic.

The proposal to open approximately 211 metres (being an area of 4,263m²) of unused government road shall only proceed to gazettal, subject to the following conditions:

- The applicant enters into a Section 173 Agreement under the Planning and Environment Act 1987, to construct the road to Council's satisfaction and bears all costs associated with the opening and construction of the road.
- The construction of the road must be completed prior to any building or construction works occurring on the land.
- The applicant is to maintain the road during the twelve month Defects Liability Period agreed to by Council, following which Council will be responsible for the maintenance of the road in accordance with its Road Management Plan 2013.
- The applicant is to obtain all relevant Permits before commencing works to construct the road.
- The Section 173 Agreement shall end upon the expiry of the Defects Liability Period agreed to by the Council in regards to the works provided, satisfactory completion of these works, and rectifications required during such Defect Liability Period. As soon as is reasonably practical after the ending of the Agreement and subject to the owner making an application in writing to the Council, the Council shall, at the expense of the owner, make application to the Registrar of Titles to cancel the recording of this Agreement pursuant to Section 183(2) of the Act to all or the relevant part of the land as the case may be.

Proposal

It is proposed that Council commence the statutory procedures in accordance with Sections 204, 223 and Schedule 10 Clause 3 of the Local Government Act 1989 to declare the 4,263m² section of unused government road to the south of Giles Street, Mirboo North, Parish of Mirboo (refer to [Attachment 1](#)) open to the public for traffic.

FINANCIAL CONSIDERATIONS

All costs associated with the design and construction of the road shall be the responsibility of the applicant.

The future maintenance cost of this section of road, including the culvert, is estimated to be \$550 per annum. This will be included in Council's operating budget for road maintenance when required.

RISKS

There are no risks to Council if this road opening proceeds as all legal risks fall under the Road Management Act 2004 and are subsequently addressed in Council's Road Management Plan 2013.

If Council does not open the road, the applicant will not have legal and reasonable access to their property known as L1 TP394262 located east of Meeniyan Mirboo North Road / south of Giles Street, Mirboo North.

CONCLUSION

It is considered appropriate that Council commence statutory procedures to declare that the section of unused government road, to the south of Giles Road, Mirboo North, Parish of Mirboo, be open to public traffic to allow the applicant legal and reasonable access to their property.

RECOMMENDATION

That Council:

1. Pursuant to Section 204(2) of the Local Government Act 1989 declare that the unused government road being an area of 4263m² to the south of Giles Street, Mirboo North, Parish of Mirboo shown on Attachment 1, is required to be open to the public for traffic as a right and declares the road to be a public highway for the purposes of the Act (the Proposal).
2. Give public notice on Council's website and in its Noticeboard section of the local newspapers on 27 June 2016 of the Proposal in accordance with Section 223 of the Local Government Act 1989 to commence a public consultation process inviting written submissions from the community by 5.00pm Wednesday 27 July 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 (items 1&2).
4. If submissions are received to the public notice:
 - a. Authorise the Chief Executive Officer to set the time, date and place to hear, consider, and determine submissions.
 - b. Hear submitters who had elected to speak to their submission at a Committee of Council in closed session pursuant to Section 89(2)(h) of the Local Government Act 1989 comprising of the Mayor, at least one Ward Councillor, and any other Councillor in attendance.
 - c. Consider submissions and decision determined at the next available Ordinary Council Meeting in open session.
5. If no submissions are received to the public notice agree to publish the road opening in the Victorian Government Gazette.
6. Prepare a Section 173 Agreement for the applicant to enter into under the Planning and Environment Act 1987, in which the applicant bears all

the costs associated with the opening and construction of the road and authorise the Chief Executive Officer or his delegate to sign all documentation in relation to the establishment of the Agreement.

7. Authorise the Chief Executive Officer or his delegate to sign all documentation in relation to the ending of an Agreement under Section 183 of the Planning and Environment Act to enable the removal of a Section 173 Agreement between South Gippsland Shire Council and the applicant.

MOVED: Cr Hutchinson-Brooks

SECONDED: Cr Kennedy

THAT COUNCIL:

1. **PURSUANT TO SECTION 204(2) OF THE LOCAL GOVERNMENT ACT 1989 DECLARE THAT THE UNUSED GOVERNMENT ROAD BEING AN AREA OF 4263M² TO THE SOUTH OF GILES STREET, MIRBOO NORTH, PARISH OF MIRBOO SHOWN ON ATTACHMENT 1, IS REQUIRED TO BE OPEN TO THE PUBLIC FOR TRAFFIC AS A RIGHT AND DECLARES THE ROAD TO BE A PUBLIC HIGHWAY FOR THE PURPOSES OF THE ACT (THE PROPOSAL).**
2. **GIVE PUBLIC NOTICE ON COUNCIL'S WEBSITE AND IN ITS NOTICEBOARD SECTION OF THE LOCAL NEWSPAPERS ON 27 JUNE 2016 OF THE PROPOSAL IN ACCORDANCE WITH SECTION 223 OF THE LOCAL GOVERNMENT ACT 1989 TO COMMENCE A PUBLIC CONSULTATION PROCESS INVITING WRITTEN SUBMISSIONS FROM THE COMMUNITY BY 5.00PM WEDNESDAY 27 JULY 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 (ITEMS 1&2).**
4. **IF SUBMISSIONS ARE RECEIVED TO THE PUBLIC NOTICE:**
 - a. **AUTHORISE THE CHIEF EXECUTIVE OFFICER TO SET THE TIME, DATE AND PLACE TO HEAR, CONSIDER, AND DETERMINE SUBMISSIONS.**
 - b. **HEAR SUBMITTERS WHO HAD ELECTED TO SPEAK TO THEIR SUBMISSION AT A COMMITTEE OF COUNCIL IN CLOSED SESSION PURSUANT TO SECTION 89(2)(H) OF THE LOCAL GOVERNMENT ACT 1989 COMPRISING OF THE MAYOR, AT LEAST ONE WARD COUNCILLOR, AND ANY OTHER COUNCILLOR IN ATTENDANCE.**

- c. CONSIDER SUBMISSIONS AND DECISION DETERMINED AT THE NEXT AVAILABLE ORDINARY COUNCIL MEETING IN OPEN SESSION.**
- 5. IF NO SUBMISSIONS ARE RECEIVED TO THE PUBLIC NOTICE AGREE TO PUBLISH THE ROAD OPENING IN THE VICTORIAN GOVERNMENT GAZETTE.**
- 6. PREPARE A SECTION 173 AGREEMENT FOR THE APPLICANT TO ENTER INTO UNDER THE PLANNING AND ENVIRONMENT ACT 1987, IN WHICH THE APPLICANT BEARS ALL THE COSTS ASSOCIATED WITH THE OPENING AND CONSTRUCTION OF THE ROAD AND AUTHORISE THE CHIEF EXECUTIVE OFFICER OR HIS DELEGATE TO SIGN ALL DOCUMENTATION IN RELATION TO THE ESTABLISHMENT OF THE AGREEMENT.**
- 7. AUTHORISE THE CHIEF EXECUTIVE OFFICER OR HIS DELEGATE TO SIGN ALL DOCUMENTATION IN RELATION TO THE ENDING OF AN AGREEMENT UNDER SECTION 183 OF THE PLANNING AND ENVIRONMENT ACT TO ENABLE THE REMOVAL OF A SECTION 173 AGREEMENT BETWEEN SOUTH GIPPSLAND SHIRE COUNCIL AND THE APPLICANT.**

MOVED: Cr Fawcett

SECONDED: Cr Harding

THAT COUNCIL DEFER AGENDA ITEM E.5 PROPOSED ROAD OPENING / DECLARATION OF A SECTION OF UNUSED GOVERNMENT ROAD OFF GILES STREET IN THE TOWNSHIP OF MIRBOO NORTH, PARISH OF MIRBOO IN ORDER TO CONSIDER ANY OTHER OPTIONS OF PROVIDING ACCESS TO THE PROPERTY WHICH MAY INCLUDE DISCONTINUANCE OF THE ROAD AND SALE TO THE APPLICANT BY NO LATER THAN THE COUNCIL MEETING 24 AUGUST 2016.

CARRIED

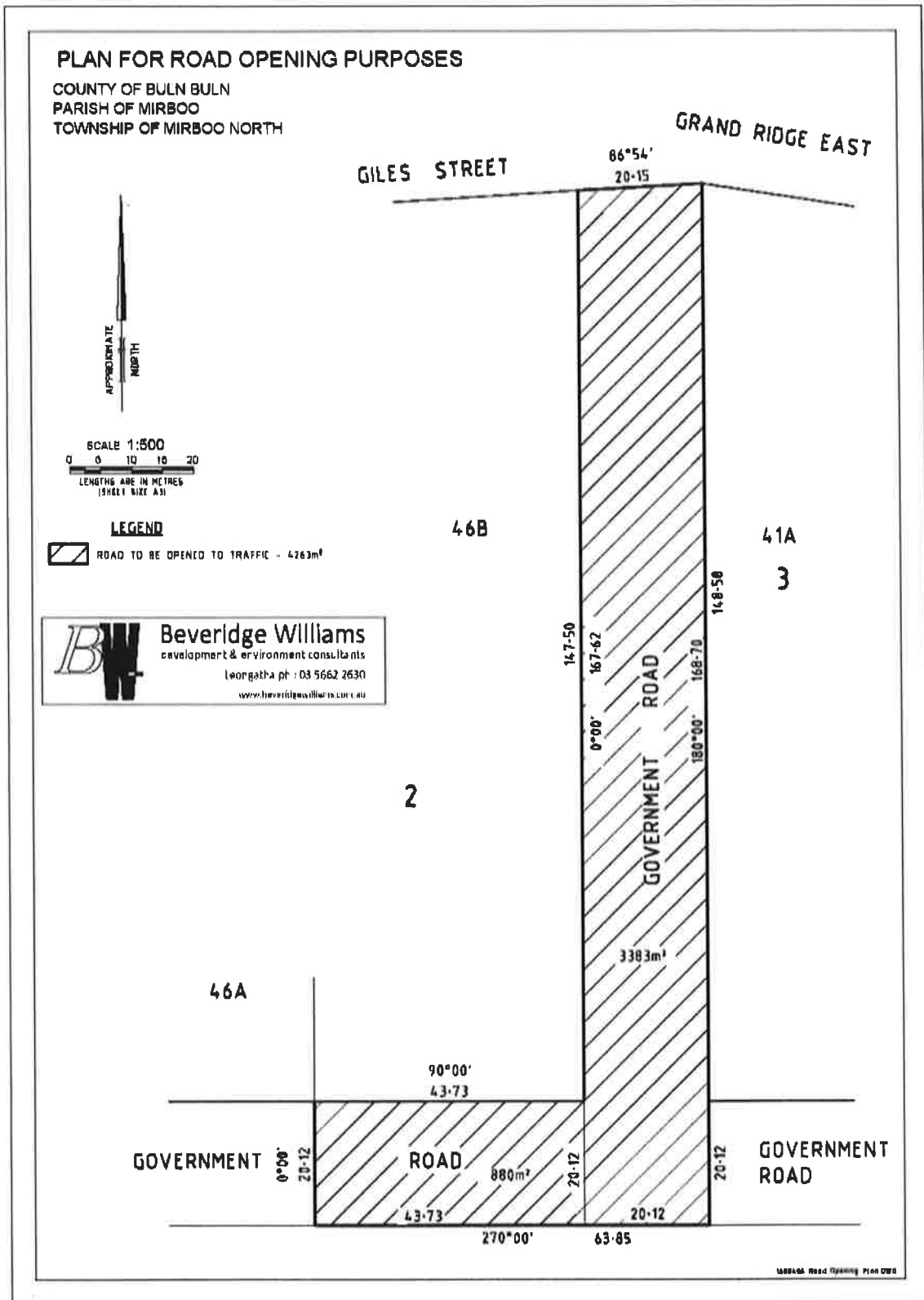
For: Crs Fawcett, Harding, Brunt, Newton, Davies, Hutchinson-Brooks and Kennedy.

Against: Cr McEwen

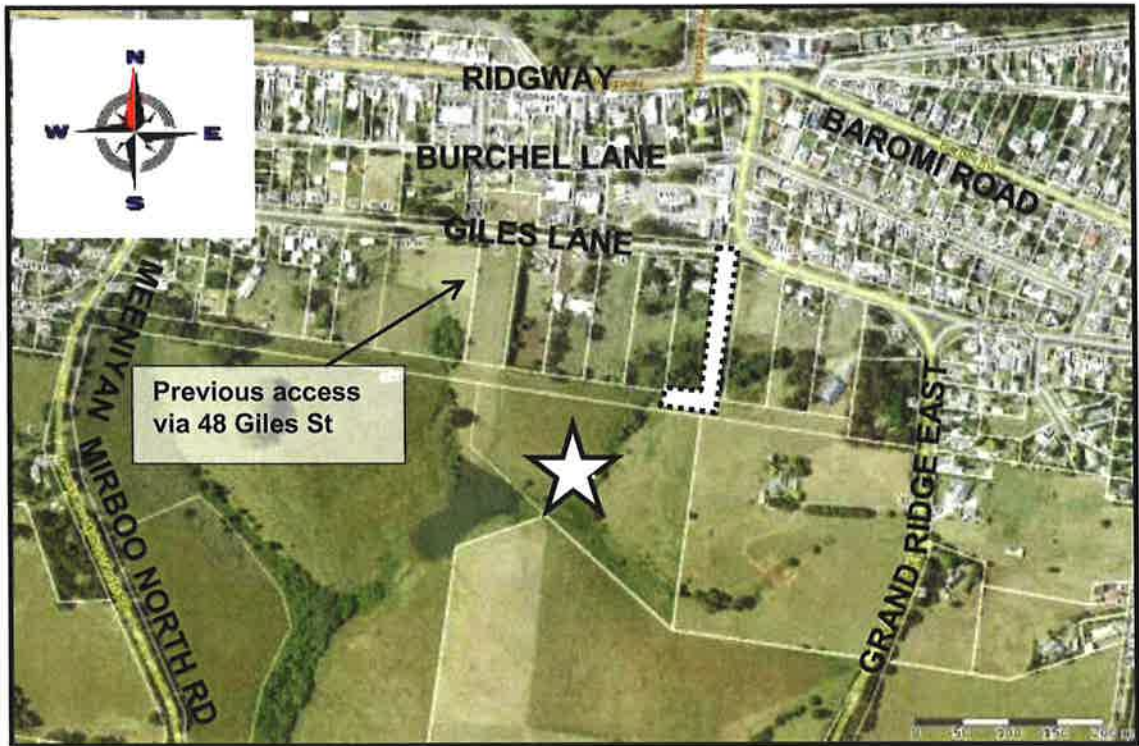
Cr Fawcett left the Council Meeting at 3.56pm

Cr Hill returned to the Council Meeting at 3.57pm.

Attachment 1
Survey Plan of Proposed Road Opening



Attachment 2
Aerial Plan of Proposed Road Opening



LEGEND



Land requiring access from unused road



Unused road to be opened

