

Councillor Don Hill left the Council Meeting at 4.14pm with a declared direct conflict of interest in respect of Council Reports Item E.11 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 is the applicant and owns land adjoining the unused road.

E.11 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

Council considered a report on 22 June 2016 to commence the statutory procedures to declare a section of unused government road to the south of Giles Street Mirboo North, Parish of Mirboo, open to public traffic to allow the applicant legal access to their property.

At this meeting Council resolved to defer the proposed road opening / declaration in order to consider other options of providing access to the property. These options have now been investigated with the outcomes detailed in the discussion of this report.

Document/s pertaining to this Council Report

- **Attachment 1** – Survey Plan of Proposed Road Opening
- **Attachment 2** – Aerial Plan of Proposed Road Opening

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
- Land Act 1958

INTERNAL POLICIES / STRATEGIES / DOCUMENTS

- Vision 2020
- Road Opening Procedure

- Infrastructure Design Manual
- Register of Public Roads

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

- Consultation with the applicant has been undertaken to establish reasonable single property access from Giles Street to the applicant's property along the licenced unused government road reserve south off Giles Street and then west along the east west government road for approximately 40 metres.
- The Department of Environment, Land, Water, and Planning (DEWLP) has advised that in order to remove the current Agricultural Licence over the subject unused road reserve Council, by resolution, must declare that the subject road reserve is required for public use to be open to public traffic, and advise DEWLP accordingly.
- Council will place a public notice of the proposed declaration, under Section 204 (2) of the *Local Government Act 1989*, in its Noticeboard section of the local newspapers and on Council's website week commencing 1 August 2016, in accordance with Section 223 of the *Local Government Act 1989*, and send letters to adjoining property owners.
- The submission period is 30 days from publication and will close at 5.00pm on Tuesday 30 August 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 Council shall declare the subject road reserve is reasonably required for public use and be opened to public traffic and subsequently advise DEWLP of Council's declaration.

REPORT

Background

History

Council 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 licenced unused government road requested to be opened to public traffic to provide property access will allow the applicant to establish reasonable access to their property being L1 TP394262 parcel 127255090.

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 vacant land will not be available in the future 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, all weather access can be achieved by installing a large culvert, or possibly a small bridge, or alternatively, dry weather access could be provided using a ford to cross the waterway. Notwithstanding, the applicant will need to contact the West Gippsland Catchment Management Authority to obtain any necessary approval to cross the waterway and permit(s) to work in waterways.

The applicant will be required to enter into a 173 Agreement, under the Planning and Environment Act 1987, with Council to establish the standard of construction and maintenance for the proposed property "access facility", as defined in the Road Management Act 2004,(crossover / driveway) along the subject road reserve to the satisfaction of Council..

The standard of construction shall be that required for a rural access road described in the Infrastructure Design Manual, namely a formed and gravelled roadway incorporating a 4.0 metre wide carriageway with 1.5 metre wide shoulders and table drains to suit.

The north south section of the unused government road off Giles Street has an Agricultural Licence (1509282) with DELWP covering it which is held with another property owner. This existing licence will need to be revoked and the unused road opened to public traffic prior to entering into the Section 173 Agreement and construction of the property access facility.

Refer to **Attachment 1 – Survey Plan of Proposed Road Opening** and **Attachment 2 – Aerial Plan of the Proposed Road Opening.**

Outcome of Council Meeting 22 June 2016

Council considered a report on 22 June 2016 to commence the statutory procedures to declare a section of unused government road to the south of Giles Street Mirboo North, Parish of Mirboo, open to public traffic to allow the applicant reasonable access to their property.

At this meeting Council resolved to (extract of Council Minutes):

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

Discussion

Multiple Land Parcels

The applicant's property consists of three land parcels. The only reasonably available road access for the eastern land parcel is the licenced unused road reserve south off Giles Street east of property No. 58 Giles Street.

Legislative Requirements

Council has the power under the *Local Government Act 1989*, Section 204(2), to declare a road be reasonably required for public use to be opened to public traffic (extract below):

204 Council may declare a road to be a public highway or to be open to the public

- (2) A Council may, by resolution, declare a road that is reasonably required for public use to be open to public traffic.
- (3) A road does not become a public highway by virtue of a Council resolution made under subsection (2).

The declaration made under Section 204(2) requires Council to follow the use a Section 223 Submission Process in accordance with Section 207A (c).

Proposed Access Facility ConditionsThe proposal to make available approximately 211 metres (being an area of 4,263m²) of unused government road for the provision of a property access facility (crossover / driveway) shall only proceed, subject to the following conditions:

- DEWLP remove the Agricultural Licence from the subject unused road reserve following declaration by Council that the road reserve is reasonably required for public use be opened to public traffic.
- The applicant enters into a Section 173 Agreement under the Planning and Environment Act 1987, to construct the property access facility (crossover / driveway) to Council's satisfaction and bears all costs associated with the construction and maintenance of the property access facility (crossover / driveway).
- The construction of the property access facility (crossover / driveway) must be completed prior to any building or construction works occurring on the land.
- The applicant is to maintain the property access facility (crossover / driveway) in accordance with standards agreed and contained in the Section 173 Agreement entered into with the applicant.
- The applicant is to obtain all relevant Permits before commencing works to construct the property access facility (crossover / driveway).
- The Section 173 Agreement shall be ended by Council at a time when more than one property requires access from the subject road reserve. As soon as is reasonably practicable 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.

Options

In response to the resolution from 22 June 2016, property access options have now been investigated as follows:

1. Option 1 (preferred option): Alternative Access from Giles Street

Alternative Access from the road reserve south of Giles Street (currently proposed) is steep, and is approximately 160 metres long with a waterway crossing. However, it is not as unreasonable as the abuttal from the east / west road reserve off Meeniyah Mirboo North Road. Previous access from vacant land at 48 Giles Street through a private arrangement will no longer be available in the future therefore alternative road access to the applicant's property is now being sought.

The road reserve off Giles Street provides access to a Farming Zone (FZ) property only at this time

2. Option 2: Alternate Access off Meeniyah Mirboo Road

Primary abuttal is available from the road reserve along the northern boundary of the applicant's land off Meeniyen Mirboo North Road, but access is also steep, and would require opening 450 metres of road reserve and provision of a waterway crossing. This may not be considered "reasonable" access.

3. Option 3: Discontinuance and Sale of Road Reserve Off Giles Street

The Department of Environment, Land, Water, and Planning (DELWP) has been consulted regarding the option of Council discontinuing the unused road reserve and reverting it back to the Crown and subsequently being sold to the applicant.

If this section of road reserve was sold, it would leave a section of unused road reserve to the east alienated and landlocked. This would also need to be discontinued and sold to adjoining land owners. Therefore, sale of the road reserve to the applicant is not considered a feasible option.

Therefore, 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 reasonable access to their property.

Proposal

It is proposed that Council commence the statutory procedures in accordance with Sections 204(2) and 223 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, construction and on-going maintenance of the proposed property access facility (crossover / driveway) shall be the responsibility of the applicant.

RISKS

There are no risks to Council as this property access facility (crossover / driveway) will not be included on Council's Register of Public Roads.

If Council does not open the road reserve and make available this road reserve for provision of an property access facility (crossover / driveway), the applicant will not have reasonable access to their property known as L1 TP394262 parcel 127255090 located east of Meeniyen 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 Street Mirboo North, Parish of Mirboo, be open to public traffic to allow reasonable access to the applicant's property by way of a property access facility (crossover / driveway).

RECOMMENDATION

That Council:

1. Commence the statutory procedures pursuant to Section 204(2) and Section 223 of the Local Government Act 1989 to declare that the unused government road, approximately 211 metres (being an area of 4263m²) to the south of Giles Street, Mirboo North, Parish of Mirboo, shown in Attachment 1, is required for public use and be opened to public traffic (the Proposal).
2. Give public notice in the local newspapers and on Council's website and in its Noticeboard section of the local newspapers in the week commencing 1 August 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 Tuesday 30 August 2016.
3. Write to all affected land owners with a property abutting the road proposed to be declared open to the public for traffic.
4. 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.
5. 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 Special 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.
6. If no submissions are received to the public notice, Council declare the unused road reserve approximately 211 metres (being an area of 4263m²) to the south of Giles Street, Mirboo North, Parish of Mirboo

shown in Attachment 1 to be reasonably required for public use and be opened to public traffic.

7. Once the conditions of the Section 173 Agreement under the Planning and Environment Act 1987 have been met, 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 1987 to enable the removal of a Section 173 Agreement between South Gippsland Shire Council and the applicant.

MOVED: Cr Fawcett

SECONDED: Cr Brunt

THAT COUNCIL:

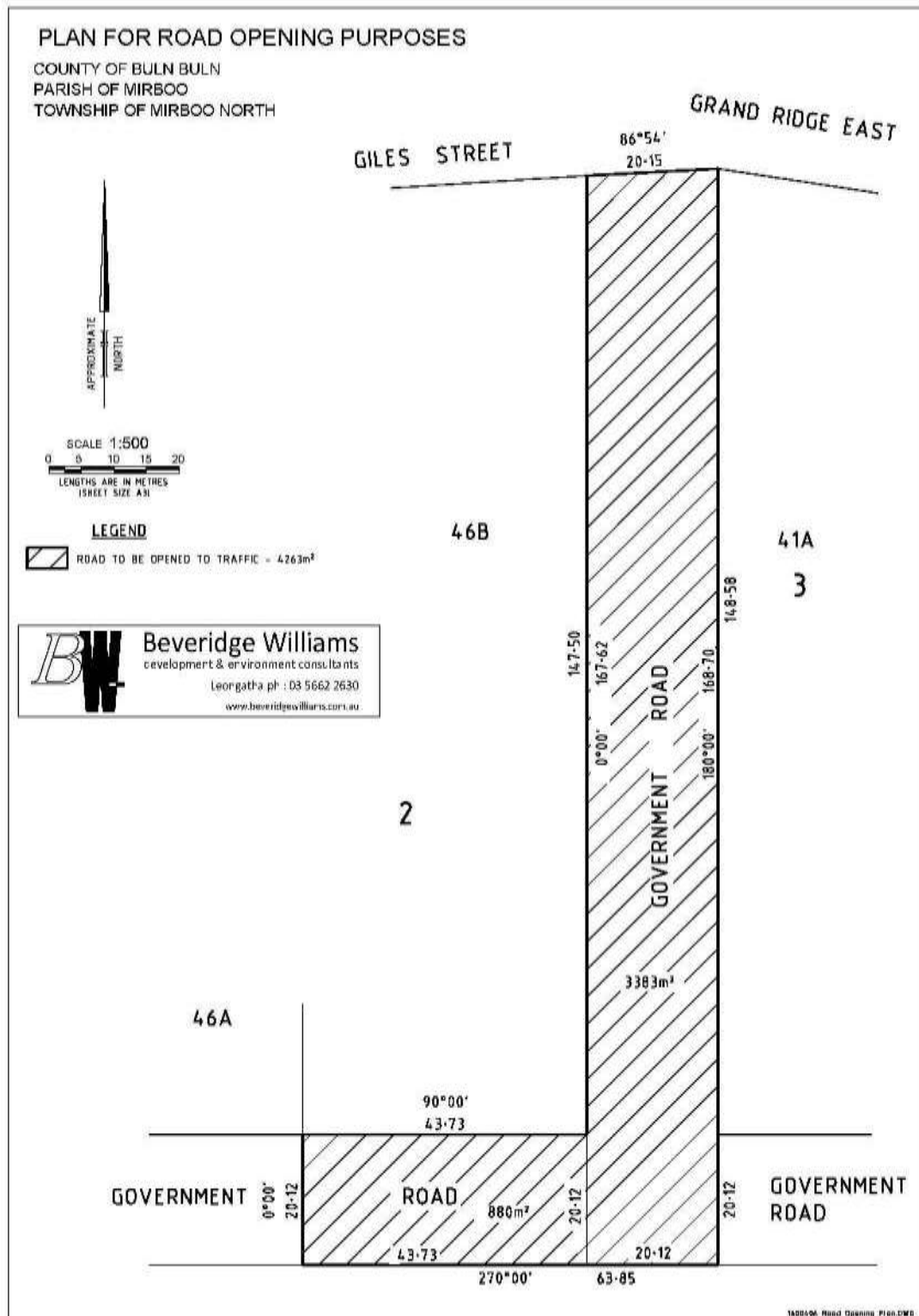
- 1. COMMENCE THE STATUTORY PROCEDURES PURSUANT TO SECTION 204(2) AND SECTION 223 OF THE LOCAL GOVERNMENT ACT 1989 TO DECLARE THAT THE UNUSED GOVERNMENT ROAD, APPROXIMATELY 211 METRES (BEING AN AREA OF 4,263M²) TO THE SOUTH OF GILES STREET, MIRBOO NORTH, PARISH OF MIRBOO, SHOWN IN ATTACHMENT 1, IS REQUIRED FOR PUBLIC USE AND BE OPENED TO PUBLIC TRAFFIC (THE PROPOSAL).**
- 2. GIVE PUBLIC NOTICE IN THE LOCAL NEWSPAPERS AND ON COUNCIL'S WEBSITE AND IN ITS NOTICEBOARD SECTION OF THE LOCAL NEWSPAPERS IN THE WEEK COMMENCING 1 AUGUST 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 TUESDAY 30 AUGUST 2016.**
- 3. WRITE TO ALL AFFECTED LAND OWNERS WITH A PROPERTY ABUTTING THE ROAD PROPOSED TO BE DECLARED OPEN TO THE PUBLIC FOR TRAFFIC.**
- 4. 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.**
- 5. 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 SPECIAL 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.**
- 6. IF NO SUBMISSIONS ARE RECEIVED TO THE PUBLIC NOTICE, COUNCIL DECLARE THE UNUSED ROAD RESERVE APPROXIMATELY 211 METRES (BEING AN AREA OF 4263M²) TO**

**THE SOUTH OF GILES STREET, MIRBOO NORTH, PARISH OF
MIRBOO SHOWN IN ATTACHMENT 1 TO BE REASONABLY
REQUIRED FOR PUBLIC USE AND BE OPENED TO PUBLIC
TRAFFIC.**

- 7. ONCE THE CONDITIONS OF THE SECTION 173 AGREEMENT
UNDER THE PLANNING AND ENVIRONMENT ACT 1987 HAVE
BEEN MET, 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 1987 TO ENABLE THE
REMOVAL OF A SECTION 173 AGREEMENT BETWEEN SOUTH
GIPPSLAND SHIRE COUNCIL AND THE APPLICANT.**

CARRIED UNANIMOUSLY



Attachment 1 Survey Plan of Proposed Road Opening



Attachment 2
Aerial Plan of Proposed Road Opening



LEGEND

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|---|--|
|  | Land requiring access from unused road |
|  | Unused road to be opened to public traffic |