

SOUTH GIPPSLAND SHIRE COUNCIL

Special Meeting of Council

Transact the business relating to a VCAT Application made by Ansevata Nominees Pty Ltd regarding the Walkerville retarding basin.

MINUTES

5 September 2018

Council Chambers, Leongatha

Commencing at 1.30pm



minutes



*South Gippsland
Shire Council*

Come for the beauty, Stay for the lifestyle



MISSION

South Gippsland Shire will be a place where our quality of life and sense of community are balanced by sustainable and sensitive development, population and economic growth.

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.

PRESENT

COUNCILLORS:	Cr Lorraine Brunt, Mayor Cr Aaron Brown, Deputy Mayor Cr Ray Argento Cr Don Hill Cr Andrew McEwen Cr Meg Edwards
COUNCILLORS NOT PRESENT:	Cr Maxine Kiel Cr Jeremy Rich Cr Alyson Skinner
OFFICERS:	Tim Tamlin, Chief Executive Officer Anthony Seabrook, Director Infrastructure Services Bryan Sword, Director Development Services Rick Rutjens, Manager Executive Support and Community Information June Ernst, Coordinator Council Business Natasha Berry, Corporate and Council Business Officer Jodi Cumming, Corporate and Council Business Officer

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Special Meeting of Council
Wednesday 5 September 2018
Council Chambers, Leongatha commenced at 1.30pm

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Tim Tamlin
Chief Executive Officer

1. PRELIMINARY MATTERS

1.1. LIVE-STREAMING COUNCIL MEETING DISCLAIMER

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

To those present in the gallery today, by attending a public meeting of the Council you are consenting to your image, voice and comments being recorded and published.

Anyone who is invited to read out a question or a presentation will be recorded and their voice, image and comments will form part of the live stream and recording.

The Chair and/or the CEO have the discretion and authority at any time to direct the termination or interruption of live streaming. Such direction will only be given in exceptional circumstances where deemed relevant. Circumstances may include instances where the content of debate is considered misleading, defamatory or potentially inappropriate to be published.

Attendees are advised that they may be subject to legal action if their actions results in inappropriate and/or unacceptable behaviour and/or comments.

Today's Meeting is being streamed live as well as recorded and published on Council's website.

Thank you

1.2. WELCOME

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

1.3. 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

1.4. 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.

1.5. REQUESTS FOR LEAVE OF ABSENCE

Nil

1.6. APOLOGIES

Councillors Alyson Skinner, Maxine Kiel and Jeremy Rich.

The Mayor adjourned the Council Meeting until a live stream technical issue was resolved.

The Council Meeting resumed at 1.35pm.

1.7. 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 (the Act). This legislation can be obtained by contacting the Council's Corporate & Community Services Directorate (Council Business) 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 Council Business Department at South Gippsland Shire Council).
- 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 – October 2012*.

Nil

1.8. 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 the Victorian State Government, Department of Transport, Planning and Local Infrastructure – *Conflict of Interest – A Guide for Council Staff – October 2011*.

Nil

2. 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, 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

3. COUNCIL REPORTS

3.1. ANSEVATA WATER DISPUTE VCAT APPLICATION

Executive Office

EXECUTIVE SUMMARY

Ansevata Nominees Pty Ltd (Ansevata) has made an Application to VCAT regarding the Walkerville retarding basin. This report seeks Council's direction in response to this matter.

RECOMMENDATION

That Council:

1. Receives the VCAT Application made by Ansevata Nominees Pty Ltd regarding the Walkerville retarding basin.
2. Provides direction to the Chief Executive Officer to instruct Council's lawyers to:
 - a. Respond by representing Council at VCAT at the directions hearing on 10 September 2018; and
 - b. Seek details of the alleged damage(s) and quantum and any other relevant or appropriate orders.
3. Continues to pursue this matter with Council's insurers as the matter may be covered by Council's insurance.
4. Receives a report addressing the outcome of the Directions Hearing at the next available Council Meeting, or earlier by way of a Special Council meeting, if required.

MOVED: Cr Edwards

SECONDED: Cr Argento

THAT COUNCIL:

- 1. RECEIVES THE VCAT APPLICATION (Attachment [3.1.1]) MADE BY ANSEVATA NOMINEES PTY LTD REGARDING THE WALKERVILLE RETARDING BASIN.**
- 2. PROVIDES DIRECTION TO THE CHIEF EXECUTIVE OFFICER TO INSTRUCT COUNCIL'S LAWYERS TO:**
 - a. RESPOND BY REPRESENTING COUNCIL AT VCAT AT THE DIRECTIONS HEARING ON 10 SEPTEMBER 2018; AND**
 - b. SEEK DETAILS OF THE ALLEGED DAMAGE(S) AND QUANTUM AND ANY OTHER RELEVANT OR APPROPRIATE ORDERS.**
- 3. CONTINUES TO PURSUE THIS MATTER WITH COUNCIL'S INSURERS AS THE MATTER MAY BE COVERED BY COUNCIL'S INSURANCE.**
- 4. RECEIVES A REPORT ADDRESSING THE OUTCOME OF THE DIRECTIONS HEARING AT THE NEXT AVAILABLE COUNCIL MEETING, OR EARLIER BY WAY OF A SPECIAL COUNCIL MEETING, IF REQUIRED.**

CARRIED UNANIMOUSLY

REPORT

Over a number of years Ansevata has both publicly and via private correspondence to Council, asserted that there are issues arising from the 1990 Water Taking Agreement (the Agreement) that the company entered into with the former Shire of Woorayl relating to the Council-owned retarding basin (the Basin) that serves Promontory Views Estate.

Ansevata has now, via its lawyers Wisewould Mahony, made an application to VCAT. The documents received by Council assert that Council is in breach of the Water Act 1989.

This is the second time Ansevata have initiated action in VCAT under the *Water Act 1989*. The earlier proceeding was settled.

The date for the preliminary or "Directions Hearing" at VCAT is set for 10 September 2018.

Council has been seeking advice on whether this matter is covered by Council's insurance policy. At the time of writing this report this question is still unresolved.

CONSULTATION

Council has consulted with its lawyers and insurers.

RESOURCES

Costs for this matter are unable to be determined until further advice is received advising if this matter is covered by Council's insurance policy.

RISKS

There is a risk to internal governance processes and Council's reputation in that a sitting Councillor, Cr Jeremy Rich, is also a director of Ansevata. In addition to the normal confidentiality applying to legal advice and proceedings, appropriate care to ensure material or information is not available or communicated to Councillor Rich, will be required.

STAFF DISCLOSURE

Nil

ATTACHMENTS

Attachments are available on Council's website: www.southgippsland.vic.gov.au

1. VCAT - Notice Hearing - Walkerville Retarding Basin Redacted **[3.1.1]**

REFERENCE DOCUMENTS

Council Policy

Documents are available on Council's website: www.southgippsland.vic.gov.au

Councillor Code of Conduct (C14)

Legislative Provisions

Local Government Act 1989

4. MEETING CLOSED

NEXT MEETING

The next Ordinary Meeting of Council open to the public will be held on Wednesday, 26 September 2018 commencing at 2pm in the Council Chambers, Leongatha.

The Special Meeting closed at 1.39pm.

Confirmed this

26th day of September 2018.

Mayor, Councillor Lorraine Brunt