

# Council Meeting Minutes

**Tuesday 4 August 2020**

**Council Chamber (and by video conferencing)  
273 Main Street  
commencing at 6.00 pm**

*Councillors* John White (Mayor), Ben Buckley, Richard Ellis, Natalie O'Connell (via Skype), Marianne Pelz, Mark Reeves (via Skype), Joe Rettino, Cr Roberts (via Skype) and Colin Toohey

*Officers* Anthony Basford (Chief Executive Officer), Fiona Weigall via Skype (General Manager Assets and Environment), Peter Cannizzaro (General Manager Business Excellence), Jodie Pitkin via Skype (General Manager Place and Community), and Vanessa Hack via Skype (Governance Administration Officer).

## Vision

**East Gippsland is the most liveable region in Australia.** A place of natural beauty, enviable lifestyles, and opportunities.

## Our Mission

A leading local government that works together with our communities to make East Gippsland the most liveable region in Australia.

## Our Values

### Accountability

We will take responsibility for our actions and decisions in an open and transparent way.

### Inclusion

We will be accessible and active in engaging with our community. We will invite, listen to and seek to understand the views of others, and proactively share information about Council's plans, projects, services and activities.

### Integrity

We will honour our commitments and conduct ourselves in an honest, ethical way.

### Respect

We will value, support and help to develop our diverse community. We will respect the views and contributions of others and act with courtesy and consideration in all our interactions.

### Resourcefulness

We will turn the challenges faced by our community into opportunities by being flexible and innovative in our response. We will actively seek better and more cost-effective ways to achieve the best outcomes for East Gippsland

# Index

<b>1.</b>	<b>Procedural .....</b>	<b>2188</b>
1.1	Opening and Recognition of Traditional Custodians.....	2188
1.2	Apologies .....	2189
1.3	Declaration of Conflict of Interest .....	2189
1.4	Confirmation of minutes .....	2189
1.5	Next meeting.....	2189
1.6	Requests for leave of absence .....	2189
1.7	Requests to speak about your Community Project.....	2189
1.8	Public question time .....	2190
1.9	Record of Assemblies of Councillors .....	2191
1.9.1	Assemblies of Councillors – June / July 2020 .....	2191
1.10	Petitions .....	2194
<b>2</b>	<b>Notices of Motion and/or Rescission.....</b>	<b>2194</b>
2.1	Notice of Motion No. 1/2020 – 20 Hardie Street, Lakes Entrance.....	2194
2.2	Notice of Motion 2/2020 - Amendment of <i>Local Government Act</i> 2020 to enable virtual attendance at Council Meetings.....	2195
<b>3</b>	<b>Deferred Business .....</b>	<b>2196</b>
<b>4</b>	<b>Councillor and Delegate Reports .....</b>	<b>2196</b>
4.1	Cr Natalie O’Connell .....	2196
4.2	Cr Colin Toohey .....	2196
4.3	Cr Joe Rettino .....	2196
4.4	Cr Ben Buckley .....	2196
4.5	Cr Richard Ellis .....	2197
4.6	Cr Marianne Pelz .....	2197
4.7	Cr John White .....	2197
<b>5</b>	<b>Officer Reports .....</b>	<b>2202</b>
5.1	Strong Communities.....	2202
5.1.1	Proposal to amend Section 173 Agreement AD851558A as it relates to 19A, 19B, 21 and 23A Golf Links Road, Lakes Entrance .....	2202
5.2	A Liveable Region .....	2209
5.2.1	Addition of Roads to Register of Public Roads.....	2209
5.3	A Growing Region of Opportunities .....	2213
5.3.1	Planning permit application 372/2019/P - 7 MacLeod Street Bairnsdale - Use of Land for Industry (boat repairs) Display of Business Identification Signage and Reduction in Car Parking .....	2213
5.4	Good Governance.....	2224
5.4.1	Amendment to Council Meeting Schedule 2020 .....	2224
<b>6</b>	<b>Urgent and Other Business .....</b>	<b>2229</b>

<b>7</b>	<b>Confidential Business.....</b>	<b>2229</b>
	7.1 Disability Advisory Committee - Chair and Deputy Chair Appointment .....	2229
<b>8</b>	<b>Close of meeting .....</b>	<b>2229</b>

**Anthony Basford**  
**Chief Executive Officer**

## **1. Procedural**

### **1.1 Opening and Recognition of Traditional Custodians**

Welcome to East Gippsland Shire Council's Ordinary Council meeting of 8 August 2020.

Effective from 1 May 2020, amendments to the *Local Government Act 2020*, allows virtual council meetings to ensure decision making can continue during the coronavirus pandemic.

The Council meeting must be livestreamed.

East Gippsland Shire Council will livestream, record and publish its meeting via webcasting to enhance the accessibility of the meetings to the broader East Gippsland community. These recordings are archived and available for viewing by the public or used for publicity or information purposes.

Pre-recorded videos for public questions and requests to speak on an agenda item, submitted in the correct form prior to the Council meeting, will be played at the appropriate time during the meeting and included in the recording of the meeting.

No other person has the right to record Council meetings unless approval has been granted by the Chair.

As per the Minister's Good Practice Guideline issued by the Minister for Local Government on 29 April 2020, the intention is to ensure the normal ordinary business of council can continue through the use of electronic communication.

A member's attendance can only be recorded as present where the member can confirm that they meet all three of the following:

1. They can hear proceedings;
2. They can see other members in attendance and can be seen by other members;
3. They can be heard (to speak).

Councillors must confirm all of the above conditions to be noted as present for the meeting.

A quorum will not be made if these conditions are not met and the meeting will be adjourned until a quorum is met or postponed if a quorum cannot be met.

If technical difficulties are encountered by Council during the meeting including with the livestreaming, we will adjourn until resolution of the issue or postpone to later time and/or date.

I will now confirm with each Councillor, in turn, that they can see, hear and be heard by each other and to note assurance from each that the location they are participating from is secure to ensure deliberations are confidential. Councillors Ellis, O'Connell and Reeves:

- Can you see and hear us?
- Can you confirm that the location you are participating from is secure to ensure deliberations are confidential?

Councillors Reeves, Roberts and O'Connell confirmed.

The Victorian Government announced on 23 April 2020 amendments to the *COVID-19 Omnibus (Emergency Measures) Bill 2020*, which relates to the *Local Government Act 2020*, allowing Council meetings to be conducted by electronic means (video conferencing from 1 May 2020 until 1 November 2020). The amendments have provisioned that Councillors will be able to electronically attend Council meetings and the requirement that Council meetings be open to the public will be satisfied where the meeting is live streamed. The amendments do not inhibit Councillors from attending a meeting in person in the Council chamber.

Members of the public are invited to view the Council Meeting livestreamed by following the link on Council's website or Facebook page.

On behalf of Council, I would like to acknowledge the Gunaikurnai People, the traditional owners of the land on which we are gathered and pay our respects to their elders both past and present.

## **1.2 Apologies**

Nil

## **1.3 Declaration of Conflict of Interest**

Cr Rettino an indirect conflict of interest for item 5.3.1 *Planning permit application 372/2019/P - 7 MacLeod Street Bairnsdale - Use of Land for Industry (boat repairs) Display of Business Identification Signage and Reduction in Car Parking* due to a relative objecting to the application.

Cr Pelz declared an indirect conflict of interest for item 5.3.1 *Planning permit application 372/2019/P - 7 MacLeod Street Bairnsdale - Use of Land for Industry (boat repairs) Display of Business Identification Signage and Reduction in Car Parking* due to owning a property next door to 7 Macleod Street, Bairnsdale.

## **1.4 Confirmation of minutes**

***Cr Joe Rettino / Cr Marianne Pelz***

***THAT THE MINUTES OF THE ORDINARY COUNCIL MEETING 7 JULY 2020 BE CONFIRMED.***

***CARRIED UNANIMOUSLY 04/08/20***

## **1.5 Next meeting**

Ordinary Council Meeting, Tuesday 25 August 2020 be held at the Corporate Centre, 273 Main Street, Bairnsdale commencing at 6.00 pm.

## **1.6 Requests for leave of absence**

Nil

## **1.7 Requests to speak about your Community Project**

Nil

## **1.8 Public question time**

Nil

## 1.9 Record of Assemblies of Councillors

### 1.9.1 Assemblies of Councillors – June / July 2020

**Authored by** Michelle Ingram, Governance and Compliance Officer

**Endorsed by** Peter Cannizzaro, General Manager Business Excellence

**Document No** 8587478

---

### EXECUTIVE SUMMARY

In accordance with section 80A(2) of *the Local Government Act 1989* (the Act), this report provides a summary record of assemblies of Councillors held during the period 30 June to 27 July 2020, refer to table below.

The assemblies of Councillors covered by this report are as follows:

Assembly of Councillors meetings:	Meeting date:
Councillor Briefing	30 June 2020 7 July 2020 14 July 2020 21 July 2020
Councillor Only Time	30 June 2020 14 July 2020 21 July 2020
East Gippsland Shire Council Planning Consultation Meeting Planning Permit Applications – Glendon Drive, Eastwood Development of two dwellings on each of 8 lots.	21 July 2020

Due to the Council meeting on 7 July 2020 commencing at 1.00pm, there was no Councillor Only Time meeting on that day.

A copy of the formal record for each of these assemblies of Councillors is provided at **Appendix 1**.

### RECOMMENDATION

***That Council notes the record of assemblies of Councillors that occurred during the period 30 June to 27 July 2020, as provided at Appendix 1.***

***Cr Joe Rettino / Cr Richard Ellis***

**THAT THE RECOMMENDATION BE ADOPTED**

**CARRIED UNANIMOUSLY 04/08/20**



## OFFICER COMMENT / CONTEXT

### Discussion

As required by the Act, this report presents a formal record of assemblies of Councillors held during the period 30 June to 27 July 2020.

An assembly of Councillors is defined as a meeting at which matters are considered that are intended or likely to be the subject of a Council decision or the exercise of a delegated authority which is either of the following:

- A meeting of an advisory committee where at least one Councillor is present; or
- A planned or scheduled meeting that includes at least half the Councillors and at least one Council officer.

### Organisational

- **Financial**

There are no financial implications for Council arising from this report.

### Climate Change

This report has been prepared and aligned with the following Climate Change function/category:

Corporate/Strategic/Council Plan: Consideration is given to climate change in corporate, strategic or council plan(s) and includes responses to direct and indirect impacts.

### Council Plan

Good Governance Goal 1 East Gippsland Shire Council is inclusive, engaged and open.

### Legislation

On 24 March 2020 the Government passed the *Local Government Act 2020* (the new Act). Provisions from the new Act are being commenced in four stages. The first tranche of provisions commenced on 6 April 2020 with other tranches commencing on 1 May 2020 and 24 October 2020. All remaining provisions are commencing on 1 July 2021. The *Local Government Act 1989* applies in circumstances where the new Act has not commenced.

The East Gippsland Shire Council is required to make decisions under both Acts as the transition occurs. Council has implemented mechanisms to ensure decisions are made according to the relevant provisions of either the *Local Government Act 1989* or the *Local Government Act 2020* as in force at the date of the decision.

This report has been prepared in accordance with *Local Government Act 1989* s80A and s80A(2). S80A sets out the requirements Councils must observe in respect of assemblies of Councillors and s80A(2) requires the Chief Executive Officer to ensure that as soon as practicable after any meeting that is an assembly of Councillors under the Act, a written record of the meeting is reported at an ordinary meeting of Council and incorporated in the minutes of that meeting. The Act also specifies the type of information to be provided in the written record.

The implications of this report have been assessed and are not considered likely to breach or infringe upon the human rights detailed in the Victorian Government's *Charter of Human Rights and Responsibilities Act 2006*.

## **APPENDICES AND ATTACHMENTS**

### **Appendices**

1. Assemblies of Councillors records

### **Attachments**

Nil

## 1.10 Petitions

Nil

## 2 Notices of Motion and/or Rescission

### 2.1 Notice of Motion No. 1/2020 – 20 Hardie Street, Lakes Entrance

Take notice that it is my intention to move at the Ordinary Meeting of Council to be held on Tuesday 4 August 2020 at 6.00 pm or at any adjournment of that meeting:

*That Council:*

- 1. Withdraw the property known as 20 Hardie Street, Lakes Entrance from the list of Council owned properties identified as available for sale as determined at a Council Meeting held on 18 February 2020 and accordingly pay any costs associated with the withdrawal of sale of the property known as 20 Hardie Street, Lakes Entrance; and*
- 2. Reinstate the status of a recreational reserve on the property known as 20 Hardie Street, Lakes Entrance and to complete the necessary processes to achieve the reinstatement.*

**Signed:** Cr Richard Ellis

**Date:** 23 July 2020

---

### Rationale

At the Council meeting of 18 February 2020, Council was presented with a report for the sale of seven freehold properties that were identified as not being designated for municipal or strategic purposes. Accordingly, Council officers commenced the process to complete the sale of the seven properties, including a public notice published in June 2020.

The property known as 20 Hardie Street Lakes Entrance (Property) did not attract any objections by the close date of the public notice.

Notwithstanding, since that time the surrounding property owners have raised community concerns regarding the sale of the Property.

The community concerns were brought to Council's attention in July 2020, when a document containing 53 names protesting to the sale of the Property was presented to Council which demonstrates consistent and wide-spread opinion which seeks Council to reconsider its position.

The community has only known the Property to be a reserve for recreational purposes and have enjoyed its amenity and positioning for families of the surrounding properties to access and appreciate. The community has been of the understanding that the Property has been and will always be a recreational reserve and do not wish that position to change through Council selling the Property.

Whilst I recognise that withdrawing the Property from sale will have a significant impact on the opportunity to re-invest the proceeds of sale of the Property into other community initiatives, reinstatement of the Property to a recreational reserve will provide immense community satisfaction and enjoyment to this community for many years to come.

I urge my fellow Councillors to support this Notice of Motion and the community.

**THAT THE NOTICE OF MOTION BE ADOPTED**

**CARRIED 04/08/20**

For Crs Buckley, Ellis, Pelz, Reeves, Roberts, White

Against Crs O'Connell, Rettino and Toohey

**2.2 Notice of Motion 2/2020 - Amendment of Local Government Act 2020 to enable virtual attendance at Council Meetings**

Take notice that it is my intention to move at the Ordinary Meeting of Council to be held on Tuesday 4 August 2020 at 6.00 pm or at any adjournment of that meeting:

*That Council:*

1. *Writes to the Premier of Victoria, the Hon. Daniel Andrews MP and the Minister for Local Government, the Hon. Shaun Leane MP requesting the Local Government Act 2020 be amended to include provisions that enable virtual attendance at Council meetings.*

*These provisions would apply during the period of any formally designated emergency and/or exceptional circumstances (which could be further defined in the Act or Regulations).*

*The effect of the amendment would be that a Councillor or any other person will satisfy any and all legislative or statutory requirements to be considered "in attendance" or "present". This would apply at any of the following meetings if the Councillor, member or other person participates in the meeting by electronic means of communication:*

- *Council meeting;*
- *joint meeting of Councils;*
- *meeting of a delegated committee or joint delegated committee;*
- *meeting of a governing body of a regional library;*
- *meeting of a special committee.*

2. *Through the Mayor, writes to the Municipal Association of Victoria, Rural Councils Victoria and local Members of Parliament requesting they advocate to the Victorian Government in support of this motion."*

**Signed:** Cr Natalie O'Connell

**Date:** 28 July 2020

---

**Rationale**

In response to the physical constraints of social distancing and lock-down restrictions imposed by the Victorian Government as part of its response to the COVID-19 pandemic, in April of this year the *COVID-19 Omnibus (Emergency Measures) Bill 2020* (the Act) was enacted.

Section 394 of the Act provides that for a prescribed period (1 May to 1 November 2020) the requirements of the Act or any other Act or regulations relating to attendance at specific meetings by a Councillor, member of a governing body of a regional library or any other person will be satisfied in they participate in the meeting by electronic communication.

In practice, this change made it possible for Councillors and other people to attend meetings virtually, through the means of video conferencing and it ensured inclusion for all Councillors and community members.

While the ability to hold virtual Council meetings during times of emergency would be beneficial for all Councils, it would be particularly advantageous for rural and regional councils.

As we have seen through the COVID-19 pandemic and the 2019/20 summer bushfires, in emergencies circumstances can arise that make it impossible for Councillors to attend meetings physically. In the case of the pandemic, it was the need to maintain physical distancing. During the bushfires a range of practical matters impacted on the ability of Councillors and other residents to move around the municipality freely, including the need to stay close to properties that were at risk if the decision had been made to stay and defend them, and because many roads were simply unsafe to travel. Similar issues arise during times of flood.

We live in increasingly uncertain times, with the word ‘unprecedented’ being applied more and more, particularly in respect of the frequency and scale of natural disasters and more recently, public health risks. This motion seeks legislative intervention to ensure that with the assistance of technology that is already available and has been proven to be fit for purpose, physical constraints experienced by Councillors and others during times of emergency do not impede the business of Council any more than is absolutely necessary.

***Cr Natalie O’Connell / Cr Joe Rettino***

***THAT THE NOTICE OF MOTION BE ADOPTED***

***CARRIED UNANIMOUSLY 04/08/20***

### **3 Deferred Business**

Nil

### **4 Councillor and Delegate Reports**

#### **4.1 Cr Natalie O’Connell**

Cr O’Connell spoke to her written report at folio 2198

#### **4.2 Cr Colin Toohey**

Cr Toohey spoke to his written report at folio 2198

#### **4.3 Cr Joe Rettino**

Cr Rettino spoke to his written report at folio 2198

#### **4.4 Cr Ben Buckley**

Cr Buckley spoke on the history of Council reports from his time at the Omeo Shire.

#### **4.5 Cr Richard Ellis**

Cr Ellis spoke to his written report at folio 2199

#### **4.6 Cr Marianne Pelz**

Cr Pelz spoke to her written report at folio 2200

#### **4.7 Cr John White**

Cr White spoke to his written report at folio 2201

## COUNCILLOR WRITTEN REPORT

### Cr Natalie O'Connell

During last month some of the things I have attended include:

An Omeo Region catch up with the Mayor and CEO to discuss recovery after the bushfires last summer. It was important to understand what the main issues were and how these may be addressed in the future.

I attended an Omeo Region BTA meeting which focused on an update of the Omeo MTB Park project, looking at updating the BTA website as well as some potential events to hold in the future (subject to restrictions) given recent funding that has been received.

I along with several other councillors attend the Planning Consultation Meeting for 8 concurrent planning applications each for two dwellings on a lot, located at 4, 5, 8, 17, 13, 12, 14 and 16 Glendon Drive, Eastwood.

I also attended the marketing subcommittee meeting for the Omeo MTB park which is great to see the process for naming/branding progressing. This will be a weekly meeting going forward.

CEO Performance and Remuneration Committee meeting.

### Cr Colin Toohey

My report is as follows:

19/07/20 Met with numerous people at Lakes Entrance Re:- Proposed Boardwalk.

19/07/20 PCM Meeting 91/2020/P – 4 (and others) Glendon Drive Eastwood.

30/07/20 CEO Remuneration Review Committee Meeting.

### Cr Joe Rettino

Date	Report Item
15/07/20	<p><b>East Gippsland Shire Events Strategy Focus Group workshop:</b> This focus group was held on Wednesday 15<sup>th</sup> July at 5:30pm The Mayor and I participated in a focus group that was available for all Councillors to participate in.</p> <p><b>A broad overview of topics was discussed.</b></p> <ul style="list-style-type: none"><li>• Identifying East Gippsland's strengths and differences from competitors</li><li>• What would help us get the most value out of events in the area – i.e. increased spend, increased visitor nights, targeted marketing/profiling etc</li><li>• Identifying issues/challenges for event attraction and development</li><li>• The types of events that we would like to see more of/grow and exploit.</li></ul>
15/07/20	<p><b>Telstra 5g Webinar:</b> Councillor O'Connell, Mayor and I attended this 5g Webinar hosted by Telstra Gippsland's regional manager Lorretta Williton. The briefing session was designed to keep the community and community leaders informed with the latest information on the relevant Australian Safety Standards and compliance relating to 5G. As Telstra rollout 5G across Australia, some people have raised concerns about this technology. There have been numerous misleading and controversial pieces of information circulating and Telstra wanted to provide an opportunity to hear from experts, who will provided information on the research and facts. Also in attendance from Telstra</p>

	<ul style="list-style-type: none"> <li>• Michelle Fuge – Community Engagement and Governance Manager</li> <li>• Mike Wood – Electromagnetic energy (EME) Strategy Manager</li> </ul>
03/08/20	<p><b>East Gippsland Livestock exchange committee meeting:</b>  <i>Meeting highlights:</i></p> <p><b><i>Covid-19 Practices</i></b>  Council Staff in conjunction with agents are ensuring safe practices are being followed during sale days. Council have installed signage and sanitiser, as well as implementing a registration system for all attending sales noting contact details and a declaration of being well and not returning from recent overseas travel. Separate viewing sessions prior to sales were also implemented to monitor visitor numbers. Agents are ensuring only genuine buyers are on-site for the sales and are reminding buyers to assist with socially-distancing through-out the sales requesting only buyers interested in the lot to remain in the relevant lot auction area.</p> <p><b><i>Recycling Programs</i></b>  Council have saved approximately \$15K by recycling sawdust. Spasmodic through-put has allowed sawdust to be rested. New sawdust will be installed in Spring as is usual practice.  Council's waste team will be meeting with Saleyard staff to investigate processes in place for floor waste. Currently Jarvis Norwood buy from Council for \$15 per metre however cartage costs are high and almost negate any profit.</p> <p><b><i>In-house scanning</i></b>  Council are planning to meet with stakeholders for formal discussions regarding the potential to implement in-house scanning for all sales in the future rather than engaging 'Scanclear'. Scanclear have been advised this is being investigated.</p> <p><b><i>Ram Sale</i></b>  Elders will be holding a Ram sale in the at the Livestock Exchange Tuesday 1st September.</p> <p><b><i>Post Repair Couplings</i></b>  After success in the old stage 1 of post repair coupling, this will now proceed on a larger scale.</p> <p><b><i>Paddock Sales</i></b>  Council would like to see a special dedicated meeting of this audience to further discuss Council requirements and associated costs, auditing processes and animal welfare including EU participation noting there have been no beasts sold to date.</p> <p><b><i>Highlights</i></b>  Council would like to highlight yard fees have remained the same for two years. Mark McDonald has advised East Gippsland Livestock Exchange is the only Victorian saleyard with increased cattle numbers for the last financial year</p>

## Cr Richard Ellis

First and foremost, I would like to welcome everyone who may be viewing the streaming of our "remote Ordinary Meeting" streamed live from the Chamber in Bairnsdale this evening. On a personal note it is most pleasing to be back in the Chamber today after an absence of many months, but who knows on hearing the latest COVID-19 figures for the state it may be the last opportunity to be here in the life of this Council term.



Having run through the activities recorded in my diary the majority of which have been cancelled or held remotely it is easy to reflect on how different a world we are currently operating in.

That said I aside from mentioning that I have been involved in a number of business as usual teleconferences and am becoming used to working from home, I would like to mention the following community contacts which are all associated with matters I have brought to the Council's attention hopefully with some success.

Meeting with the North Lakes Entrance Community Group headed by Ms Karen Renwick seeking the reinstatement of a Community Reserve.

Meeting with the Cunninghame Arm Residents Group in regard to their concerns with the impact of a proposed boardwalk upon their properties and their further ambition to reinstate a series of safe beaches along the Cunninghame Arm. I will provide more detail on that concept as it is developed.

Meeting with members of the Bullock Island Development Group and hearing of their aspirations for the long-term further development of the Island, a vision not impairing the good work currently planned for the Island. Again, more information will flow from this group as time progresses.

Meeting with Minister D'Ambrossio and other Waste Management leaders in regard to the introduction of the new Recycle Victoria Reforms.

Meeting with various members of our wide community on a wide range of issues.

### **Cr Marianne Pelz**

Thank You Mr. Deputy Mayor,

Rural Councils Victoria have been working hard behind the scenes lobbying Politian's in the best interest of Rural Council needs.

Unemployment figure due to COVID-19 Pandemic has hit hard in rural areas. Shepparton has suffered large numbers of rural job losses in regards to overseas fruit and vegetable pickers not being able to fly in and return to their jobs. As a result, there may be a shortage of fresh fruit and vegetables not being picked and the price may skyrocket in the near future.

Community engagement best practice toolkits are being finalised and should be ready soon.

Population attraction and retention tool kits are also being worked upon.

Our face coverings tonight are not part of a fancy dress theme they are now State Government Law in the prevention of spreading the COVID-19 virus; mandatory face masks of various styles must be worn as soon as you walk out of the house, in all work places, all public spaces in Victoria.

My Beloved South East Australian Transport Strategy Inc (SEATS) groups Executive Officer Andrew Martin and Greg Pullen (economic development) from Shoal haven have also been working diligently in the NSW/ Victoria cross border space. They have been working on behalf of our border communities with the cross-border commissioners, the NSW transport body and the Federal and State Ministers in regards to transport.

This concludes my report for the month.

**Cr John White**

03/07/20	Donation Handover – David Nixon, Orbost Airport
08/07/20	Visit to Omeo and District – Community Recovery
10/07/20	One Gippsland Mayor's Catch-Up
13/07/20	Native Timber Taskforce Inaugural Meeting
14/07/20	Citizenship Ceremonies x 2
14/07/20	Meeting with The Hon Jane Garrett
15/07/20	East Gippsland Shire Council Event Strategy Focus Group
20/07/20	Mallacoota (MADRA) Catch-up
21/07/20	Citizenship Ceremony
21/07/20	Planning Consultation Meeting
24/07/20	Presentation School Captain's East Gippsland Specialist School
24/07/20	Cenotaph De-Consecration Ceremony
27/07/20	Visit to Wairewa and Nowa Nowa
28/07/20	Audit and Risk Committee Meeting
29/07/20	Start Up Gippsland Launch Event
30/07/20	MAV Virtual Mayoral Forum
31/07/20	One Gippsland Board Meeting
31/07/20	MAV Rural Gippsland Regional Meeting
01/08/20	Livestock Exchange Consultative Committee Meeting

## 5 Officer Reports

### 5.1 Strong Communities

#### 5.1.1 **Proposal to amend Section 173 Agreement AD851558A as it relates to 19A, 19B, 21 and 23A Golf Links Road, Lakes Entrance**

<b>Authored by</b>	Ben McGeehan, Land Use Planning Officer Robert Pringle, Acting Senior Land Use Planner
<b>Endorsed by</b>	Jodie Pitkin, General Manager Place and Community
<b>Document no.</b>	8505099
<b>In attendance</b>	Nicole Reynolds, Acting Manager Planning

---

### EXECUTIVE SUMMARY

This report seeks Council's decision to provide in principle support to amend a Section 173 Agreement AD851558A (provided at **Appendix 1** with all relevant title documentation) in relation to 19A, 19B, 21, and 23A Golf Links Road, Lakes Entrance following from a landowner's request to end the agreement. This will allow for the implementation of stage two of the process to amend the agreement. Stage two involves community consultation whereby notices will be sent directly to all of the affected landowners. A further report will be presented to Council in order to determine the proposal.

The land owners of the land in question had previously entered into this agreement in relation to a planning permit to 103/2005/P which allowed a nine (9) lot subdivision to occur on the basis that development of those nine (9) lots would be developed in accordance with planning permit 243/2004/P (both planning permits provided at **Attachment 1**).

The original application by the landowner was to end the Agreement wholly as it related to the land, however officers have determined that there is value in retaining Clause 2)(a) of the Agreement which relates to protection and maintenance of the rainforest area of the land. Specifically, this is to prevent exemptions under the Erosion Management Overlay and Clause 52.17 Native Vegetation from being used to remove the vegetation without permits or consents.

On 29 July 2020 the request was extended with support of the current landowner at 23A Golf Links Road. The supporting information has been provided with **Appendix 1**. The applicant also confirmed verbally on this date that there was consent to officer recommendation to amend rather than end the agreement by deleting the following portion of the agreement:

*2) (b) Covenants that it or its successors in Title will contribute to any future special rates and charges scheme for the upgrade of Golf Links Road, Lakes Entrance when required by the Responsible Authority*

*(c) Covenants that the lots approved for development pursuant to Planning Permit No. 103/2005/P will only be developed in accordance with the Plans endorsed as a part of Planning Permit 243/2004/P.*

The purpose of the amendment is to retain Clause 2)(a) which protects the rainforested portion of the land, while still meeting the intent of the applicant's request which would allow different built form outcomes on the land than what the Agreement requires.

## RECOMMENDATION

*That Council,*

**1. agrees in principle to the amending of Section 173 Agreement AD851558A provided at Appendix 1, as it relates to:**

- **Vol. 10902 Fol. 410 being Lot 5 on PS535111H, 19A Golf Links Road, Lakes Entrance;**
- **Vol. 10902 Fol. 411 being Lot 6 on PS535111H, 19B Golf Links Road, Lakes Entrance;**
- **Vol. 11011 Fol. 063 being Land in PC369358J, 21 Golf Links Road, Lakes Entrance; and**
- **Vol. 10902 Fol. 414 being Land in Lot 9 on PS PS535111H, and Vol. 10902 Fol. 415 being Land in Lot 10 on PS535111H, both forming part of 23A Golf Links Road, Lakes Entrance.**

**By deletion of the following wording from the agreement:**

- 2) (b) Covenants that it or its successors in Title will contribute to any future special rates and charges scheme for the upgrade of Golf Links Road, Lakes Entrance when required by the Responsible Authority**
- (c) Covenants that the lots approved for development pursuant to Planning Permit No. 103/2005/P will only be developed in accordance with the Plans endorsed as a part of Planning Permit 243/2004/P.**

**in accordance with Section 178A of the Planning & Environment Act 1987; and**

- 2. determines to undertake the necessary public notice of the proposal in accordance with section 178C of the Planning & Environment Act 1987.**
- 3. Agrees that upon the public notice being completed, the ending of the agreement shall be reported to Council for final consideration.**

**Cr Richard Ellis / Cr Marianne Pelz**

**THAT THE RECOMMENDATION BE ADOPTED**

**CARRIED UNANIMOUSLY 04/08/20**

## OFFICER COMMENT / CONTEXT

It is noted, for clarity, that due to likely administrative errors at Land Registry during an earlier subdivision, the agreement was not carried down to the child lots 5 and 6 (19A and 19B Golf Links Road). Whilst the agreement does not appear on the title to the land, the agreement still applies to these lots by virtue of it applying to all the land at the time the agreement was executed.

The subject land is located at the base of Merrangbaur Hill, between the Princes Highway (to the east) and Sea-Lakes Close (to the west). A locality plan can be viewed at **Figure 1**. The land is zoned General Residential Zone 1 (see **Figure 2**) and is covered by the Erosion Management Overlay. The zoning and overlays have some bearing on the current consideration in relation to potential permit requirements for vegetation removal.



Figure 1 – Locality Map

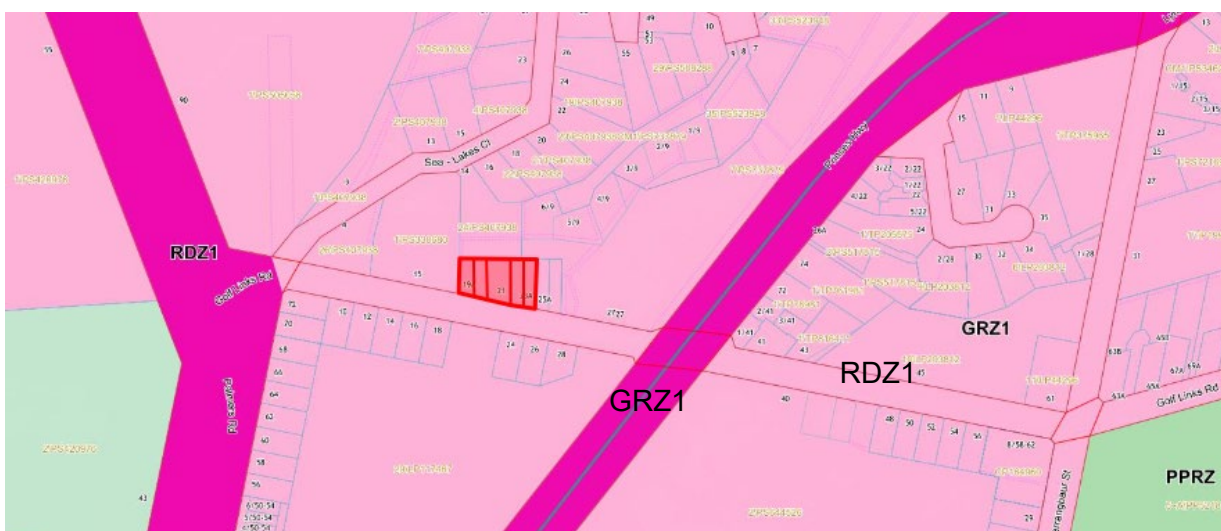


Figure 2 – Zoning Plan

Condition 2 on East Gippsland Shire Council Planning Permit 103/2005/P (1 July 2005) for a nine-lot subdivision required the subdivider to enter into a Section 173 Agreement that would require future development of the nine-lots to be generally in accordance with development approved under East Gippsland Shire Council Planning Permit 243/2004/P (23 July 2004) for development of 35 dwellings and three-lot subdivision. The development was known as Kinkuna Heights.

The development approved under 243/2004/P was never commenced, or completed, and the Planning Permit has expired. Alternative development has occurred, and been approved, including the construction of two townhouses at 25A and 25B Golf Links Road, and approval for the development of a service station and associated facilities on the corner of Golf Links Road and Princes Highway (27 Golf Links Road, 413/2016/P/C).



Planning Permit 67/2020/P (19A Golf Links Road) has been granted allowing the construction of a single storey detached dwelling, subject to a condition requiring the Section 173 Agreement which applies being removed. Based on the officer recommendation to amend rather than end the agreement, the responsible authority will seek consent of the applicant to amend the permit condition.

Planning Permit 68/2020/P (19B Golf Links Road) has been granted allowing the construction of a single storey detached dwelling, subject to a condition requiring the Section 173 Agreement which applies being removed. Based on the officer recommendation to amend rather than end the agreement, the responsible authority will seek consent of the applicant to amend the permit condition.

A Planning Permit is not required for the construction of a dwelling on the land at 21 Golf Links Road, although the presence of the Agreement, which is the subject of this removal request, prevents any development until such time as the Agreement is removed, or varied.

A Planning Permit is not required for the construction of a dwelling at Lot 10, being part of 23A Golf Links Road, as the land is larger than 300 square metres in area. A planning permit would be required for a dwelling at Lot 9, as the lot is less than 300 square metres in area. If the land were to be consolidated, then no planning permit would be required for a single dwelling on the consolidated lot. The presence of the Agreement, which is the subject of this removal request, prevents any development until such time as the Agreement is removed, or varied.

### *The Agreement*

The owners obligations noted in the Agreement are:

2. *The Owner with the intent that the covenants hereunder shall run with Land hereby covenant and agree that they (which term shall include the Owner or owners of the Land or any part thereof from time to time:*
  - (a) *Covenants that the rainforest area shown to be retained and planted in the approved landscaping plans shall be maintained in accordance with the approved landscaping maintenance plan; and*
  - (b) *Covenants that it or its successors in Title will contribute to any future special rates and charges scheme for the upgrade of Golf Links Road, Lakes Entrance when required by the Responsible Authority*
  - (c) *Covenants that the lots approved for development pursuant to Planning Permit No. 103/2005/P will only be developed in accordance with the Plans endorsed as a part of Planning Permit 243/2004/P.*

With respect to 2(c), the compelling case for ending of the agreement is that the development is no longer being implemented in accordance with the approved development or subdivision permit. It is proposed to delete 2(c) wholly.

With respect to 2(b), Council has on other matters considered a request to end an agreement with a similar special charge requirements. One matter in particular was considered at VCAT (Boys v East Gippsland SC [2013] VCAT 275 (6 March 2013)), with the ruling making special note of the oddity of requiring such condition when the council has other legislative powers to require such contributions. It is therefore considered appropriate to delete 2(b) wholly.

With respect to 2(a), although the proposed development has not occurred in full, works had commenced in the form of retaining walls, and plans for the landscaping were endorsed. These plans continue to have effect through the agreement.

The land is subject to the Erosion Management Overlay, which does consider vegetation removal, and as such there could be considered some protection of the vegetation under the planning scheme controls. The Overlay, however provides for various exemptions for the need for a planning permit to remove vegetation, and the rainforest vegetation could be removed without any consent of the responsible authority if the exemptions are met.

The applicant was consulted about the proposal to amend rather than end the Agreement. The question was put about considerations of the ending of the Agreement on 27 Golf Links Road. It is considered that in that Agreement, a potential consideration is that the land does not benefit from the 0.4 hectares or less land size exemption for Native Vegetation consideration, as such a planning permit would be required to remove native vegetation. Conversely, the lots at 19A-23A are smaller than 0.4 hectares and as such under the native vegetation provisions, the vegetation can be removed fully without consideration of biodiversity.

Retaining Clause 2(a) therefore allows the vegetation to be protected while also being transparent on the land title. The requirement will not have a significant impact on the ability of the lots to be developed, as there is already cleared area that is limited by the retaining wall design.

Amending the Agreement by deleting 2(b) and 2(c) will meet the intent of the applicant to develop the land in a different way than required by the Agreement. Retention of Clause 2(a) will preserve the natural landscape feature and biodiversity significance of the rainforest area, and continue to provide certainty to prospective purchasers regarding the significance and rights and responsibilities in relation to this vegetation.

The permits for development at 19A and 19B will require amendment to alter the wording of the condition regarding removal of the Agreement.

## **Council Plan**

Strong Communities Goal 2 East Gippsland communities plan for their future

A Liveable Region Goal 2 Sustainable planning and growth supports thriving townships, while maintaining our commitment to sustainability and protecting our natural environment

## **Legislation**

On 24 March 2020 the Government passed the *Local Government Act 2020* (the new Act). Provisions from the new Act are being commenced in four stages. The first tranche of provisions commenced on 6 April 2020 with other tranches commencing on 1 May 2020 and 24 October 2020. All remaining provisions are commencing on 1 July 2021. The *Local Government Act 1989* applies in circumstances where the new Act has not commenced.

The East Gippsland Shire Council is required to make decisions under both Acts as the transition occurs. Council has implemented mechanisms to ensure decisions are made according to the relevant provisions of either the *Local Government Act 1989* or the *Local Government Act 2020* as in force at the date of the decision.

The implications of this report have been assessed and are not considered likely to breach or infringe upon the human rights detailed in the Victorian Government's *Charter of Human Rights and Responsibilities Act 2006*.

The *Planning & Environment Act 1987* pursuant to Section 178A provides the opportunity for Council to consider ending an agreement, either wholly or in part, without the consent of all persons who are bound by the agreement.

The applicant is seeking to end Section 173 Agreement AD851558A wholly as it applies to

- Vol. 10902 Fol. 410 being Lot 5 on PS535111H, 19A Golf Links Road, Lakes Entrance;
- Vol. 10902 Fol. 411 being Lot 6 on PS535111H, 19B Golf Links Road, Lakes Entrance;
- Vol. 11011 Fol. 063 being Land in PC369358J, 21 Golf Links Road, Lakes Entrance; and
- Vol. 10902 Fol. 414 being Land in Lot 9 on PS PS535111H, and Vol. 10902 Fol. 415 being Land in Lot 10 on PS535111H, both forming part of 23A Golf Links Road, Lakes Entrance.

However, the consent of all parties bound by the agreement has not been obtained.

It is not always reasonable or practical for the applicant to obtain the consent of all parties to an agreement, particularly where there are a number of parties and non-resident owners.

Where the consent of all parties has not been obtained, Section 178B(2) of the *Planning & Environment Act 1987* proves the framework for the proposal to be assessed and considered by Council. This process includes sending notices directly to all of the affected landowners as part of the consultation process.

The process is the same whether the proposal is to end or amend the agreement. Officers have obtained in principal support of the applicant to pursue an amendment rather than ending of the agreement for the reasons outlined above.

## **Community**

It is not anticipated that amending the agreement as proposed will have a negative impact on the community.

## **Organisational**

- **Financial**

Nil

## **Consultation**

It has not been necessary at this point in the process to consult with the community.

Consultation by way of formal notice to all of the affected landowners of the proposal to amend the agreement will be undertaken as part of the process outlined under the *Planning & Environment Act 1987* should in principle support to the proposal be decided by Council.

## **Climate Change**

This report has been prepared and aligned with the following Climate Change function/category:

Land Use Planning: Consideration is given to climate change in the local land use planning and includes responses to direct and indirect impacts.

The preservation of rainforest environment is critical to local microclimate and biodiversity. The amending of the agreement has little overall bearing on the climate outcomes.



## **APPENDICES AND ATTACHMENTS**

### **Appendices**

1. Land Titles and Section 173 Agreement AD851558A

### **Attachments**

1. Copies of Planning Permits 243/2004/P and 103/2005P

## **5.2 A Liveable Region**

### **5.2.1 Addition of Roads to Register of Public Roads**

**Authored by** Peter Morton, Road Safety Coordinator

**Endorsed by** Fiona Weigall, General Manager Assets and Environment

**Document No** 8552520

**In Attendance** Mark Burnett, Manager Works

---

#### **EXECUTIVE SUMMARY**

This report considers the inclusion of additional roads to East Gippsland Shire Council Register of Public Roads (ROPR), as part of Council's responsibilities under the *Road Management Act 2004 (the Act)*.

The Act establishes a statutory requirement for road authorities to maintain a ROPR. Road authorities have a duty to inspect, maintain and repair roads that have been determined as public roads. The East Gippsland Shire Council Road Management Plan establishes the standards that shall be met when discharging these duties to inspect, maintain and repair public roads.

Council Officers have received a number of requests from members of the community seeking maintenance on roads that are not currently included on the ROPR and consequently, are not currently inspected, repaired or maintained by Council, in addition to identifying omissions through internal review.

The roads considered for inclusion to the Register of Public Roads in this report include:

- Gold Ring Road, Lake Entrance (0.14km)
- Puggle Lane, Sarsfield (0.19km)
- Jacks Track, Lucknow (0.92km)
- Salt Creek Road, Johnsonville (0.14km)

## RECOMMENDATION

### *That Council:*

1. ***declares the sections of roads listed below as Public Roads and these be added to Council's Register of Public Roads under the classifications shown;***

Road Name	Locality	Land Tenure	Principle Places of Residence	Approx. length	Classification
Gold Ring Road	Lakes Entrance	Road reserve	2	0.14km	Urban Access
Puggle Lane	Sarsfield	Road reserve	3	0.19km	Rural Access
Jacks Track	Lucknow	Road reserve	3	0.92km	Rural Access
Salt Creek Road	Johnsonville	Road reserve	2	0.14km	Rural Access

2. ***Council's Register of Public Roads be updated accordingly as required by the Road Management Act 2004.***

***Cr Colin Toohey / Cr Marianne Pelz***

***THAT THE RECOMMENDATION BE ADOPTED***

***CARRIED UNANIMOUSLY 04/08/20***

## OFFICER COMMENT / CONTEXT

### Discussion

Council Officers periodically receive requests to add roads to the ROPR. In accordance with the *Act*, Council can make alterations to its ROPR to include any new roads it considers to be public roads.

Council must record on its ROPR, any road in respect of which it is the responsible authority and where it has made a decision that the road is reasonably required for general public use, in accordance with Section 17(3) of the *Act*.

While there is no statutory definition for what circumstances constitute reasonably required for general public use, the following is guiding criteria that has been used historically by East Gippsland Shire Council when assessing whether a road fits this definition and therefore should be added to the ROPR:

- The road provides access to a principal place of residence (PPR)
- The road in question provides a single closest point of access to a rateable property holding
- The road is located on suitable land, in a road reserve or Crown land where Council has relevant authority to lawfully have a road
- The road is not maintained by another authority

The road also needs to be of an appropriate constructed standard, with only nominal works required to bring them up to an acceptable standard that can be maintained through routine operational activities.

The guiding principles outlined above aim to provide a property access service level whereby private land that has been developed to include a principle place of residence, adjacent to a

connected network of roads, has an access point to a roadway listed on the Public Road Register which is inspected, repaired and maintained by Council.

Unused road reserves requiring full construction of a physical road to provide access to properties are not usually considered under this process. Such works would have to be undertaken by the landholder(s) to a satisfactory standard before consideration of their addition to the register would occur.

This report considers the suggested classifications of the following roads to be Urban and Rural Access. These road hierarchy classifications require annual hazard inspections and regular maintenance throughout the year (a suggested minimum of one grade per annum for gravel roads).

The roads as listed below total 1.39 kilometres in length and have been nominated for inclusion in the Register of Public Roads. A map of each of the roads is provided in **Attachment 1**.

Road Name	Locality	Land Tenure	Principle Places of Residence	Approx. length	Proposed Classification	Conditions
Gold Ring Road	Lakes Entrance	Road reserve	2	0.14km	Urban Access	Gravel Road
Puggle Lane	Sarsfield	Road reserve	3	0.19km	Rural Access	Gravel Road
Jacks Track	Lucknow	Road reserve	3	0.92km	Rural Access	Gravel Road
Salt Creek Road	Johnsonville	Road reserve	2	0.14km	Rural Access	Gravel Road

The roads nominated in this report all provide access to dwellings located on private property which are understood to contain a minimum of one principal place of residence.

The roads considered generally have alignments within road reserves.

### Council Plan

A Liveable Region Goal 1 East Gippsland has safe, accessible and well utilised open spaces and built environments that reflect the priorities of our community

### Legislation

On 24 March 2020 the Government passed the *Local Government Act 2020* (the new Act). Provisions from the new Act are being commenced in four stages. The first tranche of provisions commenced on 6 April 2020 with other tranches commencing on 1 May 2020 and 24 October 2020. All remaining provisions are commencing on 1 July 2021. The *Local Government Act 1989* applies in circumstances where the new Act has not commenced.

The East Gippsland Shire Council is required to make decisions under both Acts as the transition occurs. Council has implemented mechanisms to ensure decisions are made according to the relevant provisions of either the *Local Government Act 1989* or the *Local Government Act 2020* as in force at the date of the decision.

The implications of this report have been assessed and are not considered likely to breach or infringe upon the human rights detailed in the Victorian Government's Charter of Human Rights and Responsibilities Act 2006.

The procedures and recommended actions within this report are consistent with the requirements of the *Road Management Act 2004*.

## **Organisational**

- **Financial**

It is estimated that the annual routine maintenance costs for the recommended roads would be \$1,500.

Gravel re-sheeting of the road pavements of the roads included in this report is estimated to cost approximately \$44,500 and would occur at a frequency of every 10 – 20 years as required by material condition. This equates to an approximate average annual cost of \$2,200 – \$4,450 per year.

Should the recommendation be adopted, Council officers will manage the additional costs within the existing annual road maintenance and capital works budgets as adjusted each financial year.

## **Climate Change**

This report has been prepared and aligned with the following Climate Change function/category:

Asset Management: Climate change is considered in the design and maintenance of assets and includes responses to direct and indirect impacts.

## **Consultation**

The requests for Council to assume the maintenance responsibility of these roads and their subsequent consideration for inclusion on Council's Public Road Register has largely come as a result of requests from members of the community.

Each stakeholder will be updated directly regarding the outcome of this report and how it impacts their specific situation.

## **APPENDICES AND ATTACHMENTS**

### **Appendices**

Nil

### **Attachments**

1. Maps showing road sections proposed to be included within the Public Road Register.

## 5.3 A Growing Region of Opportunities

### Conflict of Interest

Cr Marianne Pelz and Cr Joe Rettino, having declared a conflict of interest in item 5.3.1 left the meeting at 7.09 pm and were absent during discussion on this item.

#### 5.3.1 Planning permit application 372/2019/P - 7 MacLeod Street Bairnsdale - Use of Land for Industry (boat repairs) Display of Business Identification Signage and Reduction in Car Parking

**Authored by:** Land Use Planning Officer

**Endorsed by** Jodie Pitkin, General Manager Place and Community

**Document No** 8551843

**In Attendance** Nicole Reynolds, Acting Manager Planning

---

### EXECUTIVE SUMMARY

This report seeks Council's decision to issue a Notice of Decision to Grant a Permit for planning permit application 372/2019/P at 7 MacLeod Street, Bairnsdale.

Officers have undertaken an assessment of the proposal and recommend that Council resolves to approve the planning permit application.

The basis for the approval is summarised as follows:

- The use of the land is allowed in the zone and considered unlikely to result in unreasonable detriment to adjoining and adjacent land users;
- The proposed signage is non-illuminated and typically sized for a building and use within a predominantly commercial area; and
- The requested reduction in car parking spaces (14 in lieu of 17) is considered acceptable given the expected number of customers / visitors to the site based on the nature of the business.

The application has been referred to all the required authorities and has been the subject of public notice.

The application has attracted 16 objections. The East Gippsland Catchment Management Authority (EGCMA) has provided conditional consent.

## RECOMMENDATION

***That Council being the Responsible Authority and having considered all the relevant planning matters, determines that planning application 372/2019/P is generally consistent with the requirements and objectives of the East Gippsland Planning Scheme and therefore resolves to issue a Notice of Decision to Grant a Planning Permit for Use of Land for Industry (boat repairs) and Display of Business Identification Signage and Reduction in Car Parking.***

Proposed conditions included at **Appendix 1**.

***Cr Richard Ellis / Cr Mark Reeves***

***THAT THE RECOMMENDATION BE ADOPTED***

***CARRIED UNANIMOUSLY 04/08/20***

## OFFICER COMMENT / CONTEXT

### Discussion

The planning permit application currently before Council seeks a permit (retrospectively) for the following matters:

- Use of the land for industry (boat repairs)
- Display of non-illuminated business identification signage (17.28m<sup>2</sup>)
- Reduction in the standard car parking provision (14 in lieu of 17)

The land is in the Mixed Use Zone (**MUZ**), and is subject to the Land Subject to Inundation Overlay (**LSIO**).

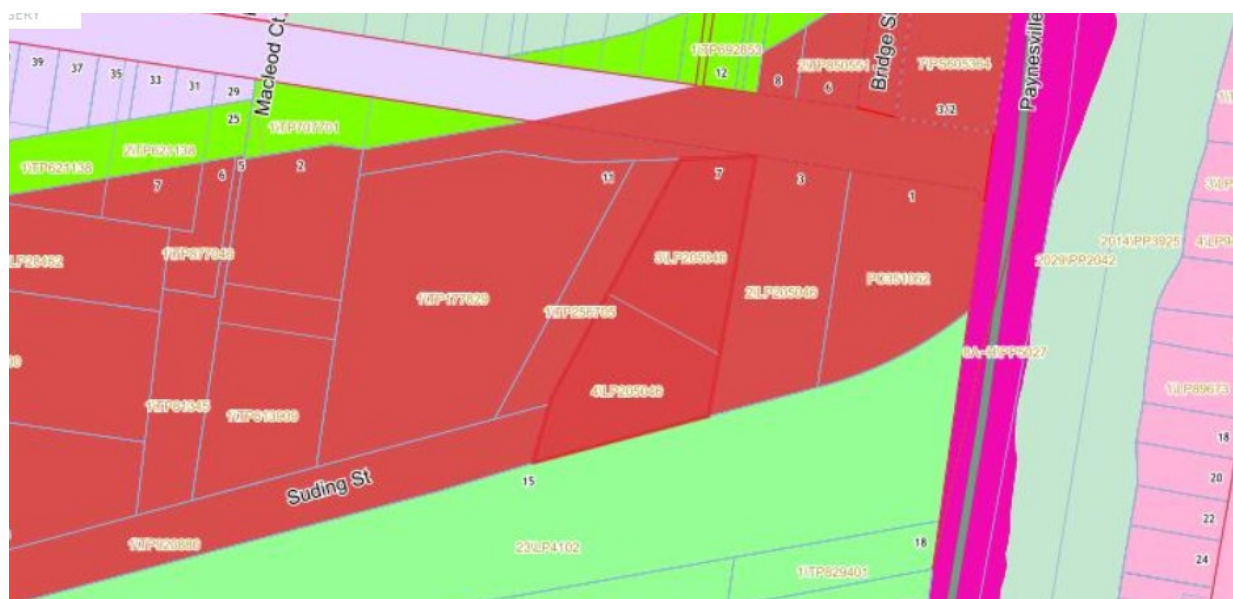


Figure 1 - Zoning Plan (mixed use zone: red, farming zone: dull green, rail trail: bright green, main road: bright pink, commercial 1 zone: light purple, residential zone: light pink)



Figure 2 - Overlay Plan (blue: Land Subject to Inundation)

Opposite the subject land, to the north, is a garden supplies centre. To the north-east are predominantly commercial land uses including doggie day care and a battery supplier.

To the east, on Paynesville Road, is Lucke's Fresh Food Market.

To the south is a farming enterprise, including a fire wood supply operation.

To the west is a motor mechanic.

The Bairnsdale Growth Strategy (2009) identifies the land as being within precinct 1, established Bairnsdale. The strategy makes no specific reference to the expectations of development within this locality.



Figure 3 - Extract from Figure 1b), Bairnsdale Growth Strategy (2009)

## The Land

The southern portion of the site, which contains the existing building, hard stand and car parking facilities, is the high point of the land. This portion of the land enjoys existing legal and practical road access at two points via Suding Street. The amended application is only seeking to utilise this southern portion, and to gain access via Suding Street.

The application was initially referred to EGCMA pursuant to Section 55 of the Planning and Environment Act 1987 (the Act), as the recommending statutory authority for proposals which fall within the LSIO. EGCMA has provided conditional consent, being that the finished floor level (FFL) of the proposed office must be a minimum of 4.8m, and that it must be built on unenclosed footings.



It is noted, however, that as a result of amendments to the application post-referral (ie: the proposal no longer seeks approval for any new buildings and works) the application is no longer required to be referred to the EGCMA, although their comments have been included within this report and attachments for completeness.

It is considered reasonable to utilise the declared flood level (4.8m to AHD), provided by the EGCMA, as 'advice' to form the basis of conditions in relation to matters of chemical storage, which will be discussed later in this report.



Figure 4 - The subject land (in red)



Figure 5 - The locality in reference to the subject land (in red)



Figure 6 - Proposed signs (left to right: west elevation, north elevation and east elevation)

### Assessment of proposal against planning policy

A copy of the application documents is included at **Attachment 1**. A full assessment of the proposal against the East Gippsland Planning Scheme is included at **Attachment 2**. Referral responses are provided at **Attachment 3**.

The application was formally amended pursuant to Section 57A of the Planning and Environment Act 1987 (the Act) on 26 June 2020. The applicant advises that the owner has been advised of this amendment, as required by the Act. The application has not been subject to re-advertising as Section 57A of the Act prevents Council from directing additional notice if the proposal is deemed to make the same, or less, impact on adjoining and adjacent parties. In this instance, the footprint of the use is being reduced and the proposed works are no longer sought, thus the amenity impacts are reduced (and certainly not increased).

It is noted that the use for which this application seeks approval for commenced prior to a planning permit being issued or applied for. The amended proposal currently before Council seeks retrospective approval for the following matters:

- Use of the already-developed southern portion of the land for industry (boat repairs)
- Display of non-illuminated business identification signage (17.28m<sup>2</sup>)
- Reduction in the standard car parking provision (14 in lieu of 17)

For the purposes of completeness, the application as originally lodged sought retrospective approval for a new office (in the south-west corner of the lot, within a relocatable structure) which has since been removed from the site. This structure is no longer proposed.

It is also noted that it was unclear within the original application documents as to which portion of the land approval was sought. It is now advised to Council that the application seeks to use only the already-developed southern portion of the land (southern portion of Lot 4).





Figure 7 - Proposed area of the site affected by his application

### Triggers

The proposed land use is considered to fall most appropriately into the land use definition (at clause 73.03 of the Planning Scheme) of 'industry' which is defined as:

*Land used for any of the following operations:*

- a) *any process of manufacture;*
- b) *dismantling or breaking up of any article;*
- c) *treating waste materials;*
- d) *winning clay, gravel, rock, sand, soil, stone, or other materials (other*
- e) *than Mineral, stone, or soil extraction);*
- f) ***laundering, repairing, servicing or washing any article, machinery, or vehicle, other than on-site work on a building, works, or land; or*** [emphasis added]
- g) *any process of testing or analysis.*

The use is considered to fall under item f) which relates to servicing any article, machinery or vehicle (boat repairs).

The use 'industry' falls within Section 2 (permit required) of the zone and is considered to represent a use which meets the requirements of clause 53.10 (uses and activities with potential adverse impacts). Accordingly, the proposed use is not prohibited and the application can be considered.

As the use falls within Section 2, a permit was originally required for the works (clause 32.04-9), and a permit was also originally triggered for works under the **LSIO** (clause 44.04-2). However, as the application has been formally amended (s57A of the Act) removing any proposed works, these are no longer triggers.

The zone sets out the signage requirements, that signs must be assessed against the requirements of 'category 3 – High amenity areas' at clause 52.05-13. This clause does not stipulate a mandatory maximum signage area (although floodlit signs are prohibited). The signs are not 'floodlit' and accordingly, the proposed signage is not prohibited and can be considered.

Car parking requirements are stipulated at clause 52.06-5, specifically that the use 'industry' must provide at least 2.9 parking spaces per 100m<sup>2</sup> of net floor area, defined at clause 73.01 as being *'The total floor area of all floors of all buildings on a site. It does not include the area of stairs, loading bays, accessways, or car parking areas, or any area occupied by machinery required for air conditioning, heating, power supply or lifts.'* The applicant's plans suggest that 612m<sup>2</sup> of net floor area will be provided, creating a parking demand of 17 spaces. The plans show that 14 spaces will be provided, providing a shortfall of 3 spaces, hence a permit is required for a reduction of 3 spaces.

### Discussion

The application currently before Council seeks (retrospective) approval to use the land for industry (boat repairs), display business identification signage (3 non-illuminated signs totalling 17.28m<sup>2</sup> in area) and to reduce the statutory car parking rate by 3 spaces (from 17 to 14).

A full assessment of the proposal against the East Gippsland Planning Scheme is included at **Attachment 2**.

### **Use**

The use is considered appropriate for the location. The use is on land which is generally above the 1% probability flood level, within an existing industrial building. The site is generally surrounded by other commercial businesses (ie: not close to any residentially zoned land) and therefore is consistent with state and local planning policy which encourages the establishment of businesses which provide services and economic activity in a manner which will not unreasonably impact the locality. Subject to conditions pertaining to hours of operation, the use is deemed reasonable and should be supported.

It is acknowledged that the use generates by-products (waste products, oil, etc...) which have the potential to damage the environment should they leave the site (for example, during a flood event). Whilst the operator of the business has a responsibility under other legislation, such as the Environment Protection Act 2018, it is considered appropriate to include conditions on any permit which may issue requiring all chemicals used within the business to be stored above the nominated flood protection level of 4.8m AHD.

### **Signage**

As there is no specific local planning policy which relates to signage within the East Gippsland Planning Scheme, an assessment is made against first principles, ie: signage should be low impact, and only of such a scale that allows for the effective identification of the business without dominating the locality. The signage is considered to meet this principle; the signs are appropriately scaled in relation to the host building, they are not directed towards any sensitive land uses. They are not illuminated or animated. The signage is considered commensurate to the size of the building and the purpose which they seek to serve.

### **Car Parking**

The planning scheme requires that prior to a new use commencing, car parking (at a rate related to the use) must be provided, or a reduction sought by way of planning permission. The proposal seeks to provide 14 car parking spaces in lieu of the planning scheme's requirement to provide 17. A reduction of 3 spaces is sought.

In deciding whether the car parking provision is acceptable, officers must have regard to such matters as staffing, frequency and length of visits by customers, opportunities for informal car parking during peak periods and the availability of on-street parking (and how that may impact other nearby businesses).

Taking into account the nature of the business, low staffing numbers, low frequency of attendance by customers, opportunities for overflow parking, the reduction of 3 spaces is considered acceptable and unlikely to create parking issues in the vicinity.

### **Council Plan**

A Growing Region of Opportunities Goal 1 - East Gippsland is a region of economic opportunity with strong industry sectors, a skilled workforce and local jobs

Strong Communities Goal 2 - East Gippsland communities plan for their future

### **Council Policy**

This application has been processed in accordance with Council's Planning Permit Delegations Policy 2018.

### **Legislation**

On 24 March 2020 the Government passed the Local Government Act 2020 (the new Act). Provisions from the new Act are being commenced in four stages. The first tranche of provisions commenced on 6 April 2020 with other tranches commencing on 1 May 2020 and 24 October 2020. All remaining provisions are commencing on 1 July 2021. The Local Government Act 1989 applies in circumstances where the new Act has not commenced.

The East Gippsland Shire Council is required to make decisions under both Acts as the transition occurs. Council has implemented mechanisms to ensure decisions are made according to the relevant provisions of either the Local Government Act 1989 or the Local Government Act 2020 as in force at the date of the decision.

The implications of this report have been assessed and are not considered likely to breach or infringe upon the human rights detailed in the Victorian Government's Charter of Human Rights and Responsibilities Act 2006.

The application has been assessed against the East Gippsland Planning Scheme in accordance with the *Planning and Environment Act 1987*.

### **Organisational**

- **Financial**

Nil

## Consultation

Consultation has been undertaken in the following manner:

Referrals	East Gippsland Catchment Management Authority – Conditional approval
Advertising	<p>The permit applicant was required to send letters to adjoining and adjacent properties.</p> <p>A statutory declaration has been provided by the permit applicant confirming that public notice was undertaken, and the site notice was displayed for a minimum of 14 days.</p> <p>Advertising was undertaken in accordance with section 52 of the <i>Planning and Environment Act 1987</i>.</p>
Objections	16 (at the time of writing this report)
Planning Consultation Meeting	<p>A Planning Consultation Meeting was held on 12 May 2020 (via Skype). In attendance were Crs White, Toohey, Roberts, O'Connell, Ellis, Buckley, the CEO, Ms Reynolds, Mr Pringle, Ms Pitkin, the applicant and the owner.</p> <p>No objectors attended.</p>

## Objections received

The planning application was advertised in accordance with section 52 of the Act. It is noted that all objections were the same, with different objector details provided.

It is considered that on balance the concerns of objectors generally beyond that which the planning scheme manages. Copies of objections are provided at **Attachment 4**. A total of 16 objections have been received, and the grounds are listed below with officer comments:

### *Environmental concerns*

Objectors are concerned that the proposal, on land immediately adjacent environmentally sensitive land, could adversely damage this significant area. Officers are satisfied that the use (as depicted within the amended application) is confined to the portion of the land which is generally above the declared flood level. Whilst it is noted that the application no longer proposes any buildings and works, and thus no longer required to be referred to the Catchment Management Authority (CMA), the initial application was referred to the CMA who provided conditional consent on the basis that the area where works were proposed was generally above the flood level, and thus low risk.

It is agreed that the original application covered the entire lot, some of which is within a higher risk area, this concern has now been alleviated through the application being formally amended.

### *Trade waste / flooding*

Objectors are concerned that the proposal will produce waste products, including oil, which due to the site being located within a flood overlay, poses a risk of contamination. Officers acknowledge this risk and note matters of pollution are generally handled by other relevant legislation, such as the Environment Protection Act, administered by the Environment Protection Agency (EPA). That said, the applicant has agreed to a condition being placed on any permit which may issue requiring a Flood Management Plan to be prepared for endorsement, and requirements to be included on any permit which may issue requiring all chemicals used in the business to be stored above the declared flood level.

### *Site significance*

Objectors are concerned that the proposed use of the land is disrespectful to the Gunaikurnai people, the traditional custodians of the land. The planning scheme does not allow consideration of such matters, other than for particular types of works which may occur on land designated as culturally significant, and where previous significant ground disturbance has not occurred. As works are not proposed, and the land has been previously disturbed, officers are not in a position to consider this matter.

### *Zoning / neighbourhood*

Objectors have raised concerns that the use is more appropriate in an industrial zone. Officers note that the use is allowed in the zone, and that consideration of the surrounding land uses, the majority of which are commercial in nature, concludes that the use is unlikely to create unreasonably off-site amenity impacts. Conditions will be imposed to ensure hours of operation are within a reasonably expected range (7am – 7pm Monday to Friday, 8am – 7pm weekends).

### *Use and works have already commenced*

Objectors have noted that the use has been operating, without a permit, since September 2019. Officers are not making any comment in relation to timing, this report is only to describe and discuss the application. Planning legislation, and case law, allows consent to be sought retrospectively. Whilst it is regrettable that uses commence, signs are erected and buildings placed on a site prior to permits being granted, it does not change the assessment criteria.

Officers are of the view that the use is allowable and acceptable, the car parking provided is acceptable taking into account the expected patronage and the signage (non-illuminated) is both sufficient to identify the building but subtle enough not to dominate the locality. It is for these reasons that the proposal is being supported by officers, whether the use had or had not commenced at the land.

## **Conclusion**

On the balance of planning policy in respect to the use of the land, the parking rate proposed and the nature and size of the signs proposed, the proposal is considered generally consistent with the East Gippsland Planning Scheme and it is recommended that the application should be supported.

## **Climate Change**

This report has been prepared and aligned with the following Climate Change function/category:

Land Use Planning: Consideration is given to climate change in the local land use planning and includes responses to direct and indirect impacts.

The preservation of rainforest environment is critical to local microclimate and biodiversity. The amending of the agreement has little overall bearing on the climate outcomes.

## **APPENDICES AND ATTACHMENTS**

### **Appendices**

1. Proposed conditions

### **Attachments**

1. Copy of the original and amended planning permit application documents.
2. Assessment against the East Gippsland Planning Scheme.
3. Copy of the referral authority responses.
4. Copy of objections.

### **Attendance**

Cr Marianne Pelz and Cr Joe Rettino returned to the meeting at 7.23 pm



## **5.4 Good Governance**

### **5.4.1 Amendment to Council Meeting Schedule 2020**

**Authored by** Patricia Clive, Governance and Compliance Coordinator

**Endorsed by** Peter Cannizzaro, General Manager Business Excellence

**Document No** 8562090

---

#### **EXECUTIVE SUMMARY**

Council at its meeting held on 4 February 2020 (refer item 5.2.3) adopted the Council Meeting schedule 2020. This report seeks Council's approval to amend the 2020 Council Meeting Schedule.

The Victorian Electoral Commission has advised that the 2020 Local Government elections will be declared on 13 November 2020. It is proposed that the following changes be made to the current Council Meeting schedule for 2020:

- a) additional Ordinary Council Meeting to be held on 1 September 2020 which will be held in the Council Chamber, Corporate Centre, Bairnsdale;
- b) the Ordinary Council Meeting scheduled for 8 September 2020 be amended to 15 September 2020 which will be held in the Council Chamber, Corporate Centre, Bairnsdale;
- c) the Statutory Council Meeting scheduled for 10 November 2020 be amended to 17 November 2020 which will be held in the Council Chamber, Corporate Centre, Bairnsdale; and
- d) the Ordinary Council Meeting scheduled for 17 November 2020 be amended to 24 November 2020 which will be held in the Council Chamber, Corporate Centre, Bairnsdale.

The amended Council Meeting schedule has no impact on its primary objective, which is to provide a forum for timely and effective decision-making.

## RECOMMENDATION

*That Council, in accordance with Local Law No. 1 clause L3.2:*

1. *Resolves that the schedule of Council Meeting dates adopted at the Council meeting held on 4 February 2020 be amended as follows:*
  - (a) *additional Ordinary Council Meeting to be held on 1 September 2020 which will be held in the Council Chamber, Corporate Centre, Bairnsdale;*
  - (b) *the Ordinary Council Meeting scheduled for 8 September 2020 be amended to 15 September 2020 which will be held in the Council Chamber, Corporate Centre, Bairnsdale;*
  - (c) *the Statutory Council Meeting scheduled for 10 November 2020 be amended to 17 November 2020 which will be held in the Council Chamber, Corporate Centre, Bairnsdale; and*
  - (d) *the Ordinary Council Meeting scheduled for 17 November 2020 be amended to 24 November 2020 which will be held in the Council Chamber, Corporate Centre, Bairnsdale.*
2. *Resolves that the Council Meeting schedule tabled below, as amended in accordance with recommendation 1 (a) to 1(d) above, be adopted and published as the amended schedule of Council Meetings*

Day	Date	Time	Purpose	Location
Tuesday	4 February	6.00 pm	Ordinary Meeting	Corporate Centre
Tuesday	3 March	6.00 pm	Ordinary Meeting	Corporate Centre
Tuesday	17 March	1.00 pm	Ordinary Meeting	Mallacoota District
Tuesday	7 April	6.00 pm	Ordinary Meeting	Corporate Centre
Tuesday	21 April	1.00 pm	Ordinary Meeting	Corporate Centre
Tuesday	5 May	6.00 pm	Ordinary Meeting	Corporate Centre
Tuesday	2 June	1.00 pm	Ordinary Meeting	Corporate Centre
Tuesday	23 June	1.00 pm	Ordinary Meeting	Corporate Centre
Tuesday	7 July	1.00 pm	Ordinary Meeting	Corporate Centre
Tuesday	4 August	6.00 pm	Ordinary Meeting	Corporate Centre
Tuesday	25 August	6.00 pm	Ordinary Meeting	Corporate Centre
Tuesday	1 September	6.00 pm	Ordinary Meeting	Corporate Centre
Tuesday	15 September	6.00 pm	Ordinary Meeting	Corporate Centre
Tuesday	6 October	6.00 pm	Ordinary Meeting	Corporate Centre
Tuesday	17 November	6.00 pm	Statutory Meeting	Corporate Centre
Tuesday	24 November	6.00 pm	Ordinary Meeting	Corporate Centre
Tuesday	8 December	6.00 pm	Ordinary Meeting	Corporate Centre

3. *Resolves that unless determined otherwise and notified to citizens through appropriate public notice, the Council meetings will be held in accordance with the amended Council Meeting Schedule 2020 as per recommendation 2 above.*

*Cr Mark Reeves / Cr Richard Ellis*

**THAT THE RECOMMENDATION BE ADOPTED**

**CARRIED UNANIMOUSLY 04/08/20**

## OFFICER COMMENT / CONTEXT

### Discussion

At the Council meeting held on Tuesday 4 February 2020 (refer item 5.2.3), Council adopted the schedule of Council meeting dates for 2020.

At the Council meeting held on Tuesday 21 April 2020 (refer item 5.2.2), Council adopted an updated schedule of Council meeting dates for 2020, as a result of the COVID-19 pandemic and the restrictions and advice provided from the Government and the Department of Health and Human Services (DHHS) regarding travel, meeting places and social distancing.

The Victorian Electoral Commission (VEC) has advised that the 2020 Local Government elections will be declared on 13 November 2020. The VEC had previously advised the declaration would occur on 6 November 2020 therefore the Statutory Meeting was scheduled for 10 November 2020. Given the change to the declaration date, advised by the VEC, it is considered prudent to revise the date of the Statutory Meeting and the Ordinary meetings post the election to accommodate the change.

The current meeting schedule is:

<b>Day</b>	<b>Date</b>	<b>Time</b>	<b>Purpose</b>	<b>Location</b>
Tuesday	4 February	6.00 pm	Ordinary Meeting	Corporate Centre
Tuesday	3 March	6.00 pm	Ordinary Meeting	Corporate Centre
Tuesday	17 March	1.00 pm	Ordinary Meeting	Mallacoota District
Tuesday	7 April	6.00 pm	Ordinary Meeting	Corporate Centre
Tuesday	21 April	1.00 pm	Ordinary Meeting	Corporate Centre
Tuesday	5 May	6.00 pm	Ordinary Meeting	Corporate Centre
Tuesday	2 June	1.00 pm	Ordinary Meeting	Corporate Centre
Tuesday	23 June	1.00 pm	Ordinary Meeting	Corporate Centre
Tuesday	7 July	1.00 pm	Ordinary Meeting	Corporate Centre
Tuesday	4 August	1.00 pm	Ordinary Meeting	Corporate Centre
Tuesday	25 August	6.00 pm	Ordinary Meeting	Corporate Centre
Tuesday	8 September	6.00 pm	Ordinary Meeting	Corporate Centre
Tuesday	6 October	6.00 pm	Ordinary Meeting	Corporate Centre
Tuesday	10 November	6.00 pm	Statutory Meeting	Corporate Centre
Tuesday	17 November	6.00 pm	Ordinary Meeting	Corporate Centre
Tuesday	8 December	6.00 pm	Ordinary Meeting	Corporate Centre

It is proposed that the following changes be made to the current Council Meeting schedule 2020:

- additional Ordinary Council Meeting to be held on 1 September 2020 which will be held in the Council Chamber, Corporate Centre, Bairnsdale;
- the Ordinary Council Meeting scheduled for 8 September 2020 be amended to 15 September 2020 which will be held in the Council Chamber, Corporate Centre, Bairnsdale;
- the Statutory Council Meeting scheduled for 10 November 2020 be amended to 17 November 2020 which will be held in the Council Chamber, Corporate Centre, Bairnsdale; and
- the Ordinary Council Meeting scheduled for 17 November 2020 be amended to 24 November 2020 which will be held in the Council Chamber, Corporate Centre, Bairnsdale.

## **Council Plan**

Good Governance Goal 1 East Gippsland Shire Council is inclusive, engaged and open

## **Council Policy**

Council meetings are conducted in accordance with the East Gippsland Shire Council Local Law No.1, which governs the conduct of Council Meetings. Clause L3.1 requires the Council to set the date, time and place of any Council Meetings from time to time and Clause L3.2 change meeting dates, times and places.

## **Legislation**

On 24 March 2020 the Government passed the *Local Government Act 2020* (the new Act). Provisions from the new Act are being commenced in four stages. The first tranche of provisions commenced on 6 April 2020 with other tranches commencing on 1 May 2020 and 24 October 2020. All remaining provisions are commencing on 1 July 2021. The *Local Government Act 1989* applies in circumstances where the new Act has not commenced.

The East Gippsland Shire Council is required to make decisions under both Acts as the transition occurs. Council has implemented mechanisms to ensure decisions are made according to the relevant provisions of either the *Local Government Act 1989* or the *Local Government Act 2020* as in force at the date of the decision.

This report has been prepared in accordance with *Local Government Act 2020* s60(8) that requires Council to apply the Local Law Meeting Procedure until Governance Rules have been adopted. East Gippsland Shire Council Local Law 1 requires the Chief Executive to determine the date, place and time in collaboration with the Mayor and Councillors. A Statutory Meeting is required to be held no later than 30 November to enable the election of the Mayor and Deputy Mayor in accordance with section 71 and 77 of the *Local Government Act 1989*. This requirement is consistent with sections 25 (election of Mayor) and 27 (election of Deputy Mayor) of the *Local Government Act 2020* that will commence on the 24 October 2020.

The implications of this report have been assessed and are not considered likely to breach or infringe upon the human rights detailed in the Victorian Government's *Charter of Human Rights and Responsibilities Act 2006*.

## **Organizational**

- **Financial**

No additional costs will be incurred as a result of the amendment.

## **Climate Change**

This report is assessed as having no direct impact on climate change.

## **Consultation**

Consultation has been undertaken with the Mayor and Councillors in respect of this report.

### **Officer Declaration of Conflict of Interest**

Council Officers involved with the preparation of this report have no conflict of interest with this matter.

### **APPENDICES AND ATTACHMENTS**

#### **Appendices**

Nil

#### **Attachments**

Nil

## **6 Urgent and Other Business**

Nil

*Cr Joe Rettino / Cr Colin Toohey*

**COUNCIL WILL NOW CLOSE THE MEETING TO THE PUBLIC IN ACCORDANCE WITH THE PROVISION OF SECTION 66(2) OF THE LOCAL GOVERNMENT ACT 2020 TO CONSIDER ITEM 7.1 AS THE ITEM CONTAINS PERSONAL INFORMATION.**

**CARRIED UNANIMOUSLY 04/08/20**

## **7 Confidential Business**

Consideration of confidential matters under section 66(2) of the *Local Government Act 2020*.

Deliberations of Council while in closed session are recorded in Council's Confidential Minute Book.

Reports and Attachments are located in Council's Confidential Minute Book.

The meeting was re-opened to the public at 7.33 pm.

### **7.1 Disability Advisory Committee - Chair and Deputy Chair Appointment**

This report, attachments and resolution are located in Council's Confidential Minute Book in accordance with the resolution made by Council in closed session.

## **8 Close of meeting**

The meeting closed at 7.34 pm.

Confirmed \_\_\_\_\_

Cr John White, Mayor

Date: 25 August 2020