



Council Meeting Agenda

Tuesday 7 July 2020

**Meeting will be held on
Tuesday 7 July 2020
Council Chamber (and by video conferencing)
273 Main Street
commencing at 1.00 pm**

Council Information

East Gippsland Shire Council live streams, records and publishes its meetings via webcasting to enhance the accessibility of its meetings to the broader East Gippsland community. These recordings are also archived and available for viewing by the public or used for publicity or information purposes. At the appropriate times during the meeting, any members of the gallery who are addressing the council will have their image, comments or submissions recorded.

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

Please ensure that mobile phones and other electronic devices are turned off or in silent mode for the duration of the meeting.

Our 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

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Anthony Basford
Chief Executive Officer

1. Procedural

1.1 Opening and Recognition of Traditional Custodians

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

1.3 Declaration of Conflict of Interest

1.4 Confirmation of minutes

That the minutes of the Ordinary Council Meeting 23 June 2020 be confirmed.

1.5 Next meeting

Ordinary Council Meeting, Tuesday 4 August 2020 be held at the Corporate Centre, 273 Main Street, Bairnsdale commencing at 1.00 pm.

1.6 Requests for leave of absence

1.7 Requests to speak about your Community Project

Note At Ordinary Meetings of Council, community groups and registered businesses may be allowed to speak on community projects they are seeking to carry out that will promote Council's vision for East Gippsland, as set out in its four-year Council Plan.

If you would like to take up this opportunity, please access the form on Council's website and lodge it with the Chief Executive Officer at least 10 days prior to the Council meeting at which your organisation wishes to speak.

1.8 Public question time

Note Questions must be received at Council's Corporate Centre via hand delivery, postal delivery or email by no less than four hours before the meeting's published commencement time on the day of the Ordinary Meeting of Council, or handed to the Council Officer on duty fifteen minutes before the meeting's published commencement time on the day of the Ordinary Meeting.

While every effort will be made to respond to questions on the night, if this is not possible, then questions will be taken on notice. A response will be provided to the member of the community who posed the question in accord with Council's Customer Response Policy standard for written correspondence, that is within 10 business days, or within 30 days in relation to a complex or sensitive matter. The response will also be attached to the Minutes of the meeting at which the question was put.

1.9 Record of Assemblies of Councillors

1.9.1 Assemblies of Councillors – (May / June 2020)

Authored by Michelle Ingram, Governance and Compliance Officer

Endorsed by Peter Cannizzaro, General Manager Business Excellence

Document No 8550976

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 26 May to 29 June 2020, refer to table below. Also included in the report is one record from 15 May 2020, not previously presented.

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

Assembly of Councillors meetings:	Meeting date:
Councillor Briefing	26 May 2020 2 June 2020 9 June 2020 16 June 2020 23 June 2020
Councillor Only Time	26 May 2020 9 June 2020 16 June 2020
East Gippsland Shire Council Marina Consultative Committee	15 May 2020
Councillor Budget Workshop	27 May 2020
East Gippsland Shire Council - Disability Advisory Committee	1 June 2020

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 26 May to 29 June 2020, together with one record not previously presented from 15 May 2020 as provided at Appendix 1.

OFFICER COMMENT / CONTEXT

Discussion

As required by the Act, this report presents a formal record of assemblies of Councillors held during the period 26 May to 29 June 2020, together with one record from 15 May 2020.

An assembly of Councillors is 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

The preparation of this report has had no direct impact on climate change considerations.

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). Section 80A sets out the requirements Councils must observe in respect of assemblies of Councillors. Under section s80A(2) the Chief Executive Officer is required to ensure that as soon practicable after an assembly of Councillors a written record of the meeting is reported to and incorporated in to the minutes of a Council meeting.

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

3 Deferred Business

3.1 Planning Permit Application 319/2019/P - 31 Boyd Court Eagle Point - Multi Lot Subdivision (Staged)

Note This item was deferred at the Ordinary Council meeting held on Tuesday 23 June 2020 to allow officers to provide additional information to the Councillors. This report is listed in this agenda at item 5.1.2.

4 Councillor and Delegate Reports

5 Officer Reports

5.1 Strong Communities

5.1.1 Dogs in Public Places – Extension of trial period

Authored by Sam McPherson, A/Manager Regulatory and Compliance Services

Endorsed by Jodie Pitkin, General Manager Place and Community

Document No 8524389

In Attendance Sam McPherson, A/Manager Regulatory and Compliance Services

EXECUTIVE SUMMARY

This report and recommendations seek to extend the Dogs in Public Places trial period for an additional 12 months.

As a result of the impacts of both the summer's bushfires and more recently COVID-19 restrictions there is insufficient data to undertake a thorough and legitimate evaluation of the Order created under Section 26 of the *Domestic Animals Act* 1994 at the November 2019 Ordinary Council Meeting (refer Item No 5.2.1).

The extension of the trial period for a further 12 months will allow for data collected from the region's peak tourist times, summer holidays and Easter 2021, to be included in the final report.

The endorsement of this report will direct officers to provide an evaluation report back to Council by no later than the July 2021 Ordinary Council Meeting.

RECOMMENDATION

That Council:

- 1. resolves to extend the Dogs in Public Places trial period for an additional 12 months to 30 June 2021; and***
- 2. notes a report will be presented on the evaluation of the Dogs in Public Places trial at a future Council Meeting no later than July 2021***

OFFICER COMMENT / CONTEXT

Discussion

At its November 2019 Ordinary Meeting, Council unanimously passed a resolution to create a new Order under Section 26 of the *Domestic Animals Act* 1994 (refer Item No 5.2.1). In response to community feedback, this Order created several opportunities for dog owners to have their pets off leash in public areas. The resolution also directed officers to report back to Council following six months of operation of the new Order.

The new Order was published in the Government Gazette on 17 December 2019, meaning the six-month evaluation report is now due for Council's consideration.

As a result of both the summer's bushfires and more recently COVID-19 restrictions, officers believe that there is insufficient data to undertake a thorough and legitimate evaluation of the Order at this time. To remedy this, officers are recommending that Council endorse an extension of up to 12 months for the evaluation to occur. This time period will allow the region's peak tourist times of summer and Easter 2021 to be included in the evaluation.

This report also recommends that the evaluation report be provided to Council for its consideration no later than at its July 2021 Ordinary Meeting

Council Plan

This report has been prepared and aligned with the following goals set out in the Council Plan 2017-2021:

Strong Communities Goal 1 - East Gippsland has connected, inclusive and vibrant communities

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

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*.

There are no implications associated with extending the trial period under the Domestic Animals Act 1994. The Order gazetted on 17 December 2019 remains in place until a replacement Order is made.

Organisational

- **Financial**

There are no additional financial resources required to extend the trial period.

- **Human Resources**

The continuation of the trial period will be managed by Council's Community Laws team.

Climate Change

This report has been assessed and has no direct or indirect impacts on climate change.

Consultation

Approval of this report and recommendations will increase the opportunity for community consultation to occur. By lengthening the Dogs in Public Places trial period officers will be able to undertake a thorough evaluation of the Order and provide Council with sufficient information to make an informed decision for the longer term.

APPENDICES AND ATTACHMENTS

Appendices

Nil

Attachments

Nil

5.1.2	Planning Permit Application 319/2019/P - 31 Boyd Court Eagle Point - Multi Lot Subdivision (Staged)
Authored by:	Land Use Planning Officer
Endorsed by	Jodie Pitkin, General Manager Place and Community
Document No	8413254
In Attendance	Nicole Reynolds, Acting Manager Planning

EXECUTIVE SUMMARY

This report seeks Council's decision to issue a Notice of Decision to Refuse to Grant a Permit for planning permit application 319/2019/P at 31 Boyd Court, Eagle Point.

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

The basis for the refusal is summarised as follows:

- The layout of the subdivision fails to address the prevailing neighbourhood character and pattern of subdivision;
- The lot density will result in a subdivision pattern which is inconsistent with the existing neighbourhood character; and
- The lot density will result in a subdivision pattern which is inconsistent with the strategic outcomes of the Eagle Point Structure Plan (May 2019) (EPSP) as adopted by Council in August 2019 (Item 5.2.1).

The zoning of the land and the in-principle notion of subdividing this land is not contested. However, the specific design of the subdivision results in an unacceptable outcome.

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

The application has attracted three objections. All referral authorities responded with consent or conditional consent.

RECOMMENDATION

That Council being the Responsible Authority and having considered all the relevant planning matters, determines that planning application 319/2019/P is inconsistent with the requirements and objectives of the East Gippsland Planning Scheme and therefore resolves to issue a Notice of Decision to Refuse to Grant a Planning Permit for a Multi-lot subdivision (staged) at 31 Boyd Court Eagle Point on the following grounds:

- 1. The Application is inconsistent with the Local Planning Policy Framework, specifically Clauses 21.04 environmental and landscape values, 21.07 built environment and heritage and 21.12-2 sub-regions lakes and coastal;***
- 2. The Application will result in a subdivision pattern which is inconsistent with the existing and proposed neighbourhood character; and***
- 3. The Application is inconsistent with the Eagle Point Structure Plan (May 2019).***

OFFICER COMMENT / CONTEXT

Discussion

The planning permit application currently before Council seeks a permit to subdivide land in the form of a low-density residential estate. The subject land is approximately 7.56 hectares in area and currently contains one dwelling and several ancillary outbuildings. A copy of the application and plans can be found at **Attachment 1**.

The proposal includes the creation of 17 lots ranging between 0.20 hectares and 2.68 hectares in area. Access to proposed lots 1 to 16 is proposed via a new road, with lot 17 being accessed directly off Boyd Court.

The land is in the Low Density Residential Zone (LDRZ), and is subject to the following overlays:

- Design and Development Overlay – Schedule 11; and
- Vegetation Protection Overlay – Schedule 1.

A series of low-density subdivisions are present in the area, and the general local character is of a low-density style and form.

The northern side of the land adjoins Boyd Court and the southern boundary adjoins Paynesville Road.

The land is included in the Eagle Point Structure Plan (May 2019) area.

The land features a gentle slope and enjoys legal and practical road access via Boyd Court.

The application has been referred to utility service providers, all have responded with conditional approval. East Gippsland Water have indicated that the proposed subdivision can be connected to the reticulated town water supply network and the reticulated sewer network, and will not cause any overloading issues from a supply perspective (provided upgrades are implemented at the applicant's cost).

The application was referred to the CFA for comment in relation to bushfire risk. The CFA has responded with conditional consent.



Fig.1 – The subject land



Fig. 2 – The locality in reference to the subject land (in red)



Fig. 3 – The zoning arrangement in the area (pink denotes General Residential Zone, green denotes Farming Zone, light red denotes Low Density Residential Zone, tan denotes Rural Living Zone and yellow Public Use Zone)

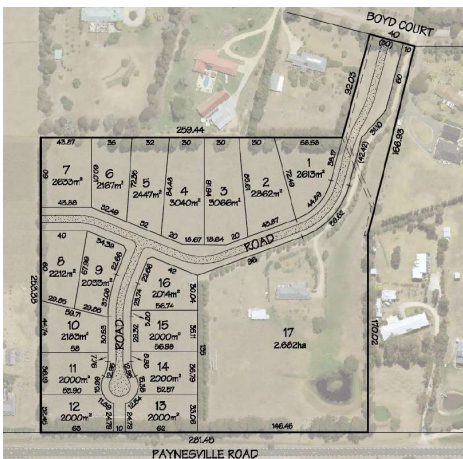


Fig. 4 – The proposed Plan of Subdivision

Assessment of proposal against planning policy

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 proposal currently before Council seeks to significantly increase the lot yield in accordance with the zoning provisions without taking into account other policy, including the EPSP which had been adopted by Council prior to the lodgement of the application. Seeking to subdivide in accordance with the provisions of the zone is a legitimate desire. The design of the subdivision and its response to the neighbourhood character is the matter at contest and forms the grounds for refusal.

The application currently before Council seeks to create lots as small as 2,000 square metres (the average of lots 1 to 16 is 2,329 square metres in area). These lot sizes are not indicative of those found elsewhere in the area and are significantly smaller than that anticipated in the EPSP. As demonstrated below, the average lot size of land within the Low Density Residential Zone bounded by Lake Victoria Road, Eagle Point Road and Paynesville Road, is approximately 8,600 square meters.

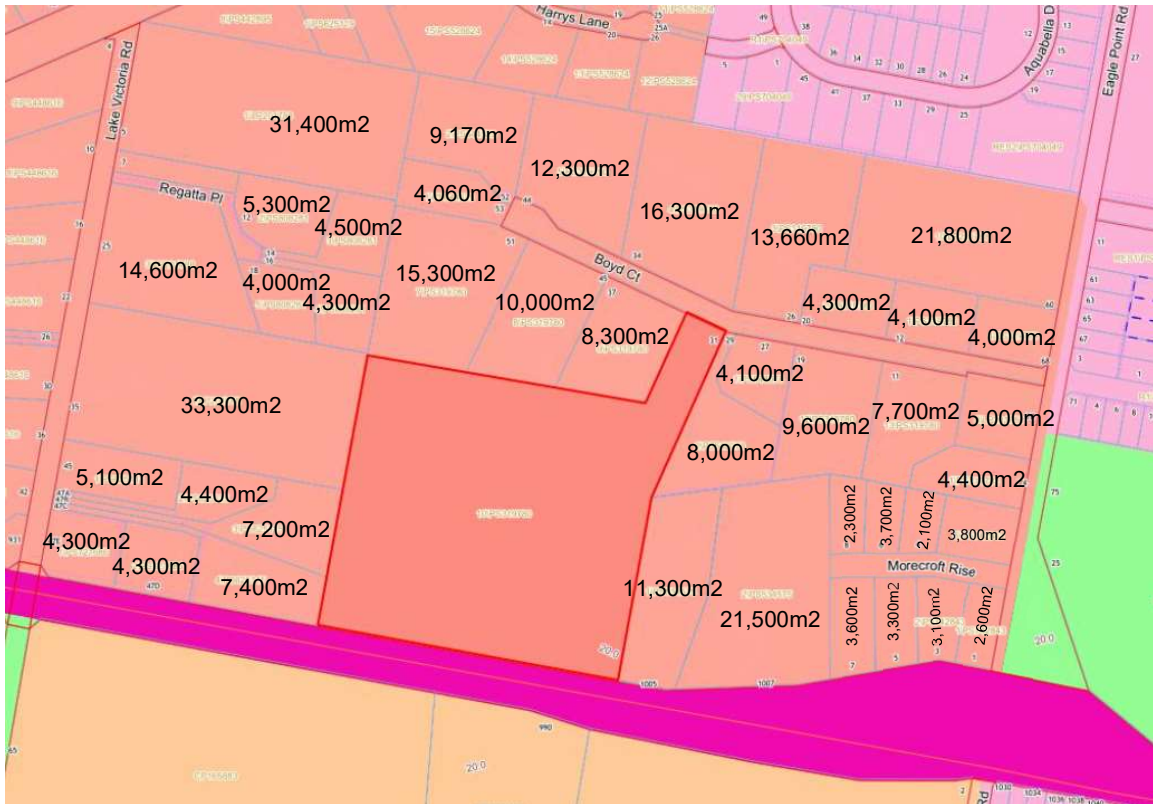


Fig. 5 – Analysis of lot sizes adjacent and close to the subject lot

Minimum lot sizes form a part of a range of matters that decision makers are required to consider when deciding on a planning permit application. Council in this case, is still required to balance the pattern of subdivision proposed with the policy objectives set out in the state-wide *Planning Policy Framework* and the *Local Planning Policy Framework*.

A review of the prevailing subdivisional character (i.e. pattern of subdivision and development of the 41 blocks within the immediate surrounds) shows that this proposal is inconsistent with the existing low-density character of this area of Eagle Point. The proposed lots are far smaller than the existing average lot size, as depicted above.

Council is also required to consider the impact that the subdivision will have upon the use of the land and give regard to possible built outcomes that are generated 'as of right' by virtue of the subdivision.

The subdivision (if approved) would logically lead to at least one dwelling on each new lot. In light of the lot sizes, 16 additional dwellings in this area, and on lots of these sizes, would introduce a new built form outcome and a character which is inconsistent and at odds with the existing and preferred character of Eagle Point. The area is defined by lots that are at least 4000 square metres (1 acre) although many are larger as clearly documented in figure 5.

The Eagle Point Structure Plan

The proposed lot areas are, on average, roughly half the size that is sought within the recently adopted EPSP. Additionally, the layout and connectivity of the proposal is inconsistent with that set out within the EPSP – this includes roads, pedestrian linkages and future recreation areas. The extract below shows an approximate comparison between the desired layout set out within the EPSP, and the proposed layout.



Fig. 6 – Eagle Point Structure Plan extract comparison with the proposed Plan of Subdivision

The graphic above (left) is an extract from the Eagle Point Structure Plan (May 2019) setting out the desired development pattern in the vicinity. The image above (right) shows the proposed plan of subdivision. The red line is an overlay of the road layout within the EPSP, dotted purple line is the pedestrian connectivity sought within the EPSP and the green shaded area is a planned 'pocket park'.

This graphical analysis demonstrates that the proposal is clearly inconsistent with the EPSP and its approval would not only create an outcome which is at-odds, but would further compromise the EPSP by virtue of impacting road and pedestrian connections on adjoining lots to the east and west, and thereby affecting all future development of this area.

At the time of writing this report the EPSP has been adopted by Council. It is a major piece of strategic work which will have both beneficial and long-term implications for the locality. Among the positive attributes of the Structure Plan, is the strategic decision to introduce a new schedule for the LDRZ in Eagle Point. This includes raising the minimum lot size from 2,000 square metres to 4,000 square metres, even if reticulated sewer is available, to reflect the prevailing neighbourhood character.

The proposal currently meets the technical requirements of the zone, however, it is inconsistent with the strategic policy intent of the EPSP.

Whilst the EPSP has not yet been incorporated into the East Gippsland Planning Scheme, Section 60 of the Planning and Environment Act 1987 requires decision makers to '*...consider any other strategic plan, policy statement, code or guideline which has been adopted by a Minister, government department, public authority or municipal council;*' The EPSP represents Council's view to protect and enhance the neighbourhood character in this part of Eagle Point and introduce connectivity within this precinct. The plan resulted from significant consultation and has been adopted by Council. It is considered appropriate and entirely reasonable to consider the strategic intent provided within the adopted EPSP.

Council Plan

Strong Communities Goal 1 - East Gippsland has connected, inclusive and vibrant communities

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

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 Water – Conditional approval given Ausnet Services – Conditional approval given VicRoads – Conditional approval given APA Group (Gas) – Conditional approval given CFA – Conditional approval given
Advertising	The permit applicant was required to send letters to adjoining and surrounding neighbours and place an A3 sign along the Boyd Court and Paynesville Road title boundaries. 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. Advertising was undertaken in accordance with section 52 of the <i>Planning and Environment Act 1987</i> .
Objections	Three (at the time of writing this report)

Objections received

The planning application was advertised in accordance with section 52 of the Act. It is considered that on balance the concerns of objectors are reasonable, although there are some elements officers do not agree with, discussed in detail below. Copies of objections are provided at **Attachment 4**. A total of three objections have been received, and the grounds are listed below with officer comments:

Number of Lots / Density

Objectors are concerned that the proposed density exceeds that supported by the EPSP and this will result in a subdivision which is out of character. Officers agree that the proposal is considered inconsistent with the strategic policy adopted by Council on the basis that the proposed subdivision layout is inconsistent with the existing and preferred neighbourhood character, and the policy direction contained within the EPSP.

Loss of Neighbourhood Character

Objectors are concerned that the proposed density / lot layout will result in a development pattern which is out of character with that found in the neighbourhood now, and what is desired within the EPSP. Officers agree that the proposed lot layout and density is inconsistent with the general lot density and layout currently existing in the neighbourhood.

Increased Traffic

Objectors are concerned that the proposed lot density, at roughly double that anticipated within the EPSP, will impact traffic and safety in the vicinity. Officers do not believe that the traffic volumes would exceed the capacity of the road network.

Loss of Privacy / Amenity to Existing Dwellings

Objectors have raised concerns that the proposed higher density outcome will decrease privacy and reduce amenity experienced by existing dwellings through more people in a smaller area, and developments being closer to each other. As this application is for subdivision, not development, approval as proposed would not affect privacy per-se. However, officers agree with the sentiment of the objections which is that future development, on smaller lots, is more likely to impact adjoining dwellings given reduced separation.

Insufficient Infrastructure to Support Proposed Density

Objectors have noted that there is currently inadequate infrastructure in the locality to service the proposed number of lots. Whilst officers agree this is currently the case, if the proposal were to be approved, conditions could be included requiring relevant upgrades to the satisfaction of relevant authorities.

Conclusion

On the balance of planning policy in respect to the subdivision design response, neighbourhood character, access arrangements, lack of public open space provision and the loss of connectivity within the precinct, the proposal is considered inconsistent with the East Gippsland Planning Scheme and it is recommended that the application should be refused.

APPENDICES AND ATTACHMENTS

Appendices

Nil

Attachments

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

5.2 A Liveable Region

5.2.1 **Proposal to End Section 173 Agreement P624303X as it relates to 41, 43, and 79 Bunga Creek Road, Lakes Entrance**

Authored by	Acting Senior Land Use Planner
Endorsed by	Jodie Pitkin, General Manager Place and Community
Document No	8533703
In Attendance	Nicole Reynolds, Acting Manager Planning

EXECUTIVE SUMMARY

This report seeks Council's decision to end a section 173 Agreement P624303X (provided at **Appendix 1** with all relevant title documentation) in relation to 41, 43 and 79 Bunga Creek Road, Lakes Entrance. Council provided in-principal support to end the agreement at the 17 March 2020 Ordinary Meeting (Item 5.1.2). Community consultation has now been carried out whereby notices were sent directly to all of the affected landowners.

The land owner of 79 Bunga Creek Road had previously entered into this agreement in relation to a permit to subdivide land. The subdivision provided for creation of two smaller lots than was the minimum in the Rural A Zone of the Shire of Tambo Planning Scheme. The Agreement was due to be removed if the land was rezoned to Rural B.

Due to the merger of local governments and eventual consolidation to the East Gippsland Planning Scheme and translation of zones, it is unclear whether the provisions of Rural B would be equivalent to the Rural Living Zone Schedule 4 (15 hectare minimum subdivision size) that now applies.

In 2017 a planning permit was granted for a three-lot subdivision of land, which proposes to create two additional lots with frontage to Bunga Creek Road. The subdivision permit allows the outcome, subject to the Agreement being removed from the title.

One objection has been received against the removal of the Agreement, and is attached as **Attachment 2**. The objection content is noted and considered as a part of the assessment within this report.

It is considered that the ending of the Agreement is appropriate and that it will facilitate approved subdivision of the land. It is recommended that Council resolves to issue a Notice of Decision to End the Agreement.

RECOMMENDATION

That Council:

1. *agrees to the ending of section 173 Agreement P624303X wholly as it relates to:*
 - *Vol. 9965 Fol.201 being lot 1 LP220047I, 41 Bunga Creek Road, Lakes Entrance, 3909;*
 - *Vol. 11535 Fol.720 being Lot 1 PS725586M, 43 Bunga Creek Road, Lakes Entrance, 3909; and*
 - *Vol. 11535 Fol.721 being Lot 2 P727586M, 79 Bunga Creek Road, Lakes Entrance, 3909;*

in accordance with Section 178A of the Planning & Environment Act 1987 and therefore resolves to issue a Notice of Decision to End an Agreement in accordance with S178E(3) of the Planning and Environment Act 1987; and

2. *resolves that requires all costs of ending the legal agreement are to be borne by the landowner.*

OFFICER COMMENT / CONTEXT

Discussion

The subject land is located at the northern edge of the Lakes Entrance Northern Growth Area, and nearby to the existing landfill site. A locality plan can be viewed at **Figure 1**. The land is zoned Rural Living Zone 4 (see **Figure 2**), and the land is covered to varying degrees by a range of overlays that do not have any bearing over the current consideration.



Figure 1 – Locality map

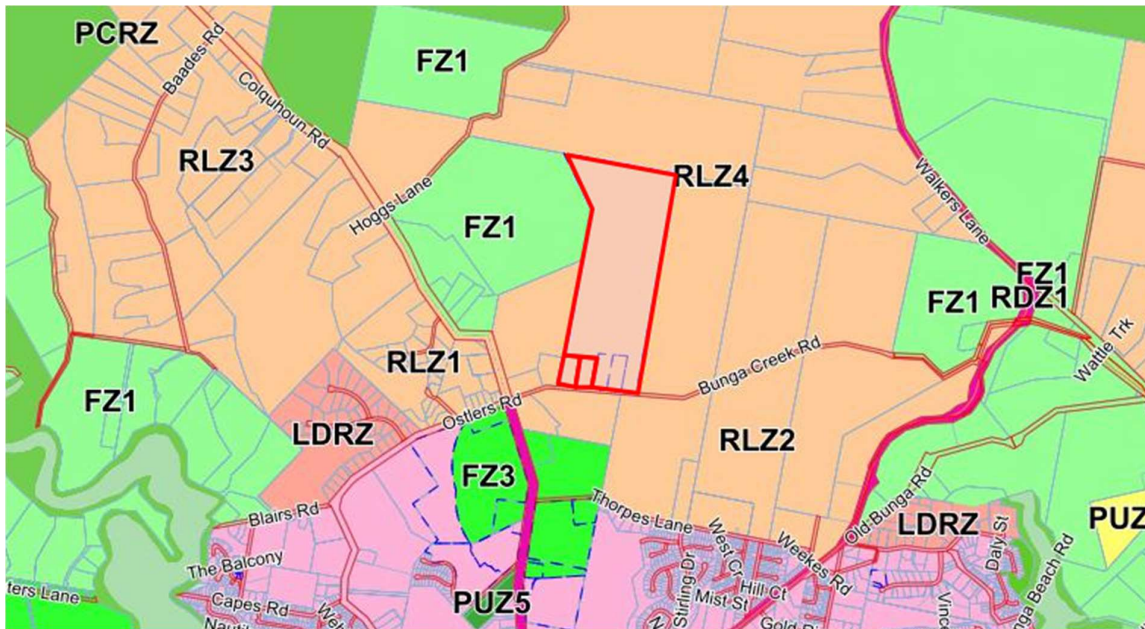


Figure 2 – Zone map

A Condition of the Shire of Tambo Planning Permit 4676 (11 October 1988) for a three-lot subdivision required the subdivider to enter into a section 173 agreement that would prevent further subdivision of the land so long as the subject land is zoned Rural A and where the land was rezoned to Rural B, the agreement is to be cancelled.

The Agreement P624303X was executed in December 1989. It included reference to the permit for subdivision and condition, and stated the following:

2. The Owner with the intent that he covenant hereunder shall run with the Land hereby covenants and agrees that he (which term shall include the Owner or owners of the subject land or any part thereof from time to time) will -

- .1 comply with the conditions of the permit;*
- .2 not cause to allow or permit the balance of the land on the Proposed Subdivision attached hereto being part of the subject land to be further subdivided whether under the provisions of the Local Government Act 1958, The Cluster Titles Act 1974, The Strata Titles Act 1967 or any amendment or consolidation thereof or otherwise.*

6: This Agreement will end pursuant to Section 177 of the Act in the event of:-

- .1 the subject land being rezoned to Rural B;*

A planning permit to restructure two of those lots was considered and granted in 2014. As no new lots were created, it was considered appropriate and not contrary to the Agreement to allow for this outcome. Also, given the land had by this time been rezoned to Rural Living Zone Schedule 4, the consideration regarding the Agreement was that it had little effect on the proposed restructure.

The responsible authority has already considered and determined to grant a planning permit allowing further subdivision of this land, it is considered appropriate to end the Agreement and progress that new planning outcome.

The receipt of an objection requires a process to issue a notice of decision to end the agreement in accordance with Section 178E (3) of the *Planning and Environment Act 1987*.

Council Plan

This report has been prepared and aligned with the following goals set out in the Council Plan 2017-2021:

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

Legislation

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 P624303X wholly as it applies to 41, 43, and 79 Bunga Creek Road, Lakes Entrance; however, the consent of all parties bound by the agreement was not obtained prior to the proposal being lodged.

It is not always reasonable nor 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* provides 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 proposal to end the Section 173 Agreement has been submitted pursuant to section 178A of the Act. A proposal submitted under this section of the Act, pursuant to section 178 B must be considered against set requirements. An assessment against these requirements is as follows:

The purpose of the Agreement

The purpose of the agreement is to implement a condition of Shire of Tambo permit No. 4676 11 October 1988 in relation to subdivision of the land. The permit took benefit of the so-called 'averaging provision' to create two smaller allotments and a larger balance allotment under the provisions of the "Rural A" Zone. The agreement was to end if the land was zoned to "Rural B", allowing for smaller lot sizes.

Whether and why the Agreement is no longer required

The Agreement is no longer required on the land as the controls of the Shire of Tambo Planning Scheme have been superseded by the East Gippsland Planning Scheme and a Rural Living Zone Schedule 4, which provides for minimum lot sizes of 15 hectares. The so-called 'averaging provision' still applies in that:

"Each lot must be at least the area (15 hectares) specified for the land in a schedule to this zone. A permit may be granted to create smaller lots if any of the following apply. The number of lots is no more than the number the land could be subdivided into in accordance with a schedule to this zone."

Whether the ending of the Agreement would disadvantage any person, whether or not a party to the Agreement

It is considered that the ending of the Agreement would not disadvantage any person whether party to the Agreement or not. Notification of the proposal to end the Agreement as it relates to 79 Bunga Creek Road, Lakes Entrance was given to all parties to the Agreement and one objection was received. The principal concern raised was in relation to encroachment of further dwellings to the north of the objector's property, on the balance lot.

The officer has explained to the objector that a separate consideration had been made in relation to the subdivision of the land, and that new lots were being created along Bunga Creek Road, not behind the existing 2 hectare (approximate) allotments created in 1990. The subdivision was subject to notice in accordance with Section 52 of the *Planning and Environment Act 1987*, and the objector was sent such notice and did not object to the grant of that permit.

The reasons why the responsible authority entered into the Agreement

The responsible authority entered into the Agreement to ensure the orderly development of the land and to prevent the landowner from taking further benefit of the balance of the land to create additional lots. The proposal to end the Agreement is sensible given the change in planning scheme zones and associated minimum lot size. Given that there were 3 lots created by the 1988 subdivision approval, it would be expected that Rural A provided for lots of 20 hectares. The current provision is for lots of 15 hectares.

It is anticipated that the land could not be further subdivided following the completion of the subdivision.

Any relevant permit or other requirements the land is subject to under the Subdivision Act 1988.

Permit 273/2017/P provided for the land to be subdivided into three (3) lots, with condition that this and one other Agreement were ended wholly in relation to the land. The ending of this Agreement is a logical next step in the progression of that permit being implemented. The other Agreement applied to land in single ownership, and was ended in late 2019 under delegation of Council as it was lodged with consent of all parties to the Agreement.

It is considered that no additional matters under the Subdivisions Act 1988 will be impacted upon by this proposal.

Any other prescribed matter

The Act is prescriptive as to the processing and consideration of proposals to end section 173 Agreements. In accordance with section 178E (3) where objections are made under section 178D, the responsible authority may, after considering the matters in section 178B – resolve to issue a Notice of Decision to End the Agreement in accordance with the proposal.

Community

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

Organisational

- **Financial**

Nil

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.

This particular matter will not alter any development, but enables the subdivision previously approved to progress. The subject land is located on land with significant features such as a dam and some vegetation which will not be impacted by the proposed subdivision.

Consultation

Consultation by way of formal notice to all of the affected landowners of the proposal to end the agreement has been undertaken as part of the process outlined under the *Planning and Environment Act 1987*.

One objection has been received by Council objecting to the request to end the agreement, which is provided at **Attachment 1**.

The objection was lodged by the landowner of 41 Bunga Creek Road, which is subject to the Agreement.

The objection details

1. Concerns with the processing of the notice and the timelines in which to make submissions;
2. "... it was agreed upon that it would remain farming land and was purchased on that condition. It is a piece of land which should still be attached to the original block of 43 Bunga Creek Road."

The processing of the notice was affected by working from home arrangements as a result of Covid19. Once some office duties were resumed, the notices were generated and sent on 15 May 2020, with a 14 day notice period as required by Section 178 of the *Planning and Environment Act 1987*. The objector received the notice 6 days after it was sent, and contacted officers to discuss the proposal, noting recent sale of 43 Bunga Creek Road and that the new owners would not have been provided a copy of the notice.

Officers communicated in this interaction that an additional notice and subsequent 14 day submission period would be provided as soon as practical, which was then distributed on 25 May and responses were then due on 9 June.

The Notice is a prescribed form. Copies of the application documentation was made available on Council's website, with a link provided, given the customer service centres were closed at the time. The weblink provided directs customers to a list of permit applications currently advertised. The notice contained the application reference number, and that number is also published on the application list. Upon calling in to the planning team, the objector was given further instruction on how to obtain a copy of the specific application documents.

Further discussions occurred between the officer and objector in relation to the approved subdivision of the land. Private matters such as agreements, if not registered on title, have no bearing on decisions made under the Planning Scheme. It was noted to the objector that there had been opportunity to object to the grant of the permit to subdivide land, and that a notice was sent direct to the objector's mailing address.

Although within their rights to object, the substance of the objection does not warrant a deviation from previous advice and approval to subdivide the land, and on the basis that the proposal is considered consistent with the objectives of planning for Victoria, the ending of the agreement is recommended to be supported.

APPENDICES AND ATTACHMENTS

Appendices

1. Copy of Section 173 Agreement

Attachments

1. Objection to the ending of the Agreement

5.3 Good Governance

5.3.1 Adoption of General Valuation 2020

Authored by	Kylie Mitchell, Rates and Valuations Coordinator
Endorsed by	Peter Cannizzaro, General Manager Business Excellence
Document No	8533526
In Attendance	Liz Collins, Manager Finance

EXECUTIVE SUMMARY

Gippsland Property Valuers, under contract to the Valuer-General Victoria, has completed the 2020 general revaluation process for all rateable and non-rateable properties in East Gippsland Shire.

Certification that the revaluation is true and correct was received from the Valuer-General Victoria on 9 June 2020. Council is now in a position to consider adopting the new property valuations as detailed in this report.

Once adopted, the new valuations will form the basis for calculation of Council rates and the Victorian Government Fire Services Property Levy for the 2020/21 financial year.

RECOMMENDATION

That Council adopts the 2020 valuations as certified by the Valuer-General Victoria for all rateable and non-rateable properties in East Gippsland Shire, with a value date of 1 January 2020 and an effective date of 1 July 2020, as follows:

Rateable Valuations

- ***Site Value*** \$ 5,534,814,000
- ***Capital Improved Value*** \$10,971,938,000
- ***Net Annual Value*** \$ 584,100,550

Non-Rateable Leviable Valuations

- ***Site Value*** \$ 94,592,000
- ***Capital Improved Value*** \$ 278,082,000
- ***Net Annual Value*** \$ 18,254,600

Non-Rateable Non Leviable Valuations

- ***Site Value*** \$ 120,582,000
- ***Capital Improved Value*** \$ 337,166,000
- ***Net Annual Value*** \$ 17,568,950

OFFICER COMMENT / CONTEXT

Discussion

The Valuer-General Victoria, as the valuation authority, oversees the process of conducting the General Valuation on an annual basis. The 2020 revaluation completes the second year since the introduction of annual general valuations and is conducted in accordance with the *2020 Valuation Best Practice Guidelines*.

The Valuer-General Victoria gave notice to Council on 29 May 2019, that he was going to cause a general valuation to be made of rateable and non-rateable land within the East Gippsland Shire municipal boundary.

Consequently, the 2020 general valuation was undertaken by Gippsland Property Valuers under the direction of the Valuer-General Victoria with the final Stage 4 submission being confirmed by the Valuer General Victoria as having been received on 7 May 2020.

The submission has now been audited and final certification that the valuations for the 2020 revaluation are generally true and correct pursuant to section 7A of the *Valuation of Land Act 1960*, was received on 9 June 2020 (**refer to Attachment 1**). The report of General Valuation, Form 2, forms part of the certification process and is used to reconcile between rateable and non-rateable leviable land (**refer to Attachment 2**)

After the valuations are adopted and certified for use, they form the basis of calculation of the 2020/21 Council rates and Fire Services Property Levy charges applicable for each assessment. Valuations completed but pending final certification were used as part of the rates prediction process undertaken for the preparation of the draft Budget 2020/21.

Council must apply valuations to both rateable and non-rateable properties. An extract of the break-up of valuations based on classifications for both rateable and non-rateable properties is as follows:

Total valuation return showing valuation comparison between rateable and non-rateable properties:

Property Type	Site Value	Capital Improved Value	Net Annual Value
General /Residential	3,899,795,000	8,471,240,000	423,811,250
Commercial/ Industrial	389,115,000	989,964,000	84,732,100
Farm	1,245,904,000	1,510,734,000	75,557,200
Total Rateable	5,534,814,000	10,971,938,000	584,100,550
Total Non Rateable	215,174,000	615,248,000	35,823,550
TOTAL	5,749,988,000	11,587,186,000	619,924,100

The valuation of non-rateable properties has no direct impact on the total rates generated. Therefore, the following table has been prepared to document the overall increase in the valuations since 1 January 2019 for rateable properties only.

Comparison of 2020 Rateable Valuation figures to 2019 valuations as at 30/06/2020.

(The 2019 valuations include supplementary valuations undertaken during the financial year to 30/06/2020):

	Site Value (\$)	Capital Improved Value (\$)	Net Annual Value (\$)
2020 Valuations (as at 01/01/2020)	5,534,814,000	10,971,938,000	584,100,550
2019 Valuations	5,369,104,000	10,628,386,000	566,793,850
Increase in rateable valuations from 2019 to 2020	165,710,000	343,552,000	17,306,700
% Increase	3.09%	3.23%	3.05%

As detailed in the table above, overall the 2020 general revaluation has resulted in a 3.23% increase in the Capital Improved Value of rateable properties.

The rates prediction process undertaken as part of the 2020/21 budget development process has already addressed the impact of adopting the 2020 revaluation.

Council Plan

This report has been prepared and aligned with the following goals set out in the Council Plan 2017-2021:

Good Governance Goal 3 - Council is in a strong financial position and can provide for future generations of East Gippslanders.

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 the *Valuation of Land Act 1960*.

The valuation authority (Valuer General Victoria) has an obligation under Section 11 of the *Valuation of Land Act 1960* to cause a general valuation of rateable land within an area to be made as at 1 January in each calendar year.

Under Section 7AF of the *Valuation of Land Act 1960*, the Minister may declare that a general valuation is generally true and correct and is taken to be suitable to be adopted and used for the purposes of any rating authority for the period allowed.

Council is now requested to adopt the valuations for use in the declaration and calculation of Council rates under Division 1 of the *Local Government Act 1989*.

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*.

Organisational

- **Financial**

There is no cost incurred by Council as the cost of completing the 2020 General Valuation is borne by the Valuer-General Victoria.

Climate Change

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

Financial Management: Climate change is budgeted for and resources are allocated for mainstreaming through a financial management plan, policy or strategy.

This is a procedural matter and has no direct climate change impacts in East Gippsland.

Consultation

Under the *Valuation of Land Act 1960* all ratepayers may make an enquiry or lodge an objection if not satisfied with the result of their valuation. Objections must be lodged on the prescribed form within two months of issue of the original Valuation and Rate notice.

APPENDICES AND ATTACHMENTS

Appendices

Nil

Attachments

1. Valuer-General Victoria certification of 2020 General Valuation.
2. Report of General Valuation – Form 2

5.3.2 Governance Rules Engagement Process

Authored by	Patricia Clive, Governance and Compliance Coordinator
Endorsed by	Peter Cannizzaro, General Manager Business Excellence
Document No	8544515
In Attendance	Patricia Clive, Governance and Compliance Coordinator

EXECUTIVE SUMMARY

This report seeks Council approval to commence engagement processes for the making of Governance Rules under the *Local Government Act 2020* (2020 Act) and revoking the *Local Law No 1 Procedure for Council Meeting* (Local Law 1) under the *Local Government Act 1989* (1989 Act).

Section 60 of the 2020 Act requires Council to develop and adopt Governance Rules by 1 September 2020 to give effect to the overarching governance principles in the conduct of Council meetings. The Governance Rules will replace Local Law 1. The draft Governance Rules in **Appendix 1** are based on the draft provided by Local Government Victoria and are consistent with the East Gippsland Shire Council Local Law 1.

In developing Governance Rules, Council is required to engage with the community (s60(4)). A 14-day engagement process on the Governance Rules is proposed to commence on 9 July and conclude on 23 July 2020. This will allow sufficient time to consider community input.

The Local Law 1 adopted by Council in October 2019 will not expire until 2029. In order to avoid confusion, it is necessary to revoke Local Law 1. Under the 1989 Act the process to revoke a local law is similar to making a local law (s119), requiring engagement under a section 223 for 28 days. It is proposed to commence this process on the date the notice appears in the Gazette.

RECOMMENDATION

That Council

1. *approves the draft Governance Rules at Appendix 1 and the draft Election Period Policy at Appendix 2 for engagement with the community;*
2. *resolves on 9 July 2020 to commence a 14-day community engagement process for the making of the Governance Rules;*
3. *resolves to commence a 28-day submission process under section 223 of the Local Government Act 1989 on the proposal to revoke Local Law No. 1 Procedure for Council Meetings, at Appendix 3;*
4. *resolves to appoint a Committee comprising the whole of Council (with a quorum of five councillors), to hear and consider any written public submissions received in relation to revoking Local Law No. 1 Procedures for Council Meetings, in accordance with section 223 of the Local Government Act 1989;*
5. *resolves to nominate 18 August 2020 at 1:30pm as the time and date for the Committee to hear any submissions;*
6. *resolves that Local Law No. 1 Procedures for Council Meetings is revoked if no submissions are received through the section 223 process;*
7. *resolves to publish a notice in the Government Gazette regarding the revocation of Local Law No. 1 Procedures for Council Meetings if no submissions are received, and*
8. *notes that should any submissions be received in relation to revoking Local Law No. 1 as part of the section 223 process, a recommendation from the section 223 committee is required to be presented at a future Council meeting for its consideration.*

OFFICER COMMENT / CONTEXT

Discussion

Governance Rules

Section 60 of the 2020 Act requires Council to develop and adopt Governance Rules by 1 September 2020. The Governance Rules will provide for:

- a) the conduct of Council and Delegated Committee meetings
- b) the form and availability of meeting records
- c) the election of the Mayor and Deputy Mayor
- d) the appointment of an Acting Mayor
- e) an election period policy
- f) procedures for the disclosure of conflict of interest by a Councillor or member of a Delegated Committee at Council meetings or other meetings
- g) procedures for the disclosure of conflict of interest by a member of Council staff, and
- h) other matter prescribed in regulations (no matters have been prescribed to date)

The Governance Rules at **Appendix 1** are based on the draft released by Local Government Victoria in June 2020. The Governance Rules have been adapted to be consistent with the East Gippsland Shire Council Local Law 1. A tracked change version of the Governance Rules is provided in **Attachment 1** for information. As demonstrated in the comparison table in **Attachment 2**, the Governance Rules substantially incorporate Local Law 1.

In developing the Governance Rules, Council is required to engage with the community (s60(4)). A 14-day engagement process on the Governance Rules is proposed to commence on 9 July and conclude on 23 July 2020. This will allow sufficient time to consider community input.

Election Period Policy

As outlined above, the Governance Rules need to incorporate an election period policy. Section 69(2) of the 2020 Act stipulates that the policy must prohibit any Council decisions during an election period that:

- a) relates to appointment and remuneration of the Chief Executive Officer but not to the appointment and remuneration of an Acting Chief Executive Officer;
- b) commits the Council to expenditure exceeding one per cent of Council's income from general rates, municipal charges and service rates and charges in the preceding financial year;
- c) the Council considers could be reasonably deferred until the next Council is in place;
- d) the Council considers should not be made during an election period.

In addition, the draft Governance Rules provided by Local Government Victoria require the election period policy to:

- a) govern decision making during the election period, including what may be considered at a Council meeting
- b) prohibits the use of Council resources for election campaign purposes
- c) set out the conditions for community engagement during an election period
- d) sets out the requirements for any Council publication during an election period
- e) define roles and responsibilities for the Council spokesperson during an election period

Council adopted an Election Period Policy in February 2020. This policy has been re-drafted to incorporate the requirements of the 2020 Act, draft Governance Rules and the in-force provisions of the 1989 Act, refer to **Appendix 2**. A tracked change version of the Election Period Policy is provided at **Attachment 3**.

The proposed engagement process for the Governance Rules will include the draft Election Period Policy.

Revocation of Local Law 1

The provisions in the 1989 Act provides the power for Council to make local laws—the relevant sections of the 1989 Act are still in force.

Section 122(1) provides that unless sooner revoked a local law will sunset 10 years after the earliest date it came into operation. The Local Law 1 was adopted by Council on 8 October 2019 and will not expire until 2029. It is proposed to revoke the Local Law No 1 to eliminate potential confusion about meeting procedures.

Section 119 of the 1989 Act outlines the procedure for making a local law and should be applied to the revocation of a local law. A section 223 of the 1989 Act submission process for 28 days is required. It is proposed to commence the engagement process for the revocation of the Local Law 1, at **Appendix 3**, on 9 July and conclude on 6 August.

Council Plan

This report has been prepared and aligned with the following goals set out in the Council Plan 2017-2021:

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

Council Policy

The Election Period Policy approved by Council in February 2020 has been amended to reflect the requirements in the 2020 Act, the 1989 Act and the Governance Rules. When adopted, the amended policy will form part of the Governance Rules.

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, as it relates to the revocation of Local Law 1, has been prepared in accordance with *Local Government Act 1989* sections 119 regarding the making of local laws and section 223 regarding the right to make a submission.

In relation to the Governance Rules this report has been prepared in accordance with *Local Government Act 2020* sections 60 and 69 (election period policy) as detailed above.

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*.

Community

The proposed engagement process will allow the East Gippsland Shire community an opportunity to provide input into the development of the Governance Rules that will govern the conduct of Council meetings after 1 September 2020.

Organisational

- **Financial**

The engagement process will involve costs for a notice in the Gazette and advertisements in the newspapers to advise the engagement processes.

Climate Change

There is no perceived climate change impact associated with this proposal.

Consultation

In the development of the Governance Rules Council is required to undertake a community engagement process (s60(4)). The new Act does not prescribe what engagement process is required as it relies on the development of a Community Engagement Policy. Council's current Community Engagement Policy is not prescriptive on the process. Due to the limited time associated with the statutory requirements a 14-day engagement process will provide time to consider community responses and incorporate input into the Governance Rules prior to 1 September 2020. The process will commence on 9 July and conclude on the 23 July.

The revocation of Local Law 1 requires Council to commence a section 223 submission process under the 1989 Act. This 28-day process will commence with the placing of a notice in the Gazette on 6 July and conclude on 9 August.

APPENDICES AND ATTACHMENTS

Appendices

- 1 Draft Governance Rules for engagement
- 2 Draft Election Period Policy for engagement
- 3 Local Law 1 Procedure for Council Meeting for engagement

Attachments

- 1 Draft Governance Rules – tracked changes
- 2 Comparison table Local Law 1 and Governance Rules
- 3 Draft Election Period Policy – tracked changes

5.4 Responsive Services

5.4.1 Sale of Land – Laneway rear of 259 Main Street Bairnsdale

Authored by Lou Wigg, Senior Property Officer

Endorsed by Peter Cannizzaro, General Manager Business Excellence

Document No 8517501

In Attendance Peter Cannizzaro, General Manager Business Excellence

EXECUTIVE SUMMARY

To obtain Council approval to sell two parts of discontinued road reserve at the rear of 259 Main Street Bairnsdale to the owner of the property. The property is owned by Nineteenth Claybank Pty Limited trading as Bairnsdale Electrics. Bairnsdale Electrics has constructed new premises over Lot 1 (3.3m²) on Title Plan TP921124 part of Lot 2 (9.5m²) on Title Plan TP921124 and has requested to purchase these parts of the discontinued road reserve that is owned by Council (**Appendix 1**).

RECOMMENDATION

That Council:

- 1. resolves that the allotment known as Lot 1 (3.3m²) on Title Plan TP921124 and 9.5m² of the allotment known as Lot 2 on Title Plan TP921124, depicted at Appendix 1, is not required for public access for any future public use;**
- 2. gives notice of its intention to sell Lot 1 (3.3m²) on TP921124 and 9.5m² of Lot 2 on TP921124 to the adjoining landowner, in accordance with the provisions of section 189 of the Local Government Act 1989.**
- 3. notes that section 5.3 of Council's Sale of Council-owned Land Policy stipulates that land will be sold for at least market valuation, unless Council specifically resolves otherwise;**
- 4. appoints a Committee comprising the whole of Council (with a quorum of five councillors), to hear and consider any written public submissions received from the public in relation to the proposed sale of land in accordance with section 223 of the Local Government Act 1989;**
- 5. nominates 8 September 2020 at 1:00pm as the time and date for the Committee to hear any submissions;**
- 6. authorises the Chief Executive Officer to sell the land identified at recommendation 1 if no submissions are received about its proposed sale through the section 223 process; and**
- 7. receive a recommendation from the section 223 Committee to be presented at a future Council meeting for its consideration, should any submissions be received regarding the proposed sale, as part of the section 223 process.**

OFFICER COMMENT / CONTEXT

Discussion

The property at 259 Main Street Bairnsdale (Property) is owned by Nineteenth Claybank Pty Limited trading as Bairnsdale Electrics (Owner). The Owner has operated at the site for approximately 40 years. In 2004 the Owner of the Property purchased the land behind the Property at 124 Macleod Street Bairnsdale.

In July 2010, the Owner applied to Council to demolish the existing buildings on site at 124 Macleod Street Bairnsdale and consent was granted. In August 2010, the Owner applied to Council for a planning permit to construct a further building on the site at 124 Macleod Street Bairnsdale and enclose it with the existing building at the Property, covering an easement and Lot 1 (3.3m²) (outlined blue and labelled Lot 1 on Appendix 1) and part of Lot 2 (9.5m²) (outlined red and labelled Lot 2 on Appendix 1) of discontinued road reserve (Laneway) between the two properties. The planning permit was granted by Council in May 2011.

A recent survey of the Property revealed that the building at 124 Macleod Street Bairnsdale had been constructed over part of the Laneway (outlined blue and labelled Lot 1 on Appendix 2 and outlined red and labelled Lot 2 on Appendix 2) that had not been sold to the Owner as part of the purchase of 124 Macleod Street Bairnsdale. The Owner engaged surveyors Crowther and Sadler Pty Limited (Surveyor) to make enquiries regarding the Laneway. The Surveyor established that the status of the Laneway was previously shown as road and was part of a land dealing that had never been completed by Council. The title of the Laneway had remained in the name of the previous owner who had owned the Laneway since June 1900.

Council Officer's undertook a search of Council archives and confirmed that Council agreed to discontinue the Laneway in 1976 and it was published in the Victoria Government Gazette on 15 February 1978 that the Laneway was to be discontinued (**Attachment 1**). The transaction to put the Laneway in Council's name was not completed at the time. Council Officers have now completed the transaction and the Laneway is now in the name of Council (**Attachment 2**).

Council Plan

This report has been prepared and aligned with the following goals set out in the Council Plan 2017-2021:

Responsive Services Goal 2 - We put the customer first and give each customer a great experience of Council's services.

Council Policy

Clause 5.5.2 of Council's *Sale of Council-owned Land Policy* (Policy) provides for "where a proposed sale of land comprises a parcel of land or discontinued road that would otherwise not be able to be lawfully utilised or developed in its own right, the land may be sold by private treaty to the adjoining registered freehold proprietor at a price not less than current market valuation and to achieve a consolidation of title with the adjoining freehold property.

As this matter relates to a Laneway that is between two properties that are owned by the same owner, there is no requirement to offer the land for sale at public auction or the open market.

Legislation

On the 24th 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 sale of Council-owned land must comply with the provisions of section 189(2) of the *Local Government Act 1989* (Act), which stipulates that a market valuation must be obtained from a qualified or experienced person and must be dated within six months of the date of sale or exchange of the Property.

Public consultation regarding this proposal must also be undertaken in accordance with section 223 of the Act. As part of the public notice, members of the public will be invited to make a written submission to Council on the proposal. Submitters will also have an opportunity to speak to their written submission at a hearing of a special committee of Council convened for this purpose.

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*.

Organisational

- **Financial**

All valuation, surveying and legal costs associated with the sale of land, including Council's legal costs would be met by the applicant.

If Council approves the sale of the Laneway, the purchase price of the Laneway will be determined in accordance with a report from a registered valuer.

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.

Consultation

Members of the public will be entitled to make a submission in response to the public notice and hearing process conducted in accordance with section 223 of the Act.

The General Manager Assets and Environment has been consulted and has provided consent to the sale of the Laneway.

Officer Declaration of Conflict of Interest

Section 80C of the Act requires members of Council staff and persons engaged under contract to provide advice to Council, to disclose any direct or indirect interest in a matter to which the advice relates.

Council officers involved in the preparation of this report have no conflict of interest in this matter.

APPENDICES AND ATTACHMENTS

Appendices

1. Plan showing proposed areas of Laneway to be sold

Attachments

1. Precinct Plan – 259 Main Street Bairnsdale
2. Victorian Government Gazette No.11 February 15, 1978 showing discontinuance of Laneway.
3. Certificate of Title and associated plan for Laneway

6 Urgent and Other Business

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 Items 7.1 and 7.2 as these items relate to private commercial matters.

7 Confidential Business

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

7.1 CON2019 1382 Lucknow Recreation Reserve Change Rooms

Note Pursuant to sections 3(1) and 66(5) of the *Local Government Act 2020*, the information contained in this report is confidential because it contains private commercial information, being information provided by a business, commercial or financial undertaking that if released, would unreasonably expose the business, commercial or financial undertaking to disadvantage. Under section 66(2) of the *Local Government Act 2020* a meeting considering confidential information may be closed to the public.

7.2 Variation to CON2019 1287 Landfill Environmental Monitoring Service

Note Pursuant to sections 3(1) and 66(5) of the *Local Government Act 2020*, the information contained in this report is confidential because it contains private commercial information, being information provided by a business, commercial or financial undertaking that if released, would unreasonably expose the business, commercial or financial undertaking to disadvantage. Under section 66(2) of the *Local Government Act 2020* a meeting considering confidential information may be closed to the public.

Council will now re-open the meeting to the public.

8 Close of meeting