



Minutes Council Meeting

Tuesday 14 September 2021 at 6:00 pm

**Council Chambers (and by video conferencing)
East Gippsland Shire Council Corporate Centre
273 Main Street, Bairnsdale 3875**

Councillors

Crs Mendy Urie (Mayor), Mark Reeves (Deputy Mayor), Arthur Allen, Sonia Buckley (via Teams), Tom Crook, Jane Greacen OAM, Trevor Stow, Kirsten Van Diggele and John White

Vision

East Gippsland is an inclusive and innovative community that values our natural environment, puts community at the centre of Council decision-making, and creates the conditions in which communities can thrive.

Our Strategic Objectives

1. An inclusive and caring community that respects and celebrates diversity
2. Planning and infrastructure that enriches the environment, lifestyle, and character of our communities.
3. A natural environment that is managed and enhanced.
4. A thriving and diverse economy that attracts investment and generates inclusive local employment.
5. A transparent organisation that listens and delivers effective, engaging and responsive services

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1 Procedural

1.1 Recognition of Traditional Custodians

Welcome to East Gippsland Shire Council's meeting of Tuesday 14 September 2021.

East Gippsland Shire Council live streams, records and publishes its meetings via webcasting ([youtube.com/c/East Gippy TV](https://youtube.com/c/EastGippyTV)) 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.

The Victorian Government has amended the COVID-19 Omnibus (Emergency Measures) and Other Acts Amendment Act 2020 that enables Council meetings to be conducted by electronic means (videoconferencing) until 26 April 2022. The Minister for Local Government re-issued the Ministerial Good Practice Guideline for Virtual Meetings on 20 October 2020 outlining the provisions relating to the Local Government Act 2020 allow Councillors to attend Council meetings electronically, and the requirement where Council meetings are open to the public will be satisfied where the meeting is livestreamed. The amendments do not preclude Councillors from attending a meeting in person in the Council chambers.

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

East Gippsland Shire Council acknowledges the Gunaikurnai, Monero and the Bidjawan people as the Traditional Custodians of this land that encompasses East Gippsland Shire, and their enduring relationship with country. The Traditional Custodians have cared and nurtured East Gippsland for tens of thousands of years.

Council value their living culture and practices and their right to self-determination. Council pays respect to all Aboriginal and Torres Strait Islander people living in East Gippsland, their Elders, past, present, and future.

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 Councillor Buckley that she can see, hear and be heard and to note assurance that the location she is participating from is secure to ensure deliberations are confidential.

- Can you see and hear us?
- Can you confirm that the location you are participating from is secure to ensure confidential items are dealt with in a confidential manner?

Councillor Buckley confirmed.

1.2 Apologies

Nil

1.3 Declaration of Conflict of Interest

Anthony Basford Chief Executive Officer declared a conflict of interest in item 7.1 *Performance and Remuneration Review 2020/21 and 2021/22 Key Performance Indicators - Chief Executive Officer*, as a material interest due to matter being about his terms of employment at East Gippsland Shire Council.

1.4 Confirmation of minutes

Cr John White / Cr Mark Reeves

THAT THE MINUTES OF THE COUNCIL MEETING 24 AUGUST 2021 BE CONFIRMED.

CARRIED

1.5 Next meeting

The next Council Meeting of Tuesday 5 October 2021 to be held at the Corporate Centre, 273 Main Street Bairnsdale commencing at 6.00pm.

1.6 Requests for leave of absence

Nil

1.7 Open Forum

1.7.1 Petitions

Nil

1.7.2 Questions of Council

Nil

1.7.3 Public Submissions

Mr Richard Hoxley, Crowther and Sadler Pty Ltd, spoke in relation to item 3.1. Mr Hoxley spoke at item 3.1.

2 Notices of Motion

Nil

3 Deferred Business

Public Submission

Mr Richard Hoxley, Crowther and Sadler Pty Ltd

3.1 156/2021/P - 100 Kings Cove Boulevard, Metung

Authorised by General Manager Place and Community

Conflict of Interest

Officers preparing this report have no conflict of interest to declare.

Executive Summary

Planning permit application 156/2021/P (**Attachments 1, 2 & 3**) was lodged in March 2021. The application seeks to subdivide the land at 100 Kings Cove Boulevard, Metung into twelve (12) lots. The lot sizes proposed vary from 2000 to 6000 square metres. Lots 1, 4, 5, 8, 9 and 12 will front onto Kings Cove Boulevard, with Lots 2, 3, 6, 7, 10 and 11 to be situated behind those that front the road. These lots will be in a 'battle-axe' form, with 6m accessways to be provided to the lots furthest from the road.

Notice was undertaken in accordance with Section 52 of the *Planning and Environment Act 1987*. No objections were received. The application has been referred to relevant statutory authorities, with responses explained in the report and provided at **Attachment 5**.

The land is situated within the Kings Cove residential estate. The land is zoned Low Density Residential Zone, which recommends that lots be at least 4000 square metres where reticulated sewerage is not connected, and 2000 square metres where lots are connected to reticulated sewerage, which the property under assessment has access to.

A Report was presented to Council on 24 August 2021 (Item 5.3.1) with an Officer Recommendation for Refusal to Grant a Permit. The Council resolution was that the motion was defeated, and an alternative motion passed for Deferral of the matter for resolution at the next Ordinary Council meeting scheduled for 14 September 2021.

In further discussions, the proponent has put forward an alternative arrangement for provision of fire services to the proposed allotments, which does not accord with the CFA correspondence pertaining to the matter but is deemed to be satisfactory on further clarification with all parties.

As a result of the additional information provided and proposed changes to the subdivision layout, officers are satisfied that the provision of fire services utilising the provision of static water tanks is a reasonable alternative solution to the servicing of the land.

However, due to Officer's continuing concerns regarding the impact of the subdivision on the prevailing neighbourhood character and inconsistencies with the planning policy framework, refusal of the application is recommended for grounds outlined in the recommendation to Council. The recommendation is consistent with response provided early in the processing of the application to the permit applicant (**Attachment 4**).

Officer Recommendation

That Council:

- 1. receives and notes this report and all attachments pertaining to this report; and***
- 2. being the Responsible Authority and having considered all the relevant planning matters, determines that planning application 156/2021/P at 100 Kings Cove Boulevard, Metung for a twelve lot subdivision is inconsistent with the requirements and objectives of the East Gippsland Planning Scheme and therefore resolves to issue a Notice of Refusal to Grant a Planning Permit in accordance with the following grounds of refusal:***
 - a. the proposed subdivision is inconsistent with the Incorporated Plan Overlay Schedule 1 – Storth Ryes Incorporated Plan C0002 June 2000;***
 - b. the proposed subdivision is inconsistent with the prevailing neighbourhood character for low density residential zone area of this estate;***
 - c. the proposed subdivision is inconsistent with the planning policy framework relating to neighbourhood character at clause 15.01-5S; and***
 - d. the proposed subdivision is inconsistent with the local planning policy framework at clause 21.12-2, Metung Strategy Plan, particularly in relation to landscape and environmental values and character of the area.***

Cr Mark Reeves / Cr Jane Greacen OAM

THAT THE RECOMMENDATION BE ADOPTED

LOST

Alternate motion

Cr Trevor Stow / Cr Arthur Allen

THAT COUNCIL BEING THE RESPONSIBLE AUTHORITY AND HAVING CONSIDERED ALL THE RELEVANT PLANNING MATTERS, DETERMINES THAT PLANNING APPLICATION 156/2021/P IS CONSISTENT WITH THE REQUIREMENTS AND OBJECTIVES OF THE EAST GIPPSLAND PLANNING SCHEME AND THEREFORE RESOLVES TO GRANT A PLANNING PERMIT FOR A MULTI-LOT SUBDIVISION AT 100 KINGS COVE BOULEVARD, METUNG, SUBJECT TO THE FOLLOWING CONDITIONS:

- 1. PRIOR TO THE CERTIFICATION OF THE PLAN SUBDIVISION, AMENDED PLANS TO THE SATISFACTION OF THE RESPONSIBLE AUTHORITY MUST BE SUBMITTED TO AND BE ENDORSED BY THE RESPONSIBLE AUTHORITY. THE PLANS MUST BE AMENDED TO SHOW:***
 - a. CROSSOVER LOCATIONS IN ACCORDANCE WITH CONDITION 7***
 - b. ACCESS DESIGN PLANS AND WATER TANK LOCATIONS FOR LOTS 2, 3, 6, AND 7 WHICH MEET THE CONSTRUCTION STANDARDS AT CONDITION 13.***

- c. **A PLAN OF RESTRICTION, GENERALLY IN ACCORDANCE WITH THE PLAN OF RESTRICTION VERSION 2 PREPARED BY CROWTHER & SADLER DATED 17 AUGUST 2021, BUT MODIFIED**
 - i. **TO SHOW A RESTRICTION AREA FOR EACH LOT ACCESS FOR LOTS 2, 3, 6, AND 7.**
 - ii. **TO PROVIDE FOR RESTRICTIONS AS REQUIRED BY CONDITIONS 13 AND 14;**
 - iii. **TO SHOW ADDITIONAL RESTRICTION AREAS PREVENTING DEVELOPMENT OUTSIDE OF THE 60-METRE HOSE-REEL LENGTH FOR LOTS 2, 3, 6, AND 7, AND**
 - iv. **TO SHOW ADDITIONAL RESTRICTION AREAS PREVENTING DEVELOPMENT OUTSIDE OF THE 120-METRE HOSE REEL LENGTH FOR LOTS 10 AND 11.**
2. **THE SUBDIVISION AS SHOWN ON THE ENDORSED PLANS MUST NOT BE ALTERED WITHOUT THE PRIOR WRITTEN CONSENT OF THE RESPONSIBLE AUTHORITY.**
3. **THE OWNER OF THE LAND MUST ENTER INTO AN AGREEMENT WITH:**
 - **A TELECOMMUNICATIONS NETWORK OR SERVICE PROVIDER FOR THE PROVISION OF TELECOMMUNICATION SERVICES TO EACH LOT SHOWN ON THE ENDORSED PLAN IN ACCORDANCE WITH THE PROVIDER'S REQUIREMENTS AND RELEVANT LEGISLATION AT THE TIME; AND**
 - **A SUITABLY QUALIFIED PERSON FOR THE PROVISION OF FIBRE READY TELECOMMUNICATION FACILITIES TO EACH LOT SHOWN ON THE ENDORSED PLAN IN ACCORDANCE WITH ANY INDUSTRY SPECIFICATIONS OR ANY STANDARDS SET BY THE AUSTRALIAN COMMUNICATIONS AND MEDIA AUTHORITY, UNLESS THE APPLICANT CAN DEMONSTRATE THAT THE LAND IS IN AN AREA WHERE THE NATIONAL BROADBAND NETWORK WILL NOT BE PROVIDED BY OPTICAL FIBRE.**
4. **BEFORE THE ISSUE OF A STATEMENT OF COMPLIANCE FOR ANY STAGE OF THE SUBDIVISION UNDER THE SUBDIVISION ACT 1988, THE OWNER OF THE LAND MUST PROVIDE WRITTEN CONFIRMATION FROM:**
 - **A TELECOMMUNICATIONS NETWORK OR SERVICE PROVIDER THAT ALL LOTS ARE CONNECTED TO OR ARE READY FOR CONNECTION TO TELECOMMUNICATIONS SERVICES IN ACCORDANCE WITH THE PROVIDER'S REQUIREMENTS AND RELEVANT LEGISLATION AT THE TIME; AND**
 - **A SUITABLY QUALIFIED PERSON THAT FIBRE READY TELECOMMUNICATION FACILITIES HAVE BEEN PROVIDED IN ACCORDANCE WITH ANY INDUSTRY SPECIFICATIONS OR ANY STANDARDS SET BY THE AUSTRALIAN COMMUNICATIONS AND MEDIA AUTHORITY, UNLESS THE APPLICANT CAN DEMONSTRATE THAT THE LAND IS IN AN AREA WHERE THE NATIONAL BROADBAND NETWORK WILL NOT BE PROVIDED BY OPTICAL FIBRE.**
5. **ALL NEW SERVICES TO THE SUBDIVISION MUST BE PLACED UNDERGROUND IN SHARED TRENCHING. DESIGN FOR THE INSTALLATION OF SERVICES MUST MEET THE REQUIREMENTS OF THE RELEVANT AUTHORITIES AND MUST BE APPROVED BY THOSE AUTHORITIES TO THE SATISFACTION OF THE RESPONSIBLE AUTHORITY.**

6. **BEFORE ANY WORKS ASSOCIATED WITH THE SUBDIVISION START, A DETAILED DRAINAGE MANAGEMENT PLAN TO THE SATISFACTION OF THE RESPONSIBLE AUTHORITY MUST BE SUBMITTED TO AND BE APPROVED BY THE RESPONSIBLE AUTHORITY. WHEN APPROVED, THE PLANS WILL THEN FORM PART OF THE PERMIT. THE DESIGN AND DOCUMENTATION FOR THE DRAINAGE WORKS MUST BE PREPARED IN ACCORDANCE WITH STANDARD ENGINEERING PRACTICE TO PROVIDE FOR THE COLLECTION, CONTROL AND DISPOSAL OF ALL STORMWATER RUNOFF, AND SHOW:**
- a) **DRAINAGE INFRASTRUCTURE (WHERE REQUIRED AND AS APPROPRIATE TO THE SITE), INCLUDING SWALE DRAINS AND CULVERTS, PIPING/DRAINS AND PITS.**
 - b) **ANY MODIFICATION TO THE TERRAIN, SUCH AS FILLING AND EXCAVATION.**
 - c) **EASEMENTS AND LEGAL POINTS OF DISCHARGE.**
 - d) **METHODS OF ON-SITE DETENTION, INCLUDING THE PROVISION OF SEDIMENT TRAPS, WETLANDS, ROCK BEACH OUTLETS, DETENTION BASINS AND GROSS POLLUTANT TRAPS.**
- ALL DRAINAGE WORKS AND REQUIREMENTS MUST BE UNDERTAKEN AND COMPLETED TO THE SATISFACTION OF THE RESPONSIBLE AUTHORITY.**
7. **PRIOR TO CERTIFICATION OF THE PLAN OF SUBDIVISION, A CROSSOVER LOCATION PLAN TO THE SATISFACTION OF THE RESPONSIBLE AUTHORITY MUST BE SUBMITTED TO AND ENDORSED BY THE RESPONSIBLE AUTHORITY. THE CROSSOVER PLAN MUST DEMONSTRATE SINGLE CROSSOVERS TO LOTS 1 AND 12 AND SHARED CROSSOVERS TO THE REMAINDER OF THE LOTS IN SUITABLE PAIRS.**
8. **PRIOR TO CERTIFICATION OF THE PLAN OF SUBDIVISION, A LANDSCAPE PLAN TO THE SATISFACTION OF THE RESPONSIBLE AUTHORITY MUST BE SUBMITTED TO AND ENDORSED BY THE RESPONSIBLE AUTHORITY. THE LANDSCAPE PLAN MUST DEMONSTRATE:**
- a) **MINIMUM OF ONE SCREEN PLANTING (SHRUB WITH MATURE WIDTH 2 METRES) PER 4 METRES ON THE OUTSIDE BOUNDARY OF EACH OF THE ACCESSWAYS TO LOTS 2 & 3, 6 & 7, AND 10 & 11;**
 - b) **METHOD OF WATERING DURING THE ESTABLISHMENT PERIOD; AND**
 - c) **ROOT PROTECTION MEASURES NEAR UNDERGROUND SERVICES.**
9. **BEFORE THE ISSUE OF A STATEMENT OF COMPLIANCE, SEALED CROSSOVERS MUST BE CONSTRUCTED TO ALL LOTS, AT RIGHT ANGLES TO THE ROAD, TO THE SATISFACTION OF THE RESPONSIBLE AUTHORITY.**
10. **BEFORE THE ISSUE OF A STATEMENT OF COMPLIANCE, THE LANDSCAPING IN ACCORDANCE WITH THE ENDORSED PLANS MUST BE IMPLEMENTED TO THE SATISFACTION OF THE RESPONSIBLE AUTHORITY. THE LANDSCAPING MUST BE MAINTAINED INTO PERPETUITY TO THE SATISFACTION OF THE RESPONSIBLE AUTHORITY.**

- 11. DURING CONSTRUCTION AND MAINTENANCE ACTIVITIES, ADEQUATE STEPS MUST BE TAKEN TO STOP SOIL EROSION AND THE MOVEMENT OF SEDIMENT OFF SITE AND INTO DRAINAGE LINES, WATERCOURSES AND ONTO ADJOINING LAND TO THE SATISFACTION OF THE RESPONSIBLE AUTHORITY. METHODS INCLUDE BUT ARE NOT LIMITED TO:**
- a) CONTROL OF ON-SITE DRAINAGE BY INTERCEPTING AND REDIRECTING RUN-OFF IN A CONTROLLED MANNER TO STABILISED VEGETATED AREAS ON SITE.**
 - b) INSTALLATION OF SEDIMENT CONTROL STRUCTURES SUCH AS SEDIMENT BASINS, SEDIMENT FENCES AND SEDIMENT TRAPS WHEN CONSTRUCTION COMMENCES AND MAINTAINING THEM UNTIL THE SITE IS STABILISED.**
 - c) RE-VEGETATING ALL DISTURBED AREAS AS QUICKLY AS POSSIBLE OR WITHIN 14 DAYS AFTER CONSTRUCTION WORKS ARE COMPLETED.**
- 12. THE PLAN OF SUBDIVISION SUBMITTED FOR CERTIFICATION MUST INCLUDE A RESTRICTION THAT PROVIDES THAT NO BUILDINGS OR STRUCTURES ARE TO BE DEVELOPED WITHIN THE RESTRICTION AREA ON EACH OF LOTS 2, 3, 6, 7, 10, AND 11.**
- 13. THE PLAN OF SUBDIVISION SUBMITTED FOR CERTIFICATION MUST INCLUDE A RESTRICTION THAT PROVIDES THAT BUILDINGS AND WORKS MUST NOT COMMENCE FOR A DWELLING ON EACH OF LOTS 2, 3, 6, AND 7 UNTIL:**
- A STATIC WATER SUPPLY FOR FIREFIGHTING AND PROPERTY PROTECTION PURPOSES IS PROVIDED TO THE SATISFACTION OF THE RESPONSIBLE AUTHORITY. THE STATIC WATER SUPPLY MUST:**
 - BE STORED IN AN ABOVE GROUND WATER TANK CONSTRUCTED OF CONCRETE OR METAL.**
 - HAVE A MINIMUM CAPACITY OF 10,000 LITRES.**
 - BE READILY IDENTIFIABLE FROM THE BUILDING OR APPROPRIATE IDENTIFICATION SIGNS TO THE SATISFACTION OF THE RELEVANT FIRE AUTHORITY.**
 - THE OUTLET/S OF THE WATER TANK MUST BE WITHIN 4 METRES OF THE ACCESSWAY AND UNOBSTRUCTED.**
 - INCORPORATE A SEPARATE BALL OR GATE VALVE (BRITISH STANDARD PIPE (BSP 65 MILLIMETRE) AND COUPLING (64-MILLIMETRE CFA 3 THREAD PER INCH MALE FITTING).**
 - ANY PIPEWORK AND FITTINGS MUST BE A MINIMUM OF 65 MILLIMETRES (EXCLUDING THE CFA COUPLING).**
 - VEHICLE ACCESS TO THE STATIC WATER SUPPLY IS CONSTRUCTED TO THE SATISFACTION OF THE RESPONSIBLE AUTHORITY AND MUST**
 - INCLUDE A TURNING AREA FOR FIRE FIGHTING VEHICLES HAVING A TURNING CIRCLE WITH A MINIMUM RADIUS OF 8 METRES, OR A TURNING AREA SUCH AS A T OR Y HEAD WHICH MEET THE SPECIFICATION OF AUSTROAD DESIGN FOR AN 8.8M SERVICE VEHICLE**
 - HAVE A MINIMUM TRAFFICABLE WIDTH OF 3.5 METRES AND BE CLEAR OF ENCROACHMENTS FOR AT LEAST 0.5 METRES ON EACH SIDE AND 4 METRES ABOVE THE ACCESS WAY.**

14. **BEFORE THE ISSUE OF STATEMENT OF COMPLIANCE, ABOVE OR BELOW GROUND OPERABLE HYDRANTS MUST BE PROVIDED. THE MAXIMUM DISTANCE BETWEEN THESE HYDRANTS AND THE REAR OF BUILDING ENVELOPES (OR IN THE ABSENCE OF BUILDING ENVELOPES, THE REAR OF THE LOTS) FOR LOTS 1, 4, 5, 8, 9, 10, 11, AND 12, MUST BE 120 METRES AND THE HYDRANTS MUST BE NO MORE THAN 200 METRES APART. THESE DISTANCES MUST BE MEASURED AROUND LOT BOUNDARIES.**

THE HYDRANTS MUST BE IDENTIFIED WITH MARKER POSTS AND ROAD REFLECTORS AS APPLICABLE TO THE SATISFACTION OF THE COUNTRY FIRE AUTHORITY.

15. **BEFORE THE ISSUE OF A STATEMENT OF COMPLIANCE, ANY PORTION OF COUNCIL'S EXISTING INFRASTRUCTURE DAMAGED AS A RESULT OF WORK UNDERTAKEN ON THE SITE OR ASSOCIATED WITH THE DEVELOPMENT MUST BE REPAIRED/REINSTATED TO THE SATISFACTION OF THE RESPONSIBLE AUTHORITY.**

EAST GIPPSLAND WATERS CONDITIONS

16. **WATER AND SEWER RETICULATION INFRASTRUCTURE (INCLUDING SEWER CONNECTION POINTS) MUST BE EXTENDED TO SERVICE EACH LOT TO EAST GIPPSLAND WATER'S REQUIREMENTS, AT THE COST OF THE APPLICANT/DEVELOPER. SUBJECT TO EAST GIPPSLAND WATER'S REQUIREMENTS BEING MET, RELEVANT INFRASTRUCTURE WILL THEN BECOME GIFTED ASSETS (REFER NOTES). EACH LOT IS TO BE SEPARATELY SERVICED BY THE WATER AND SEWER RETICULATION SYSTEM AND ABLE TO BE SEPARATELY METERED (WATER) AS APPROPRIATE TO THE SATISFACTION OF EAST GIPPSLAND WATER.**
17. **ARRANGEMENTS FOR THE DESIGN, CONSTRUCTION, COMMISSIONING AND ACCEPTANCE OF ALL GIFTED ASSETS REQUIRED BY EAST GIPPSLAND WATER TO EXTEND WATER AND / OR SEWERAGE SERVICES TO EACH LOT REQUIRE WRITTEN APPROVAL BY EAST GIPPSLAND WATER. DESIGN DRAWINGS TO BE SENT TO DEVELOPERWORKS@EGWATER.VIC.GOV.AU AFTER CERTIFICATION APPLICATION HAS BEEN MADE.**
18. **PAYMENT OF APPLICABLE DEVELOPMENT PLANNING CHARGES BY THE APPLICANT/DEVELOPER TO EAST GIPPSLAND WATER (REFER NOTES).**
19. **PROVIDE EASEMENTS ON THE PLAN OF SUBDIVISION OVER NEWLY CREATED OR EXISTING INFRASTRUCTURE, AS REQUIRED BY EAST GIPPSLAND WATER.**
20. **NO STRUCTURE OR FILL IS TO BE PLACED OVER EAST GIPPSLAND WATER WORKS AND/OR EASEMENTS WITHOUT PRIOR AGREEMENT BY EAST GIPPSLAND WATER.**

AUSNET SERVICES CONDITIONS

- 21. THE PLAN OF SUBDIVISION SUBMITTED FOR CERTIFICATION MUST BE REFERRED TO AUSNET ELECTRICITY SERVICES PTY LTD IN ACCORDANCE WITH SECTION 8 OF THE SUBDIVISION ACT 1988.**
- 22. THE APPLICANT MUST ENTER INTO AN AGREEMENT WITH AUSNET ELECTRICITY SERVICES PTY LTD FOR THE EXTENSION, UPGRADING OR REARRANGEMENT OF THE ELECTRICITY SUPPLY TO LOTS ON THE PLAN OF SUBDIVISION. A PAYMENT TO COVER THE COST OF SUCH WORK WILL BE REQUIRED.**
- 23. THE APPLICANT MUST PROVIDE ELECTRICITY EASEMENTS INTERNAL AND EXTERNAL TO THE SUBDIVISION IN FAVOUR OF AUSNET ELECTRICITY SERVICES PTY LTD TO SERVICE THE LOTS ON THE PLAN OF SUBDIVISION AND/OR ABUTTING LANDS AS REQUIRED BY AUSNET ELECTRICITY SERVICES PTY LTD. THE PROVISION OF RESERVES FOR ELECTRICITY SUBSTATIONS MAY ALSO BE REQUIRED.**

TIME LIMIT CONDITION

- 24. THIS PERMIT WILL EXPIRE IF ANY OF THE FOLLOWING CIRCUMSTANCES APPLIES:**
 - THE PLAN OF SUBDIVISION IS NOT CERTIFIED WITHIN TWO YEARS.**
 - A STATEMENT OF COMPLIANCE IS NOT ISSUED WITHIN FIVE YEARS OF THE DATE OF THE PLAN OF SUBDIVISION BEING CERTIFIED.**

IN ACCORDANCE WITH SECTION 69 OF THE PLANNING AND ENVIRONMENT ACT 1987, AN APPLICATION MAY BE SUBMITTED TO THE RESPONSIBLE AUTHORITY FOR AN EXTENSION OF THE PERIODS REFERRED TO IN THIS CONDITION.

NOTES

- 1. BEFORE UNDERTAKING WORKS WITHIN A COUNCIL ROAD RESERVE, A NON-UTILITY – MINOR WORKS CONSENT OF WORKS WITHIN ROAD RESERVE MUST BE OBTAINED FROM THE ROADS AND TRAFFIC UNIT OF COUNCIL. REFER TO THE INFRASTRUCTURE DESIGN MANUAL (IDM) FOR CROSSOVER DESIGNS.**

EAST GIPPSLAND WATER NOTES

- 2.**
 - (A) SUBJECT TO ITS WRITTEN ACCEPTANCE OF THE GIFTED ASSETS, EAST GIPPSLAND WATER WILL BECOME RESPONSIBLE FOR OWNERSHIP AND THE ONGOING MAINTENANCE AND OPERATION OF THE ASSETS IN PERPETUITY.**
 - (B) DEVELOPMENT PLANNING CHARGES APPLY WHERE EAST GIPPSLAND WATER ARE INVOLVED IN THE DEVELOPER'S WORKS (ACTUAL CHARGE IS BASED ON THE FINAL COST OF THE WORKS). CONTACT EAST GIPPSLAND WATER FOR FURTHER INFORMATION ON THESE FEES.**
 - (C) ANY ADDITIONAL INFRASTRUCTURE REQUIRED TO ADEQUATELY SERVICE THE DEVELOPMENT WOULD NEED TO BE PROVIDED BY THE DEVELOPER AT THE DEVELOPER'S COST. THE TYPE AND EXTENT OF ADDITIONAL INFRASTRUCTURE, IF NEEDED, IS SUBJECT TO DETAILED ENGINEERING DESIGN AND APPROVAL BY EAST GIPPSLAND WATER**

- (D) FOR ANY LOT AREA THAT IS NOT ABLE TO BE FULLY SERVICED BY A GRAVITY SEWER CONNECTION, BUILDING ENVELOPES OR MINIMUM FLOOR LEVELS ARE REQUIRED TO BE LISTED AS RESTRICTIONS ON TITLE TO THE SATISFACTION OF EAST GIPPSLAND WATER.**

CARRIED

Background

The Land

The site under assessment sits within the Kings Cove estate. In relation to landmarks in the area, it is adjacent to the golf course in the north, and is a short distance to the proposed Metung Hot Springs (73 Storth Ryes Avenue).

The land, shown in **Figure 1**, is located along Kings Cove Boulevard, which is the major thoroughfare within the estate. As previously mentioned, the adjacent lot to the north is currently part of the golf course. To the east is a carpark and reserve with access to development owned by Kings Cove Club Pty Ltd. On the other side of the road, there are four lots which are between 4000 to 5000sqm each in size. Three of the four lots are developed with single dwellings. To the west is undeveloped land, which is to be the site of further residential development and the inclusion of a new road coming from the roundabout at the intersection of Kings Cove Boulevard and Storth Ryes Avenue. This development is subject to the Resort/Motel and Convention Centre Incorporated Plan (May 1999) and requires final sign-off by the responsible authority before the subdivision progresses.



Figure 1 – The site in neighbourhood context (Source: Intramaps)

The land is 46,034 square metres (4.6 hectares) and is roughly rectangular in shape. Two existing sewerage easements are located on the site, with sewerage easement 'E-2' (as named in the plan of subdivision for the site) running across the north-western corner of the site and sewerage easement 'E-6' running across the rear of the site. The site only contains a single outbuilding as well as an estimated 50 to 100 trees of mature size and canopy as shown at **Figure 2**. There is currently only a single gravel crossover, located where proposed lot 9 is shown in **Figure 5**.



Figure 2 – Photo taken on site from the far south west corner near the road reserve. (Source: Officer)

The land is encumbered by two Section 173 Legal Agreements, which are subject to current processes led by council (see *Current Issues/Status* section of this report).

The Neighbourhood Context

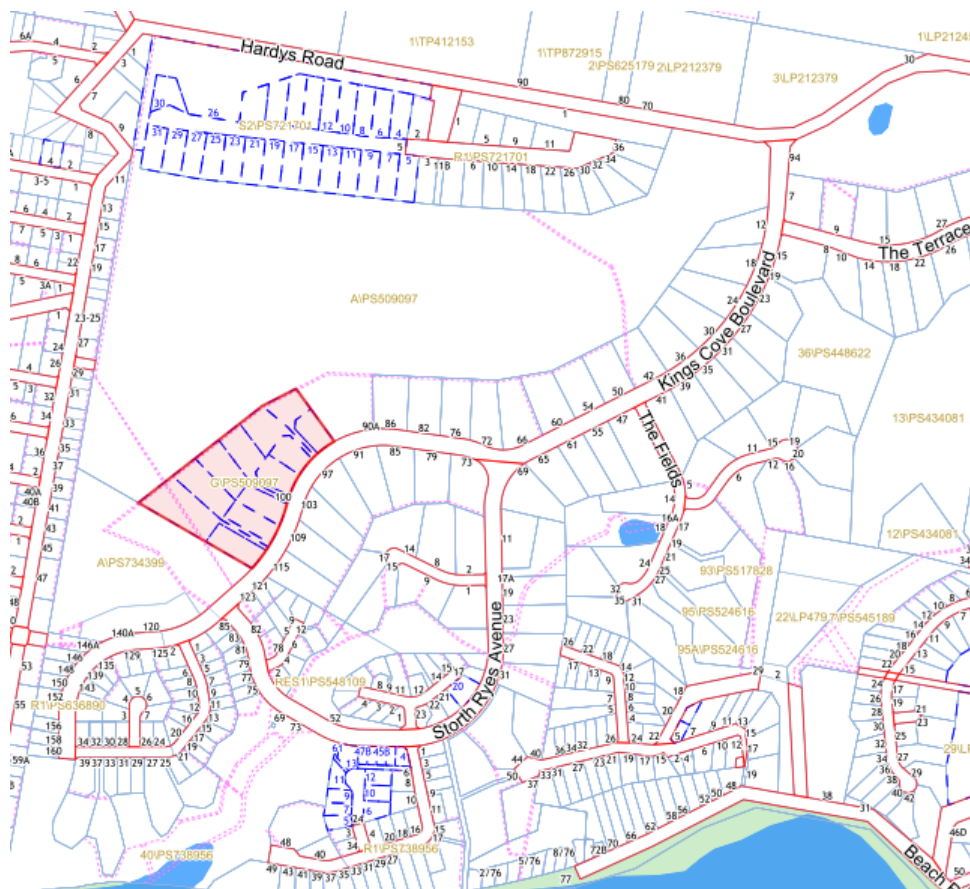


Figure 3 – The layout of lots in the area with the site of the proposed subdivision shaded in red (Source: Intramaps)

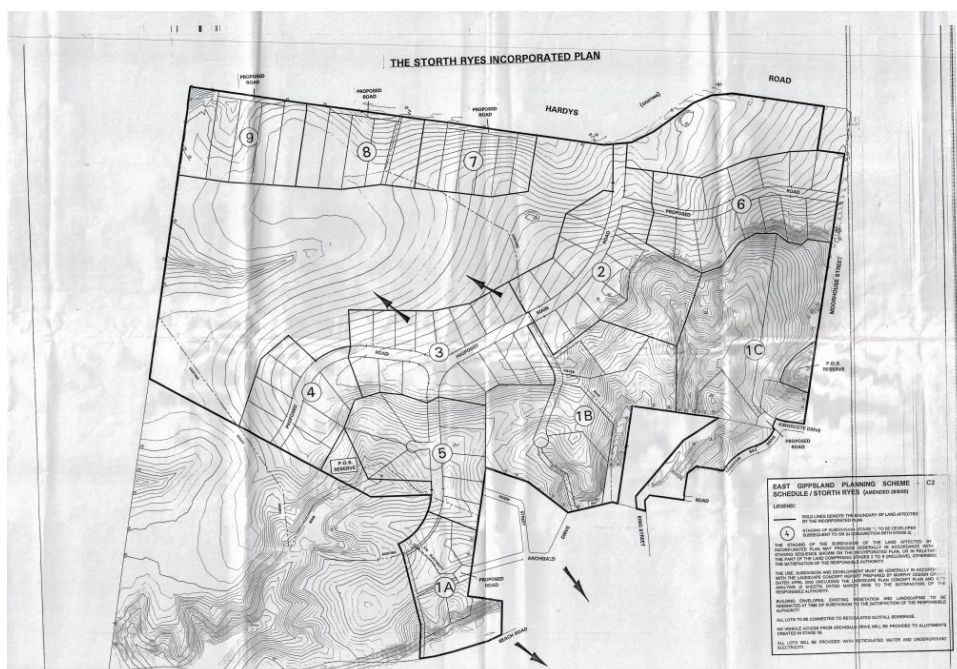


Figure 4 – Storth Ryes Incorporated Plan as exhibited with Amendment C2 (Source: DELWP Resource Library)

The Kings Cove estate is a carefully planned and managed area. The lots mapped under the Storth Ryes Incorporated Plan allow for previously planted vegetation to be maintained with ample room on lots to support low density residential development and associated outbuildings. The legal agreements found on lots across the area have been created to guide an ideal pattern of development and design of homes as can be seen throughout the estate.

The lot sizes within the estate can be broadly categorised under those which are in accordance with the Storth Ryes Incorporated Plan, and those which are not.

The former can be found primarily along Kings Cove Boulevard, The Terrace and partially down Storth Ryes Avenue. These can be considered as demonstrating the desired lot structure in the Storth Ryes Incorporated Plan (C002) as shown in **Figure 4**.

A separate and distinct Incorporated Plan operates to the south and west of the subject land. This Incorporated Plan (*Resort Hotel/Motel and Convention Facility Development, May 1999*) provides for the subdivision, use and development of the land for such things as a licenced resort hotel/motel, flats, townhouses, attached houses and the subdivision of the land including Bearham Chase, Plateau, parts of Kings Cove Boulevard and Storth Ryes Avenue, and associated courts that have progressed over the last decade at a density similar to General Residential zoning.

The Proposal

The subject Application seeks approval for a multi-lot subdivision which entails twelve lots ranging from 2000 to 6000 square metres (as shown on **Attachment 2**).

Each of the proposed lots exceeds the minimum subdivision size for lots specified for the Low-Density Residential Zone, given each lot can be connected to reticulated sewerage. In considering the number of lots as well as the connection to existing infrastructure, the proposal could be considered as being 'infill' development relative to the larger lots in the Kings Cove area.

Lots 1, 4, 5, 8, 9 and 12 will have frontage to Kings Cove Boulevard and will be provided with vehicle access as well as the installation of new crossovers to the satisfaction of the responsible authority. The remainder of the lots will be in 'battle-axe' form, with access to the lots behind those fronting the road being provided with 6m being provided for access down the 'handle' of the lots (see **Figure 5** and **Attachment 2**).

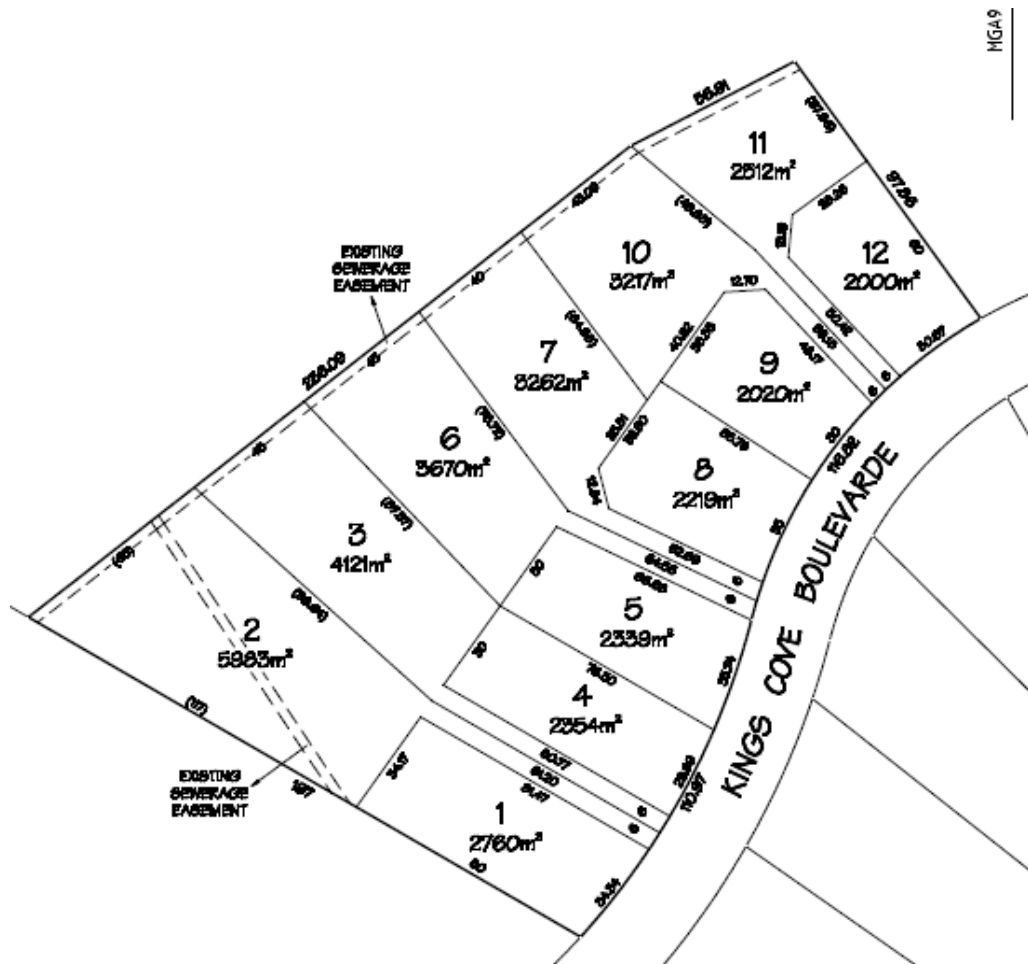


Figure 5 – Proposed Plan of Subdivision (Source: Crowther & Sadler, Version 2, Drawn 12/11/2020)

Application Process

The application (**Attachments 1, 2, & 3**) was submitted to Council in March 2021.

A site inspection by Officers was undertaken on 22 of April 2021.

A response to the application was sent to the applicant in the form of a concerns letter on 7 May 2021 (**Attachment 4**). In summary, the key points were as follows:

- The proposed subdivision is not consistent with the subdivision layout as shown in the Incorporated Plans for the Storth Ryes Estate.
- The proposal is inconsistent with the neighbourhood character of the Low Density Residential Zone/Kings Cove Boulevard Precinct.
- Officers did not share the applicants view regarding the proposed departure from neighbourhood character.

Notice was undertaken in accordance with Section 52 of the *Planning and Environment Act 1987*, with letters sent to adjoining owners as well as signs at both corners of the property adjoining Kings Cove Boulevard. No objections were received.

The applicant has carried out the notice to the satisfaction of the responsible authority and carried out a statutory declaration advising that the last day of the notice period was 14 May 2021.

Referrals were sent to:

- Ausnet Services under clause 66.01
- East Gippsland Water under clause 66.01
- APA Group under clause 66.01
- CFA under Section 52 of the *Planning and Environment Act 1987*.
- Council's Senior Technical Officers for internal comment.

Referral authority responses are provided at **Attachment 5**.

- Conditional consent was given by East Gippsland Water and Ausnet Services. Standard conditions apply.
- CFA requested further information regarding the fire hydrant requirements for the proposal. Officers have requested that the applicant provide a response to this further information request before a determination is made, however this does not alter the officer recommendation.
- APA did not respond to the referral task within the statutory timeframe. This is not unusual for an area which does not have reticulated gas supply.
- Councils Senior Technical Officers advised that as there is no drainage outfall or waterway immediately available to this proposed subdivision, a concept drainage Management Plan must be provided before a determination is made.

Current Status/Issues

The estate is undergoing a significant transition with respect to Section 173 Legal Agreements (Agreements) registered across the estate, including introducing consistent and standard amended Agreements through a Council-led process.

There are no restrictive covenants on the land, as is typical for other lots in the estate. Two Agreements applied to the subject land at the time the permit was lodged:

1. Agreement AB573238L, which has been ended and removed from title since the application was lodged.
2. Agreement AC166290V, which is in the final process to be amended, with the effect of the amendment due within the coming weeks following final lodgment of the amendment paperwork with Land Use Victoria.

These Agreements were registered in relation to the subdivision of the land and implemented design controls as desired by the developer of the estate and are not considered as typical restrictions that would have been required by the responsible authority. The guidelines attached to the Agreements on the titles set out:

- Building envelopes and single dwelling construction guidelines
- Soil and water management plans
- Landscaping and fencing controls.

A specific control and requirement enforced through covenants entered into at the transfer of land was that the developer (Kings Cove Metung Architectural Review Committee) must review and approve the proposed development plans prior to commencement of

construction. In most cases, the developments would meet planning permit exemptions as a result of the zoning and title controls combined. As explored through the process of ending and amending the Agreements in 2020/2021, Kings Cove Metung became insolvent, and once the liquidators had completed all activities, the entity ceased to exist and the restrictions on title could not be met.

The intent of the process to amend the Agreements (as carried out by Council in the past 8 months) is to maintain the existing neighbourhood character which is influenced by pattern of development, design of homes, retention of existing planted vegetation, separation between dwellings, and presentation to the streetscape. This resulted in Council carrying forward the fencing requirements, general amenity considerations, size of dwellings, building envelopes through the Amended Agreement.

It is noted that feedback on the proposed Amendments to the Agreements from the community reinforced the desire for the estate to maintain its character and that the responsible authority should continue to preserve the character through the prevention of further subdivision. This was also clear in relation to permit application 61/2020/P for a two lot subdivision at 9 The Billabong, Metung (May 4 2021, Item 5.2.2), which saw 42 objections and the endorsement of a recommendation to refuse that application on similar grounds to those proposed therein by Council.

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 processing of the planning permit application is undertaken in accordance with the provisions of the *Planning and Environment Act 1987*.

The proposal is made pursuant to the East Gippsland Planning Scheme:

Zone:	Low Density Residential Zone (LDRZ)
Overlays:	Erosion Management Overlay (EMO); Vegetation Protection Overlay Schedule 3 (VPO3); Incorporated Plan Overlay Schedule 1 (IPO1)

Planning Permit Triggers:

- Clause 32.03-3 for subdivision in accordance with the LDRZ;
- Clause 44.01-5; for subdivision in accordance with the EMO; and
- There is no trigger for the proposal pursuant to the:
 - o IPO1 – The schedule provides that “Except with the grant of a permit, the use, subdivision and development of the land must be generally in accordance with the Incorporated Plan”.
 - o VPO3 - no vegetation removal required for the subdivision and no trigger for subdivision in the overlay.

Assessment of the Proposal against the East Gippsland Planning Scheme

State and Local Policy

The proposed subdivision appropriately responds to the majority of State and Local Planning Policy. The proposal is to provide for additional housing in well serviced townsites areas. Where the proposal is considered to fail is in relation to the character of the neighbourhood.

15.01-5S Neighbourhood character

Objective

To recognise, support and protect neighbourhood character, cultural identity, and sense of place.

Strategies

Support development that respects the existing neighbourhood character or contributes to a preferred neighbourhood character.

Ensure the preferred neighbourhood character is consistent with medium and higher density housing outcomes in areas identified for increased housing.

Ensure development responds to its context and reinforces a sense of place and the valued features and characteristics of the local environment and place by respecting the:

- *Pattern of local urban structure and subdivision.*
- *Underlying natural landscape character and significant vegetation.*
- *Neighbourhood character values and built form that reflect community identity*

It is considered that the proposal is highly inconsistent with the prevailing neighbourhood character when considering the relevant controls applicable to the land. It is important to distinguish between this land and land to the south which is subject to a different set of controls, and therefore, has a contrasting neighbourhood character. The character area assessed is limited to Storth Ryes Avenue, Kings Cove Blvd, and Golf Course Precinct, and does not include an assessment related to the North Course area to the North-West, which is clearly distinguished by the golf course in-between.

The proposed design, specifically battle-axe configuration of half of the lots, is therefore not consistent with the development pattern and intensity along Kings Cove Boulevard.

Vision

Metung will be a key destination for visitors to the Gippsland Lakes system and a significant boating hub.

It will continue to have a strong residential community. Preservation of environmental and landscape values will be a key priority.

It will have an attractive village centre that promotes community interaction, with extensive pathways linking the village centre to other attractions. The village will be contained and meet the day to day needs of residents and visitors, but there will remain a reliance on external sources for higher order goods and services.

The buildings in Metung will remain modest in scale – generally two to three levels. Materials and colours will complement the natural environment.

Objectives

- *To retain the landscape setting, environmental qualities and lifestyle that contribute to the 'village' character of Metung.*
- *To ensure that development does not adversely affect landscape and environmental values.*
- *To support Metung's boating centre role and improve water access.*
- *To create a cohesive and attractive village centre.*
- *To improve pedestrian circulation and safety.*

Strategies

- *Ensure that the development of Metung occurs generally in accordance with the Metung Strategy Plan.*
- *Limit urban development to areas south of Metung – Nungurner Road and Hardys Road.*
- *Retain the north-east area of Metung as low density residential development, reflecting the physical constraints and existing character of the area.*
- *Ensure new development does not adversely affect landscape and environmental values and incorporates measures to protect those values including by protecting visually and environmentally significant native vegetation, the vegetated escarpment of Lake King and vegetated wildlife corridors; protecting wetlands; provision for on-site storm water management and erosion protection; minimisation of building footprints; and encouraging additional planting of indigenous plant species.*
- *Contain commercial development to suitably zoned areas or approved sites.*
- *Provide better visual connections to the water and increase water edge activities.*
- *Limit building height to retain the human and village scale of the area.*
- *Provide additional parking opportunities on the fringe of the village centre.*
- *Ensure consistent signage that communicates an appropriate village theme.*
- *Improve pedestrian connections along both sides of the peninsula, providing waterfront links between the village centre and the rest of Metung.*
- *Ensure that development adjoining the Village Green and Patterson Park preserves the village atmosphere.*
- *If the resort proposal on the Storth Ryes site between Metung and Tambo Bluff does not go ahead, encourage the progressive development of this site for low density residential uses, subject to the preparation of an Incorporated Plan.*
- *Ensure that land use and development adjoining Metung Road, Nungurner Road and Kalimna West Road do not detract from the scenic landscape values of the road corridors and the views from them.*

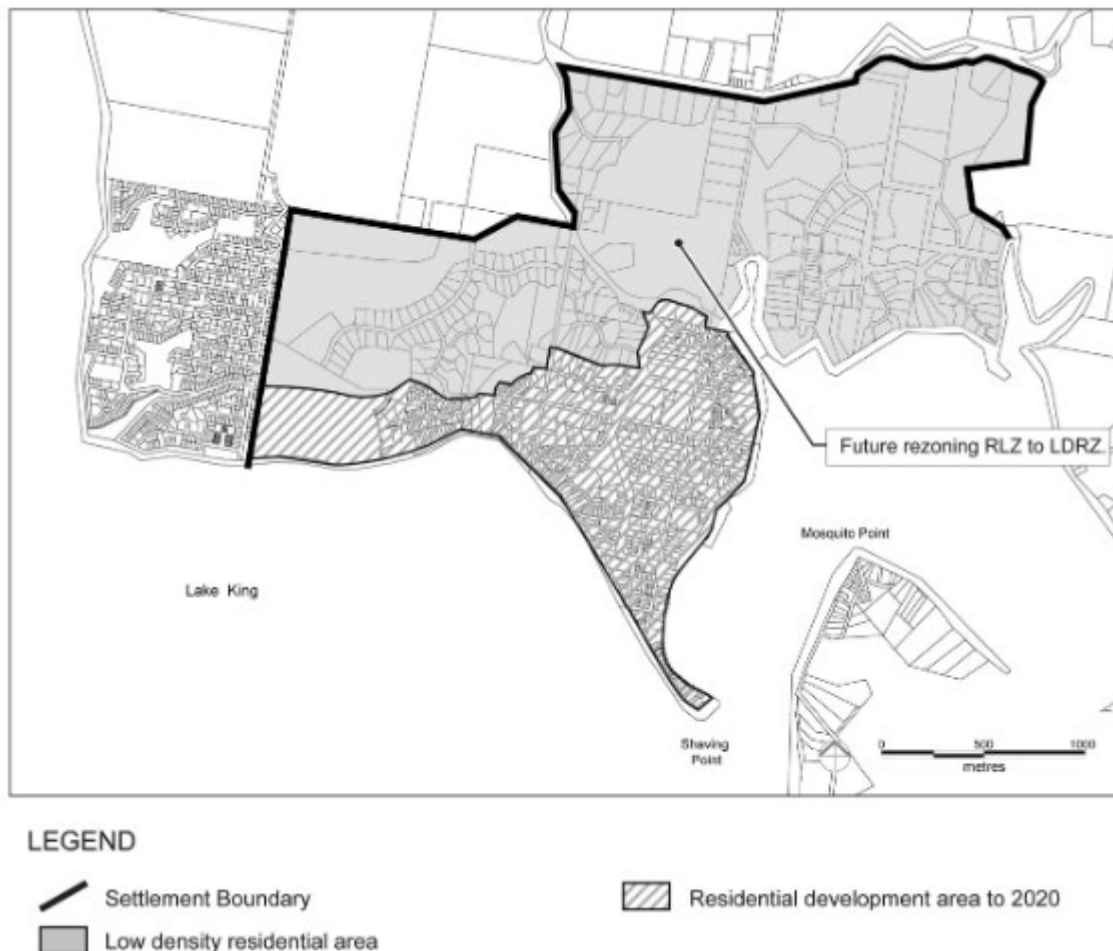


Figure 6 – Metung Strategy Plan (Source: East Gippsland Planning Scheme)

In considering the proposal's location in Metung, the land is clearly within the Low Density Residential Zone precinct for development, and meets the majority of the strategies towards the objectives of the settlement. Officers contend that the proposal is a poor response to landscape and environmental values designated in this area. Despite the vegetation on the site being planted, much of the vegetation could be retained with fewer lots being developed on the site. The guidelines which were established for the development will arguably not have the same impact to ensure landscaping consistent with the remaining estate. The loss of these trees cannot be immediately made up by new plantings on private property, and therefore their removal must be limited by refusing to grant the permit.

Zones and Overlays

Pursuant to the Low Density Residential Zone, the application is compliant and can be supported in relation to lot size for sewered areas. The relevant decision guidelines for subdivision focus on these aspects, but also requires consideration of:

The protection and enhancement of the natural environment and character of the area including the retention of vegetation and faunal habitat and the need to plant vegetation along waterways, gullies, ridgelines and property boundaries.

There is not a specific neighbourhood character assessment required as in other residential zones.

Pursuant to the Erosion Management Overlay, a Geotechnical Risk Assessment has been provided which demonstrates that the land can be subdivided and developed with a single dwelling on each lot with no increased erosion risk.

It is identified and agreed upon that the vegetation present on the land is planted and is therefore exempt from planning permission for native vegetation removal under Clause 52.17 of the Scheme. No request is made in relation to this application to have vegetation removed pursuant to the Vegetation Protection Overlay, however the future development of dwellings may first require vegetation removal permits, where officers would consider the avoid and minimise principle in advice to purchasers.

The Incorporated Plan Overlay, including Schedule 1 of that overlay, notes:

Purpose

To identify areas which require:

- *The form and conditions of future use and development to be shown on an incorporated plan before a permit can be granted to use or develop the land.*
- *A planning scheme amendment before the incorporated plan can be changed.*

To exempt an application from notice and review if it is generally in accordance with an incorporated plan.

Requirement before a permit is granted

A permit must not be granted to use or subdivide land, construct a building or construct or carry out works until an incorporated plan has been incorporated into this scheme.

This does not apply if a schedule to this overlay specifically states that a permit may be granted before an incorporated plan has been incorporated into this scheme.

A permit granted must:

- *Be generally in accordance with the incorporated plan, unless a schedule to this overlay specifies otherwise.*

Exemption from notice and review

An application under any provision of this planning scheme which is generally in accordance with the incorporated plan is exempt from the notice requirements of section 52(1)(a), (b) and (d), the decision requirements of section 64(1), (2) and (3) and the review rights of section 82(1) of the Act.

Decision guidelines

Before deciding on an application under any provision of this scheme which is not generally in accordance with the incorporated plan, in addition to the decision guidelines in Clause 65, the responsible authority must consider:

- *The Municipal Planning Strategy and the Planning Policy Framework.*
- *The incorporated plan.*

Preparation of the incorporated plan

The incorporated plan may consist of plans or other documents and may, with the agreement of the planning authority, be prepared and implemented in stages.

The incorporated plan must describe:

- *The land to which the plan applies.*
- *The proposed use and development of each part of the land.*
- *Any other requirements specified for the plan in a schedule to this overlay.*

SCHEDULE 1 TO CLAUSE 43.03 INCORPORATED PLAN OVERLAY STORTH RYES, METUNG

Requirement before a permit is granted

A permit must not be granted to use or subdivide the land, construct a building or construct or carry out works until an incorporated plan has been incorporated into this Scheme. This does not apply to a use, subdivision, development or buildings and works if they are in accordance with the specific site controls set out in the Schedule to Clause 51.01 of this Scheme.

Except with the grant of a permit, the use, subdivision and development of the land must be generally in accordance with the Incorporated Plan.

Preparation of the incorporated plan

The purpose of the Incorporated Plan Overlay control is to regulate the future use, subdivision and development of the land pursuant to the provisions of the Low Density Residential Zone until an incorporated plan has been incorporated into this Scheme. The incorporated plan must contain the following information to the satisfaction of the responsible authority:

- Details of all existing significant physical features of the land including topography, vegetation, viewpoints*
- The general subdivisional layout for the land*
- The position and width of existing and proposed major access roads*
- The staging of subdivisional works within particular development areas or stages*
- Building envelopes*
- Areas of proposed landscaping*
- The nature of utility services (including waste disposal arrangements)*
- Any other matter which is considered appropriate by the responsible authority to satisfy the requirements of this Scheme*

The entirety of the Incorporated Plan is outlined at **Figure 4**. Quite obviously, the requirements of the Incorporated Plan Overlay and Schedule have been amended since the preparation of C002, as little of the detail now required is demonstrated in this incorporated plan.

As demonstrated in **Figure 4** and more closely in **Figure 7**, the incorporated plan demonstrates four lots to be developed on the (approximate) subject land, with frontages fully to the road. It is noted that the development brought forward over the years is not absolutely, but generally in accordance with the plan, as suitable under the Overlay and Schedule. The argument put forth by officers is that by increasing the lot yield by a multiple of three (3) to create a total of twelve (12) lots in the area, the proposal is no longer generally in accordance with the plan. As such, notice of the proposal was given, and officers content that the exemption provided by the overlay does not apply. This has not been debated by the applicant as of the time of writing.



Figure 7 – Detail from the Incorporated Plan (C002) of the subject site in neighbourhood context (Source: DELWP Resource Library).

Decision Guidelines: Approval of an Application to Subdivide Land

Before deciding on an application to subdivide land, the responsible authority must also consider, as appropriate:

- *The suitability of the land for subdivision.*
- *The existing use and possible future development of the land and nearby land.*
- *The availability of subdivided land in the locality, and the need for the creation of further lots.*
- *The effect of development on the use or development of other land which has a common means of drainage.*
- *The subdivision pattern having regard to the physical characteristics of the land including existing vegetation.*
- *The density of the proposed development.*
- *The area and dimensions of each lot in the subdivision.*
- *The layout of roads having regard to their function and relationship to existing roads.*
- *The movement of pedestrians and vehicles throughout the subdivision and the ease of access to all lots.*
- *The provision and location of reserves for public open space and other community facilities.*
- *The staging of the subdivision.*
- *The design and siting of buildings having regard to safety and the risk of spread of fire.*
- *The provision of off-street parking.*
- *The provision and location of common property.*
- *The functions of any body corporate.*
- *The availability and provision of utility services, including water, sewerage, drainage, electricity and gas.*
- *If the land is not sewered and no provision has been made for the land to be sewered, the capacity of the land to treat and retain all sewage and sullage within the boundaries of each lot.*

- *Whether, in relation to subdivision plans, native vegetation can be protected through subdivision and siting of open space areas.*

In relation to the Clause 65.02 'Decision Guidelines', Officers attest that there is a suitability for some level of subdivision to occur in relation to the property. Key areas where the proposal is deemed as failing includes the density, layout, existing vegetation, movement of access and ease of access.

The applicant at Page 20 of their submission in **Attachment 3** notes that variations to the incorporated plan have previously been approved, as is the case in the North Course and lot layouts to the east along Kings Cove Boulevard, Storth Ryes Avenue and The Billabong. Officers contend that decision guidelines above with relation to vegetation, site access, and servicing are key points of difference that made the North Course an amenable outcome. New roads were proposed, and vegetation loss was minimised along Hardys Road in this instance. Further, the North Course is not adjacent to the remaining 4000 plus square metre allotments in the same incorporated plan area, thus the neighbourhood character arguments put forth do not hold the same amount of weight.

Along with the decision guidelines and servicing is the referral response from Country Fire Authority which highlights that the proposal may have a servicing issue for Hydrants. Hydrants are currently provided at every other lot along the south/east of Kings Cove Boulevard. Hydrants must service the rear of the lot within 120 metres, which is a requirement based on hose reel lengths and water pressure. With a battle-axe configuration, some of the rear/furthest points from the road reserve on the proposed lots are closer to 200 metres. As of the time of writing a response is being prepared by the applicant, but it is argued that this would not necessarily alter the officer recommendation without significant amendment to and further public notice of the proposal.

Key to the officer argument against the proposal is neighbourhood character, relying on the specific history of the development, the recent amendments to Agreements, public response to the Agreements, some recent variations to covenants, and the assessment and subsequent decision made in relation to planning permit application 61/2020/P. Officers acknowledge that no objections were lodged with respect to this proposal, however the public sentiment is being carried forward from those other consultation processes.

As per the officer recommendation, the assessment is made that the application cannot be supported. The proposed grounds of refusal are:

- the proposed subdivision is inconsistent with the Incorporated Plan Overlay Schedule 1 – Storth Ryes Incorporated Plan C0002 June 2000;
- the proposed subdivision is inconsistent with the prevailing neighbourhood character for low density residential zone area of this estate;
- the proposed subdivision is inconsistent with the planning policy framework relating to neighbourhood character at clause 15.01-5S; and
- the proposed subdivision is inconsistent with the local planning policy framework at clause 21.12-2, Metung Strategy Plan, particularly in relation to landscape and environmental values and character of the area.

The proposal increases the anticipated lot yield for this section by a multiple of three (3). Lots which were to have full frontage to the road are in this application proposed to include a battle axe configuration, which is inconsistent with the prevailing lot layout. Nowhere else in the estate is there such an intensity of fragmented property accesses proposed. From a traffic safety and site servicing perspective, this is an undesirable outcome. Typically this arrangement would be proposed in areas with significant environmental constraints which limit access, such as slope or vegetation, or where there is an established dwelling to be retained in a two-lot subdivision.

Collaborative procurement

Not applicable

Council Plan

This report has been prepared and aligned with the following strategic objectives set out in the Council Plan 2021-2025:

Strategic Objective 2: 2.1 Statutory and strategic planning for land use delivers sustainable outcomes that balance the need for growth with the enhancement of our lifestyle, character, the built and natural environment.

Council Policy

As officers have determined that an application is not supported, the matter has been reported to Council for consideration and determination pursuant to *Council's Planning Permit Application Delegations Policy 2018*.

Options

The matter must be determined by Council. The options available include:

1. Refusal, subject to specific grounds as listed in the recommendation, or
2. Approval, subject to conditions.

Should Councillors choose to grant a planning permit, it is recommended that an alternative motion be considered which sets out in-principal support for the application and parameters for delegation of the setting of conditions to the General Manager, Place and Community, as the outstanding matter of Country Fire Authority referral response may require some modifications to the design and further conditions to be imposed.

Resourcing

Financial

The assessment of the planning permit application is subject to standard statutory fees which contribute to cost recovery.

Plant and equipment

Nil resources required outside standard working equipment.

Human Resources

The application assessment is undertaken by staff in the planning team.

Risk

The risks of this proposal have been considered and there is limited organizational assessed risk outside the typical planning assessment process.

Economic

It could be considered that the proposal will provide minor opportunities for development through an increase in provision of lots for housing.

Social

Despite there being no objections received by the proposal, it is argued that there is the potential for the proposal to create stress on community infrastructure as well as a likely increase in the amount of traffic, noise, and the creation of related amenity impacts on the surrounding neighbourhood as mentioned.

Environmental

From a land capability and biodiversity perspective, it is likely that environmental features would be impacted by the proposal. As mentioned, there is no drainage outfall or waterway available to the proposed subdivision.

Due to the proposed lot sizes and the planning provisions which apply to the property, planning approval will not be required for the removal of vegetation on the proposed lots, which may ultimately lead to a loss in trees on the site as mentioned.

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.

Engagement

Pursuant to the *Planning and Environment Act 1987*, notification of the proposal was carried out via a sign on site and letters to directly affected landowners/occupiers. There have been no objections received. The requirement to carry out notice has been undertaken by the applicant to the satisfaction of the responsible authority.

Attachments

1. Application Form [3.1.1 - 2 pages]
2. Plans [3.1.2 - 2 pages]
3. Copy of Title, Agreements and Supporting Documentation [3.1.3 - 138 pages]
4. Officer Response to Application [3.1.4 - 1 page]
5. Referral Responses [3.1.5 - 5 pages]

4 Councillor and Delegate Reports

4.1 Cr Tom Crook

Cr Crook spoke on events attended over the past month; details of these events can be listened to in the recording of this meeting.

4.2 Cr Arthur Allen

Cr Allen spoke to his written report at page 30.

4.3 Cr John White

Cr White spoke on events attended over the past month:

- Audit and Risk Committee meeting;
- Agriculture Advisory Committee meeting; and
- Safety aspects in relation to Lindenow South meeting.

4.4 Cr Jane Greacen OAM

Cr Greacen OAM spoke on events attended over the past month; details of these events can be listened to in the recording of this meeting.

4.5 Cr Mark Reeves

Cr Reeves spoke on events attended over the past month; details of these events can be listened to in the recording of this meeting.

4.6 Cr Sonia Buckley

Cr Buckley spoke on events attended over the past month; details of these events can be listened to in the recording of this meeting.

4.7 Cr Mendy Urie

Cr Urie spoke to her written report at page 30.

COUNCILLOR WRITTEN REPORTS

Cr Arthur Allen

On August 25th, 2021, I attended the first meetings of the Economic Development Committees along with Cr Stow. The two groups are tasked with developing an economic development strategy from the perspective of both larger business and from the smaller scale sectors of our economy. It was great to see the commitment of both groups to the task ahead and I look forward to council receiving their report.

On Wednesday 1st September 2021, along with Councillor Reeves and Mayor Mendy, I attended a forum entitled "Future of Orbost and District Quarterly Conversation". Whilst there were some very good speakers present, I came away unsure what will benefit Orbost into the future. I hope and trust that tangible and ongoing economic activities result for Orbost, Swifts Creek and our other communities that have their economies based on timber.

Cr Mendy Urie

Community Engagements

01/09/21 - Future of the Orbost and District - Conversation Quarterly; Tim Cotter and LVA and Smart Specialization (SS) presentation. Interesting to learn more about SS approach and to keep up with conversations around renewal in Orbost.

Representation

30/08/21 - Local Government Mayoral Advisory Panel (LGMAP) joint presentation around Environmental Effects Statement (EES) Advocacy with Mornington Shire Council Mayor, and officers. Minister Lean was unwell, so presented to some of his senior staff. Requested to meet with minister at a later date.

03/09/21 - With the CEO and Council Emergency Manager staff, Met with Michelle Young and her team, new Deputy Commissioner of Fire Rescue Victoria to hear about the new structures and personnel in this organisation.

08/09/21 - Final meeting of LGMAP. Minister Lean on leave, so Minister Mary-Anne Thomas stepping in. Topics included: Council Culture and the PWC Project, Improving culture of Council, Regional Housing issues, Accountability and Transparency reforms and single use plastic presentation. This has been a great forum (over just 4 sessions) for learning, making connections, and building relationships and I have been very pleased to have been part of it and to contribute. I will share presentations with Councillors

08/09/21 - With CEO, met with CEO and staff BRHS and PHU CEO and staff about COVID vaccination rollout in E Gippsland. Focus on Council's role in supporting a rapid rollout and how all agencies can work together for best results for our community.

08/09/21 - One Gippsland Mayors and Deputy-Mayors met with C4G to discuss Cleaner Energy as part of their consultation process.

09/09/21 - With Cr White, Agricultural Sector Advisory Committee (on-line). Cr White invited to chair. Great discussions especially around the future focus of this group, and the early results from the Farmer Survey coming in. Frequency of meetings will increase while future directions are being determined.

09/09/21 - Mayoral briefing on Cultural review (PWC). Poor Councillor behavior is an issue across a number of LGA's (this is not a new issue but seems to be at high levels currently and causing a lot of concern). Minister for LG has initiated this review with an opportunity for broad participation of Councillors over the next months.

10/09/21 - With CEO Briefing from MAV re changes to MAV Workcover Insurance

13/09/21 - Meeting 2 with Border Reps Reference Group. Chaired by Minister Mary-Anne Thomas. Updates provided on relevant border issues and a chance for discussion. Advocated for some East Gippsland residents 'stuck' in parts of NSW; seeking equality of eligibility for applying to return home.

14/09/21 - Special meeting: Audit & Risk Combined annual meeting with Councillors

Training

02/09/21 - MAV Meeting Procedure. A helpful refresher.

Other

Again, there have been a lot of community events cancelled due to rapid initiation of lockdown rules from 21st August and extended until end of Thursday 9th Sept. The constant scheduling and cancelling and ongoing uncertainty is now resulting in many events being cancelled until the end of the year when (we anticipate) there will be more certainty D/T increased vaccination rates in E Gippsland.

Councillors decided we should write to the Premier, outlining some of the negative effects of this situation on our bushfire affected communities, businesses, young people and those who are not safe at home. The letter was sent on Monday 6th September. Notification of some restrictions easing from MN on Thursday 9th Sept will I think be most welcomed by many people, although we all continue on high alert and following all public health restrictions.

I will be taking leave from Wednesday 15th Sept – Sunday 3rd October 2021 and am grateful that Deputy Mayor, Cr Mark Reeves will step in for me during this time.

5 Officer Reports

5.1 Assets and Environment

5.1.1 CON2018 1254 Maintenance Services for the Raymond Island Ferry - Contract Extension

Authorised by General Manager Assets and Environment

Conflict of Interest

Officers preparing this report have no conflict of interest to declare.

Executive Summary

The purpose of this report is to seek Council's approval to exercise its option with CON2018 1254, to extend the existing maintenance services for the Raymond Island Ferry for a period of twenty-four (24) months, to 30 September 2023 for three of the current contractors and for a period up to 10 December 2021 for one of the current contractors.

This contract is for the inspection and maintenance of the Raymond Island Ferry including all fixtures and components to ensure the ferry and all components of the ferry are well maintained and in a safe and working condition. The tender was split into five packages to reflect the variety of trades and skills required to deliver the works. The five packages are:

- A) maintenance coordination
- B) mechanical services
- C) electrical services
- D) hydraulic services and
- E) welding and fabrication services

The contract commenced on 1 October 2018 with the initial term scheduled to end on 30 September 2021. Under the agreement, Council has the option to extend the contract for a further twenty-four (24) months solely exercisable by Council. The intention is to extend the contract for the full contract extension term for three out of the four contractors with the completion date being 30 September 2023 and extend the contract for part of the contract extension term up to 10 December for one of the contractors being The Trustee for Curtis Family Trust due to this contractor deciding to close its business effective 11 December 2021.

Officer Recommendation

That Council:

- 1. Receives and notes this report,***
- 2. Approves the contract extension to CON2018 1254 Maintenance Services for the Raymond Island Ferry for a period of twenty-four (24) months to 30 September 2023, for the tendered lump sum and schedule of rates to the following contractors:***
 - a. Sixtyninth Calajero Proprietary Limited;***
 - b. MGL Electrical Pty Ltd;***
 - c. Gary's Hydraulic Services Pty. Ltd and***
- 3. Approves the contract extension to CON2018 1254 Maintenance Services for the Raymond Island Ferry for a period up to Friday, 10 December 2021 for the tendered schedule of rates to the following contractor:***
 - a. The Trustee for Curtis Family Trust***
 - b. The Trustee for Curtis Family Trust***

Cr Mark Reeves / Cr Arthur Allen

THAT THE RECOMMENDATION BE ADOPTED

CARRIED

Background

CON2018 1254 is a lump sum and schedule of rates contract for appropriate contractors to undertake:

- A) maintenance coordination
- B) mechanical services
- C) electrical services
- D) hydraulic services and
- E) welding and fabrication services

On 13 November 2018 CON2018 1254 Maintenance Services for the Raymond Island Ferry was awarded by Council for the initial term commencing 1 October 2018 and expiring 30 September 2021.

As a result of the request for tender process, contracts were formed with five (5) tender packages as follows:

CON2018 1254A	-	Sixtyninth Calajero Proprietary Limited;
CON2018 1254B	-	The Trustee for Curtis Family Trust;
CON2018 1254C	-	MGL Electrical Pty Ltd;
CON2018 1254D	-	Gary's Hydraulic Services Pty. Ltd. and
CON2018 1254E	-	The Trustee for Curtis Family Trust.

Three of the four contractors have agreed to the contract extension, subject to Council approval. The Trustee for Curtis Family Trust has decided to opt out as they are intending to close their business toward the end of the year.

The works completed to date by all contractors as part of the above contracts have been satisfactory. Based on performance and availability, this report recommends that three contractors be offered the extension option, a period of twenty-four (24) months, to 30 September 2023 and that The Trustee for Curtis Family Trust for a period up to 10 December 2021, subject to Council approval.

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*.

Collaborative Procurement

Not applicable

Council Plan

This report has been prepared and aligned with the following strategic objectives set out in the Council Plan 2021-2025:

Strategic Objective 2: 2.2 Infrastructure provision and maintenance supports a diverse range of current and future user needs and activities and is both environmentally and financially sustainable.

Strategic Objective 5: 5.5 Resources are managed to meet current and future needs and priorities.

Council Policy

This report and its recommendations are in accordance with the East Gippsland Shire Council Procurement Policy (2020).

Options

There are three options available to Council with respect to this report.

1. Exercise the twenty-four month extension option with Sixtyninth Calajero Proprietary Limited, MGL Electrical Pty Ltd and Gary's Hydraulic Services Pty. Ltd. with the completion date being 30 September 2023 and up to 10 December with The Trustee for Curtis Family Trust.
2. Exercise the extension options listed above with only some of the current panel.
3. Re-tender for the services provided by Contract CON2018 1254 Maintenance Services for the Raymond Island Ferry.

Option 1 is recommended for the reasons outlined earlier in this report, as it provides Council continued reliability in inspection and maintenance of the ferry.

Resourcing

Financial

The lump sum value of works conducted under CON2018 1254 Maintenance Services for the Raymond Island Ferry between the commencement on 1 October 2018 to 30 September 2021 is detailed in the following table:

YEAR	PERIOD	SERVICE	AMOUNT GST EXL.
1	1 Oct 2018 – 30 Sep 2019	maintenance coordination mechanical services electrical services hydraulic services welding & fabrication services	\$13,520.00 & Schedule of rates \$22,855.68 & Schedule of rates Schedule & rates only \$5,700.00 & Schedule of rates \$3,750.00 & Schedule of rates
2	1 Oct 2019 – 30 Sep 2020	maintenance coordination mechanical services electrical services hydraulic services welding & fabrication services	\$13,520.00 & Schedule of rates \$22,855.68 & Schedule of rates Schedule & rates only \$5,700.00 & Schedule of rates \$3,750.00 & Schedule of rates
3	1 Oct 2020 – 30 Sep 2021	maintenance coordination mechanical services electrical services hydraulic services welding & fabrication services	\$13,520.00 & Schedule of rates \$22,855.68 & Schedule of rates Schedule & rates only \$5,700.00 & Schedule of rates \$3,750.00 & Schedule of rates
TOTAL			

Plant and equipment

Not applicable

Human Resources

The contract is managed internally by existing staff within the Assets and Environment Directorate. Exercising the contract extension has no impact on existing staff capacity.

Risk

The risks of this proposal have been considered and the Contractors are required to carry out all activities as specified in the specifications and following the Occupational Health and Safety Regulations.

Council Officers are currently working on a plan to bring the mechanical services and welding and fabrication services in-house utilising the current qualified mechanic and owner of The Trustee for the Curtis Family Trust. This operator has been working on the ferry for the past 15 years and holds more mechanical and structural knowledge of the ferry than any other person. This plan will negate the risk of knowledge loss and will ensure continuity of these particularly important services to the ferry.

Economic

Offering contract extensions to the four recommended local contractors (5 tender packages) supports local business and employment

Social

The maintenance of the ferry is a critical component ensuring that access to Raymond Island is maintained. Outage of the ferry services will impact residents and emergency services.

Environmental

There are no identified environmental impacts in relation to this report.

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.

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

Engagement

Not applicable

Attachments

Nil

5.1.2 CON2022 1444 - Major Culvert Repairs – Various Locations Shire Wide

Authorised by General Manager Assets and Environment

Conflict of Interest

Officers preparing this report have no conflict of interest to declare.

Executive Summary

Pursuant to sections 3(1) and 66(5) of the *Local Government Act* 2020, the information contained in the attachment/s to this report are confidential because it contains private commercial information, which if released, would unreasonably expose the business, commercial or financial undertaking to disadvantage.

The purpose of this report is to provide the detail and background of the tender and evaluation process for CON2022 1444 Major Culvert Repairs Various Locations Shire Wide and seek approval by Council to accept the recommendations made by the Tender Evaluation Panel.

Bridges and major culverts play a critical role across Council's 3,018km road network. All 132 major culverts managed by Council are inspected to assess their condition every three years, to ensure serviceability and public safety.

44 sites of 132 inspected were identified as needing some form of reactive works during the three-yearly inspection conducted throughout 2020-21. A tender has been prepared to address these needs, ranging from minor repairs to significant rehabilitation works.

The Tender Evaluation Report is provided as **Confidential Attachment 1** and Council is now in a position to award a contract.

Officer Recommendation

That Council:

- 1. receives and notes this report and all attachments pertaining to this report;***
- 2. accepts the tender submitted by _____ for CON2022 1444 Major Culvert Repairs Various Locations Shire Wide for the contract amount of \$_____, exclusives of GST;***
- 3. authorises signing and sealing of the contract in the form proposed; and***
- 4. resolves that the attachments to this report and all discussions in relation to the attachments remain confidential.***

THAT COUNCIL:

- 1. RECEIVES AND NOTES THIS REPORT PERTAINING TO THE AWARDING OF CON2022 1444 MAJOR CULVERT REPAIRS VARIOUS LOCATIONS SHIRE WIDE.**
- 2. ACCEPTS THE TENDER SUBMITTED BY EAST GIPPSLAND ROAD MAINTENANCE PROPRIETARY LIMITED FOR MAJOR CULVERT REPAIRS VARIOUS LOCATIONS SHIRE WIDE FOR THE CONTRACT AMOUNT OF \$502,625.00 (EX GST);**
- 3. AUTHORISES SIGNING AND SEALING OF THE CONTRACT IN THE FORM PROPOSED; AND**
- 4. RESOLVES THAT THE ATTACHMENTS TO THIS REPORT AND ALL DISCUSSIONS IN RELATION TO THE ATTACHMENTS REMAIN CONFIDENTIAL.**

Cr Tom Crook / Cr Jane Greacen OAM

THAT THE RECOMMENDATION BE ADOPTED

CARRIED

Background

Bridges and major culverts play a critical role across Council's 3,018km road network. All major culverts are inspected to assess their condition every three years, to ensure serviceability and public safety.

Throughout late 2020 and early 2021, all of Council's 132 major culverts were subject to the three-yearly inspection by a third-party qualified engineer. As a result of this assessment, 44 sites were identified as needing some form of reactive works to maintain their integrity and ensure maximum longevity. The required works range from minor repairs to major rehabilitation works.

A tender was prepared and advertised covering the scope of works needed to address all issues identified during the 2020/21 major culvert inspection across 44 sites. These works will ensure an appropriate response to the issues identified, maintaining road user safety, asset longevity, resilience to storm events and reliable service to the community.

A Tender Evaluation Panel (TEP) was established to assess the tenders received. A report and recommendation from the TEP is provided as **Confidential Attachment 1** and Council is now in a position to award a contract.

Legislation

On 24 March 2020, the Government passed the *Local Government Act 2020* (the new Act). As of 1 July 2021, all provisions from the new Act have commenced. Some provisions of the *Local Government Act 1989*, that have not been repealed, will remain applicable until such time as they are revoked.

This report has been prepared in accordance with *Local Government Act 2020*

Pursuant to sections 3(1) and 66(5) of the *Local Government Act 2020*, the information contained in the attachment/s to this report are confidential because it contains private commercial information, which if released, would unreasonably expose the business, commercial or financial undertaking to disadvantage.

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.

Collaborative procurement

Pursuant of section 109(2) of the *Local Government Act* 2020, this report has not been prepared in collaboration with other municipalities or agencies, as it is direct response to a condition assessment undertaken on East Gippsland Shire Council managed assets.

Council Plan

This report has been prepared and aligned with the following goals set out in the Council Plan 2021-2025:

Strategic Objective 2: 2.2 Infrastructure provision and maintenance supports a diverse range of current and future user needs and activities and is both environmentally and financially sustainable.

Resourcing

Human Resources

The project will be supervised by existing personnel from the Assets and Projects team.

Risk

The risks of this proposal have been considered low, as the recommendation pertains to mitigating identified risks associated with major culverts.

Environmental

When complete, the project will ensure that waterways in these locations will have unimpeded stream flows and improved erosion protection.

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.

Engagement

Affected communities will be consulted as required throughout the project.

Attachments

1. CONFIDENTIAL - CON2022 1444 Major Culvert Repairs Various Locations - Tender Evaluation Panel Report [5.1.2.1 - 9 pages]

5.2 Bushfire Recovery

5.2.1 South Bairnsdale Industrial Estate Declaration of a Special Charge Scheme

Authorised by General Manager Bushfire Recovery

Conflict of Interest

Officers preparing this report have no conflict of interest to declare.

Executive Summary

This report recommends that Council formally provide a notice of intent to commence the statutory process required under section 163 of the Local Government Act 1989 to implement a Special Charge Scheme. The Public Notice of Intent to Declare a Special Charge Scheme for the South Bairnsdale Industrial Estate is at **Attachment 1**.

The proposed scheme will require some landholders located in the South Bairnsdale Industrial Estate (the estate), to contribute a portion of the funding required to facilitate works to upgrade the water supply to the estate.

Works to upgrade the water supply will significantly reduce the costs to property owners located in the estate when installing private firefighting services for buildings with floor areas greater than 500 m², thus removing what has been identified by landholders as a key barrier to developing effective use of the land.

The overall project cost to upgrade the water supply to the estate is \$2.4M. Of that, East Gippsland Water has already contributed \$1.1M in works and Regional Development Victoria has provided a grant of \$500,000. This Special Charge Scheme is intended to raise \$400,000 from benefiting landowners and the final \$400,000 contribution will be from Council. The contribution from Council is proposed to be allocated from the Economic Development Discretionary Fund and a report seeking Council's endorsement of that allocation will be made at a future meeting.

Officer Recommendation

That Council:

- 1. *Receives and notes this report and all attachments pertaining to this report;***
- 2. *Gives notice of its intention to declare a special charge in accordance with section 163 of the Local Government Act 1989 (Act) as follows:***
 - 2.1 *A special charge is declared for the period commencing on the day on which Council issues a notice levying payment of the special charge and concluding on 30 June 2026.***
 - 2.2 *The special charge be declared for the purpose of repaying a debt to be incurred by Council in engaging East Gippsland Water to make arrangements to upgrade the water supply service at the South Bairnsdale Industrial Estate (Estate), which:***

- 2.2.1 Council considers will confer a special benefit on those persons required to pay the special charge (and who are described in succeeding parts of this resolution); and**
- 2.2.2 arises out of Council's functions of:**
- (a) advocating and promoting proposals which are in the best interests, and for the benefit and wellbeing, of the municipal community;**
 - (b) providing property and infrastructure services;**
 - (c) ensuring the economic sustainability of the Estate and the broader municipal community;**
 - (d) enhancing the safety and wellbeing of properties, owners and occupiers within the Estate; and**
 - (e) generally ensuring the peace, order and good government of the municipal district.**
- 2.3 The total:**
- 2.3.1 cost to Council of performing the functions described in paragraph 2.2.2 of this resolution is estimated to be \$1,300,000; and**
- 2.3.2 amount to be levied under the special charge is \$400,000, or such other amount as is lawfully levied as a consequence of this resolution.**
- 2.4 The special charge is to be declared in relation to the land identified as the 'Designated Zone' shown on the Scheme Plan of Area in Attachment 4, and the properties in relation to which the special charge is to be levied are all of the properties identified in the Special Charge Property Application Plan at Attachment**
- 2.5 The amount of the Special Charge for which each owner is liable is listed alongside each property specified in Attachment 3.**
- 2.6 The owners of the land described in paragraph 2.4 of this resolution will, subject to a further resolution of Council, pay the special charge in the amount set out in paragraph 2.5 of this resolution in the following manner:**
- 2.6.1 payment by a lump sum within 90 days of receiving a notice levying payment under section 163(4) of the Act; or**
 - 2.6.2 payment under an instalment plan to be paid over a period of 5 years, which may include a component for reasonable interest in accordance with section 167(6) of the Act, at the election of the owner.**
- 3. Considers that there will be a special benefit to the persons required to pay the special charge because there will be a benefit to those persons that is over and above, or greater than, the benefit that is available to persons who are not subject to the proposed special charge, as a result of the expenditure proposed by the special charge, as the expenditure and resulting works will obviate the need for those persons to install private water supply works**

before constructing or occupying a building with a floor area greater than 500 square metres;

- 4. For the purposes of having determined the total amount of the special charge to be levied:***
 - 4.1 considers and formally records that only those properties located within the 'Designated Zone' shown on the Scheme Plan in Attachment 4 will derive a special benefit from the imposition of the special charge; and***
 - 4.2 determines for the purposes of sections 163(2)(a), (2A) and (2B) of the Act that the estimated proportion of the total benefits of the special charge to which the performance of the function or the exercise of the power relates (including all special benefits and community benefits) that will accrue as special benefits to the persons who are liable to pay the special charge is 100%.***
- 5. Give public notice in the Bairnsdale Advertiser of Council's intention to declare, at its Ordinary Council meeting to be held on 7 December 2021, the special charge in the form set out above;***
- 6. Send separate letters, enclosing an outline of the proposed declaration set out in this resolution and a copy of the public notice referred to in paragraph 4 of this resolution, to the owners of the properties identified in paragraph 2.4 of this resolution, advising of Council's intention to levy the special charge, the amount for which the property owner will be liable, the basis of calculation of the special charge, and notification that submissions in relation to the proposal will be considered by Council in accordance with sections 163A and 223 of the Act;***
- 7. Authorises Anthony Basford, Chief Executive Officer, to carry out any and all administrative procedures necessary to enable Council to give effect to this resolution and to carry out its functions under sections 163A, 163(1A), (1B) and (1C), 163B and 223 of the Act; and***
- 8. Notes Council's financial commitment of \$400,000 should Council declare the special charge scheme described in this resolution.***

Amended Officer Recommendation

THAT COUNCIL:

- 1. RECEIVES AND NOTES THIS REPORT AND ALL ATTACHMENTS PERTAINING TO THIS REPORT;**
- 2. GIVES NOTICE OF ITS INTENTION TO DECLARE A SPECIAL CHARGE IN ACCORDANCE WITH SECTION 163 OF THE LOCAL GOVERNMENT ACT 1989 (ACT) AS FOLLOWS:**
 - 2.1 A SPECIAL CHARGE IS DECLARED FOR THE PERIOD COMMENCING ON THE DAY ON WHICH COUNCIL ISSUES A NOTICE LEVYING PAYMENT OF THE SPECIAL CHARGE AND CONCLUDING ON 30 JUNE 2026.**
 - 2.2 THE SPECIAL CHARGE BE DECLARED FOR THE PURPOSE OF DEFRAYING THE EXPENSES TO BE INCURRED BY COUNCIL IN ENGAGING EAST GIPPSLAND WATER TO MAKE ARRANGEMENTS TO UPGRADE THE WATER SUPPLY SERVICE AT THE SOUTH BAIRNSDALE INDUSTRIAL ESTATE (ESTATE), WHICH:**
 - 2.2.1 COUNCIL CONSIDERS WILL CONFER A SPECIAL BENEFIT ON THOSE PERSONS REQUIRED TO PAY THE SPECIAL CHARGE (AND WHO ARE DESCRIBED IN SUCCEEDING PARTS OF THIS RESOLUTION); AND**
 - 2.2.2 ARISES OUT OF COUNCIL'S FUNCTIONS OF:**
 - (A) ADVOCATING AND PROMOTING PROPOSALS WHICH ARE IN THE BEST INTERESTS, AND FOR THE BENEFIT AND WELLBEING, OF THE MUNICIPAL COMMUNITY;**
 - (B) PROVIDING PROPERTY AND INFRASTRUCTURE SERVICES;**
 - (C) ENSURING THE ECONOMIC SUSTAINABILITY OF THE ESTATE AND THE BROADER MUNICIPAL COMMUNITY;**
 - (D) ENHANCING THE SAFETY AND WELLBEING OF PROPERTIES, OWNERS AND OCCUPIERS WITHIN THE ESTATE; AND**
 - (E) GENERALLY ENSURING THE PEACE, ORDER AND GOOD GOVERNMENT OF THE MUNICIPAL DISTRICT.**
 - 2.3 THE TOTAL:**
 - 2.3.1 COST TO COUNCIL OF PERFORMING THE FUNCTIONS DESCRIBED IN PARAGRAPH 2.2.2 OF THIS RESOLUTION IS ESTIMATED TO BE \$1,300,000; AND**
 - 2.3.2 AMOUNT TO BE LEVIED UNDER THE SPECIAL CHARGE IS \$400,000, OR SUCH OTHER AMOUNT AS IS LAWFULLY LEVIED AS A CONSEQUENCE OF THIS RESOLUTION.**
 - 2.4 THE SPECIAL CHARGE IS TO BE DECLARED IN RELATION TO THE LAND IDENTIFIED AS THE 'DESIGNATED ZONE' SHOWN ON THE SCHEME PLAN OF AREA IN ATTACHMENT 4, AND THE PROPERTIES IN RELATION TO WHICH THE SPECIAL CHARGE IS TO BE LEVIED ARE ALL OF THE PROPERTIES IDENTIFIED IN THE SPECIAL CHARGE PROPERTY APPLICATION PLAN AT ATTACHMENT**

- 2.5 THE AMOUNT OF THE SPECIAL CHARGE FOR WHICH EACH OWNER IS LIABLE IS LISTED ALONGSIDE EACH PROPERTY SPECIFIED IN ATTACHMENT 3.**
- 2.6 THE OWNERS OF THE LAND DESCRIBED IN PARAGRAPH 2.4 OF THIS RESOLUTION WILL, SUBJECT TO A FURTHER RESOLUTION OF COUNCIL, PAY THE SPECIAL CHARGE IN THE AMOUNT SET OUT IN PARAGRAPH 2.5 OF THIS RESOLUTION IN THE FOLLOWING MANNER:**
- 2.6.1 PAYMENT BY A LUMP SUM WITHIN 90 DAYS OF RECEIVING A NOTICE LEVYING PAYMENT UNDER SECTION 163(4) OF THE ACT; OR**
- 2.6.2 PAYMENT UNDER AN INSTALMENT PLAN TO BE PAID OVER A PERIOD OF 5 YEARS, WHICH MAY INCLUDE A COMPONENT FOR REASONABLE INTEREST IN ACCORDANCE WITH SECTION 167(6) OF THE ACT, AT THE ELECTION OF THE OWNER.**
- 3. CONSIDERS THAT THERE WILL BE A SPECIAL BENEFIT TO THE PERSONS REQUIRED TO PAY THE SPECIAL CHARGE BECAUSE THERE WILL BE A BENEFIT TO THOSE PERSONS THAT IS OVER AND ABOVE, OR GREATER THAN, THE BENEFIT THAT IS AVAILABLE TO PERSONS WHO ARE NOT SUBJECT TO THE PROPOSED SPECIAL CHARGE, AS A RESULT OF THE EXPENDITURE PROPOSED BY THE SPECIAL CHARGE, AS THE EXPENDITURE AND RESULTING WORKS WILL OBTAIN THE NEED FOR THOSE PERSONS TO INSTALL PRIVATE WATER SUPPLY WORKS BEFORE CONSTRUCTING OR OCCUPYING A BUILDING WITH A FLOOR AREA GREATER THAN 500 SQUARE METRES;**
- 4. FOR THE PURPOSES OF HAVING DETERMINED THE TOTAL AMOUNT OF THE SPECIAL CHARGE TO BE LEVIED:**
- 4.1 CONSIDERS AND FORMALLY RECORDS THAT ONLY THOSE PROPERTIES LOCATED WITHIN THE 'DESIGNATED ZONE' SHOWN ON THE SCHEME PLAN IN ATTACHMENT 4 WILL DERIVE A SPECIAL BENEFIT FROM THE IMPOSITION OF THE SPECIAL CHARGE; AND**
- 4.2 DETERMINES FOR THE PURPOSES OF SECTIONS 163(2)(A), (2A) AND (2B) OF THE ACT THAT THE ESTIMATED PROPORTION OF THE TOTAL BENEFITS OF THE SPECIAL CHARGE TO WHICH THE PERFORMANCE OF THE FUNCTION OR THE EXERCISE OF THE POWER RELATES (INCLUDING ALL SPECIAL BENEFITS AND COMMUNITY BENEFITS) THAT WILL ACCRUE AS SPECIAL BENEFITS TO THE PERSONS WHO ARE LIABLE TO PAY THE SPECIAL CHARGE IS 100%.**
- 5. GIVE PUBLIC NOTICE IN THE BAIRNSDALE ADVERTISER OF COUNCIL'S INTENTION TO DECLARE, AT ITS ORDINARY COUNCIL MEETING TO BE HELD ON 7 DECEMBER 2021, THE SPECIAL CHARGE IN THE FORM SET OUT ABOVE;**

6. **SEND SEPARATE LETTERS, ENCLOSING AN OUTLINE OF THE PROPOSED DECLARATION SET OUT IN THIS RESOLUTION AND A COPY OF THE PUBLIC NOTICE REFERRED TO IN PARAGRAPH 4 OF THIS RESOLUTION, TO THE OWNERS OF THE PROPERTIES IDENTIFIED IN PARAGRAPH 2.4 OF THIS RESOLUTION, ADVISING OF COUNCIL'S INTENTION TO LEVY THE SPECIAL CHARGE, THE AMOUNT FOR WHICH THE PROPERTY OWNER WILL BE LIABLE, THE BASIS OF CALCULATION OF THE SPECIAL CHARGE, AND NOTIFICATION THAT SUBMISSIONS IN RELATION TO THE PROPOSAL WILL BE CONSIDERED BY COUNCIL IN ACCORDANCE WITH SECTIONS 163A AND 223 OF THE ACT;**
7. **AUTHORISES ANTHONY BASFORD, CHIEF EXECUTIVE OFFICER, TO CARRY OUT ANY AND ALL ADMINISTRATIVE PROCEDURES NECESSARY TO ENABLE COUNCIL TO GIVE EFFECT TO THIS RESOLUTION AND TO CARRY OUT ITS FUNCTIONS UNDER SECTIONS 163A, 163(1A), (1B) AND (1C), 163B AND 223 OF THE ACT; AND**
8. **NOTES COUNCIL'S FINANCIAL COMMITMENT OF \$400,000 SHOULD COUNCIL DECLARE THE SPECIAL CHARGE SCHEME DESCRIBED IN THIS RESOLUTION.**

Cr Trevor Stow / Cr Tom Crook

THAT THE RECOMMENDATION BE ADOPTED

CARRIED

Background

The South Bairnsdale Industrial Estate is considered East Gippsland's premier industrial estate for large scale developments and is partially developed with several significant and many smaller operations. There remains considerable potential for further development on the estate in terms of new developments as well as upgrades to existing developments.

The water supply (flow and pressure) provided to the estate by East Gippsland Water is such that any buildings over 500 m² in floor area must provide their own firefighting service. The costs of these systems can vary from \$50,000 - \$150,000 per building. This requirement has limited development of the estate and economic development within the Shire.

When the original subdivision was undertaken, it was not considered necessary to upgrade the water reticulation system for firefighting purposes. It was customary practice for the Country Fire Authority (CFA) to provide an exemption for the need to install a private supplementary firefighting service to buildings over 500 m².

However, in the wake of the Black Saturday bushfires in 2009 the CFA stopped providing such exemptions, leading to a need for those constructing buildings over 500 m² to provide a private firefighting service. (*East Gippsland Regional Towns Study, 2012, Spatial Economics*)

Upgrades to the current water supply system on the estate have the potential to unlock industry investment into the estate and support much needed job creation in East Gippsland. There is a higher unemployment rate in East Gippsland compared to regional Victoria. Drought, bushfires, COVID-19, and a decline in the timber industry, have also impacted employment in East Gippsland.

Ongoing representations have been made to Council by existing and potential developers advocating the need for a suitable fire protection solution for the estate to assist in unlocking investment into new and expanding businesses. The project will help maintain existing jobs in the estate and encourage potential investment into these sites.

Outlined in **Attachment 2 – Scheme Plan of Area** and **Attachment 3 – Special Charge Property Application Plan** is the area and individual lots that the scheme will apply to.

At its meeting on 22 June 2021, Council approved executing an agreement with East Gippsland Water for upgrading the water supply at Estate.

Economic benefits of the proposal

Using REMPLAN to analyse the estimated value in terms of financial investment and jobs is as follows:

- Project Implementation, \$2.3M investment into civil construction creating a total of seven jobs.
- Non-residential building construction and upgrades to industrial buildings. Estimate of \$100,000 into each vacant lot, and upgrade of \$50,000 into 27 under-utilised lots, gives a total \$4.75M into Non-Residential Building Construction, creating an additional 25 jobs.
- Investment into 34 new lots and 27 upgrades is estimated to create on average of two jobs per lot for new buildings and one additional job per lot for upgrades, totaling an additional 95 ongoing direct jobs.
- The total number of jobs created due to direct, supply-chain and consumption effects is up to 178 jobs.

The above figures are based on REMPLAN outputs; however, case studies of recent business set-up indicate there are greater benefits.

Case Study

A boat building company recently moved from a small site to a larger new facility in the estate. Moving to this larger facility has enabled the business to scale up and increased employment from three employees in early 2020 to 26 at the end of 2020, with the intention to expand further.

To significantly improve fire-fighting standards to the estate, it is proposed that East Gippsland Water will upgrade the existing potable water supply to the necessary pressure and flow rate that meets the building code.

East Gippsland Water have agreed to undertake the necessary upgrade works at a total project cost of \$1.3M, having already independently invested \$1.1M in earlier works to enable the proposed fire-fighting standard to be achieved. The estimated cost to complete the upgrade is \$1.3M.

Council officers propose that Council fund the remaining cost to complete the project from the following:

- \$500,000 grant from Regional Development Victoria (approved);
- \$400,000 East Gippsland Shire Council contribution; and
- \$400,000 to be raised from estate landowners through a proposed Special Charge Scheme.

Legislation

On 24 March 2020 the Government passed the *Local Government Act 2020* (the new Act). As of 1 July 2021, all provisions from the new Act have commenced. Some provisions of the *Local Government Act 1989*, that have not been repealed, will remain applicable until such time as they are revoked.

This report has been prepared in accordance with the *Local Government Act 1989*, Section 163 - Special Rate and Special Charges, which remains in force.

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*.

Under the *Local Government Act 1989* Section 163, to declare a Special Charge Scheme Council must give 28 days' public notice of its intention to declare a Special Charge Scheme.

Additionally, Council must send a copy of the public notice to each person who will be liable to pay the Special Charge within 3 working days of the day on which the public notice is published.

Once Council has given public notice of its intention to declare the Special Charge, Council must undertake formal consultation in accordance with section 223 of the *Local Government Act 1989*. The formal consultation will invite submissions from those affected by the scheme to be followed by a Council decision on whether to proceed with the scheme.

This decision is then subject to possible appeal through Victorian Civil and Administrative Tribunal (VCAT).

Collaborative procurement

Section 109(2) of the *Local Government Act 2020* is not applicable to this report.

Council Plan

This report has been prepared and aligned with the following strategic objectives set out in the Council Plan 2021-2025:

Strategic Objective 4: 4.1 Leadership enables economic prosperity, investment, recovery, resilience and growth.

Strategic Objective 4: 4.3 Council's work with stakeholders fosters entrepreneurship and new business opportunities, particularly with communities facing change.

Council Policy

This recommendation is in accordance with the Special Charge Scheme Policy 2021.

Options

Should Council wish to enable a fire-fighting standard water supply at the estate then there are two options for funding the remaining \$400,000 required.

Option 1 is a Special Charge Scheme where landowners who benefit from the scheme will contribute under the Special Charge Scheme policy.

Option 2 is that additional funding is sought from the State Government or from Council.

The Victorian Government has already provided \$500,000 in funding and through communications they have indicated they are highly unlikely to contribute further.

Council could consider paying an additional \$400,000 (on top of \$400,000 it is already proposing to contribute). This additional \$400,000 could be recovered from current or future rates revenue, or from a new differential rate on all sites in the estate. These options are not recommended. These options are not considered fair, as not all lots/landowners or contributing rate payers will receive the direct benefit of the increased water supply to the estate (i.e. could build a building over 500 m²).

Given that the Victorian Government has already provided \$500,000 in funding and that the Council is already contributing \$400,000, and that the benefit of the water upgrades accrues to the landowners, Option 1 is more equitable.

For the purposes of effecting Option 1 above, there are a variety of ways of applying the Special Charge Scheme to landholders. The method to identify the optimal process is clarified in the Special Charge Scheme Policy 2021.

In accordance with the formula outlined in the Local Government Act 1989, for calculating the Benefit Ratio, which establishes the maximum amount Council can collect under a special charge scheme, Council can levy the amount of \$400,000. See **Attachment 4 - Benefit Ratio Calculation**.

How the scheme will be applied to each property is outlined in **Attachment 5 – Statement of Methodology**.

Council officers have already undertaken informal consultation and will be presenting a scheme that they are satisfied is equitable across the estate.

Resourcing

Financial

There are no financial implications for declaring an intent to implement a Special Charge Scheme. Should Council then choose to declare a Special Charge Scheme, then Council will also need to commit \$400,000 funding for the project. It is proposed that this funding be made available from the Economic Development Discretionary Fund.

Plant and equipment

There are no implications on plant and equipment.

Human Resources

There are no human resources implications to administer the scheme, above those already available.

Risk

The risks of this proposal have been considered and are considered low.

There is no risk in declaring an intent to declare a Special Charge Scheme.

Should Council decide to implement a Special Charge Scheme there are a range of risks in relation to East Gippsland Water's ability to deliver the project on time and on budget. These risks are mitigated by the fact that these works are not complex and East Gippsland Water is experienced in the delivery of such works.

As per the agreement with East Gippsland Water, they have agreed to cover the cost of any over-expenditure on the project and any savings will accrue to Council.

Economic

This agreement will facilitate further development of the South Bairnsdale Industrial Estate with subsequent economic benefits.

Social

There are no social implications of the project.

Environmental

There are no environmental implications of this report. Should the Special Charge Scheme go ahead then all works will be undertaken in accordance with East Gippsland Water's environmental policies and practices.

Climate change

This report has been prepared and aligned with the following Climate Change function/category of building resilience through the increasing of fire-fighting capabilities given the expected (and recently experienced) increase in frequency and intensity of bushfire.

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

Engagement

To date, informal community consultation regarding the proposed Special Charge Scheme to fund this project has been undertaken. The project and Special Charge Scheme are broadly supported by the owners of land in the South Bairnsdale Industrial Estate.

A notification of intent to declare a Special Charge Scheme will trigger formal consultation with affected landowners and will be undertaken once Council has resolved in the terms of the recommendation outlined in this paper.

The Act outlines that Council need to undertake formal consultation with impacted property owners, and a letter to be distributed to those impacted by the Scheme which will be distributed within three working days of publishing notice of intent to declare a special charge scheme for the South Bairnsdale Industrial Estate in a newspaper generally circulating in the municipal district. See **Attachment 6 - Draft Letter to Ratepayers**

Attachments

1. Public Notice [**5.2.1.1** - 2 pages]
2. Scheme Plan of Area [**5.2.1.2** - 1 page]
3. Special Charge Property Application Plan [**5.2.1.3** - 5 pages]
4. Benefit Ratio Calculation [**5.2.1.4** - 6 pages]
5. Statement of Methodolgy [**5.2.1.5** - 2 pages]
6. Draft Letter to Ratepayers [**5.2.1.6** - 4 pages]

5.3 Business Excellence

Attendance

Cr Van Diggele left the Chamber at 7.05 pm and returned at 7.06 pm

5.3.1 Draft Annual Financial Statements 2020/21 and Draft Performance Statement 2020/21

Authorised by General Manager Business Excellence

Conflict of Interest

Officers preparing this report have no conflict of interest to declare.

Executive Summary

Councils are required to produce an annual report within three months of the end of the financial year. The annual report includes the annual financial statements (accounts), a performance statement and a range of other information to discharge councils' reporting requirements.

Due to the limited time available to achieve these requirements, provision exists in the *Local Government Act 1989* (the Act) for Councils to adopt the accounts and performance statement 'in principle' before submission to the Auditor General, the responsible Minister and later, inclusion in councils' Annual Report.

In line with the process in place to achieve 'in principle' adoption, the auditor will present the accounts and performance statement to Audit and Risk Committee (the Committee) on Tuesday 14 September 2021. After discussion between the Committee and the auditor, it is anticipated that the Committee will recommend that Council adopt the accounts and performance statement 'in principle'.

A copy of the draft accounts has been provided at **Attachment 1** and the draft performance statement at **Attachment 2**

Officer Recommendation

That Council, having considered a recommendation from the East Gippsland Shire Council Audit and Risk Committee:

- 1. receives and notes the report and its attachments;***
- 2. gives its 'in principle' approval to the Annual Financial Statements 2020/21 as provided at Attachment 1, subject to the Auditor General's review;***
- 3. gives its 'in principle' approval to the Performance Statement 2020/21 as provided at Attachment 2, subject to the Auditor General's review; and***
- 4. appoints Councillors _____ and _____ to certify the Annual Financial Statements 2020/21 and the Performance Statement 2020/21 in their final form.***

THAT COUNCIL, HAVING CONSIDERED A RECOMMENDATION FROM THE EAST GIPPSLAND SHIRE COUNCIL AUDIT AND RISK COMMITTEE:

- 1. RECEIVES AND NOTES THE REPORT AND ITS ATTACHMENTS;**
- 2. GIVES ITS 'IN PRINCIPLE' APPROVAL TO THE ANNUAL FINANCIAL STATEMENTS 2020/21 AS PROVIDED AT ATTACHMENT 1, SUBJECT TO THE AUDITOR GENERAL'S REVIEW;**
- 3. GIVES ITS 'IN PRINCIPLE' APPROVAL TO THE PERFORMANCE STATEMENT 2020/21 AS PROVIDED AT ATTACHMENT 2, SUBJECT TO THE AUDITOR GENERAL'S REVIEW; AND**
- 4. APPOINTS COUNCILLORS ALLEN AND WHITE TO CERTIFY THE ANNUAL FINANCIAL STATEMENTS 2020/21 AND THE PERFORMANCE STATEMENT 2020/21 IN THEIR FINAL FORM.**

Cr John White / Cr Mark Reeves

THAT THE RECOMMENDATION BE ADOPTED

CARRIED

Background

Councils are required to produce an annual report within three months of the end of the financial year. The annual report includes a range of information that is required to be provided in order to discharge councils' reporting requirements.

Due to the limited time available to achieve these requirements, provision exists in the *Local Government Act 1989* (the Act) for Councils to adopt the accounts and performance statement 'in principle' before submission to the Auditor General, the responsible Minister and later, inclusion in councils' Annual Report.

To achieve the timeline, officers prepare the accounts and performance statement, which are then audited by the Auditor General's contractor (the auditor). Any adjustments are discussed and implemented, with the accounts and performance statement then presented to Council's Audit and Risk Committee (the Committee) for review and subsequently to Council for 'in principle' adoption.

The accounts and performance statement are then sent to the auditor, who conducts a further review and signs the audit reports. These are then returned to Council for final certification by two Councillors, the Chief Executive Officer and the Principal Accounting Officer for inclusion in the Annual Report. Past practice has been that two Councillors who sit on the Committee are nominated to sign the accounts and performance statement.

The auditor will present the accounts and performance statement to the Committee meeting on Tuesday 14 September 2021. After discussion between the Committee and the auditor, it is anticipated that the Committee will recommend that Council adopt the accounts and performance statement 'in principle'.

Legislation

On 24 March 2020 the Government passed the *Local Government Act 2020* (the new Act). As of 1 July 2021, all provisions from the new Act have commenced. Some provisions of the *Local Government Act 1989*, that have not been repealed, will remain applicable until such time as they are revoked.

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* Sections 131 and 132 which details the requirements in respect of the preparation and certification of the Annual Report, annual financial statements and performance statement.

Council is required to submit the accounts and performance statement in their final form to the auditor for auditing as soon as possible after the end of the financial year. Council, after passing a resolution giving its approval in principle to the accounts and performance statement, must submit the statements to the auditor for reporting on the audit.

The auditor must prepare a report on the accounts and performance statement. The auditor must not sign a report on the accounts or performance statement unless they have been certified by Council after ensuring that the accounts and performance statement are in their final form after any changes recommended or agreed by the auditors have been made. The certification must then be made by the two Councillors who have been appointed by Council 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*.

Collaborative procurement

Not applicable to this report.

Council Plan

This report has been prepared and aligned with the following strategic objectives set out in the Council Plan 2021-2025:

Strategic Objective 5: 5.5 Resources are managed to meet current and future needs and priorities.

Council Policy

Not applicable to this report.

Options

Not applicable to this report.

Resourcing

Financial

Not applicable to this report.

Plant and equipment

Not applicable to this report.

Human Resources

Not applicable to this report.

Risk

The risks of this proposal have been considered and are not applicable to this report.

Economic

Not applicable to this report.

Social

Not applicable to this report.

Environmental

Not applicable to this report.

Climate change

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

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

Engagement

Ongoing discussions have occurred with Council's auditor in the preparation of the accounts and the performance statement. The auditor will present the accounts and performance statement to the Audit and Risk Committee for discussion and review on 14 September 2021.

Attachments

1. Annual Finance Statements 2020/21 [5.3.1.1 - 50 pages]
2. Performance Statement 2020/21 [5.3.1.2 - 12 pages]

5.3.2 CON2016 133 Provision of Banking and Associated Services - Contract Extension

Authorised by General Manager Business Excellence

Conflict of Interest

Officers preparing this report have no conflict of interest to declare.

Executive Summary

The purpose of this report is to seek Council's approval to exercise its option within CON2016 133, to extend the existing contract Provision of Banking and Associated Services, for a period of three (3) years to 21 September 2024.

This contract is a schedule of rates contract for banking and associated services, such as day-to-day transactional banking including Bpay/direct debits/period payments/electronic funds transfers and banking from Council facilities.

The contract commenced on 22 September 2016 with the initial five-year term scheduled to end on 21 September 2021. The contract was awarded for a fixed term period of five years with an option, solely exercisable by Council, for a further three years. The intention is to extend the contract for the full extension term of three years, with the completion date being 21 September 2024.

Officer Recommendation

That Council:

- 1. receives and notes this report, and***
- 2. approves the contract extension to CON2016 133 Provision of Banking and Associated Services for a period of three (3) years to 21 September 2024, to National Australia Bank***

Cr Jane Greacen OAM / Cr Arthur Allen

THAT THE RECOMMENDATION BE ADOPTED

CARRIED

Background

On 2 August 2016 Council awarded CON2016 133 Provision of Banking and Associated Services to National Australia Bank for the initial five-year term commencing 22 September 2016 and expiring on 21 September 2021 with an option, solely exercisable by Council, for a further three years.

This contract is a schedule of rates contract for banking and associated services such as transactional banking and/or collection services to East Gippsland Shire Council. It provides our customers with enhanced, easy to use systems for making payments to Council, as well as streamlined processes for use by Council staff in the facilitation of payments to external customers, as well as receipt of payments.

It also provides value added services for functions such as expense management for corporate card approvals and account allocations.

The services provided by National Australia Bank have been in accordance with the contract and no issues have been experienced during the initial contract period.

Legislation

On 24 March 2020 the Government passed the *Local Government Act 2020* (the new Act). As of 1 July 2021 all provisions from the new Act have commenced. Some provisions of the *Local Government Act 1989*, that have not been repealed, will remain applicable until such time as they are revoked.

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*.

Collaborative Procurement

Not applicable

Council Plan

This report has been prepared and aligned with the following strategic objectives set out in the Council Plan 2021-2025:

Strategic Objective 5: A transparent organisation that listens and delivers effective, engaging, and responsive services

Council Policy

This report and its recommendations are in accordance with the East Gippsland Shire Council Procurement Policy (2020).

Options

There are two options available to Council with respect to this report.

1. exercise the three (3) year extension with National Australia Bank with the contract completion date being 21 September 2024; or
2. re-tender for the services provided by Contract CON2016 133 Provision of Banking and Associated Services.

Resourcing

Financial

The total contract value for the initial five years plus the optional three-year period of the life of the contract is \$614,408.00 gst excl.

Plant and equipment

Not applicable

Human Resources

The contract is managed internally by existing staff within the Finance Unit. Exercising the contract extension has no impact on existing staff capacity.

Risk

The risks of this proposal have been considered and considered low.

Economic

Offering this contract extension supports internal and external customers with easy-to-use systems for making payments and streamlined process for receipting payments.

Social

There are no identified social impacts in relation to this report.

Environmental

There are no identified environmental impacts in relation to this report.

Climate change

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

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

Engagement

Not applicable

Attachments

Nil

5.3.3 Instrument of Appointment and Authorisation and Instrument of Sub-Delegation

Authorised by General Manager Business Excellence

Conflict of Interest

Officers preparing this report have no conflict of interest to declare.

Executive Summary

This report is seeking Council's approval for the Instrument of Sub-Delegation under the *Environment Protection Act 2017*, at **Attachment 1**, to enable officers to enforce the provisions that have come into force on 1 July 2021. The provisions in the *Environment Protection Act 1970* have been repealed and replaced with the new provisions in the *Environment Protection Act 2017*.

In addition, this report seeks Council's approval of the Instrument of Appointment and Authorisation under the *Environment Protection Act 2017* for the Council staff in the Environmental Health, Community Laws and Waste teams, at **Attachment 2**.

These are two new Instruments that will enable Council staff to enforce the *Environment Protection Act 2017* following the repeal of the *Environment Protection Act 1970*.

This report is also seeking approval for the Instrument of Appointment and Authorisation under the *Planning and Environment Act 1987* for the Manager Planning at **Attachment 3** and the revocation of Instruments of Appointment and Authorisation for those authorised officers no longer employed by Council.

Officer Recommendation

That Council:

- 1. receives and notes this report and all attachments pertaining to this report;***
- 2. in the exercise of the powers conferred by s 437(2) of the Environment Protection Act 2017 resolves that:***
 - a. the Instrument of Sub-Delegation provided at Attachment 1 is approved;***
 - b. Council Officers named in the Instruments of Appointment and Authorisation provided at Attachment 2 be appointed and authorised;***
 - c. the Instrument of Appointment and Authorisation and Instrument of Sub-Delegation come into force once the common seal is affixed and remain in force until Council determines to vary or revoke these; and***
 - d. the Instrument of Sub-Delegation at Attachment 1 and Instrument of Appointment and Authorisation at Attachment 2 be signed and sealed; and***

3. *in the exercise of the powers conferred by section 147(4) of the Planning and Environment Act 1987 resolves that:*
- a. *the Instruments of Appointment and Authorisation for Aaron Hollow, Stephen Daly, Stefani Risteska and Daniella Natautama are revoked;*
 - b. *the Council Officer named in Instrument of Appointment and Authorisation provided at Attachment 3 be appointed and authorised;*
 - c. *the Instrument of Appointment and Authorisation comes into force once the common seal is affixed and remains in force until Council determines to vary or revoke it;*
 - d. *the Instrument of Appointment and Authorisation provided at Attachment 3 be signed and sealed.*

Cr Mark Reeves / Cr Tom Crook

THAT THE RECOMMENDATION BE ADOPTED

CARRIED

Background

The appointment of Authorised Officers allows certain Council staff to act on behalf of the Council in the administration and enforcement of various Acts, regulations or local laws in accordance with the powers granted to them.

Under the *Environment Protection Act 2017* Council staff act on behalf of Council in enforcing the provisions of the Act. The Instrument of Delegation of the Environment Protection Authority issued on 4 June 2021 gave Councils the power to exercise the Environment Protection Authority's powers and functions under the *Environment Protection Act 2017* for the purpose of regulating:

- onsite wastewater management systems with a design or actual flow rate of sewage not exceeding 5,000 litres on any day; and
- noise from construction, demolition and removal residential premises.

The Instrument of Sub-Delegation under the *Environment and Planning Act 2017* at **Attachment 1** allows Council to delegate these powers to Council staff in the nominated positions.

This Instrument of Sub-Delegation requires that the Council staff members in the nominated positions are authorised officers under the *Environment Protection Act 2017*. Therefore, the following officers are required to be authorised officers under the *Environment Protection Act 2017* as per **Attachment 2**:

Anthony Basford, Chief Executive Officer
Jodie Pitkin, General Manager Place and Community
Fiona Weigall, General Manager Assets and Environment
Wayne Bath, Manager Sustainability and Waste Minimisation
Sam McPherson, Manager Regulatory and Compliance Services
Leah McLeod, Environmental Health Coordinator
Darren Lang, Community Laws Coordinator
Angus Howlett, Waste Planner Coordinator
Heidi Thewma, Coordinator Waste Operations
Guy Corney, Environmental Health Officer
Matt Blow, Environmental Health Officer

Peter Anderson, Environmental Health Officer
Jody Haberfield, Community Laws Officer
Zoe Jennings, Community Laws Officer
Nicole Guns, Community Laws Officer
Christopher Boyer, Community Laws Officer
Buck Cerridwyn, Community Laws Officer

Under the *Planning and Environment Act 1987* Council can appoint authorised officers to act on behalf of Council in certain circumstances and represent Council in enforcing provisions of the Act. Martin Richardson has been appointed Manager Planning and is required to be an authorised officer under the *Planning and Environment Act 1987*.

The Instruments of Appointment and Authorisation for the following officers are to be revoked as they are no longer employed by Council:

Aaron Hollow
Stephen Daly
Stefani Risteska
Daniella Natautama

Legislation

On 1 July 2020 the Government fully implemented all provisions of the *Local Government Act 2020*. Some provisions of the *Local Government Act 1989*, that have not been repealed, will remain applicable until such time as they are revoked.

This report is being prepared in accordance with Council's delegation under the *Environment Protection Act 2017* and the *Planning and Environment Act 1987*.

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*.

Collaborative procurement

This report does not involve collaborative procurement.

Council Plan

This report has been prepared and aligned with the following strategic objectives set out in the Council Plan 2021-2025:

Strategic Objective 5: 5.2 Strong relationships with government, partners and stakeholders are maintained and strengthened to advocate for the community.

Strategic Objective 5: 5.4 Continuous improvement systems are strengthened, and organisational efficiency enhanced.

Council Policy

There is no applicable Council Policy for this report.

Options

There are no alternative options for Council to consider in relation to Instruments of Appointment and Authorisation and Instrument of Sub-Delegation.

Resourcing

Financial

There are no financial implications from this report.

Plant and equipment

There are no plant and equipment implications from this report.

Human Resources

There are not implications for human resources. Existing resources will enforce the provisions of the *Environment Protection Act 2017* and the *Planning and Environment Act 1987*.

Risk

Implementing the Instrument of Sub-Delegation and appointing authorised officers minimises the risks of failing to comply with the *Environment Protection Act 2017* when officers are acting on behalf of Council under this Act.

Economic

The application of the powers, functions and duties under the *Environment Protection Act 2017* and *Planning and Environment Act 1987* will ensure businesses are operating within the legislative requirements and can effectively contribute to the Shire's economy.

Social

The East Gippsland Shire will have confidence that Council is applying the powers, duties and functions of the *Environment Protection Act 2017* and the *Planning and Environment Act 1987* for the well-being and benefit of the municipal community.

Environmental

The East Gippsland Shire will have confidence that Council is applying the powers, duties and functions of the *Environment Protection Act 2017* and the *Planning and Environment Act 1987* for the environmental sustainability of the Shire.

Climate change

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

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

Engagement

The Instruments in the report have been prepared in consultation with appropriate personal across the Council.

Attachments

1. Instrument of Sub- Delegation [**5.3.3.1** - 8 pages]
2. Instrument of Appointment of Authorisation EPA [**5.3.3.2** - 17 pages]
3. Instrument of Appointment and Authorisation P&E Act [**5.3.3.3** - 1 page]

5.3.4 Draft Procurement Policy

Authorised by General Manager Business Excellence

Conflict of Interest

Officers preparing this report have no conflict of interest to declare.

Executive Summary

In accordance with the new *Local Government Act 2020* (the new Act) Council is required to prepare and adopt a new procurement policy prior to 1 January 2022, refer **Attachment 1** for the new draft Procurement Policy and **Attachment 2** for the current Procurement Policy.

The Procurement Policy is required to specify the principles, processes and procedures applying in respect of the purchase of goods and services by the Council, including for the carrying out of works, whilst also seeking to promote open and fair competition and provide value for money.

The Procurement Policy must include the following:

1. the contract value above which the Council must invite a tender or seek an expression of interest;
2. a description of the criteria to be used by the Council to evaluate whether a proposed contract provides value for money;
3. a description of how the Council will seek collaboration with other Councils and public bodies in the procurement of goods or services; and
4. the conditions under which the Council may purchase goods or services without inviting a public tender or expression of interest.

Governance has prepared Council's new Procurement Policy and Procurement Procedure (**refer Attachment 3**) (Procurement Framework) to align with the intent of the new Act, whilst also incorporating feedback from within the organisation to ensure the framework represents best-practice for Council's procurement activities.

The approach has been to develop a Procurement Framework which includes the establishment of processes with clear roles and responsibilities and fosters effective decision-making processes, reflecting the key principles of transparency and accountability, which will create an environment that is also conducive to good governance.

Council's policy pursues innovation and continuous improvement and promotes economic, social and environmental sustainability and collaboration within Council and with other Councils.

Officer Recommendation

That Council:

- 1. receives and notes this report and all attachments pertaining to this report;***
- 2. adopts the draft Procurement Policy, at Attachment 1; and***
- 3. notes that the subsequent Procurement framework templates will be developed, upon adoption of the draft Procurement Policy.***

Cr Tom Crook / Cr Jane Greacen OAM

THAT THE RECOMMENDATION BE ADOPTED

CARRIED

Background

The new Act removes a lot of the rigidity that was contained in the old *Local Government Act* 1989 (such as removing ministerial exemptions and delegated market-engagement thresholds) in favour of allowing Councils to approach their procurements more flexibly.

However, the intent of the new Act is still subject to the key principles of:

- Value for Money;
- Open and Fair competition;
- Accountability;
- Risk Management;
- Probity and Transparency; and
- Sustainable and social procurement objectives.

The new Procurement Framework adopts and incorporates these key principles into Council's procurement activities by:

- clarifying what value for money includes and how value for money can be realised in Council's procurement activities (including for example, explaining how collaborative arrangements can be identified or utilised in a procurement) – see section 4.1 of the Policy;
- including processes for ensuring open and fair competition (such as by ensuring competitive neutrality is included and considered in each stage of the process – particularly for In-house Bids) – see section 6.3 of the Policy;
- ensuring there are clear responsibilities and delegations for each member of Council who are involved in a procurement process – see section 7.1 of the Policy;
- amending the exemptions for market engagement which may apply to procurement activities given the flexibility afforded by the new Act – see section 7.4 of the Policy;
- clarifying how contract variations of contracts already underway may be requested and approved to align with Council's risk management processes – see section 7.5 of the Policy;

- specifying when probity auditors or advisors are required to be engaged, how conflicts of interest are to be managed and delegation and expenditure thresholds are easily understood to assist Council's risk management and enable probity and transparency of the procurement process to be maintained – see section 5.2 of the Policy;
- promoting and encouraging sustainable and social procurement objectives, such as support for Indigenous Businesses, local content and environmental sustainability – see sections 4.4 – 4.7 of the Policy; and
- including options for innovative and contemporary methods and mechanisms of procurement to encourage new solutions and enhanced methods of procurement to be explored or utilised for particular procurements – see section 6 of the Policy.

Furthermore, officers have addressed these principles and requirements in great detail within the Procurement Procedure, providing context and actions to enable Council officers to be accountable to the process and ensure these outcomes can be achieved.

There are also a number of new inclusions to the framework to ensure Council can realise the benefit of the broader scope of the new Act and how Council may procure goods and services including:

- the ability to adjust evaluation criteria, prior to releasing to the market, to emphasise the importance of particular objectives (such as sustainability and local content) on a case-by-case basis, acknowledging that one size does not fit all – see sections 4.4 – 4.7 of the Policy;
- recognition and compliance with the Local Jobs First Regime when Council obtains State Government funding and an optional adjustment to the tender evaluation weightings where local content is a preferred factor - see section 4.4 of the Policy;
- sustainable procurement processes and recognition that sustainable procurement is of key benefit to the wider EGS community - see section 4.5 of the Policy;
- explaining the importance of awareness for the circular economy and circular procurement (which also responds to the key principle of sustainable procurement) – see section 4.6 of the Policy;
- adjusting the exemptions for when Council may undertake a time-sensitive or urgent procurement activity without a prior market process, this addresses the removal of ministerial approvals from the new Act, (while also ensuring the steps and approval processes remain in place to maintain the integrity and accountability of Council in the procurement process) – see section 6 of the Policy;
- inclusion of bidding at auction provisions (which allows a new way for Council to approach a competitive market process and obtain value for money) – section 6.5 of the Policy; and
- adjusted flexibility around Council being able to procure critical post-disaster/ emergency goods, services or works without issuing and proceeding through the usual market process – see section 6 and section 7.4 of the Policy.

Legislation

On 24 March 2020 the Government passed the new Act. As of 1 July 2021, all provisions from the new Act have commenced. Some provisions of the *Local Government Act* 1989, that have not been repealed, will remain applicable until such time as they are revoked.

This report has been prepared in accordance with new Act specifically sections 108 and 109.

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.

Collaborative procurement

Pursuant of section 109(2) of the *Local Government Act* 2020 this report has been prepared to provide a framework to Council when undertaking collaborative procurement.

Council Plan

This report has been prepared and aligned with the following strategic objectives set out in the Council Plan 2021-2025:

Strategic Objective 5: 5.5 Resources are managed to meet current and future needs and priorities.

Council Policy

The revised draft Policy redevelops Council's Procurement Framework to one of a strategic nature, utilising the opportunities presented with the new Act whilst ensuring compliance with the required principles. The development of a strategic procurement framework allows Council to approach procurement in a manner that serves the organisations objectives but also the community in an efficient and effective manner whilst ensuring that transparent and accountable practices still underpin the framework.

Options

Section 108 of the new Act requires Council to adopt a Procurement Policy which specifies the principles, processes and procedures applying in respect of the purchase of goods and services by the Council, including carrying out works, additionally the Act stipulates under sections 108 (3) (a-f) the mandatory inclusions that are to be captured within Council's Procurement Policy.

The draft policy, at **attachment 1**, addresses the requirements of the new Act and as such there are no alternative options to be considered.

Resourcing

Financial

There are no financial implications arising from the adoption of the Policy.

Plant and equipment

There is no implication for Council's plant and equipment from the adoption of this Policy.

Human Resources

The management of the Policy is effectively resourced within current arrangements.

Risk

The adoption and implementation of the Procurement Policy will strengthen Council's robust governance framework and assist in the mitigation of risks associated with the procuring of goods, services and works.

Economic

The new Framework demonstrates Council's commitment to procurement that supports Local Business and economic diversity. Where applicable, Council will give preference to goods manufactured or produced in Australia and will actively seek quotations and tenders from Local Businesses in the local government area. Council's sustainable procurement will be underpinned by the following principles, where possible:

- ensuring probity, accountability and transparency in the procurement process;
- ensuring Value for Money on a whole of life basis, rather than just initial cost;
- ensuring open and effective competition, and the development of competitive Local Business and industry;
- building relationships with Local Business;
- increasing local employment;
- fostering innovation and emerging sectors; and
- considering life cycle costs.

Social

The new Framework demonstrates Council's commitment to building a stronger community and meeting social objectives which benefit the Shire and commits to incorporating measures in its procurement processes and documentation which promote improved social outcomes.

Council's social procurement will be underpinned by the following principles:

- a thorough understanding of the socio-economic issues affecting our community;
- creation of training and employment opportunities for unemployed or disadvantaged residents in the Shire to address socio-economic issues;
- increasing social procurement spend;
- increasing employment opportunities for indigenous people, people with a disability, disadvantaged people and long term unemployed;
- promotion of equity, diversity and equal employment;
- prevent, detect and remove modern slavery from Council's supply chain; and
- respect for human rights, the rule of law and international norms of behaviour.

Environmental

The new Framework will support the purchase of goods, services and works that reduce air, water and soil pollution, greenhouse gas emissions, waste production, natural resource depletion and biodiversity depletion whenever they present an acceptable Value for Money outcome, and in some cases where they might not. Council's strategies will be underpinned by the following principles:

- considering a product's or asset's lifecycle;
- promoting circular economy participation;
- increase the use of recycled materials;
- improve energy and water efficiency;
- minimise waste production;
- reduce pollution;
- managing demand to reduce procurement requirements;
- encouraging innovation through specifications; and
- engaging suppliers who are also committed to reducing their environmental impact.

Climate change

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

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

Engagement

Internal engagement with has been undertaken with key stakeholders regarding the development of this policy.

Attachments

1. New Draft Procurement Policy [5.3.4.1 - 23 pages]
2. Old Procurement Policy [5.3.4.2 - 13 pages]
3. New Draft Procurement Procedure [5.3.4.3 - 49 pages]
4. Old Procurement Procedure [5.3.4.4 - 29 pages]

5.4 Place and Community

5.4.1 Planning Permit Application - Slip Road Foreshore Redevelopment

Authorised by General Manager Place and Community

Conflict of Interest

Officers preparing this report have no conflict of interest to declare.

Executive Summary

This report relates to the proposed buildings and works to alter the existing surface levels and native vegetation removal for the Crown foreshore reserve at Slip Road, Paynesville. The proposal triggered assessment under the land subject to inundation overlay and the native vegetation provisions but was exempt from notice.

The proposed plans are provided at **Attachment 2**, and generally provide for a range of improvements to the existing foreshore reserve, particularly in improvements to the existing car parking and drainage regimes, improving pedestrian accesses and provision of park amenities, upgrades and additions to marine facilities such as boat ramps, jetties, and marina infrastructure, and improves the public ablutions. Native vegetation removal includes vegetation within the seabed where the seawall and jetties will be constructed.

The application has been subject to referral to relevant authorities and various consents have been obtained, the confirmation of these responses and consents is provided at **Attachment 3**.

The project has a cost of works in excess of \$5 million and must be determined by Council in accordance with the *Planning Permit Applications Delegations Policy 2018*.

A detailed assessment of the application is provided in the Legislation Section of the report, and the finding is that the application is suitable for endorsement, having satisfied the concerns and considerations of the East Gippsland Planning Scheme and associated Acts and Regulations with respect to Aboriginal Cultural Heritage, and development on Crown foreshores.

The officer recommendation, having considered all relevant matters, is to grant a planning permit, subject to the conditions outlined at **Attachment 1**.

Officer Recommendation

That Council:

- 1. receives and notes this report and all attachments pertaining to this report; and***
- 2. Being the responsible authority and having considered the relevant planning matters, determines that planning application 236/2021/P is consistent with the requirements and objectives of the East Gippsland Planning Scheme and therefore resolves to Grant a Planning Permit for Buildings and works which alter existing surface levels and native vegetation removal at Slip Road, Paynesville, subject to the conditions provided at Attachment 1 to this report.***

Cr John White / Cr Sonia Buckley

THAT THE RECOMMENDATION BE ADOPTED

CARRIED

Background

The planning permit application relates to proposed development of the Slip Road Foreshore. Council most recently considered an addendum to the Paynesville Maritime Precinct Master Plan in a report to Council Tuesday 20 May 2021 (refer to Item No 5.2.4). The proposed Addendum, specifically in relation to the Slip Road Foreshore area, was adopted.

The Slip Road Maritime Precinct (Squatter's Row), Paynesville is approximately 5 ha of Crown Reserve foreshore on McMillan Strait, one of Victoria's busiest recreational waterways – this is an identified precinct within the Paynesville Maritime Precinct master plan. The site adjoins the Gippsland Ports Boatyard and sits opposite a range of boatbuilding, maritime servicing and related businesses. The marine industry within this precinct is Victoria's third largest marine industry and is an important employer in the area.

East Gippsland Shire Council is the designated Crown Land Committee of Management on behalf of the Department of Environment, Land, Water and Planning (DELWP). Despite the master planning in 2009 the site remains underdeveloped and disconnected from the main services of the town. Existing features are a boat ramp, adjoining jetties, Paynesville Boat Harbour (North), amenities block and car parking accommodating approximately 120 boat trailers.

The Land and Proposal

The development area is generally as shown in **Figure 1**, being the Slip Road Crown Foreshore outlined in orange dashed lines. The existing condition includes ablutions, car parking areas, both formal (constructed and linemarked) and informal (unsealed and uncontrolled), a public boat ramp and jetties for boat launching, and a portion of a marina under Council management. There are very basic associated services including a toilet block. There is minimal pedestrian or other park amenities.

Currently, the interface with McMillan Strait is informal and where construction has occurred over the years, it has generally worn down through years of inundation. Drainage infrastructure is insufficient to contribute to post-inundation clearance of standing water.

The proposal generally provides for the following, as shown in overview at **Figure 2**:

- Seawall renovation (Paynesville Boat Harbour North (south of boat ramp));
- New seawall (north boat ramp)
- Access pathways and boardwalks;
- Three floating jetties to accommodate berthing for; boat brokerage, itinerate berthing, permanent berthing and valet berthing;
- A fixed jetty to accommodate working berths and commercial usage.
- Existing boat ramp renovation
- New boat ramp at north end of the site
- Fish cleaning provisions;
- Provision for marine industry access;
- Small boat launch eg kayaks;
- Parking provisions;
- Amenity block improvements; and
- General landscaping and planting

Detailed plans are provided for consideration at **Attachment 2**.

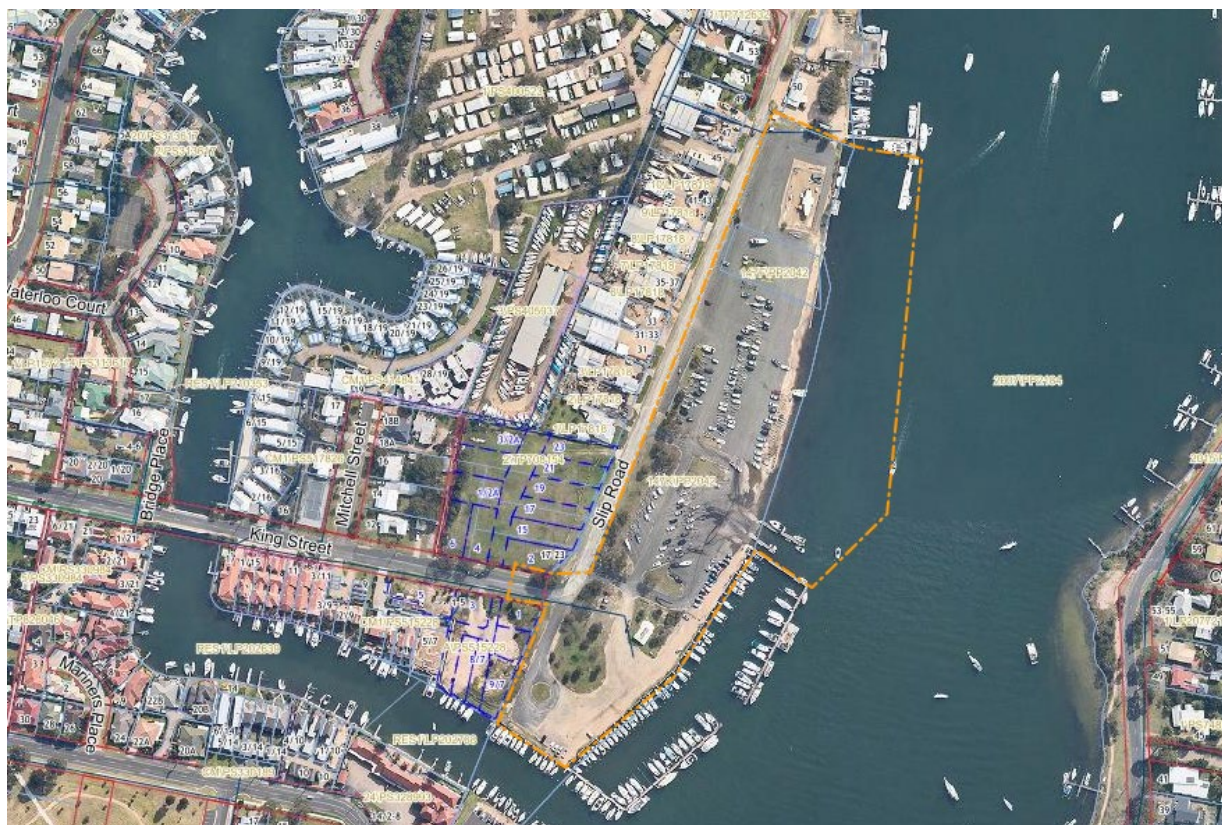


Figure 1 – The site in neighbourhood context. Development area is outlined orange.

The applicable controls under the planning scheme are summarised below:

Application No.	236/2021/P
Address	Slip Road, Paynesville (Crown Land, including part of McMillan Straight)
Zone	Public Park and Recreation Zone, Industrial Zone 3, General Residential Zone 1
Overlays	Land Subject to Inundation Overlay
Particular Provisions	52.17 Native Vegetation 52.31 Local Government Projects
General Provisions	62 General Exemptions 65 Decision Guidelines 66 Referral and Notice Provisions
Public Notification	Exempt pursuant to Clause 52.31-2 of the Scheme
Referrals	Internal: Senior Technical Officer – Development External: Gippsland Ports; Department of Environment, Land, Water and Planning; East Gippsland Catchment Management Authority

East Gippsland Planning Scheme

Government Amendment VC 194 on 25 March 2021 inserted Clause 52.31 - Local Government Projects provision into all Planning Schemes in Victoria. This application is the first example for East Gippsland Shire of a proposal which is subject to certain exemptions as set out in the provision:

The purpose of the provision at Clause 52.31 is to facilitate the development of land by or on behalf of municipal councils.

Permit exemptions and exemption from notice and review of the proposal are provided for as follows:

*Any requirement in a **zone** or a schedule to a zone to obtain a permit to construct a building or construct or carry out works does not apply to the development of land carried out by or on behalf of a **municipal council**. This exemption does not apply to:*

- *A development with an estimated cost of more than \$10 million.*

Any requirement in the Floodway Overlay, Land Subject to Inundation Overlay and Special Building Overlay to obtain a permit to construct a building or construct or carry out works does not apply to the development of land carried out by or on behalf of a municipal council to the satisfaction of the relevant floodplain management authority.

This clause prevails over any inconsistent provision in this planning scheme.

**Emphasis added*

An application under any provision of this planning scheme to develop land by or on behalf of a municipal council is exempt from the notice requirements of section 52(1)(a), (b) and (d), the decision requirements of section 64(1), (2) and (3) and the review rights of section 82(1) of the Act. This exemption does not apply to:

- *An application for a development with an estimated cost of more than \$10 million.*
- *An application to remove, destroy or lop more than:

 - *0.5 hectares of native vegetation other than a tree; or*
 - *15 native trees with a trunk diameter of less than 40 centimetres at a height of 1.3 metres above ground level; or*
 - *5 native trees with a trunk diameter of 40 centimetres or more at a height of 1.3 metres above ground level.**

Assessment of Impact of Clause 52.31

The above extracted portions of the Clause identify whether or not the proposal requires a permit, and if so, under what circumstances is public notice required.

In assessing the overall development proposal against this provision, officers note that:

- All provisions relating to the buildings and works proposed under the Public Park and Recreation Zone are exempt from planning consideration (no permit trigger) as the cost of the total works is less than \$10 million.
- Native Vegetation provisions at Clause 52.17 and supporting referral requirements at Clause 66.02-2 confirm that an application made by a municipal council for native vegetation removal is required, and must be assessed by the Department of Environment, Land, Water and Planning as a recommending referral authority.
- Despite the above permit requirement for native vegetation removal to be subject to a permit, Clause 52.31-2 exempts the application from public notice. This is because the area of vegetation removal is less than 0.5 hectares and does not include the number and size of trees specified in the exemption.
- The buildings and works which alter the existing surface level under the Land Subject to inundation overlay must be undertaken under Clause 52.31-1 to the satisfaction of the relevant floodplain management authority. In assessment of the proposal, it is unclear how to verify the exemption without an application being made. For the purpose of this application, the referral and response from East Gippsland Catchment Management Authority is taken to be their satisfaction, obtained through the planning permit process.
- The buildings and works in the overlay are already exempt from notice and review pursuant to the Land Subject to Inundation Overlay provisions, but are further exempted under Clause 52.31-2.

What remains from the above is assessment of the proposal against the relevant State and Local Planning Policies, the Land Subject to Inundation Overlay, and the Native Vegetation provisions.

Planning Policy

Planning policy at both State and local levels generally seeks to:

- Direct development to appropriately zoned and serviced land.
- Deliver networks of high-quality integrated settlements that have a strong identity and sense of place, are prosperous and are sustainable by:
 - Developing settlements that will support resilient communities and their ability to adapt and change.
- Provide clear direction for the future sustainable use of the coast, including the marine environment, for recreation, conservation, tourism, commerce and similar uses in appropriate areas.
- Plan for marine development and infrastructure that is sensitive to marine national parks and environmental assets.
- Ensure that use and development on or adjacent to coastal foreshore Crown land:
 - Maintains safe, equitable public access and improves public benefit.
 - Protects local environmental and social values.
 - Demonstrates need and coastal dependency.
 - Minimises impact on the coast by locating within a defined activity or recreation node.
- Minimise development on flood prone land to reduce the likelihood of impeding or redirecting floodwaters, and to protect against future claims for compensation for flood damage.

- Encourage provision of tourism facilities, such as toilets, picnic facilities and barbecues, jetties and launching ramps, interpretive signage, and public art in appropriate locations.

The Municipal Strategic Statement identifies Paynesville as a part of the Lakes and Coastal subregion, directing significant expansion of Paynesville as a District Town. Key considerations for Paynesville as a part of the subregion include the focus on marine recreation activity, availability of and accessibility of services and amenities, and providing for upgrades of the townscape to improve appeal to residents and tourists.

Paynesville will build on its strengths as the best recreational boating destination to access the Gippsland Lakes to become a vibrant maritime town that reflects the international standard of the lakes for boating, the natural environment and cultural heritage. The preservation and enhancement of the natural environment will have high priority.

Policy Assessment:

The development demonstrates a high level of consistency with the State and Local Planning Policy Framework, and the strategic vision and objectives for Paynesville as a District Town. The proposal seeks to rejuvenate the foreshore precinct, making it more inviting and engaging, including a variety of services to the maritime activity, increasing pedestrian safety by reducing conflict points and providing separate walking paths. Ample car and boat trailer parking is provided, including formalised overflow areas which will allow for a more clear parking arrangement, and will minimise the potential for environmental damage by containing car parking to formalised areas which can be better managed, especially in flood and inundation events.

Vegetation removal is kept to an absolute minimum, and the introduction of landscaping elements will contribute to environmental amenity.

Land Subject to Inundation Overlay (LSIO)

To ensure that development maintains the free passage and temporary storage of floodwaters, minimises flood damage, is compatible with the flood hazard and local drainage conditions and will not cause any significant rise in flood level or flow velocity.

To protect water quality and waterways as natural resources by managing urban stormwater, protecting water supply catchment areas, and managing saline discharges to minimise the risks to the environmental quality of water and groundwater.

To ensure that development maintains or improves river and wetland health, waterway protection and flood plain health.

Decision Guidelines:

- Any local floodplain development plan.
 - Any comments from the relevant floodplain management authority.
 - The existing use and development of the land.
 - The susceptibility of the development to flooding and flood damage.
 - The potential flood risk to life, health and safety associated with the development.
- Flood risk factors to consider include:*
- The frequency, duration, extent, depth and velocity of flooding of the site and accessway.
 - The flood warning time available.
 - The danger to the occupants of the development, other floodplain residents and emergency personnel if the site or accessway is flooded.
- The effect of the development on redirecting or obstructing floodwater, stormwater or drainage water and the effect of the development on reducing flood storage and increasing flood levels and flow velocities.

- *The effect of the development on river health values including wetlands, natural habitat, stream stability, erosion, environmental flows, water quality and sites of scientific significance.*

LSIO – Assessment

The application was subject to referral to the relevant floodplain management authority – East Gippsland Catchment Management Authority (EGCMA). Through negotiation, certain modifications were made to the proposal that satisfied the project design. Consideration was given to the susceptibility of the land to inundation, the drainage regime being maintained after a flood event, and the prevention of off-site impacts to the surrounding residential and industrial developments in the precinct and beyond.

The negotiations specifically related to a redesign the site works to minimise the amount of fill required while still maintaining functional drainage of the site.

In the referral response dated 23 June 2021 (part of **Attachment 3**), EGCMA provided a single condition, requiring detailed construction drawings prior to commencement of works. This condition will be imposed on the permit, however an overview plan has already been prepared which demonstrates general compliance with the condition, and further sets of drawings will be prepared once the permit is granted.

The referral response gives certainty to the responsible authority that the proposal will not have ongoing detrimental impact on the natural environment and surrounding development, especially in future inundation events which are certain to occur.

Clause 52.17 Native Vegetation

To ensure that there is no net loss to biodiversity as a result of the removal, destruction or lopping of native vegetation. This is achieved by applying the following three step approach in accordance with the Guidelines for the removal, destruction or lopping of native vegetation (Department of Environment, Land, Water and Planning, 2017) (the Guidelines):

- 1. Avoid the removal, destruction or lopping of native vegetation.*
- 2. Minimise impacts from the removal, destruction or lopping of native vegetation that cannot be avoided.*
- 3. Provide an offset to compensate for the biodiversity impact if a permit is granted to remove, destroy or lop native vegetation.*

To manage the removal, destruction or lopping of native vegetation to minimise land and water degradation.

The Guidelines for the removal, destruction and lopping of native vegetation set out the decision guidelines to inform the decision maker.

The proposal to remove vegetation involves removal of 0.307 hectares of native vegetation, with 0 large trees. The removal is required to facilitate the new car parking layout, and the construction of a new seawall and jetties, as shown in **Figure 3**. East Gippsland Shire maintains offset sites for the purposes of providing direct offsets of loss of native vegetation through infrastructure and built form proposals. As such, the proposed loss of vegetation is proposed to be accounted back to one or more of Council's strategic offset sites.

Native Vegetation Assessment

As outlined above, the purpose of the provision is to ensure there is no net loss to biodiversity through the removal, destruction or lopping of native vegetation. The application materials at **Attachment 2** include a report for Native Vegetation Assessment. Section 4.1.2 speaks to principals of avoid, minimise and offset.

A conservative assessment has been undertaken, wherein the proposal may result in the complete loss of native vegetation on the site, however some may be retained depending on the final scope of works and construction plans. The design work for the project considered whether there were suitable alternative arrangements, but ultimately the traffic safety and access design issues led to the design outcomes which necessitate the vegetation removal.

Additional landscape plantings are a component of the design, and although they will not directly address the loss of biodiversity from the existing vegetation, it will contribute to a suitable landscape amenity.



Figure 2. Overview of proposed development at Slip Road Maritime Precinct, Paynesville.

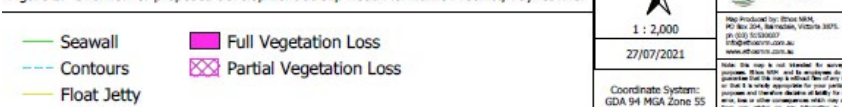


Figure 3 – Proposed native vegetation removal in context of the existing and proposed development.

Clause 65 Decision Guidelines and Section 60 and 61 Matters which must be considered

The proposal is generally consistent with the policies, objectives and provisions of the East Gippsland Planning Scheme. It represents orderly planning in the municipal district, and takes into consideration and responds effectively to the zones, overlays and other provisions, specifically native vegetation which apply.

The proposal is a high impact activity on land (and water) within an area of cultural heritage sensitivity as defined by the *Aboriginal Heritage Regulations 2018*. The applicant has submitted evidence that the project has obtained an approved Cultural Heritage Management Plan (CHMP), with endorsement by the Registered Aboriginal Party (Gunaikurnai Land and Waters Aboriginal Corporation) dated 13 April 2021 (refer **Attachment 3**). A determination can be made with respect to the application in accordance with the Planning and Environment Act and Aboriginal Heritage Regulations as the relevant approval has been granted. A permit condition will require the development to accord with the conditions of the endorsed CHMP.

The proposal is for buildings and works on Coastal Crown land. As such, Marine and Coastal Act (MACA) Consent is required prior to determination of the application. The application for MACA Consent was submitted directly to DELWP by the project officer, and MACA Consent for the proposal has been issued (refer **Attachment 3**). As such, a determination can be made in accordance with the relevant Acts, and a permit condition will require the development to accord with the conditions of the endorsed MACA Consent.

Collaborative Procurement

Not applicable

Council Plan

This report has been prepared and aligned with the following strategic objectives set out in the Council Plan 2021-2025:

Strategic Objective 2: 2.1 Statutory and strategic planning for land use delivers sustainable outcomes that balance the need for growth with the enhancement of our lifestyle, character, the built and natural environment.

Strategic Objective 2: 2.2 Infrastructure provision and maintenance supports a diverse range of current and future user needs and activities and is both environmentally and financially sustainable.

Strategic Objective 2: 2.3 Planning with local communities for natural disasters and emergencies strengthens capacity, infrastructure, resilience, preparedness, and recovery.

Council Policy

Pursuant to the Planning Permit Application Delegations Policy 2018, the matter is reported to Council as the total cost of development is greater than \$5 million (circa \$6.1 million). The application is exempt from notice and review as explained elsewhere, so no additional processes have been required in accordance with the Policy.

Consideration has been given to the Coastal Inundation and Erosion Planning Policy (2017). The proposal is a matter that should be supported under the policy. Working with Gippsland Ports, East Gippsland Catchment Management Authority, and the Department of Environment, Land, Water and Planning, the proposal appropriately addresses coastal inundation risk.

Council adopted the Paynesville Maritime Precinct master plan in 2009 and more recently adopted the Paynesville Foreshore Management Plan in 2017- which also incorporates this area.

Options

As a strategic priority development, the options available would be in and around amendments to conditions only. It is highly recommended that the planning permit is granted.

Resourcing

Financial

Financial considerations have previously been addressed, refer Ordinary Council Minutes of Tuesday 20 May 2021, Item 5.2.4. No additional financial considerations are required, and any offset contribution for native vegetation is considered in the project works.

Plant and equipment

Assessment of the proposal is undertaken within the scope of existing resources.

Human Resources

Assessment of the application was undertaken by existing planning department staff.

Risk

The risks of this proposal have been considered and there is low risk assessed, given the general support by relevant referral authorities. Public opinion regarding the planning permit application processing is not factored in and presents low risk as a result of exemptions for notice and review afforded under the East Gippsland Planning Scheme.

A detailed organisational risk assessment for the proposed development was put at the Ordinary Council Meeting of Tuesday 20 May 2021, Item 5.2.4.

Economic

Economic considerations for the project are assessed through the project assessment. The project is generally consistent with the state and local policy objectives for economic development. Refer again to Ordinary Council Minutes of Tuesday 20 May 2021, Item 5.2.4.

Social

Social impacts for the project are assessed through the project assessment. The project is generally consistent with the state and local policy objectives for social impact, and did not trigger additional assessment under Council's Social Impact Assessment guidelines. Refer again to Ordinary Council Minutes of Tuesday 20 May 2021, Item 5.2.4 for a detailed discussion of Social benefits of the proposal.

Environmental

Assessment of environmental impact is managed through the Coastal Inundation and Erosion Planning Policy, Clause 52.17 Native Vegetation, and the Marine and Coastal Act consent. The proposal adequately responds to issues and impacts of sea level rise.

Climate change

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

Climate Risk Management: Council's risk management considers climate change issues in decision-making and includes responses to direct and indirect impacts.

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

Engagement

As previously outlined, the planning permit application is exempt from notice pursuant to Clause 52.31-2. Any further project engagement would be managed through the project planning team.

Statutory referrals have been carried out, involving Gippsland Ports, East Gippsland Catchment Management Authority, and the Department of Environment, Land, Water and Planning. All agencies have provided consent/conditional consent. Referral responses are available at **Attachment 3**.

A detailed discussion regarding the engagement undertaken with the community in respect of the Master Plan and Concept plan which are recommended for approval through this report is set out in the Ordinary Council Minutes of Tuesday 20 May 2021, Item 5.2.4. Through the planning permit application, some further minor modifications to the proposal have been made in response to stakeholder engagement, specifically East Gippsland Catchment Management Authority, and are assessed as being generally consistent with the endorsed addendum.

Attachments

1. Proposed Permit Conditions [**5.4.1.1** - 4 pages]
2. Plans and Reports Considered Slip [**5.4.1.2** - 40 pages]
3. Consents and Referrals [**5.4.1.3** - 17 pages]

6 Urgent and Other Business

Nil

7 Confidential Business

Cr Arthur Allen / Cr Mark Reeves

COUNCIL WILL NOW CLOSE THE MEETING TO THE PUBLIC IN ACCORDANCE WITH THE PROVISION OF SECTIONS 3(1) AND 66(5) OF THE LOCAL GOVERNMENT ACT 2020, THE INFORMATION IS CONFIDENTIAL BECAUSE IT CONTAINS PRIVATE COMMERCIAL INFORMATION, WHICH IF RELEASED, WOULD UNREASONABLY EXPOSE THE BUSINESS, COMMERCIAL OR FINANCIAL UNDERTAKING TO DISADVANTAGE.

CARRIED

The meeting was closed to the public at 7:39 pm.

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 8.31 pm

7.1 Performance and Remuneration Review 2020/21 and 2021/22 Key Performance Indicators - Chief Executive Officer

Under section 66(2) of the *Local Government Act 2020* a meeting considering confidential information may be closed to the public. 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 personal information that would if released result in the unreasonable disclosure of information about personal affairs.

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

7.2 CON2022 1457 Bushfire Road Repairs

Under section 66(2) of the *Local Government Act 2020* a meeting considering confidential information may be closed to the public. 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, which if released, would unreasonably expose the business, commercial or financial undertaking to disadvantage.

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

7.3 Datacentre Operations

Under section 66(2) of the *Local Government Act 2020* a meeting considering confidential information may be closed to the public. 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 Council business information being information that would prejudice the Council's position in commercial negotiations.

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

7.4 Gippsland Business Initiative

Under section 66(2) of the *Local Government Act 2020* a meeting considering confidential information may be closed to the public. 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 Council business information being information that would prejudice the Council's position in commercial negotiations.

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

Cr Mendy Urie declared the Council Meeting closed at 8:31 pm.

Confirmed

Cr Mendy Urie Mayor
5 October 2021