

Minutes Special Council Meeting

TUESDAY 18 FEBRUARY 2020

**Council Chamber
273 Main Street Bairnsdale
commencing at 6.00 pm**

| | |
|--------------------|--|
| <i>Councillors</i> | Cr John White (Mayor), Ben Buckley, Richard Ellis, Marianne Pelz, Mark Reeves, Joe Rettino and Colin Toohey. |
| <i>Officers</i> | Anthony Basford (Chief Executive Officer), Fiona Weigall (General Manager Assets and Environment), Stuart McConnell (General Manager Bushfire Recovery), Peter Cannizzaro (General Manager Business Excellence), Jodie Pitkin (Acting General Manager Place and Community), Brigitte Dew (Councillor Support Officer) and Wendy Veldhuizen (Personal Assistant Business Excellence). |

Our Vision

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

Our Mission

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

Our Values

Accountability

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

Inclusion

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

Integrity

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

Respect

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

Resourcefulness

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

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1. Procedural

1.1 Opening and Recognition of Traditional Custodians

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

1.2 Apologies

Cr Natalie O'Connell and Cr Jackson Roberts

1.3 Declaration of Conflict of Interest

Nil

1.4 Next meeting

Ordinary Council Meeting Tuesday 3 March 2020 be held at the Corporate Centre, 273 Main Street, Bairnsdale commencing at 6.00 pm.

2 Election Period Policy 2019

| | |
|----------------------|---|
| Authored by | Susan Lloyd, Acting Manager Governance |
| Endorsed by | Peter Cannizzaro, General Manager Business Excellence |
| Document No | 8257710 |
| In Attendance | Chris Feil, Manager Governance |

EXECUTIVE SUMMARY

This report presents the revised, draft Election Period Policy 2019 (the Policy) provided at **Appendix 1** for Council's review and consideration for formal adoption.

The Policy is intended to ensure that future municipal elections are conducted in an environment that is open and fair to all candidates. It also sets out a series of procedures and practices to be followed during the election period, with the objective of ensuring that actions of the current Council do not bind an incoming Council and limit its freedom of action.

The adoption of a Caretaker Policy is required under the provisions of section 93B of the *Local Government Act* 1989 (the Act). Although the Policy was reviewed in November 2017, it has been assessed again to accord with officers' commitment that Council would have an opportunity to review this policy twelve months before an election.

While this is not a statutory requirement, it is considered best practice to provide the incoming Council with an opportunity to familiarise itself with existing policy and review it to ensure it accurately reflects any changes to Council's vision, values or *modus operandi*.

Changes to the Policy are largely administrative in nature, for example to reflect current position titles and document conversion to Council's new policy template.

RECOMMENDATION

That Council adopts the East Gippsland Shire Council Election Period Policy 2019, as provided in Appendix 1.

Cr Marianne Pelz / Cr Joe Rettino

THAT THE RECOMMENDATION BE ADOPTED.

CARRIED UNANIMOUSLY 18/02/20

OFFICER COMMENT / CONTEXT

Discussion

The Act stipulates that Council and its staff are governed by election period provisions that apply leading up to Council elections and details penalties that will apply for any breach of the Act.

The Policy will ensure elections are conducted in an environment that is open and fair to all candidates by setting out procedures and practices to be followed during the 'election period'. It establishes a series of election period practices to ensure that actions of the current Council do not bind an incoming Council and limit its freedom of action.

The Policy complements the legislative requirements of the Act but does not replace any of its provisions. The provisions under the Act and the Policy apply for the duration of the given election period.

A copy of the revised draft Election Period Policy 2019 has been included at **Appendix 1** to this report. Provided at **Attachment 1** is a marked-up copy of the Policy detailing amendments made to the existing policy in addition to updating it to the newest policy template.

Council Plan

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

Council Policy

The draft Policy is consistent in tone and content with the Municipal Election Period Caretaker Policy approved by Council on 21 November 2017.

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.

Part 3 of the Act prescribes the provisions for the conduct of elections. Section 93A prescribes a number of matters on which Local Government Councils must not make decisions during the caretaker period. Section 93B requires all Victorian Councils to adopt an 'Election Period Policy' and provides guidance on what must be included in the policy, the manner in which the policy is to be made available to Councillors and the public and a range of other matters specific to the policy.

On 13 November 2019, the Local Government Bill 2019 was introduced to Parliament with a second reading in the Legislative Assembly occurring on 14 November 2019. It will deliver on the Victorian Government's commitment to modernise how local government works in our state.

The Bill is the result of 4 years' work on the Local Government Act Review. The review featured extensive engagement with councils, ratepayers, stakeholders and communities to develop the new Bill.

This Election Period Policy has been prepared based on the law as it currently stands and if required the Election Period Policy will be adjusted wherever necessary to accommodate legislative reform, including changes to regulations. Accordingly, the impact of any changes will be communicated to Council.

Organisational

- **Financial**

There are no direct cost implications associated with the implementation and operation of the Election Period Policy

- **Human Resources**

Adoption of the Election Period Policy will not impact on Council's human resourcing requirements.

While all staff will need to be vigilant in ensuring the provisions of the Election Period Policy are carefully observed, Council's Business Excellence will be responsible for many of the operational areas most directly impacted.

Consultation

No consultation has been undertaken during the preparation of the draft Policy.

Once approved, the policy will be publicly available at Council's Corporate Centre, at Service and Outreach Centres, and from Council's website.

APPENDICES AND ATTACHMENTS

Appendices

1. Draft East Gippsland Shire Council Election Period Policy 2019

Attachments

1. Draft East Gippsland Shire Council Election Period Policy 2019 (marked up version)

3 Review of the Organisation's Operations

| | |
|----------------------|---|
| Authored by | Peter Cannizzaro, General Manager Business Excellence |
| Endorsed by | Anthony Basford, Chief Executive Officer |
| Document No | 8319895 |
| In Attendance | Liz Collins, Manager Finance |

EXECUTIVE SUMMARY

At the Ordinary Meeting held on 25 June 2019 (refer Item No 5.1.2), Council reviewed and subsequently adopted the 2019/20 annual budget.

At that meeting, the following motion was put and carried:

THAT COUNCIL:

- 1. REQUESTS THE CHIEF EXECUTIVE OFFICER TO REVIEW THE ORGANISATION'S OPERATIONS WITH THE OBJECTIVE OF ACHIEVING AN ONGOING NET SAVING OF \$1.5 MILLION FOR THE 2020/21 FINANCIAL YEAR; AND***
- 2. REPORTS BACK TO COUNCIL BY DECEMBER 2019 WITH A RECOMMENDATION ON HOW THIS OUTCOME CAN BE ACHIEVED.***

CARRIED 25/06/19

In accordance with the above Council resolution, this report identifies potential cost savings, as provided in **Appendix 1**, of \$1.5 million for the Financial Year 2020/21 and provides an overview of how the outcomes may be achieved.

Council's Strategic Resource Plan (SRP), adopted as part of the 2019/20 budget, included unquantified cost efficiencies of \$9.5 million over a ten-year period.

This report has quantified both the cost efficiencies noted above and further cost savings which when combined equal \$1.5 million for FY2020/21. Over a ten-year period, this will result in an additional cumulative cost savings of \$5.5 million.

RECOMMENDATION

That Council:

- 1. notes that the review of the organisation's operations to identify potential cost savings of \$1.5 million for Financial Year 2020/21, as provided in this report and Appendix 1, has been completed and satisfies the two recommendations as set out in the Council resolution made on 25 June 2019, and***
- 2. determines the use of any identified cost savings during the Council budget planning process for the Financial Year 2020/21.***

Amendment

Cr Marianne Pelz /

That Council notes that the review of the organisation's operations to identify potential cost savings of \$1.5 million for Financial Year 2020/21, as provided in this report and Appendix 1, has been completed and satisfies the two recommendations as set out in the Council resolution made on 25 June 2019.

The amendment lapsed due to lack of a seconder.

Cr Joe Rettino / Cr Mark Reeves

THAT THE RECOMMENDATION BE ADOPTED.

CARRIED 18/02/20

For Crs Reeves, Rettino, Toohey and White
Against Crs Buckley, Ellis and Pelz

OFFICER COMMENT / CONTEXT

Discussion

A review of Council's operating expenditure has been undertaken which has identified potential cost savings for the Financial Year 2020/21 of \$1,500,000.

The identified list of potential cost savings for Financial Year 2020/21 has been developed on the basis that:

- Council will not require a further budget allocation in the Financial Year 2020/21 for drought relief akin to the \$500,000 drought budget allocation included in the 2019/20 operating budget;
- No job losses would result;
- Current services are maintained;
- Current service levels are maintained and
- Capital expenditure budgets would not be drawn upon as a substitution for operating expenditure savings.

The key areas of expenditure that have been proposed to deliver these cost savings include the:

- Cessation of any Council rebate where there is an existing State Government rebate provided;
- Assessment of the average annual maintenance costs required for bridges will result in an average annual reduction in budget required to the value of \$700,000. It is proposed that 50% of this annual savings be reallocated to capital to increase the capacity to complete the replacement of the remaining timber bridges as concrete bridges in FY2021 to FY2025, hence the result will deliver a net operating saving of \$350,000 p.a. for FY2021 to FY2025;
- Reduction of spend in services and materials;
- Anticipated savings from staff vacancies – i.e. the time whilst positions are vacant;
- Reduction of corporate training spend without impacting mandatory and compliance training and
- Review of property leases to identify property that may be surplus to Council operational needs.

After due consideration of this report and subject to Council resolving in accordance with Recommendation 2 contained in this report to deal with the potential cost savings through the budget planning process for financial year 2020/21, Council has several options in regard to the list of costs savings as provided in **Appendix 1** which include:

1. Agree to accept the potential cost savings of \$1.5m for FY2020/21 as presented in **Appendix 1**; or
-
2. Agree to accept a lesser value (i.e. less than \$1.5m) of potential cost savings for FY2020/21 with specific measures determined by Council; or
-
3. Agree on a revised mix of measures to arrive at potential cost savings of \$1.5m for FY2020/21 with Council to determine the alternate budget line item(s) from which cost savings will be derived; or
-
4. Agree to retain the status quo of the unquantified cost savings as per the current Long-Term Financial Plan.

Council Plan

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

Council Policy

Council has prepared a Strategic Resource Plan (SRP) for the four years 2019-20 to 2022-23 as part of its ongoing financial planning to assist in adopting a budget within a longer-term framework.

The SRP takes the strategic objectives and strategies as specified in the Council Plan and expresses them in financial terms over these four years.

The key objective, which underlines the development of the SRP, is financial sustainability in the medium to long term, while still achieving Council's strategic objectives as specified in the Council Plan.

The key financial objectives, which underpin the SRP, are:

- Maintain existing service levels;
- Achieve an underlying surplus of not less than \$1,000,000 each year;
- Fully fund capital renewals each year; and
- Maintain unrestricted cash and investments at a level that allows Council to respond to unplanned events such as natural disasters, defined benefits superannuation call and to provide seed funding for new grant funding opportunities.

In preparing the SRP, Council has also been mindful of the need to comply with the Principles of Sound Financial Management as contained in the *Local Government Act 1989* as set out in section 136 and further elaborated on in the Legislation section below in this report.

The system of sound financial management includes the activities of budgeting, accounting, auditing, forecasting revenue and expenditure, asset management, treasury management and performance measurement. A sound financial management system builds capacity to deal with future issues or events such as economic fluctuations, revenue shifts or restrictions on spending practices. Further, a sound financial management system is designed to ensure that decisions are made, and actions taken having regards to their financial effects on future generations.

Sound financial management capacity is therefore the key to the Council's fiscal health.

The SRP is updated annually through a rigorous process of consultation followed by a detailed sensitivity analysis to achieve the key financial objectives.

Council has developed a Long-Term Financial Plan setting out the strategies that will support the achievement of Council Plan objectives within a sustainable financial framework.

A Long-Term Financial Plan is an essential tool for financial decision making. It provides information to guide decisions about the mix and timing of outlays on operating activities, renewal and replacement of existing assets, future additional assets and the associated funding implications. It is used to assess the expected future impact of financial decisions, and to manage risks.

The current Long-Term Financial Plan has factored in unquantified savings totalling \$9.5 million for Financial Years 2019/20 to 2028/29, a ten-year period. Following the decision of Council on this report, the Long-Term financial Plan will be adjusted accordingly to the adopted recommendation.

Legislation

The *Local Government Act 1989* at Part 7 Financial Management under section 136 provides four principles of sound financial management for councils. All councils are required to implement these principles and establish budgeting and reporting frameworks that are consistent with the principles.

Section 136 Principles of sound financial management is extracted below:

(1) A Council must implement the principles of sound financial management.

(2) The principles of sound financial management are that a Council must—

(a) manage financial risks faced by the Council prudently, having regard to economic circumstances;

(b) pursue spending and rating policies that are consistent with a reasonable degree of stability in the level of the rates burden;

(c) ensure that decisions are made, and actions are taken having regard to their financial effects on future generations;

(d) ensure full, accurate and timely disclosure of financial information relating to the Council.

(3) The risks referred to in subsection (2)(a) include risks relating to—

(a) the level of Council debt;

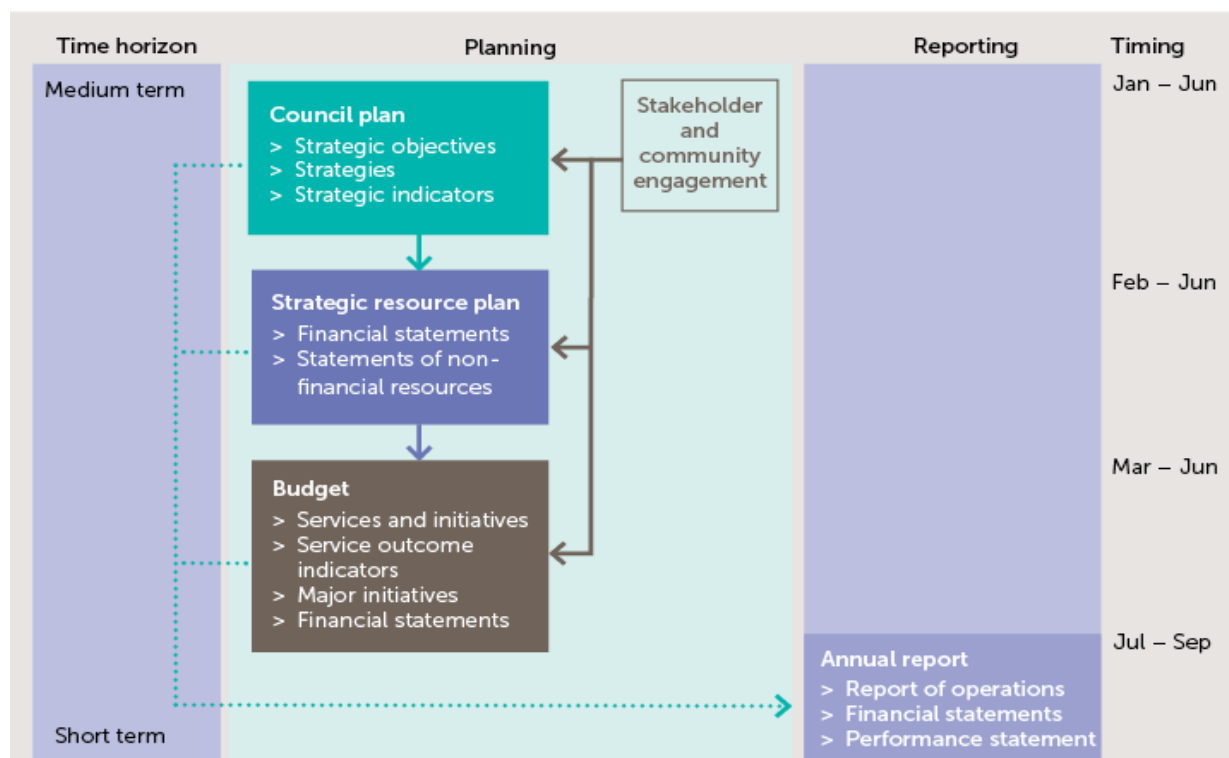
(b) the commercial or entrepreneurial activities of the Council;

(c) the management and maintenance of assets;

(d) the management of current and future liabilities;

(e) changes in the structure of the rates and charges base.

The Local Government Victoria Planning and Accountability framework which is found at Part 6 of the *Local Government Act 1989* is represented in the figure below.



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

Organisational

• Financial

This report primarily has focussed on expenditure as the basis to which potential cost savings may be achieved. The analysis did not assess the capital expenditure program for possible cost savings.

The potential cost savings identified in this report may reduce future unknown cost pressures that inevitably occurs as a result of increases in costs of goods and services that Council uses to maintain and deliver the services and functions to the community and equally on the flip side may reduce the pressure of revenue opportunities forgone as a result of any future Council decisions made to support either subsidisation, revenue reduction (including a reduction in the proposed rate cap percentage increase) or the waiving of fees for services that Council provides.

Consultation

The content of this report has been discussed extensively with both the Executive Leadership Team and the Strategic Leadership Group. Further, the subject has been discussed at Councillor Briefing Sessions held on 26 November 2019 and on 10 December 2019, wherein Councillors provided valuable feedback.

APPENDICES AND ATTACHMENTS

Appendices

1. Potential Cost Savings for Financial Year 2020/21

Attachments

Nil

4 Report on Audit and Risk Committee Meeting held on 22 October 2019 and Audit and Risk Committee Charter review

Authored by Peter Cannizzaro, General Manager Business Excellence

Document No 8314361

EXECUTIVE SUMMARY

This report provides Council with an overview of the issues considered by the East Gippsland Shire Council Audit and Risk Committee (the Committee) at its meeting held on 22 October 2019.

Items of note considered by the Committee included the following:

- Gabrielle Castree of Crowe Horwath (Council's internal auditors) presented the internal audit report of Council's Management of Leases and Licences.
- Review of the Audit and Risk Committee Charter (Charter), Draft Work Program 2019/20 and meeting schedule. The Committee noted the administrative updates and the changes to the Draft Charter, a copy of which is provided at **Appendix 1** and endorsed its progress to Council for adoption. The to the charter are:
 - The Charter provides for maximum terms, the Chair of the Committee may only be appointed for a maximum of four 12-month terms (with no independent member serving more than two consecutive 12-month terms in a three-year period), independent members may only be appointed for a maximum of three, three-year terms (i.e. no more than nine years in total), an independent member may be appointed to serve as Chair:
 - for no more than four, 12-month terms; and/or
 - for no more than two consecutive 12-month terms in a three-year period.
 - Charter and Duties section has been 'stripped back' to include only functions that are explicitly required to be performed by the Committee under legislation or Council resolution.
 - The evaluation panel that frames a recommendation for Council to appoint new members has been expanded to include the Mayor, along with the Committee Chair and Chief Executive Officer.
 - The draft Work Program, a copy of which is provided at **Appendix 2**, has been framed with two key objectives in mind:
 - optimising the Committee's time and
 - ensuring that through its Work Program, the Committee meets its obligations under applicable legislation and its Charter.
- Victorian Auditor General's Officer reports –Local Government Performance May 2019 - Fraud and Corruption Control – Local Government, officer assessment report on the actions Council is taking in response to the recommendations made in the report.
- The Committee noted the Victorian Ombudsman report – *Revisiting councils and complaints October 2019* and the Independent Broad-based Anti-corruption Commission – *Special report on corruption risks associated with procurement in local Government September 2019*.

The Committee also received and considered the suite of quarterly and annual reports and updates on regularly reported or previously identified matters and provided feedback on these as required.

RECOMMENDATION

That Council:

- 1. notes this report on issues considered by the East Gippsland Shire Council Audit and Risk Committee at its meeting held on 22 October 2019,***
- 2. adopts the draft Audit and Risk Committee Charter and Work Plan as provided at Appendix 1 and Appendix 2; and***
- 3. authorises the Chief Executive Officer to amend the adopted Charter without formal Council consideration if amendment is required because of changes to officer titles or administrative changes that occur from time to time.***

Cr Mark Reeves / Cr Colin Toohey

THAT THE RECOMMENDATION BE ADOPTED.

CARRIED UNANIMOUSLY 18/02/20

OFFICER COMMENT / CONTEXT

The Audit and Risk Committee (the Committee) meets on a quarterly basis to consider issues particularly relevant to the governance of Council and to formulate recommendations for Council's consideration. Issues considered at the meeting held on 22 October 2019 included the following:

Internal Audit Current and Outstanding Actions

The Committee was provided with an update on progress made during the quarter in relation to previously identified audit actions. The Report contained new audit action items from the recently completed Project Management internal audit.

Internal Audit Plan Status update and Management of Leases and Licences internal audit review

In its quarterly report to the Committee, Crowe Horwath, Council's internal auditors, advised that the 2019/20 program has now commenced.

The Management of Leases and Licences review was presented for the Committee's consideration.

Regular Updates

The Committee received and noted updates in respect of several regularly reported or previously identified agenda items, including reports for the period ended 30 June 2019 relating to:

- Debtors;
- Finance;
- Capital Works and Landfill Rehabilitation Projects
- Risk Management;

- Legal Activities;
- Major Insurance Claims; and
- Drone (Remotely Piloted Aircraft) Program Annual Review

Review of the Audit and Risk Committee Charter, Draft Work Program 2019/20 and Meeting Schedule

The Committee was presented with a draft Work Program for adoption and a revised Draft Charter for review. The Committee noted the administrative updates and the substantive changes to the Draft Charter, a copy of which is provided at **Appendix 1**. A marked-up version of the current Charter is provided at **Attachment 1**. The substantive changes to the Charter are:

- The Charter provides for maximum terms, the Chair of the Committee may only be appointed for a maximum of four 12-month terms (with no independent member serving more than two consecutive 12-month terms in a three-year period), independent members may only be appointed for a maximum of three, three-year terms (i.e. no more than nine years in total), an independent member may be appointed to serve as Chair:
 - for no more than four, 12-month terms; and/or
 - for no more than two consecutive 12-month terms in a three-year period.
- Charter and Duties section has been 'stripped back' to include only functions that are explicitly required to be performed by the Committee under legislation or Council resolution.
- The evaluation panel that frames a recommendation for Council to appoint new members has been expanded to include the Mayor, along with the Committee Chair and Chief Executive Officer.

The draft Work Program has been framed with two key objectives in mind:

- optimising the Committee's time and
- ensuring that through its Work Program, the Committee meets its obligations under applicable legislation and its Charter.
- The draft Work Program includes only those tasks that relate directly to the Committee's designated focus areas.
- A copy of the Work Plan is provided at **Appendix 2**. A copy of the recommended inclusions / exclusions - Audit and Risk Committee Draft Work Program 2019/20 is provided at **Attachment 2**.

The Committee agreed to holding the Committee meetings on the third Wednesday in February, April, July and October.

Status update CCTV Steering committee and Public Space Closed Circuit Television Surveillance Program Annual Review

The Committee noted the report advising that following staff changes and the recent organisation restructure, the necessary survey and CCTV Steering Committee meeting have not occurred, and as such the review has not been drafted. As a result, a full report on this matter is not able to be presented to this meeting.

Victorian Auditor General's Office report Fraud and Corruption Control – Local Government report

The Committee noted the officer assessment report on the actions Council is taking in response to the recommendations made in the report.

Managing reputational risks – social media

The Committee reviewed the report presented on Managing reputational risks – social media and noted that the current policy has gaps in respect of social listening and reporting on external activity, it is internally focussed on how social media is used. The Communications team take steps to mitigate risk when posts are brought to their attention and officers have commenced a review of the policy.

Victorian Ombudsman Report – Revisiting councils and complaints October 2019 and Independent Broad-based Anti-Corruption Commission - special report on corruption risks associated with procurement in local government September 2019

The Committee noted these two reports and that officer assessment report will be presented to a future Committee meeting.

Council Plan 2017-2021

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

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

Legislation

Section 139 of the *Local Government Act* 1989 requires all Councils to establish an Audit Committee.

Organisational

- **Financial**

An attendance fee is paid to the four external members of the Audit and Risk Committee. This expense is accommodated within Council's annual operating budget.

Consultation

Not applicable

APPENDICES AND ATTACHMENTS

Appendices

1. Draft revised Audit and Risk Committee Charter
2. Draft Audit and Risk Committee Workplan 2019/20

Attachments

1. Audit and Risk Committee Charter with tracked changes
2. Recommended inclusions / exclusions - Audit and Risk Committee Draft Work Program 2019/20

5 Road Exchange – Limestone Road Benambra

| | |
|----------------------|---|
| Authored by | Lou Wigg, Senior Property Officer |
| Endorsed by | Simon Alleaume, Acting Manager Governance |
| Document No | 8253653 |
| In Attendance | Chris Feil, Manager Governance |

EXECUTIVE SUMMARY

To obtain Council approval to commence proceedings for a road discontinuance and road exchange to correct the road alignment of the Limestone Road Benambra where an existing portion of road traverses private property outside of the designated road reserve.

RECOMMENDATION

That Council:

- 1. determines that the unused road reserve on the eastern boundary of 81 Limestone Road Benambra is not required for public access or any future public use (Refer Blue Area in Appendix 1);***
- 2. pursuant to Section 206 including clause 3 of schedule 10 and section 207A of the Local Government Act 1989, resolves to advertise its intention to discontinue the unused road reserve on the eastern boundary of 81 Limestone Road Benambra;***
- 3. authorises Council Officers to place a public notice of the proposed road discontinuance and the road exchange in local newspapers;***
- 4. notes that section 5.5.2 of Council's Sale of Council-owned Land Policy stipulates that land will not be sold for less than market value, unless Council specifically resolves otherwise;***
- 5. resolves to undertake the road exchange with the owner of 81 Limestone Road Benambra at no cost to the owner, and that Council will pay all legal costs associated with the exchange;***
- 6. appoints a Committee comprising the whole of Council with a quorum of five councillors, to hear and consider any written public submissions received in relation to the proposed road exchange in accordance with section 223 of the Local Government Act 1989;***
- 7. nominates 21 April 2020 at 1.30pm as the date and time for the Committee to hear any submissions;***
- 8. proceeds to publish a notice in the Government Gazette and all relevant documentation surrounding the exchange to be lodged with the Registrar of Title if no submissions are received on the proposed road exchange, and***

9. *notes that as part the Section 223 process, a report providing a recommendation from the Committee Hearing will be presented at a future Council meeting for its consideration, should any submissions be received regarding the proposed road exchange.*

Cr Colin Toohey / Cr Ben Buckley

THAT THE RECOMMENDATION BE ADOPTED.

CARRIED UNANIMOUSLY 18/02/20

OFFICER COMMENT / CONTEXT

Discussion

The purpose of this report is to seek authorisation from Council to complete a road discontinuance and a road exchange to correct the road alignment of the Limestone Road Benambra where it traverses private property outside the designated road reserve.

Limestone Road (the Road) (**outlined green on Appendix 1**) is on the eastern side of the Benambra township with surrounding uses generally comprising of a mixture of rural-residential and rural properties. The township of Benambra is located approximately 423 kilometres northeast of Melbourne.

The Road is approximately 75.8 kilometres in length connecting Benambra with the Snowy River Road at Wulgulmerang, with much of the road passing through State forest and the Alpine National Park. A search of Council records has been unable to establish when the Road was constructed on its current alignment.

It has been confirmed by the Asset Management Officer that the Road is on Council's Road Register and therefore recognised as a public highway and the management and maintenance responsibility rests with Council under the *Road Management Act 2004*.

In May 2015 the owner of 81 Limestone Road Benambra (Property) (**outlined red on Appendix 1**) contacted Council in regard to a section of the Road being constructed through part of her Property. The owner was in the process of selling the Property when it was identified that the Road traversed her Property.

The Property that is affected by the encumbrance is irregular in shape and is approximately 2.599 hectares in area and comprises of the existing Road and a cleared, sloping portion of land on the western side of the Road (**identified as 'A' on Appendix 1**).

The construction of the Road through the Property has caused a dissection of the land (**marked A and B on Appendix 1**) and is considered an encumbrance as it effectively makes approximately one third of the Property unviable for development or use. The severed portion of land is approximately 2,382m² in size. The owner will retain both lots marked 'A' and 'B'.

It is proposed to undertake a road exchange with the alignment of Limestone Road through the Property and the unused road reserve on the eastern boundary of the Property (**outlined blue on Appendix 1**).

The unused road reserve along the eastern boundary of the Property is approximately 5,514m² in size and is to be closed as part of the exchange and will be consolidated with the owners Property (**identified as 'B' on Appendix 1**). It is generally level and cleared with pasture comprising of native grasses. The area of the Road which is to remain open and will be vested in Council and will form part of the exchange is 8,443m² in size.

When proposing to exchange land by private treaty, the land should be exchanged at market value and where necessary, monetary adjustments should be made to establish equality of exchange. As there is a difference in area between the land to remain open as a Road and the land to be closed of 2,929m², a valuation has been undertaken to ascertain the market value of this area.

The unused road reserve on the eastern boundary of the Property would be required to be discontinued as a road before the exchange can take place

Council Plan

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

Council Policy

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

As this matter relates to the correction of the alignment of the Road through the Property, there is no requirement to offer the land for sale at public auction or the open market.

Legislation

The proposed road exchange is required to be conducted in accordance with sections 206, 207B, 207D(1)(b) and 207E of the *Local Government Act 1989*, including Clauses 2 and 3 of Schedule 10.

The sale can be completed as a private treaty sale and effected under the provisions of Section 189 of the *Local Government Act 1989* (the Act), provided that all details of Council's intention to sell are clearly disclosed during the proposed road exchange process.

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

Organisational

- **Financial**

The road exchange process including the completion and coordinating of the registration of all necessary documentation will be finalised by Council. Council have agreed to pay all costs, including the owner's costs, to rectify this matter. As the land proposed to be exchanged has a difference in area, compensation will be payable by Council to the owner. The total legal and surveying costs (exclusive of GST) are as follows:

| | |
|--|--------------------|
| Valuation | \$ 1,500.00 |
| Surveying Costs | \$ 6,200.00 |
| Legal, land registry and ancillary costs | \$ 5,000.00 * |
| Compensation to Owner | <u>\$ 5,625.00</u> |

| | |
|--------------|--------------------|
| TOTAL | \$18,325.00 |
|--------------|--------------------|

*Legal, land registry and ancillary estimates as \$5000.

It has been confirmed by the Rates and Valuations Coordinator that the owner has been paying rates on the whole of the Property, which includes the road that traverses through the Property.

- **Compensation Calculation**

A valuation was undertaken by Council officers to determine the value of the road to be acquired by Council (highlighted **green** on **Appendix 1**) and the road to be transferred to the owner (highlighted **blue** on **Appendix 1**).

| | |
|---|-----------------|
| Land Value – Encumbered portion: 8,443m ² @ \$1.50/sqm | \$12,665 |
| Land Value – Unused road reserve: 5514m ² @ \$1.50/sqm | <u>\$ 8,271</u> |
| Difference | \$ 4,394 |
| Valuation advice adopt | \$ 4,500 |
| Add 25% special value** | <u>\$ 1,125</u> |
| Offer to Owner | \$ 5,625 |

** "Special value" is the principle commonly used in land acquisition cases, to compensate a vendor for existing advantages and possibilities foreseeable by the vendor, not captured within the market value of the property. This acknowledges the loss of sale of the property due to the road traversing the Property and the payment of rates on the Property which included the road.

Consultation

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

The General Manager Assets and Environment (formally Acting Director Operations) has been consulted and has provided consent to the exchange of the unused road reserve and the formal acquisition of the Limestone Road which traverses through private property.

APPENDICES AND ATTACHMENTS

Appendices

1. Plan showing proposed road exchange

Attachments

1. Encumbered Property
2. Title Plan of 81 Limestone Road Benambra

Authored by Lou Wigg, Senior Property Officer
Endorsed by Peter Cannizzaro, General Manager Business Excellence
Document No 8257218
In Attendance Chris Feil, Manager Governance

EXECUTIVE SUMMARY

In response to a request from Councillors on 20 August, Council officers identified all the properties (by title) that are owned by Council. All Council owned property is freehold and mainly consists of public open space, roads, drainage, environmental and municipal purposes. The properties were categorised and from this it was established that there were seven vacant properties that were stand alone and be able to be offered for sale without any further planning or evaluation required.

The seven vacant properties in Council's ownership that have been identified are not designated as required for municipal or strategic purposes. The objective of the exercise was to identify land that could be sold as a means of realising non-current assets that are surplus to Council's needs while at the same time, saving on insurance and maintenance costs associated with the allotments.

Once identified, each property was assessed by officers having regard for the location, zoning, surrounding land use and other relevant factors that may impact on their viability for sale on the open market.

The properties that Council officers identified that could be offered for sale on the open market are located within the Lakes Entrance, Swan Reach and Metung areas. They are described as:

- A. 7 Kingscote Drive, Metung;
- B. 52 Old Orbost Road, Swan Reach;
- C. 16 Tanjil Grove, Lakes Entrance;
- D. 20 Hardie Street, Lakes Entrance;
- E. 10 Margaret Court, Kalimna;
- F. 43 Hazel Road, Kalimna; and
- G. 8-12 Avril Avenue, Metung.

Provided at **Attachment 1** is a copy of site plans for each property with the identified history of each property, together with any other relevant information.

RECOMMENDATION

That Council:

1. *determines that the properties described as:*
 - *7 Kingscote Drive, Metung;*
 - *52 Old Orbost Road, Swan Reach;*
 - *16 Tanjil Grove, Lakes Entrance;*
 - *20 Hardie Street, Lakes Entrance;*
 - *10 Margaret Court, Kalimna;*
 - *43 Hazel Road, Kalimna; and*
 - *8-12 Avril Avenue Metung**are not required for public access or any other municipal or public use;*
2. *gives notice of its intention to sell the properties identified in clause 1 of this resolution in accordance with the provisions of section 189 of the Local Government Act 1989;*
3. *notes that in accordance with section 5.3 of Council's Sale of Council-owned Land Policy, the properties will be sold for at least market valuation, unless Council specifically resolves otherwise;*
4. *appoints a Committee comprising the whole of Council (with a quorum of five Councillors), to hear and consider any written submissions received from the public in relation to the proposed sale of land, in accordance with section 223 of the Local Government Act 1989;*
5. *nominates 21 April 2020 at 1.00 pm as the date and time for the Committee to hear any submissions;*
6. *authorises officers to sell each of the properties identified at clause 1 for which no submissions are received about its proposed sale through the section 223 process; and*
7. *notes that as part of the Section 223 process, a report providing a recommendation from the Committee Hearing will be presented at a future Council meeting for its consideration, should any submissions be received about the proposed sale of one or more of the properties identified at clause 1.*

Cr Joe Rettino / Cr Marianne Pelz

THAT THE RECOMMENDATION BE ADOPTED.

CARRIED UNANIMOUSLY 18/02/20

OFFICER COMMENT / CONTEXT

Discussion

In response to a request from Councillors, Council officers have identified all the properties (by title) that form the suite of Council-owned properties.

All of Council-owned property identified for possible sale are classified as freehold. Freehold property is any property that Council owns outright and where Council, as owner of the land, has no time limit to its period of ownership. Property classed as freehold allows Council to sell, lease or licence the land subject to compliance with applicable laws.

Much of Council property is held in public open space, roads, drainage, environmental and municipal uses. Only a small portion of the property that Council own is used for direct Council service delivery with a number of facilities supporting community and commercial activities.

Council officers have used this information to determine opportunities to go out to market for the sale of the land. This will ensure that Council-owned properties are managed for the long term whilst maximising the benefit to the wider community, both socially, recreationally and economically.

While preparing the register of Council owned properties, Council officers incorporated an exercise to identify any parcels of Council-owned land that are not required for any municipal or strategic purpose and therefore, have the potential to be sold as a means of realising non-current assets and saving incidental costs related to them.

Seven properties were identified, which are listed below. In considering these properties, Council officers assessed each property by reviewing its location and zoning, topography and the future needs of the community and Council.

The properties identified were stand-alone allotments with residential zoning. The properties were deemed developable and able to be placed on the open market for sale without any further planning or evaluation required to be undertaken. There are no Council-owned assets on any of the listed properties.

Consultation was undertaken with internal stakeholders across multiple directorates to discuss the category of properties, being standalone parcels of land ready for immediate sale. These properties are described as:

- A. 7 Kingscote Drive Metung;
- B. 52 Old Orbost Road Swan Reach;
- C. 16 Tanjil Grove Lakes Entrance;
- D. 20 Hardie Street Lakes Entrance;
- E. 10 Margaret Court Kalimna;
- F. 43 Hazel Road Lakes Kalimna; and
- G. 8-12 Avril Avenue Metung.

Council officers concluded that all seven allotments are:

- located within a residential development;
- flat or gradually sloping;
- able to be developed; and
- not required for Council purposes now or in the foreseeable future.

Provided at **Attachment 1** is a copy of site plans for each property with the identified history of each property, together with any other relevant information.

Council Plan

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

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

Council Policy

Under clause 5.3 of Council's Sale of Council-owned Land Policy (the Policy), and in line with the provisions of the *Local Government Act* 1989, these properties must be sold for at least the market value determined by a registered valuer unless Council resolves otherwise. If Council resolves that the properties are to be sold, Council officers will obtain this valuation prior to offering the properties for sale.

Clause 5.2 of the Policy provides that unless determined specifically by Council, all land sales will be achieved by public auction or public tender, unless specific circumstances apply.

Legislation

The sale of Council-owned land must comply with the provisions of section 189(2)(b) of the Act, which stipulates that a market valuation must be obtained from a qualified or experienced person and must be dated within six months of the date of sale or exchange of the property.

Public consultation regarding this proposal must also be undertaken in accordance with section 223 of the Act. Members of the public will be invited to make a written submission to Council on the proposal and submitters will have an opportunity to speak to their written submission, should they wish, at a hearing of a special committee of Council convened for this purpose.

If supported by Council, the proposal to sell the allotments will be publicly advertised in accordance with section 189 of the Act, at least four weeks prior to any transaction taking place.

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

Organisational

- **Financial**

If Council approves the sale of these land parcels, an independent valuation will be undertaken for each property prior to it being offered for sale on the open market. This will determine the minimum reserve price for each property. Each valuation will incur a cost of approximately \$1,500 - \$2,000. Legal fees are anticipated to fall within the same range for each property.

The cost of maintaining the properties is approximately \$3,000 per year per property, which includes slashing to reduce fire fuel load. The cost of additional maintenance at 16 Tanjil Grove, Lakes Entrance due to vandalism and illegal dumping of rubbish is approximately \$1,500 to \$2,000 per annum, depending on how often officers need to attend the property.

Until an independent valuation is undertaken, it is difficult to determine what the approximate sale price of each allotment might be due to a range of factors influencing market conditions.

The funds received from the sale of these properties, which have been identified as surplus to Council's requirements, will be placed into Council's operating revenue. The funds will form part of the surplus for that year and shown as a gain/loss on the same property, therefore offsetting the sale proceeds against the book value of the property.

Council are able to make a decision that any profit on the sale of these properties be recorded in a 'discretionary reserve' (which still forms part of the surplus), that can be allocated towards capital projects within the Shire.

Consultation

In accordance with section 223 of the Act, if Council supports the sale of the seven allotments its intention will be advertised publicly. Community members will have the opportunity to lodge written submissions on each or all the proposed sales and if they wish to do so, speak to their submission at a public hearing convened for the purpose.

Conflict of Interest

No staff and/or contractors involved in the preparation of this report have declared a Conflict of Interest.

APPENDICES AND ATTACHMENTS

Appendices

Nil

Attachments

1. Site Plan and history for properties proposed for sale.

7 Instrument of Appointment and Authorisation (*Planning and Environment Act 1987*)

Authored by Michelle Ingram, Governance and Compliance Officer

Endorsed by Peter Cannizzaro, General Manager Business Excellence

Document No 8239100

EXECUTIVE SUMMARY

The report seeks Council's approval for designated East Gippsland Shire Council officers in the Place and Community Directorate to be appointed as Authorised Officers under section 147 of the *Planning and Environment Act 1987* ("the Act").

This is achieved through formal execution by Council of an Instrument of Appointment and Authorisation. A copy of the proposed Instrument of Appointment and Authorisation is provided at **Appendix 1**, and Instrument of Appointment and Authorisation Certificates provided at **Appendix 2**.

The appointment of Authorised Officers enables appropriate officers within the organisation to act on behalf of Council in the administration and enforcement of various Acts, regulations or local laws in accordance with the powers granted to them under legislation or a local law.

The officers identified in the Instrument are responsible for acting on behalf of Council to enforce a range of provisions of the *Planning and Environment Act 1987*.

Council's formal authorisation of officers under this section of the Act is sought when there is a change to the list of officers required to perform the role of Authorised Officer under the Act, or otherwise at regular intervals as determined from time to time. In this instance this is occurring due to recent changes in staff position titles, new staff commencing, in addition to sealing and signing from the current CEO.

RECOMMENDATION

That Council, in the exercise of the powers conferred by section 224 of the Local Government Act 1989 (the Act) and section 147(4) of the Planning and Environment Act 1987, resolves that:

- 1. the Instrument of Appointment and Authorisation and Instrument of Appointment and Authorisation Certificates dated 6 June 2017 be revoked;***
- 2. Council officers named in the Instrument of Appointment and Authorisation provided at Appendix 1 and Instrument of Appointment and Authorisation Certificates provided at Appendix 2 be appointed and authorised;***
- 3. the Instrument of Appointment and Authorisation and Instrument of Appointment and Authorisation Certificates comes into force once the common seal of Council is affixed and remains in force until Council determines to vary or revoke it; and***

4. *the Instrument of Appointment and Authorisation provided at Appendix 1 and Instrument of Appointment and Authorisation Certificates provided at Appendix 2, both be signed and sealed.*

Cr Marianne Pelz / Cr Joe Rettino

THAT THE RECOMMENDATION BE ADOPTED.

CARRIED UNANIMOUSLY 18/02/20

OFFICER COMMENT / CONTEXT

Discussion

From time to time officers from the Place and Community Directorate are required to represent Council in enforcing the provisions of the *Planning and Environment Act* 1987. Instruments of Appointment and Authorisation empower appropriate officers to exercise the powers granted to authorised officers by legislation or a local law.

Council's Instrument of Appointment and Authorisation is revised on a regular basis or as required as a result of changes to the list of officers required to act as Authorised Officers under the Act.

Council previously approved an Instrument of Appointment and Authorisation at its meeting held on 6 June 2017, as provided at **Attachment 1**. As a result of changes in personnel since that time, this instrument needs to be revoked and a new, updated Instrument of Appointment and Authorisation be drafted for adoption by Council.

The proposed Instrument of Appointment and Authorisation (*Planning and Environment Act* 1987) is provided at **Appendix 1** and Instrument and Appointment of Authorisation Certificates provided at **Appendix 2**.

Council Plan

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

Select additional Council Plan reference if required, or delete

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

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 appointment of Authorised Officers is made under Sections 147 and 188 of the *Planning and Environment Act* 1987 and Sections 224 and 232 of the *Local Government Act* 1989 (LGA).

Section 188(1)(b) of the Act provides for a responsible authority to delegate powers, discretions or functions under the Act to an employee. Section 147(4) of the Act prescribes that a reference to an authorised officer is describing any officer or employee of Council with written authorisation, either generally or specifically, granting the power to exercise functions or duties on behalf of Council.

Section 224 of the LGA permits Council to appoint any person, other than a Councillor, to be an authorised officer with permission to administer or enforce any Act, regulation or local law relating to the functions and powers of the Council. Section 232 provides for the authorised employee to commence legal proceedings on behalf of Council for offences against Acts or regulations listed in the instrument of authorisation.

Organisational

- **Financial**

There are no financial implications arising from this report.

- **Human Resources**

Council officers within the Development Unit are responsible for implementing enforcement action under the *Planning and Environment Act 1987*.

Consultation

The Instrument of Appointment and Authorisation provided at **Appendix 1** for Council's consideration has been prepared in accordance with template 'S11A Instrument of Appointment and Authorisation' circulated to the Local Government sector by Maddocks Lawyers.

Although the appointment and authorisation of authorised officers under other relevant legislation is effected by the Chief Executive Officer under delegation, Maddocks Lawyers has recommended that officers enforcing the *Planning and Environment Act 1987* be authorised specifically by Council resolution.

APPENDICES AND ATTACHMENTS

Appendices

1. Instrument of Appointment and Authorisation (*Planning and Environment Act 1987*)
2. Instrument of Appointment and Authorisation Certificates

Attachments

1. Instrument of Appointment and Authorisation dated 6 June 2017

8 Close of meeting

The meeting closed at 1.44pm

Confirmed _____

Cr John White, Mayor

Date: 3 March 2020