



# Council Meeting Agenda

Cape Conran

**Tuesday 16 March 2021 at 6:00 PM**  
Council Chambers (and by video conferencing)  
East Gippsland Shire Council Corporate Centre  
273 Main Street, Bairnsdale 3875





## Acknowledgement to country

East Gippsland Shire Council acknowledges the Gunaikurnai, Monero and the Bidawal people as the Traditional Custodians of the land that encompasses East Gippsland Shire.

We pay our respects to all Aboriginal and Torres Strait Islander people living in East Gippsland, their Elders past and present.

## Council information

East Gippsland Shire Council live streams, records and publishes its meetings via webcasting ([youtube.com/c/EastGippyTV](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 2021. 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.

*Photo supplied by Destination Gippsland*

## Councillors

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

## Executive Leadership Team

Anthony Basford Chief Executive Officer  
Fiona Weigall General Manager Assets and Environment  
Peter Cannizzaro General Manager Business Excellence  
Stuart McConnell General Manager Bushfire Recovery  
Jodie Pitkin General Manager Place and Community

## Purpose of Council meetings

- (1) Council holds scheduled meetings and, when required, unscheduled meetings to conduct the business of Council.
- (2) Council is committed to transparency in decision making and, in accordance with the *Local Government Act 2020*, Council and Delegated Committee meetings are open to the public and the community are able to attend.
- (3) Meetings will only be closed to members of the public, in accordance with section 66 of the Act, if:
  - (a) there are clear reasons for particular matters to remain confidential; or
  - (b) a meeting is required to be closed for security reasons; or
  - (c) it is necessary to enable the meeting to proceed in an ordinary manner.
- (4) A meeting closed to the public for the reasons outlined in sub-rule 3(b) or 3(c) will continue to be livestreamed. In the event a livestream is not available:
  - (a) the meeting may be adjourned; or
  - (b) a recording of the proceedings may be available on the Council website.

## Governance Rules

A copy of East Gippsland Shire Council's governance rules can be found at  
[https://www.eastgippsland.vic.gov.au/About Us/Publications and Policies/Council Policies](https://www.eastgippsland.vic.gov.au/About%20Us/Publications%20and%20Policies/Council%20Policies)

## 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 Recognition of Traditional Custodians

East Gippsland Shire Council acknowledges the Gunaikurnai, Monero and the Bidawal people as the Traditional Custodians of the land that encompasses East Gippsland Shire. We pay our respects to all Aboriginal and Torres Strait Islander people living in East Gippsland, their Elders past and present.

## 1.2 Apologies

Cr Sonia Buckley

## 1.3 Declaration of Conflict of Interest

## 1.4 Confirmation of minutes

That the minutes of the Council Meeting 23 February 2021 be confirmed.

## 1.5 Next meeting

The next Council Meeting of Tuesday 13 April 2021 to be held at the Corporate Centre, 273 Main Street Bairnsdale commencing at 6.00pm.

## 1.6 Requests for leave of absence

## 1.7 Request to speak about your Community Project

### **Note:**

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

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

## 1.8 Public question time

### **Note:**

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

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

## 1.9 Petitions

Nil

## 2 Notices of Motion and/or Rescission

### 2.1 Notice of Motion No. 2/2021- Prioritisation of township protection operations for Marlo

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Take notice that it is my intention to move at the Ordinary Meeting of Council to be held on Tuesday 16 March 2021 at 6.00 pm or at any adjournment of that meeting:

***That East Gippsland Shire Council writes to the Hon Lily D'Ambrosio, Minister for Energy, Environment and Climate Change and the Hon Jane Garrett, Upper House Member for Eastern Victoria to urgently request the prioritisation of township protection operations for Marlo in East Gippsland through strategic, mosaic or planned burning and vegetation management.***

**Signed: Cr Mark Reeves**  
Date: 9 March 2021

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### RATIONALE

Severe fire impacted the area of Cape Conran and Marlo Plains in December 2019-January 2020. This fire devastated the Cape Conran National Park infrastructure. The fire was racing towards Marlo when a providential wind change occurred. The township of Marlo cannot rely on the fickle provenance of wind and weather next time. The fact that a Mallacoota-like catastrophe did not occur at Marlo was mostly due to luck and not preventative management.

During the Black Summer fire period the Cape Conran Road vegetation was widened and great effort was undertaken to ensure the road and transit security along the road. As a result of the clearing operations, considerable dried and heaped windrows remain along the Cape Conran Road.

There is a sense and reality that the Cape Conran Coastal Park has not been strategically managed with burning for either regeneration, environmental or township protection for more than 20 years. The presence of large piles of now dried foliage along the roadside, plus the intense growth of the coastal vegetation, is a cause for great concern for the community.

The community feels that the opportunity to ensure the protection of the Marlo township is slipping away. The community wish for urgent management work be undertaken this autumn along the Cape Conran Coastal Park to protect Marlo from the next inferno and conflagration. There was much vigorous work undertaken in the fire period to strategically protect the township and it is hoped this can be continued.

### **3 Deferred Business**

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



## 5 Officer Reports

### 5.1 Strong Communities

#### 5.1.1 Emergency Management Legislation Amendment Act 2018 Committee Reform

Authorised by      Acting General Manager Place and Community

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#### Conflict of Interest

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

#### Executive Summary

The *Emergency Management Legislation Amendment Act 2018* was passed through Parliament in August 2018, requiring the Emergency Management Commissioner to arrange for the preparation of a state emergency management plan. In Victoria there are three emergency management tiers, state, region and municipal level. As a consequence, Council is now required to update municipal level planning to align with the new state plan. This provides an integrated, comprehensive and coordinated framework for emergency management planning.

This report seeks Council's support in the implementation of changes outlined in the *Emergency Management Legislation Amendment Act 2018*. East Gippsland Shire Council is now required to formally acquit its responsibility to establish a Municipal Emergency Management Planning Committee (MEMPC) through a Council resolution that ensures a MEMPC is established in accordance with new legislation.

This must include recognising that the MEMPC promotes shared responsibility for planning by requiring relevant agencies to participate in the planning process, and that the MEMPC reports directly to the Regional Emergency Management Planning Committee. Changes to the membership are outlined noting that Councillors are not automatically members of the MEMPC, but rather may be a member, as a community representative subject to the appointment process of the MEMPC.

#### Officer Recommendation

##### ***That Council:***

- 1. receives and notes this report and all attachments pertaining to this report;***
- 2. authorises the disestablishment of the existing Municipal Emergency Management Planning Committee (MEMPC) established under s21(3)-(5) of the Emergency Management Act 1986;***
- 3. authorises the Chief Executive Officer to facilitate the establishment of the MEMPC in accordance with the provisions of s68 of the Emergency Management Legislation Amendment Act 2018;***
- 4. notes that, under the MEMPC Terms of Reference provided and the Emergency Management Legislation Amendment Act 2018 Council's role is to establish the committee, and once established, the committee exists separately to Council and is not a committee of Council; and***
- 5. acknowledges the commitment and work undertaken by members under the previous arrangements and thanks them for their contribution.***

## Background

Emergency Management Victoria (EMV) leads emergency management in Victoria and as a result of a review and amendments to the *Emergency Management Act 2013* (EM Act 2013) the new State Emergency Management Plan (SEMP) was created and came into effect 1 December 2020. The SEMP replaces the Emergency Management Manual of Victoria (EMMV). A copy of the SEMP is provided at Attachment 1.

Changes in the *Emergency Management Legislation Amendment Act 2018* require Council to implement the following:

- Disestablishment of the existing Municipal Emergency Management Planning Committee (MEMPC) established under s21(3)-(5) of the *Emergency Management Act 1986*, in recognition that on 1 December 2020 these provisions are repealed by s82(2) of the *Emergency Management Legislation Amendment Act 2018* and replaced by the provisions of s68 of the *Emergency Management Legislation Amendment Act 2018*;
- Authorisation of the Chief Executive Officer to facilitate the establishment of the MEMPC in accordance with the provisions of s68 of the *Emergency Management Legislation Amendment Act 2018* (which inserts a new 'Part 6-Municipal Emergency Management Planning Committees' into the *Emergency Management Act 2013* on 1 December 2020); and
- Under the MEMPC Terms of Reference provided and the *Emergency Management Legislation Amendment Act 2018* (which inserts s59 and 59F into the *Emergency Management Act 2013* on 1 December 2020), Council's role is to establish the committee. Once established, the committee exists separately to Council and is not a committee of Council.

### *Supporting Information:*

Council has been advised by Emergency Management Victoria (EMV) who implemented a emergency management planning reform as outlined in the *Emergency Management Legislation Amendment Act 2018* (EMLA Act). The reform at the municipal level will align municipal emergency management planning with changes that have already occurred at the state and regional levels. The new municipal arrangements apply from 1 December 2020

The multi-agency MEMPC is responsible for preparing the MEMP. The MEMP is a multi-agency plan for the municipal district. It is not only a council plan.

Changes to legislation mean the membership has been reviewed with the previous membership altered in size to this core membership;

The new core MEMPC is:

- Municipal Council appointed representatives
- Victoria Police
- Country Fire Authority
- Ambulance Victoria
- Victoria State Emergency Service
- Australian Red Cross
- Department of Health and Human Services
- at least one community representative
- at least one recovery representative
- at least one other representative (for example, industry, business or additional agency).

Any member of previous MEMPC that are not reflected in the core membership remains eligible to sit on the committee as an additional member, with the approval of the committee. Council will support Councillors in their wish to represent as a community representative.

In a letter to Chief Executive Officers on 5 October 2020, CEOs were advised that *“In line with section 59(1) of the Local Government Act 2020, Council is able to acquit its responsibility [to establish a MEMPC] through a council resolution that ensures a MEMPC is established in accordance with the legislation, including recognising that the MEMPC promotes shared responsibility for planning by requiring relevant agencies to participate in the planning process, and that the MEMPC reports directly to the Regional Emergency Management Planning Committee, not to council.*

*S59(2) of the Local Government Act 2020 defines a resolution of the Council as including ‘a resolution made at a Council meeting’, ‘a resolution made at a meeting of a delegated committee’ or ‘the exercise of a power or the performance of a duty or function of the Council by a member of Council staff...under delegation’*

## **Legislation**

The implementation of the *Emergency Management Legislation Amendment Act 2018* will establish a new integrated, comprehensive and coordinated framework for emergency management planning at state, regional and municipal levels.

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*.

## **Collaboration**

Not applicable

## **Council Plan**

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

Strong Communities Goal 4 - East Gippsland has safe, resilient communities.

## **Council Policy**

The proposed changes are at a direction from Emergency Management Victoria and as such the Municipal Emergency Management Plan will be updated as will subsequent sub plans.

## **Options**

There are no options available other than to support the legislative changes.

## **Resourcing**

### *Financial*

There are no adverse or additional costs to Council as a result of this report.

### *Plant and equipment*

Not applicable

### *Human Resources*

Support to the implemented changes will not result in any change to Councils human resourcing levels.

### *Risk*

The risks of this proposal have been considered and assessed as negligible.

### **Economic**

Not applicable

### **Social**

Not applicable

### **Environmental**

Not applicable

### *Climate change*

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

Emergency Management: Consideration is given to climate change in all elements of the Planning, Preparation, Response, Recovery (PPRR) process.

### **Engagement**

Emergency Management Victoria reviewed and consulted relevant agencies in the preparation of the SEMP. The legislative requirements under *Emergency Management Legislation Amendment Act 2018* with EMV leading the transition for the Emergency Management Planning Reform.

### **Attachments**

1. Victorian State Emergency Management Plan (SEMP) [5.1.1.1 - 89 pages]



## 5.1.2 Adoption of Council's Community Engagement Policy

Authorised by      Acting General Manager Place and Community

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### Conflict of Interest

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

### Executive Summary

The *Local Government Act 2020* (the Act) requires Councils to update their Community Engagement Policy (the revised Policy) so it is reflective of the community engagement principles defined in the Act. It is a principles-based Act, removing unnecessary regulatory and legislative prescription, enabling Councils to apply processes that are sensitive to the community-context in which it is applied.

Reflected by the community engagement principles, the intent of the new Act is to encourage positive and productive community engagement, by assisting Councils to build capacity in deliberative engagement practices so that this way of working with the community becomes standard practice, rather than an exceptional exercise.

The community engagement principles highlight the value of collaboration for Councils in working with groups of people who may be connected through place, special interests, or situations as an effective way of responding to the issues impacting the well-being of those people. Council has already embraced this approach, demonstrated through the community planning processes in the development of place-based community plans, as we understand and respect the unique characteristics, strengths and values of each place in East Gippsland.

To align with the requirements of the *Local Government Act 2020*, including the addition of deliberative engagement practices, the existing Community Engagement Policy that was endorsed at the Ordinary Council Meeting on 12 December 2017 (Item 5.4.5), has been amended and a draft revised policy presented in **Attachment 1**.

Following endorsement by Council at the Ordinary Council Meeting on 25 August 2020 (Item 5.1.1), this draft policy was released for public consultation for a 28-day period. Due to the Election Period this consultation was undertaken in two parts. Consultation was undertaken via Council's Your Say website.

The revised Policy, as presented, is the first iteration and will be reviewed periodically. This presents Council with the opportunity to continually test and evaluate engagement processes and build its capacity to improve practices on an ongoing basis.

Following the adoption of the Policy, a Community Engagement Tool Kit will be developed and implemented within the organisation. This Tool Kit will provide both Councillors and Officers with the resources to effectively engage with the community through a variety of different methods.

## Officer Recommendation

### ***That Council:***

- 1. receives and notes this report and all attachments pertaining to this report; and***
- 2. adopts the Community Engagement Policy as detailed in Attachment 1***

## Background

The *Local Government Act 2020* requires Council to update its Community Engagement Policy so that it is reflective of the principles defined within the new Act.

As a principle-based Act, it enables Council to develop and apply a community engagement process that is sensitive and responsive to the community and context it is being applied to.

The following community engagement principles are defined in the new Act:

	<b>Community Engagement Principles</b>
a	A community engagement process must have a clearly defined objective and scope.
b	Participants in community engagement must have access to objective, relevant and timely information to inform their participation.
c	Participants in community engagement must be representative of the persons and groups affected by the matter that is the subject of the community engagement.
d	Participants in community engagement are entitled to reasonable support to enable meaningful and informed engagement.
e	Participants in community engagement are informed of the ways in which the community engagement process will influence Council decision making.

The new Act does not define any type of community engagement that council must utilise; but it does require that at a minimum, council use deliberative engagement practices in developing certain documents and processes such as the development or review of the Community Vision, Council Plan, Financial Plan, Asset Plan and Annual Budget.

Following the adoption of the Policy, a Community Engagement Tool Kit will be developed and implemented within the organisation. This Tool Kit will provide both Councillors and Officers with the resources to effectively engage with the community through a variety of different methods.

## Legislation

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

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

This report has been prepared in accordance with *Local Government Act 2020*, specifically section 55 requires the Community Engagement Policy to have to give effect to the Community engagement principles in section 56.

The Act requires Council to adopt the Community Engagement Policy on or before 1 March 2021 which has been developed in consultation with the municipal community. Not adopting this Policy by the statutory deadline is a breach of the Act, whilst not good governance it is likely to be considered a minor form of non-compliance, particularly given that Council is adopting the Policy as soon as practical after the required date.

In addition, Council is currently undertaking community engagement on a range of matters, including the Council Vision and Plan, that are following the community engagement principles in the Act.

East Gippsland Shire Council was one of the Councils that already had a community engagement plan to guide interactions with community. The revised Policy expands the practices already being followed at Council to ensure community engagement.

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*.

## **Council Plan**

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

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

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

## **Council Policy**

Council currently has a Community Engagement Policy that uses the IAP2 framework to guide practice. The key amendments made to the draft Policy include the modification of the IAP2 framework to better reflect the intent and requirements of the new Act with consideration to the context in which is applied. There is also the inclusion of deliberative engagement as one of the mechanisms Council can utilise and must do so in certain circumstances in the development of specified documents.

## **Resourcing**

### *Financial*

There is no direct financial cost associated with the adoption of this policy.

### *Plant and equipment*

The adoption of this policy does not have any plant and equipment resource requirements.

## *Human Resources*

The creation of the revised Policy has been undertaken by existing Council Officers. The development and implementation of the Community Engagement Tool Kit to support this Policy will be undertaken through a mix of internal staff and external consultants.

## *Risk*

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

## **Economic**

The adoption of this Policy has no direct impact on the economy of East Gippsland.

## **Social**

The adoption of this Policy will provide residents of East Gippsland with an enhanced level of engagement through the introduction of new practices and processes. It also provides a clearly defined structure of when, how, and why Council will engage with the community.

## **Environmental**

The adoption of this Policy will not have any environmental impacts.

## *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**

Following endorsement by Council at the Ordinary Council Meeting on 25 August 2020 (Item 5.1.1), this draft policy was released for public consultation for a 28-day period. Due to the Election Period, the consultation was undertaken in two parts via Council's Your Say website.

Little community feedback was received through the consultation period however as this policy is subject to periodic review, it does allow Council the opportunity to continually test and review its engagement processes to ensure they meet the needs of the community.

## **Attachments**

1. Draft Community Engagement Policy for Adoption Mar21 [**5.1.2.1** - 25 pages]



### 5.1.3 Planning Application 486/2020/P - Use of the land for informal outdoor recreation (mountain bike trails) and native vegetation removal (Omeo MTB Park)

Authorised by Acting General Manager Place and Community

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#### Conflict of Interest

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

#### Executive Summary

The application seeks approval for the use of the land for informal outdoor recreation (mountain bike trails) and native vegetation removal.

The subject site is made up of Crown Land and State Forest to the north-west of the township of Omeo. Included within this land are the Mount Mesley Reserve, Mount Sam State Forest and the Oriental Claims Historic Area. The Crown Land Reserve is managed by the Department of Environment, Land, Water and Planning (DELWP).

The proposal, with application and supporting documents at **Attachment 2**, is comprised of:

- Use of the land for informal outdoor recreation (mountain bike trail).
- Associated works and construction of 121.58 kilometres of bike track throughout land, including:
  - Trail alignment clearing;
  - Trail excavation;
  - Drainage of water from trail;
  - Rock armouring (hardening trail surface);
  - Dry rock walling;
  - Construction of low level bridges over waterways or bogs; and
  - Associated signage.
- Removal of native vegetation as necessary for construction of bike trail.
- Provision of carparking.

The application requires consideration by Council in accordance with the Planning Permit Application Delegations Policy (April 2018). The development cost of the application exceeds the \$5 Million threshold set in section 8.5 of the Policy.

Public Notification was carried out by the applicant in the form of on-site signage, letters to adjacent owners/occupiers, and a newspaper notice. Four (4) objections have been received from adjacent landowners. Three (3) letters of support have been provided. The objections and letters of support are provided at **Attachment 3**. Referral Authority responses (**Attachment 4**) indicate support for the proposal, subject to conditions.

The proposal on the subject land for the purposes of an informal outdoor recreation and native vegetation removal is considered appropriate having regard for the relevant controls of the East Gippsland Planning Scheme. The proposal appropriately responds to the site constraints. The mountain bike trail is a significant investment and a tourism attraction for the Omeo and High Country region and will have a significant positive impact on the community. The proposal is recommended for support of Council, with conditions proposed for approval

outlined at **Attachment 1**. Detailed analysis of the proposal in relation to the controls of the East Gippsland Planning Scheme is at **Attachment 5**.

## Officer Recommendation

### *That Council:*

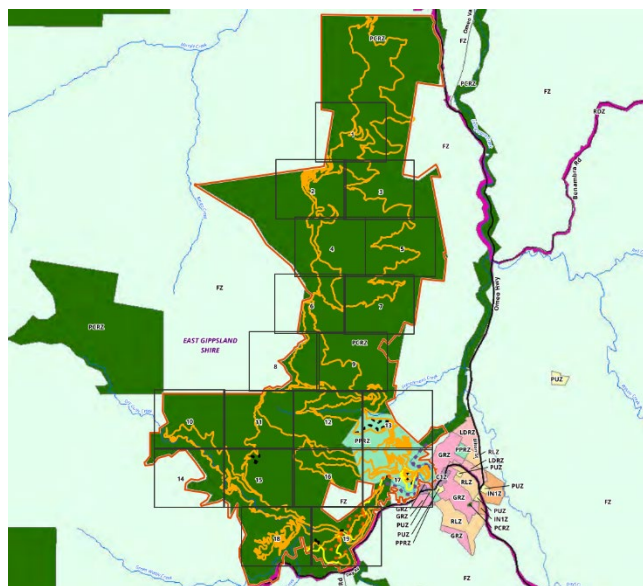
- 1. receives and notes this report and all attachments pertaining to this report, and**
- 2. being the Responsible Authority and having considered all the relevant planning matters, determines that planning application 486/2020/P is consistent with the requirements and objectives of the East Gippsland Planning Scheme and therefore resolves to Issue a Notice of Decision to Grant a Planning Permit for the Use of the land for informal outdoor recreation (mountain bike trails) and native vegetation removal at CA 9J, 9K & 5B, 38A, 39 Parish Bingo-Munjie (Crown land north and west of the townsite of Omeo, including parcels adjacent to Livingstone Creek), subject to the permit conditions and notes listed in Attachment 1.**

## Background

### *Subject Site*

The subject site is formally known as CA 9J, 9K & 5B, 38A, 39 Parish Bingo-Munjie, but can also be identified as the Crown land to the north and west of Omeo, also including parcels adjacent to Livingstone Creek. This includes Mount Sam State Forest, Mount Mesley Reserve and the Oriental Claims Historic Area. The land can be access via several road abutments. DELWP is the land manager for the Crown Land Reserve. The site is shown in locality context in **Figure 1**.

The site is primarily bound by existing farm holdings, a portion of the south-eastern abuttal borders the township of Omeo.

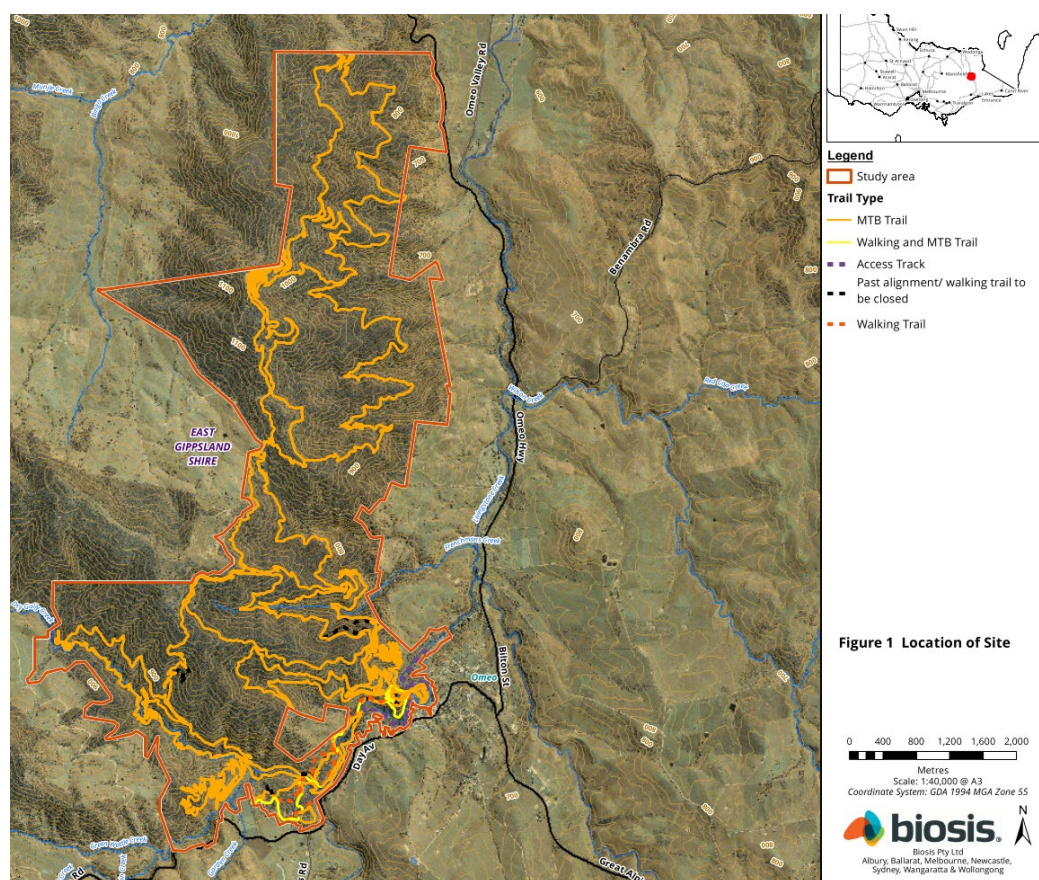


**Figure 1:** Subject site outlined in red (taken from Page 11 of Omeo Mountain Bike Trail Network: Planning Application Report prepared by biosis).

### *Description of Proposal*

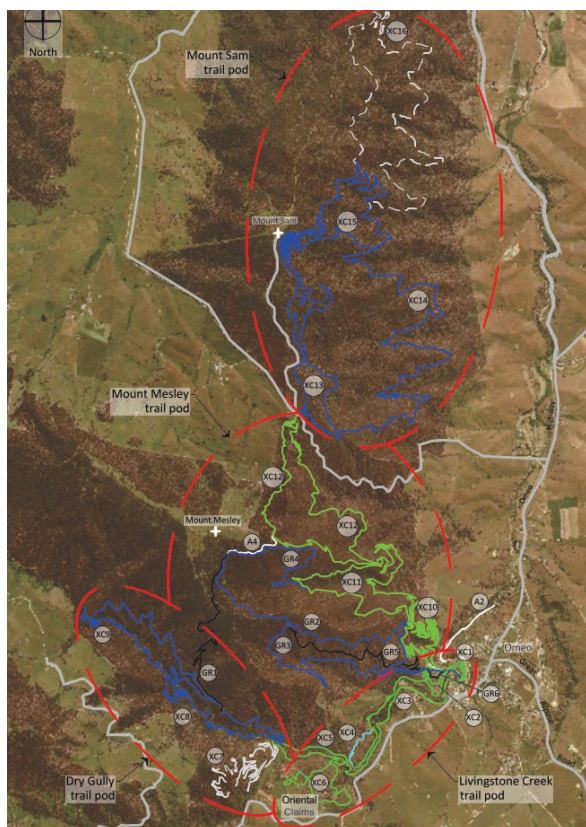
The application proposes to use the land identified for informal outdoor recreation (mountain bike trails) and associated native vegetation removal. Further details are provided below and relevant documentation is available at **Attachment 2**.

The proposed bike trail will consist of approximately 121.58 kilometres of track. This track will be split into different runs across different terrain types and of varying difficulties to provide unique riding experiences for many different skill levels and interests. The trail will also include some exclusive walking paths, shared paths and access tracks. The total proposed trail plan can be seen in **Figure 2**.



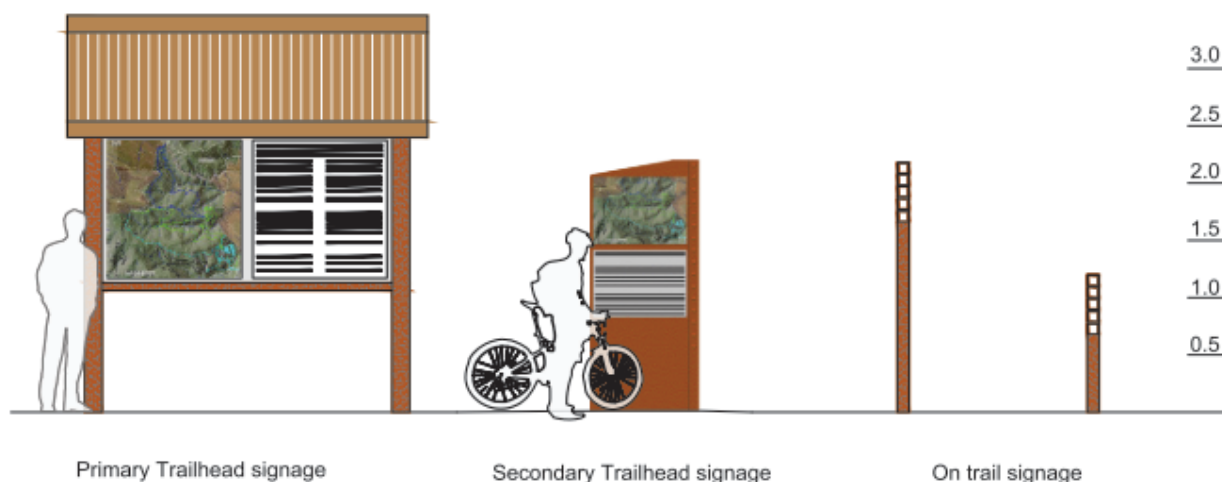
**Figure 2:** Proposed trails.

**Figure 3** below shows the trail divided into different 'pods' based on the different areas of significance the trails will be located in. These pods are the Mount Sam trail pod, Mount Mesly trail pod, Dry Gully trail pod, and the Livingstone Creek trail pod.



**Figure 3: Proposed trail ‘pods’.**

Appropriate signage will be displayed throughout the trail to highlight safety, directions and distance. Typical bike trail signage design can be seen at **Figure 4**.

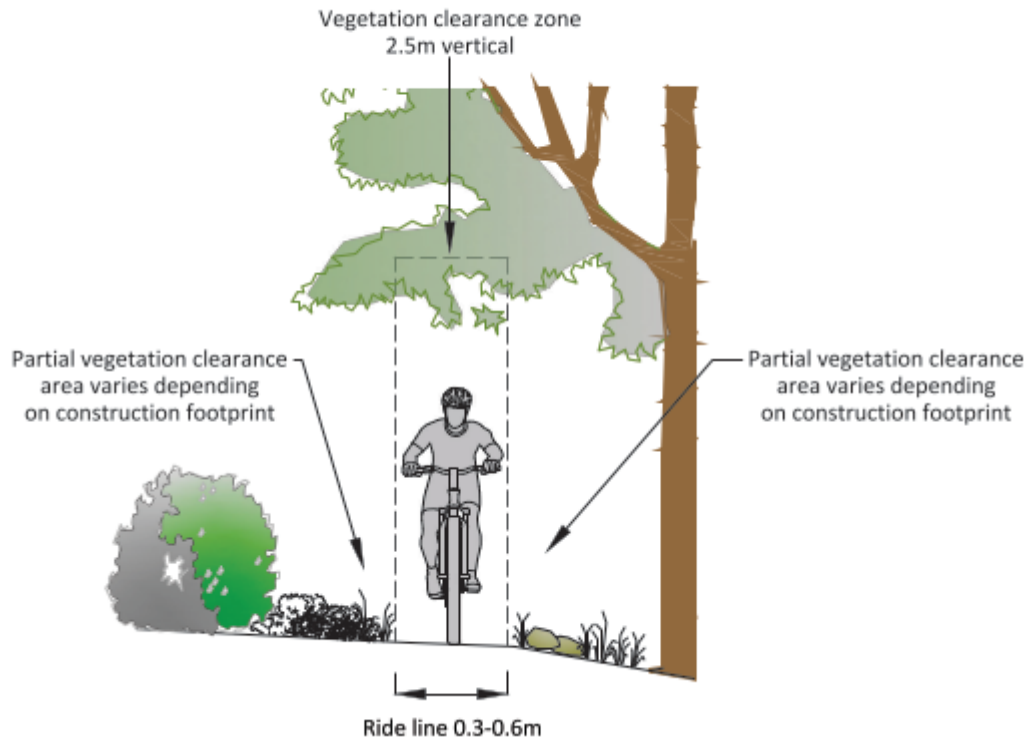


**Figure 4:** Typical trail signage design.

Native vegetation removal is required throughout the trail in order to clear appropriate space for the bike and rider. This removal is primarily targeted toward ground cover (such as shrubs), but where necessary, tree limbs may also require removal/trimming. The area typically required to clear vegetation for trail creation is shown at **Figure 5**. Once the vegetation is cleared then appropriate excavation is proposed to level the track where necessary. Installation of appropriate drainage will be required to prevent soil erosion and pooling water. Further information regarding the proposed vegetation removal and resulting offset required can be seen within **Attachment 2**.

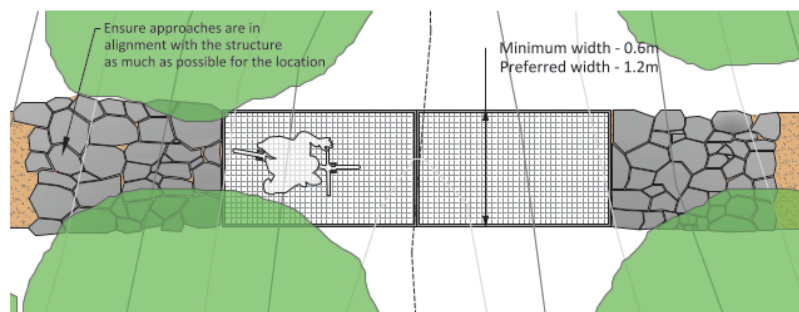


## Typical Section 1 - vegetation clearing

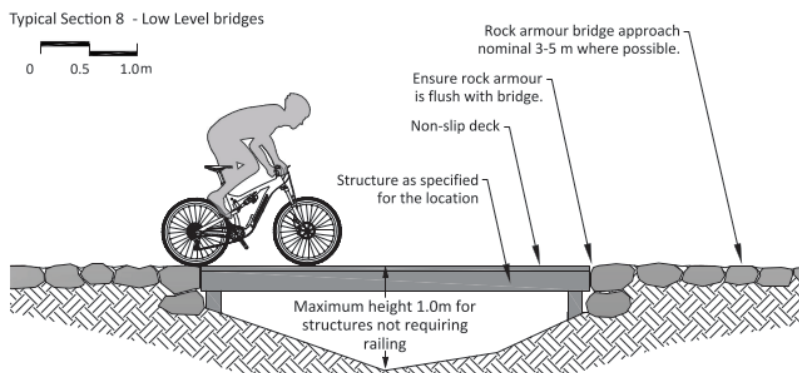


**Figure 5:** Typical vegetation clearing dimensions.

The trail will also require the construction of some structures to allow riders to pass over bodies of water and areas of a boggy nature. Low level bridges are proposed where necessary to deal with these minor waterways and bogs and a typical design for these structures can be seen at **Figure 6**.



**Figure 6:** Typical low level bridge structures.



The trail also required the construction of 4 substantial bridges/passes to traverse more difficult terrain and to also bypass other proposed track. The locations of these proposed passes can be seen at **Figure 7**.



**Figure 7:** Proposed substantial bridges and passes locations.

The proposal seeks to also use existing parking infrastructure within the area (notably at Livingstone Park) and provide additional car parking along Mount Sam Road for trail goers and users.

#### *Current Status and/or Issues*

The proposal has been subject to extensive pre-consultation between Council officers.

Notice of the application was undertaken in accordance with section 52 of the *Planning and Environment Act 1987*. As of the writing of this application Council has received 4 objections and 3 letters of support. These documents can be seen at **Attachment 3**.

The objections contain both planning issues and concerns which lie outside of the realm of planning consideration. Traffic and access concerns are the most prominent of objection reasons. Council officers are currently in discussion with objectors to alleviate concerns where possible. Further discussion of the concerns and process of stakeholder engagement is provided in the Engagement section of this report.

The application was also referred under Section 55 of the Act to DELWP and Goulburn-Murray Water who had no objection and any required conditions have been included in the proposed permit conditions at **Attachment 1**.

It is suggested that there can be no further compromise reached between the objectors and the applicant that would resolve the concerns raised. Council as the permit applicant relies on the expertise of Biosis, who advise that it would not be possible to further amend the trails layout to avoid the trails coming close to private property boundaries. Relocation of trail entry points to reduce traffic in key locations would also make the project unviable.

With the objections remaining, the determination of Council, if inclined to grant a permit, would be subject to the Notice of Decision process. As such, the recommendation from officers is to resolve to issue a Notice of Decision to Grant the planning permit. Further rationale and support is provided herein and in **Attachment 5**.

## Legislation

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

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

The applicable controls under the planning scheme are summarised below:

Application No.	486/2020/P
Address	CA 9J, 9K & 5B, 38A, 39 Parish Bingo-Munjie (Crown land north and west of the townsite of Omeo, including parcels adjacent to Livingstone Creek)
Zone	Public Conservation and Resource Zone
Particular Provisions	52.17 Native Vegetation

The following planning controls also apply to the site but do not trigger a planning permit either due to the control not applying over the area of trail development, or the specific conditions : Farming Zone – Schedule 1, Public Park and Recreation Zone, Road Zone Category 1, Heritage Overlay – Schedule 365, Bushfire Management Overlay and Erosion Management Overlay.

Council has relied upon the general exemption at Clause 62.02-2, which unless otherwise specified elsewhere in the planning scheme, a permit is not required for bicycle pathways and trails.

A full assessment against the East Gippsland Planning Scheme is included at **Attachment 5**. In summary, the assessment is that:

### East Gippsland Planning Scheme

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

- Direct development to appropriately zoned and serviced land.
- Improve tourism opportunities.
- Minimise impact on the natural environment.

The proposal demonstrates a high level of consistency with the State and Local Planning Policy Framework. The purpose and objectives of the Public Conservation and Resource Zone are addressed by the proposal which results in a good planning outcome for the subject land.

The proposal is a high impact activity on land which is within an area of cultural heritage sensitivity as defined by the *Aboriginal Heritage Regulations 2018*. The applicant has submitted a Cultural Heritage Management Plan to Aboriginal Victoria. The approval can be viewed at **Attachment 2**.

### **Collaboration**

Not applicable

### **Council Plan**

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

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

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

Strong Communities Goal 3 - East Gippslanders enjoy healthy lifestyles.

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

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

A Growing Region of Opportunities Goal 2 - East Gippsland is Australia's number one adventure destination. We offer unforgettable tourism experiences for people of all interests, ages and abilities.

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.

Responsive Services Goal 1 - East Gippsland Shire Council is a leading local government service provider.

### **Council Policy**

In accordance with Council's Planning Permit Application Delegations Policy, the application requires consideration by Council as the cost of development exceeds \$5 million.

### **Options**

Project officers and the planning officers have considered whether to:

1. Progress the application through to a Notice of Decision to Grant a Permit; or
2. Engage the objectors further to seek withdrawal of each of the four objections, allowing for the Grant of a Planning Permit.

It is considered that the concerns of the objectors cannot be resolved without. The objections have been considered fully, and the planning considerations have been addressed by the applicant. Land tenure, privacy, and trespass are the key remaining themes.

Option 1 is therefore reflected in the Officer recommendation to Council that a Notice of Decision to Grant a Permit is issued. This considers all the relevant planning merits of the proposal, and also includes analysis of the economic benefit of the proposal for the locality, municipality and region.

There are no further options to consider, except to note to Councilors that the recommendations, if not supported, would require preparation of grounds of refusal.

## **Resourcing**

### *Financial*

Assessment of the proposal is undertaken utilising planning department resources. No external support (legal or expertise) was required for the assessment of the application in accordance with the *Planning and Environment Act 1987*.

### *Plant and equipment*

There are no plant and equipment implications resulting from the recommendations.

### *Human Resources*

There are no human resources implications resulting from the recommendations.

### *Risk*

The risks of this proposal have been considered and officers note the following:

## **Economic**

The financial implications of the project have previously been demonstrated through the project design phase. It is considered that the proposal will have a significant impact on the economic diversity of the High Country, and already the interest in the proposal is driving investment in the community.

## **Social**

The social and community impacts of the proposal have previously been examined through the design phase of the project. It is considered that an overall positive social impact will result from increased economic activity associated with the proposed use. It is considered broadly, based on the few number of objections, grant funding from State and Federal governments, and associated community interest, that there is general social licence to proceed with the project.

## **Environmental**

Environmental impacts of the proposal have been assessed. The proposal provides for as minimal clearing of native vegetation as practical to establish the trail network. Management plans for the facility will consider further waste impacts on the environment.

## *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.

**Community Risk:** Climate change is considered as a community risk 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 stated, the application was subject to notice in accordance with S.52 of the *Act*. Four objections were received. 3 letters of support were received.

Prior to lodgement of the planning permit application, the Projects team carried out extensive community, stakeholder, and referral authority consultation relating to crown land management, trail design, and potential impacts on neighbouring properties. Most of the objectors were involved in this early engagement and the proposal was modified to address many of the concerns raised.

Following the submission of the objections, the Projects officers and Planning Officers met to discuss the concerns raised. Many of the concerns fell broadly into the categories of:

- Trespass, amenity loss, and other issues regarding trails in close proximity to private land;
- Traffic and associated noise and dust generated on the local road network; and
- Land tenure, specifically in relation to leases and licences for use of Crown Land;

It was determined to engage each of the objectors with the Projects and Planning officers in attendance. Meetings with all four objectors occurred on 23 and 24 February 2021 at the Omeo Customer Service Centre and at one objectors property.

The nature of the objections were discussed with the objectors, and the matters to be resolved include:

- Appropriate awareness and signage along roads and on trails, to discourage users from crossing into private property;
- Resolution of Crown Land Lease and Licence amendments;
- Biodiversity concerns, again primarily an awareness campaign, and appropriate facilities available to promote best practice prevention of weed species through bike wash areas at trail heads; and
- Assistance to clarify land tenure in a section of Crown Land adjacent to a private property.

From the discussions held and other communication received, it does not appear that any further negotiation will resolve the concerns of the objectors to the point that each objection will be withdrawn. The planning officers are generally satisfied that the proposal aligns with the requirements of the East Gippsland Planning Scheme, state and local policy and the relevant controls. As such any further discussions held may result in resolution to the non-planning considerations. As this project is reliant on government grants with commencement



pending the outcome of the determination, the Options have been considered and a recommendation is made to process a Notice of Decision to Grant a Planning Permit.

As a way of further engaging with and supporting the community, a recommendation was made to include profiles of community members on websites and trail information as a way to foster respect for property and the community in the trail users. It is hoped that the trail users will recognise the positive and negative impacts of their choice to adhere to or not adhere to the code of conduct which will be established.

### **Attachments**

1. Proposed Permit Conditions [**5.1.3.1** - 5 pages]
2. Application Documents (relevant to the final determination) [**5.1.3.2** - 120 pages]
3. Objections and Support Letters [**5.1.3.3** - 17 pages]
4. Referral Responses [**5.1.3.4** - 5 pages]
5. Detailed Assessment of the Proposal Against the East Gippsland Planning Scheme [**5.1.3.5** - 5 pages]

## 5.2 A Liveable Region

### 5.2.1 Ending and amending section 173 legal agreements Kings Cove and Paynesville

Authorised by General Manager Place and Community

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#### Conflict of Interest

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

#### Executive Summary

The purpose of this Report is to seek a decision of the East Gippsland Shire Council (Council) in relation to 11 formal applications to amend and/or end in part a series of section 173 legal agreements (Agreements) under section 178A(5) of the *Planning and Environment Act 1987* (Act) following the execution and completion of the public notice requirements. Council resolved to proceed with 11 proposals to amend and end in part the Agreements in question at the Council meeting of 15 September 2020 (Item 5.2.1).

The public notice process was undertaken and administered by Officers commencing on the 11 December 2020, with formal notice specifying that a decision would not be made before 18 January 2021. All affected landowners, a total of 385 landowners were notified of the applications. Correspondence included copies of the public notice and the drafted proposed amended Agreements. An approximate five-week notice was extended to allow for public holidays and the Christmas New Year period.

As a result of the public notice a total of 2 written objections were received.

This Report considers 11 applications to amend and end in part Agreements burdening land forming part of the established residential estates or Riviera Harbours in Paynesville and Kings Cove in Metung.

By separate applications, Council proposes to amend and/or end in part the following agreements affecting land within Kings Cove:

- Application No. 004/2020/AGR – AD201621Y originally recorded on certificate of title volume 10743 folio 418 on 26 October 2004;
- Application No. 005/2020/AGR – AB573238L originally recorded on certificate of title volume 10569 folio 313 on 20 September 2002;
- Application No. 006/2020/AGR – AC129582R originally recorded on certificate of title volume 10569 folio 313 on 13 June 2003;
- Application No. 007/2020/AGR – AC166290V originally recorded on certificates of title volume 10678 folio 247, volume 10678 folio 249 and volume 10678 Folio 251 on 30 June 2003;
- Application No. 008/2020/AGR – AC499295B originally recorded on certificate of title volume 10678 folio 250 on 26 November 2003;
- Application No. 010/2020/AGR – AE324337A originally recorded on certificate of title volume 10838 folio 730 on 1 May 2006; and
- Application No. 011/2020/AGR – AF246024X originally recorded on certificate of title volume 10516 folio 543 on 2 August 2007.

By separate applications, Council proposes to amend and/or end in part the following agreements affecting land in Riviera Harbours:

- Application No. 009/2020/AGR – AD247186G originally recorded on certificate of title volume 10662 folio 008 on 17 November 2004;
- Application No. 012/2020/AGR – AF357298N originally recorded on certificate of title volume 10844 Folio 072 on 24 September 2007;
- Application No. 013/2020/AGR – AF499542K originally recorded on certificate of title volume 10562 Folio 626 on 28 November 2007; and
- Application No. 014/2020/AGR – AG568558C originally recorded on certificate of title volume 11019 folio 496 on 17 June 2009.

The title details of all the land currently burdened by the Agreements are listed in each application. All are provided at **Attachments 1 to 11** inclusive.

Given that certain properties are affected by more than one Agreement imposing the same (or very similar) obligations, the Applications also propose to end in part the Agreements in respect of these properties in order to reduce duplication and achieve clarity. If the Applications are approved, these properties will be burdened by a single Agreement (in its proposed amended form).

Officers have received two written objections to three applications, being Application No. 005/2020/AGR, Application No. 006/2020/AGR and Application No. 008/2020/AGR. Officers recommend that the Agreements are amended and ended as proposed in the Applications. This recommendation will achieve a coordinated approach across the two residential estates. Further, if Council decides to refuse one or more of the Applications, those land owners will need to individually approach Council to have their agreements amended or ended. This will place ongoing pressure on the Planning and Development team's resources. There is considered to be a net community benefit by Council assisting with the resolution of the current circumstances.

In summary, the Agreements require the owners to comply with a set of development guidelines (Guidelines). The Guidelines in turn require that an architectural review committee (ARC) or an architectural review panel (ARP) approves any development before development commences on a lot or any alteration occurs to an existing development. The ARC and the ARP were funded and controlled by Riviera Properties Projects Limited (Riviera Projects) and Kings Cove Metung Pty Ltd (Kings Cove Metung). In 2017, these companies were wound up and deregistered.

The deregistration of these companies means that landowners can no longer obtain the required approvals from the ARC and the ARP under the Agreements. The practical effect on the ground is that houses on vacant lots cannot be built and existing buildings cannot be extended without breaching the Agreements.

In simple terms, the Applications propose to amend the Agreements to delete obligations to comply with the Guidelines so the approval of the ARC or the ARP is no longer required. The amendments also translate aspects of the Guidelines into the amended agreements as specific obligations that can usually be varied with Council's consent.

## Officer Recommendation

### *That Council:*

- 1. receives and notes this report and all attachments pertaining to this report;**
- 2. having considered the matters set out in sections 178B(1) and 178B(2) (as relevant), Council resolves in accordance with section 178E(2) of the Planning and Environment Act 1987, to approve Application No. 004/2020/AGR, Application No. 007/2020/AGR, Application No. 009/2020/AGR, Application No. 010/2020/AGR, Application No. 011/2020/AGR, Application No. 012/2020/AGR, Application No. 013/2020/AGR, and Application No. 014/2020/AGR without changes;**
- 3. having considered the matters set out in section 178B(1) and 178B(2) (as relevant), and the objections received, Council resolves in accordance with section 178E(3) of the Planning and Environment Act 1987, to approve Application No. 005/2020/AGR, Application No. 006/2020/AGR and Application No. 008/2020/AGR without changes and to give notice of its decision under section 178F of the Planning and Environment Act 1987 to each person who made an objection to these applications; and**
- 4. resolves that it will pay all costs associated with ending and amending the section 173 agreements subject to Application No. 004/2020/AGR, Application No. 005/2020/AGR, Application No. 006/2020/AGR, Application No. 007/2020/AGR, Application No. 008/2020/AGR, Application No. 010/2020/AGR, Application No. 011/2020/AGR, Application No. 013/2020/AGR, Application No. 009/2020/AGR, Application No. 012/2020/AGR and Application No. 014/2020/AGR. This will include the fees associated with lodging the various documents at land registry.**

## Background

In the early 2000s, Riviera Properties controlled a number of corporate entities, including Riviera Projects and Kings Cove Metung, that were developing land within the municipality. Riviera Projects was developing Riviera Harbours in Paynesville and Kings Cove Metung was developing Kings Cove in Metung.

When Kings Cove and Riviera Harbours were developed, Riviera Projects and Kings Cove Metung implemented a similar legal framework to regulate the future development of the subdivisions. In broad terms, this involved the companies entering into the various Agreements with Council and creating restrictive covenants (Covenants) with those persons purchasing the newly subdivided lots.

In both developments, the developer maintained a high degree of control over the future development of each of the newly created lots. This was achieved through the Agreements and the Covenants.

The Agreements require the owners to comply with the Guidelines. The Guidelines in turn require that the ARC or the ARP (as the case may be) approves any development before development commences on a lot or any alteration occurs to an existing development. The ARC and the ARP were funded and controlled by Riviera Projects and Kings Cove Metung.

Officers understand that this process worked relatively well while Riviera Projects and Kings Cove Metung remained registered companies.

## *The Issues*

The deregistration of Riviera Properties, Riviera Projects and Kings Cove Metung means that landowners can no longer obtain the required approvals from the ARC and the ARP under the Agreements or from Riviera Projects and Kings Cove Metung under the Covenants. The practical effect on the ground is that houses on vacant lots cannot be built and existing buildings cannot be extended without breaching the Agreements.

In addition to the Agreements, Riviera Projects and Kings Cove Metung created the Covenants with the original purchases of the newly created residential lots. The Applications to amend and end the Agreements will have no impact on the Covenants. There are separate issues associated with the Agreements and Covenants which have led to Council's different response towards each set of instruments. These are outlined below.

## *The Covenants*

The Covenants are a private contractual agreement between a current owner and Riviera Projects or Kings Cove Metung (depending on the specific covenant). The Covenants were not a requirement of Council. As Council is not a party to the Covenants, it has no role in enforcing them. Further, each of the current owners of land in Kings Cove and Riviera Harbours would have had notice of the Covenant at the time of purchasing their land. Council understands that the Covenants contain obligations including to obtain the approval of Riviera Projects and Kings Cove Metung for any development.

As Council is not a party to the Covenants, Council has decided not to take proactive steps to resolve the issues with the Covenants.

Council officers understand that an owner could apply to the Australian Securities and Investments Commission (ASIC) under section 601AF of the *Corporations Act 2001 (Cth)* for the written approval required under the Covenants. However, Council is unaware whether ASIC would be forthcoming with any approval if it were requested by an owner.

Further, based on the Tribunal's decision in *Sesto v Hume CC* [2019] VCAT 826, Council would have a reasonable basis to vary a Covenant by deleting this obligation if an owner applied for a planning permit to vary their Covenant.

Therefore, the owners have options available to address the issues arising from the Covenants.

## *The Agreements*

Unlike the Covenants, Council is a party to the Agreements and has a duty to administer and enforce them.

Title searches have revealed there are 7 Agreements applying to land in Kings Cove and 4 Agreements applying to land in Riviera Harbours, which include an obligation to comply with the Guidelines and obtain the approval of the ARC or the ARP.

There are additional section 173 agreements affecting land in Kings Cove and Riviera Harbours. However, as their terms do not require compliance with the Guidelines or the approval of an ARC or ARP before development takes place on the affected land, Council has not prepared applications in respect of these agreements. These agreements will remain unchanged as a result of the Applications.

### *The Statutory Process*

The process for considering the proposals is set out in the Act. In broad terms, the process requires Council to undertake the following steps:

1. give notice of each proposal (at least 14 days);
2. consider any submissions or objections that are received to each proposal;
3. decide whether to approve (with or without changes) or refuse each proposal;
4. give notice of its decision on each proposal to any submitters and objectors; and
5. deal with any applications for review lodged with the Victorian Civil and Administrative Tribunal (Tribunal) that seek a review of Council's decisions.

This report is prepared to assist Council with making a decision required under steps 2 and 3.

### *The proposed amended agreements*

Council has prepared separate proposals to amend and/or end each of the 11 Agreements. This is intended to avoid any uncontroversial proposals being held up by those proposals that might receive considerable objections or become subject to reviews at the Victorian Civil and Administrative Tribunal (Tribunal).

The amendments proposed to the Agreements remove obligations to comply with the Guidelines and therefore remove the need to obtain approval from an ARC or ARP. The amendments also translate aspects of the Guidelines into the amended agreements. This is a practical way to give ongoing effect to the Guidelines even though the approval of an ARC or ARP will no longer be required.

Council has not included every aspect of the Design Guidelines in the amended agreements to avoid them becoming unnecessarily complex. Further, some aspects of the Design Guidelines were too ambiguous and subjective for Council and landowners to reasonably determine compliance.

The obligations proposed to be incorporated into the Agreements affecting Kings Cove broadly relate to building envelopes, compliance with the soil & water management plan, single dwellings, dwelling floor area and new materials, outbuildings, vehicle parking, screening, driveways and fencing.

The obligations proposed to be incorporated into the Agreements affecting Riviera Harbours broadly relate to building envelopes, single dwellings or multi-dwelling detached buildings, dwelling floor area and new materials, buildings exposed to public view, parking, screening, driveways, compliance with the soil & water management plan, revetment wall structures, contamination of the canals system, and jetties, landings and decks.



### *The proposed ending of Agreements in part*

As a result of the subdivision of land occurring in stages, certain properties are now affected by more than one Agreement imposing the same (or very similar) obligations. In order to ensure clarity and reduce duplication, the Applications also propose to end in part Agreements in respect of these properties. As a result, these properties will be burdened by a single Agreement (in its proposed amended form) to ensure the ongoing effect of relevant obligations.

Officers note that some properties may still have more than one agreement if they are subject to agreements that did not require compliance with the Guidelines.

As there is community opposition to the process, and as such, following Council's decision there may be applications lodged for review with the Victorian Civil & Administrative Tribunal (VCAT).

### **Legislation**

On 24 March 2020 the Victorian 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*.

This Report has been prepared in accordance with the *Planning and Environment Act 1987* (Act).

Pursuant to section 178A of the Act, Council can consider ending an agreement, either wholly or in part, or amending an agreement without the consent of all persons who are bound by the agreement. Council has prepared the Applications under section 178A(5) which allows a council to propose an amendment or ending of an agreement on its own initiative.

### *Assessment of the applications*

The Applications to end and/or amend the Agreements have been submitted pursuant to section 178A(5) of the Act. An application submitted under this section, must be considered pursuant to section 178B(1) of the Act with respect to a proposal seeking to amend an agreement and section 178B(2) of the Act with respect to a proposal seeking to end an agreement. The assessment of the Applications against the requirements of the Act for amending and ending an agreement is set out below.

## Assessment of the amendment Applications

### *The purpose of the Agreements*

The Agreements do not expressly set out a purpose.

Based on the obligations contained in the Agreements, officers consider that the purposes of the Agreements were to fulfil the requirements of various planning permits and to provide a legal framework to regulate the future developments of the residential lots.

The proposed amendments to each Agreement will not undermine the purposes of each Agreement as the amended Agreements will continue to regulate the ongoing development of the land subject to each Agreement.

### *The purpose of the Amendments*

Council is proposing to amend the Agreements to delete the obligation to comply with the Design Guidelines so the approval of the ARC or the ARP will be no longer required. The amendments also seek to incorporate certain aspects of the Design Guidelines into agreements.

Council proposes to amend some of the ending clauses to remove obsolete requirements that require the consent of the Minister for Planning.

Therefore, the purpose of the proposed amendment is to:

1. enable landowners to develop their lots without the approval of the ARC or ARP and without breaching their Agreement; and
2. provide a practical way to give ongoing effect of the Guidelines even though the approval of the ARC or ARP will no longer be required.

### *Whether any change in circumstances necessitates the amendment*

The deregistration of Riviera Projects and Kings Cove Metung and the consequences that these two events have had on the implementation of the Agreements have been significant. As already explained above, the deregistration of these two companies have led to the Agreements being unworkable and has effectively sterilise large areas of Kings Cove and Riviera Harbours.

This change in circumstance and its consequences has necessitated the amendment.

The amendments are also required to ensure that the land can be otherwise developed in accordance with the East Gippsland Planning Scheme.

### *Whether the amendment of the Agreements would disadvantage any person, whether or not a party to the Agreements*

The proposed amendments will not disadvantage any person, including a person who is not a party to the Agreement. This is because the amendment to the Agreements will not result in any land being removed from any ongoing obligations due to the existence of at least another comparable agreement.

The amendments will assist the relevant owners to develop their land in accordance with the amended Agreements in circumstances where they cannot do so. The amendments will also remove a layer of control by no longer requiring an owner to obtain the approval of an ARC or ARP before development commences. Provided the minimum standards set out in the Agreements are met, the amended Agreements will not require owners to obtain any specific permission from Council. This means the affected owners will generally not be required to obtain any approvals from Council under the Agreements. It should be noted that planning permits might still be required under the East Gippsland Planning Scheme, but this requirement will not change as a result of the Applications.

Council has received two objections relating to three agreements. A copy of the Objections together with written statements, not considered to be objections are attached at **Attachment 12**.

The first objection relates to the land on Plan of Subdivision 448625 and is relevant to Application No. 005/2020/AGR and Application No. 006/2020/AGR. The owners are concerned that the amendments to the agreement on the land are too restrictive and will prevent their land from being further subdivided. Concerns are also raised regarding the Covenant on their property.

In response to the matters raised by the objector, officers make the following comments:

1. Application No. 005/2020/AGR will not lead to any additional restrictions because this application proposes to end agreement no. AB573238L on this property.
2. Application No. 006/2020/AGR proposes to amend agreement no. AC129582R. The proposed amendments to the agreement include a restriction that no more than one dwelling can be constructed on a lot. This restriction reflects a corresponding and existing requirement in the Design Guidelines.
3. As discussed above, the Applications do not affect the obligations under the Covenant.

The second objection relates to the land on Plan of Subdivision 509111 and is relevant to Application No. 005/2020/AGR and Application No. 008/2020/AGR. The owners are concerned that they should have received notices with respect to the other agreements affecting land in Kings Cove and that their property is being treated differently to other land in Kings Cove. Concerns are also raised that there should be more land that is subject to the section 173 agreements applying to both applications.

In response to the matters raised by the objector, officers make the following comments:

1. The certificate of titles in question has been reviewed and there are only two section 173 agreements relevant to this property, namely the agreements the subject of Application No. 005/2020/AGR and Application No. 008/2020/AGR. Therefore, the owners received notices relevant to the agreements affecting their property.
2. Although not strictly relevant because each agreement in Kings Cove is slightly different, there is a high degree of consistency between the amendments proposed to be made to each of the Agreements in Kings Cove.

3. The Applications expressly apply to various road reserves and other reserves where the Agreements have been recorded on these certificates of title. While there would be sound reasons for removing the Agreements from these properties, the Applications were not considered to be the appropriate vehicle to address these issues. In this respect, Council owned land that is subject to the Agreements has been treated in the same way as privately owned land.

For these reasons, the objectors are not considered to be disadvantaged by the proposed amending and ending of the Agreements on their respective properties.

*The reasons why the responsible authority entered into the Agreements*

The responsible authority entered into the Agreements to comply with conditions of various planning permits to subdivide the land.

The proposed amendments are not considered to undermine this reason.

*If the amendment is to remove land from the application of the agreement, whether the land is subject to any further liability under the agreement*

This consideration is not relevant to the Applications. This is because the Applications do not seek to remove land from the Agreements by way of an amendment. The Applications do propose to end the Agreements in part and the implications of doing so are considered below.

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

The only relevant permits in this case are the original subdivision permits. These permits are all either expired or spent and are no longer enforceable. That said, the amendments maintain the spirit and intent of the conditions on those permits that required a section 173 agreement to be entered into.

*Any other prescribed matter*

The *Planning and Environment Regulations 2015* does not prescribe any matters for the purposes of section 178B(1).

*Assessment of the ending Applications*

*Purpose of the Agreements*

The Agreements do not expressly set out a purpose. Based on the obligations contained in the Agreements, officers consider that the purposes of the Agreements were to fulfill the requirements of various planning permits and to provide a legal framework to regulate the future developments of the residential lots.

The proposed partial ending of each Agreement will not undermine the purpose of that Agreement as another agreement will continue to regulate the ongoing development of the land.

### *Whether and why the Agreements are no longer required*

The Agreements are no longer required on the properties over which the Agreements are to be ended because another agreement regulating the ongoing development of this land will remain.

### *Whether the ending of the agreement would disadvantage any person, whether or not a party to the agreement*

The ending of the Agreements in part will not disadvantage any person, including a person who is not a party to the Agreement. This is because the ending of the Agreements will not result in any land being removed from any ongoing obligations due to the existence of another comparable agreement remaining on the relevant certificates of title. Further, the ending of the Agreements will be limited to the land that already has at least one other comparable agreement.

There is considerable benefit by rationalising the obligations into a single set of obligations, rather than retaining multiple overlapping section 173 agreements.

### *The reasons why the responsible authority entered into the agreement*

The responsible authority entered into the Agreement to as part of conditions of planning permits issued for a series of subdivisions.

The partial ending of the Agreements is not considered to undermine this reason because the relevant land will continue to be subject to another comparable agreement.

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

The only relevant permits in this case are the original subdivision permits. These permits are all either expired or spent and are no longer enforceable. That said, the remaining agreements will maintain the spirit and intent of the conditions on these permits. This is because the partial ending of the Agreements has been targeted to removing duplication as opposed to removing any land entirely from the obligations of a section 173 agreement.

### *Any other prescribed matter*

The *Planning and Environment Regulations 2015* do not prescribe any matters for the purposes of section 178B(2).

## **Collaboration**

Not applicable

## **Council Plan**

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

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

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



In the Council Plan as part of the 'A liveable Region' goals strategies include.

*"Advance planning that provides community members and landowners with certainty about the way that land will be used and developed in their towns" and*

*Ensure that the East Gippsland Planning Scheme continues to facilitate investment confidence to support sustainable growth in East Gippsland.*

Council's proactive response to the current circumstances embraces and is reflective of these strategies and identified courses of action.

## **Council Policy**

Not applicable

## **Options**

As a result of Riviera Projects and Kings Cove Metung being deregistered, officers considered three options, namely:

1. do nothing (Option 1);
2. assessing amendments to the Agreements on a case by case basis (Option 2); and
3. proceeding with a proposal itself to amend and/or end the Agreements in a comprehensive and coordinated manner (Option 3).

Given Council's role as a party to the Agreements and the concerns being raised by the community, Option 1 was considered to be an unfeasible option. Option 2 was considered to be comparable to Option 1 as Council would not be taking any proactive action and would be relying on individual owners taking action. Further, if Option 2 was adopted by numerous landowners, it would potentially have significant workload implications for Council when assessing these proposals and such proposals would also likely lead to the Agreements being amended in different ways, leading to an inconsistent approach throughout each estate.

Even though the Act places no obligation on Council to take any action, Option 3 was adopted as the preferred approach.

Council has decided to take action because it is a party of the agreements and this is a significant issue facing a large number of landowners.

## **Resourcing**

### *Financial*

Council resources within the statutory and strategic planning operating budgets for the current financial year will be dedicated to the current process. There is considered to be no other option for Council. It is foreshadowed that financial costs associated with the process are in the order of \$60,000 (legal expenses). Council has received a contribution of \$16,000 from the company receivers in February 2019 towards these costs. There may be additional resources required in the event that the matter is referred to the Victorian Civil and Administrative Tribunal (VCAT), given the written objections to the applications.

### *Plant and equipment*

Not applicable

### *Human Resources*

Council officers will project manage and administer the applications associated with the requests to amend the series of legal agreements in question. Legal counsel in relation to the applications will continue.

### *Risk*

The risks of this proposal have been considered.

### **Economic**

Not applicable

### **Social**

There are important amenity and built environment design and decision guidelines that are proposed to be uplifted into the new versions of the section 173 legal agreements to be executed. These controls and design criteria will be discussed with affected landowners. There are no new obligations proposed.

### **Environmental**

The amended agreements propose to carry forward ongoing obligations in relation to approved Soil & Water Management Plans which address key elements relating to the Erosion Management Overlay.

### *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**

There has been a significant level of response and engagement in relation to the issues and proposal at hand for an extended period of time, commencing in early 2017. There have been significant pressures on Council to resolve and solve the issue with respect to the both the section 173 legal agreements and restrictive covenants which require the approval of development from the ARC or ARP. This has resulted in significant impact to affected landowners, resulting in uncertainty on many levels.

Many landowners are aggrieved and frustrated by the situation.

There have been a significant number of telephone calls, emails and general correspondence in relation to the current situation and specifically in relation to the proposed series of amending and ending in part of the section 173 legal agreements.

The issues raised specifically in the two written objections and submissions, all relating to Kings Cove. The issues broadly relate to the following areas of concern.

### Procedural fairness & Equity

Issues have been raised in relation to the procedural fairness relating to the question of why some agreements are being amended and some being ended.

The number of properties affected by either amending or ending, has been determined on a case by case basis, based on a title search of each of the affected properties. The aim being to ensure that no more than one agreement requires compliance with design guidelines remains on each title.

The overall aim is for consistency and fairness.

### Fencing requirements

The proposed amended legal agreement proposes to carry forward obligations in relation to fencing of allotments. The obligations restrict a fence on a boundary adjoining a road reserve. This restricts the construction of a front fence. This carries forward the established character of the residential estate.

### Building materials

The Guidelines refer to building form, external finishes and colors. The guidelines nominate preferred and desirable characteristics. The Guidelines refers to the coastal setting, and state that as such it is desirable but not definite. As such the form, it has not been possible to draft these elements of the guidelines into legal prescriptive obligations.

### Landscaping requirements

It is not proposed to carry forward the elements contained in the Guidelines relating to preparation of landscape plans, use of indigenous and coastal species and lodgment of landscaping bonds. In some cases, the Guidelines require ARC approval to remove any existing vegetation on allotments.

The amended legal agreements do not propose to carry forward the maintenance obligations with respect to grass height and general maintenance of properties.

Council does not have sufficient resources going forward to implement obligations relating to landowners' gardens and properties. The planning scheme controls together with local laws provisions relating to maintenance and grass height will continue to apply.

## **Attachments**

1. Required reading - 4.2020. AGR A D 201621 Y [5.2.1.1 - 48 pages]
2. Required reading - 5.2020. AGR A B 573238 L [5.2.1.2 - 71 pages]
3. Required reading - 6.2020. AGR A C 129582 R [5.2.1.3 - 57 pages]
4. Required reading - 7.2020. AGR A C 166290 V [5.2.1.4 - 61 pages]
5. Required reading - 8.2020. AGR A C 499295 B [5.2.1.5 - 56 pages]
6. Required reading - 9.2020. AGR A D 247186 G [5.2.1.6 - 59 pages]
7. Required reading - 10.2020. AGR A E 324337 A [5.2.1.7 - 26 pages]
8. Required reading - 11.2020. AGR A F 246024 X [5.2.1.8 - 41 pages]
9. Required reading - 12.2020. AGR A F 357298 N [5.2.1.9 - 36 pages]
10. Required reading - 13.2020. AGR A F 499542 K [5.2.1.10 - 58 pages]
11. Required reading - 14.2020. AGR A G 568558 C [5.2.1.11 - 33 pages]
12. Required reading - Combined objections [5.2.1.12 - 3 pages]

## 5.3 Good Governance

### 5.3.1 Finance Report - period ending 31 December 2020

Authorised by General Manager Business Excellence

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#### Conflict of Interest

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

#### Executive Summary

The forecast operating result for the 2020/21 financial year is \$12.552 million compared to the adopted operating surplus of \$22.673 million. This is a forecast reduction in operating surplus of \$10.121 million.

There are operating and capital grant income reductions of \$6.68 million as a result these grants being brought to account in the 2019/20 year and included in the operating surplus for that year. Offsetting the reduction in grants are a number of new grants for projects, the most significant being the Working for Victoria grant of \$2.830 million. There is also \$3.012 million of projects that were incomplete at the end of the 2019/20 year that will now be completed in the current financial year. The majority of these projects are funded from grants received in the 2019/20 year.

The expected end-of-year cash position of \$49.046 million (\$11.189 million greater than the adopted budget) is the result of the more favourable 2019/20 end-of-year cash position than the estimated result at the time of adopting the 2020/21 budget together with the estimated value of capital works being less than the adopted budget by \$9.154 million noting that \$6.918 million of capital projects from the current financial are expected to be now completed in the 2021/22 year.

The capital works adopted budget was \$64.765 million and has been adjusted to the current forecast of \$55.610 million with an estimated \$6.918 million of works now to be completed in the 2021/22 financial year. Landfill rehabilitation projects forecast expenditure has increased from \$2.219 million to \$3.219 million as a result of the Orbost landfill rehabilitation that will be undertaken in 2020/21.

Details of the forecast variances and other financial information are included in **Attachments 1 to 7**.

The *Local Government Act 2020* Section 97 (3) now requires that the second quarterly finance report to Council includes a statement by the Chief Executive Officer as to whether a revised budget is, or may be, required. The Chief Executive Officer has determined that a revised budget will not be required for the 2020/21 financial year.

#### Officer Recommendation

##### ***That Council:***

- 1. receives and notes this report and its attachments; and***
- 2. notes that the Chief Executive Officer has advised that no revised budget is required for the 2020/21 financial year; and***
- 3. adopts the Finance Report for the six-month period ended 31 December 2020, as outlined in Attachments 1 to 7.***

## **Background**

### **Overview of Financial Performance**

Provided in this report as at the end of December 2020 is an overview of the year-to-date (YTD) operating and capital expenditure compared to the forecast result, and adjustments to the adopted budget for the full year that have been incorporated into the full year forecast result.

#### **Year-to-Date**

##### *Net Comprehensive Result*

The YTD favourable variance of \$4.512 million is primarily the result of the timing for bushfire reinstatement works and project costs yet to be incurred for new grant funded projects.

Refer to **Attachment 1** for a full explanation of all variances.

#### **Full Year – Budget**

##### *Net Comprehensive Result*

The expected operating surplus for the year is \$12.552 million which is \$10.121 million less than the adopted budget of \$22.673 million.

There were operating and capital grants included in the adopted budget totalling \$6.68 million that were accounted for in the 2019/20 year and included in the end of year operating surplus for that year. This has reduced the expected operating surplus for the 2020/21 year by this amount and together with \$3.012 million of additional expenditure added to the 2020/21 year as a result of projects that were incomplete at the end of the 2019/20 year, accounts for the majority of the reduction in the estimated operating surplus.

##### *Adjusted Underlying result*

The adjusted underlying surplus is the net surplus for the year adjusted for non-recurrent capital grants, non-monetary contributions and capital contributions from other sources. The unfavourable variance of \$6.792 million is primarily a result of the forecast reduction in operating surplus of \$10.121 million offset by a reduction in non-recurrent capital funding of \$3.335 million.

**Attachment 1** provides further explanation of the variances discussed above.

#### **Cash Position**

##### *Year-to-Date:*

As at 31 December 2020, Council held cash of \$69.633 million. This is greater than YTD expectations as a result of the timing of works and services and the delivery of the capital works and landfill rehabilitation program.



### *Full Year*

The end-of-year forecast cash position of \$49.046 million is \$11.189 million greater than the adopted budget of \$37.857 million. This forecast cash position takes into account the actual 2019/20 end-of-year result that was more favourable than estimated at the time of adopting the 2020/21 budget as well as \$6.918 million of 2020/21 capital projects that will not be completed until the 2021/22 financial year. The increase in cash though is restricted in nature and committed to various provisions, that are required to be cash funded, for landfill rehabilitation projects and employee annual and long service leave. The use of this cash happens over time as landfill rehabilitation works are undertaken and employees take leave entitlements.

For further details, please refer to the Balance Sheet variance explanations in **Attachment 2** and Statement of Cash Flows at **Attachment 3**.

### **Capital Works and Landfill Rehabilitation Projects**

#### *Year-to-Date:*

The adopted budget for the 2020/21 financial year was \$64.765 million in capital works and a further \$2.219 million in landfill rehabilitation projects, giving a total of \$66.984 million.

Actual YTD capital and landfill rehabilitation projects expenditure at the end of December 2020 was \$14.185 million.

#### *Full Year:*

The forecast capital and landfill rehabilitation expenditure for the 2020/21 year is \$58.829 million. There has been a forecast reduction in capital works expenditure of \$2.2 million as a result of revised estimates as well as a \$6.918 million reduction to account for projects that will now not be completed until the 2021/22 year. There has also been an increase in landfill rehabilitation projects of \$1.0 million as a result of the Orbost landfill rehabilitation works required following the reopening of the landfill site to accept bushfire waste.

### **Legislation**

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

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

This report has been prepared in accordance with *Local Government Act 2020*. Section 97 of the *Local Government Act 2020* requires a quarterly budget report be presented to the Council at a Council meeting which is open to the public. The quarterly budget report must include a comparison of the actual and budgeted results to date and an explanation of material variances. The second quarterly report of a financial year must include a statement by the Chief Executive Officer as to whether a revised budget is, or may be, required.

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*.

### **Collaboration**

This is not applicable for this report.

### **Council Plan**

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

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

### **Council Policy**

Not applicable for this report.

### **Options**

Not applicable for this report.

### **Resourcing**

#### *Financial*

Refer to the following **attachments**:

1. Income and Expenditure Statement and Explanation of Variances
2. Balance Sheet and Explanation of Variances
3. Statement of Cash Flows and Explanation of Variances
4. Reconciliation of Adopted (Operating) budget to Forecast budget
5. Summary of Capital Works and Landfill Rehabilitation
6. Rates Performance
7. Financial Performance Indicators

#### *Plant and equipment*

Not applicable for this report.

#### *Human Resources*

Not applicable for this report.

#### *Risk*

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

#### *Economic*

Not applicable for this report.

**Social**

Not applicable for this report.

**Environmental**

Not applicable for this report.

***Climate change***

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

**Engagement**

Not applicable for this report.

**Attachments**

1. Attachments 1 to 7 - Financial Report December 2020 [5.3.1.1 - 17 pages]

### **5.3.2 Public submission process S223 Omeo Caravan Park lease**

Authorised by General Manager Business Excellence

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#### **Conflict of Interest**

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

#### **Executive Summary**

On the 15 September 2020, Council resolved to undertake an Expression of Interest (EOI) process for the future management of the Omeo Caravan Park. This report outlines the section 223 public consultation process required for the 21-year lease term, as part of this EOI process.

The current lease arrangement for the Omeo Caravan Park was for a 21-year lease. Continuing with a 21-year lease arrangement for the management of the Omeo Caravan Park provides security of tenure for the lessee and incentive to invest in the development of the park.

Under section 190 of the *Local Government Act 1989* (the 1989 Act) Council has the power to lease land, however if the lease is to be for a period of 10 years or more, Council must provide the public with an opportunity to make a submission under section 223 of the 1989 Act on the proposed term of the lease. A public submission process is scheduled to commence no later than 30 March 2021.

#### **Officer Recommendation**

##### ***That Council:***

- 1. receives and notes this report and all attachments pertaining to this report;***
- 2. resolves to commence a 28-day submission process under section 223 of the Local Government Act 1989 on the 21-year lease term for the Omeo Caravan Park no later than 30 March 2021;***
- 3. appoint a Committee comprising the whole of Council (with a quorum of five Councillors) to hear and consider any written public submissions received in relation to the 21-year lease term for the Omeo Caravan Park, in accordance with section 223 of the Local Government Act 1989;***
- 4. nominates 11 May 2021 at 1.30pm as the time and date for the Committee to hear any submissions; and***
- 5. notes the Expression of Interest process for the operation, management and maintenance of the Omeo Caravan Park will commence no later than 1 June 2021.***

## Background

The Omeo Caravan Park is situated on Crown land for which Council is appointed the committee of management on behalf the State Government. Under the *Crown Land (Reserves) Act 1978* section 17D Council may lease the land. However, section 190 of *Local Government Act 1989* provides the power for entering to a lease arrangement. The current lease arrangement is due to expire and the lessee has been advised that Council is considering its options for the ongoing management of the park.

At the Council meeting of the 15 September 2020, it was resolved:

*That, to ensure Council gains the best economic, environmental and social outcome for the future management of public land where the Omeo Caravan Park is located, Council shall:*

- 1. Apply the Leasing and Licensing Policy for Council-owned Land and Council Managed Land and the State Government Leasing Policy for Victorian Crown Land and their respective intents, for the future management of the Omeo Caravan Park by entering into a competitive Expression of Interest process.*
- 2. Acknowledge that Council may provide an in-house bid in that Expression of Interest Process and request the CEO to draft a process for Council consideration that details how this can be managed to ensure proper and due process is maintained.*
- 3. Where the Expression of Interest process is not resolved within 90 days of the end of the current lease, extend the lease of the Omeo Caravan Park to 90 days after Council awarding any new lease or resolving to bring the matter in-house to ensure continuity of service provision and the opportunity for the outgoing lease holder to restore the site as determined in the lease.*

Consistent with the current lease term it is proposed that the new lease agreement for the Omeo Caravan Park is for 21 years. Section 190 of the 1989 Act requires that for any lease term greater than 10 years Council must publish a notice of the proposed lease inviting members of the community to comment through a submission. As outlined under section 223 of the 1989 Act the community will have 28 days to make a submission regarding the term of the lease.

Anyone making a submission, may nominate to be heard in support of their written submission and if they wish to be heard they can appear in person or by a person acting on their behalf. Submissions will be heard at a meeting of a committee appointed by Council.

If submissions are received on the proposed term of the lease for the Omeo Caravan Park a report will be presented at a future Council meeting for consideration.

Should no submissions be received, a brief will be prepared advising of this and the EOI will be advertised immediately.

A public notice will appear in the Bairnsdale Advertiser, and on Council's website in the Public Notices section no later than 30 March 2021. Submissions will be able to be submitted online and hardcopies via mail or hand delivery to Council offices. The submission process will close no later than 30 April 2021. A section 223 hearing is scheduled for 11 May 2021 with a report proposed for the Council meeting on 25 May 2021, if submissions are received.

The EOI process will be commenced no later than 1 June 2021.

## **Legislation**

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

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

This report has been prepared in accordance with sections 190 and 223 of the *Local Government Act 1989* as outlined above.

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

## **Collaboration**

This report does not involve collaborative procurement.

## **Council Plan**

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

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

A Growing Region of Opportunities Goal 2 - East Gippsland is Australia's number one adventure destination. We offer unforgettable tourism experiences for people of all interests, ages and abilities.

## **Council Policy**

The section 223 submission process is a legislative requirement there is no applicable policy.

## **Options**

There are no other options available to Council as it is a requirement of section 190 of the Act that the section 223 process must be followed in respect of a lease for 10 years or more.

## **Resourcing**

### *Financial*

There are no identified financial implications with this briefing.

### *Plant and equipment*

There is no plant and equipment requirements associated with this briefing.

### *Human Resources*

The section 223 process will be undertaken within existing resourcing.

### *Risk*

Following the statutory process to publish a notice of Council's intention to offer the lease for the Omeo Caravan Park for a term of 21 years will eliminate the risk of Council being non-compliant with the legislative requirement of public consultation under the section 223 process.

### **Economic**

The process outlined in the report will provide the best economic, environmental and social outcome for the future management of the public land where the Omeo Caravan Park is located.

### **Social**

The section 223 submission process will enable the community to be involved in the decision making in the best interest of the future operation, management and maintenance of the Omeo Caravan Park.

### **Environmental**

The process to identify the future lessee of the Omeo Caravan Park will determine the best environmental outcome for the community and the park.

### *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**

This report outlines the process for community engagement of the term of the lease for the Omeo Caravan Park as required under section 190 of the 1989 Act.

### **Attachments**

Nil



### 5.3.3 Mayoral and Councillor Allowances 2021-2024

Authorised by General Manager Business Excellence

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#### Conflict of Interest

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

#### Executive Summary

This report outlines the process for determining Mayoral and Councillor allowances for 2021-2024.

The *Local Government Act 2020* (the 2020 Act) provides for the Mayor and Councillors to receive allowances from the Council. These allowances will be in accordance with the determination of the Victorian Independent Remuneration Tribunal. However, until a determination is made the Act provides that allowances will be determined in accordance with the requirements in the *Local Government Act 1989* (the 1989 Act).

The Council must review and determine the level of Mayoral and Councillor allowance within six months of the general election or by 30 June 2021, whichever is later. In undertaking the review, Councils must ensure that a person has the right to make a submission under section 223 of the 1989 Act; this is a 28-day public submission process.

The Minister for Local Government has reviewed the current amounts, limits and ranges of mayoral and Councillor allowances and determined that there will be no adjustments this year. Council is required to determine the level of Mayoral and Councillor allowances within the range that applies to East Gippsland Shire Council.

#### Officer Recommendation

##### ***That Council:***

- 1. receives and notes this report;***
- 2. resolves the annual allowance for the Mayor is \$81,204 and for a Councillor \$26,245, adjusted from time to time as determined by the Victorian Government and advised by the Minister for Local Government;***
- 3. notes Councillors will receive in addition to the allowance an amount that is equivalent to the superannuation guarantee;***
- 4. notes under section 39 of the Local Government Act 2020 the first determination of the Victorian Independent Remuneration Tribunal will supersede this decision of Council;***
- 5. resolves to commence a 28-day submission process under section 223 of the Local Government Act 1989 on the annual Mayoral and Councillor allowances, as determined in resolution 2, above, no later than 25 March 2021;***
- 6. appoint a Committee comprising the whole of Council (with a quorum of five Councillors) to hear and consider any written public submissions received in relation to the allowances payable to the Mayor and Councillors as determined in resolution 2 above, in accordance with section 223 of the Local Government Act 1989; and***
- 7. nominates 27 April 2021 at 1.30pm as the time and date for the Committee to hear any submissions.***

## Background

As elected representatives Councillors do not receive benefits such as those that apply to employees (e.g. salary, paid leave, sick leave etc.). Section 39 of the 2020 Act provides for the Mayor and Councillors to receive an allowance while performing their duties as elected officials.

The Victorian Government sets the upper and lower levels for allowances to be paid to Councillors. These levels are automatically adjusted each year and announced in the Government Gazette by the Minister for Local Government.

In October 2020, the Minister advised that there would be no adjustments to Mayoral and Councillor allowances. The Department of Jobs, Precincts and Regions advised that Councils were to continue to pay Mayors and Councillors the same allowances that applied prior to the general elections.

The Victorian Government has divided Councils into three categories based on the income and population of each Council. East Gippsland Shire Council is a category two Council. The category 2 range limits advertised in the Government Gazette on 13 November 2019 are:

Councillors: \$10,914 - \$26,245 per annum  
Mayors: up to \$81,204 per annum

Councillors are required within 6 months of the general election or by 30 June 2021, whichever is the later, to review and determine the level of allowances to be paid to the East Gippsland Shire Mayor and Councillors. In 2017 Council decided the Mayor and Councillors would receive the maximum allowance for category 2 Councils, therefore the current annual allowances for the Mayor is \$81,204 and Councillors is \$26,245.

In addition to the Mayoral and Councillor allowances, Council is required to pay an amount that is equivalent to the superannuation guarantee (9.5%). This percentage is scheduled to be increased to 10% from 1 July 2021.

## Legislation

On 24 March 2020 the Government passed the *Local Government Act* 2020. 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 (1989 Act) applies in circumstances where the new Act has not commenced.

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

This report has been prepared in accordance with section 39 of the *Local Government Act* 2020 and section 73B and 74 to 74B of the *Local Government Act* 1989.

In accordance with section 39 of the *Local Government Act 2020*, Councillors are entitled to receive allowances from the Council as a Mayor or a Councillor in accordance with the determination from the Victorian Independent Remuneration Tribunal. Further, the Mayor is not able to receive an allowance as a Councillor while receiving the allowance for a Mayor. The Act does not allow a Council to pay an allowance to the Mayor or a Councillor that exceeds the determination.

However, the Victorian Independent Remuneration Tribunal has not yet made a determination under the 2020 Act. The Act provides that until such time as a determination is made the framework for determining Mayoral and Councillor allowances that applied under 1989 Act applies.

Therefore, under section 74 of the 1989 Act Council is required to review the Mayoral and Councillor allowances within six months of the general election or by 30 June 2021, whichever is later. Council must review and determine the level of allowance following the advice from the Minister regarding the ranges of allowances payable for the Mayor and Councillors. Council must allow a person the right to make a submission under section 223 in respect of the level of the Mayoral and Councillor allowances determined by the Council.

Under section 223 of the 1989 Act, Council must publish a notice outlining the level of Mayoral and Councillor allowances to be paid for the 2021-2024 term of Council and advising that members of the community are entitled to request, in the submission, that they be heard by Council. The submission process must not be less than 28 days. It is proposed to commence this process no later than the 25 March 2021.

If Council receives a request to be heard on the matter, provisions will be made for Councils to hear submissions prior to Councillor briefing on a Tuesday 27 April 2021. A report on the hearings will be provided to Council to inform decision-making prior to 30 June 2021.

Council's determination on Mayoral and Councillor allowances will apply until the first determination of the Victorian Remuneration Tribunal. However, Council is still required to complete a review and determine the level of allowances under the 1989 Act, prior to 30 June 2021, as advised by Department of Jobs, Precinct and Regions.

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 Victorian Remuneration Tribunal will make a determination on Mayoral and Councillor allowances under the *Victorian Independent Remuneration Tribunal and Improving Parliamentary Standards Act 2019*.

## **Collaboration**

As this report does not involve procurement, there is no requirement to consider opportunities for collaboration.

## **Council Plan**

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

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

## **Council Policy**

Payment for the Councillor and Mayoral allowance is provided for in Council's Councillors Support and Expenses Policy.

## **Options**

There are no alternative methods for considering mayoral and councillor allowances as it is a statutory requirement to review and determine the Mayoral and Councillor allowances as outlined in the 2020 and 1989 Acts.

Councillors have two options to consider when determining the level of mayoral and councillor allowances:

1. maintain the current maximum level of the allowance for both the Mayor and Councillors as determined by the Victorian Government for category two Councils; or
2. reduce the level of allowance to a nominated amount for both the Mayor and Councillors, within the limits determined by the Victorian Government for category two Councils.

## **Resourcing**

### *Financial*

Payment of an annual allowance of \$26,245 to eight Councillors, and an annual allowance of \$81,204 to the Mayor, plus an additional percentage being equivalent to the prevailing superannuation guarantee contribution has been provided for in the adopted 2020/21 budget. Provision will be made in Council's future budgets for the cost of the allowances for the Mayor and Councillors.

If Council, was to reduce the level of allowances for the Mayor and Councillors this would result in savings in the current budget.

### *Plant and equipment*

There are no implications for plant and equipment from this proposal.

### *Human Resources*

Payment of allowances to the Mayor and Councillors will be achieved within existing resourcing.

### *Risk*

Following the statutory process to review and determine Mayoral and Councillor allowances will eliminate the risk of Council being non-compliant with the legislative requirement to complete the process by 30 June 2021. Commencing the process in March 2021 should provide Council will adequate time to meet the statutory requirement.

## **Economic**

Providing an allowance to the Mayor and Councillors, as required by the Act, will enable the Mayor and Councillors to perform their duties in the best interest of the Shire.

## **Social**

The municipal community has the opportunity to be involved in the process of determining the Mayoral and Councillor allowances in the best interest of the financial sustainability of the Council.

## **Environmental**

There are no environmental impacts attributable to the review and determination of allowances for the Mayor and Councillors.

### *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**

This report proposes a section 223 submission process commencing no later than 25 March 2021 and concluding not later than the 23 April 2021. A public notice will be placed in Council's weekly notice in the Bairnsdale Advertiser each week until submissions close.

## **Attachments**

Nil

## **6 Urgent and Other Business**

## **7 Confidential Business**

Nil

## **8 Close of Meeting**