



Council Meeting Agenda

Tuesday 28 February 2023 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 Bidawel people as the Traditional Custodians of this land that encompasses East Gippsland Shire, and their enduring relationship with country. The Traditional Custodians have cared and nurtured East Gippsland for tens of thousands of years.

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

Council information

East Gippsland Shire Council live streams, records and publishes its meetings via webcasting (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.

In line with the *Local Government Act 2020*, Councillors are able to attend Council meetings electronically or in person and the meetings will be open to the public via livestreaming.

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

Councillors

Cr Mark Reeves (Mayor)
Cr Arthur Allen (Deputy Mayor)
Cr Sonia Buckley
Cr Tom Crook
Cr Jane Greacen OAM
Cr Trevor Stow
Cr Mendy Urie
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 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/council/council-policies>

Councillors pledge

As Councillors of East Gippsland Shire Council, we solemnly and sincerely declare and affirm that we will consider each item on this agenda in the best interests of the whole municipal community.

Vision

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

Our Strategic Objectives

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

Index

1 Procedural	7
1.1 Recognition of Traditional Custodians	7
1.2 Apologies	7
1.3 Declaration of Conflict of Interest	7
1.4 Confirmation of Minutes	7
1.5 Next Meeting	7
1.6 Requests for Leave of Absence	7
1.7 Open Forum	7
1.7.1 Petitions	7
1.7.2 Questions of Council	7
1.7.3 Public Submissions	7
2 Notices of Motion	7
3 Deferred Business	8
3.1 Economic Development Advisory Committee Appointment of Members	8
4 Councillor and Delegate Reports	23
5 Officer Reports	23
5.1 Assets and Environment	23
5.1.1 CON2023 1503 - Supply of Plant and Equipment for Emergency Response and Recovery Works	23
5.1.2 CON2023 1478 Heritage Listed Hinnomunjie Timber Truss Bridge - Structural Stabilisation	28
5.2 Business Excellence	34
5.2.1 Council Plan Progress Report - Quarter Two 2022-23	34
5.2.2 Councillor Representation Register	89
5.3 Place and Community	95
5.3.1 Request to End S173 Agreement AL961631J - 40 Koraleigh View, Nicholson	95
6 Urgent and Other Business	167

7 Confidential Business	167
7.1 Personnel Matter	167
8 Close of Meeting	167

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 this land that encompasses East Gippsland Shire, and their enduring relationship with country. The Traditional Custodians have cared and nurtured East Gippsland for tens of thousands of years.

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

1.2 Apologies

1.3 Declaration of Conflict of Interest

1.4 Confirmation of Minutes

That the minutes of the Council Meeting held Tuesday 7 February 2023 be confirmed.

1.5 Next Meeting

The next Council Meeting is scheduled to be held on Tuesday 21 March 2023 at the Corporate Centre, 273 Main Street Bairnsdale commencing at 6.00 pm.

1.6 Requests for Leave of Absence

1.7 Open Forum

1.7.1 *Petitions*

1.7.2 *Questions of Council*

1.7.3 *Public Submissions*

2 Notices of Motion

3 Deferred Business

3.1 Economic Development Advisory Committee Appointment of Members

Authorised by General Manager Place and Community

Conflict of Interest

No officer who has provided advice in the preparation of this report has disclosed a conflict of interest.

Executive Summary

Under section 66(2) of the *Local Government Act 2020* a meeting considering confidential information may be closed to the public. Pursuant to sections 3(1) and 66(5) of the *Local Government Act 2020*, the information contained in **Confidential Attachment 1** to this report is confidential because it contains personal information that would if released result in the unreasonable disclosure of information about personal affairs.

This report recommends approval of the Economic Development Advisory Committee (Committee) Charter and also makes recommendations regarding the appointment of members to the new Committee.

As part of the development of the East Gippsland Economic Development Strategy, Council identified two focus groups to assist with the development of the Strategy. In the first instance, members of the focus groups were invited to express interest in being members of the Committee. As a result, seven members are recommended for appointment.

An additional candidates for appointment have been nominated by Councillors with the aim of ensuring the Committee has the necessary skills, experience and perspectives to provide advice to Council.

Officer Recommendation

That Council:

- 1. receives and notes this report and all attachments pertaining to this report;***
- 2. approves the draft Economic Development Advisory Committee Charter presented in Attachment 2;***
- 3. appoints the applicants listed in confidential Attachment 1 to the Economic Development Advisory Committee for an initial period of 2 years;***
- 4. resolves that Confidential Attachment 1 to this report and all discussions relating to the attachment remain confidential; and***
- 5. authorises the Mayor or Chief Executive Officer to make a public statement on membership of the Economic Development Advisory Committee.***

Background

In August 2020, Council called for Expressions of Interest (EOI) for membership to the Committee, several submissions were received. However, after consideration that the development of Council's new Economic Development Strategy was underway and that this would include a review of the role of the Committee, member appointment to the Committee was postponed until the completion of the Strategy and review.

The Economic Development Strategy and Action Plan have recently been finalised. The Strategy was adopted by Council on 8 November 2022 and the Action Plan was endorsed at the Council Meeting on 13 December 2022. A revised Committee Charter (Draft) has been developed as a result of the review, which is more consistent with the Agriculture Sector Advisory Committee Charter.

The Committee's primary role is to advise Council on critical matters of economic prosperity sustainability in East Gippsland and the wellbeing of those engaged in various industry sectors, the draft Charter is attached for Councillors' consideration and approval **(Attachment 2)**.

To assist the development of the Strategy, focus groups were convened with membership consisting of invited community members. Subsequently, focus group members were invited to submit EOIs to form membership of a new Committee.

Seven (7) EOIs were received. Additional candidates for appointment have been nominated by Councillors, with the aim of ensuring the Committee has the necessary skills, experience and perspectives to provide advice to Council, including coverage of the nine (9) Focus Areas set out in the Economic Development Strategy.

The nine (9) Focus Areas are as follows:

1. Fostering business
2. A high value and sustainable food and fibre sector
3. A unique and compelling tourist destination
4. An economy for young and future generations
5. Digital skills and connections
6. Arts, culture and heritage
7. Attractive place to live
8. Climate action leaders; and
9. A circular economy.

The Draft Charter **(Attachment 2)** identifies that up to 14 skill-based members may be appointed by Council plus three (3) Councillors, this will form the Committee membership. This will progress the formation of the Committee after a two-year pause, due to the development of the new Economic Development Strategy and Action Plan, Bushfires and COVID-19.

Legislation

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

Under section 66(2) of the *Local Government Act 2020* a meeting considering confidential information may be closed to the public. Pursuant to sections 3(1) and 66(5) of the *Local Government Act 2020*, the information contained in **Confidential Attachment 1** to this report is confidential because it contains personal information that would if released result in the unreasonable disclosure of information about personal affairs.

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*.

In preparing this report the Victorian *Gender Equality Act 2020* has been considered. The implications of the report have been assessed and are compliant with the obligations and principles of the *Gender Equality Act 2020*. The need for a Gender Impact Assessment has also been assessed. The implications of this report have been assessed and align with the principles and objects of the *Gender Equality Act 2020*.

Council Plan

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

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

Options

Council has the options to:

1. appoint the candidates as recommended;
2. appoint none of the recommended candidates; or
3. appoint some, but not all of the candidates.

Resourcing

Human Resources

The Committee will potentially consist of up to fourteen community members representing various industry sectors, along with three Councillors and several Council Officers, it is anticipated that the Committee will convene four times annually.

Council's Economic Development and Tourism Department will provide administrative support to the Committee.

Risk

There are range of risks associated with each of the options presented. Proceeding as outlined in the recommendations does not include a public expression of interest process which ordinarily would provide for increased transparency and equity of opportunity. Inclusion of a public expression of interest process would delay the establishment of the Committee and the provision of advice in relation to implementation of the Economic Development Strategy. The balance of these risks has been considered in forming the recommendation.

Economic

The formation of the Committee is important to help guide Council decision making regarding the implementation of the Economic Development Strategy of the life of the 4-year Action Plan.

Social

Gender Impact Statement

The formation of the Committee will consider the *Gender Equality Act 2020* in its preparation.

Environmental

Not applicable.

Climate change

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

Engagement

The invitations to join the Committee included an opportunity for the existing Economic Development Strategy Focus Group Members to expression of interest, as they had been previously appointed by Council and have remained passionate and committed stakeholders throughout the development of the Strategy.

Attachments

1. CONFIDENTIAL - Recommended Applicants for Economic Development Advisory Committee [3.1.1 - 1 page]
2. Draft Economic Development Advisory Committee Charter revised [3.1.2 - 11 pages]



Charter

East Gippsland Economic Development Advisory Committee

TABLE OF CONTENTS

Economic Development Advisory Committee (EDAC)

Purpose	3
Scope	3
Policy Context.....	3
The Committee	3
1. Formation, Powers and Limitations	3
2. Objectives	3
3. Charter and Duties.....	4
4. Membership	5
5. Support	5
6. Term of Membership.....	6
7. Meetings	6
8. Conflicts of Interest and Disclosure of Conflicts of Interests.....	7
9. Confidentiality	7
10. Indemnity	7
Roles and Responsibilities	8
References and Supporting Documents.....	9
Applicable Legislation:	9
Supporting Documents:	9
Privacy and Human Rights Consideration	9
Definitions	10
For the purposes of this Charter, the following definitions apply:	10
Revision History and Review	11

Purpose

The Economic Development Advisory Committee (Committee) will provide advice, guidance and recommendations to East Gippsland Shire Council (Council) on matters that affect Economic Development in East Gippsland and its communities.

Scope

This Charter will guide the operation of the Committee and apply to all its members.

Policy Context

A strong, competitive and sustainable economy is essential for the future of rural and regional areas. In the case of East Gippsland, Council recognises the importance of strong, resilient and inclusive economic development to support investment and job opportunities that are key to providing quality of life and wellbeing for current and future generations.

The Committee will provide a valuable forum through which Council can gain timely and informed insight into the issues that are impacting on individual industry sectors and economic development more broadly.

The Committee

1. Formation, Powers and Limitations

The Committee will comprise representatives of Council and a range of stakeholders operating within East Gippsland's economic and business environment.

The Committee will be an Advisory Committee to Council as defined in Council's Governance Rules, which is informed by the *Local Government Act 2020* (the Act).

Neither the Committee nor its members are authorised to make decisions on Council's behalf or to act for Council.

Because Council maintains several Advisory Committees, this Committee's Charter does not include working with Council, or any other Committee/group on initiatives to encourage or facilitate new business in East Gippsland. However, the Committee may refer matters to Council or another Council Advisory Committee for consideration (see also clause 3 below).

2. Objectives

The Committee's primary role is to advise Council on critical matters of economic prosperity sustainability in East Gippsland and the wellbeing of those engaged in various industry sectors, specifically;

- Provide advice on priority implementation of the Economic Development Strategy;
- Provide strategic advice and insights from the business community that are relevant to Council;
- Help strengthen connection between Council and the broader business community; and
- Provide policy advocacy in support of economic prosperity in the Shire.

It will do this through the provision of advice and recommendations on matters relevant to its Charter and Duties (detailed at clause 3) to facilitate decision-making by Council and its officers in discharging their responsibilities.

3. Charter and Duties

The Committee will:

1. Discuss and provide input on significant initiatives or programs Council is considering implementing to support economic development in East Gippsland and/or improve its resilience in the longer term.
2. Assist Council to formulate appropriate responses to significant existing or emerging issues that are impacting or are likely to affect industry (eg; local emergency incidents).
3. Discuss and provide feedback on strategic documents of Council that impact on the sector, eg:
 - planning scheme amendments;
 - policies;
 - draft Council Plan, draft Budget (including draft Capital Works program) and draft Rating Strategy;
 - any other matter likely to impact significantly on economic development outcomes in East Gippsland
4. Act in an advisory capacity to provide recommendations to Council and other stakeholders on matters that fall within the Committee's Charter or are otherwise consistent with the intent and purpose of the Committee.
5. Act as a conduit, and advise on collaboration between Council and business, industry and the economic development community in East Gippsland.
6. Refer matters for consideration by Council or another Council Advisory Committee if the issue is relevant to economic development but falls outside the Committee's Charter.

Committee members will:

1. Actively participate in and contribute to the work of the Committee;
2. Proactively raise awareness of changes or proposed changes of relevant strategic directions of key stakeholders to Committee members (e.g. actual or impending legislative, regulatory or other changes that may impact adversely on economic development);
3. Bring matters to the attention of the Committee as necessary to ensure Council retains a good understanding of what is happening 'on the ground'. Examples could include:
 - Longer-term environmental factors such as climate adaption and water security, and their impact on individuals and industries.
 - Inability to benefit from technological advances for any reason.
 - Any other matters impacting on the health and wellbeing of business and industry.
4. Participate in community engagement as advocates for economic development and business communities.

(Also see the 'Roles and Responsibilities' section of this Charter)

4. Membership

The Committee will comprise of a maximum of seventeen (17) members, as follows:

1. Three Councillors, appointed by Council, one of whom will be the Mayor¹.
2. Up to fourteen (14) skill-based members appointed by the Council.

A representative of other relevant groups may be invited to participate as an observer (non-voting) member.

Selection of the skills-based members will be held either by way of a publicly advertised process or other processes that ensures an appropriate mix of skills is attained.

East Gippsland Shire Council will endeavor to ensure that these twelve skill-based members will individually possess the relevant skills and experience, and collectively will bring a breadth and depth of knowledge aligning with the nine Focus Areas of the East Gippsland Economic Development Strategy;

1. Fostering Business;
2. A High Value and Sustainable Food and Fibre Sector;
3. A Unique and Compelling Tourist Destination;
4. An Economy for Young and Future Generation;
5. Digital Skills and Connections;
6. Arts, Culture and Heritage;
7. Attractive Place to Live;
8. Climate Action Leaders; and
9. A Circular Economy.

Seek to ensure there is also appropriate coverage of the following sectors in our economy:

- Manufacturing;
- Construction;
- Retail;
- Professional Services; and
- Health.

Council is committed to promoting and supporting diversity in the workplace and recognises that our success depends upon our people with their diverse views, abilities, skills, languages, cultures, and backgrounds, as well as differences in race, religion and/or belief, gender and sexual orientation. We respect, value, and encourage diversity in the workplace. We are an inclusive organisation that values fairness, respect, equity, and diversity consistent with our policies and the Gender Equality Act 2020.²

Council's Chief Executive Officer, or a delegate will attend meetings as a non-voting member of the Committee.

Periodically additional representatives or stakeholders may be co-opted to the Committee for limited periods to provide advice or assistance on specific issues. Co-opted representatives and stakeholders will not be entitled to vote.

Membership and composition of the Committee may be varied at any time by Council resolution.

¹ If the Mayor chooses to relinquish their ex officio membership of the East Gippsland Economic Development Advisory Committee, another Councillor will be elected through the same mechanism and for the same term as the other Councillor representative.

² Council's Workforce Plan 2021-2025

Any member of the The Committee that is absent from three consecutive ordinary meetings without having first applied for leave of absence will be considered to have vacated their position. In extenuating circumstances members can seek a leave of absence for an extended time, which may be approved at the discretion of the Chair.

5. Support

The responsible General Manager will attend Committee meetings but will not be a member of the Committee. The General Manager will ensure that appropriate secretariat services are provided to support the work of The Committee.

6. Term of Membership

Duration of appointments to the Committee will be for the following terms, using the appointment method nominated:

Membership type	Appointment method	Length of tenure
Two Councillors, comprising: <ul style="list-style-type: none"> the Mayor; and one other Councillor 	<i>Ex officio</i> unless Mayor chooses to relinquish that right ³ Formal resolution of Council	Duration of their term as Mayor 12 months reviewed annually following Council's Statutory Council Meeting.
Ordinary Members	Formal resolution of Council	Two years with the option to extend for a further two years.

The Committee ordinary members (other than Councillors) may serve a maximum of two consecutive terms. Following a break of one term's duration, a former member may re-apply for membership. If appointed, the two-term provision would then recommence.

Chair: The Chair of the Committee will be the Mayor. If the Mayor chooses not to take up membership of the Committee, the Chair will be another Councillor appointed by resolution of Council.

In the absence of the Chair, another Councillor or their delegate will chair the meeting.

(Also see 'Roles and Responsibilities' section of this Charter)

7. Meetings

- The Committee will meet at least four (4) times per year, once in each quarter.
- Additional meetings may be convened at the written request of any member of the Committee or as considered necessary by the Chair or responsible General Manager.
- A quorum will exist if at least 50% plus one of the Committee members are present.
- Agreement by the Committee on matters will generally be made by consensus. If consensus is not possible, matters will be resolved by a show of hands and a simple majority of votes cast by members in attendance. The Chair will have the casting vote if the votes are equal.

³ *If the Mayor chooses to relinquish their ex officio membership of the East Gippsland Economic Development Advisory Committee, a second Councillor will be elected through the same mechanism and for the same term as the 'one other Councillor'.*

- In accordance with section 126 of the *Local Government Act 2020* (Disclosure of Conflict of Interest), Committee members must declare all conflicts of interest before any discussion occurs on the matter for which the conflict of interest has arisen. *Also refer to clause 6 - Conflicts of Interest and Disclosure of Conflicts of Interests below.*
- Councillors who are not members of the Committee may attend its meetings as observers and through the Chair, may ask questions in relation to matters listed on the agenda.
- Agenda items can be submitted to the responsible General Manager for inclusion in the agenda of Committee meetings. The final composition of the agenda and associated documents will be determined by the responsible General Manager in consultation with the Chair.
- Minutes of Committee meetings will be kept and when the draft minutes have been approved by the Chair, circulated to Committee members and East Gippsland Shire Councillors as Unconfirmed Minutes. The Unconfirmed Minutes will be confirmed at the next meeting of the Committee.
- A report on the activities of the Committee will be presented to the next Ordinary Meeting of Council following each quarterly meeting of the Committee.

8. Conflicts of Interest and Disclosure of Conflicts of Interests

As defined in section 126 of the *Local Government Act 2020*, a conflict can arise when a person has the potential to be influenced, or appear to be influenced, by personal or private interests. Where such a conflict exists, it should be resolved in the best interests of East Gippsland Shire and its business and industry community, rather than the individual's private interest.

As set out in Clause 18 of Council's Governance Rules if a member of the Committee considers that they have, or might reasonably be perceived to have, an interest in a matter before the Committee, they will clearly state the nature of their interest at the beginning of the meeting and immediately before the matter is considered.

It is the responsibility of a Committee member to make their own determination about whether to declare a conflict of interest, consistent with the Definitions outlined in section 126, General Conflict of Interest in section 127, Material Conflict of Interest in section 128 and the exemptions in section 129 of the Act.

Further, having declared such a conflict on a matter, the Committee member must exclude themselves from the decision-making process in relation to that matter, including any discussion or vote on the matter, and any action in relation to the matter.

Further guidance is available through the Victorian government's publication, [Good Governance Guide, 2012](#) and the [Conflict of Interest – A Guide for Members of Council Committees, 2012](#).

9. Confidentiality

Members of the Committee will be bound by the provisions of section 125 of the *Local Government Act 2020* in relation to confidentiality. In this regard, members are expected to maintain confidentiality in relation to matters under consideration from time to time that have been declared as confidential, particularly those matters of a commercial in confidence nature.

10. Indemnity

Members of the Committee will be covered by Council's insurance when engaged on or attending to their duties in accordance with this Charter.

Roles and Responsibilities

Following is a list of positions with designated responsibilities under this Charter:

Party / Parties: Roles and responsibilities:	
Chair	<p>Conduct meetings efficiently to ensure all matters listed for consideration are afforded appropriate time and attention.</p> <p>Exercise a casting vote where:</p> <ul style="list-style-type: none"> (a) consensus cannot be reached; and (b) a formal vote is required to resolve the matter; and (c) voting numbers are equal. <p>Approve the Unconfirmed Minutes of each meeting for circulation to Committee members, Councillors and others.</p> <p>Consider applications from Committee members for leave of absence.</p> <p>Together with the responsible General Manager, participate in the selection process for relevant Committee members.</p> <p>Together with the responsible General Manager, ensure compliance with this Charter by Committee members and address any matters of concern arising in respect of a Committee member's conduct.</p>
The Committee members	<p>Make every effort to attend scheduled meetings of the Committee.</p> <p>Ensure that matters are considered fairly and consistently and facilitate open and respectful sharing of opinions.</p> <p>Form conclusions and recommendations based on the best available information.</p> <p>Keep confidential any matter or documents that have been declared to be confidential.</p> <p>In accordance with sections 126, 127 and 128 of the <i>Local Government Act 2020</i> (Disclosure of Conflict of Interest), make a full disclosure of all conflicts of interest prior to discussion of the matter for which the conflict of interest has arisen. Further, having declared such a conflict, leave the room and remain outside the room and any gallery or other area in view or hearing of the room until the matter has been concluded.</p> <p>As prescribed by section 123 of the <i>Local Government Act 2020</i>, members must not misuse their position on the Committee to gain or attempt to gain, directly or indirectly, an advantage for themselves or for any other person; or cause, or attempt to cause, detriment to Council or any person.</p> <p>Complete the Register of Interest returns required by sections 133 and 134 of the <i>Local Government Act 2020</i> within the stipulated timeframes.</p>
Responsible General Manager	<p>Responsible for the implementation, review and updating of this Charter.</p> <p>While not a member of the Committee, attend all meetings of the Committee (or arrange for another General Manager to do so) and provide guidance and advice.</p> <p>also:</p> <ul style="list-style-type: none"> • ensure that an appropriate agenda is formulated for scheduled meetings and circulated to members in a timely fashion; • facilitate meetings by arranging for appropriate Council officers or others to attend to provide pertinent information, as necessary;

Party / Parties: Roles and responsibilities:	
	<ul style="list-style-type: none"> • provide secretariat services in respect of matters before the Committee; • after each quarterly meeting, ensure that a report describing the activities of the Committee and explaining any recommendations or key findings is tabled at an ordinary meeting of Council and the Committee; • ensure that accurate minutes of Committee meetings are taken, circulated to Committee members, Councillors and others in a timely fashion and once confirmed, stored securely in Council's electronic document record management system; • coordinate the selection process for relevant the Committee positions and together with the Committee's Chair, comprise the interview panel for these positions; and • together with the Committee's Chair, address any matters of concern arising in respect of a Committee member's conduct.
Officers in Attendance	<p>Together with the responsible General Manager, the Manager responsible for Economic Development and Tourism or their delegate, will attend all meetings of the Committee.</p> <p>The Chief Executive Officer or other members of Council's staff may attend Committee meetings from time to time to provide information or respond to queries.</p>

References and Supporting Documents

Applicable Legislation:

Local Government Act 2020

Supporting Documents:

- Council Plan 2021-2025
- [Governance Rules](#) 2022
- [Good Governance Guide](#) 2012
- [Conflict of Interest – A Guide for Members of Council Committees](#) 2012

Privacy and Human Rights Consideration

All personal information collected by East Gippsland Shire Council in connection with the Committee will be handled in accordance with all applicable privacy legislation and will be used only for the purpose of investigating audit matters.

The Committee's Charter has been assessed as compliant with the obligations and objectives of the Victorian *Charter of Human Rights and Responsibilities Act 2006*.

Definitions

For the purposes of this Charter, the following definitions apply:

Term	Meaning
Advisory Committee	A committee established by the Council, other than a special committee, that provides advice to: (a) Council; or (b) a special committee; or (c) a member of Council staff who has been delegated a power, duty or function of the Council under section 98 of the <i>Local Government Act</i> 1989.
Committee member	A member of East Gippsland Shire Council's Economic Development Advisory Committee.
Chief Executive Officer	Person appointed by Council to the position of Chief Executive Officer.
Conflict of Interest	The <i>Local Government Act</i> 2020 requires members of Council and many Council committees to disclose conflicts of interest that may impair an individual's ability to serve the Board in a fair, impartial manner. This mechanism is intended to demonstrate that in performing the role to which they were appointed, The Committee members are not attempting to serve their own interests or the interests of someone close to them.
Councillor	Person who has been elected to the office of "Councillor" of East Gippsland Shire Council.
Council officer	A current member of East Gippsland Shire Council staff with the authority to engage in activities on behalf of Council.
Officers in Attendance	Council officers attending Committee meetings to provide information or respond to queries. No officers hold membership of the Committee.
Mayor	Councillor elected by other Councillors to fill the role of Mayor.
Responsible General Manager	General Manager delegated by the Chief Executive Officer to support the work of the Committee.

Revision History and Review

Version Control	Approved Amended Rescinded	Date Effective	Approved By	ECM Document Reference	Summary of Changes
1	Approved	12/11/2005	Council		
2	Approved	07/09/2017	Council	7404717	
3	Approved	08/10/2019	Council	8309319 v8	<p>That Council:</p> <ol style="list-style-type: none"> 1. Removes the Chief Executive Officer from nominated membership of the East Gippsland Shire Council's Economic Development Advisory Committee as referenced at 2.3 point 4 of the adopted Terms of Reference and in turn modifies the Terms of Reference to indicate that a delegate of the Chief Executive Officer attends the meetings, but is not a member of the Committee; and 2. Removes the Mayor, East Gippsland Shire Council from nominated membership of the East Gippsland Shire Council's Economic Development Advisory Committee as the Council's joint representative and in turn nominates a Councillor to that role; and that Council continues to support the work of the Economic Development Advisory Committee in the supply to Council of timely, considered and unbiased economic advice to the betterment of the East Gippsland Community
4	Approved	10/03/2020	Council	V9	<ol style="list-style-type: none"> 1. The Economic Development Advisory Board be renamed the Economic Development Advisory Committee. 2. The terms of reference be amended to reflect that the CEO and/or their delegate is a non-voting member of the Economic Development Advisory Board. 3. The terms of reference be amended to allow the Mayor to attend and actively participate and/or be a member of the Economic Development Advisory Board if they wish to.
5					

4 Councillor and Delegate Reports

5 Officer Reports

5.1 Assets and Environment

5.1.1 CON2023 1503 - Supply of Plant and Equipment for Emergency Response and Recovery Works

Authorised by General Manager Assets and Environment

Conflict of Interest

No Officer who has provided advice in the preparation of this report has disclosed a conflict of interest.

Executive Summary

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

The purpose of this report is to provide the background of the tender and evaluation process for CON2023 1503 Supply of Plant and Equipment for Emergency Response and Recovery Works and seek approval from Council to award a contract for this service.

This is a schedule of rates contract with appropriate qualified contractors for the periodic supply of Plant and Equipment should it be required during an emergency event.

Council is responsible for 2,898 kilometres of roads and numerous associated structures, including approximately 200 bridges. The municipality has in the past been subject to several significant natural disaster events which have impacted heavily on a number of these assets. It is highly likely that these events will occur in the future.

Council has historically used multiple contractors for the supply of plant equipment and labour to conduct clean-up operations and assist with reinstatement of its assets following these disaster events. To enable post-disaster clean-up activities to happen in a timely manner, while also offering best value for money to both Council and the disaster relief funding body, a more proactive approach is preferred. Tenders have therefore been sought to provide this service for a three-year period for the provision of plant, equipment, and labour.

A Request for Tender (RFT) was advertised through the Bairnsdale Advertiser, Lakes Post, Snowy River Mail and online through Tenderlink. Twenty-four (24) vendors downloaded the tender documents, and a healthy number of tender submissions were received by the closing date of 12 noon Wednesday 23 November 2022.

Tenders have been assessed by a Tender Evaluation Panel (TEP) against criteria consisting of financial (40%), capacity (25%), capability (25%), local contribution (5%) and sustainability (5%). A TEP report is provided as **Confidential Attachment 1**, detailing the assessment of tenders and the TEP's recommendation.

Officer Recommendation

That Council:

- 1. receives and notes this report and all attachments pertaining to this report;***
- 2. accepts the tenders submitted from the Vendors for Contract CON2023 1503 Supply of Plant and Equipment and labour for Emergency Response and Recovery Works for the Schedule of Rates (ex GST) as detailed in Confidential Attachment 1;***
- 3. endorses the establishment of a supplier panel for the supply of plant and equipment for emergency response and recovery works, for use of contractors to meet the requirement of proposed emergency and / or recovery works based on the tendered schedule of rates as detailed in Appendix A of the Confidential Attachment 1 for an initial term of three (3) years inclusive of annual CPI adjustment with an anticipated commencement date early March 2023 and comprising of the following suppliers:***
 - a) _____;***
 - b) _____;***
 - c) _____;***
 - d) _____;***
 - e) _____;***
 - f) _____;***
 - g) _____;***
 - h) _____;***
 - i) _____;***
 - j) _____;***
 - k) _____; and***
 - l) _____.***
- 4. authorises the Chief Executive Officer to exercise one extension option of up to twenty-four (24) months inclusive of an annual CPI adjustment subject to suppliers' satisfactory performance;***
- 5. notes that where possible work will be allocated on best value principles including price to contractors in any area, and that acceptance of a successful tender submitted to Council does not constitute a guarantee of all or any post-disaster recovery works;***
- 6. authorises the Chief Executive Officer or delegate to finalise the terms and to sign and seal the contracts in the form proposed; and***
- 7. resolves that Confidential Attachment 1 to this report, and all discussions in relation to Confidential Attachment 1 remain confidential.***

Background

The engagement of contractors for the supply of plant equipment and labour at the time of natural disasters, is undertaken in a rapid manner, with the intent of bringing assets back into serviceable condition to facilitate safe access for our residents and visitors.

When an event is declared, standard procurement processes, which can be time-consuming, are able to be set aside to enable emergency works to be completed. This enables immediate engagement of contractors without having to go through the normal quotation or tender process.

The hasty requirement for the provision of plant equipment and labour and the abnormal working conditions might dictate a higher rate unless a pre-existing contract with an agreed schedule of rates is in place. It is also considered a transparent and acceptable process to establish what is effectively a Panel of Providers for these works. This will ensure the most cost-effective outcome for Council.

Tenders for the supply of Plant and Equipment and labour for Emergency Response and Recovery Works were received from a range of companies. It is considered that all contractor/suppliers recommended for appointment to the panel will be able to provide, to varying degrees, the necessary plant equipment and labour required by Council to undertake emergency response works to its road network for the period of the contract (three years).

Acceptance of the tendered rates does not guarantee any or all works will be assigned to any contractor. In all cases the lowest priced contractor for a particular region will be offered the work in the first instance.

Legislation

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

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

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

In preparing this report the Victorian *Gender Equality Act 2020* has been considered. The implications of the report have been assessed and are compliant with the obligations and principles of the *Gender Equality Act 2020*. The need for a Gender Impact Assessment has also been assessed. The implications of this report have been assessed and align with the principles and objects of the *Gender Equality Act 2020*.

Collaborative procurement

Pursuant of section 109(2) of the *Local Government Act 2020*, collaborative procurement was considered but deemed inappropriate given the need for responsive services in an emergency.

Council Plan

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

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

Council Policy

Procurement has been undertaken in accordance with Council's Procurement Policy 2021.

Options

Council has the options of:

- awarding the contracts as recommended, including a 24-month extension period;
- awarding contracts without the option of a further extension period; or
- not awarding the contracts.

Resourcing

Financial

The panel of providers for the supply of plant equipment and labour ensures that in time of natural disaster events, rates have been predetermined and all variables including margins have been thoroughly considered by the tendering contractors and factored in. Council Officers will also benefit by knowing rates up-front and the availability of various type of equipment and labour and their respective localities throughout the shire.

Plant and equipment

Plant and equipment hire is outlined in each tender's response to the RFT and makes up a significant portion of this service contract.

Human Resources

Work associated with this contract will be undertaken by Council Officers in the Operations Department as part of their normal duties.

Risk

The risks of this proposal have been considered and are seen to be manageable. Indeed, having this contract in place is considered to mitigate financial and supply risks for Council in times of emergency recovery work.

Economic

Having the ability to respond rapidly to emergency events and reinstate infrastructure in a timely manner supports the local economy and the movement of freight and services within and into / out of East Gippsland.

Social

Having the ability to respond rapidly to emergency events and reinstate infrastructure in a timely manner supports the local community to recover after an emergency event through the restoration of physical connectivity.

Gender Impact Statement

This service contract has been assessed as not requiring a Gender Impact Assessment.

Environmental

This contract is designed to assist council recover from natural disasters and other emergency events.

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

No engagement is required to support this report.

Attachments

1. CONFIDENTIAL - CON2023 1503 - Supply of Plant and Equipment for Emergency Response and Recovery Works - TEP Report [5.1.1.1 - 27 pages]

Authorised by General Manager Assets and Environment

Conflict of Interest

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

Executive Summary

Under section 66(2) of the *Local Government Act 2020* a meeting considering confidential information may be closed to the public. Pursuant to sections 3(1) and 66(5) of the *Local Government Act 2020*, the information contained in the attachments to this report are confidential because they contain confidential meeting information, being the records of meetings closed to the public under section 66(2)(a).

The heritage listed Hinnomunjie Bridge is located on the Omeo Valley Road and crosses the Mitta Mitta River, 11.7km North of the Omeo Highway. The existing bridge was constructed for the former Omeo Shire Council in 1910 and provided a vital link for the local community, primary producers, and tourists. The bridge no longer provides these necessary links, having been replaced a number of years ago with a more suitable structure. At the time the new bridge was constructed, the original bridge was left standing to provide pedestrian access to the other side of the river and in recognition of its heritage value.

The bridge is of heritage significance as it is the second oldest timber truss bridge in Victoria. It is listed on the Victorian Heritage Register and is therefore subject to the Victorian Heritage Act (2017) Council has a statutory obligation under the Act to ensure the bridge's historical values are maintained and retained. Due to the bridge's age, many of the timber components have worn to the point of failure and require replacement or repair to ensure the bridge remains intact. Bridge inspection reports (**Confidential Attachment 3**) and cost estimates (**Confidential Attachments 5 and 6**) for these repairs have been received and identify a requirement for large scale and costly remedial repairs.

Given the recent bridge inspection reports and the interest Heritage Victoria has taken in this matter, a tender was developed to repair the bridge in accordance with the recommendations of the inspection report recommendations. A tender evaluation report is provided as **Confidential Attachment 1**, and a probity report is provided as **Confidential Attachment 2**.

Council has received a \$200,000 Living Heritage grant towards this remediation work, which is significantly less than the cost of the work. Correspondence was sent to the Minister at the time of lodging this funding application, and additional correspondence to the new Minister has been prepared outlining the inadequacy of this funding and seeking an urgent meeting.

Officer Recommendation

That Council:

- 1. receives and notes this report and all attachments pertaining to this report;***
- 2. accepts the tender submitted by _____ for CON2023 1478 Hinnomunjie Bridge Restoration Omeo Valley for the contract amount \$ _____ exclusive of GST, with formal awarding of the tender being subject to receiving additional funding from the Victorian government for these works;***
- 3. authorises the Chief Executive Officer or delegate to finalise the terms and to sign and seal the contract in the form proposed, once additional funding has been confirmed;***
- 4. resolves that the attachments, and all discussions about the attachments remain confidential;***
- 5. requests an urgent meeting with the Minister for Planning to discuss the financial implications for Council in awarding this contract and the need for additional Heritage funding from the Victorian Government for this project;***
- 6. writes to the Minister for Local Government and the Member for Gippsland East the Hon Tim Bull MP to bring the financial impost of the repair and maintenance of this bridge for Council to their attention; and***
- 7. notes that the Hinnomunjie Bridge will be an insured asset once works are undertaken, given the vulnerability to future flood or fire damage.***

Background

The Hinnomunjie Bridge was constructed for the former Omeo Shire Council in 1910 to allow vehicles up to fifteen tons gross weight to cross the Mitta Mitta River. The bridge, which is open to pedestrian traffic, has been recognised to be historically significant by the National Trust of Australia (Victoria). The structure is significant because it is the second oldest timber truss bridge in Victoria known to the National Trust, and one of the very few surviving examples of timber truss bridges constructed for vehicular traffic. The bridge served the Omeo Valley area from 1910 until 2007, when it was closed to vehicular traffic following the construction of the new concrete bridge downstream.

The bridge sustained considerable damage from bushfires in January 2003, at which time steel relieving beams were placed to transfer static and traffic loads from the damaged and deteriorating timber trusses. These beams are still in place and provide critical support to the entire structure.

During the 2019 fires three heritage listed bridges were destroyed when the fires swept through the region. Murrindal River Bridge, Genoa Truss Bridge and Bete Bolong Road Bridge have all since been decommissioned and their remains removed from site. Heritage Victoria were notified of the damage to the three bridges and advised that Hinnomunjie Bridge had not sustained any fire damage. Since this notification, Heritage Victoria has shown a strong interest to see that Council undertakes complex and costly maintenance works to ensure the Hinnomunjie Bridge is preserved. Unfortunately, the age and condition of the bridge preclude the possibility of any upgrade or repair restoring the functionality of the bridge.

In addition to carrying out the maintenance works to bring the bridge to an acceptable Heritage standard which Council is required to do under the *Heritage Act 2017*; an updated cyclic maintenance program will need to be prepared and actioned to ensure Council complies with the requirement of the *Heritage Act 2017*.

Legislation

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

As detailed in this report, given the recognised heritage status of the bridge, Council is obliged to meet the Victorian *Heritage Act 2017* requirements for management and maintenance of this asset. To ensure that Council was not investing unnecessarily in the refurbishment of the bridge, advice was sought from Maddocks Lawyers to ensure that Council was meeting its legislative requirements, but not exceeding them. This advice, provided as **Confidential Attachment 4**, states:

1. Heritage Victoria can direct Council to repair a heritage listed place under the Act.
2. Council cannot relinquish ownership of the bridge based on it no longer being 'functional'. Even if Council could, the Bridge is still 'functional' in the sense that it provides access from one side of the Mitta Mitta River to the other.
3. Failure to adhere to the requirement of the Act can lead to enforcement proceedings (discussed below) against Council including the imposition of financial penalties or an order requiring certain actions to be taken (**Confidential Attachment 7**).

There does not appear to be any precedence where factors such as excessive cost, non-functionality or lack of community benefit has been shown to alleviate or reduce Council's obligations under the Act. Council can receive financial assistance from the Heritage Council through a grant or loan to contribute towards the conservation of the Bridge.

Given the heavy penalties associated with knowingly not complying with the requirements of the *Heritage Act 2017*, it is officers view that Council has no option other than to undertake the costly repair work.

Advice is provided by Council's Planning Department that permission to develop a heritage place is likely required pursuant to the *Heritage Act 2017* as the bridge is on the Victorian Heritage Register (Place H917). Pursuant to the East Gippsland Planning Scheme, development does not require a planning permit to be considered by the Responsible Authority as the *Heritage Act* takes precedence.

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 has written to The Hon Sonya Kilkeny MP to seek an audience on the matter and is yet to receive a response. Representatives from the Department of Transport and Planning and the Local Member have also been sent a copy of this letter.

In preparing this report the Victorian *Gender Equality Act 2020* has been considered. The implications of the report have been assessed and are compliant with the obligations and principles of the *Gender Equality Act 2020*. The need for a Gender Impact Assessment has also been assessed. The implications of this report have been assessed and align with the principles and objects of the *Gender Equality Act 2020*.

Collaborative procurement

Pursuant of section 109(2) of the *Local Government Act 2020* this report has been prepared in collaboration with Heritage Victoria, which has assisted with some of the assessment work. Given the nature of the work, a collaborative tender is not possible. A tender process was carried out seeking submissions from heritage certified and experienced contractors to carry out the works. (**Confidential Attachment 1**).

Council Plan

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

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

Council Policy

Procurement has been undertaken in accordance with the Council Procurement Policy (2021).

Options

1. Award the contract subject to funds being secured to carry out the works as directed by Heritage Victoria under *Heritage Act 2017* (**preferred**);
2. Await for further external funding before proceeding; or
3. Not undertake the works, which could see Council receive a significant penalty under Non-compliance with Repair Order Section 157 of the *Heritage Act 2017* (**not recommended**).

Resourcing

Financial

There is a significant gap between the costs of the repair work estimated though a Heritage Victoria report, the funding received from the Living Heritage grant received for these works and the actual cost of the works as tendered. This leaves Council with a financial shortfall of over \$1.7 million for an asset that has no functional value to Council.

Additional funds will need to be allocated to the project as part of this approval process. This will take up all existing capacity within the Capital Program Holding Account and may require the delay of other projects. An urgent meeting with the Minister for Planning has therefore been sought to discuss a further contribution from the State towards this project.

The requirement for continual and costly maintenance as required by the Heritage Victoria report will also have an ongoing impact on the ability of Council to fund other projects and works which may have a higher Council and community priority.

Plant and equipment

All plant and equipment requirements will be provided in accordance with the proposed contract.

Human Resources

The project supervisor for this project is Project Supervisor Bridges.

Risk

The risks of this proposal have been considered and Council is required to act on this work as soon as possible to meet compliance with the *Heritage Act 2017*. Failure to meet compliance has financial and reputational implications for Council.

Economic

The tendered works will not improve the bridges functionality and therefore provide no economic benefit.

Social

The Hinnomunjie Bridge has been closed to traffic for fourteen years and is only used for pedestrians viewing the bridge and waterway. A new concrete bridge was constructed 100 metres downstream from the heritage listed bridge in 2017, this bridge provides unrestricted access for tourists and the community. To date, there has been little community interest regarding the preservation of the bridge. However, it is expected that the communities' interest will increase once the bridges condition is made public.

Gender Impact Statement

The *Gender Equality Act 2020* has been considered in the preparation of this report. Contract CON2023 1478 Hinnomunjie Bridge Restoration Omeo Valley has been assessed as not requiring a Gender Impact Assessment (GIA).

Environmental

The implications of this report will have no impact 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.

Given the heritage listing, no changes can be made to the bridge height or materials to make it more resilient to future flood or fire impacts.

Engagement

No community engagement has been undertaken regarding the restoration of the bridge.

Attachments

1. CONFIDENTIAL - CON2023 1478 Hinnomunjie Bridge Restoration Omeo Valley - Tender Evaluation Report [**5.1.2.1** - 8 pages]
2. CONFIDENTIAL - CON2023 1478 Hinnomunjie Bridge Restoration Omeo Valley - Probity Review Report [**5.1.2.2** - 2 pages]
3. CONFIDENTIAL - Hinnomunjie Bridge Report - Mark Hodgkinson Pty Ltd [**5.1.2.3** - 63 pages]
4. CONFIDENTIAL - Advice re maintenance of State heritage listed place - Maddocks Lawyers [**5.1.2.4** - 8 pages]
5. CONFIDENTIAL - Hinnomunjie Bridge Works Cost Plan - PlanCost [**5.1.2.5** - 8 pages]
6. CONFIDENTIAL - Quotation - Period Building Conservation Pty Ltd [**5.1.2.6** - 2 pages]
7. CONFIDENTIAL - VHR place offence [**5.1.2.7** - 4 pages]

5.2 Business Excellence

5.2.1 Council Plan Progress report – Quarter Two 2022-23

Authorised by General Manager Business Excellence

Conflict of Interest

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

Executive Summary

This report provides a summary of major initiatives, actions and strategic indicators listed in the Annual Action Plan 2022-23 covering the reporting period 1 October to 31 December 2022 (Quarter Two). The actions and strategic indicators are listed under the Council Plan Strategies they contribute to. The Council Plan Progress Report – Quarter Two 2022-23 period ending 31 December 2022 is provided at **Attachment 1**.

The Annual Action Plan identifies nine major initiatives that represent significant, high priority activities that will require substantial time and resources to deliver. They are important to achieving the strategic objectives in the Council Plan. For Quarter Two, six of the nine major initiatives are on schedule, with three behind schedule. An update of the status of each major initiative is:

Major initiative	Status	Comment
1. Develop a Culture and Creativity Strategy	On schedule	Following extensive community consultation last Quarter, a draft Culture and Creativity Strategy was finalised this quarter and released for public comment and feedback.
2. Develop a new Reconciliation Action Plan	Behind schedule	Progress on the new Reconciliation Action Plan has been impacted by challenges in securing the consultancy skillset with availability to conduct the work. The original preferred consultant advised Council that they were no longer able to complete the project. A new consultancy was engaged and has commenced finalising a timeframe for completion. Scheduled progress currently includes a February 2023 review of the pre-existing Reconciliation Action Plan and late February consultation with key Council stakeholders.
3. Prepare a Housing and Settlement Strategy to guide future housing development and to support increased housing diversity and affordability	On schedule	A Discussion Paper for the Housing and Settlement Strategy was released on Council's engagement portal for public comment. In addition, a land supply/demand assessment for the Rural Living Zone was completed this quarter. Land supply/demand maps and tables for each town in the Shire were developed.
4. Develop key public open space planning initiatives, which includes the East Gippsland Sporting Facilities Plan and Public Open Space Strategy	On schedule	The first draft of the East Gippsland Sporting Facilities Plan was developed at the end of quarter two. During the quarter external consultants were also engaged to prepare the East Gippsland Marine and Coastal Plan, which is a requirement of the State Marine and Coastal Strategy.

Major initiative	Status	Comment
5. Implement a climate risk analysis to identify the likely impact of extreme weather and climate events on Council's infrastructure assets, and ability to provide community services	Behind schedule	This project is reliant on grant funding, with a grant application lodged in early July. Late in the quarter notification was received that the funding required for the climate risk analysis had not been successful. Alternate funding mechanisms are now being investigated.
6. Support the circular economy through initiatives that reduce waste going to landfill, including: <ul style="list-style-type: none"> Value adding green and organic waste; and Introducing appropriate glass collection services at locations throughout the Shire. 	On schedule	A detailed business case for the management of organic waste has been developed and externally peer reviewed. The tender for the detailed design of a composting facility will shortly be awarded. Glass collection has been introduced at eight Waste Transfer Stations.
7. Implement the Tourism Events Action Plan 2022-26	On schedule	A key initiative - the Pathways to Growth Program - has received seven applications for two program openings, with assessment and announcement of successful applicants to occur in quarter three, which is significant in the implementation of the Action Plan. Officers continued to provide ongoing input into the management and coordination of the new Gippsland Event Acquisition Fund. Additional funding was made available for the Community Grants Program in recognition of smaller community events, which are no longer being supported through the tourism events program. Implementation of the Action Plan has been slower than expected due to acquittal and reporting required for bushfire recovery and Austrade funded events, and the high demand for event permits locally.
8. Implement the Customer Experience Strategy. Key projects include: <ul style="list-style-type: none"> Enhance systems and processes to increase resolution of customer enquiries and requests at first point; and Streamlining customer response systems and processes 	Behind schedule	Implementation of this Strategy was slowed due to delays to the upgrade of Council's corporate information system, which is scheduled to occur in March 2023. Work continued with business units to develop triage processes for customer response improvements and will rely on resource availability to progress further.
9. Review and redevelop the organisation's Occupational Health and Safety Management System	On schedule	The evaluation panel has selected a consultant for the review and development of the Occupational Health and Safety Management System. The consultant commenced reviewing current documents and designing of the new system. Engagement of stakeholders within the organisation is scheduled to occur in the next quarter. A new procedure for Contractor Management has been developed, with stakeholder consultation to continue in the next quarter.

Officer Recommendation

That Council receives and notes this report and the Quarter 2 2022-23 Council Plan Progress Report as provided at Attachment 1.

Background

The attached progress report, refer **Attachment 1**, covers the reporting period 1 October to 31 December (Quarter Two) and provides a high-level summary of major initiatives and actions listed in the Annual Action Plan 2022-23. The actions and strategic indicators are listed under the Council Plan Strategies to which they contribute.

This report has been created directly from General Managers, Managers and Officers, who provide quarterly updates on their actions that contribute to achieving the strategies of the Council Plan. Councillors are presented with these reports following the end of each quarter at a Council Meeting.

Legislation

This report has been prepared in accordance with *Local Government Act 2020*, 18 (1)(d) section from the Act. The role of the Mayor is to report to the municipal community, at least once each year, on the implementation of the Council Plan.

By developing quarterly reporting Council is undertaking best practice in reporting to the community on the progress of implementing the Council Plan.

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*.

In preparing this report the Victorian *Gender Equality Act 2020* has been considered. The implications of the report have been assessed and are compliant with the obligations and principles of the *Gender Equality Act 2020*. The need for a Gender Impact Assessment has also been assessed.

Collaborative procurement

Pursuant of section 109(2) of the *Local Government Act 2020*, this report has not been prepared in collaboration with an external party.

Council Plan

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

Strategic Objective 5: 5.1 A better everyday customer experience is created for our residents and visitors.

Council Policy

Not applicable.

Options

No options available.

Resourcing

Financial

There are no financial resourcing impacts relating to this report, however the delivery of the Council Plan as stated in this report is directly linked to the Annual Budget and 10-year Financial Plan.

Plant and equipment

Not applicable.

Human Resources

There are no human resources impacts relating to this report, however the delivery of the Council Plan as stated in this report requires human resources to action the listed initiatives.

Risk

The risks of this proposal have been considered and were managed accordingly.

Economic

This report itself has no direct economic impacts. However, through the Council Plan, this report identifies the delivery of key economic actions and projects that have a positive influence on the local economy.

Social

This report itself has no direct social impacts. However, through the Council Plan, this report identifies the delivery of key social actions and projects that have a positive influence on the community.

Gender Impact Statement

The Council Plan Progress Report has considered the *Gender Equality Act 2020* in its preparation. The Council Plan Progress Report has been assessed as not requiring a Gender Impact Assessment (GIA).

Environmental

This report itself has no direct environmental impacts. However, through the Council Plan, this report identifies the delivery of key actions and projects that have a positive influence on the natural environment.

Climate change

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

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

Engagement

This report will be provided to the community following Council review. This will be made available on Council's website and promoted through social media channels.

Attachments

1. Quarter 2 2022-23 Council Plan Progress Report [**5.2.1.1** - 50 pages]



Council Plan Progress Report – Quarter Two 2022-23

Period ending 31 December 2022

Contents

Major Initiatives	4
1. An inclusive and caring community that respects and celebrates diversity	5
2. Planning and infrastructure that enriches the environment, lifestyle, and character of our communities	13
3. A natural environment that is managed and enhanced	24
4. A thriving and diverse economy that attracts investment and generates inclusive local employment	32
5. A transparent organisation that listens and delivers effective, engaging, and responsive services	41

Front cover image

Council's Corporate Centre on Main Street, Bairnsdale at sunrise. The Corporate Centre houses the Council Chambers and a Customer Service Centre, which operates from 9am-5pm Monday-Friday.

Acknowledgement of Country

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

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

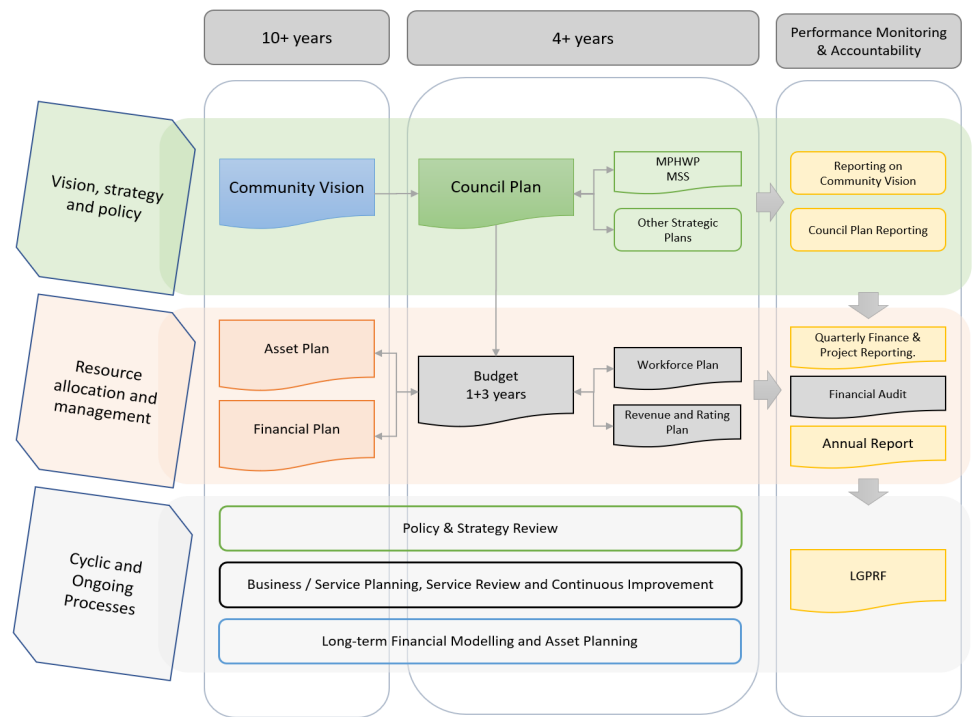
Our Vision

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

Our Strategic Planning Framework

Our Strategic planning framework shows how Our Community Vision 2040 will be delivered through the Council Plan, the Budget and other Council Plans and Strategies.

The Quarterly Council Plan Progress Report is a critical element of the framework below, as it provides a transparent account of how we are performing to the community on a regular basis.



Terminology:

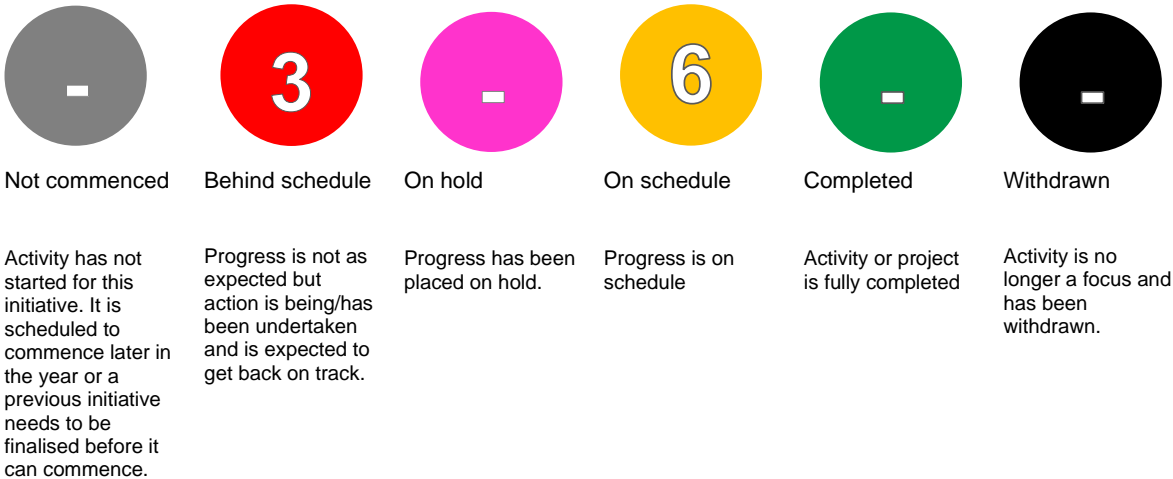
- MPHWP = Municipal Public Health and Wellbeing Plan
- MSS = Municipal Strategic Statement
- LGPRF = Local Government Performance Reporting Framework

Major Initiatives

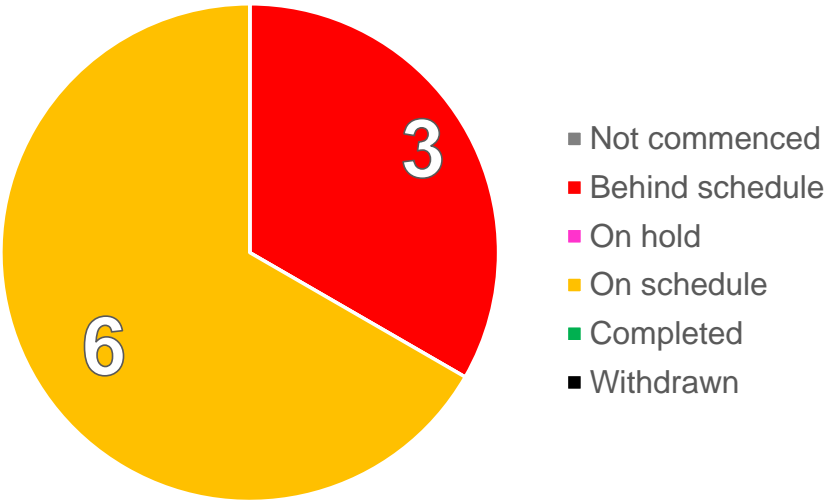
Status of major initiatives

Council identified 9 major initiatives for 2022-23. Major initiatives are high priority activities from the Council Plan that will require substantial time and resources to deliver.

Overall progress against these initiatives is summarised below.



Major initiatives





St Mary's Primary School Grade 4 students visited Council Chambers on 29 November 2022

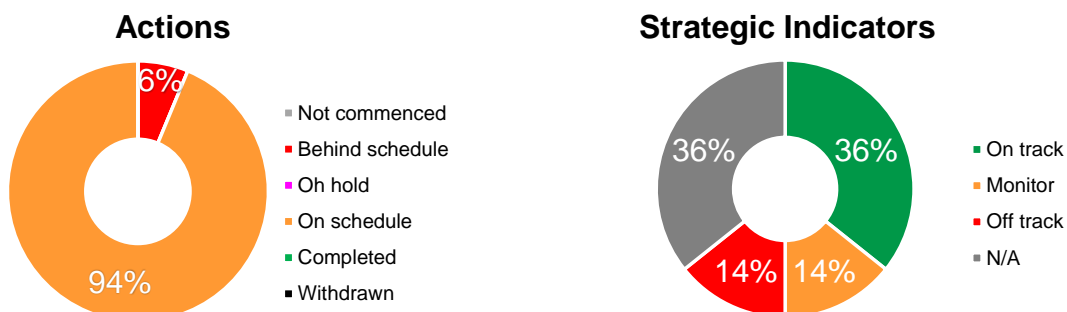
1 An inclusive and caring community that respects and celebrates diversity

1: An inclusive and caring community that respects and celebrates diversity



Strategies	Council's role
1.1 Council strives to provide equitable access to their services, support and facilities	Provider
1.2 Collaboration with key stakeholders fosters the cultural, arts and creative communities for all activities Council has facilitated or financially contributed to	Facilitator
1.3 Community groups and volunteers are acknowledged, promoted and supported	Provider / Facilitator
1.4 Through targeted services, partnerships and advocacy, communities enjoy strong mental and physical health, well-being and resilience	Provider / Facilitator / Advocate
1.5 Strong working relationships are further developed with Aboriginal people and organisations	Facilitator
1.6 Council is culturally and linguistically inclusive and celebrates diversity	Facilitator

Summary of performance






Council services provided

Arts and Culture
Community and Place- based Planning
Community Engagement
Community Laws
Community Programs

Community Support and Development
Environmental Health
Library
Performing Arts
Recreation Centres

1.1: Council strives to provide equitable access to their services, support and facilities

Code	Action Name	Comments	Progress	Status
1.1.1	Universal access principles are applied to infrastructure construction and upgrades	Design officers reviewed all proposed project designs to ensure the Disability Discrimination Act 1992 was met. Similarly, Officers used the National Construction Code AS1428 to ensure all building designs for new building work enabled access for people with disabilities. This review ensured that all structural and civil designs were compliant with regulations to ensure Council's Municipal buildings, playgrounds and open spaces are accessible.	50%	
1.1.2	Develop internal capacity to deliver access audits across council service and facilities	Access audits on Council facilities and programs were commenced. These will continue, under the responsibility of a Council officer who is equipped to complete the audits.	60%	
1.1.3	Consider access to services in service reviews undertaken	Access to services was considered in the Service Centre and Library service review, which was completed in quarter two. Access to services will continue to be considered for ongoing service reviews.	50%	




Strategic Indicators

Name	Comments	Result	Target
Community satisfaction with accessibility to Council facilities	Quarterly surveys continued to be conducted with the community, with the results to be released later in the year.	-	Baseline to be confirmed 2022-23
Number of visits to aquatic facilities per head of municipal population	The result for this quarter is only slightly below the target of 2.25 visits, required to achieve an annual outcome of greater than, or equal to, 10 visits per head of the municipal population.	2.24 visits	≥ 10 visits (annually)
Number of community facilities and infrastructure upgraded to improve accessibility	This will be reported fully at the end of the financial year.	-	≥ 10 projects

Progress Indicator Legend

 - Not commenced
  - Behind schedule
  - On hold
  - On schedule
  - Completed
  - Withdrawn






1.2: Collaboration with key stakeholders fosters the cultural, arts and creative communities for all activities Council has facilitated or financially contributed to

Code	Action Name	Comments	Progress	Status
Major initiative 1	Develop a Culture and Creativity Strategy	Following extensive community consultation last quarter, a draft Culture and Creativity Strategy was finalised this quarter and released for public comment and feedback.	85%	
1.2.1	Provide arts and cultural services and experiences that encourages connection and creativity, while supporting businesses, community groups and individuals	<p>Council's cultural services are currently focused on the operation of the Forge Theatre and a range of funding programs. The Forge Theatre has had a full program of events including theatre, music and children's events.</p> <p>The arts and cultural service council provides is being reviewed as part of the Culture and Creativity Strategy Action Plan, which commenced this quarter.</p>	50%	
1.2.2	Support projects and events that foster creativity through the funding for visitor events and the community grants program	<p>Following the successful cycle of community grants in recent months, Council has committed to review the grants program to ensure benefit to community and Council are aligned and maximized.</p> <p>Bushfire recovery funding for community events and projects has continued. A funding stream for small grants for community events is nearing completion, having supported a wide range of community events and initiatives in the 2022/23 financial year. Additionally, the Community Recovery Committee – Local Government Area grants are now in place and have enabled Community Recovery Committees access to funding for community events and initiatives.</p>	50%	

Strategic Indicators



Name	Comments	Result	Target
Number of community organisations / individuals funded through Council's arts and heritage grants program	Eight arts and heritage projects were funded directly through the program. A further two projects were funded under community programs as they demonstrated multiple skill building and social engagement opportunities.	8	≥ Nine annually
Number of community organisations / individuals funded through Council's community grants program	There were 12 applications proposed to be funded in the first round of 2022/23 Community Grants Program. These applications were presented to Councillors on 11 October 2022 and were approved for funding.	12	≥ 25 annually

Progress Indicator Legend

 - Not commenced
  - Behind schedule
  - On hold
  - On schedule
  - Completed
  - Withdrawn

Name	Comments	Result	Target
Develop baseline measures for cultural outcomes for Council programs	<p>Development of the baseline measures will be considered as part of the grants cycle and process review that will commence in 2023. It is envisioned that a more systematic and consistent assessment framework for grant applications (including a measure of cultural outcomes for community) will be developed in future.</p> <p>Officers remain confident that baseline measures will be developed in 2022/23.</p>	50%	Baseline developed in 2022-23

1.3: Community groups and volunteers are acknowledged, promoted and supported

Code	Action Name	Comments	Progress	Status
1.3.1	Implement improvements to Council's processes and online systems to improve access to information regarding community programs and services, and promote volunteer events and opportunities across the shire	<p>Council officers developed and promoted a range of information specific to the 16 Days of Activism against Gender Based Violence via a range of sharing mechanisms. Additionally, in recent months officers promoted and ran a community accessible demographic data session with Profile ID, which was well attended.</p>	50%	
1.3.2	Support volunteer Committees of Management for recreation reserves and halls with funding and capacity building	<p>Council supported over 70 volunteer community committees of management. Work also continued on large partnership projects with Committees of Management, including;</p> <ul style="list-style-type: none"> • upgrading facilities at the Metung Bowls and Tennis clubs; • upgrading the Lindenow Recreation Reserve scorers' box; • upgrading the netball courts at the Omeo Recreation Reserve and • major upgrades of the Swifts Creek and Buchan Recreation Reserves. <p>The appointment of a responsible Council officer, which occurred late in quarter two, will provide the capacity to work more closely with these important volunteer committees of management.</p>	50%	




Progress Indicator Legend

 - Not commenced
  - Behind schedule
  - On hold
  - On schedule
  - Completed
  - Withdrawn

Strategic Indicators

Name	Comments	Result	Target
Community group satisfaction with Council support	Quarterly surveys continued to be conducted with the community, with the results to be released later in the year.	-	Baseline to be developed 2022-23
Number of events held that recognise and support volunteers	Continued events involving Youth Ambassadors, Disability Advisory Committee, and Friends of the Library have been supported this quarter, centering on recognizing volunteer efforts.	Three	≥ Five events







1.4: Through targeted services, partnerships and advocacy, communities enjoy strong mental and physical health, well-being and resilience

Code	Action Name	Comments	Progress	Status
1.4.1	Establish governance arrangements for the implementation, ongoing monitoring and delivery of the Municipal Public Health and Wellbeing Plan 2021-25	<p>The Draft Municipal Public Health and Wellbeing Plan continued to be finalised and is scheduled to be released for community feedback early in 2023.</p> <p>The capacity for Council to increase responsibility for coordinating implementation of the Health and Wellbeing Plan is being established, particularly considering the cessation of the East Gippsland Primary Care Partnership and the transfer of some functions to the Gippsland Public Health Unit.</p>	50%	
1.4.2	Advocate for and identify opportunities to support social and affordable housing	The Housing and Settlement Strategy Discussion Paper, presented to Council and released for public comment this quarter, included options for Council involvement in affordable housing.	50%	
1.4.3	Align recreation centre service delivery with regional health and wellbeing programming and allied health services	Work during this quarter has focused on relationship building with Bairnsdale Regional Health Service with the objective of linking allied health services with our centres to deliver Health and Wellness programs.	20%	




Strategic Indicators

Name	Comments	Result	Target
People attending Council's recreation centres through an allied health service program delivery	At this point in time there is no data from Bairnsdale Regional Health Service on how many community members engage with Council's recreation centres due to the direct link of allied health.	No Data	≥ 800 attendances
Develop a Housing Strategy	The Housing and Settlement Strategy Discussion Paper was presented to Council and released for public comment.	Progressing	Adopted in 2022-23







Progress Indicator Legend

 - Not commenced
  - Behind schedule
  - On hold
  - On schedule
  - Completed
  - Withdrawn

1.5: Strong working relationships are further developed with Aboriginal people and organisations

Code	Action Name	Comments	Progress	Status
Major initiative 2	Develop a new Reconciliation Action Plan	<p>Progress on the new Reconciliation Action Plan has been impacted by challenges in securing the consultancy skillset with availability to conduct the work. The original preferred consultant advised Council that they were no longer able to complete the project.</p> <p>A new consultancy was engaged and has commenced finalising a timeframe for completion. Scheduled progress currently includes a February 2023 review of the pre-existing Reconciliation Action Plan and late February consultation with key Council stakeholders.</p>	25%	
1.5.1	Increase and embed understanding of Aboriginal and Torres Strait Islander culture, knowledge and history within the planning and development of Council services, infrastructure and projects	<p>Council's Aboriginal Engagement Officer continued work to develop relationships between Council and community stakeholders. Further progress was conducted on developing a partnership for shared project management resources with GLaWAC. Specific projects included:</p> <ul style="list-style-type: none"> Engagement with Lake Tyers Aboriginal Trust to source local indigenous contractors. Involvement and inclusion of indigenous voices in the development of a Culture and Creativity Strategy. Engagement of local indigenous subcontractors and development of a school-based apprenticeship as part of delivery of the WORLD project. <p>Council officers working with local Aboriginal organisations to support culturally appropriate options for relief and other support during emergencies.</p>	50%	
1.5.2	Enhance engagement with traditional owners in the development of key Council Capital projects	<p>Regular meetings continued to be held with GLaWAC and other traditional owner groups during the design and delivery phase of a range of Council's capital projects, such as the design of artwork and cultural interpretation for the Krautungalung Walk and delivery of the Crooke Street Wetlands. Cultural Heritage inductions were also held during the quarter for contractors on both the Omeo Mountain Bike project and the Eagle Point Hub project.</p>	25%	



Progress Indicator Legend

 - Not commenced
  - Behind schedule
  - On hold
  - On schedule
  - Completed
  - Withdrawn

Strategic Indicators

Name	Comments	Result	Target
Number of projects and service reviews that have included formal engagement with traditional owners	Formal engagement with traditional owners occurred through cultural heritage assessments and cultural introductions. Aspects of this engagement were conducted during quarter two for 36 projects. Additionally, the consultation processes for the Culture and Creativity Strategy has involved formal and informal engagement with traditional owners.	37 projects	≥ 10 projects
Percentage of Council directorate representation on Reconciliation Action Plan working group	Representation is yet to be determined.	-	100%
Percentage of total staff who have participated in cultural awareness training in the past 24-months	Ongoing training for new starters is provided at Corporate Orientation, with one session conducted during quarter two, attended by 18 staff. Cultural awareness training across the organisation is planned for delivery at the start of the 2023/24 financial year.	50.83%	100%

1.6: Council is culturally and linguistically inclusive and celebrates diversity

Code	Action Name	Comments	Progress	Status
1.6.1	Develop a process to document and verify inclusive and accessible features of Council programs and facilities	A designated Council officer has commenced conducting audits on accessibility now that training in this area has been completed. Given the gaps in this competency internally within council in recent years, the completion of access audits to verify accessible features of council facilities is an achievement. The Disability Advisory Committee has continued to provide a key role in identifying issues and providing advice on existing and proposed programs and infrastructure.	50%	
1.6.2	Develop, implement and promote an annual calendar that recognises events that celebrate diversity and inclusion in East Gippsland	Work is underway to draft a calendar of significant events that celebrate diversity, with work in subsequent quarters to release the calendar across the organisation for feedback and input.	50%	

Strategic Indicators

Name	Comments	Result	Target
The number of initiatives that celebrate diversity and inclusion supported by Council	Council hosted and supported events in the recent quarter specific to 16 days of activism against Gender Based Violence, as well as the Youth Ambassador Camp.	Two	≥ 10 initiatives

Progress Indicator Legend

 - Not commenced
  - Behind schedule
  - On hold
  - On schedule
  - Completed
  - Withdrawn



Delivery of the Eagle Point Foreshore Hub Development (design by landscape architects, enlocus, pictured above) continued this quarter with completion scheduled for June 2023.

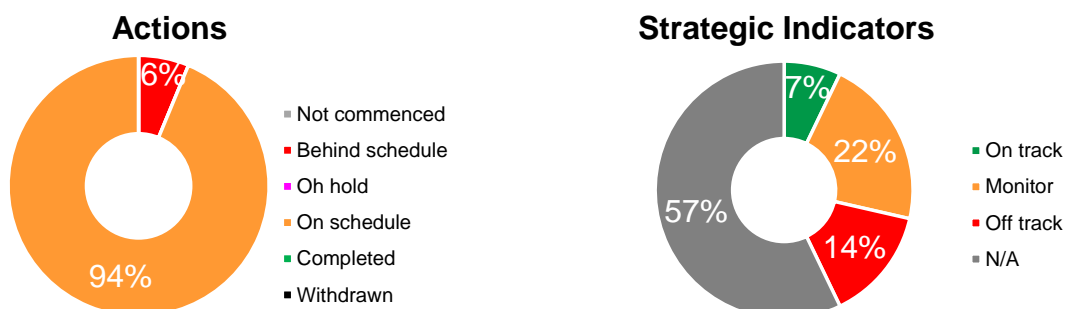
2 Planning and infrastructure that enriches the environment, lifestyle, and character of our communities

2: Planning and infrastructure that enriches the environment, lifestyle, and character of our communities



Strategies	Council's role
2.1 Statutory and strategic planning for land use delivers sustainable outcomes that balance the need for growth with the enhancement of our lifestyle, character, the built and natural environment	Facilitator / Provider
2.2 Infrastructure provision and maintenance supports a diverse range of current and future user needs and activities and is both environmentally and financially sustainable	Advocate / Provider / Facilitator
2.3 Planning with local communities for natural disasters and emergencies strengthens capacity, infrastructure, resilience, preparedness, and recovery	Facilitator / Provider

Summary of performance



Council services provided

Asset Maintenance

Asset Management

Building Controls

Capital Works

Emergency Management

Emergency Response

Land use Planning

Open Space Management

Recreation and Sporting Reserve Management

Statutory Planning and Development Services

Strategic Planning

Major Capital Works Projects update

Bairnsdale Landfill Cell 4



The cell is now fully lined. All repairs and testing have been completed and have passed. Installation of leachate pipework continues; it is 80% complete.

Bullock Island Bridge



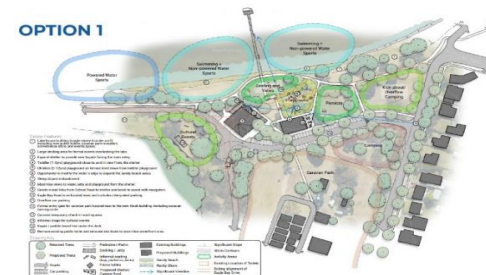
Bullock Island bridge is open to two lane traffic and nearing completion with the following minor works expected to be completed by February 2023, these include guardrail, line marking and lighting.

Bullock Island Master Plan Implementation



The tender to undertake the civil construction works is now closed and under evaluation. Works will commence in February 2023 and the current project completion date is June 2023.

Eagle Point Foreshore Hub



The contractor has commenced on site early September and civil works are now underway. This project is due to be completed in June 2023.

Krauatungalung Walk



We have awarded the contractor for detailed design of Stages 2-4, and these are expected to be complete by August 2023.

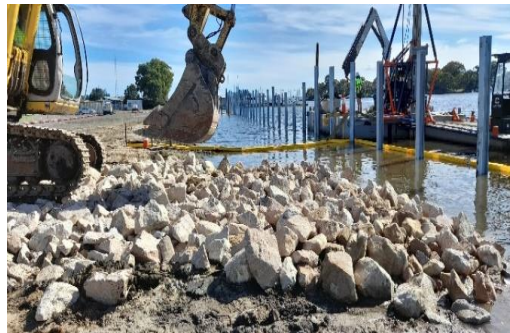
Mallacoota Streetscape



Community engagement has now closed and the design is being reviewed. This project will move to a detailed design stage in the next month, and the tender for this stage will be released shortly. This project has a completion date of September 2023.

Omeo Mountain Bike Trail and Stage 2

All elements of pre-construction requirements for stage 1 and stage 2 have been completed, and construction will commence on schedule. This project will be completed in stages over the next 18 months.

Slip Road Maritime Precinct

Marine construction works have commenced. Additional investigations were identified and are underway. In the meantime, the detailed design for the carparking works is progressing.

Lakes Entrance Waste Transfer Station

The recycling shed slab has been constructed and cured. Further construction has been delayed due to rain and weather constraints. This project is expected to be complete in May 2023.

WORLD Sporting Precinct Stage 1

Construction of stages 1 and 2 is continuing, with a projected completion date of March 2023 but further stages of works are temporarily delayed.

Swifts Creek Recreation Reserve

Construction tenders closed at the end of August. Feedback on design has been received from the committee and is now being finalised for a final review.

Jemmy's Point - Stage 2

The concept design for the toilet block is now complete and detailed design for the trailhead is progressing. Additional areas requiring surveying have been identified and a contractor to undertake these works has been engaged.

Gymnastics Pavilion Lucknow

Steel erection has commenced with all the main posts and end purlins now installed. Roof beams will begin installation early October. The project is on track for a completion date for April 2023.






Orbost Forest Park Upgrade

Concepts for the civil works have been received and are under review. Landscaping concepts designs will need to be revised with the Project Management Group. This Project is set to be completed late 2024.

Lakes Entrance Foreshore Park

Final designs have been received and the tender for the construction component has been advertised. This project is set to be completed by the end of this year.






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

Action Code	Action Name	Comments	Progress	Status
Major initiative 3	Prepare a Housing and Settlement Strategy to guide future housing development and to support increased housing diversity and affordability	A Discussion Paper for the Housing and Settlement Strategy was released on Council's engagement portal for public comment. In addition, a land supply/demand assessment for the Rural Living Zone was completed this quarter. Land supply/demand maps and tables for each town in the Shire were developed.	50%	
Major initiative 4	Develop key public open space planning initiatives, which includes the East Gippsland Sporting Facilities Plan and Public Open Space Strategy	The first draft of the East Gippsland Sporting Facilities Plan was developed at the end of quarter two. During the quarter external consultants were also engaged to prepare the East Gippsland Marine and Coastal Plan, which is a requirement of the State Marine and Coastal Strategy.	45%	
2.1.1	Deliver rebuilding support for landholders that lost a house and/or sheds in the 2019-20 Black Summer Bushfire	All applications continued to be processed in a timely manner, and three applications were currently under assessment at the end of the quarter.	50%	
2.1.2	Finalise the Rural Land Use Strategy and prepare a Planning Scheme Amendment	The final draft of the Rural Land Use Strategy was released for public comment.	50%	
2.1.3	Prepare Strategic Land Use Plans and Planning Scheme Amendments to address priority growth areas at Eagle Point, Paynesville and Lakes Entrance	Documentation continued to be prepared this quarter.	50%	

Strategic Indicators



Name	Comments	Result	Target
Community satisfaction with building and planning	Quarterly surveys continued to be conducted with the community, with the results to be released later in the year.	-	≥ Large Rural Council average
Planning applications decided within required time frames	This quarter has seen a significant improvement in decision timeframes from 38.91% determined within 60 days in quarter two of the last financial year. It is expected that as the backlog is reduced, these timeframes will continue to improve.	49.55%	> 80%
Average time taken to decide planning applications	The target has not yet been achieved, due to the backlog of applications and staff	93 days	< 61 days

Progress Indicator Legend







 - Not commenced
  - Behind schedule
  - On hold
  - On schedule
  - Completed
  - Withdrawn




Name	Comments	Result	Target
	resources being diverted to the upgrade of Council's corporate information system.		
Council planning decisions upheld at VCAT	There were three decision for the period; two were varied and one was set aside.	66.6%	> 60%
Completion of milestones of key strategic plans:	Rural Land Use Strategy - Met milestones	83% of milestones	> 90% of milestones
<ul style="list-style-type: none"> Rural Land Use Strategy Housing and Settlement Strategy Eagle Point Structure Plan Paynesville Structure Plans East Gippsland Sporting Facilities Plan Public Open Space Strategy 	Housing and Settlement Strategy - Met milestones Eagle Point Structure Plan - Met milestones Paynesville Structure Plans - Behind schedule East Gippsland Sporting Facilities Plan - Met milestones Public Open Space Strategy - Met milestones		

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

Action Code	Action Name	Comments	Progress	Status
2.2.1	Implement the asset management framework to drive Council's capital and maintenance infrastructure investment in a transparent and financially sustainable way	Focus this quarter was on a detailed review of the current CONFIRM systems functionality and usability. This review included detailed assessments and workshops with key internal users and asset managers. The assessment report has been received and the recommended improvement actions will commence implementation in quarter three.	30%	
2.2.2	Develop and commence the implementation of service standards for the maintenance of asset classes	Prior to the development of service standards there is requirement to review and improve service processes. In quarter two this work included completion of a detailed assessment of the Project Management Framework (PMF), PULSE and alignment of the PMF and the Asset Management Framework.	30%	

Progress Indicator Legend







 - Not commenced
  - Behind schedule
  - On hold
  - On schedule
  - Completed
  - Withdrawn

Action Code	Action Name	Comments	Progress	Status
2.2.3	Work with community and stakeholders to plan, design, implement and maintain infrastructure to meet community needs in an affordable way	There are currently 141 projects that are in the project planning or detailed design stages. The East Gippsland Your Say page has 29 current projects that are regularly monitored and updated to ensure the community remains informed. Key projects have established project reference and project control groups in place to ensure ongoing consultation and that the intended project outcomes meet community needs.	50%	
2.2.4	Deliver a capital works program and asset management program that is aligned to community need and is able to be delivered within Council resources	As at 31 December 2022, 57.72% of the forecast budget had been expended or committed. It is acknowledged that the Capital budget for this year is extensive, however much of the budget comes from external sources, with only approximately \$25 million being Council cash, which is on par with comparable years. The program covered 251 separate projects of which 22 projects had been completed, 183 are progressing, 10 projects have been withdrawn or transferred. The remaining projects are either on hold or have not started. As at the end of December 2022, it was estimated that there would be approximately \$28 million of program carry forwards.	35%	
2.2.5	Build the capacity of volunteer groups and provide support for volunteer managed community facilities	Ongoing support for Committees of Management was provided through responses to queries and distribution of annual allocations. Additionally, significant progress has been made toward a more proactive maintenance response, with a dedicated officer commencing in quarter three.	50%	

Strategic Indicators




Name	Comments	Result	Target
Asset renewal and upgrade expenses as a percentage of depreciation	This indicator is only calculated at year end when the financial data has been reconciled.	-	> 100%
Percentage of adopted capital projects completed at the conclusion of the financial year (based on the most recent amended budget)	The total program has 251 separate projects of which 22 projects have been completed.	8.76%	> 80%
Percentage of sealed roads that meet Council's target condition rating	The condition of sealed road assets is assessed every three years.	96.9%	> 97%

Progress Indicator Legend







 - Not commenced
  - Behind schedule
  - On hold
  - On schedule
  - Completed
  - Withdrawn




Name	Comments	Result	Target
Community satisfaction with appearance of public areas in East Gippsland	Quarterly surveys continued to be conducted with the community, with the results to be released later in the year.	-	≥ Large Rural Council average
Committees of Management and volunteer groups for Council managed land with a guiding plan	Progress towards committees of management and volunteer groups is yet to commence. A responsible officer will be appointed in quarter three.	0	≥ 10
Percentage of community recreation reserves and halls asset condition above target condition rating	Condition assessments for community recreation reserves and halls was completed. The next steps will be developing a target condition rating and determining priority.	-	Target to be confirmed in 2022-23

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

Action Code	Action Name	Comments	Progress	Status
Major initiative 5	Implement a climate risk analysis to identify the likely impact of extreme weather and climate events on Council's infrastructure assets, and ability to provide community services	This project is reliant on grant funding, with a grant application lodged in early July. Late in the quarter notification was received that the funding required for the climate risk analysis had not been successful. Alternate funding mechanisms are now being investigated.	10%	
2.3.1	Develop and implement plans that enhance the organisation's preparedness and ability to manage and mitigate the impact of natural disasters	Local Incident Management Plans continue to be developed with communities as they were requested. Additionally, a preparedness spreadsheet was developed for monitoring Council's resources, infrastructure, systems, people and processes for reporting. Planning commenced for a cross agency exercise, scheduled for February 2023, and a capability register with planning for future training and updates, to be further developed in 2023.	80%	
2.3.2	Develop new approaches to road renewal and maintenance that improves resilience to changing climatic conditions	Effort during the quarter has focused on both raising the need for modified approaches to road design and maintenance at a State and Commonwealth level as an advocacy issue; and on investigating improvements to specific roads and storm water systems. A research project has been delayed as this was reliant on external funding that was not successful.	30%	

Progress Indicator Legend

 - Not commenced
  - Behind schedule
  - On hold
  - On schedule
  - Completed
  - Withdrawn

Action Code	Action Name	Comments	Progress	Status
2.3.3	Design new infrastructure to meet changing climatic conditions and is resilient to the impact of natural disasters	<p>A request for tender was released to provide critical data on road condition, enabling a review of design and materials considerations through the Forward Design Program. A review of road maintenance data is also underway.</p> <p>Hydrological and geotechnical investigations continued to be undertaken to inform best practice design for non-road infrastructure projects. Recruitment commenced for an officer, to provide the in-house capacity to advise on drainage and road designs.</p>	15%	
2.3.4	Support and strengthen municipal emergency planning arrangements to meet community expectations for resilience and preparedness	Work continued with the Municipal Emergency Management Planning Committee to ensure clear understanding of roles and responsibilities and develop the calendar for 2023, which will assist in driving the committee outcomes. A key issue for quarter three will be the engagement of all agencies in driving the necessary work at sub-committee/working group level.	60%	
2.3.5	Support communities to enhance resilience and strategically respond to recovery challenges and opportunities, including through support to Community Recovery Committees	<p>New arrangements have been established to access recovery funding (including the Community Recovery Committee – Local Government Area Support Grant) to deliver on community identified priorities. A program of work has been agreed with Emergency Recovery Victoria to address recovery gaps for the Recovery and Resilience Grant with the funding agreement being finalised.</p> <p>Ongoing support is provided to Community Recovery Committees to identify recovery needs and priorities, and project facilitation support is being provided to assist in progress on key funded projects, particularly in the Omeo district. Council is also delivering several key bushfire recovery infrastructure projects on behalf communities.</p> <p>The Buchan STAYS expo was held to explore accommodation options to support tourism and economic recovery.</p>	50%	

Strategic Indicators







Name	Comments	Result	Target
Community satisfaction with emergency and disaster management	Quarterly surveys continued to be conducted with the community, with the results to be released later in the year.	-	≥ Large Rural Council average

Progress Indicator Legend

 - Not commenced
  - Behind schedule
  - On hold
  - On schedule
  - Completed
  - Withdrawn

Name	Comments	Result	Target
Percentage of communities that need a Local Incident Management Plan have one in place and reviewed as needed	Local Incident Management Plans continue to be developed throughout East Gippsland communities, with the creation of new community plans and the review of existing plans with community.	-	100%
Milestones achieved for climate risk analysis	Funding has not yet been secured to progress this work.	-	100%

Progress Indicator Legend

 - Not commenced
  - Behind schedule
  - On hold
  - On schedule
  - Completed
  - Withdrawn



Council staff continued to maintain Council managed areas during the extensive grass growth of the spring season with the added challenge of a large amount of rainfall for the period.

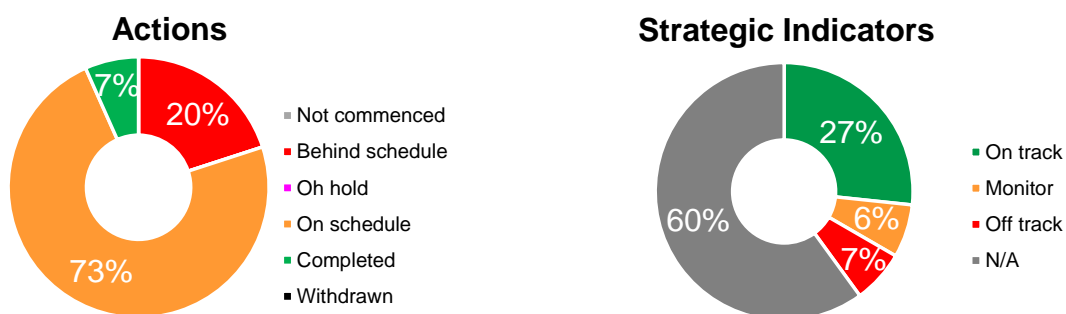
3 A natural environment that is managed and enhanced

3: A natural environment that is managed and enhanced



Strategies	Council's role
3.1 Council works to reduce its own and the communities carbon emissions while supporting the community to mitigate the impact of a changing climate on the environment, safety, health and lifestyles	Facilitator / Provider
3.2 Sustainable land use practices are used to manage council land to protect biodiversity and to provide education and incentives to support the management of private land	Facilitator / Provider / Advocate
3.3 Natural values on key Council managed land are managed and enhanced	Advocate / Provider / Facilitator
3.4 Environmentally and financially sustainable practices reduce waste going to landfill	Facilitator / Provider

Summary of performance



Council services provided




Building Maintenance
Delivery of new assets
Environment Projects Management

Environmental Sustainability
Waste Services







Progress Indicator Legend

● - Not commenced
 ● - Behind schedule
 ● - On hold
 ● - On schedule
 ● - Completed
 ● - Withdrawn

3.1: Council works to reduce its own and the communities carbon emissions while supporting the community to mitigate the impact of a changing climate on the environment, safety, health and lifestyles

Action Code	Action Name	Comments	Progress	Status
3.1.1	Council's greenhouse gas emissions from energy use are reduced through key projects that include: <ul style="list-style-type: none"> • Install and commission permanent landfill gas flare at Bairnsdale Landfill; and • Purchase additional alternate fuel vehicles for Council's passenger fleet 	<p>Council made several achievements during the quarter to reduce greenhouse gas emissions, such as:</p> <ul style="list-style-type: none"> • Finalisation of an agreement with one of the region's major manufacturers, which will facilitate this company's transition to renewable power sources. • Participation with six other local governments on a project to assist and accelerate the transition to all-electric renewable energy. • Council also made a submission on the Gippsland offshore renewable energy zone with the zone announced late in the quarter. • An audit of Sports Oval lighting has also been undertaken and recommendations pending on how best to convert these systems to a low energy option. 	50%	
3.1.2	Develop processes and tools that support whole of community (local business, community organisations, and individuals) to take action and participate in a climate response	<p>During the quarter Council adopted the Economic Development Strategy and Action Plan, which includes linkages to Climate Change.</p> <p>Council has also joined the newly formed Gippsland Alliance for Climate Action (GACA).</p>	50%	
3.1.3	Implement infrastructure enhancement and improvements to respond and assist in managing impacts of climate change	<p>A request for tender was released for a road condition assessment that will provide critical data on road condition to enable a review of design and materials considerations through the Forward Design Program. A review of Road Maintenance data is also underway.</p> <p>Recruitment has commenced for an in-house drainage engineer to manage inundation and the risk of flooding to road assets.</p> <p>LED street lighting continued to be installed, with only 11 locations remaining for replacement, and four electric vehicle charging stations were installed, which will support climate change adaptation and mitigation.</p>	50%	


Progress Indicator Legend

 - Not commenced
  - Behind schedule
  - On hold
  - On schedule
  - Completed
  - Withdrawn

Strategic Indicators





Name	Comments	Result	Target
New public electric vehicle charging stations installed	As of 31 December 2022, chargers have been installed at Omeo, Orbost, Bairnsdale and Cann River and are now waiting for final confirmation from Ausnet before they can be used by the public. A tender for the installation of EV chargers at Mallacoota, Buchan and Lakes Entrance was closed on the 23 December 2022.	0	> Seven stations
Proportion of Council passenger vehicle fleet is electric, hybrid or uses alternate fuel sources	Council increased the vehicles that use sustainable energy by two for the period. Of the 127 vehicles in Council's fleet; <ul style="list-style-type: none"> 15 are hybrid; one is an alternate fuel source; and one is a full electric. 	13.4%	> 10%
Total kilowatt hours output from renewable energy systems at Council owned facilities	Renewable energy usage is reported annually.	-	> 10%
Percentage of Council's electricity use from renewable sources	Emissions are reported annually.	-	> 95%
Reduce Carbon emissions from Council's operations	Target will be reported on at the end of the financial year.	No Data	< 5,535

3.2: Sustainable land use practices are used to manage council land to protect biodiversity and to provide education and incentives to support the management of private land

Action Code	Action Name	Comments	Progress	Status
3.2.1	Undertake community education to promote the need to protect the natural environment and actions community members can undertake to support this	<p>Councillors were briefed on environmental incentives on private land this quarter, which may assist to inform future incentives in the area of biodiversity protection.</p> <p>The Spring 2022 and Summer 2022-23 editions of Environmental Connect were released to over 400 subscribers. A Citizens Science component to a wetland project was also secured with Federation University.</p> <p>Community engagement was conducted, with the North East Catchment Management Authority and the Mitta Mitta community group on the Matchkeys Grasshopper relocation</p>	50%	

Progress Indicator Legend







 - Not commenced
  - Behind schedule
  - On hold
  - On schedule
  - Completed
  - Withdrawn

Action Code	Action Name	Comments	Progress	Status
3.2.2	Further develop sustainable practices and implement projects around water and land use, which includes the construction of Crooke Street, Bairnsdale wetland	<p>During the quarter the Crooke street Wetland project was tendered; however, the tender has not been awarded and the project will be re-advertised in early 2023.</p> <p>Further progress on these practices will be supported by a future drainage engineer, who will progress the water management needs of the Lakes Entrance Northern Growth Area, and a future integrated water management role, developed in collaboration with DELWP and East Gippsland Water this quarter.</p>	35%	
3.2.3	Advocate for appropriate State Government support for Council's management of public land for natural and biodiversity purposes	Council has continued to advocate for State Government support this quarter with regards to management of public land for natural and biodiversity purposes, through the Advocacy Strategy. The Advocacy Strategy was used for discussions with current State Government-sitting Members of Parliament as well as candidates standing for election during quarter two.	50%	
3.2.4	Continue to manage fire effected Council land to protect biodiversity and ensure public safety, including completing the War on Weeds projects	<p>Council received a grant under Federal Government the Bushfire Recovery for Wildlife and Habitat Community Grants program to undertake weed surveillance and treatment along Betka Beach to Pebbly Beach at Mallacoota. Works have been undertaken over 70 hectares to target emerging and known weed species in this area to protect regenerating vegetation communities and associated fauna, this grant is almost completed.</p> <p>A second grant under this program received for bushfire impacted roadsides has allowed an additional 1000km of roadsides to be assessed and treated for emerging and regenerated weeds, this project is completed.</p>	100%	
3.2.5	Develop and implement suitable plans for managing storm water and water within new urban development	The Lakes Entrance Northern Growth Area drainage strategy has been developed.	50%	

Strategic Indicators




Name	Comments	Result	Target
Community satisfaction with slashing and weed control	Quarterly surveys continued to be conducted with the community, with the results to be released later in the year.	-	≥ Large Rural Council average

Progress Indicator Legend

 - Not commenced
  - Behind schedule
  - On hold
  - On schedule
  - Completed
  - Withdrawn

Name	Comments	Result	Target
Kilometres of regionally controlled and prohibited weeds treated	The kilometres of weeds treated is not tracked periodically, it is calculated at the end of the financial year.	-	> 200 kilometres annually
A baseline for the quality and quantity of land being managed for 'at risk' habitat, biodiversity purposes, and community safety on Council and private land	The baseline is still under development with no further action in quarter two.	-	Baseline to be developed







3.3: Natural values on key Council managed land are managed and enhanced

Action Code	Action Name	Comments	Progress	Status
3.3.1	Establish which values are to be managed and develop management plans to guide management of key Council land	The draft Management Plan for Toonalook Waters wetland has been developed and will be reviewed in quarter three. Assessment of several erosion matters is still ongoing due to persistent wet weather.	35%	
3.3.2	Implement a framework to support partners and volunteers to work on key priority projects for Council land	Actions relating to volunteer management for environmental purposes is on hold while a Volunteer Management Policy is developed. Recruitment of a Council officer during quarter 2 will allow more targeted support for volunteer Committees of Management.	10%	
3.3.3	Complete the Bairnsdale Alternative Water Project with the development of water management (including effluent) plan for Bairnsdale Saleyards	Officers assessed a consultant's brief to develop a water management plan for the Livestock Exchange. With further progress will be conducted once funding is confirmed.	50%	




Strategic Indicators

Name	Comments	Result	Target
Total investment in Council managed land to support natural areas	Much of the investment in council managed natural areas is seasonally influenced. With the long period of rain in quarter two, many of the weed and roadside vegetation activities were not commenced as early as usual. Reserve management expenditure, along with roadside vegetation management and weed eradication will therefore significantly extended into quarter three.	\$440,560	≥ \$1.710 million annually







Progress Indicator Legend


 - Not commenced
  - Behind schedule
  - On hold
  - On schedule
  - Completed
  - Withdrawn

3.4: Environmentally and financially sustainable practices reduce waste going to landfill

Action Code	Action Name	Comments	Progress	Status
Major initiative 6	Support the circular economy through initiatives that reduce waste going to landfill, including: <ul style="list-style-type: none"> Value adding green and organic waste; and Introducing appropriate glass collection services at locations throughout the Shire. 	<p>A detailed business case for the management of organic waste has been developed and externally peer reviewed. The tender for the detailed design of a composting facility will shortly be awarded.</p> <p>Glass collection has been introduced at eight Waste Transfer Stations.</p>	65%	
3.4.1	Develop and implement waste education programs to focus on key areas of waste reduction	<p>A range of ongoing education programs continued to be rolled out, including regular print and social media campaigns.</p> <p>Council again supported the very successful Detox Your Home program, with the Bairnsdale Livestock Exchange carpark used as the collection point.</p> <p>A range of new school incursion material was developed, and a program run with Lucknow Primary School. Two workshops were also run in Bairnsdale on the benefits of using cloth nappies.</p>	60%	
3.4.2	Implement the Waste Minimisation Action Plan, including delivering key actions: <ul style="list-style-type: none"> Conduct a comprehensive waste service review; Transition Cann River's waste service to a Transfer Station Service and remediate the existing landfill; and Develop a framework for reporting and tracking of illegal dumping 	<p>The 10-year action plan continued implementation.</p> <p>The Cann River Transfer Station Planning Permit was the subject of a VCAT appeal, with the first directions hearing held late in the quarter, which will delay the project for up to a year. Officers are reviewing other options including the need for an alternate waste service once the Cann River Landfill is full. A service review has been funded and is scheduled to commence in quarter three.</p>	65%	

Progress Indicator Legend







 - Not commenced
  - Behind schedule
  - On hold
  - On schedule
  - Completed
  - Withdrawn

Action Code	Action Name	Comments	Progress	Status
3.4.3	Support the inclusion of more recycled materials in council's infrastructure and maintenance program, with particular focus on roads and footpaths	<p>The Works team have been proactively using recycled asphalt product, as well as recycled crush rock where applicable in the maintenance program. Several roads contracts were also amended to facilitate the use of recycled road materials.</p> <p>Discussion occurred with local contractors to explore more sustainable road and footpath construction options that may be available to trial.</p>	30%	

Strategic Indicators

Name	Comments	Result	Target
All Council offices have four streams of recycling (co-mingled, organics, soft plastics, paper/cardboard)	This project will be managed by the Waste Minimisation Officer from early 2023.	40%	100%
Number of community waste education programs delivered	<p>Council conducted two cloth nappy workshops and one incursion at Lucknow Primary School.</p> <p>A request for incursion was received from Clifton Creek Primary school, which will be scheduled in 2023.</p> <p>Community markets will be attended with a pop-up stand in 2023.</p>	2	≥ Five programs
Proportion of recycled content in construction projects on Council assets	Process improvements to enable more accurate reporting on both quantitative and qualitative data for the percentage of use of recycled material in construction projects is underway and will reported in quarter three.	No Data	> 10%
Community satisfaction with waste management	Quarterly surveys continued to be conducted with the community, with the results to be released later in the year.	-	≥ Large Rural Council average
Number of new waste streams collected through waste facilities	Have started collecting source separated glass at eight sites.	1	≥ 2
Kerbside collection waste diverted from landfill	Data has been provided by Tambo Waste.	51.45%	> 52%

Progress Indicator Legend

 - Not commenced
  - Behind schedule
  - On hold
  - On schedule
  - Completed
  - Withdrawn



Community consultation for the Buchan Main Street and Linkages Project was conducted in quarter two and works are scheduled to commence in early 2023.

4

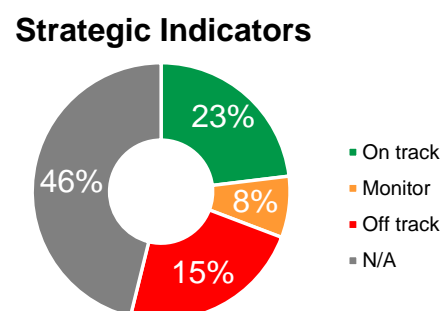
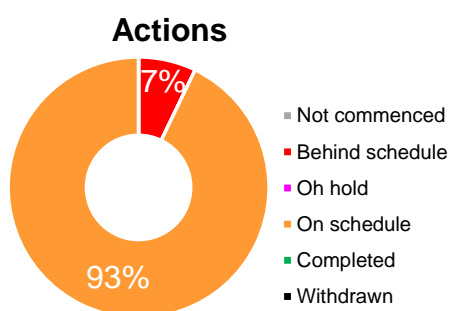
A thriving and diverse economy that attracts investment and generates inclusive local employment

4: A thriving and diverse economy that attracts investment and generates inclusive local employment



Strategies	Council's role
4.1 Leadership enables economic prosperity, investment, recovery, resilience and growth	Facilitator / Advocate
4.2 Collaboration amongst key partners is facilitated to improve pathways for education and skills training	Facilitator / Advocate
4.3 Council's work with stakeholders fosters entrepreneurship and new business opportunities, particularly with communities facing change	Facilitator / Advocate
4.4 Targeted information and streamlined approvals and processes make it easier for business to invest	Facilitator / Advocate
4.5 Tourism sector investment is sought in business capability, product development and experience to meet the changing needs of domestic and international markets	Facilitator / Advocate
4.6 East Gippsland's natural strengths in agriculture and natural resource-based industries are enhanced to increase value, employment, sustainability and resilience	Facilitator / Provider

Summary of performance





Council services provided

Business Support
Economic Development
Economic Recovery

Events
Tourism and Visitor Information


4.1: Leadership enables economic prosperity, investment, recovery, resilience and growth

Action Code	Action Name	Comments	Progress	Status
4.1.1	Support businesses to leverage digital technologies to access new markets and create new products and services	Internal digital technology training was undertaken for the Visitor Information Centres with digital health audits to commence for businesses that are members early in 2023. Planning for the Digital Innovation & Smart Agriculture Conference continued, with the conference scheduled for May 2023.	25%	
4.1.2	Support business transition toward greater resilience and adoption of environmentally sustainable initiatives or practices and fostering of the circular economy	Officers supported business webinars in preparation for the Single Use Plastics Ban effective from January 2023. The Global Eco Destination application was submitted, with an independent audit scheduled for February 2023. Additionally, Council, in collaboration with Tambo Waste, implemented a 'source separated' glass recycling program to further reduce landfill, and signed off on an Environmental Upgrade Agreement with Patties Pies. The agreement was for the installation of LED lighting throughout the Bairnsdale plant.	50%	

Strategic Indicators

Name	Comments	Result	Target
Percentage of actions implemented from the Economic Development Strategy Action Plan 2022-26	The Economic Development Strategy Action Plan 2022-26 was endorsed by Council and progress will be reported at the end of the financial year.	N/A	≥ 80% of year 1 actions

4.2: Collaboration amongst key partners is facilitated to improve pathways for education and skills training

Action Code	Action Name	Comments	Progress	Status
4.2.1	Facilitate engagement with young people, youth organisations and social enterprises to understand barriers to training and employment and their vision for the future	Discussions progressed with Management Governance Australia to address barriers to young adult learning across East Gippsland, and investigations were undertaken into an Entrepreneurs in Schools program, in partnership with the Gippsland East Local Learning and Employment Network.	15%	

Progress Indicator Legend

 - Not commenced
  - Behind schedule
  - On hold
  - On schedule
  - Completed
  - Withdrawn

Strategic Indicators

Name	Comments	Result	Target
Exiting secondary school students undertaking an apprenticeship / traineeship or TAFE training	This is reported annually, with the data for 2022 to reported later in the financial year.	N/A	> 24%
Year 12 students continuing to university education	This is reported annually, with the data for 2022 to reported later in the financial year.	N/A	> 20%


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

Action Code	Action Name	Comments	Progress	Status
4.3.1	Develop a program to identify, foster and promote emerging business leaders, entrepreneurs and new investors	<p>The Business Boost Pilot Program had 11 clients and 30 resource volunteers this quarter, and support for expanding the program into other regions is being considered subject to funding (Omeo/Swifts Creek and Orbost).</p> <p>The Invest East Gippsland website is almost prepared for release, awaiting a final review and input by the Economic Development Advisory Committee. Additionally, planning for a Community-owned Assets forum commenced with expected delivery in 2023.</p>	50%	







Strategic Indicators


Name	Comments	Result	Target
Participation in Council run programs delivered to support business growth	There were 308 participates across 8 industry development programs delivered by Council.	308	≥ 300 participants
Number of new businesses registered	This is only reported annually by the Australian Bureau of Statistics and will be updated when the new figures are published.	N/A	> 394 businesses

4.4: Targeted information and streamlined approvals and processes make it easier for business to invest

Action Code	Action Name	Comments	Progress	Status
4.4.1	Review and enhance the coordination of Business Concierge Services	With the Business Concierge role currently vacant, concierge services are begun being triaged and prioritised until recruitment is completed.	30%	

Progress Indicator Legend







 - Not commenced
  - Behind schedule
  - On hold
  - On schedule
  - Completed
  - Withdrawn

Action Code	Action Name	Comments	Progress	Status
4.4.2	Implement the outcomes of the Better Planning Approvals Project	Implementation of outcomes from the Better Planning Approvals Project has been delayed by the upgrade to Council's corporate information system, which is scheduled to occur in March 2023.	25%	



Strategic Indicators

Name	Comments	Result	Target
Average processing time for goods on footpath permits	There were 19 new goods on footpath permits issued for the period 01/01/2022 - 30/06/2022 with an average of 9 days to action.	9 days	≤ 8 days
Average processing time trading permits	There were four new trading permits issued for the period 01/01/2022 - 30/06/2022 with an average of 5 days to action.	5 days	≤ 6 days
Average processing time for domestic animal business registrations	There were two new Domestic Animal Businesses permits issued for the period 01/01/22 – 30/06/22, with an average of 28 days to action. This was due to delays in applicants supplying required information and determining suitable times for an on-site inspection.	28 days	≤ 6 days

Progress Indicator Legend




 - Not commenced
  - Behind schedule
  - On hold
  - On schedule
  - Completed
  - Withdrawn

4.5: Tourism sector investment is sought in business capability, product development and experience to meet the changing needs of domestic and international markets

Action Code	Action Name	Comments	Progress	Status
Major initiative 7	Implement the Tourism Events Action Plan 2022-26	<p>A key initiative - the Pathways to Growth Program - has received seven applications for two program openings, with assessment and announcement of successful applicants to occur in quarter three, which is significant in the implementation of the Action Plan.</p> <p>Officers continued to provide ongoing input into the management and coordination of the new Gippsland Event Acquisition Fund. Additional funding was made available for the Community Grants Program in recognition of smaller community events, which are no longer being supported through the tourism events program.</p> <p>Implementation of the Action Plan has been slower than expected due to acquittal and reporting required for bushfire recovery and Austrade funded events, and the high demand for event permits locally.</p>	30%	
4.5.1	Partner with relevant stakeholders to implement key actions of the Destination Management Plan	<p>The Metung Hot Springs, a catalyst project within the Destination Management Plan, officially opened in quarter two.</p> <p>A new Business Resilience Development Officer role will be recruited focused on rural areas of East Gippsland. The role will include working with businesses in the Omeo district in preparation for economic recovery and growth opportunities arising from the Omeo Mountain Bike Park.</p>	40%	

Progress Indicator Legend




 - Not commenced
  - Behind schedule
  - On hold
  - On schedule
  - Completed
  - Withdrawn

Action Code	Action Name	Comments	Progress	Status
4.5.2	Undertake major projects that enhance the look and feel of our towns, improving the tourist experience and facilitating business investment including: <ul style="list-style-type: none"> Buchan Streetscape and Activation Project; Bruthen Streetscape and Activation Project; and Mallacoota Streetscape Project. 	<p>Progress continued with major projects this quarter:</p> <ul style="list-style-type: none"> The Bruthen Streetscape contract was awarded. Construction for the shared path at Buchan was awarded and works in Council-managed areas have commenced. Design of the Streetscape has been conducted and activation workshops were held to promote visitor accommodation. Detailed design of the Mallacoota Streetscape is due to be completed in early 2023. <p>A range of other town improvement projects were also advanced including design of the Jemmy Point lookout and trails and improvements to on-street parking in Cann River.</p>	50%	
4.5.3	Upgrade the Bairnsdale Airport and work towards attracting a commercial air service to the region	<p>Detailed design continued to be developed for upgrade works on the Bairnsdale Airport, with focus on the runway extension, to allow for tendering to occur.</p> <p>Bairnsdale Airport was nationally recognised as Small Airport of the Year, which will assist with future service attraction. Work has also commenced on the physical separation of the Field Day site from the Airside areas of the airport and a contract has been awarded to upgrade fuel services at the site.</p>	50%	
4.5.4	Review Council's approach to the provision and management of caravan and camping facilities on Council managed land	<p>Officers have received a final draft of the Caravan Park Management Model review. This review identified the best management model for each park while also providing strategic direction on how, or if, Council should continue managing caravan parks. A workshop with Councillors will be used to determine the strategic direction for the management of Council's caravan parks.</p>	80%	

Strategic Indicators



Name	Comments	Result	Target
Number of tourism events held during the low and shoulder season periods	<p>Events held;</p> <ul style="list-style-type: none"> East Gippsland Winter Festival; Deep in the Weeds; Twin Rivers Bream Classic; Tennis Seniors Victoria National Ranking Tournament; Round 4 Victoria Bream Classics Marlo; 	Eight	> 50 events

Progress Indicator Legend







 - Not commenced
  - Behind schedule
  - On hold
  - On schedule
  - Completed
  - Withdrawn


Name	Comments	Result	Target
	<ul style="list-style-type: none"> Squash Victoria Country Individuals Championship; Friends of the Mitta Give Back to the Mitta; and Great East Rail Trail Ride 		
Total visitation to East Gippsland (international, domestic and daytrip combined)	Visitation increased by 26%, to 1.4 million for the period October 2021 to September 2022 compared to the previous year, surpassing all previous records.	1.4 million <i>(for period 1 October 2021 – 30 September 2022)</i>	> 1.3 million
Tourism expenditure in East Gippsland	Tourism expenditure increased by 64.8% to \$638 million for the period October 2021 to September 2022 compared to the previous year. This was three times higher than any other local government area in Gippsland.	\$638 million <i>(for period 1 October 2021 – 30 September 2022)</i>	> \$360 million

4.6: East Gippsland's natural strengths in agriculture and natural resource-based industries are enhanced to increase value, employment, sustainability and resilience

Action Code	Action Name	Comments	Progress	Status
4.6.1	Explore export potential with local businesses who have globally competitive products	Engagement with local businesses with export potential occurred on an as-needed basis. Development of a specific program has been delayed while recruitment of key roles occurs.	15%	
4.6.2	Promote the shire as emerging leaders in sustainability and climate change adaptation	<p>Council was represented on the Latrobe Valley Authority Innovation Working Group for Circular Economy and provided input into the Gippsland Regional Circular Economy Plan developed by Department of Environment, Land and Water Planning.</p> <p>Council promoted the announcement of a project to construct the Crooke Street Wetland, which will improve stormwater flow, remove of gross pollutants and reduce the levels of phosphorous and nitrogen discharged.</p> <p>Council Officers presented on Eco Destination Sustainability at the Australian Regional Tourism Network conference (Ballarat) and the Victorian Tourism Industry Council Forum (Melbourne).</p>	50%	

Progress Indicator Legend







 - Not commenced
  - Behind schedule
  - On hold
  - On schedule
  - Completed
  - Withdrawn

Action Code	Action Name	Comments	Progress	Status
4.6.3	Provide a voice for agriculture in Council's activities through the Agriculture Sector Advisory Committee	A farming rates subcommittee will provide input into Council rating system decisions for 2023/24. The Committee met to capture feedback on the Rural Land Use Strategy and provide guidance on the Farmer Survey 2021 results, for publishing early January 2023.	50%	

Strategic Indicators

Name	Comments	Result	Target
Number of jobs in the agriculture sector in East Gippsland	The data source is yet to be updated this year.	N/A	> 1,612 jobs
Value added by the agriculture sector in East Gippsland	The data source is yet to be updated this year.	N/A	> \$288,043,000

Progress Indicator Legend

 - Not commenced
  - Behind schedule
  - On hold
  - On schedule
  - Completed
  - Withdrawn



National Emergency Services Medals were presented to about 60 East Gippsland Shire Council staff on 19 October 2022 as recognition of the important and sustained contribution made by staff to the response effort during the 2019-2020 Black Summer Bushfires.

5

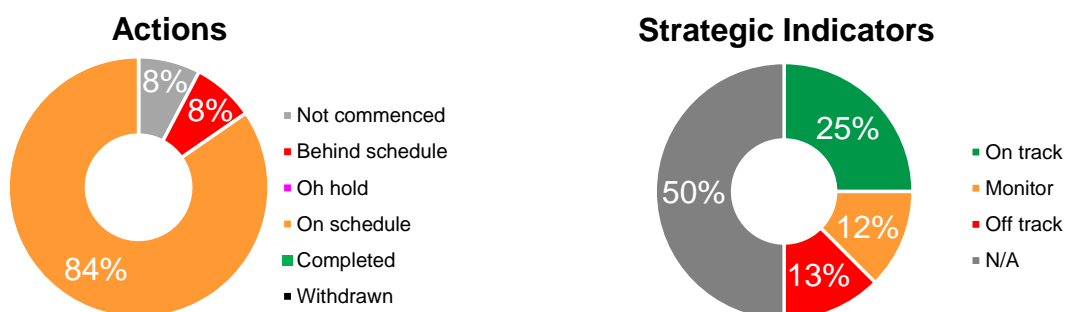
A transparent organisation that listens and delivers effective, engaging, and responsive services

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



Strategy	Council's role
5.1 A better everyday customer experience is created for our residents and visitors	Provider
5.2 Strong relationships with government, partners and stakeholders are maintained and strengthened to advocate for the community	Facilitator
5.3 Communities are engaged in decision-making and support is provided to develop local solutions to local issues	Provider / Facilitator
5.4 Continuous improvement systems are strengthened, and organisational efficiency enhanced	Provider
5.5 Resources are managed to meet current and future needs and priorities	Provider / Advocate
5.6 Council attracts, develops, and retains an inclusive workforce to deliver services and priorities	Provider

Summary of performance




Council services provided

Commercial Business
 Communications, Media and Civic Events
 Corporate Planning
 Council Enterprises
 Customer Experience
 Finance
 Governance
 Human Resources

Information Services
 Occupational Health and Safety
 Organisation Development
 Procurement
 Property Administration
 Rates and Valuations
 Risk Management


5.1: A better everyday customer experience is created for our residents and visitors

Action Code	Action Name	Comments	Progress	Status
Major initiative 8	Implement the Customer Experience Strategy. Key projects include; <ul style="list-style-type: none"> Enhance systems and processes to increase resolution of customer enquiries and requests at first point; and Streamlining customer response systems and processes 	Implementation of this strategy was slowed due to delays to the upgrade of Council's corporate information system, which is scheduled to occur in March 2023. Work continued with business units to develop triage processes for customer response improvements and will rely on resource availability to progress further.	50%	

Strategic Indicators


Name	Comments	Result	Target
Community satisfaction with customer service	Quarterly surveys continued to be conducted with the community, with the results to be released later in the year.	-	≥ Large Rural Council average

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

Action Code	Action Name	Comments	Progress	Status
5.2.1	Participate in One Gippsland advocacy activities	Following the two One Gippsland meetings last quarter, there were no further meetings. The last meeting involved input from Council on the region's Health Priority Projects.	50%	

Progress Indicator Legend


 - Not commenced
  - Behind schedule
  - On hold
  - On schedule
  - Completed
  - Withdrawn

Action Code	Action Name	Comments	Progress	Status
5.2.2	Deliver an advocacy program that focuses on Council's priorities. Key priorities include: <ul style="list-style-type: none"> Seek homelessness funding allocation through 'Big Housing Build'; Seek commitment for support to bushfire recovery services at least until year five; Seek commitment to telecommunications infrastructure upgrades; Seek funding programs to implement a net zero emissions target; and Seek funding and support for management of remnant vegetation and weeds on Council managed reserves and road reserves 	Council's advocacy this quarter has secured grant funding for key priorities: <ul style="list-style-type: none"> Delivery of wellbeing and rebuilding support services to support an extended bushfire recovery program through the Recovery and Resilience grant. Delivery of the roadside weed and pest program through environmental works in Mallacoota, including a focus on the foreshore area, and along the Mitchell River in Bairnsdale. Continued delivery of four new Electric Vehicle charging stations, replacement of sports lighting and street lighting with LED lights through the Local Roads and Community Infrastructure program. Council was advised late in the quarter that the funding application to implement a Climate risk identification and mitigation program (based on Mallacoota trial with CSIRO) had been unsuccessful.	50%	






Strategic Indicators



Name	Comments	Result	Target
Community satisfaction with advocacy (lobbying on behalf of the community)	Quarterly surveys continued to be conducted with the community, with the results to be released later in the year.	-	≥ Large Rural Council average

5.3: Communities are engaged in decision-making and support is provided to develop local solutions to local issues

Action Code	Action Name	Comments	Progress	Status
5.3.1	Build Council's capacity to deliver consistent and effective community engagement, and embed use of the Community Engagement Toolkit	An initial project outline has been developed. Further work will be conducted in 2023, with dedicated external or internal project resourcing to be defined. In addition, community engagement capacity to support infrastructure projects is being increased (pending recruitment).	0%	

Progress Indicator Legend







 - Not commenced
  - Behind schedule
  - On hold
  - On schedule
  - Completed
  - Withdrawn

Action Code	Action Name	Comments	Progress	Status
5.3.2	Strengthen how council's Place Manager model can support ongoing community engagement in remote areas of the municipality	<p>With the Place Manager model review complete, planning for implementation is underway - acknowledging the need to progress both bushfire recovery related support while simultaneously establishing the ongoing place manager function.</p> <p>A proposal is in place to recruit to the ongoing Place Manager positions to commence implementation of the strengthened, new Place Manager model. It is envisioned that Omeo District, Far East (Mallacoota and Cann Valley) and the Orbost District (inclusive of Buchan/Errinundra to Snowy districts) will be the focus of the new resources. Some delays have been experienced in progressing this due to resourcing constraints and recruitment timeframes.</p>	40%	
5.3.3	Conduct strong and effective community engagement for all major strategies and projects	<p>Community engagement continued for all major strategies and projects:</p> <ul style="list-style-type: none"> • Feedback on the Housing and Settlement Strategy and Rural Land Use Strategy via forms on the Council's YourSay website. • The Marine Parade Upgrade conducted community consultation via feedback survey. • Community feedback on the Culture and Creativity Strategy continued with an online survey. • The Buchan Streetscape project conducted community consultation in via online feedback forms and consultation sessions at the Buchan Hotel and CFA Building. 	50%	



Strategic Indicators

Name	Comments	Result	Target
Community satisfaction with community consultation and engagement	Quarterly surveys continued to be conducted with the community, with the results to be released later in the year.	-	≥ Large Rural Council average
Community satisfaction with making community decisions	Quarterly surveys continued to be conducted with the community, with the results to be released later in the year.	-	≥ Large Rural Council average
Community satisfaction with informing the community	Quarterly surveys continued to be conducted with the community, with the results to be released later in the year.	-	≥ Large Rural Council average

Progress Indicator Legend

 - Not commenced
  - Behind schedule
  - On hold
  - On schedule
  - Completed
  - Withdrawn







5.4: Continuous improvement systems are strengthened, and organisational efficiency enhanced

Action Code	Action Name	Comments	Progress	Status
5.4.1	Undertake service reviews for priority services and implement recommendations	The Service Review for Service Centres and Libraries was presented to Council at a meeting held on 8 November 2022, where Council resolved several recommendations. This service review is now completed and will form part of the operational model.	35%	
5.4.2	Fit for purpose technology is explored, implemented and used to generate productivity and efficiency gains across the organisation. Key projects include: <ul style="list-style-type: none"> Replace Rates, Property, Planning and Customer Request Management system; Improve datacentre capability through reduced infrastructure footprint; and Replace electronic records management system (multi-year project) 	Council is making good progress on the implementation of new technologies: <ul style="list-style-type: none"> Civica implementation (New Property, Rates, Planning and Customer Request Management) - The planning and configuration for final User Acceptance Testing is in progress and scheduled for February 2023. Datacentre consolidation (in collaboration with Wellington Shire Council) is scheduled for finalisation in early February 2023. New Electronic Document and Records Management Solution (in collaboration with Wellington Shire Council) – Council has completed tender procurement and will award contracts in February 2023. 	45%	



Strategic Indicators

Name	Comments	Result	Target
Number of service reviews undertaken	There are two formal service reviews underway. The service review for the Service Centres and Libraries has now been completed.	1	2 reviews
Permanent workforce has access to mobile technology	Up to 90% of full-time staff and key council positions (90% of full time EFT staff) now have access to mobile technology (laptop, tablet or mobile phone devices).	90%	> 70%

Progress Indicator Legend

 - Not commenced
 - Behind schedule
 - On hold
 - On schedule
 - Completed
 - Withdrawn

5.5: Resources are managed to meet current and future needs and priorities

Action Code	Action Name	Comments	Progress	Status
5.5.1	Manage resources in accordance with Council's 10-year Financial Plan and asset management plans	The 10 Year Financial Plan and the Asset Management Plans form the basis of future decisions to ensure resources are managed in accordance with those plan and ongoing financial sustainability.	50%	
5.5.2	Advocate to funding bodies to attract external and partner funding for high priority needs	<p>Funding has been sought for a range of projects and activities this quarter:</p> <ul style="list-style-type: none"> • Additional funding for several road and streetscape projects through application to the Commonwealth Department of Industry. • Works in Bruthen and Nowa Nowa, funded by the Department of Transport. • Application to the State Government with regards to works for the Bogong High Plains Road. • Additional funding for bushfire recovery in the region, such as \$5.3 million through the Council Support Fund, \$7.1 million through Recovery and Resilience Grants and \$1.2 million through Community Recovery Committee - Local Government Area Grants. • New indoor sporting facility for Lakes Entrance as part of the State Government's election commitment for high priority projects. • Upgrades for the Sarsfield and Ensay Recreation Reserves. 	50%	




Strategic Indicators

Name	Comments	Result	Target
Victorian Auditor-General's Office assessment of Council's overall Financial Sustainability is low risk	The Victorian Auditor-General's Office no longer provide an individual report to Council, instead they provide a sector-wide report and the result for East Gippsland Shire Council is combined with other large rural Councils.	-	Achieve low risk rating

Progress Indicator Legend

 - Not commenced
  - Behind schedule
  - On hold
  - On schedule
  - Completed
  - Withdrawn







5.6: Council attracts, develops, and retains an inclusive workforce to deliver services and priorities

Action Code	Action Name	Comments	Progress	Status
Major initiative 9	Review and redevelop the organisation's Occupational Health and Safety Management System	<p>The evaluation panel has selected a consultant for the review and development of the Occupational Health and Safety Management System. The consultant commenced reviewing current documents and designing of the new system. Engagement of stakeholders within the organisation is scheduled to occur in the next quarter.</p> <p>A new procedure for Contractor Management has been developed, with stakeholder consultation to continue in the next quarter.</p>	45%	
5.6.1	Implement the Workforce Plan 2021-25. Key actions include: <ul style="list-style-type: none"> Review attraction and retention strategies; Deliver structured leadership development training; and Create succession plans for key roles 	<p>A discussion paper continued to be developed and is scheduled for review in February 2023, with regards to attraction and retention strategies.</p> <p>Leadership development training continued to be developed in consultation with Wellington Shire Council. The Leadership capabilities will be mapped to the East Gippsland Shire Councils existing values.</p>	30%	
5.6.2	Deliver actions from the Gender Equality Action Plan. Key actions for include: <ul style="list-style-type: none"> Update employee diverse data collection systems; and Implement a safe and inclusive workplace training framework 	<p>While implementation has been impacted by staff shortages, significant work has been conducted to progress the Action Plan. Achievements include:</p> <ul style="list-style-type: none"> Data collection processes have been made more inclusive of gender diversity. Consolidation and release of information relating to Gender Equality, Diversity and Inclusion within the organisation. Representation of East Gippsland Shire Council's Gender Equality Working Group in the Staff Consultative Committee has been achieved. Training for Contact Officers and Sexual Harassment training has been scheduled for 2023. 	30%	

Strategic Indicators







Name	Comments	Result	Target
The percentage of actions implemented from the Workforce Plan 2021-25	Actions are progressing on schedule for 80% by the end of the financial year.	0	≥ 80%

Progress Indicator Legend

 - Not commenced
  - Behind schedule
  - On hold
  - On schedule
  - Completed
  - Withdrawn

Name	Comments	Result	Target
Unplanned annual staff turnover rate	The unplanned staff turnover for the period was below the quarterly target of 3%, and the result is on track to be below the annual target.	2.61%	≤ 12% annually

Progress Indicator Legend

 - Not commenced
  - Behind schedule
  - On hold
  - On schedule
  - Completed
  - Withdrawn

Contact us

Residents' Information Line: 1300 555 886
Contact Centre: (03) 5153 9500
National Relay Service: 133 677

East Gippsland Shire Council, PO Box 1618
Bairnsdale 3875 Australia

Web eastgippsland.vic.gov.au
Email feedback@egipps.vic.gov.au
Fax (03) 5153 9576

In person

Bairnsdale: 273 Main Street
Lakes Entrance: 18 Mechanics Street
Mallacoota: 70 Maurice Avenue
Omeo: 179 Day Avenue
Orbost: 1 Ruskin Street
Paynesville: 55 The Esplanade

Outreach Centres

Bendoc Outreach Centre - 18 Dowling Street
Buchan Resource Centre - 6 Centre Road
Cann River Community Centre - Princes Highway

5.2.2 Councillor Representation Register

Authorised by General Manager Business Excellence

Conflict of Interest

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

Executive Summary

This report is presented to Council for adoption of the revised Councillor Representation Register 2020-2024 (the Register) for internal advisory committees and external organisations, following the annual review. The Register is provided at **Attachment 1**.

Following the Statutory Council Meeting held on Tuesday 25 October 2022 for the election of Mayor and the subsequent Statutory Council Meeting held on Tuesday 8 November 2022 for the election of the Deputy Mayor of Council, there is an opportunity to review the Register.

Effective representation on relevant external organisations and internal advisory committees is a critical element of Council's advocacy program. Through its membership of and representation on a diverse range of relevant local, regional and state committees and organisations, Council is well placed to represent and advocate for the interests of the East Gippsland community.

Councillor representation on these committees and organisations is guided by the Councillor Representation Policy (the Policy).

Recommendation

- 1. receives and notes this report and all attachments pertaining to this report; and**
- 2. adopts the updated Councillor Representation Register 2020-2024, for internal committees and external organisations, as provided at Attachment 1.**

Background

Council is represented on a range of internal and external committees, reference groups, industry groups, forums and other local and regional organisations. Ensuring that Council has proper appointments of Councillors to these organisations is a critical element of Council's advocacy program. The Policy guides Council's advocacy program and establishes expectations of Councillors when representing Council in these forums.

Following the Statutory Council Meeting held on Tuesday 25 October 2022 for the election of Mayor and the subsequent Statutory Council Meeting held on Tuesday 8 November 2022 for the election of the Deputy Mayor of East Gippsland Shire Council, there is an opportunity to review the Register. A copy of the Register is provided at **Attachment 1**.

There are some internal advisory committees and external organisations that require the Mayor to attend as Mayor ex-officio. There are also opportunities for Councillors to participate on a range of committees that are important to the future economic, environmental and social sustainability of the municipality.

Councillor representatives are supported by a member of the Executive Leadership Team who will provide information, advice and context in respect of matters being considered by the Committees.

Councillors are required to disclose conflicts of interest that are identified with any agenda item for the meetings of the internal and external committees and organisations that they attend. These disclosures will be recorded in the publicly available conflict of interest register.

Councillors are also required under the Policy to provide a report at the next Council meeting about the meetings they have attended.

Legislation

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

This report has been prepared in accordance with the overarching governance principles in section 9 of the *Local Government Act 2020*. This report outlines compliance with the conflict of interest requirements in sections 126-131 of the *Local Government Act* and the procedure for disclosure outlined in the East Gippsland Shire Council Governance Rules.

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 implications of this report have been assessed and align with the principles and objects of the *Gender Equality Act 2020*.

Collaborative procurement

This report does not involve procurement.

Council Plan

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

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

Council Policy

This report has been prepared in accordance with the Council Representation Policy.

Options

Councillors have discussed and subsequently nominated the identified appointments to the committees and organisations, as outlined in **Attachment 1**.

Resourcing

Financial

Costs associated with attendance at these meetings is covered by current budget allocations. Payment or reimbursement of costs and expenses associated with Councillor representation will be managed in accordance with the Councillor Support and Expenses Policy.

Plant and equipment

Not Applicable

Human Resources

All Councillor representatives will be supported by a member of the Executive Leadership Team, who on request, will be available to provide information, advice and context in respect of matters being considered by the relevant organisation.

Risk

The risks of this report have been considered and determined to be low.

Economic

Councillor membership of and representation on a diverse range of committees and organisations ensures Council is aware of and understands the economic situation of the municipality. It also enables Council to make informed decisions for the economic sustainability of the Shire.

Social

By ensuring Council has a 'voice at the table' through its representation arrangements, Councillors will be able to work proactively with other members of these organisations to achieve the best possible social outcomes for Council and the East Gippsland community.

Gender Impact Statement

Given that this report provides an update on the Councillor Representation Register, a gender impact assessment is not applicable.

Environmental

Councillor representatives will advocate on environmental issues in line with Council policies at meetings and other forums where appropriate. Councillors will report to Council on emerging issues and other environmental matters that are likely to impact on Council's many areas of responsibility.

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

Councillors have discussed the purposes of the internal advisory committees and external organisations and the Council Representation Policy with the Executive Leadership Team.

Attachments

1. Councillor Representation Register 2020-24 [**5.2.2.1** - 2 pages]



Councillor Representation Register 2020-2024

NOTE – Proposed Representation 2023 - The expiry date for each of the appointments is December 2023.

Committee/External Group	Current appointed Councillor/s	Position	Forum Allocated	Date Allocated	Meeting Frequency
Audit and Risk Committee	Cr Mark Reeves (Mayor ex-officio) Cr John White Cr Sonia Buckley	Committee members	Council Meeting	28/02/23	Quarterly
Chief Executive Officer Employment and Remuneration Committee	Cr Mark Reeves (Mayor ex officio) Cr Arthur Allen (Deputy Mayor) Cr Trevor Stow Cr Jane Greacen, OAM	Committee members	Council meeting	28/02/23	Quarterly
Economic Development Advisory Committee	Cr Mark Reeves (Mayor ex officio) Cr Jane Greacen, OAM Cr Trevor Stow	Committee members	Council Meeting	28/02/23	Bi-monthly
Disability Advisory Committee	Cr Kirsten Van Diggele Cr Mendy Urie Cr Jane Greacen, OAM	Committee members Substitute	Council Meeting	28/02/23	Bi-monthly
Livestock Exchange Committee	Cr Trevor Stow Cr John White Cr Sonia Buckley	Committee members Substitute	Council Meeting	28/02/23	Quarterly
Marina Consultative Committee	Cr Arthur Allen	Committee members	Council Meeting	28/02/23	Biannual
Agriculture Sector Advisory Committee	Cr Mark Reeves (Mayor ex-officio) Cr John White Cr Sonia Buckley	Committee members Substitute	Council Meeting	28/02/23	Quarterly
Local Road Community Safety Committee	Cr Trevor Stow Cr Sonia Buckley	Committee members	Council Meeting	28/02/23	Biannual
Youth Ambassador Committee	Cr Mark Reeves (Mayor ex-officio) Cr Kirsten Van Diggele	Committee members	Council Meeting	28/02/23	Bi-Monthly



Councillor Representation Register 2020-2024

Committee/External Group	Current appointed Councillor/s	Position	Forum Allocated	Date Allocated	Meeting Frequency
External Organisations					
Australian Coastal Councils Association Inc.	Cr Tom Crook	Representative	Council Meeting	28/02/23	Monthly
Australian Local Government Association	Cr Mark Reeves (Mayor ex-officio) (Other Councillors by Agreement)	Representative	Council Meeting	28/02/23	Annual
East Gippsland Local Aboriginal Justice Action Committee (LAJAC)	Cr Jane Greacen OAM Cr Tom Crook	Committee member Substitute	Council Meeting	28/02/23	Monthly
One Gippsland	Cr Mark Reeves (Mayor ex-officio)	Committee member	Council Meeting	28/02/23	Monthly
Municipal Association of Victoria	Cr Mark Reeves (Mayor ex-officio)	Delegate	Council Meeting	28/02/23	Biannual
Municipal Association of Victoria – Emergency Management Committee	Cr John White Cr Jane Greacen OAM	Committee member Substitute	Council Meeting	28/02/23	Quarterly
Rail Freight Alliance	Cr Arthur Allen Cr Trevor Stow	Delegate Substitute	Council Meeting	28/02/23	Biannual
Rural Councils Victoria	Cr Sonia Buckley Cr Mendy Urie	Gippsland Representative Substitute	Council Meeting	28/02/23	Monthly
South East Australian Transport Strategy Inc (SEATS)	Cr Arthur Allen Cr Trevor Stow	Delegate Substitute	Council Meeting	28/02/23	Biannual
Timber Towns Victoria	Cr Sonia Buckley Cr Tom Crook	Delegate Substitute	Council Meeting	28/02/23	Monthly
National Timber Councils Association	Cr Sonia Buckley Cr Tom Crook	Committee Member Substitute	Council Meeting	28/02/23	Biannual

5.3 Place and Community

5.3.1 Request to End S173 Agreement AL961631J - 40 Koraleigh View, Nicholson

Authorised by General Manager Place and Community

Conflict of Interest

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

Executive Summary

The purpose of this report is to seek Council's decision to end the Section 173 Agreement AL961631J (Agreement) as it relates to 40 Koraleigh View, Nicholson.

It is proposed that Council end the existing Agreement and that a new Agreement is entered into that allows appropriate development outside the nominated building envelope, with Council approval. This approach allows development in other areas of the site (subject to a range of constraints such as boundary setbacks) while still protecting the designated area in accordance with the Cultural Heritage Management Plan (CHMP). Costs associated with ending the Agreement and establishing a new Agreement will be borne by the applicant.

The catalyst to end the Agreement is the owner would like to develop an outbuilding (shed) outside an existing building envelope in accordance with the approved CHMP. A request to end the Agreement and the relevant title documents, including the Agreement, can be found at **Attachment 1**. It has been determined by Officers that the proposed shed would not trigger a planning permit.

Council provided in-principle support to end the Agreement at the 1 February 2022 Council meeting (Item 5.3.4). Consultation has now been carried out. Notices were sent directly to the affected landowners. Twenty (20) objections were received and are provided at **Attachment 2**. The applicant response to objections is provided at **Attachment 3**.

A planning consultation meeting was held, and the matters of concern are categorised as:

- procedurally unfair as others had asked to amend the agreement but were told they could not;
- the proposed outbuilding would: be a detriment to neighbourhood character; result in the loss of views; and create further stormwater issues; and
- the potential use of the land for motor vehicle repairs, and associated traffic impact.

The minutes of the Planning Consultation Meeting (PCM) are available at **Attachment 4**.

Ending the agreement as it relates to 40 Koraleigh View, Nicholson is a reasonable request and will enable the land to be developed in accordance with the applicable zone and overlays set out in the East Gippsland Planning Scheme.

It is considered that the need for the variation to the Agreement is to better comply with the intent of the CHMP relevant to the subdivision which created the subject land. The concerns of the objectors are noted. However, there is opportunity for variation to the Agreements on other land within the subdivision which is also consistent with the CHMP. Further, the major concerns can be mitigated by the default provisions of the East Gippsland Planning Scheme, which prevents certain uses in the Low-Density Residential Zone. The Officer recommendation is to issue a Notice of Decision to end the agreement.

Officer Recommendation

That Council:

- 1. receives and notes this report and all attachments pertaining to this report;**
- 2. agrees to the ending of Section 173 Agreement AL961631J wholly as it relates to Lot 15 on plan of subdivision 722623L at 40 Koraleigh View, Nicholson in accordance with Section 178A of the Planning and Environment Act 1987 and resolves to issue a Notice of Decision to End an Agreement in accordance with S178E(3) of the Planning and Environment Act 1987;**
- 3. notes that the ending of the agreement is subject to a new agreement being registered on title before Agreement AL961631J is removed, which must implement the building envelope restrictions consistent with the relevant cultural heritage management plan; and**
- 4. resolves that all costs of ending the legal agreement are to be borne by the landowner.**

Background

Council has received a request to end Agreement AL961631J (**Attachment 2**) wholly as it relates to Lot 15 on plan of subdivision 722623L at 40 Koraleigh View, Nicholson. A planning permit application 107/2021/VIC was received for Buildings and Works for an Outbuilding. A permit was assessed as being “not required”, based on Officer interpretation of the provision of the Erosion Management Overlay.

The proposed shed for which the application was made would be outside an existing building envelope but is not within an area of restriction outlined in the CHMP endorsed for the subdivision. The purpose of the Agreement was to ensure any buildings erected on the subject land were constructed within the Building Envelope as shown on the plan endorsed as part of the permit. The envelopes established for Lot 15 are shown in **Figure 2**.

Section 173 agreement AL961631J provides the following specific obligations on the landowner(s):

SPECIFIC OBLIGATIONS OF THE OWNER

6.5 building envelopes

The Owner must not build, construct or erect or cause or permit to be built, constructed or erected any Building outside a Building and Waste Disposal Envelope.

Council Officers have previously been asked for advice regarding the ability of Officers to provide consent for building outside of a nominated building envelope on other land within this development. The Agreement does not provide for a “miscellaneous consent” process, and as such a formal request to amend or end the Agreement is required. No other individuals have made a request formally and have instead modified their proposals to comply with the existing Agreement. Some of these individual landowners may be aggrieved by the request since they were advised their requests would not be supported by Officers.

The applicants contend that the endorsed building envelope plan is unsuitable given the amount of land area not restricted by the CHMP, and the small size of the existing building envelope.



Figure 2 - Endorsed building envelope (blue) and cultural heritage restriction (red) plan related to the subject land.

The building envelope was nominated on the land subdivided at 140 Nicholson-Sarsfield Road, Nicholson. The subdivision plan was approved in response to the provisions of the Low Density Residential Zone of the East Gippsland Planning Scheme. The provisions of the Low Density Residential Zone do not require the Building Envelope to be registered on title under an Agreement. However, the Agreement was established to satisfy the approved CHMP.

The proposal would provide a new agreement that would be specific to 40 Koraleigh View, Nicholson. New wording would allow the Responsible Authority to authorise construction of the shed outside of the building envelope via miscellaneous consent. The views of affected parties in relation to the miscellaneous consent could be taken into account via informal notice, which could be carried out concurrently with the formal notification process to prevent duplication and delay. There would still be a need to comply with the approved CHMP in any miscellaneous approval.

Proposed Section 173 agreement:

SPECIFIC OBLIGATIONS OF THE OWNER

6.5 Building envelopes

Unless with Council's prior written consent, the Owner must not build, construct or erect or cause or permit to be built, constructed or erected any Building outside a Building and Waste Disposal Envelope.

The proposed wording above introduces the ability for miscellaneous consent. Any other affected owner would need to make a similar application to end their Agreement and enter into a revised agreement for this wording to apply.

On this basis, Officers consider that the request to end the Agreement is reasonable and the processing of a revised Agreement would come after this consideration is finalised. A new Agreement would need to be executed prior to or concurrently with the ending of the current Agreement.

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*.

In preparing this report the Victorian *Gender Equality Act 2020* has been considered. The implications of the report have been assessed and are compliant with the obligations and principles of the *Gender Equality Act 2020*. The need for a Gender Impact Assessment has also been assessed. The implications of this report have been assessed and align with the principles and objects of the *Gender Equality Act 2020*.

Planning & Environment Act 1987

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

The applicant is seeking to end section 173 Agreement AL961631J wholly as it applies to 40 Koraleigh View, Nicholson; however, the consent of all parties bound by the agreement has not been obtained.

Where the consent of all parties has not been obtained, section 178B (2) of the *Planning & Environment Act 1987* provides the framework for the proposal to be assessed and considered by Council.

The proposal to end the Section 173 Agreement has been submitted pursuant to section 178A of the Act. A proposal submitted under this section of the Act, pursuant to section 178B must be considered against set requirements. An assessment against these requirements is as follows:

The purpose of the Agreement

The purpose of the Agreement was to implement conditions of Planning Permit 299/2011/P, for subdivision of the land into multiple lots and vegetation removal and to make sure the planning permit conditions were fulfilled on the subject land, specifically to provide appropriate fences, services, secondary treatment of sewerage, stormwater detention, and, most critically, to ensure the buildings and waste disposal were located within the appropriate envelopes.

Whether and why the Agreement is no longer required

The subdivision has been completed. Nearly all lots within the subdivision are currently developed with a single dwelling. Ongoing obligations of the owners mean that the Agreement must persist on the land, which is the reason for the amended agreement being provided in draft.

The responsible authority has been asked to consider the Ending of the Agreement in its current form and entering into the new agreement in relation to just this one lot. As such, there would not necessarily be precedent for a straightforward request to Council for the ending of Agreements to alter the building envelopes or allow buildings by consent.

The responsible authority consideration must be given to:

- whether it is appropriate in the context of the CHMP to provide for development in an area not covered by a building envelope; and
- whether it is appropriate, in the context of the draft amended agreement to give consent to buildings and works outside the building envelope given the concerns which have been raised by neighbours.

In this specific instance, there are protections required for the 'no-go' zone that can be implemented through any approval granted under the proposed amended agreement. The wording of the CHMP indicates that an outbuilding should have been permissible within the area not designated as "no-go" and outside the building envelope.

There are also additional lots which could benefit from a similarly worded amendment to the agreement, but not without undertaking a similar consultation process.

Notably, the main dwelling is constructed in accordance with the current envelope.

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

It is considered that the ending of the Agreement could be perceived to disadvantage neighbours in that the proposed development is not currently an anticipated outcome on the land, and the proposed development is considered to be imposing. It is reiterated that the proposed development does not trigger a planning permit.

The grounds of objection, generally, include the following:

- *Proposed use of the land and associated amenity and traffic impact*

The applicant has confirmed that the landowner does not intend to operate a business from the land and that the proposed development, not subject to a planning permit, would be restricted by the Planning Scheme in relation to any use other than for private/domestic use. Officers clarified in the PCM that a home-based business could not be operated if involving motor vehicle repair.

- *Impact of development on land subject to heritage sensitivity*

Any development under the proposed revised agreement would be subject to review by the responsible authority. A guide for this process would include consideration of the impact to the cultural sensitivity of the place, including the 'no-go' zone restrictions. It is considered that the proposed shed would be located outside of the 'no-go' zone, and this zone was originally intended under the CHMP to include or allow minimally disruptive development, including slab construction. Services and driveways leading to the shed would need to be located outside of the 'no-go' zone, unless consistent with the restrictions set out by the CHMP. Council could ask the applicant to obtain advice of a heritage advisor if they are proposing works within the 'no-go' zone.

- *Neighbourhood character/setbacks and consistency with surrounding property*

The applicant has advised they would be willing to restrict development size in an amended agreement to be registered. It would be suitable for some informal consultation to occur with potentially affected landowners before the new agreement is registered, but this does not need to prevent consideration of the current proposal.

Objections relating to the size of the proposed shed note that there are other large sheds in the neighbourhood and that they have concerns about those sheds, however all of the sheds have been exempt from planning permit requirements. The only reason this application is made is to consider a variation to the permissibility of building outside of a building envelope. If this is not approved, the development cannot be approved.

The reasons why the responsible authority entered into the Agreement

Council entered into the Agreement to reinforce conditions of approval for subdivision, most specifically to ensure that Cultural Heritage Values were protected in the development of each newly created lot. This has been achieved through the building envelopes, however the restriction is overly restrictive on some lots.

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

None.

Any other prescribed matter

The Act is prescriptive as to the processing and consideration of proposals to end section 173 Agreements. In accordance with section 178E (2) the responsible authority may, after considering the matters in section 178B – resolve to issue a Decision to End the Agreement in accordance with the proposal, or to consider a variation from that which was proposed.

While there may be no scope to vary the decision to end the current agreement, in entering into a new agreement, Council may consider whether to impose any other requirements it sees fit into the wording of the proposed agreement, such as a limitation on the extent of buildings and works which would reasonably be considered, or requirements for consent of other burdened landowners.

This is subject to further negotiation with the applicant in the preparation of the draft new agreement. Such additional limitations may satisfy the concerns of the objectors.

Collaborative procurement

Not applicable.

Council Plan

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

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

Council Policy

The matter was reported to Council for in-principle support under the previous Planning Permit Application Delegations Policy. Where the matter was reported to Council, the adopted motion also requires consideration of the matter at Council, following notice. As the proposal attracted more than 10 objections, a planning consultation meeting was held to hear concerns of objectors and the position of the applicant.

Options

1. Resolve as per the officer recommendation to issue a notice of decision to end the agreement, subject to a new agreement being entered into to restrict the development consistent with the CHMP for the subdivision. All parties to the agreement will have right to review the determination under s184B of the Act; or
2. Resolve an alternative – to refuse to end the agreement in accordance with s178E(3)(d). The applicant (owner) has rights to review the determination under s184A of the Act. This would prevent any development of the land outside of the current building envelope.

Resourcing

Financial

There are no financial implications

Plant and equipment

Not applicable.

Human Resources

Assessment is by planning department Officers.

Risk

The risks of this proposal have been considered and there is relatively low risk in the determination as recommended.

Economic

The proposal relates to buildings and works proposed on the land for a shed associated with a private dwelling. The shed itself is exempt from a planning permit requirement but is limited by the s173 Agreement registered on title. There is no discernible economic impact of the proposal.

Social

Ending the Agreement is not likely to have a negative impact on the wider community.

Consultation for this matter has revealed certain perceived amenity impacts, however such impacts are not subject to review.

Gender Impact Statement

Considerations of Gender Equality in Planning are made in relation to planning strategy, including planning scheme amendments and policy changes. Individual assessment of planning applications tends to be gender neutral, however Council Officers consider factors such as community safety, privacy, and accessibility in an integrated and multi-faceted decision making process. It considered that this application does not have a specific gendered impact.

Environmental

The proposal will not have any significant environmental impacts.

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

The procedure to assess proposals to end section 173 agreements under section 178A of the *Planning and Environment Act 1987* directs that notice of the proposal to all parties bound by the agreement is undertaken after obtaining 'in principle' support.

Notice took place in the form of direct mail to all persons who own land that has the same agreement included on their title. Notices were sent by the proponent in accordance with the instructions of the responsible authority and a statutory declaration has been provided advising that the recipients were advised that the responsible authority would not make a determination prior to 25 March 2022.

20 objections have been received by Council objecting to the request to end the Agreement, which are provided at **Attachment 2**. The objections were lodged by owners of land in the vicinity of the subject land and are all parties to/subject to the Agreement. The applicant has been provided a copy of the objections and has made a submission in response. The response indicates that the commercial activity alleged by objectors is categorically not proposed, nor would the same be acceptable or permissible under the provisions of the East Gippsland Planning Scheme. The response is provided at **Attachment 3**.

Although not expressly required under the Planning Permit Applications Delegations Policy (2018), a PCM was held on 8 August 2022, allowing for the objectors and applicant to present competing points of view to Councillors for consideration. Minutes of the meeting are available at **Attachment 4**.

The specific considerations given to the grounds, where relevant to the ending of the Agreement, are contained within this report in the '*Legislation*' section.

Referral Authorities

There are no referrals required in relation to the proposal, as the agreement is entered into between the landowner(s) and Council only, and there are no third-party signatories to the Agreement.

Attachments

1. Application [**5.3.1.1** - 49 pages]
2. Objections [**5.3.1.2** - 7 pages]
3. Applicant Response to Objections [**5.3.1.3** - 3 pages]
4. Planning Consultation Meeting Minutes 8 August 2022 [**5.3.1.4** - 4 pages]

Our ref: 19265

152 Macleod St.
PO Box 722,
Bairnsdale, VIC 3875

P: 5152 5011
F: 5152 5705

E: contact@crowthersadler.com.au

16 November 2021

Statutory Planning Coordinator
East Gippsland Shire Council
Via Email: planning@egipps.vic.gov.au

Attention: Mr. Robert Pringle

Dear Robert,

**Re: Request to end Legal Agreement AL961631J
Lot 15 PS 722623L
40 Koraleigh View, Nicholson**

We refer to Planning Application 107/2021/VIC for buildings and works (Shed) on the abovementioned land which was lodged with Council on 6 October 2021 and respectfully request Council's consent to the ending of Legal Agreement AL961631J as currently registered on title.

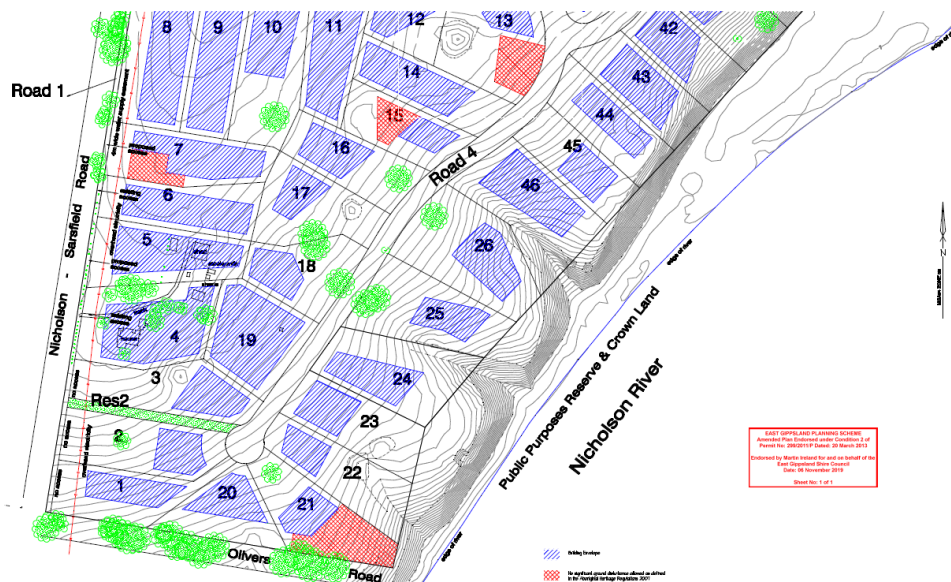
Purpose for Removal and Background

The purpose in part of the Agreement was to ensure any dwellings constructed on the subject land were constructed in accordance with the approved Cultural Heritage Management Plan.

It would appear that in order to ensure the requirements of the approved Cultural Heritage Management Plan were met, the land surveyor that designed the subdivision incorporated a building envelope plan and an area (building exclusion zone) that was not to be subject to significant ground disturbance.

The Building Envelope Plan endorsed in accordance with Condition 2 as part of Planning Permit 299/2011/P continued to apply by virtue of Agreement AL961631J, being registered on title to the subject land.





Extract of Plan referenced within the Agreement

The approved Cultural Heritage Management Plan, CHMP11323 applies to the properties within the Riverbend Estate.

The approved Cultural Heritage Management Plan was more detailed than the approved Building Envelope Plan and the Agreement reflect. Advice has been provided by one of the authors of the CHMP who is now a Director and Principal Heritage Advisor with *Unearthed Heritage* and is provided as an attachment.

CHMP 11323 allowed for three zones being:

Table 1: Permissible ground disturbing activities within each zone. (From CHMP 11323, 126)

Zone	Description	Description of permissible ground disturbing activities within zone
1	Building envelope / road envelope	Permissible activities consist of all activities permissible under the relevant planning scheme (i.e. house construction, garage construction, landscaping, road & drainage construction, services reticulation etc. are all permissible)
2	Services envelope	Permissible activities consist of all activities permissible under the relevant planning scheme with the exception of the construction of any residential buildings (i.e. a driveway, services trenches, landscaping etc. are all permissible, while the construction of a house is not).
3	Increased harm minimisation envelope	Permissible activities consist of mechanical excavation only for the construction of residential storm water drains (if required). Landscaping and other ground disturbing impacts of a non-mechanical nature are permissible. There is to be no construction of buildings, structures, or ground disturbing works for the purposes of services.

Extract from CHMP 11323

It is respectfully suggested that the Building Envelope Plan should have included Zone 2, services envelope. As the services envelope was not included or otherwise acknowledged on the plans, Agreement AL961631J resulted in no building being allowed to be developed outside the nominated building envelope.

This is clearly not the intension and does not reflect the requirements of CHMP 11323.

We believe that the Legal Agreement should be ended and a new agreement to be entered into to reflect the full requirements of CHMP 11323.

A planning permit application for buildings and works (proposed shed) on the subject land was lodged with Council on 6 October 2021. The application is yet to be determined.



Site plan of the proposed shed (which is currently not within the building envelope)

It is considered that a pathway to address the limitations is to end Agreement AL961631J on the basis that prior to Agreement AL961631J being ended the owner enter into a new agreement with Council that would only change the definition of the subject land and alter the Owners Specific Obligations at 6.5 Building Envelopes that would read:

Unless with Council's prior written consent, the Owner must not build, construct or erect or cause or permit to be built, constructed or erected any Building outside a Building and Waste Disposal Envelope.

Such a change would allow Council to consider on merit the construction of an outbuilding on the subject land outside the Building Envelope.

The Proposal

Our proposal to end the Agreement as it applies to the subject land has been made pursuant to Section 178A(1)(b) of the *Planning & Environment Act 1987*.

Section 178A(2)(b) requires the application to be “*accompanied by the information required by the regulations*”. In accordance with the requirements of Regulation 55 of the *Planning & Environment Regulations 2015* we provide the following requisite information:

Regulation 55(a) - we confirm the Applicant for the request to end the Agreement is Mr. John Holzer, C/- Crowther & Sadler Pty. Ltd of 152 Macleod Street, Bairnsdale, Victoria, 3875. Phone number for the Applicant is 5152 5011.

Regulation 55(b) – the Agreement AL961631J is to be ended as it applies to 40 Koraleigh View, Nicholson, formally described as Lot 15 on PS722623L.

Regulation 55(c) - not applicable as the proposal does not seek to amend the Agreement.

Regulation 55(d)(i) – not applicable to the proposal does not seek to end the Agreement in part.

Regulation 55(d)(ii) – the proposal seeks to end the Agreement as applying to part of the land. The Agreement is to be ended as it applies to 40 Koraleigh View, Nicholson, formally described as Lot 15 on PS722623L.

Regulation 55(d)(iii) – the Agreement is an unnecessary restriction on the land and does not reflect accurately the requirements of the approved Cultural Heritage Management Plan and will be at conflict with our Client’s desire to undertake buildings and works (proposed shed) in accordance with the provisions of the East Gippsland Planning Scheme.

To assist with Council’s consideration of our request in accordance with Section 178(B)(2) of the Act, we are pleased to provide the following information.

Purpose of the Agreement

The purpose of the Agreement was in part to ensure any buildings erected on the subject land were consistent with the requirements of the approved Cultural Heritage Management Plan (other requirements of the agreement were to provide for ongoing restrictions associated with the subdivision consistent with other permit conditions).

Why the Agreement is no longer required

The agreement at Clause 6 *Owner's further obligations*, more particularly at Clause 6.5 *Building envelopes*, is no longer required as it relates to 40 Koraleigh View, Nicholson, formally described as Lot 15 on PS722623L because it does not accurately reflect all the requirements of the approved Cultural Management Plan.

The Agreement is considered to impose an unreasonable limitation on the land that inconsistent with the provisions of the East Gippsland Planning Scheme. It is therefore appropriate that it be ended.

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

The ending of the Agreement will not give rise to any form of disadvantage to any other person.

The ending of the Agreement will simply enable future development to occur on the subject land consistent with the provisions of the Low Density Residential Zone as currently applying.

Existing development contained on many properties within the Riverbend Estate are developed with outbuildings associated with dwellings.

The reasons why the responsible authority entered into the agreement

The Agreement was appropriately entered into by Council at the time in accordance with conditions on Planning Permit 299/2011/P.

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

None applicable.

Any other prescribed matter

We are not aware of any other prescribed matter which is relevant to the request to end the Agreement as it applies to the subject land.

Section 178A(2)(c) of the Act requires an application of this type to be accompanied by the requisite fee as prescribed by the *Planning & Environment (Fees) Regulations 2016*.

Payment to the *East Gippsland Shire Council* in the amount of \$668.84 (Regulation 16) has been made to facilitate the processing of this request.

We trust this information provides sufficient detail to facilitate Council's commencement of the process associated with the ending of the Agreement as it applies to the subject land. We respectfully await Council's timely advice regarding the scheduling of this matter on the next available Ordinary Council Meeting agenda.

Regards,



RICHARD HOXLEY
Senior Planner

*Encl. Copy of Title (Lot 15 PS722623L)
S173LA AL961631J
Voluntary proposed draft legal agreement
Unearthed Heritage letter of advice dated 18/10/2021
Required fee of \$668.84*

Copyright State of Victoria. No part of this publication may be reproduced except as permitted by the Copyright Act 1968 (Cth), to comply with a statutory requirement or pursuant to a written agreement. The information is only valid at the time and in the form obtained from the LANDATA REGD TM System. None of the State of Victoria, its agents or contractors, accepts responsibility for any subsequent publication or reproduction of the information.

The Victorian Government acknowledges the Traditional Owners of Victoria and pays respects to their ongoing connection to their Country, History and Culture. The Victorian Government extends this respect to their Elders, past, present and emerging.

REGISTER SEARCH STATEMENT (Title Search) Transfer of Land Act 1958

VOLUME 11582 FOLIO 864

Security no : 124092909873L

Produced 06/10/2021 02:52 PM

LAND DESCRIPTION

Lot 15 on Plan of Subdivision 722623L.
PARENT TITLE Volume 11582 Folio 828
Created by instrument PS722623L 09/07/2015

REGISTERED PROPRIETOR

Estate Fee Simple
Sole Proprietor
JOHN ANDREW HOLZER of 40 KORALEIGH VIEW NICHOLSON VIC 3882
AT578225M 04/09/2020

ENCUMBRANCES, CAVEATS AND NOTICES

MORTGAGE AT578226K 04/09/2020
PERPETUAL TRUSTEE COMPANY LTD

COVENANT AN035608C 22/08/2016

Any encumbrances created by Section 98 Transfer of Land Act 1958 or Section 24 Subdivision Act 1988 and any other encumbrances shown or entered on the plan set out under DIAGRAM LOCATION below.

AGREEMENT Section 173 Planning and Environment Act 1987
AL961631J 17/06/2015

DIAGRAM LOCATION

SEE PS722623L FOR FURTHER DETAILS AND BOUNDARIES

ACTIVITY IN THE LAST 125 DAYS

NIL

-----END OF REGISTER SEARCH STATEMENT-----

Additional information: (not part of the Register Search Statement)

Street Address: 40 KORALEIGH VIEW NICHOLSON VIC 3882

ADMINISTRATIVE NOTICES

NIL

eCT Control 18440T MSA NATIONAL
Effective from 04/09/2020

DOCUMENT END

Delivered from the LANDATA System by GlobalX Terrain Pty Ltd

Delivered by LANDATA®, timestamp 06/10/2021 14:54 Page 1 of 3

© State of Victoria. This publication is copyright. No part may be reproduced by any process except in accordance with the provisions of the Copyright Act 1968 (Cth) and for the purposes of Section 32 of the Sale of Land Act 1962 or pursuant to a written agreement. The information is only valid at the time and in the form obtained from the LANDATA® System. None of the State of Victoria, LANDATA®, Victorian Land Registry Services Pty. Ltd. ABN 86 627 986 396 as trustee for the Victorian Land Registry Services Trust ABN 83 206 746 897 accept responsibility for any subsequent release, publication or reproduction of the information.

TRANSFER OF LAND

Creating an Easement and/or Restrictive Covenant

Section 45 Transfer of Land Act 1958



Lodged by

Name: Eastcoast Conveyancing Group Pty Ltd

Phone:

Address: PO Box 695 BAIRNSDALE VIC 3875

Reference: 16-3626

Customer Code: 549U

The transferor at the direction of the directing party (if any) transfers to the transferee the estate and interest specified in the land described for the consideration expressed-

- together with any easements created by this transfer;
- subject to the encumbrances affecting the land including any created by dealings lodged for registration before the lodging of this transfer; and
- subject to any easements reserved by this transfer or restrictive covenant contained or covenant created pursuant to statute and included in this transfer.

Land: (volume and folio)

Certificate of Title

Volume	Folio
11582	864

Estate and Interest: (e.g. "all my estate in fee simple")
All its estate in fee simple

Consideration:
\$85,500.00

Transferor: (full name)
NICHOLSON RIVER PTY LTD ACN 140 839 710

Transferee: (full name and address including postcode)
LANDERS TRUEMAN BROOKE-KELLY AND RIVA JAIM BROOKE-KELLY of 'Hiltone' 335 Thuddunga Road YOUNG NSW 2594 as Joint proprietors

Directing Party: (full name)

Creation and/or Reservation of Easement and/or Restrictive Covenant

The Transferee with the intent that the benefit of this Covenant shall be attached to and run at law and in equity with the whole of the land comprised in Plan of Subdivision NoPS722623L (other than the land hereby transferred) and each and every part thereof and that the burden of this Covenant shall be annexed to and run at law and in equity with the land hereby transferred and each and every part thereof and that the same shall be noted and appear on every Certificate of Title for the said land and every part thereof as an encumbrance affecting the same DOES HEREBY COVENANT with the Transferor and other registered proprietor or proprietors for the time being of the land comprised in the said Plan of Subdivision (other than the land hereby transferred) that the Transferee will not:

30800812A

T2

Page 1 of 3

Duty Use Only

THE BACK OF THIS FORM MUST NOT BE USED

Land Victoria, 570 Bourke Street, Melbourne, 3000, Phone 8636-2010

8

TRANSFER OF LAND

Creating an Easement and/or Restrictive Covenant

Section 45 Transfer of Land Act 1958



- a. Erect, place, permit, licence or authorise on the land any buildings other than a single dwelling (together with usual outbuildings) such dwelling to contain a floor area of not less than 160m² within the outer walls thereof calculated by excluding the area of any carport, garage, terrace, pergola, porch or verandah;
- b. Erect, place, permit, licence or authorise on the land any building or outbuilding other than a building or outbuilding which is externally constructed of new materials save for second hand bricks;
- c. Erect, place, permit, licence or authorise on the land any building which is relocatable, or relocated from any other property.
- d. Erect, place, permit, licence or authorise on the land any boundary fence other than a post and wire or wire netting fence.
- e. Extract or remove or permit the extraction or removal of any soil, gravel or earth or other materials from the said land except for the purpose of excavating for the foundations of a building or of a swimming pool or tennis court or for gardening, landscaping or driveway within the said land.
- f. Permit the land or any part thereof to be used for the riding or driving of off road motorcycles or any other off road vehicles for recreation purposes.
- g. Permit the land or any part thereof to be used for the purpose of commercial breeding or boarding of or training kennels for cats or dogs or for the purpose of keeping roosters thereon.
- h. Permit the land to be used for the parking, garaging or servicing of any motor vehicle in excess of 5 tonnes gross vehicle mass (GVM) except for the purpose of loading or unloading of goods unless the vehicle is a vehicle engaged in construction works on the said land.
- i. Use or permit the use of the said land for any offensive or noxious purpose.
- j. Further subdivide the land in any way so as to create an additional Lot.

9801206A

Duty Use Only

T2

Page 2 of 3

THE BACK OF THIS FORM MUST NOT BE USED

Land Victoria, 570 Bourke Street, Melbourne, 3000, Phone 8636-2010

9

TRANSFER OF LAND
Creating an Easement and/or
Restrictive Covenant
Section 45 Transfer of Land Act 1958

Dated:

19/8/16

Execution and attestation:

Executed by Nicholson River Pty Ltd ACN 140 839 710
 by being signed by the person/people authorised to sign for the company:

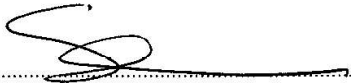
Director.....



Full name: Ross Charles Heath

Usual address: 10 ROBB STREET BAIRNSDALE

Director.....



Full name: Simon James Anderson

Usual address: 9 Bent Street BAIRNSDALE

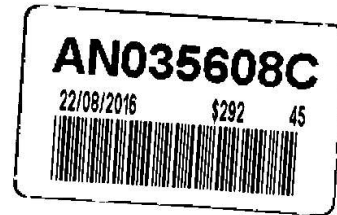
Signed by the Transferee

in the presence of: Mikhaela Rykers


 LANDERS TRUEMAN BROOKE-KELLY

Witness.....



 RIVA JAIM BROOKE-KELLY


9801206A

Duty Use Only

T2

Page 3 of 3

THE BACK OF THIS FORM MUST NOT BE USED

Land Victoria, 570 Bourke Street, Melbourne, 3000, Phone 8636-2010

10

Delivered by LANDATA®, timestamp 06/10/2021 14:54 - Page 1 of 13

© State of Victoria. This publication is copyright. No part may be reproduced by any process except in accordance with the provisions of the Copyright Act 1968 (Cth) and for the purposes of Section 32 of the Sale of Land Act 1962 or pursuant to a written agreement. The information is only valid at the time and in the form obtained from the LANDATA® System. None of the State of Victoria, LANDATA®, Victorian Land Registry Services Pty. Ltd. ABN 86 627 986 396 as trustee for the Victorian Land Registry Services Trust ABN 83 206 746 897 accept responsibility for any subsequent release, publication or reproduction of the information.

Application by a Responsible Authority for the making of a Recording of an Agreement

Section 181 **Planning and Environment Act 1987**

Form 18

AL961631J



Lodged by:

Name: **EASTCOAST CONVEYANCING**
 Phone: **MADDOCKS**
 Address: **9258-3655**
 Ref: **Level 6, 140 William Street, Melbourne, Victoria, 3000**
 Customer Code: **KAL:RTS:6237836 14-0683**
1107E 549U

The Authority having made an agreement referred to in section 181(1) of the **Planning and Environment Act 1987** requires a recording to be made in the Register for the land.

Land: Volume 11521 Folio 242

Authority: East Gippsland Shire Council of 273 Main Street, Bairnsdale, Victoria

Section and Act under which agreement made: Section 173 of the *Planning and Environment Act 1987*


A copy of the Agreement is attached to this Application

Signature for the Authority:

Name of officer:

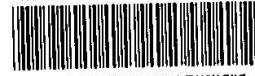
Position Held:

Date:


 Sarah McLaughlin
 Senior Planner
 15/06/2015

AL961631J

17/06/2015 \$121.50 173



Telephone 61 3 9258 3555
Facsimile 61 3 9258 3666

info@maddocks.com.au
www.maddocks.com.au

DX 259 Melbourne

**Agreement under section 173
of the Planning and Environment Act 1987**
Subject Land: 140 Nicholson-Sarsfield Road, Nicholson

East Gippsland Shire Council
and

Nicholson River Pty Ltd
ACN 140 839 710

[6237836: 13651855_2]

Interstate offices
Canberra Sydney
Affiliated offices around the world through the
Advoc network - www.advoc.com

12

AL961631J

Contents

1.	Definitions	1
2.	Interpretation	3
3.	Purposes of Agreement.....	3
4.	Reasons for Agreement.....	3
5.	Agreement required	4
6.	Owner's specific obligations.....	4
6.1	Rainwater Tanks	4
6.2	Fences	4
6.3	Access.....	4
6.4	Maintenance contribution for offsets.....	4
6.5	Building envelopes.....	5
6.6	Waste disposal envelopes	5
6.7	Septic tanks.....	5
7.	Owner's further obligations	5
7.1	Notice and registration	5
7.2	Further actions	5
7.3	Council's costs to be paid	5
7.4	Time for determining satisfaction	6
7.5	Interest for overdue money	6
7.6	Notification of compliance with Owner's obligations	6
8.	Agreement under s 173 of the Act	6
9.	Owner's warranties	6
10.	Successors in title.....	6
11.	General matters	6
11.1	Notices	6
11.2	No waiver	7
11.3	Severability.....	7
11.4	No fettering of Council's powers	7
11.5	Inspection of documents	7
11.6	Governing law	7
12.	Commencement of Agreement	7

AL961631J



Agreement under section 173 of the Planning and Environment Act 1987

Dated 15/06/2015

Parties

Name	East Gippsland Shire Council
Address	273 Main Street, Bairnsdale, Victoria
Short name	Council

Name	Nicholson River Pty Ltd ACN 140 839 710
Address	10 Robb Street, Bairnsdale, Victoria
Short name	Owner

Background

- A. Council is the responsible authority for the Planning Scheme.
- B. The Owner is or is entitled to be the registered proprietor of the Subject Land.
- C. Council issued the Planning Permit requiring the Owner to enter into this Agreement providing for the matters set out in conditions 5 and 38 of the Planning Permit.
- D. As at the date of this Agreement, the Subject Land is encumbered by a mortgage in favour of the Mortgagee. The Mortgagee consents to the Owner entering into this Agreement.

The Parties agree

1. Definitions

In this Agreement unless the context admits otherwise:

Act means the *Planning and Environment Act 1987*.

Agreement means this Agreement and includes this Agreement as amended from time to time.

Building and Waste Disposal Envelope means an area identified on the Endorsed Plan as a 'Building envelope' or the like.

Current Address means:

AL961631J

17/06/2015 \$12150 173



- (a) for Council, the address shown on page one of this Agreement, or any other address listed on Council's website; and
- (b) for the Owner, the address shown on page one of this Agreement or any other address provided by the Owner to Council for any purpose relating to the Subject Land.

Current Email means:

- (a) for Council, feedback@egipps.vic.gov.au, or any other email address listed on Council's website; and
- (b) for the Owner, any email address provided by the Owner to Council for the express purpose of electronic communication regarding this Agreement.

Dwelling has the same meaning as in the Planning Scheme.

Endorsed Plan means the plan endorsed with the stamp of Council from time to time as the plan which forms part of the Planning Permit.

Fence Design Plans means the fence design plans approved by Council from time to time.

Lot means a lot created by the subdivision of the Subject Land whether in accordance with the Planning Permit or otherwise.

Mortgagee means the person registered or entitled from time to time to be registered as mortgagee of the Subject Land.

Offset Maintenance Contribution means the amount agreed between the parties or, failing agreement after reasonable attempts by the parties, an amount determined by Council for the maintenance of the native vegetation offsets provided in the Reserve pursuant to clauses 14 and 41 of the Planning Permit.

Owner means the person registered or entitled from time to time to be registered as proprietor of an estate in fee simple of the Subject Land and includes a mortgagee-in-possession.

Owner's obligations includes the Owner's specific obligations and the Owner's further obligations.

Party or Parties means the Parties to this Agreement but does not include a person who has transferred or otherwise disposed of all of their interests in the Subject Land.

Planning Permit means planning permit no. 299/2011/P, as amended from time to time, issued on 20 March 2013, authorising the subdivision of the Subject Land and removal of vegetation in accordance with the Endorsed Plan.

Planning Scheme means the East Gippsland Planning Scheme and any other planning scheme that applies to the Subject Land.

Proposed Lot means a lot shown on the Endorsed Plan.

Rainwater Tank means the rainwater tank to be installed on a Lot.

Reserve means an area identified on the Endorsed Plan as any of 'Res 1', 'Res 2', 'Res 3', 'Res 4' or 'Public Purposes Reserve' or the like.

AL961631J

Subject Land means the land situated at 140 Nicholson-Sarsfield Road, Nicholson being the land referred to in certificate of title volume 11521 folio 242 and any reference to the Subject Land includes any lot created by the subdivision of the Subject Land or any part of it.

2. Interpretation

In this Agreement unless the context admits otherwise:

- 2.1 the singular includes the plural and vice versa;
- 2.2 a reference to a gender includes all genders;
- 2.3 a reference to a person includes a reference to a firm, corporation or other corporate body and that person's successors in law;
- 2.4 any agreement, representation, warranty or indemnity by 2 or more persons (including where 2 or more persons are included in the same defined term) binds them jointly and severally;
- 2.5 a term used has its ordinary meaning unless that term is defined in this Agreement. If a term is not defined in this Agreement and it is defined in the Act, it has the meaning as defined in the Act;
- 2.6 a reference to an Act, regulation or the Planning Scheme includes any Act, regulation or amendment amending, consolidating or replacing the Act, regulation or Planning Scheme;
- 2.7 the Background forms part of this Agreement;
- 2.8 the Owner's obligations take effect as separate and several covenants which are annexed to and run at law and equity with the Subject Land; and
- 2.9 any reference to a clause, page, condition, attachment or term is a reference to a clause, page, condition, attachment or term of this Agreement.

3. Purposes of Agreement

The Parties acknowledge and agree that the purposes of this Agreement are to:

- 3.1 give effect to the Planning Permit; and
- 3.2 achieve and advance the objectives of planning in Victoria and the objectives of the Planning Scheme in respect of the Subject Land.

4. Reasons for Agreement

The Parties acknowledge and agree that Council has entered into this Agreement for the following reasons:

- 4.1 Council would not have issued the Planning Permit without the condition requiring this Agreement; and
- 4.2 the Owner has elected to enter into this Agreement in order to take the benefit of the Planning Permit.

AL961631J II

17/06/2015 \$121.50 173



5. Agreement required

The Parties agree that this Agreement will continue to be required until the Owner has complied with all of the Owner's obligations.

6. Owner's specific obligations

The Owner covenants and agrees that:

6.1 Rainwater Tanks

in the event that the development of a Lot includes the construction of a Dwelling:

6.1.1 the Owner must, at the Owner's full cost, install and maintain a Rainwater Tank on the Lot with a capacity of at least 10,000 litres to collect rainwater runoff from the roof of the Dwelling on the Lot

6.1.2 the Rainwater Tank must:

- (a) be used as the primary water source for:
 - (i) toilet flushing; and
 - (ii) laundry services; and
- (b) contain an external tap for garden irrigation purposes.

6.2 Fences

where a boundary fence on the Subject Land abuts a Reserve, the Owner must:

- 6.2.1 submit Fence Design Plans showing fences to a maximum height of 1.5 metres to Council for its written approval prior to construction of the fence;
- 6.2.2 construct the boundary fence in accordance with the approved Fence Design Plans;
- 6.2.3 thereafter maintain the boundary fence to ensure the fence remains of a similar height and style to the other boundary fences on the Subject Land abutting a Reserve; and
- 6.2.4 not construct or allow to be constructed, any gate in the boundary fence other than a pedestrian gate not exceeding 1.0 metre in width.

6.3 Access

the Owner must not create, or cause or permit the creation of, vehicle access to or from Proposed Lots 1, 2, 3, 8, 49 or 53 inclusive from the Nicholson-Sarsfield Road.

6.4 Maintenance contribution for offsets

the Owner must pay the Offset Maintenance Contribution to Council upon the vesting of the Reserve in Council.

AL961631J

**6.5 Building envelopes**

the Owner must not build, construct or erect or cause or permit to be built, constructed or erected any Building outside a Building and Waste Disposal Envelope.

6.6 Waste disposal envelopes

unless with Council's prior written consent, the Owner must not dispose of, or cause or permit the disposal of, effluent on the Subject Land other than within a Building and Waste Disposal Envelope.

6.7 Septic tanks

the Owner must ensure that any septic tank system on the Subject Land includes:

- 6.7.1 secondary treatment of wastewater; and
- 6.7.2 disposal of treated wastewater by subsurface irrigation.

7. Owner's further obligations**7.1 Notice and registration**

The Owner must bring this Agreement to the attention of all prospective occupiers, purchasers, lessees, licensees, mortgagees, chargees, transferees and assigns.

7.2 Further actions

The Owner:

- 7.2.1 must do all things necessary to give effect to this Agreement;
- 7.2.2 consents to Council applying to the Registrar of Titles to record this Agreement on the certificate of title of the Subject Land in accordance with s 181 of the Act; and
- 7.2.3 agree to do all things necessary to enable Council to do so, including:
 - (a) sign any further agreement, acknowledgment or document; and
 - (b) obtain all necessary consents to enable the recording to be made.

7.3 Council's costs to be paid

The Owner must pay to Council within 14 days after a written request for payment, Council's costs and expenses (including legal expenses) relating to this Agreement, including:

- 7.3.1 preparing, drafting, finalising, signing, recording and enforcing this Agreement;
- 7.3.2 preparing, drafting, finalising and recording any amendment to this Agreement;
- 7.3.3 determining whether any of the Owner's obligations have been undertaken to Council's satisfaction; and
- 7.3.4 preparing, drafting, finalising and recording any document to give effect to the ending of this Agreement.

AL961631J**7.4 Time for determining satisfaction**

If Council makes a request for payment of any costs or expenses under clause 7.3.3, the Parties agree that Council will not decide whether the Owner's obligation has been undertaken to Council's satisfaction, or whether to grant the consent sought, until payment has been made to Council in accordance with the request.

7.5 Interest for overdue money

7.5.1 The Owner must pay to Council interest in accordance with s 227A of the *Local Government Act 1989* on any amount due under this Agreement that is not paid by the due date.

7.5.2 If interest is owing, Council will apply any payment made to interest and any balance of the payment to the principal amount.

7.6 Notification of compliance with Owner's obligations

The Owner must notify Council of its compliance with all of the Owner's obligations.

8. Agreement under s 173 of the Act

Without limiting or restricting the respective powers to enter into this Agreement, and insofar as it can be so treated, this Agreement is made as a deed in accordance with s 173 of the Act.

9. Owner's warranties

The Owner warrants that apart from the Owner and any other person who has consented in writing to this Agreement, no other person has any interest, either legal or equitable, in the Subject Land which may be affected by this Agreement.

10. Successors in title

Until such time as a memorandum of this Agreement is recorded on the certificate of title of the Subject Land, the Owner must require successors in title to:

- 10.1 give effect to this Agreement; and
- 10.2 enter into a deed agreeing to be bound by the terms of this Agreement.

11. General matters**11.1 Notices**

A notice or other communication required or permitted to be served by a Party on another Party must be in writing and may be served:

- 11.1.1 personally on the other Party;
- 11.1.2 by leaving it at the other Party's Current Address;

AL961631J

11.1.3 by posting it by prepaid post addressed to the other Party at the other Party's Current Address; or

11.1.4 by email to the other Party's Current Email.

11.2 No waiver

Any time or other indulgence granted by Council to the Owner or any variation of this Agreement or any judgment or order obtained by Council against the Owner does not amount to a waiver of any of Council's rights or remedies under this Agreement.

11.3 Severability

If a court, arbitrator, tribunal or other competent authority determines that any part of this Agreement is unenforceable, illegal or void then that part is severed with the other provisions of this Agreement remaining operative.

11.4 No fettering of Council's powers

This Agreement does not fetter or restrict Council's power or discretion to make decisions or impose requirements or conditions in connection with the grant of planning approvals or certification of plans subdividing the Subject Land or relating to use or development of the Subject Land.

11.5 Inspection of documents

A copy of any planning permit, document or plan referred to in this Agreement is available for inspection at Council offices during normal business hours upon giving the Council reasonable notice.

11.6 Governing law

This Agreement is governed by and is to be construed in accordance with the laws of Victoria.

12. Commencement of Agreement

This Agreement commences on the date specified on page one or if no date is specified on page one, the date Council executes this Agreement.

AL961631J

17/06/2015 \$121.50 173



Signing Page

Signed, sealed and delivered as a deed by the Parties.

Signed sealed and delivered by the Chief Executive Officer on behalf of the East Gippsland Shire Council pursuant to the power delegated to that person by an Instrument of Delegation in the presence of:

Witness

Colleen Smith

Colleen Smith

Print name

15-06-15

Executed by Nicholson River Pty Ltd ACN 140 839 710 in accordance with s 127(1) of the Corporations Act 2001:

Simon James Anderson

Signature of Director

Simon James Anderson

Print full name

)
)
)
)

Ross Charles Hertz

Signature of Director (or Company Secretary)

Ross Charles Hertz

Print full name



Mortgagee's Consent

National Australia Bank Ltd as Mortgagee under instrument of mortgage no. AL493274P consents to the Owner entering into this Agreement and in the event that the Mortgagee becomes mortgagee-in-possession, agrees to be bound by the covenants and conditions of this Agreement.

.....

AL961631J



Registrar of Titles
Land Titles Office
Marland House
570 Bourke Street
MELBOURNE

**APPLICATION TO REGISTER AN AGREEMENT UNDER SECTION 173 OF THE
PLANNING AND ENVIRONMENT ACT 1987**

Certificate of Title Volume 11521 Folio 242

Registered Proprietor: Nicholson River Pty Ltd ACN 140 839 710

National Australia Bank Limited A.B.N. 12 004 044 937 as Mortgagee pursuant to Registered Mortgage number AL493274P hereby consents to the within Agreement.

Dated this 27th day of May 2015

EXECUTED by **NATIONAL AUSTRALIA BANK LIMITED** by being signed sealed and delivered in Victoria by its Attorney

MICHAEL JAMES COOK
who holds the position of Level 3 Attorney under
Power of Attorney dated 1/3/2007 (a certified
copy of which is filed in Permanent Order Book
No 277 Page No 025 Item 35) in the presence of:

) Attorney

Signature of Witness

Delivered by LANDATA®, timestamp 06/10/2021 15:01 Page 1 of 9

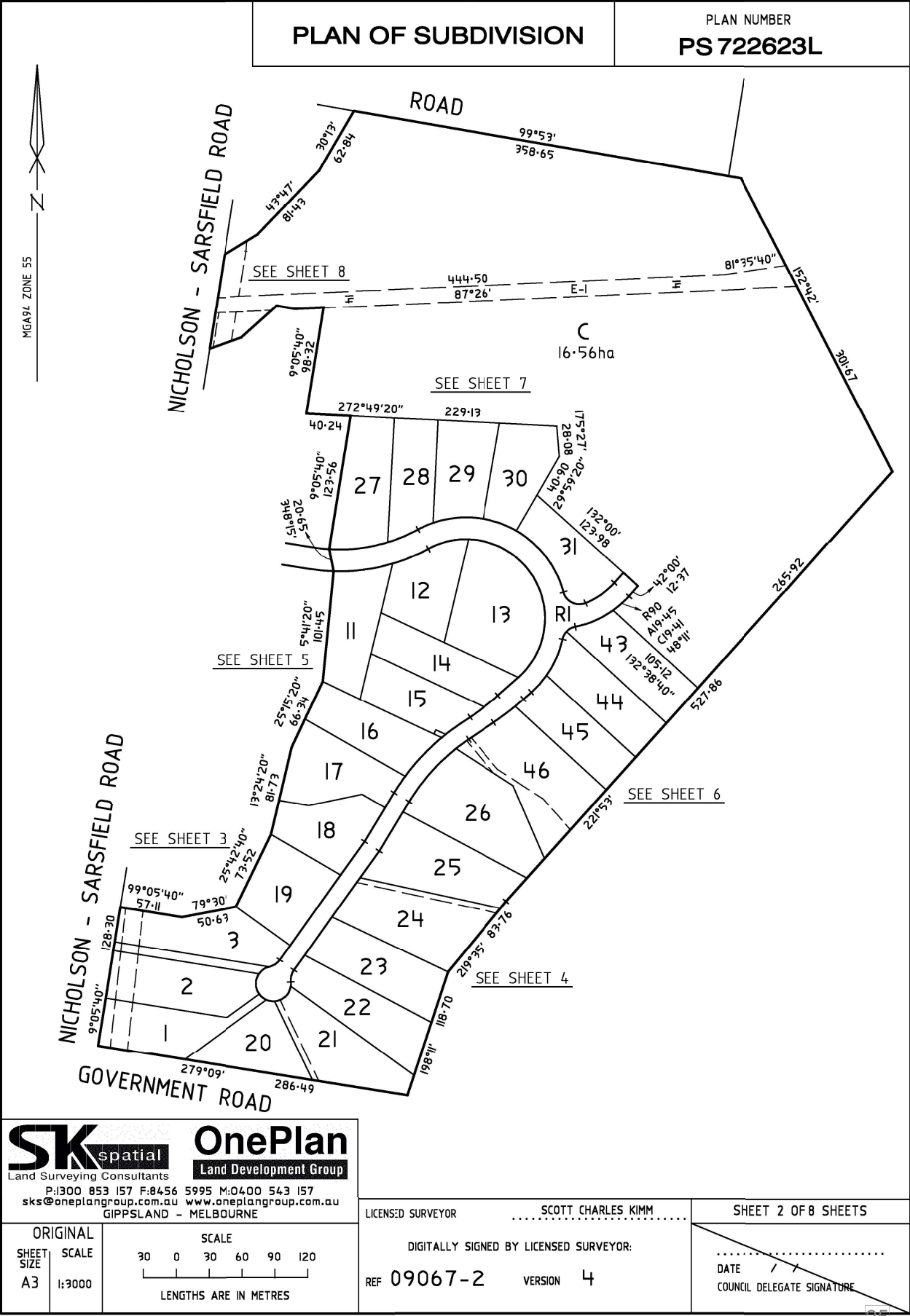
© State of Victoria. This publication is copyright. No part may be reproduced by any process except in accordance with the provisions of the Copyright Act 1968 (Cth) and for the purposes of Section 32 of the Sale of Land Act 1962 or pursuant to a written agreement. The information is only valid at the time and in the form obtained from the LANDATA® System. None of the State of Victoria, LANDATA®, Victorian Land Registry Services Pty. Ltd. ABN 86 627 986 396 as trustee for the Victorian Land Registry Services Trust ABN 83 206 746 897 accept responsibility for any subsequent release, publication or reproduction of the information.

Signed by Council: East Gippsland Shire Council, PP Ref: 299/2011/P, Cert Ref: PS722623L, Original Certification: 18/06/2015, S.O.C.: 18/06/2015

PLAN OF SUBDIVISION				LV USE ONLY EDITION 1	PLAN NUMBER PS 722623L
Location of Land Parish: Sarsfield Township: - Section: 2 Crown Allotment: 4A1 (part) Crown Portion: - Title References: V. 11582 F. 828 Last Plan Reference: Lot B on PS722606L Postal Address: Nicholson - Sarsfield Road, <small>(at time of subdivision)</small> Nicholson 3882 MGA 94 Co-ordinates: E 565 900 <small>(of approx. centre of plan)</small> N 5815 700 Zone: 55				Council Certification and Endorsement Council Name: East Gippsland Shire Council Ref: 1. This plan is certified under Section 6 of the Subdivision Act 1988. 2. This plan is certified under Section 11(7) of the Subdivision Act 1988. Date of original certification under Section 6 / / 3. This is a statement of compliance issued under Section 21 of the Subdivision Act 1988. Open Space (i) A requirement for public open space under Section 18 Subdivision Act 1988 has / has not been made. (ii) The requirement has been satisfied. (iii) The requirement is to be satisfied in stage Council Delegate Council seal Date / / Re-certified under Section 11(7) of the Subdivision Act 1988 Council Delegate Council seal Date / /	
Vesting of Roads or Reserves				Notations	
Identifier Road - R1 Reserve No.1 Reserve No.2		Council/Body/Person East Gippsland Shire Council East Gippsland Shire Council AusNet Electricity Services Pty Ltd		Staging This is / is not a staged subdivision Planning Permit No 299/2011/P	
Depth Limitation Does not apply Lots A, B, 4-10 and 32-42 have been omitted from this plan. WATERWAY NOTATION: LOTS 21, 22, 23, 26, 43, 44, 45, 46 AND LOT C IN THIS PLAN MAY ABUT CROWN LAND THAT MAY BE SUBJECT TO A CROWN LICENCE TO USE Survey: This plan is / is not based on survey This plan has been connected to permanent mark no(s). PM32, PM37, PM38 This is a SPEAR plan				RECEIVED <input checked="" type="checkbox"/> DATE 22/6/2015	
Easement Information				LRS USE ONLY STATEMENT OF COMPLIANCE / EXEMPTION STATEMENT	
Legend A - Appurtenant Easement E - Encumbering Easement R - Encumbering Easement (Road)				PLAN REGISTERED TIME: 12:20 PM DATE: 9/7/2015 BILL SKALITSIS Assistant Registrar of Titles	
Easement Reference	Purpose	Width (Metres)	Origin	Land Benefited/In Favour Of	SHEET 1 OF 8 SHEETS
E-1	Transmission of Electricity	See diag.	C/E M880918M	S.E.C of Victoria	ORIGINAL SHEET SIZE A3
E-2	Drainage	See diag.	This Plan	East Gippsland Shire Council & Land in this Plan	
E-4	Powerline	See diag.	PS715883X - Section 88 Electricity Industry Act 2000	SPI Electricity Pty Ltd	
SK spatial Land Surveying Consultants P:1300 853 157 F:8456 5995 M:0400 543 157 sks@oneplangroup.com.au www.oneplangroup.com.au GIPPSLAND - MELBOURNE				OnePlan Land Development Group LICENSED SURVEYOR SCOTT CHARLES KIMM DIGITALLY SIGNED BY LICENSED SURVEYOR: REF 09067-2 VERSION 4	

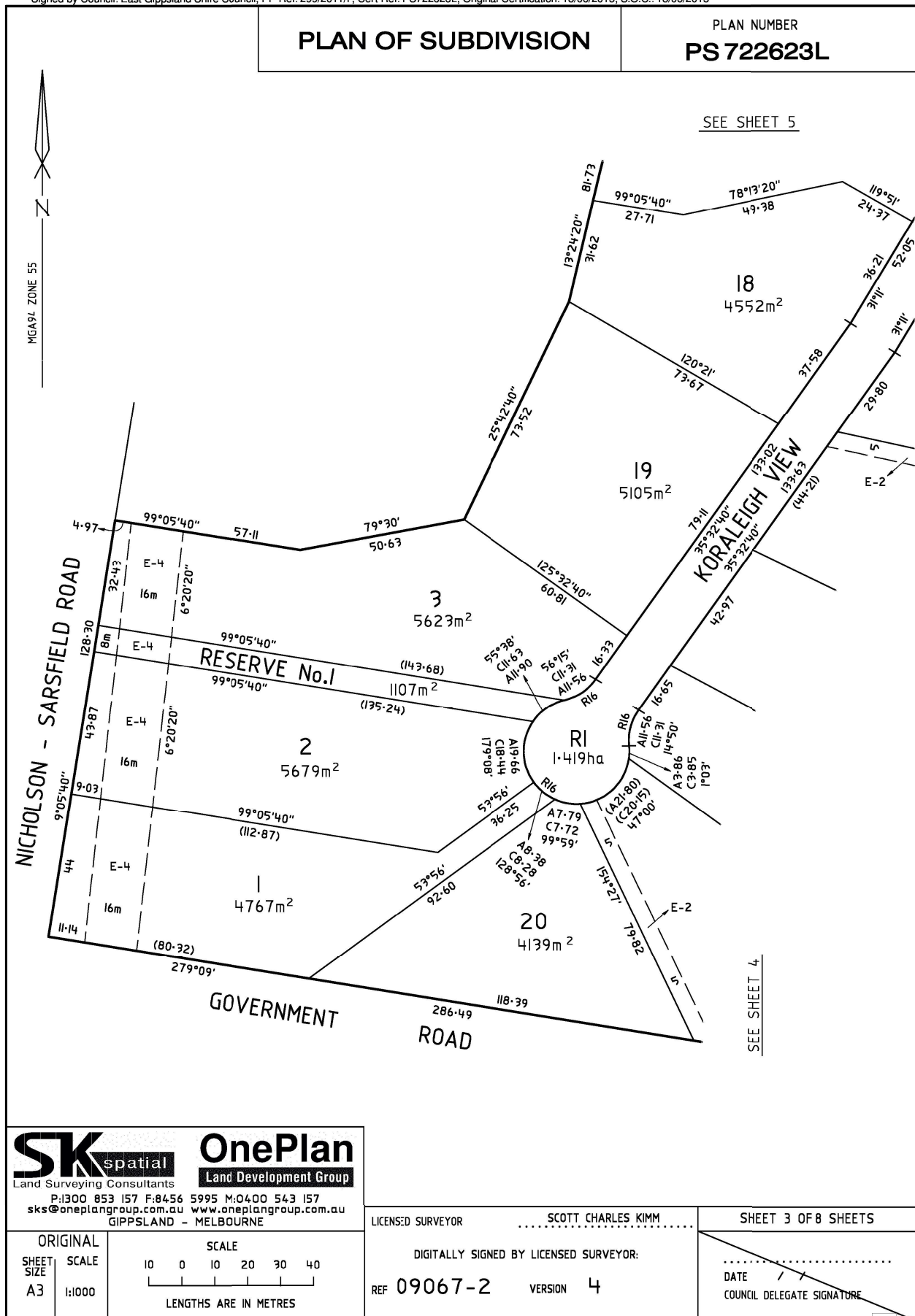
Signed by: Scott Charles Kimm (SK Spatial) Surveyor's Plan Version (4) SPEAR Ref: S058861V 08/05/2015

Signed by Council: East Gippsland Shire Council, PP Ref: 299/2011/P, Cert Ref: PS722623L, Original Certification: 18/06/2015, S.O.C.: 18/06/2015

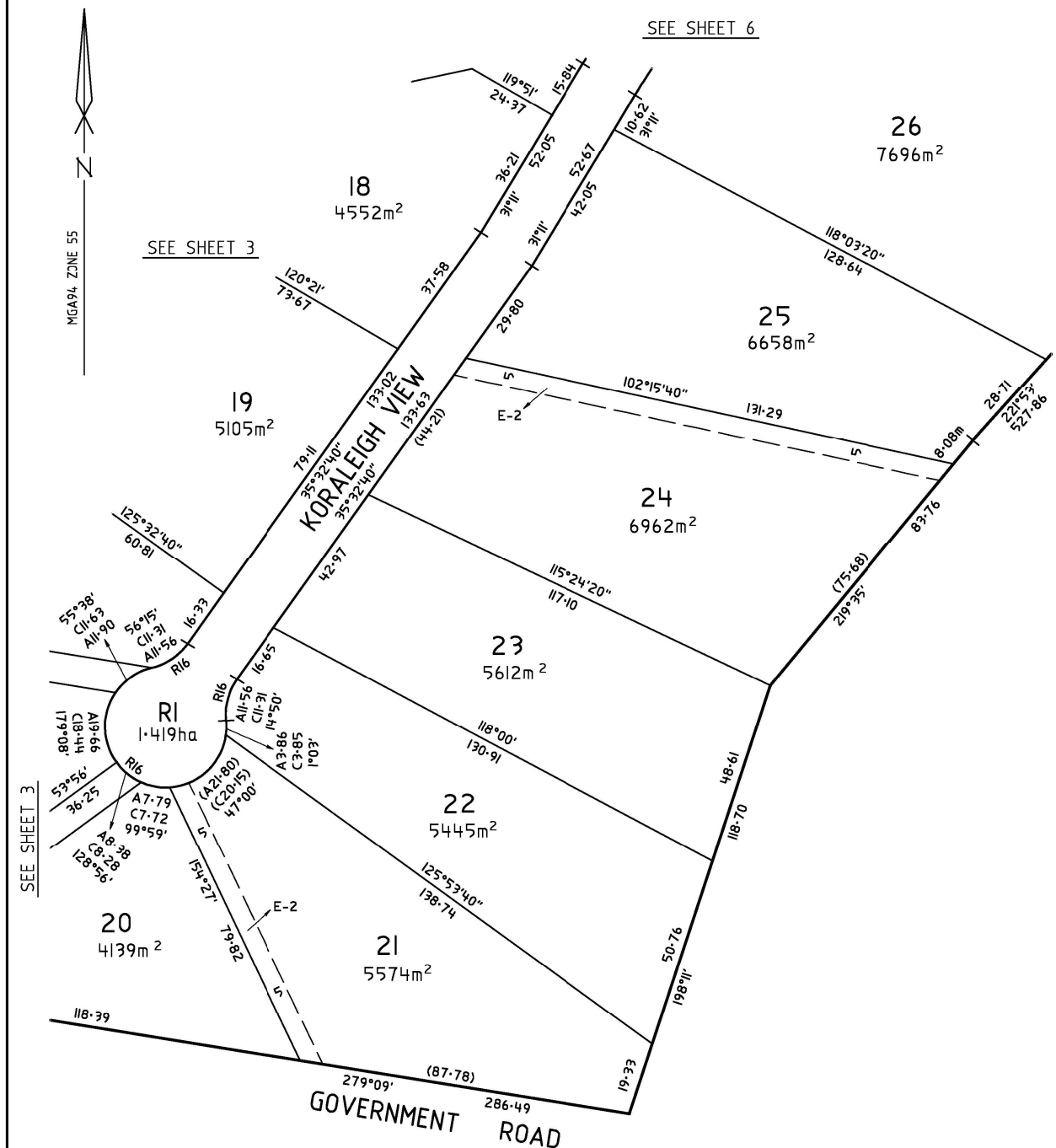


Signed by: Scott Charles Kimm (SK Spatial) Surveyor's Plan Version (4) SPEAR Ref: S058861V 08/05/2015

Signed by Council: East Gippsland Shire Council, PP Ref: 299/2011/P, Cert Ref: PS722623L, Original Certification: 18/06/2015, S.O.C.: 18/06/2015



PLAN NUMBER
PS 722623L



SK spatial
Land Surveying Consultants

OnePlan
Land Development Group

P:1300 853 157 F:8456 5995 M:0400 543 157
sks@oneplangroup.com.au www.oneplangroup.com.au
GIPPSLAND - MELBOURNE

LICENSED SURVEYOR SCOTT CHARLES KIMM

SHEET 4 OF 8 SHEETS

ORIGINAL	
SHEET SIZE	SCALE
A3	1:1000

ORIGINAL
SCALE
1:1000

SCALE

10 0 10 20 30 40

LENGTHS ARE IN METRES

DIGITALLY SIGNED BY LICENSED SURVEYOR:

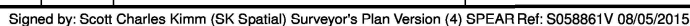
REF 09067-2

VERSION 4

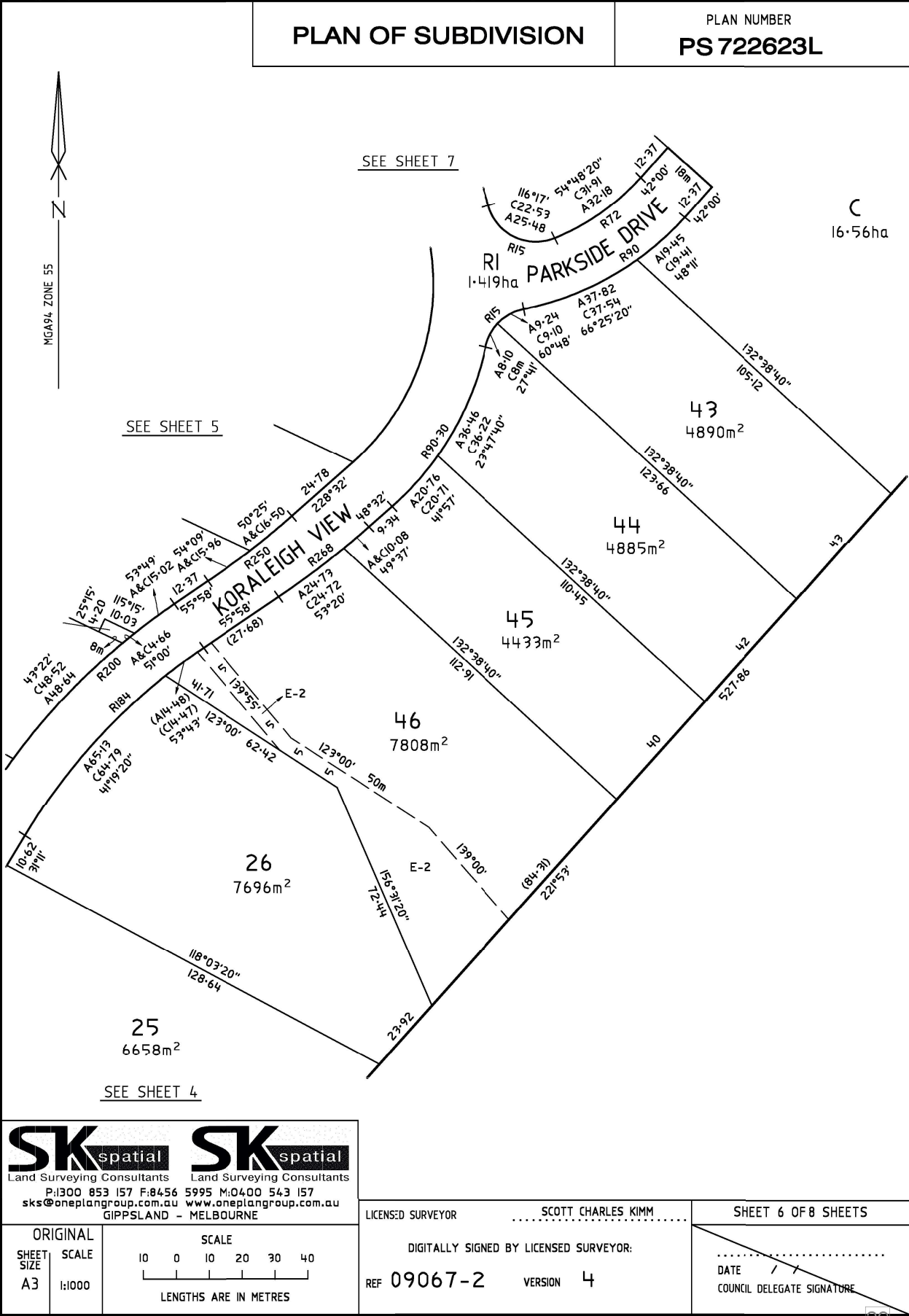
DATE / /
COUNCIL DELEGATE SIGNATURE

Signed by: Scott Charles Kimm (SK Spatial) Surveyor's Plan Version (4) SPEAR Ref: S058861V 08/05/2015

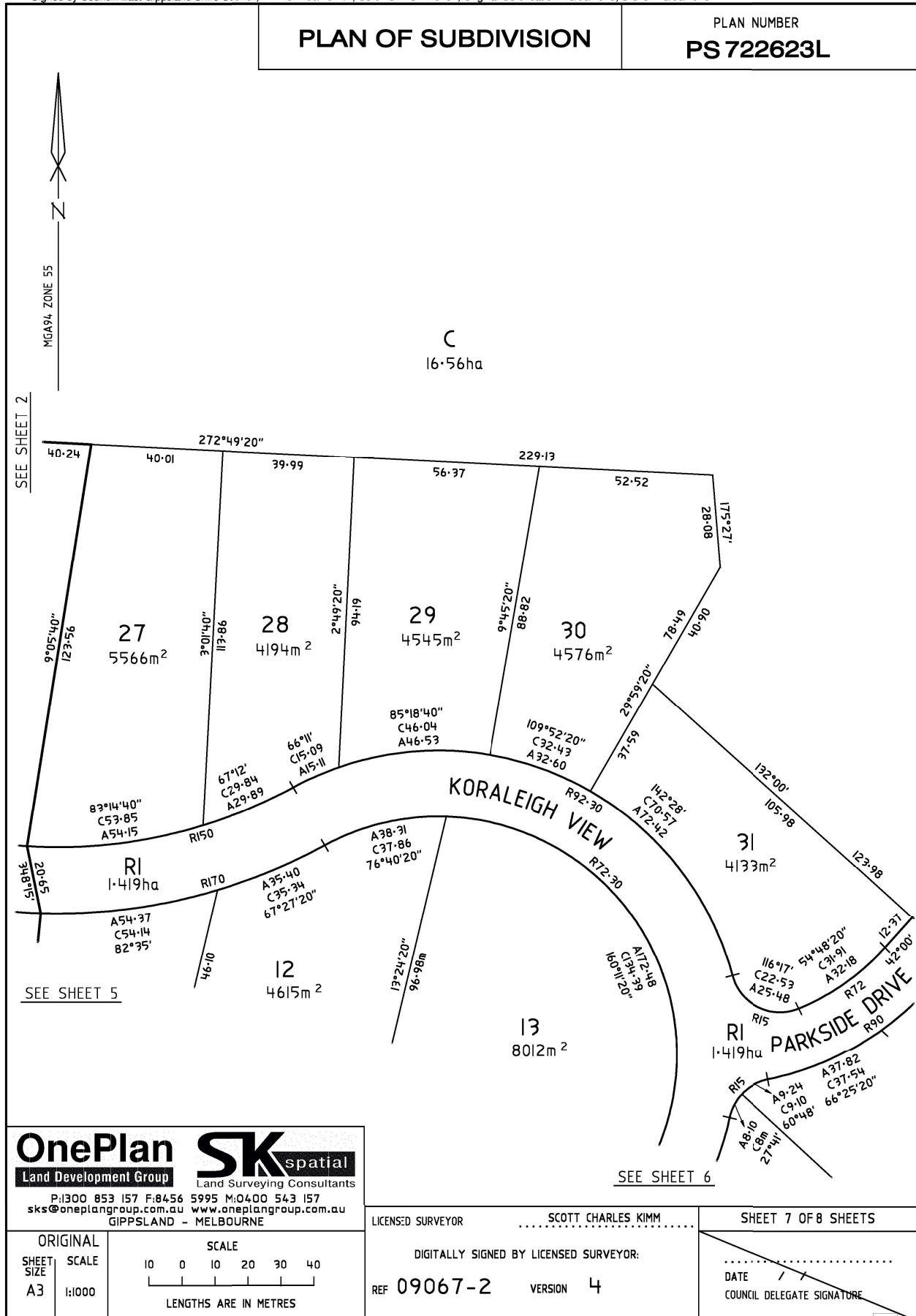
Signed by Council: East Gippsland Shire Council, PP Ref: 299/2011/P, Cert Ref: PS722623L, Original Certification: 18/06/2015, S.O.C.: 18/06/2015



Signed by Council: East Gippsland Shire Council, PP Ref: 299/2011/P, Cert Ref: PS722623L, Original Certification: 18/06/2015, S.O.C.: 18/06/2015



Signed by Council: East Gippsland Shire Council, PP Ref: 299/2011/P, Cert Ref: PS722623L, Original Certification: 18/06/2015, S.O.C.: 18/06/2015



Signed by: Scott Charles Kimm (SK Spatial) Surveyor's Plan Version (4) SPEAR Ref: S058861V 08/05/2015

Signed by Council: East Gippsland Shire Council, PP Ref: 299/2011/P, Cert Ref: PS722623L, Original Certification: 18/06/2015, S.O.C.: 18/06/2015



Plan of Subdivision PS722623L
Concurrent Certification and Statement of Compliance
(Form 3)

SUBDIVISION (PROCEDURES) REGULATIONS 2011

SPEAR Reference Number: S058861V
Plan Number: PS722623L
Responsible Authority Name: East Gippsland Shire Council
Responsible Authority Permit Ref. No.: 299/2011/P
Responsible Authority Certification Ref. No.: PS722623L
Surveyor's Plan Version: 4

Certification

☒ This plan is certified under section 6 of the Subdivision Act 1988

Statement of Compliance

☒ This is a statement of compliance issued under section 21 of the Subdivision Act 1988

Public Open Space

A requirement for public open space under section 18 of the Subdivision Act 1988

☐ Has not been made at Certification

Digitally signed by Council Delegate: Sarah McLaughlin
Organisation: East Gippsland Shire Council
Date: 18/06/2015

Signed by: Sarah Marie McLaughlin (East Gippsland Shire Council) 18/06/2015

32



Unearthed Heritage Australia Pty Ltd
Address: PO Box 446 Castlemaine, Vic, 3450
0427 757 300 | david@unearthedheritage.com.au

John Holzer
c/o
Richard Hoxley
Senior Planner
Crowther & Sadler Pty Ltd

18 October 2021

Re: Aboriginal Cultural Heritage Requirements for the construction of a shed at 40 (Lot 15) Koraleigh View, Nicholson

The following letter was prepared by Unearthed Heritage Australia Pty Ltd to outline the requirements regarding the *Aboriginal Heritage Act 2006* (Vic) / *Aboriginal Heritage Regulations 2018* regarding the construction of a proposed shed at 40 (Lot 15) Koraleigh View. This letter addresses matters relating to the *Aboriginal Heritage Act 2006* and the *Aboriginal Heritage Regulations 2018*. In particular, whether proposed construction of the shed is a captured activity under a previously approved Cultural Heritage Management Plan (CHMP) that applies to the property (and broader subdivision).

1. The Study Area

The study area comprises the property at 40 (Lot 15) Koraleigh View, Nicholson. The study area is located within the East Gippsland Shire, and therefore subject to the East Gippsland Planning Scheme. We understand that the proposed development is the construction of a shed at the rear of the property.

2. Legislative Context

In Victoria, the *Aboriginal Heritage Act 2006* (the Act) is the main piece of legislation regarding the protection and management of Aboriginal cultural heritage. Section 47 of the Act states:

Section 47 - Regulations may require plan

The regulations may specify the circumstance in which a cultural heritage management plan is required for an activity or class of activity.

Under the *Aboriginal Heritage Regulations 2018* (the Regulations), Regulation 7 states:

Regulation 7 - When a cultural heritage management plan is required

A cultural heritage management plan is required for an activity if—

- (a) all or part of the activity area for the activity is an area of cultural heritage sensitivity; and
- (b) all or part of the activity is a high impact activity.



Unearthed Heritage Australia Pty Ltd
 Address: PO Box 446 Castlemaine, Vic, 3450
 0427 757 300 | david@unearthedheritage.com.au

It is important to note that the Act includes other instances where a mandatory CHMP is required (for example if the Minister directs the preparation of a CHMP or if an Environmental Effects Statement (EES), must be prepared).

Previously, a mandatory CHMP (CHMP 11323, Mathews and Whincop 2011) was prepared for the broader subdivision and was approved by Gunaikurnai Land and Waters Aboriginal Corporation (GLaWAC), the Registered Aboriginal Party (RAP) for the area.

3. The Proposed Activity

The proposed activity currently under consideration is understood to be the construction of a shed at the rear of 40 (Lot 15) Koraleigh View, Nicholson. The construction of a shed is not a listed high impact activity in the *Aboriginal Heritage Regulations 2018*, so the proposed activity does not trigger the need for a CHMP in isolation.

3. Does the study area occur in an area of cultural heritage sensitivity?

Division 3 of the Regulations defines areas of cultural heritage sensitivity for the purpose of establishing whether a CHMP is required.

The study area includes areas of cultural heritage sensitivity, as defined in the *Aboriginal Heritage Regulations 2018* (Regulation 25), being land within 50 of a registered Aboriginal place (Nicholson-Sarsfield Road 7 - 8422-0602).

4. Is a new mandatory CHMP required?

The proposed activity includes an area of cultural heritage sensitivity as defined in the Regulations but does not meet the threshold of a high impact activity, so thus does not trigger the mandatory requirement of a CHMP.

5. Previously approved CHMP

The previously approved CHMP (11323) covered the broader subdivision (at the time called 130 Nicholson-Sarsfield Road, Nicholson) and includes the current study area, 40 (Lot 15) Koraleigh View, Nicholson within its mapped activity area. The activity description of CHMP 11323 broadly included construction activities relating to the proposed low density residential subdivision and related infrastructure, amenities, and services. This included, development of residential blocks, topsoil stripping, road construction and ancillary works. The activity description of CHMP 11323 captures the currently proposed activity (construction of a shed).

Aboriginal cultural heritage (in the form of stone artefact scatters) was identified as part of the CHMP 11323 assessment and a total of 16 Aboriginal places were registered. All of these places were stone artefact scatters (noting many are lower density and would now be registered as low density artefact distributions).

One Aboriginal place (Nicholson-Sarsfield Road 7 - 8422-0602) partially overlaps with 40 Koraleigh View, Nicholson.



Unearthed Heritage Australia Pty Ltd
Address: PO Box 446 Castlemaine, Vic, 3450
0427 757 300 | david@unearthedheritage.com.au

As a management condition of the CHMP (then referred to as recommendation) three management zones were established with respect to registered Aboriginal cultural heritage and the land within the CHMP 11323 activity area more broadly, with these zones establishing the permissible types of activities that could occur within each zone. The management zones are presented below in Table 1 (see CHMP 11323, 123-128):

Table 1: Permissible ground disturbing activities within each zone. (From CHMP 11323, 126)

Zone	Description	Description of permissible ground disturbing activities within zone
1	Building envelope / road envelope	Permissible activities consist of all activities permissible under the relevant planning scheme (i.e. house construction, garage construction, landscaping, road & drainage construction, services reticulation etc. are all permissible)
2	Services envelope	Permissible activities consist of all activities permissible under the relevant planning scheme with the exception of the construction of any residential buildings (i.e. a driveway, services trenches, landscaping etc. are all permissible, while the construction of a house is not).
3	Increased harm minimisation envelope	Permissible activities consist of mechanical excavation only for the construction of residential storm water drains (if required). Landscaping and other ground disturbing impacts of a non-mechanical nature are permissible. There is to be no construction of buildings, structures, or ground disturbing works for the purposes of services.

The land where the shed is proposed is within 'Zone 2' (See Figures 1 and 2). Consistent with the wording in CHMP 11323, if the relevant planning scheme allows for the construction of a shed, then it is permitted under the zone 2 description and can occur under the CHMP.

The CHMP does define a 'Zone 3 – increased harm minimisation envelope' just south of the proposed shed and construction activities relating to the shed (including ground preparation) are not permitted under CHMP 11323 within this Zone 3 area.

6. Recommendations

1. If the construction of a shed is permissible under the relevant planning scheme, then the CHMP allow these works to occur as part of the 'Zone 2' description presented in Section 9.3, CHMP 11323, 126).
2. Under CHMP 11323, impacts from the shed construction are not permitted to the area marked 'Zone 3' on Figure 1 as this is an area where Aboriginal cultural heritage was identified and which is subject to a management condition of harm minimisation.
3. During construction works relating to the shed, temporary above ground fencing (e.g. cyclone mesh and above ground concrete footings and signage stating 'no ground disturbance from construction is permitted' (or similar) should be placed to demarcate the northern boundary of the 'Zone 3' harm minimisation envelope to ensure that ground disturbance does not occur to 'Zone 3' from the construction.
4. Despite this, a voluntary Cultural Heritage Permit (CMP) may be prepared with GLaWAC as risk minimisation should the client choose.



Uearthed Heritage Australia Pty Ltd
Address: PO Box 446 Castlemaine, Vic, 3450
0427 757 300 | david@uneearthedheritage.com.au

I would be more than happy to discuss any of this advice, so please feel free to contact me.

David Mathews

Director/Principal Heritage Advisor
Uearthed Heritage Australia
0427 757 300 | david@uneearthedheritage.com.au



Unearthed Heritage Australia Pty Ltd
Address: PO Box 446 Castlemaine, Vic, 3450
0427 757 300 | david@unearthedheritage.com.au

References

Mathews, David and Matthew Whincop. 2011. 130 Nicholson-Sarsfield Road, Nicholson:
Cultural Heritage Management Plan (11323). Unpublished Report prepared for Nicholson
River Pty Ltd



Unearthed Heritage Australia Pty Ltd
Address: PO Box 446 Castlemaine, Vic, 3450
0427 757 300 | david@unearthedheritage.com.au

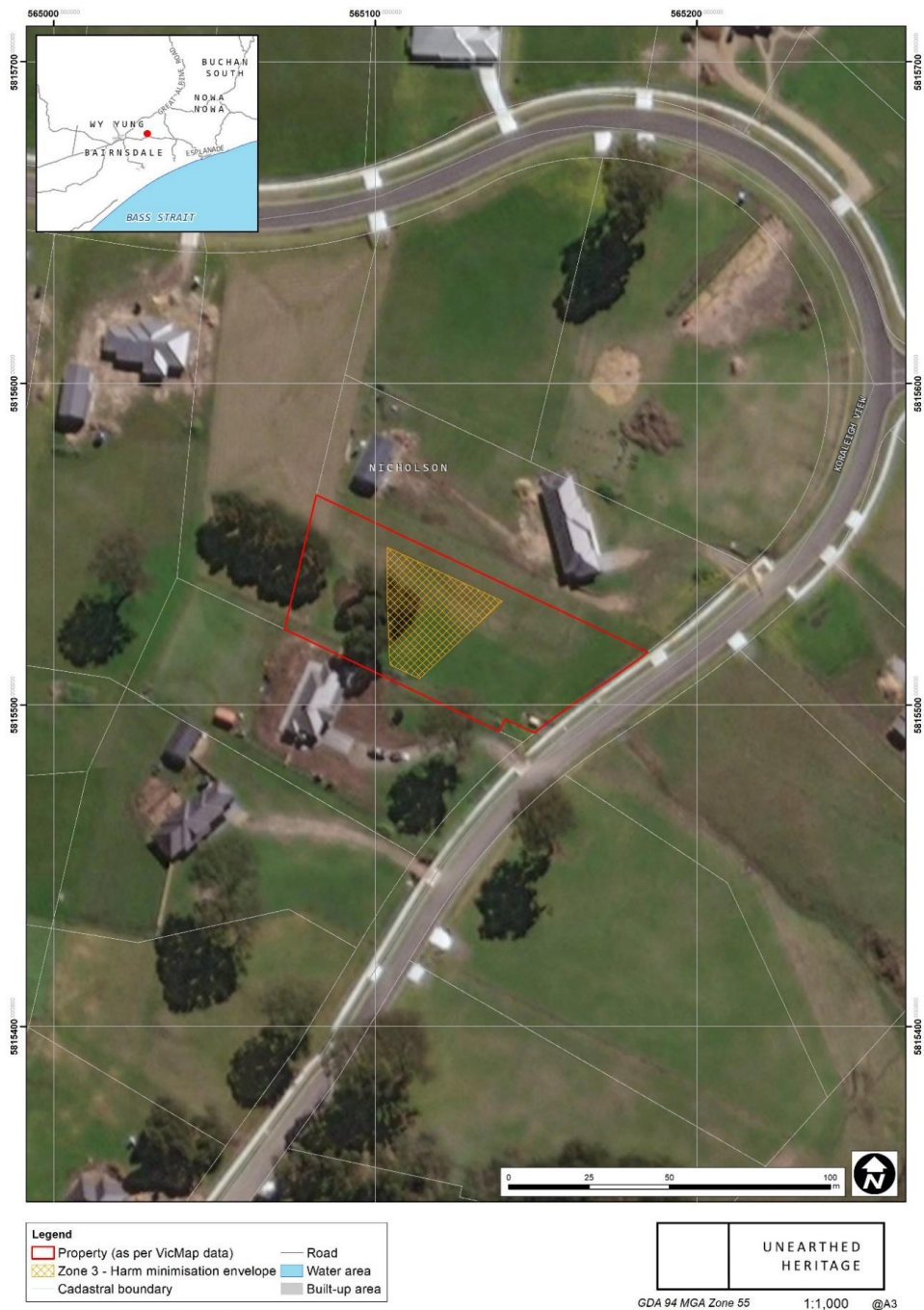


Figure 1: Location of Zone 3 (harm minimisation envelope) with the study area



Unearthed Heritage Australia Pty Ltd
 Address: PO Box 446 Castlemaine, Vic, 3450
 0427 757 300 | david@unearthedheritage.com.au

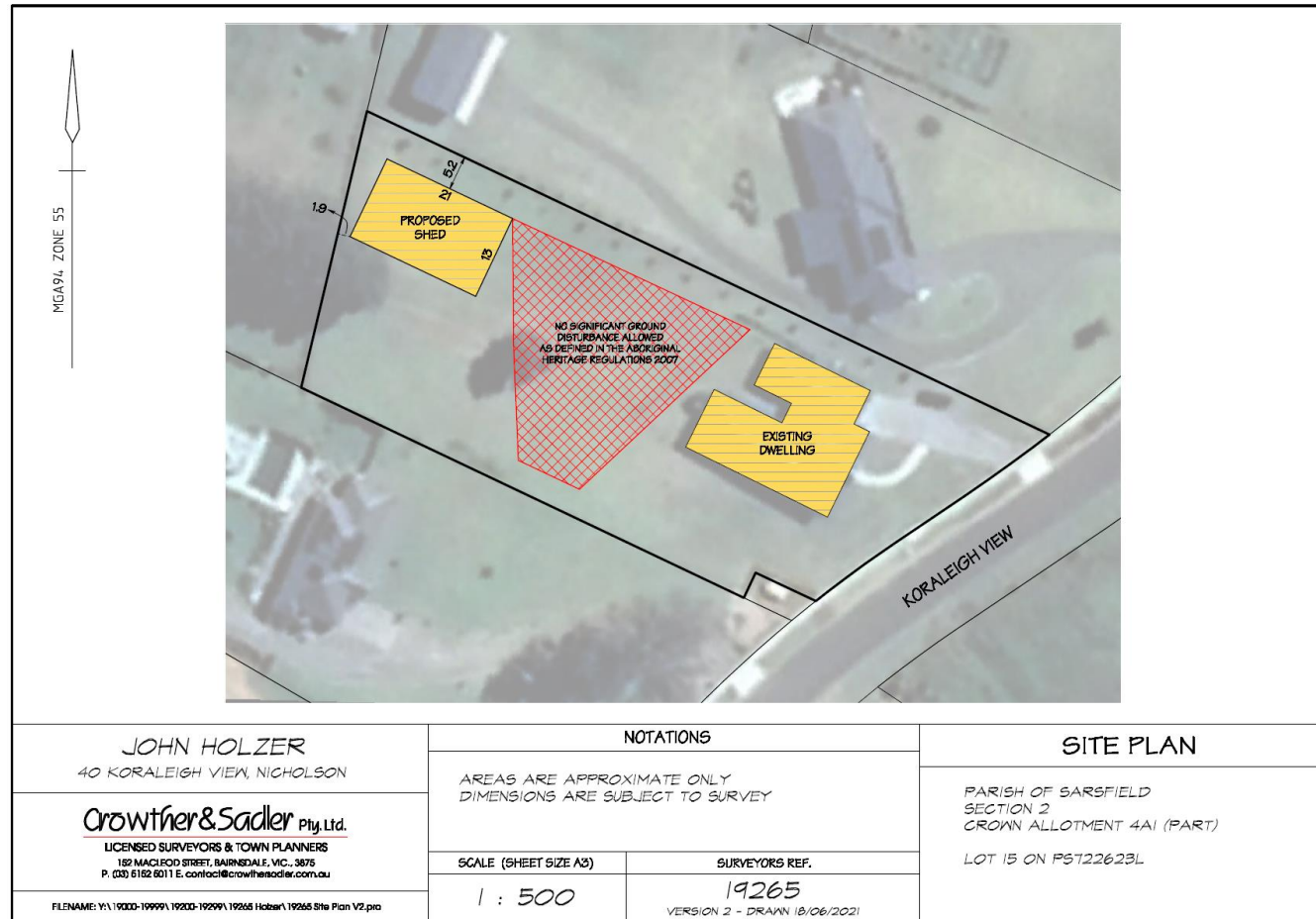


Figure 1: Location of proposed shed Location of Zone 3 (harm minimisation envelope) with the study area

Date / /

**Agreement under section 173
of the Planning and Environment Act 1987**
Subject Land: 40 Koraleigh View, Nicholson

East Gippsland Shire Council
and

John Andrew Holzer

DRAFT

Contents

1.	Definitions	1
2.	Interpretation	3
3.	Purposes of Agreement.....	3
4.	Reasons for Agreement.....	3
5.	Agreement required	4
6.	Owner's specific obligations	4
6.1	Rainwater Tanks	4
6.2	Fences	4
6.3	Access	4
6.4	Maintenance contribution for offsets.....	4
6.5	Building envelopes.....	5
6.6	Waste disposal envelope.....	5
6.7	Septic Tanks	5
7.	Owner's further obligations	5
7.1	Notice and registration	5
7.2	Further actions	5
7.3	Council's costs to be paid	5
7.4	Time for determining satisfaction	6
7.5	Interest for overdue money	6
7.6	Notification of compliance with Owner's obligations	6
8.	Agreement under section 173 of the Act	6
9.	Owner's warranties	6
10.	Successors in title	6
11.	General matters	6
11.1	Notices	6
11.2	No waiver	7
11.3	Severability	7
11.4	No fettering of Council's powers	7
11.5	Inspection of documents	7
11.6	Governing law	7
12.	Commencement of Agreement.....	7

Agreement under section 173 of the Planning and Environment Act 1987

Dated / /

Parties

Name	East Gippsland Shire Council
Address	273 Main Street, Bairnsdale, Victoria
Short name	Council
Name	John Andrew Holzer
Address	40 Koraleigh View, Nicholson, Victoria
Short name	Owner

Background

- A. Council is the responsible authority for the Planning Scheme.
- B. The Owner is or is entitled to be the registered proprietor of the Subject Land.
- C. Council issued the Planning Permit requiring the Owner to enter into this Agreement providing for the matters set out in conditions 5 and 38 of the Planning Permit.
- D. As at the date of this Agreement, the Subject Land is encumbered by a mortgage in favour of the Mortgagee. The Mortgagee consents to the Owner entering into this Agreement.

The Parties agree

1. Definitions

In this Agreement unless the context admits otherwise:

Act means the *Planning and Environment Act 1987*.

Agreement means this Agreement and includes this Agreement as amended from time to time.

Building and Waste Disposal Envelope means the area which is identified on the Endorsed Plan as a 'Building Envelope' or the like.

Current Address means:

- (a) for Council, the address shown on page one of this Agreement, or any other address listed on Council's website; and
- (b) for the Owner, the address shown on page one of this Agreement or any other address provided by the Owner to Council for any purpose relating to the Subject Land.

Current Email means:

- (a) for Council, feedback@egipps.vic.gov.au, or any other email address listed on Council's website; and
- (b) for the Owner, any email address provided by the Owner to Council for the express purpose of electronic communication regarding this Agreement.

Dwelling has the same meaning as in the Planning Scheme.

Endorsed Plan means the plan endorsed with the stamp of Council from time to time as the plan which forms part of the Planning Permit.

Fence Design Plans means the fence design plans approved by Council from time to time.

Lot means a lot created by the subdivision of the Subject Land whether in accordance with the Planning Permit or otherwise.

Mortgagee means the person registered or entitled from time to time to be registered as mortgagee of the Subject Land or any part of it.

Offset Maintenance Contribution means the amount agreed between the parties or, failing agreement after reasonable attempts by the parties, an amount determined by Council for the maintenance of the native vegetation offsets provided in the Reserve pursuant to clauses 14 and 41 of the Planning Permit.

Owner means the person registered or entitled from time to time to be registered as proprietor of an estate in fee simple of the Subject Land and includes a mortgagee-in-possession.

Owner's obligations includes the Owner's specific obligations and the Owner's further obligations.

Party or Parties means the Parties to this Agreement but does not include a person who has transferred or otherwise disposed of all of their interests in the Subject Land.

Planning Permit means planning permit No. 299/2011/P, as amended from time to time, issued on 20 March 2013, authorising the subdivision of the Subject Land and removal of vegetation in accordance with the Endorsed Plan.

Planning Scheme means the East Gippsland Planning Scheme and any other planning scheme that applies to the Subject Land.

Proposed Lot means a lot shown on the Endorsed Plan.

Rainwater Tank means the rainwater tank to be installed on a Lot.

Reserve means an area identified on the Endorsed Plan as any of 'Res 1', 'Res 2', 'Res 3', 'Res4' or 'Public Purposes Reserve' or the like.

Subject Land means the land situated at 40 Koraleigh View, Nicholson being the land referred to in certificate of title volume 11582 folio 864 and any reference to the Subject Land includes any lot created by the subdivision of the Subject Land or any part of it.

2. Interpretation

In this Agreement unless the context admits otherwise:

- 2.1 the singular includes the plural and vice versa;
- 2.2 a reference to a gender includes all genders;
- 2.3 a reference to a person includes a reference to a firm, corporation or other corporate body and that person's successors in law;
- 2.4 any agreement, representation, warranty or indemnity by 2 or more persons (including where 2 or more persons are included in the same defined term) binds them jointly and severally;
- 2.5 a term used has its ordinary meaning unless that term is defined in this Agreement. If a term is not defined in this Agreement and it is defined in the Act, it has the meaning as defined in the Act;
- 2.6 a reference to an Act, regulation or the Planning Scheme includes any Act, regulation or amendment amending, consolidating or replacing the Act, regulation or Planning Scheme;
- 2.7 the Background forms part of this Agreement;
- 2.8 the Owner's obligations take effect as separate and several covenants which are annexed to and run at law and equity with the Subject Land; and
- 2.9 any reference to a clause, page, condition, attachment or term is a reference to a clause, page, condition, attachment or term of this Agreement.

3. Purposes of Agreement

The Parties acknowledge and agree that the purposes of this Agreement are to:

- 3.1 give effect to the Planning Permit; and
- 3.2 achieve and advance the objectives of planning in Victoria and the objectives of the Planning Scheme in respect of the Subject Land.

4. Reasons for Agreement

The Parties acknowledge and agree that Council has entered into this Agreement for the following reasons:

- 4.1 Council would not have issued the Planning Permit without the condition requiring this Agreement; and
- 4.2 the Owner has elected to enter into this Agreement in order to take the benefit of the Planning Permit.

5. Agreement required

The Parties agree that this Agreement will continue to be required until the Owner has complied with all of the Owner's Obligations.

6. Owner's specific obligations

The Owner covenants and agrees that:

6.1 Rainwater Tanks

in the event that the development of a Lot includes the construction of a Dwelling:

6.1.1 the Owner must, at the Owner's full cost, install and maintain a Rainwater Tank on the Lot with a capacity of at least 10,000 litres to collect rainwater runoff from the roof of the Dwelling on the Lot

6.1.2 the Rainwater Tank must:

a) be used as the primary water source for:

(i) toilet flushing; and

(ii) laundry services; and

b) contain an external tap for garden irrigation purposes.

6.2 Fences

where a boundary fence on the Subject Land abuts a Reserve, the Owner must:

6.2.1 submit Fence Design Plans showing fences to a maximum height of 1.5 metres to Council for its written approval prior to construction of the fence;

6.2.2 construct the boundary fence in accordance with the approved Fence Design Plans;

6.2.3 thereafter maintain the boundary fence to ensure the fence remains of a similar height and style to the other boundary fences on the Subject Land abutting a Reserve; and

6.2.4 not construct or allow to be constructed, any gate in the boundary fence other than a pedestrian gate not exceeding 1.0 metre in width.

6.3 Access

the Owner must not create, or cause or permit the creation of, vehicle access to or from Proposed Lots 1, 2, 3, 8, 49 or 53 inclusive from the Nicholson-Sarsfield Road.

6.4 Maintenance contribution for offsets

the Owner must pay the Offset Maintenance Contribution to Council upon the vesting of the Reserve in Council.

6.5 Building envelopes

Unless with Council's prior written consent, the Owner must not build, construct or erect or cause or permit to be built, constructed or erected any Building outside a Building and Waste Disposal Envelope.

6.6 Waste disposal envelope

Unless with Council's prior written consent, the Owner must not dispose of, or cause or permit the disposal of, effluent on the Subject Land other than within a Building and Waste Disposal Envelope.

6.7 Septic Tanks

the Owner must ensure that any septic tank system on the Subject Land includes:

- 6.7.1 secondary treatment of wastewater; and
- 6.7.2 disposal of treated wastewater by subsurface irrigation.

7. Owner's further obligations**7.1 Notice and registration**

The Owner must bring this Agreement to the attention of all prospective occupiers, purchasers, lessees, licensees, mortgagees, chargees, transferees and assigns.

7.2 Further actions

The Owner:

- 7.2.1 must do all things necessary to give effect to this Agreement;
- 7.2.2 consents to Council applying to the Registrar of Titles to record this Agreement on the certificate of title of the Subject Land in accordance with s 181 of the Act; and
- 7.2.3 agree to do all things necessary to enable Council to do so, including:
 - (a) sign any further agreement, acknowledgment or document; and
 - (b) obtain all necessary consents to enable the recording to be made.

7.3 Council's costs to be paid

The Owner must pay to Council within 14 days after a written request for payment, Council's costs and expenses (including legal expenses) relating to this Agreement, including:

- 7.3.1 preparing, drafting, finalising, signing, recording and enforcing this Agreement;
- 7.3.2 preparing, drafting, finalising and recording any amendment to this Agreement;
- 7.3.3 determining whether any of the Owner's obligations have been undertaken to Council's satisfaction; and
- 7.3.4 preparing, drafting, finalising and recording any document to give effect to the ending of this Agreement.

7.4 Time for determining satisfaction

If Council makes a request for payment of any costs or expenses under Clause 7.3.3, the Parties agree that Council will not decide whether the Owner's obligation has been undertaken to Council's satisfaction, or whether to grant the consent sought, until payment has been made to Council in accordance with the request.

7.5 Interest for overdue money

7.5.1 The Owner must pay to Council interest in accordance with s 227A of the *Local Government Act* 1989 on any amount due under this Agreement that is not paid by the due date.

7.5.2 If interest is owing, Council will apply any payment made to interest and any balance of the payment to the principal amount.

7.6 Notification of compliance with Owner's obligations

The Owner must notify Council of its compliance with all of the Owner's obligations.

8. Agreement under section 173 of the Act

Without limiting or restricting the respective powers to enter into this Agreement, and insofar as it can be so treated, this Agreement is made as a deed in accordance with s 173 of the Act.

9. Owner's warranties

The Owner warrants that apart from the Owner and any other person who has consented in writing to this Agreement, no other person has any interest, either legal or equitable, in the Subject Land which may be affected by this Agreement.

10. Successors in title

Until such time as a memorandum of this Agreement is recorded on the certificate of title of the Subject Land, the Owner must require successors in title to:

10.1 give effect to this Agreement; and

10.2 enter into a deed agreeing to be bound by the terms of this Agreement.

11. General matters
11.1 Notices

A notice or other communication required or permitted to be served by a Party on another Party must be in writing and may be served:

11.1.1 personally on the other Party;

11.1.2 by leaving it at the other Party's Current Address;

11.1.3 by posting it by prepaid post addressed to the other Party at the other Party's Current Address; or

11.1.4 by email to the other Party's Current Email.

11.2 No waiver

Any time or other indulgence granted by Council to the Owner or any variation of this Agreement or any judgment or order obtained by Council against the Owner does not amount to a waiver of any of Council's rights or remedies under this Agreement.

11.3 Severability

If a court, arbitrator, tribunal or other competent authority determines that any part of this Agreement is unenforceable, illegal or void then that part is severed with the other provisions of this Agreement remaining operative.

11.4 No fettering of Council's powers

This Agreement does not fetter or restrict Council's power or discretion to make decisions or impose requirements or conditions in connection with the grant of planning approvals or certification of plans subdividing the Subject Land or relating to use or development of the Subject Land.

11.5 Inspection of documents

A copy of any planning permit, document or plan referred to in this Agreement is available for inspection at Council offices during normal business hours upon giving the Council reasonable notice.

11.6 Governing law

This Agreement is governed by and is to be construed in accordance with the laws of Victoria.

12. Commencement of Agreement

This Agreement commences on the date specified on page one or if no date is specified on page one, the date Council executes this Agreement.

Signing Page

Signed, sealed and delivered as a deed by the Parties.

The Common Seal of the **East Gippsland Shire Council** was hereunto affixed on the day of , in the presence of:

..... Chief Executive

..... Witness

Signed Sealed and Delivered by John)
Andrew Holzer in the presence of:)

.....
Witness

Mortgagee's Consent

Perpetual Trustee Company Limited as Mortgagee under Instrument of mortgage No. AT578226K consents to the Owner entering into this Agreement and in the event that the Mortgagee becomes mortgagee-in-possession, agrees to be bound by the covenants and conditions of this Agreement.

.....

Grounds for Objection?	How will the objector be affected?
<p>1. Allowing the envelope to be changed could sit a precedent and create further issues resulting in more building envelopes wanting to be changed or decreased. The envelope is not new and was outlined very clearly prior to purchasing the land and the further restrictions related to the area. Furthermore all other residents have had to adhere to the requirements of the subdivision and respect the Aboriginal Heritage regulations 2007. The 21 X 15 Metre Shed also being proposed I object to- this is a semi rural area, not an industrial estate therefore the proposed automotive business being relocated to the area I consider to be inappropriate.</p>	<p>I paid a premium to live in a semi rural area by allowing the this change of envelope this could impact my lifestyle especially if the owner continues to pursue an automotive business in his backyard. There are plenty of industrial sites available for said business to be conducted from; and what a better way to support their new community by leasing are more appropriate building in town. I do not want my property to decrease in value by being near an automotive business. Our road would or could be impacted with the additional traffic attending said business.</p>
<p>2. The home owners want to end the legal agreement so they can build outside their building envelope on heritage indigenous land. They are building an industrial size shed so they can run their Automotive business. This is a residential area and should not have business run from it granted our estate would have much more road traffic coming to the shed for automotive works. Additionally the noise created from running an automotive business would be immense. Thus creating noise complaints throughout the estate. Furthermore I believe it to be disrespectful to build on the heritage listed land.</p>	
<p>3. Paid a premium for our property in a semi rural area. The building envelope have been put in place for a reason and I do not want this to set precedence for future applications. Research should be conducted before purchasing property to ensure it meets needs.</p>	<p>Sets precedence for future applications for individual to change building envelope at will.</p>
<p>4. I am the resident and owner of (land adjacent/rear to the proposal). Any changes to the current building regulations could set for future developments outside of the original plan for the estate. I and most of my neighbours purchased/built knowing that there would be protection to maintain the aesthetics of the area we chose to live in. Space between properties, nothing built closer than 5 metres from a boundary, etc.</p>	<p>The applicant is seeking to end the agreement, in order to build a large shed. The proposed shed would be built close to my boundary fence, closer than any other building. I have other neighbours with sheds but none closer than 5 metres and I believe that is a reasonable distance. Details were not available of where access to the shed would be and if there would be an additional footprint on the property with driveways and concrete pads. Also the proposed height of the building is</p>

Grounds for Objection?	How will the objector be affected?
	not available, and I have concerns of shadowing over my yard where I am trying to grow a garden
5. loss of view loud noise during the day and evening hooning in the area safety of the children in the area as lots of young families in the area	mine and my partners health the culture of the whole estate the reputation of our area loss of value on our home and everyone elses'
6. Building envelopes have been applied to this development for a reason. Everyone else has abided by them. The shed in question is going to be far too big. We do not want a business run from our street. This is not an industrial area. The owner is wanting to move his Melbourne Mechanic business to Koraleigh View.	More traffic in the street from said residents customers. Cars constantly coming and going. This is a family friendly estate with plenty of children. Constant all day and potentially all night noise from a mechanic business being run from a residential street.
7. Granting this application could set a precedent affecting existing residents whose neighbours may seek change their building envelopes, and could not. Mr Holzer has spoken to numerous neighbors of his intention to run his commercial automotive restoration business in the proposed shed, This is not an industrial estate get a shed in town if you wish to run a business.	Depending on the overall height of the shed it could be quite visible from the rear of my house and be an eye sore. I think there is other options that could be proposed if this shed was to go ahead that could be more pleasing to the landscape and better suited to the block? A business being run out here will ruin the peaceful landscape we have here.
8. The River Bend Estate is a quiet residential area and the residents are mainly young families and retirees. We believe that the proposed shed is to be used as a commercial car restoration business. If this is the case, the level of traffic would increase together with an increase in noise level due to machinery required for the business.	We would be affected by the increased traffic passing our property and the noise level would possibly be excessive,
9. Setting aside the current agreement is strongly opposed by us. Here are our issues with this proposal: 1. Prior to purchasing our land at Riverbend Estate, we were advised of the restrictions on the building overlay. We are one of a number of residents who were advised by Council that we had no option, but to build within the building overlay. In our case, that severely limited what we could do as there is a large sink hole in our front yard, yet we understood the reasoning and respected Council's position. We were told that this restriction was due to the lack of sewage, problems with	Oversized sheds are beginning to dot the landscape, spoiling the amenity of the area and the appeal of the estate. If Mr Holzer proceeds with his publicly stated intention to conduct his business here, industrial noise and increased road traffic on streets would have a severe impact on all of us. Pushing the boundaries of what is and isn't permitted is of ongoing concern for many of us. For example, one very neat, well designed and built home has been turned into a shared accommodation facility for a large group of people who park their cars all over the front of the property. Meanwhile, the rest of us feel powerless to do anything about it. Please don't allow this latest

Grounds for Objection?	How will the objector be affected?
<p>stormwater runoff, the disposal of wastewater, and the need to meet the goals and intent of State planning guidelines. In addition, we were told that in some areas, there are Aboriginal sites that warrant preserving. Consequently, we had to make adjustments to our building plans to work within the restrictions. The impact to us was building size limitations (We couldn't build just what we had wanted to do.) and significant cost increases (particularly with regard to power and water connections). It would be completely unfair to now allow others to do what we were not. Since building and coming to live in the estate, we have seen the problems that arise, even with the current restrictions, as people push the boundaries of what might reasonably be expected of this type of low density living. Maintenance of the current Agreement is in everyone's long-term interest.</p> <p>2. Mr Holzer knew the limitations of his envelope when he purchased his property. In December 2021 at a street party in Koraleigh View, he openly stated his intention to build a very large shed, into which he would move his car restoration business from Melbourne. This is not heresay, he made the statement in front of several of us gathered there that evening.</p> <p>3. The balance between siting of houses and ever-larger sheds is impacting the amenity of this area. These people (who seem to be competing to build the largest and ugliest shed in the estate) are causing distress to many of us, who came here for a quiet and relaxed lifestyle, away from built-up towns and cities. Allowing this application will push the boundaries even further for no social benefit.</p> <p>4. The addition of a large shed will further stretch the stormwater runoff problems. The open drain in that section of Koraleigh View is already one of the worst affected areas when it rains.</p>	<p>attempt to have thoughtless people deprive us of our comfortable living space just so they can make a profit.</p>
<p>10. 1, The shed he has proposed to build is an industrial shed for running his business out of.</p>	<p>I reiterate this is a residential estate & not a industrial estate & we do not want a mechanical work shop with a Dyno operating</p>

Grounds for Objection?	How will the objector be affected?
<p>2, Building out of the building envelope, all other residence have abided by the regulations of the estate & Mr Holzer knew the regulations when he purchased the property as we all did.</p> <p>3, This is a quiet residential estate & we do not need industrial size buildings here.</p>	<p>within the estate. At the street xmas party John made it quite clear to us that he will be running his Melbourne based business from the Koraleigh address.</p>
<p>11. The owner intends to move his mechanical business from Melbourne to Nicholson at his home residence as he has advised me verbally. As this is not an industrial area, I would recommend that he rents a factory in a residential area. He also intends to build an extremely large shed which is too big for this area, especially for someone who only owns two cars.</p>	<p>Unnecessary noise at unreasonable hours, increased non local traffic, unfair to direct neighbours. It would be much more understandable if he was to build a smaller shed that was less than 100m2 rather than 315m2</p>
<p>12. Neighbours getting their views blocked -the noise that will happen from this shed as he wants to run a business out of it 'Gansta Automovtive' thats currently been run in Melbourne - also the cars that will be going up and down the street at a speed that is not appropriate for the area with children ridding bikes and etc. eg - he wants to store a number of hotted up cars in the shed that he will test run in the street why else would you put up a shed this big? To store your mower</p>	<p>My health culture of the neighborhood value of my home and everyone elses</p>
<p>13. The size of the proposed shed is 21m x 15 m and I have been told by the proprietor that it is being set up for his business to transfer it from Melbourne.</p>	<p>Running a business from a residential area.</p>
<p>14. Building envelopes are put in place for a reason. Other residents have legitimately sought change and been rejected. The proposed structure he intends to build is an industrial size building 21 x 15 m. Inappropriate for a residential area. This is not an industrial estate and a shed of that size tells me Mr Holzer is intending to run an industrial buisness from that shed in what I believe is not exceptable in a residential estate. Thank you for your consideration</p>	<p>Very large sheds have already been built on this estate within building envelopes and are getting out of control and very ugly. If building envelopes are allowed to be changed it will impact existing residents in this low density estate, by destroying the appeal of the estate, impacting existing outlooks and devaluing properties. This is not fair to other residents who play by the rules and understand why laws are put in place. That is why I purchased in this beautiful estate to get away from that nonsense. Hoping some common sense can be implemented. Thanking you.</p>
<p>15. I have no issue with the size of the shed but I have issue with anyone in the estate wanting to build outside of the current</p>	<p>The applicant had told people within the estate that he would be running a business from this shed. The estate is a quite</p>

Grounds for Objection?	How will the objector be affected?
<p>building envelope. If this is approved it opens a can of worms for every other owner in the estate to build outside of there envelope. Surely the applicant could compromise and build inside the envelope which would be perfectly fine. It is known that the applicant wants to run a mechanical business from said shed which under the ruling of a residential area will not be allowed to operate a business in.</p>	<p>family friendly area and a mechanical business running from a shed at a home property would create unwanted noise but extra traffic in a quite area. I have no objection against the applicant building a shed for private use which is perfectly fine but that is where the applicant can compromise and build a suitable sized shed within the current building envelope like all other residents have. We have a child due to be born very soon and we chose this area to move to because it was quite with limited traffic. Running a business in this area would increase traffic and noise.</p>
<p>16. - We purchased our property on the basis of existing neighbouring building envelopes to ensure an obstruction free view of surrounding bush land and to ensure minimum activity on those envelopes. - The present owner new the size and constraints of his envelope before purchase, why buy? - Cancelling the existing agreement could set a precedent and create issues with possible changes to other building envelopes. There are also those who wanted to legitimately change their envelope and could not. - Ending the agreement means the development of a business on the property which would impact on my property value and others. - This is a quiet, pleasant semi- rural estate, it is not an industrial estate and allowing an industrial size building to be built in a residential area is inappropriate and ugly.</p>	<p>- With the removal of the agreement Mr Holzer will build, perhaps without restriction a 21x15 m' industrial size shed and move his current Melbourne based automotive business into this shed. This business will be on our boundary fence and as well as being an eye sore, it will have significant impact on our pleasant and quiet environment. - There would noise pollution from not only within the shed but also from vehicle transportation to and from the premises and that includes street noise. - There would also be the real possibility of storage of cars and trailers on the property. - He is a mechanical repairer and V8 muscle car restorer, imagine the noise. If he wants to move his business up from Melbourne, then go to a light industrial area. -We purposely moved to this quiet peaceful neighbourhood for the wellbeing of our intellectually disabled daughter. We even made alterations to our home to provide ongoing support for her in what currently is a tranquil environment. # We do not want this business next to our property; this is residential area not industrial. Thank you.</p>
<p>17. 1. Building envelopes are in place for a reason. Other residents have legitimately sought change and been rejected.</p>	<p>Very large sheds have already been built on this estate within building envelopes. My next door neighbor at 2 Parkside Drive</p>

Grounds for Objection?	How will the objector be affected?
<p>Mr Holzer knew the size of his envelope when he purchased. Granting this application could set a precedent affecting existing residents whose neighbors may seek change.</p> <p>2. The proposed structure he intends to build is an industrial size building 21 x 15 m.</p> <p>Inappropriate for a residential area. Aesthetically ugly, blocking existing neighbors outlooks and devaluing properties.</p> <p>3. Mr Holzer has openly spoken to numerous neighbors of his intention to move and operate his Melbourne based commercial automotive restoration business to the shed he proposes to build on this property. This is not an industrial estate. Thank you for your consideration</p>	<p>Nicholson recently erected a shed on his envelope as close to the street as he could. This has severely impacted the visual street appeal of my home, It dominates our front yard views and has devalued our property. It has also impacted other immediate neighbors. If building envelopes are allowed to be changed it will impact existing residents in this low density estate, by destroying the appeal of the estate, impacting existing outlooks and devaluing properties. Mr Holzer's intention to conduct this business would have a severe impact on this quiet peaceful residential estate. There would be noise pollution, the potential of a large car transporting truck and trailer stored on the premises which already comes and goes down the street, the revving of loud V8 engines. He does this already with the loud V8 Muscle car he owns. Then there is the test driving of loud high performance cars in this residential area which is totally inappropriate especially with young children who frequent the street. We reiterate this is a residential area not an Industrial estate.</p>
<p>18. No other resident has been granted exemptions or alterations to their building envelope to my knowledge. We all bought in this estate for the wide open spaces, knowing all of the building envelopes when we bought. A new building envelope will increase the structure density in the area, particularly for the direct neighbours. It is widely known that the applicant intends to build an industrial sized shed and run his car restoration business out of it. We cannot allow our peaceful residential estate to be turned into a pseudo industrial estate - if he wants to run an industrial business from the new shed, he should buy a block in an industrial estate.</p>	<p>It would allow an avenue for the applicant to build a massive shed inconsistent with our residential zoning. It would ruin the outlook for neighbours. It will open up the floodgates for everyone to apply for alterations and exemptions to their building envelopes with an unknown knock-on effect for the whole estate.</p>
<p>19. John's shed is not the main issue. He is planning on relocating his vehicle restoration business from Melbourne to his address in Nicholson as he is tired of travelling and has not disclosed this in his application. He is upset that he did not know about the covenant/building envelope at the time of purchase. He runs 2 businesses, Gangster Classics and</p>	<p>The noise generated from him working on vehicles in our rural street will be unbearable. He is known to show little regard to his direct neighbor's so if he is permitted to build the workshop the entire area will suffer. There is real concern that he will ignore restrictions on running a business in the residential area and carry out work under the guise of a hobby. Noise travels</p>

	Grounds for Objection?	How will the objector be affected?
	Prostar Motorsport which he is listed as the owner of. (links below). He is known to work on vehicles up until midnight and lives at the workshop in Melbourne during the week. His plan is to move the business to Nicholson so that he can work from home. https://www.facebook.com/GangsterClassics/about https://www.facebook.com/ProstarMotorsport/about	far and wide in this area. If he is allowed to build this workshop it will destroy the peaceful area we call home.
20.	Whilst some minor works just outside of the approved building envelope might be ok, an industrial sized 294m2 shed in a residential area will ruin the semi-rural environment others have bought into.	This industrial shed would ruin the outlook that many of us bought into

Our ref: 19265

24 May 2022

152 Macleod St.
PO Box 722,
Bairnsdale, VIC 3875P: 5152 5011
F: 5152 5705E: contact@crowthersadler.com.au

Land Use Planner
East Gippsland Shire Council
Via email: planning@egipps.vic.gov.au

Attention: Ms Michelle Dixon

Dear Michelle,

**Re: Application 5/2021/AGR
Request to end Agreement AL961631J
40 Koraleigh Drive, Nicholson**

I refer to the objections received in response to the abovementioned application and offer the following response to the concerns that have been raised.

Having reviewed the objections we understand a number of common concerns have been raised by some of the beneficiaries to the Agreement. The following list is a summary of the concerns:

- Setting a precedent
- Size and scale of a future shed
- Use of a future shed for motor vehicle repair business
- Building envelopes for stormwater drainage and wastewater disposal
- Impact to views
- Setbacks from boundaries
- Protection of cultural heritage
- Noise

The majority of the grounds for objection are considered, in our opinion, not to be of relevance to Council in determining whether or not to support the request to end the Agreement. A number of the concerns are either factually incorrect, speculative or not relevant to the request. The matters Council are required to take into consideration are prescribed by Section 178B of the *Planning and Environment Act 1987*. Grounds of material detriment such as noise and impact to amenity relating to a specific development are not relevant to this request.

Despite the assertions made within the objections as to the purpose of the Agreement, the sole reason for the Agreement was in response to the recommendations prescribed by the cultural heritage management plan that was prepared for the subdivision. The Building Envelopes were imposed for the purpose of protecting sites of cultural heritage identified by the cultural heritage management plan process. The building envelopes were not imposed for any purpose or reason prescribed by the planning scheme or any other reason.

Given the purpose of the Building Envelopes, we do not believe ending the Agreement will disadvantage any person. Advice has been sought from the cultural heritage advisor to confirm development of an outbuilding(s) outside the current Building Envelopes on the allotment would be acceptable and not contravene the approved CHMP.

Numerous objections include concerns ending the Agreement will set a precedent and lead to development that may be detrimental to adjoining properties and the surrounding neighbourhood. This concern is simply not true. Each request to end or vary an Agreement must be considered on merit and on a site by site basis. Furthermore, the request to end the Agreement is premised on the Owner entering a new Agreement requiring approval from Council for any buildings and works outside the current Building Envelope. Planning Officers will have the ability to assess any proposed building before the building is constructed.

The size and scale of a future building has raised some concerns with many of the objections referring to an "industrial sized" building. The planning controls that apply to the area do not limit the size of outbuildings or setbacks from boundaries. Landowners all have the right to construct an outbuilding at any size they desire, limited only to construction within a Building Envelope. The request to end the Agreement has been made on the basis the landowner will enter a new Agreement. The new Agreement will provide discretion for buildings outside the Building Envelope but only with the prior written consent of Council.

The size of Building Envelopes throughout this estate vary considerably with some properties containing quite large Building Envelopes, while others are relatively small and for no apparent reason. The existing Building Envelope on the subject land is relatively small and almost entirely taken up by the house, which is by no means large. There is land available within the property capable of otherwise containing an outbuilding if not otherwise for the Agreement. A new Agreement as proposed will continue to protect the area of cultural heritage as identified by the building exclusion zone.

The allegations that the owner of the subject land intends to conduct motor vehicle repairs from the shed are untrue. Our client has confirmed no such statements were made to residents as alleged. Our client is well aware motor vehicle repairs as a business is prohibited on the property, as it is for all properties within a residential zone. Ending the Agreement will not create any opportunity for motor vehicle repairs to be conducted as a home based business.

With the request to end the Agreement attracting numerous objections we believe a consultation meeting would be most beneficial to provide clarification of the relevant issues to Councillors and residents. We would appreciate a consultation meeting being scheduled at the earliest convenience.

As always, please do not hesitate to contact our office should we be able to assist further.

Regards,



RICHARD HOXLEY
Principal Planner



**EAST GIPPSLAND SHIRE COUNCIL
PLANNING CONSULTATION MEETING
5/2021/AGR**

**Record of Meeting
(Minutes)**

MONDAY, 08 August 2022

VIA MICROSOFT TEAMS

COMMENCING AT 6:03 P.M.

1. PROCEDURAL

1.1 APOLOGIES

Councillors: Mendy Urie, Tom Crook, Kirsten Van Diggele, John White, Jane Greacen, Sonia Buckley, Trevor Stow

Objectors: Nil

Officers: Anthony Basford, Chief Executive Officer;

1.2 IN ATTENDANCE

Councillors: Mark Reeves (Mayor), Arthur Allen (Deputy Mayor),

Applicant: Richard Hoxley (Crowther & Sadler, advocate for the applicant)

Objectors: As listed as objectors speaking, plus others in attendance (4)

Officers: Stuart McConnell, General Manager Place & Community; Martin Richardson, Manager Planning; Robert Pringle, Statutory Planning Coordinator

East Gippsland Shire Council Minutes Planning Consultation Meeting 5/2021/AGR – 8 August 2022

1.3 DECLARATIONS OF CONFLICT OF INTERESTS

NIL

1.4 ACKNOWLEDGEMENT OF COUNTRY

2. REPORTS/PRESENTATIONS

2.1 PLANNERS REPORT

Robert Pringle, Statutory Planning Coordinator

Provided background of the site location, past subdivision/permit history, proposal to end the agreement details and summary of the number and content of objections and submissions.

Q: Cr. Allen: Is it permissible to relocate a business to the land?

A: Mr Pringle: The requirements to conduct a business are limited by the Low Density Residential Zone provisions. The alleged proposed business is not one that would be permissible under the Zone. The applicant has responded that the development would be for personal use only.

Q: What is the difference between a covenant and agreement? Question asked by an objector and leave to respond granted by the meeting Chair.

A: Mr Pringle: Restrictive Covenants and s173 Agreements may apply to land titles and be registered on the title to a property. A covenant is normally registered through the transfer of land between the developer and landowner, and does not involve Council unless Council is a beneficiary (such as owner of land or a reserve in the subdivision). Council not normally involved in setting out a covenant requirement. Covenants are normally imposed to regulate materials, colours, minimum dwelling size, and uses of the land. An application could be made to vary a covenant, subject to a planning permit with notice requirements to all beneficiaries.

A s173 Agreement is an agreement between the owners of the land and Council as the responsible authority. The use of an Agreement is to maintain a specific outcome for a specific purpose. In this case, building envelopes are registered, but could be used for stormwater management, or other ongoing obligations of the owners of the land.

The process to consider ending the agreement is subject to notice, and all parties to the agreement (burdened landowners) were subject to notice.

Q: Question of Clarification by objector Garry Smyth: Have any objections been withdrawn and is the applicant present?

A: No objections have been withdrawn, and the applicant is attending remotely.

Q: Cr Reeves: 173 agreement applies to all lots within the subdivision, but the request relates only to Lot 15, and only allows for the current agreement to be ended and an new agreement to modify the specific obligations allowing for consideration of a request to build outside the existing building envelope? Any additional requests would be subject to the same process?

A: Mr Pringle: Yes, the statements made are correct.

Q: Cr. Reeves: The Agreement relates to Cultural Heritage requirements of the site and other properties might be affected differently?

A: Mr Pringle: Correct.

East Gippsland Shire Council Minutes Planning Consultation Meeting 5/2021/AGR – 8 August 2022

2.2 APPLICANT PRESENTATION

Richard Hoxley – Crowther & Sadler (advocate for the Applicant)

Mr Hoxley presented the request, clarified the proposed development which necessitates the consideration, and the reasons why the proposal should be supported. Mr. Hoxley outlines that the “Zone 2” requirements of the cultural heritage management plan were not appropriately translated to restrictions on title, but that according to one of the CHMP authors, the proposed development should be permissible.

Mr. Hoxley strongly affirmed that commercial use of the land is not proposed.

Q: Cr. Reeves – On the adjacent block to the north – lot 14 – with an outbuilding – is it correct that the outbuilding is similar in siting and dimension to that which is proposed (if the agreement is amended)?

A: Mr Hoxley: In relation to proximity to boundaries, yes, the setbacks are very similar. The size may be increased overall, but the circumstances are otherwise similar.

2.3 OBJECTOR PRESENTATIONS

- **Dianne Wood**

- To the western boundary of the subject lot.
- The proposal is different than others in that all other building envelopes are 5 m to a boundary, and this proposal is for 2 metres. Fairness issue.

Q: Cr. Reeves: Clarification that the application under consideration does not involve the development of a shed? Just the s173 Agreement.

A: Mr Pringle: The shed is not currently part of the application. The request is to end one agreement, enter into a new that contains wording ‘to the satisfaction of the responsible authority’ consent may be obtained to build outside the building envelope.

There is no existing process in the Act or Scheme relating to consideration of satisfaction matters. It is officer preference that there would be some form of informal notice undertaken to potentially affected persons. In this case, notice is required in association with the s173 agreement and proposal to end the agreement. The responsible authority would consider, if the proposal is approved, the comments raised by the objectors to this matter. The responsible authority could, take the comments into consideration and advise the applicant that a 2 metre setback is not supported, to provide consistency with the neighbouring building envelopes and established boundary setbacks.

The request is not an application to a planning permit, rather a ‘satisfaction matter’ under the agreement. The concerns of the objectors in relation to eventual development

Q. Cr. Reeves: Mr. Hoxley has a point in response to raise?

A: Mr. Hoxley: building envelopes for properties adjoining the subject land are scaled at a 1:200 plan at 2.5 metres, not 5 metres. Applicant must justify the siting of the proposal outside of the building envelope upon making a request to Council, if the Agreement is ended and entered into anew with satisfaction matters included.

- **Garry Smyth & Cheryl McLeish**

- Reason for the change of the building envelope is all about the shed proposed
- Do not want the building envelope to shed.
- 21x14 m is a big shed for domestic use only
- Envelopes have been beneficial to retain semi-rural outlook, preserve view
- Attests that the owner has made it clear their intents to move the automotive business to the site.
- Neighbours have an expectation that building will be undertaken within the envelope

Q. Cr Reeves: Perhaps Mr Hoxley could respond to the statement.

A: Mr. Hoxley: Advises that the business had been sold, and the business would not be located on the land.

- **Robert Patterson**

- Properties have been built by the landowners with the knowledge of building limits
- A number of residents asked for permission to build outside the envelope and were told it would not be supported.
- Owner had communicated to neighbours that he was aware of building restrictions at the time the subject land was purchased.
- Personal pursuits of the owner are incompatible with the residential use of the land.

- **Tim Palmer**

- Night shift worker – affected by noise in the neighbourhood
- Concern for a future of noise complaints to be made

- **Bruce Stafford**

- Size of shed is comparable to the Lucknow Hall
- Bought property knowing the building envelopes of their own and other lots.
- Changes to the agreement means potential detriment to all owners neighbouring the land, especially those immediately adjacent.
-

- **Robert Napier**

- Purchases have been made in the precinct specifically due to the building envelopes.
- Had been interested in the subject land, and passed due to small building envelope. Agents admitted difficulty in selling lot due to restricted envelope.
- Do not believe this is a fair and reasonable proposal.
- Sheds are bigger and uglier over time.

2.4 CLOSING COMMENTS

Robert Pringle advised that Council will take into consideration all of the content of the evening's proceedings and go back to the Applicant due to the questions raised in the meeting.

3. MEETING CLOSE

The meeting closed at 7:09 PM

6 Urgent and Other Business

7 Confidential Business

Council will close the meeting to the public in accordance with the provision of section 66(2) of the *Local Government Act 2020* to consider the following item:

7.1 Personnel Matter

Under section 66(2) of the *Local Government Act 2020* a meeting considering confidential information may be closed to the public. Pursuant to sections 3(1) and 66(5) of the *Local Government Act 2020*, the information contained in this report is confidential because it contains personal information that would, if released, result in the unreasonable disclosure of information about personal affairs.

8 Close of Meeting