Planning and Environment Act 1987

# South Gippsland PLANNING SCHEME

# AMENDMENT C107

# EXPLANATORY REPORT

## Who is the planning authority?

This amendment has been prepared by the South Gippsland Shire Council, which is the planning authority for this amendment.

The amendment has been made at the request of the Department of Environment, Land, Water and Planning (DEWLP).

## Land affected by the Amendment

The amendment applies to areas of the South Gippsland municipality identified as containing suitable habitat for the Giant Gippsland Earthworm (GGE), as shown on the South Gippsland Planning Scheme maps as attached.

## What the amendment does

The amendment proposes to introduces and apply Schedule 9 to the Environmental Significance Overlay to land identified as containing suitable habitat for the Giant Gippsland Earthworm. Specifically the amendment proposes:

* Replace Clause 21.06 with a new Clause 21.06 *Environmental and Landscape Values*,
* Replace Clause 21.16 *Reference Documents*, with a new Clause 21.16 by inclusion of the “*Giant Gippsland Earthworm Environmental Significance Overlay Reference Document (Sept 2015)*”,
* Insert new Schedule 9 to Clause 42.01 *Environmental Significance Overlay* - (ESO9): “Protection of Giant Gippsland Earthworm and Habitat Areas”,
* Replace the Schedule to Clause 61.03 ‘*Maps comprising part of the scheme*’ to insert new Planning Scheme Map Nos. 1ESO9, 2ESO9, 3ESO9, 4ESO9, 5ESO9, 6ESO9, 7ESO9, 10ESO9, 11ESO9, 12ESO9, 13ESO9, 14ESO9, 15ESO9,
* Replace Schedule to Clause 66.04 “*Referral of permit applications under local provisions*”
* Insert new Planning Maps, 1ESO9, 2ESO9, 3ESO9, 4ESO9, 5ESO9, 6ESO9, 7ESO9, 10ESO9, 11ESO9, 12ESO9, 13ESO9, 14ESO9, 15ESO9.

## Strategic assessment of the Amendment

### Why is the Amendment required?

The amendment is required to provide a mechanism to identify suitable habitat for the GGE prior to commencing building or works. This will help avoid, mitigate or minimise negative effects on GGE habitat from planned building works. The GGE is protected by the *Flora and Fauna Guarantee Act 1988* (State) and the *Environment Protection and Biodiversity Conservation Act 1999* (Commonwealth).

The Department of Environment, Land, Water & Planning (DELWP) have created a habitat distribution model. This model has allowed a proactive approach to be taken which supports the existing protective legislation.

### How does the Amendment implement the objectives of planning in Victoria?

The amendment accords with *Planning and Environment Act 1987*, section 4(1)(b);

“*to provide for the protection of natural and man-made resources and the maintenance of ecological processes and genetic diversity*”

Identifying suitable worm habitat as a formal consideration in the planning process will minimise the risk of non-compliance with existing legislation.

### How does the Amendment address any environmental, social and economic effects?

*Environmental*

Positive environmental outcomes result from identifying the potential impacts to remaining GGE populations prior to development commencing. This identification allows the presence of GGE to be considered in the planning and design phase of any proposal, minimising adverse habitat impacts.

The amendment broadens the recognition given to native fauna in the Municipal Strategic Statement (MSS). Currently, there is a strong focus on native vegetation. Recognising the role of native fauna in the landscape, the Planning Scheme can offer greater protection to these and other native species.

The majority of worm habitat is located on and adjacent to streams and drainage lines which are subject to other planning provisions including inundation controls and waterway protections.

*Social*

Clarifying the roles and responsibilities for land developers who are affected by the overlay can grow confidence in the planning process. The *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) does not identify where this habitat is found. Management responses are therefore typically reactive and create uncertainty when working in a likely habitat area. If actions in these areas could affect the GGE, a permit from the Australian Government Minister for the Environment is required. The ESO9 provisions and maps identify where these areas are, minimising risk to the developer. This minimises the chance of surprises by capturing all relvant information early.

As the majority of remaining suitable habitat is located on private land, the community is involved in the protection of this unique species.

*Economic*

By focussing on the protection of GGE colonies through modelling and identifying management outcomes, development can accord with these objectives. Designs can be adjusted prior to planning permit application, greatly reducing the risk and potential cost of unearthing the species.

The new overlay will streamline the consideration of planning permit applications by identifying where further investigation is required. Processing times will be improved by avoiding the areas where the worms exist. Further permits will no longer be required, which avoids further application processing times.

Applications outside these areas are not required to conduct surveys or other design responses, reducing overall processing times.

### Does the Amendment address relevant bushfire risk?

The amendment will have no effect on bushfire risk as the worms exist within typically wet soil that is near stream banks. No additional protection measures are proposed.

### Does the Amendment comply with the requirements of any Minister’s Direction applicable to the amendment?

The amendment is consistent with the *Ministerial Direction on the Form and Content of Planning Schemes* under sections 7(3) and 7(5) of the Act.

### How does the Amendment support or implement the State Planning Policy Framework and any adopted State policy?

The amendment enhances the objectives of Clause 12.01-1 *Protection of biodiversity* which details the approach to protecting and conserving the habitats of Victoria’s flora and fauna as well as other strategically valuable biodiversity sites. The Clause requires avoidance or minimising significant impacts, including cumulative impacts, of land use and development on Victoria’s biodiversity. This is consistent with this amendment proposal.

### How does the Amendment support or implement the Local Planning Policy Framework, and specifically the Municipal Strategic Statement?

Clause 21.06-1 *Biodiversity* recognises the steady decline in biodiversity in South Gippsland since European settlement. The identified objective of the clause is to achieve a measurable net gain in the extent and quality of the Shire’s biodiversity, with particular focus on private land where the majority of biodiversity now exists. The amendment is consistent with this objective as identifying potential habitat provides the opportunity to grow worm colonies by minimising negative impacts.

### Does the Amendment make proper use of the Victoria Planning Provisions?

The amendment includes a schedule to the Environmental Significance Overlay (ESO) (Clause 42.01). The most relevant purpose of the ESO is:

“*To ensure that development is compatible with identified environmental values.*”

This is the most appropriate method of protecting the remaining habitat and provides suitable decision guidelines.

### How does the Amendment address the views of any relevant agency?

In 2010, the Department of Sustainability and Environment’s (DSE, now DELWP) successfully completed a robust distribution model (the ‘Maximum Entropy’ model) for the GGE, identifying locations of suitable habitat. Prior to this model, planning consideration was limited by confirmed sightings of the species.

Development of a Giant Gippsland Earthworm planning overlay (and associated documents) by South Gippsland Shire Council has been financially supported by DELWP.

### Does the Amendment address relevant requirements of the Transport Integration Act 2010?

The amendment has no relevance to the Transport Integration Act 2010.

## Resource and administrative costs

### What impact will the new planning provisions have on the resource and administrative costs of the responsible authority?

The amendment will have a minimal impact on the resources and administrative costs of the Responsible Authority. The identification of suitable habitat for the worm may generate additional planning permit applications but this will be balanced by the removal of any conservation consideration of the worm outside the identified suitable habitat.

## Where you may inspect this Amendment

The amendment is available for public inspection, free of charge, during office hours at the following places:

 South Gippsland Shire Council,

 9 Smith Street, Leongatha

The amendment can also be inspected free of charge at the Department of Environment, Land, Water and Planning website at [www.dtpli.vic.gov.au/publicinspection](http://www.dtpli.vic.gov.au/publicinspection) .

## Submissions

Any person who may be affected by the amendment may make a submission to the planning authority. Submissions about the amendment must be received by 23 November 2015.

A submission must be sent to:

 South Gippsland Shire Council,

 Att Nick Edwards

 Private Bag 4, (or 9 Smith Street),

 Leongatha, 3953

## Panel hearing dates

In accordance with clause 4(2) of Ministerial Direction No.15 the following panel hearing dates have been set for this amendment:

* directions hearing: Monday 18 January 2016
* panel hearing: Monday 15 February 2016