

SOUTH GIPPSLAND SHIRE COUNCIL

Special Council Meeting

To consider and decide on submissions to the Governance Rules under section 223 of the Local Government Act 1989.

19 August 2020

Virtual Meeting

Commenced at 12:45 pm



minutes



*South Gippsland
Shire Council*

Come for the beauty, Stay for the lifestyle



OUR PURPOSE

To serve in the best interests of the whole Shire, delivering quality services and advocating for community needs.

Privacy

Council is required to keep minutes of each Council meeting. The minutes contain details of proceedings which may include personal information about community members disclosed as part of presentations, submissions and questions. The minutes of Council meetings are a public record and can be inspected by members of the public.

Council undertakes audio recordings of Council Meetings as a contribution to good governance and accuracy of minutes. An audio recording of this meeting is being made for the purpose of verifying the accuracy of minutes of the meeting. In some circumstances the recording may be disclosed, such as where Council is compelled to do so by court order, warrant, and subpoena or by any other law such as the *Freedom of Information Act 1982*. It should be noted that other people present at the meeting may be recording the meeting and Council has limited power to regulate this. Council has developed a policy to regulate recordings, "*Sound Recording of Council Meetings*".

A copy of this policy is located on Council's website www.southgippsland.vic.gov.au.

PRESENT

ADMINISTRATORS:	Julie Eisenbise, Administrator Chair Christian Zahra, Administrator Deputy Chair Rick Brown, Administrator
NOT PRESENT:	-
OFFICERS:	Kerryn Ellis, Chief Executive Officer Natasha Berry, Corporate and Council Business Officer

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Special Council Meeting
Virtual Meeting held on 19 August 2020, commenced at 12:45 pm

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Kerry Ellis
Chief Executive Officer

1. PRELIMINARY MATTERS

1.1. LIVE-STREAMING COUNCIL MEETING DISCLAIMER

This Council Meeting is being streamed live, recorded and published in accordance with Council's *Live Streaming in Council Meetings Policy*.

The Chair and/or the CEO have the discretion and authority at any time to direct the termination or interruption of live streaming. Such direction will only be given in exceptional circumstances where deemed relevant. Circumstances may include instances where the content of debate is considered misleading, defamatory or potentially inappropriate to be published.

Today's Meeting is being streamed live as well as recorded and published on Council's website.

Thank you

1.2. WELCOME AND OPEN VIRTUAL COUNCIL MEETING VIA LIVE STREAM

Please ensure Mobile phones are set to 'silent' during the Council Meeting.

Over the past months the Federal and State Governments have been increasingly clear in their directives about social gatherings. To that end Council has taken the unprecedented step of closing its doors to the public for this Council Meeting.

This Council Meeting will be conducted virtually (an on-line meeting) and does not include an open gallery. The virtual and livestreaming of an Open Council Meeting is made in accordance with the *Local Government Act 2020*, section 394 that prescribes Administrators are able to participate in the Meeting by electronic means of communication and s.395(1)(a) that 'Meetings may be closed to the public during the prescribed period.'

Access to the live stream through Council's Internet will be the 'open' component of this Meeting.

The safety of the community and staff and the continuation of vital services remain Council's highest priority.

RECOMMENDATION

That Council:

1. Not allow members of the public to attend the 19 August 2020 Special Council Meeting – to consider and decide submissions to the Governance Rules;
2. Notes that this Special Council Meeting is being conducted as a virtual meeting, conducted by electronic means of communication pursuant to section 394 of the *Local Government Act 2020*. The 'Minister's Good Practice Guideline MGP-1: Virtual Meetings' have been used to ensure that local government decision making can continue in line with COVID19 requirements.
3. Notes that the 19 August 2020 Special Council Meeting – to consider and decide submissions to the Governance Rules remains 'open' via the livestream on the Internet, in keeping with section 395 of the *Local Government Act 2020*; and
4. Notes that this decision is made to protect the health and wellbeing of all people required to be in attendance.

MOVED: Administrator Eisenbise

SECONDED: Administrator Brown

THAT COUNCIL:

1. **NOT ALLOW MEMBERS OF THE PUBLIC TO ATTEND THE 19 AUGUST 2020 SPECIAL COUNCIL MEETING – TO CONSIDER AND DECIDE SUBMISSIONS TO THE GOVERNANCE RULES;**
2. **NOTES THAT THIS SPECIAL COUNCIL MEETING IS BEING CONDUCTED AS A VIRTUAL MEETING, CONDUCTED BY ELECTRONIC MEANS OF COMMUNICATION PURSUANT TO SECTION 394 OF THE *LOCAL GOVERNMENT ACT 2020*. THE 'MINISTER'S GOOD PRACTICE GUIDELINE MGP-1: VIRTUAL MEETINGS' HAVE BEEN USED TO ENSURE THAT LOCAL GOVERNMENT DECISION MAKING CAN CONTINUE IN LINE WITH COVID19 REQUIREMENTS.**
3. **NOTES THAT THE 19 AUGUST 2020 SPECIAL COUNCIL MEETING – TO CONSIDER AND DECIDE SUBMISSIONS TO THE GOVERNANCE RULES REMAINS 'OPEN' VIA THE LIVESTREAM ON THE INTERNET, IN KEEPING WITH SECTION 395 OF THE *LOCAL GOVERNMENT ACT 2020*; AND**
4. **NOTES THAT THIS DECISION IS MADE TO PROTECT THE HEALTH AND WELLBEING OF ALL PEOPLE REQUIRED TO BE IN ATTENDANCE.**

CARRIED UNANIMOUSLY

1.3. OPENING PRAYER

We pray to God to guide us so that the thoughts we have and the decisions made this day, are in the best interests of the people of the South Gippsland Shire.

Amen

1.4. ACKNOWLEDGEMENT OF TRADITIONAL CUSTODIANS

The South Gippsland Shire Council respectfully acknowledges the Traditional Custodians of this Land, Elders past and present, their Spirits and Ancestors.

1.5. REQUESTS FOR LEAVE OF ABSENCE

Nil

1.6. APOLOGIES

Nil

1.7. DECLARATION OF CONFLICT OF INTEREST FOR ADMINISTRATORS

Provisions under the *Local Government Act 2020* around Conflict of Interest are not operational until October 2020. Provisions under the *Local Government Act 1989* remain operational until this time.

Any interest that an Administrator or staff member has deemed to be significant and has disclosed as either a direct or an indirect interest is now considered to be a conflict of interest. Conflict of interest legislation is in sections 77A, 77B, 78, 78A-D and 79 of the *Local Government Act 1989* (the Act). This legislation can be obtained by contacting the Council's Corporate & Community Services Directorate (Council Business) or by accessing the Victorian Legislation and Parliamentary Documents website at www.legislation.vic.gov.au.

An interest may be by close association, financial, conflicting duties or receipt of gifts. If an Administrator or staff member discloses any interest in an item discussed at any Council Meeting (whether they attend or not) they must:

- Complete a disclosure of interest form prior to the Meeting (forms are available from Council Business Department at South Gippsland Shire Council).
- Advise the Chair of the interest immediately before the particular item is considered (if attending the Meeting).
- Leave the Council Chamber or Meeting room while the item is being discussed and during any vote taken (if attending the Meeting).

The Administrator or staff member will be advised to return to the Council Chamber or Meeting room immediately after the item has been considered and the vote is complete.

Administrators should check the Minutes of the Council Meeting to ensure their disclosure is recorded accurately. Administrators are not required to disclose conflict of interest in relation to matters only considered at Meetings they do not attend. Detailed information is available in *Conflict of Interest – A Guide – October 2012*.

Nil

1.8. DECLARATION OF CONFLICT OF INTEREST FOR STAFF

Provisions under the *Local Government Act 2020* around Conflict of Interest are not operational until October 2020. Provisions under the *Local Government Act 1989* remain operational until this time.

The *Local Government Act 1989*, sections 80B and 80C requires members of Council staff who have delegated functions and/ or provide advice to Council or a Special Committee to disclose conflicts of interest. If Council staff have written, provided information/ advice or approved a Council Report and have a conflict of interest, it is the responsibility of that staff member to disclose the interest.

Guidance to identifying and disclosing a conflict of interest is contained in the Victorian State Government, Department of Transport, Planning and Local Infrastructure – Conflict of Interest – *A Guide for Council Staff – October 2011*.

Nil

2. COUNCIL REPORTS

2.1. PROPOSED GOVERNANCE RULES 2020, INCLUDING ELECTION PERIOD POLICY - S.223 SUBMISSIONS

Corporate and Community Services Directorate

EXECUTIVE SUMMARY

The *Local Government Act 2020* (the Act) requires each council to develop and adopt a series of policies as part of the new principles-based reforms embodied within the Act. As per s.60 of the Act, Governance Rules need to be adopted by 1 September 2020. Council's Governance Rules will replace the majority of South Gippsland's Local Law No. 2 2020 - Meeting Procedures and Common Seal (Local Law No.2) adopted by Council on 27 May 2020.

The Governance Rules, required to be adopted by 1 September 2020, will exist as part of a suite of governance policies and procedures within Council's adopted Good Governance Framework under the pillars of 'Decision Making' and 'Structure, Systems and Policies'.

Council endorsed *the Proposed Governance Rules (C82), including the Election Period Policy (C30)* (Proposed Governance Rules), at a Special Council Meeting held on 8 July 2020. A formal submission process was held between 14 July and 5pm on 11 August 2020, seeking community submissions on the Proposed Governance Rules.

One submission has been received and the submitter has not sought to be heard in regard to the submission contained in **Attachment [2.1.1]**.

Council is asked to consider and decide on a response to this submission.

Council will then formally consider the final *Governance Rules 2020 (C82), including the Election Period Policy (C30)* (Governance Rules) at the 26 August 2020 Council Meeting.

RECOMMENDATION

That Council:

1. Consider Mr Clive Hope's submission contained in Attachment [2.1.1] and determine that the Proposed Governance Rules (C82), including the Election Period Policy (C30) either:
 1. Not be amended;
 - OR
 2. The following change(s) be made to the Governance Rules 2020 (C82):

- i. Amend the definition of 'these rules' to: 'Rules and Sub-rules - mean these Governance Rules and the clauses contained within them.'

AND/OR

- ii. Clause 13.3(a)(ii) delete the opening word 'to';

AND/OR IF FURTHER AMENDMENTS ARE REQUIRED

- iii. _____.

Administrator Rick Brown moved a Motion different from the Recommendation.

MOVED: Administrator Brown

SECONDED: Administrator Zahra

THAT COUNCIL:

1. **CONSIDERS MR CLIVE HOPE'S SUBMISSION CONTAINED IN ATTACHMENT [2.1.1] AND DETERMINE THAT THE PROPOSED GOVERNANCE RULES (C82), INCLUDING THE ELECTION PERIOD POLICY (C30) BE AMENDED WITH THE FOLLOWING CHANGES:**
 - a. **AMEND THE DEFINITION OF 'THESE RULES' TO: 'RULES AND SUB-RULES -MEAN THESE GOVERNANCE RULES AND THE CLAUSES CONTAINED WITHIN THEM.'**
 - b. **CLAUSE 13.3(A)(II) DELETE THE OPENING WORD 'TO'; AND**
 - c. **THE SECOND PARAGRAPH IN CLAUSE 15 BE AMENDED TO: 'THE MAJORITY MEANS THE NUMBER OF COUNCILLORS WHICH IS GREATER THAN HALF THE TOTAL NUMBER OF THE COUNCILLORS OF A COUNCIL. FOR EXAMPLE; WITH NINE (9) COUNCILLORS A MAJORITY WOULD BE FIVE (5).**
 - d. **AN AMENDMENT TO CLAUSE 7.7, THAT SHOULD NO NOMINATIONS BE RECEIVED, THE CHAIR WILL CALL FOR FINAL NOMINATIONS PRIOR TO THE COMMENCEMENT OF THE MEETING BEING CONDUCTED AND WILL THEN DECLARE THE NOMINATIONS CLOSED BEFORE THE MEETING BEGINS. IF NO NOMINATIONS ARE RECEIVED, THE CHAIR WILL CALL FOR NOMINATIONS AT THE MEETING.**
2. **NOTIFIES MR HOPE OF COUNCIL'S DECISION AND EXTENDS COUNCIL'S APPRECIATION FOR HIS SUBMISSION.**

CARRIED UNANIMOUSLY

REPORT

There is a requirement under s.60(4) of the Act for Council seek the views of the community during the development of the Proposed Governance Rules. Council resolved on 8 June 2020 that a formal s.223 of the Local Government Act 1989 community consultation process be undertaken, inviting written submissions for the required 28-day advertising period.

The community consultation phase was conducted from 14 July 2020 to 11 August 2020. Submissions received through this process are required to be considered by Council before the adoption of the Governance Rules. This Special Meeting is being held for Council to consider and decide on the submission received. A hearing has not been required as the one submitter did not request to be heard in regard to the submission.

Council has authority to amend or not amend the final Governance Rules as it deems relevant in response to the public community consultation process. The Governance Rules will be presented to Council for adoption on 26 August 2020 in order to meet the mandatory adoption timeline of 1 September 2020.

Submission Consideration – Officer Response

Mr Clive Hope's submission is contained in **Attachment [2.1.1]**. Mr Hope did not elect to speak to the submission.

The following Officer responses provide context for Council's consideration of the submission:

Definitions – The abbreviated definition of 'Rules' is used throughout the document. Greater clarity could be provided by modifying the definition to cover both 'Rules' and 'sub-rules' to 'mean these Governance Rules and the clauses contained within them.'

Clause 7.4 and 7.7, - Mayoral nominations – Nominations may come from any Councillor, for any Councillor, prior to the meeting. The nominated Councillor may wish to retain the right of accepting subject to knowing who else may be nominated. Every candidate should be able to reconsider their acceptance at the meeting, should they decide not to stand before the vote is taken.

Sub-clause 13.3(a)(ii) – The opening word 'to' can be deleted. This will improve the grammar associated with this sub-clause.

Clause 14.2 - Notice of Meeting - This clause provides the normal notice time to Councillors for a scheduled meeting. It also aims for any additional meeting to have the same notification period. Due to the nature of additional meetings the notice of meeting may not be able to be provided in the same notice period.

Clause 15 – Majority – The example of a majority has been provided for clarity purposes. There are some people not used to this terminology or what it means in effect.

Sub-clause 24.5 (e) – Application of term ‘Unworkable’ - The word ‘unworkable’ will be relevant where content and/or recommendations in a Notice of Motion/Rescission could not feasibly be actioned.

Sub-clause 24.5 (g) and clause 24.4 – Notice of Motion requirements for a seconder - Clause 24.4 is a rule specifically applicable to Councillors and sub-clause 24.5(g) is a rule specifically applicable to the Chief Executive Officer. Both rules are included to provide direction.

Clause 27.3 Seconding a Motion - The clause covers a potential gap whereby a Councillor may try to both move and second a motion. The inclusion of this rule would not allow that to happen and ensure that at least two Councillors are prepared to move the motion for the purposes of debate.

CONSULTATION

Council has sought public submissions on the Proposed Governance Rules through a formal s.223 public submission process in accordance with the *Local Government Act 1989*. Notices were placed in the local newspapers, on Council’s website, and to recipients of In-The Know. Copies were provided to the local Libraries. Hard copies were made available upon request, due to the required closure of Council’s Customer Service Centre due to the COVID-19 pandemic restrictions.

RESOURCES

There are no financial implications associated with the submissions or consultation process.

RISKS

Council is required under the Act to adopt a set of Governance Rules to replace the meeting procedure Local Law by 1 September 2020. Failure to meet this timeline would place Council in breach of the Act. It is possible that the final adopted Governance Rules may require further refinement at a later stage, when new regulations for the Act are released.

STAFF DISCLOSURE

Nil

ATTACHMENTS

Attachments are available on Council’s website: www.southgippsland.vic.gov.au

1. S.223 Submission - Proposed Governance Rules - Clive Hope - August 2020 - [2.1.1 - 1 page]

REFERENCE DOCUMENTS

Council Policy

Documents are available on Council’s website: www.southgippsland.vic.gov.au

Councillor Code of Conduct Policy (C14)

Human Rights Policy (C52)

Local Law No. 2 2020 - Meeting Procedures and Common Seal

Legislative Provisions

Local Government Act 1989

Local Government Act 2020

Local Law No. 2 2020.

3. MEETING CLOSED

NEXT MEETING

The next Council Meeting open to the public will be conducted as a virtual Meeting held on Wednesday, 26 August 2020, commencing at 2pm.

The Special Council Meeting closed at 1.00pm.

Confirmed this

26th day of August 2020.

Administrator Chair, Julie Eisenbise