

SOUTH GIPPSLAND SHIRE COUNCIL

Council Meeting Minutes

Election of Mayor and Determination and
Election of Deputy Mayor

17 November 2021

Council Chambers, Leongatha
Commenced at 9.30am



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*".

Copy of this Policy is located on Council's website
www.southgippsland.vic.gov.au.

PRESENT

COUNCILLORS:	Councillor Mohya Davies, Mayor Councillor Nathan Hersey, Deputy Mayor Councillor Sarah Gilligan Councillor Scott Rae Councillor Jenni Keerie Councillor Michael Felton Councillor John Schelling Councillor Clare Williams Councillor Adrian Darakai
NOT PRESENT:	-
OFFICERS:	Kerryn Ellis, Chief Executive Officer Anthony Seabrook, Director Sustainability Infrastructure Allison Jones, Director Performance and Innovation Rena Littlejohn, Director Economy and Community Development June Ernst, Acting Manager Governance Natasha Berry, Corporate and Council Business Officer

Kerryn Ellis, Chief Executive Officer, presided over the Council Meeting as Temporary Chair.

SOUTH GIPPSLAND SHIRE COUNCIL

Additional Council Meeting
Wednesday 17 November 2021
Council Chambers, Leongatha commenced at 9:30 AM

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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 TO THE COUNCIL MEETING

COVID Safe Plan

Over the past year the Federal and State Governments have had clear directives about social gatherings in respect of the COVID19 Pandemic. While restrictions have now eased across the State, Council is able to open the meetings to include a limited public gallery in accordance with the guidelines of a COVID Safe Plan. The Plan provides measures around physical distance, mask wearing, recording attendance and other Pandemic safe measures whilst attending the Meeting.

Access to the live stream through Council's Internet is another available option to the 'open' component of a Council Meeting. Link to the Live Stream on Council's website: [Live Streaming | Live Streaming | South Gippsland Shire Council](#)

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

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

We acknowledge the Bunurong and Gunaikurnai people as the Traditional Custodians of South Gippsland and pay respect to their Elders, past, present, and future, for they hold the memories, traditions, culture, and hopes of Aboriginal and Torres Strait Islander people of Australia.

1.5. APOLOGIES

Nil

1.6. CONFIRMATION OF MINUTES

RECOMMENDATION

That the Minutes of the South Gippsland Shire Council Meeting No. 464, held virtually online 20 October 2021 be confirmed.

RESOLUTION

MOVED: Cr Schelling

SECONDED: Cr Keerie

That the Minutes of the South Gippsland Shire Council Meeting No. 464, held virtually online 20 October 2021 be confirmed.

CARRIED UNANIMOUSLY

1.7. DECLARATION OF CONFLICTS OF INTEREST FOR COUNCILLORS

The *Local Government Act 2020* (the Act), Division 2 sets out the requirements relating to Conflict of Interest. Disclosure of a conflict of interest in respect of a matter to be considered at a Council Meeting is required under section 130(1)(a) and specifically applies to a relevant person being a Councillor, member of a delegated committee who is not a Councillor and a member of Council staff.

Council's *Governance Rules (C82)* (the Rules), clause 3.0 Disclosure of a Conflict of Interest at a Council Meeting sets out the prescribed manner required to disclose a conflict of interest at South Gippsland Shire Council.

The Rules require a Councillor and/ or staff member who has a conflict of interest in a matter being considered at a Council Meeting to announce before the matter is considered and disclose this in a written notice to the Chief Executive Officer. The details included in the disclosure, explain the nature conflict of interest, whether it is classified as general or material (s.127 and s.128), the name of the relevant person(s) and their relationship to them.

Failure to comply with disclosures of conflict of interest (s.130) may be subject to penalty points and/ or other disciplinary measures depending on the nature of the conflict.

The *Local Government Act 2020* can be accessed from the Victorian Legislation and Parliamentary documents website at www.legislation.vic.gov.au.

Council's *Governance Rules (C82)* can be accessed from [Council's Policies](#) webpage.

Nil

1.8. DECLARATION OF CONFLICTS OF INTEREST FOR STAFF

The *Local Government Act 2020* (the Act), Division 2 sets out the requirements relating to Conflict of Interest. Disclosure of a conflict of interest in respect of a matter to be considered at a Council Meeting is required under section 130(1)(a) and specifically applies to a relevant person being a Councillor, member of a delegated committee who is not a Councillor and a member of Council staff.

Council's *Governance Rules (C82) (the Rules)*, Chapter 5, clause 7, 8 and 9 sets the prescribed manner required for staff to disclose a conflict of interest when:

- *Preparing Reports for Meetings*
- *Exercise of Delegated Power*
- *Exercise of a Statutory Function*

Council staff must immediately upon becoming aware of a conflict of interest provide a written notice to the Chief Executive Officer disclosing the conflict of interest, explain the nature of the conflict and how it will be managed. Upon becoming aware and declaring a conflict of interest, a staff member may not exercise a power or perform a function in the matter. All prepared reports will record that staff member(s) have considered a conflict of interest and include if any, the details of a disclosure.

Failure to comply with disclosures of conflict of interest (s.130) may be subject to penalty points and/ or other disciplinary measures depending on the nature of the conflict.

The *Local Government Act 2020* can be accessed from the Victorian Legislation and Parliamentary documents website at www.legislation.vic.gov.au.

Council's *Governance Rules (C82)* can be accessed from [Council's Policies](#) webpage.

Nil

2. OBJECTIVE 4 - CUSTOMER FOCUSED ORGANISATION

2.1. ELECTION OF MAYOR

Performance and Innovation

Council Plan

Objective 4 - Customer Focused Organisation - Strategy 4.4 Build on leadership, governance, financial sustainability, shared values and cultural capabilities within the organisation

Council is required to abide by the Local Government Act 2020 and Council's Governance Rules 2020 in the proceedings of appointing a Mayor and Deputy Mayor.

EXECUTIVE SUMMARY

The purpose of this report is to facilitate the election of the Mayor.

Section 25 of the *Local Government Act 2020* (the Act), stipulates that Councillors must elect a Mayor of the Council, at a meeting that is open to the public. Section 26 determines that the meeting is to be held within one month of the general election.

The election of the Mayor must be chaired by the Chief Executive Officer (CEO) until the Mayor is elected and subject to s.25, be conducted in accordance with the *South Gippsland Shire Council Governance Rules (C82) (Governance Rules)*. Once the Mayor has been elected, they will assume the position of the Chair.

The term of office for the Mayor is for a one-year term. In accordance with ss.25 and 26 of the Act the Mayoral term will commence on 17 November 2021 upon appointment by Council and become vacant at the time and on the day of the election of the next Mayor, unless circumstances arise under ss.20, 22, 23 and 35 of the Act leads to the position of Mayor becoming vacant prior.

RECOMMENDATION

That Council:

1. Proceed to elect a Mayor of the South Gippsland Shire Council, in accordance with ss.25 and 26 of the Local Government Act 2020, for a period of one year;
2. Duly elect Councillor _____ to be appointed to the Office of Mayor.

3. Determines that the term will conclude on a day determined by the Council that is as close to the end of the one-year term as possible, unless the Office of Mayor becomes vacant earlier under ss.20, 22 or 35 of the Act.

RESOLUTION

MOVED: Cr Williams

SECONDED: Cr Rae

That Council:

1. **Proceed to elect a Mayor of the South Gippsland Shire Council, in accordance with ss.25 and 26 of the Local Government Act 2020, for a period of one year;**

CARRIED UNANIMOUSLY

RESOLUTION

MOVED: Cr Felton

SECONDED: Cr Darakai

2. **Duly elect Councillor Mohya Davies to be appointed to the Office of Mayor; and**
3. **Determines that the term will conclude on a day determined by the Council that is as close to the end of the one-year term as possible, unless the Office of Mayor becomes vacant earlier under ss.20, 22 or 35 of the Act.**

CARRIED UNANIMOUSLY

The Chief Executive Officer congratulated Councillor Davies and invited her to take the Chair for the remainder of the Meeting.

Councillor Davies assumed the Chair and addressed Council with an acceptance speech.

REPORT

Background

Section 25(3)(a)(b) of the Act states that the CEO presides as Temporary Chair at the Meeting until the Mayor is elected. This is also in accordance with Council's *Governance Rules*, Part B Clause 5.3.

The election of the Mayor will be supervised by Kerryn Ellis, the Chief Executive Officer who will be the Returning Officer for this Mayoral election.

Section 26(1) of the Act requires that the election of the Mayor (and Deputy Mayor) is to be held no later than one month after the general election and is open to the public.

As defined in s.18 of the Act:

1. *The role of the Mayor is to –*
 - a. *chair Council meetings; and*
 - b. *be the principal spokesperson for the Council; and*
 - c. *lead engagement with the municipal community on the development of the Council Plan; and*
 - d. *report to the municipal community, at least once each year, on the implementation of the Council Plan; and*
 - e. *promote behaviour among Councillors that meets the standards of conduct set out in the Councillor Code of Conduct; and*
 - f. *assist Councillors to understand their role; and*
 - g. *take a leadership role in ensuring the regular review of the performance of the Chief Executive Officer; and*
 - h. *provide advice to the Chief Executive Officer when the Chief Executive Officer is setting the agenda for Council meetings; and*
 - i. *perform civic and ceremonial duties on behalf of the Council.*
2. *The Mayor is not eligible to be elected to the office of Deputy Mayor.*

As defined in s.19 of the Act:

1. *The Mayor has the following specific powers –*
 - a. *to appoint a Councillor to be the chair of a delegated committee;*

- b. to direct a Councillor, subject to any procedures or limitations specified in the Governance Rules, to leave a Council meeting if the behaviour of the Councillor is preventing the Council from conducting its business;*
 - c. to require the Chief Executive Officer to report to the Council on the implementation of a Council decision.*
- 2. An appointment under subsection (1)(a) prevails over any appointment of a chair of a delegated committee by the Council.*

The term of office for Mayor is a one-year term, unless Council determines by exception to make the appointment for two years. A one-year term allows more Councillors over the three-year term of Council to nominate for this role as both a development opportunity and to share the associated workload and commitments.

As per the *Governance Rules* Part B clause 7.3, all nominations for the office of Mayor can be made by any Councillor and are to be submitted in writing to the CEO prior to the meeting. The nomination form must be seconded by another Councillor prior to it being submitted.

All nominees will indicate their acceptance of the nomination during the meeting. Any nominees not present at the meeting held to elect the Mayor, must have provided their acceptance in writing to the CEO, prior to the meeting.

Once nominations have been accepted, all Councillors contesting the election of the Mayor shall be known as candidates. The CEO will declare nominations closed before the meeting begins. If no nominations are received prior, the CEO will call for nominations at the meeting.

If there is only one nomination, the candidate nominated must be declared to be duly elected. If there is more than one nomination, the Councillors present at the meeting must vote for one of the candidates.

Section 61 of the Act requires that voting is to be carried out by a show of hands by each Councillor and is determined by the *absolute majority* which is greater than half the total number of the Councillors present at the meeting. With the exception of the voting method, the general provisions of Council's *Governance Rules* apply in regard to the election of Mayor and counting of votes.

CONSULTATION / COMMUNITY ENGAGEMENT

Not applicable as this is a statutory requirement.

RESOURCES / FINANCIAL VIABILITY

The Mayor and Councillors are provided an allowance to assist them in undertaking their civic duties. Section 39 of the Act sets out the requirements of a Council for setting allowances.

The State Government specifies the Mayoral and Councillor allowances are divided into three categories based on the income and population of each Council. South Gippsland Shire is listed as a Category 2 Council and the allowances (excluding 9.5 per cent superannuation) are currently:

- Mayoral allowance up to \$81,204 per annum; and
- Councillor allowance range between \$10,914 and \$26,245 per annum.

In addition to the above salaries, Councillors are entitled to 9.5 per cent superannuation. This is added to the allowance shown above.

Please note that the Mayor does not receive the Councillor allowance in addition to the Mayoral allowance.

These allowances are funded in the Annual Budget for each four-year term.

RISKS

Council is required by law to elect a Mayor. Failing to appoint a Mayor would result in a breach of the Act. This Council (Additional) Meeting to elect a Mayor has been held to ensure Council meets its legislative requirements under s.25 and s. 26 of the Act.

STAFF DISCLOSURE

All officers involved in the preparation of this report have considered and determined that they do not have a conflict of interest in the matter.

ATTACHMENTS

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

REFERENCE DOCUMENTS

Council's Good Governance Framework

Pillar 1. Direction & Leadership

Council Policy / Strategy / Plans

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

Governance Rules (C82)

Local Law No. 2 2020, Processes of Municipal Government (Meeting Procedures and Common Seal)

Legislative Provisions

Local Government Act 2020

2.2. DETERMINATION AND ELECTION OF DEPUTY MAYOR

Performance and Innovation

Council Plan

Objective 4 - Customer Focused Organisation

Objective 4 - Customer Focused Organisation - Strategy 4.4 Build on leadership, governance, financial sustainability, shared values and cultural capabilities within the organisation

Council is required to abide by the Local Government Act 2020 in the proceedings of appointing a Deputy Mayor.

EXECUTIVE SUMMARY

The purpose of this report is to determine if a Deputy Mayor is to be appointed and if so, facilitate the election of the Deputy Mayor. Establishing a Deputy Mayor's role is to assist and reduce the workload pressures on the Mayor.

Section 20A of the *Local Government Act 2020* (the Act) allows for Council to establish an office of Deputy Mayor by resolution of Council. The *South Gippsland Shire Council Governance Rules (C82)* (Governance Rules), also provides for the election of a Deputy Mayor, if desired by Council under Part B clause 5.4.

Section 27 of the Act, indicates that ss.25 and 26 applies to the election of a Deputy Mayor as if any reference in those sections to the Mayor was a reference to the Deputy Mayor.

The election of the Deputy Mayor will be chaired by the newly elected Mayor in accordance with Council's *Governance Rules*.

The term of office for the Deputy Mayor is for a one-year term, unless Council determines by exception to make the appointment for two years. A one-year term allows more Councillors over the three-year term of Council to nominate for this role as both a development opportunity and to share the associated workload and commitments.

In accordance with ss.25, 26 and 27 of the Act the Deputy Mayoral term will commence on 17 November 2021 upon appointment by Council and become vacant at the time and on the day of the election of the next Mayor, unless circumstances arise under ss.20, 22, 23 and 35 of the Act leads to the position of Deputy Mayor becoming vacant prior.

RECOMMENDATION

That Council:

1. Proceed to elect a Deputy Mayor of the South Gippsland Shire Council, in accordance with ss.25, 26 and 27 of the Local Government Act 2020, for a period of one year;
2. Duly elect Councillor _____ to be appointed to the Office of Deputy Mayor; and
3. Determines that the term will conclude on a day determined by the Council that is as close to the end of the one-year term as possible, unless the Office of Deputy Mayor becomes vacant earlier under ss.20, 22 or 35 of the Act.

RESOLUTION

MOVED: Cr Keerie

SECONDED: Cr Gilligan

That Council:

1. **Proceed to elect a Deputy Mayor of the South Gippsland Shire Council, in accordance with ss.25, 26 and 27 of the Local Government Act 2020, for a period of one year;**

CARRIED UNANIMOUSLY

RESOLUTION

MOVED: Cr Felton

SECONDED: Cr Gilligan

2. **Duly elect Councillor Nathan Hersey to be appointed to the Office of Deputy Mayor; and**
3. **Determines that the term will conclude on a day determined by the Council that is as close to the end of the one-year term as possible, unless the Office of Deputy Mayor becomes vacant earlier under ss.20, 22 or 35 of the Act.**

CARRIED UNANIMOUSLY

REPORT

Background

Council's *Governance Rules* provides for the election of a Deputy Mayor if determined by Council. This role is to deputise for the Mayor in providing a leadership and formal representational presence at civic, ceremonial and public engagements; and chairs Council Meetings on occasions when the Mayor is unable to do so.

As defined in s.21 of the Act:

1. *The Deputy Mayor must perform the role of the Mayor and may exercise any of the powers of the Mayor if—*
 - a. *the Mayor is unable for any reason to attend a Council meeting or part of a Council meeting; or*
 - b. *the Mayor is incapable of performing the duties of the office of Mayor for any reason, including illness; or*
 - c. *the office of Mayor is vacant.*

Section 61 of the Act requires that voting is to be carried out by a show of hands by each Councillor and is determined by the *absolute majority* which is greater than half the total number of the Councillors present at the meeting. With the exception of the voting method, the general provisions of Council's Governance Rules regarding the election of Deputy Mayor and counting of votes apply.

The office term of Mayor will commence on 17 November 2021 upon appointment by Council and become vacant at 6.00am on the day of a Council (Additional) Meeting to be scheduled at the time and on the day of the election of the next Mayor, unless circumstances arise under ss.20, 22, 23 and 35 of the Act leads to the position of Deputy Mayor becoming vacant prior.

If a Deputy Mayor is not elected then Council will be required to make a Council resolution each time the Mayor is unable to fulfil their role. This may cause problems for the Council if faced with a situation where an Acting Mayor is required at short notice and a resolution cannot be made at a Council meeting in time.

CONSULTATION / COMMUNITY ENGAGEMENT

The current Council were declared to Office on 9 November 2021 and undertook their Oath or Affirmation of Office on 16 November 2021. This Oath

or Affirmation allows each Candidate to take up with their position of Councillor.

Councillors have considered this report prior to this Council (Additional) Meeting. Due consideration has been given to the responsibilities to be undertaken by the Deputy Mayor and its associated role and commitments.

RESOURCES / FINANCIAL VIABILITY

Councillor allowances are currently funded in annual budgets. No additional allowance is paid to a Deputy Mayor beyond the Councillor allowance as per s.39 of the Act.

RISKS

Establishing a Deputy Mayor's role reduces the workload pressures on the Mayor, and aims to mitigate a potential occupational health and safety concern for the Mayor.

STAFF DISCLOSURE

All officers involved in the preparation of this report have considered and determined that they do not have a conflict of interest in the matter.

ATTACHMENTS

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

REFERENCE DOCUMENTS

Council's Good Governance Framework

Pillar 1. Direction & Leadership

Council Policy / Strategy / Plans

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

Governance Rules (C82)

Local Law No. 2 2020, Processes of Municipal Government (Meeting Procedures and Common Seal)

Legislative Provisions

Local Government Act 2020

3. CLOSED SESSION

The *Local Government Act 2020* (the Act), section 66 provides that if a council or delegated committee determines that a meeting is to be closed to the public to consider confidential information, the Council or delegated committee must record in the minutes of the meeting that are available for public inspection –

- a) the ground or grounds for determining to close the meeting to the public by reference to the grounds specified in the definition of ***confidential information*** in section 3(1); and
- b) an explanation of why the specified ground or grounds applied.

The Act defines ***confidential information*** in s.3(1)(a)-(l), and includes information that may prejudice or impact; commercial negotiations, the security of Council, land use planning, law enforcement, legal privilege, personal information, private commercial information, confidential meeting information, internal arbitration, Councillor conduct panel information and information specified under s.77 of the previous *Local Government Act 1989*.

Once confidential information has been considered and decided in a closed session of a Council Meeting, a further resolution to resume open Council is required.

Nil

4. MEETING CLOSED

NEXT MEETING

The next Council Meeting open to the public will be held on Wednesday, 24 November 2021 commencing at 1pm in the Council Chambers, Leongatha.

The Council Meeting closed at 9.51am.

Confirmed this

24th day of November 2021.

Councillor Mohya Davies, Mayor