



MINUTES ORDINARY COUNCIL MEETING

TUESDAY, 7 JULY 2009

**IN THE COUNCIL CHAMBER, CORPORATE CENTRE
1ST FLOOR, 273 MAIN STREET, BAIRNSDALE**

COMMENCING AT 6.00 P.M.

Present

Councillors Meredith Urie (Mayor), Trudy Anderson, Richard Ellis, William Gamble, Michael Freshwater, Peter Neal and Jane Rowe.

Officers Steve Kozlowski (Chief Executive Officer), Andrew Fearn-Wannan (Manager Administration and Human Resources), Kate Nelson (Director Planning and Community), Chris Waites (Director Infrastructure), John Websdale (Director Corporate and Economic Development), Matt Youell (General Manager Commercial).

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Steve Kozlowski
Chief Executive Officer

ITEM 1

PROCEDURAL

1. PROCEDURAL

1.1. APOLOGIES

Cr Ben Buckley and Cr Marianne Pelz

1.2. DECLARATION OF CONFLICT OF INTEREST

Cr Urie declared a Conflict of Interest in respect of Item 6.2.9 – Adoption of Combined Planning Scheme Amendment (C72) and Planning Permit Application (451/2008/P) for the development of shops, offices and medical centre at Howitt Avenue, Lucknow as an indirect interest.

1.3. CONFIRMATION OF MINUTES

Cr Jane Rowe / Cr Peter Neal

THAT THE MINUTES OF THE ORDINARY COUNCIL MEETING HELD ON 2 JUNE 2009, THE SPECIAL COUNCIL MEETING HELD ON 16 JUNE 2009, AND THE SPECIAL COUNCIL MEETING HELD ON 30 JUNE 2009 BE CONFIRMED.

CARRIED UNANIMOUSLY 07/07/2009

1.4. REQUESTS FOR LEAVE OF ABSENCE

Nil

1.5. PETITIONS

Nil

1.6. NEXT MEETING

Tuesday, 4 August 2009 commencing in the Corporate Centre at 6.00 p.m.

ITEM 2

PUBLIC QUESTION TIME

2. PUBLIC QUESTION TIME

There were no public questions.

ITEM 3

COUNCILLORS' REPORTS

3. COUNCILLORS' REPORTS

3.1. CR JANE ROWE

Cr Rowe advised that she attended the National General Assembly of the Australian Local Government Association in Canberra from 21 to 24 June 2009, together with other Councillors where discussions were conducted into; climate change and local government's responsibilities and challenges, the concept of direct federal funding for local government and constitutional recognition for local government.

Cr Rowe reported that together with the Mayor, Deputy Mayor and Chief Executive Officer along with the Mayors of Towong Shire and Wellington Shire she attended a delegation to the Minister of Agriculture discussing the impact of ongoing dryness in the region and climate change on farming communities.

3.2. CR RICHARD ELLIS

Cr Ellis reported that he also attended the National General Assembly of the Australian Local Government Association in Canberra. He Cr Ellis advised that together with the Chief Executive Officer met with the Shadow Minister for Tourism, the Arts and Small Business to promote the Shire, and also met with Member for Gippsland Darren Chester

Cr Ellis indicated there was also opportunity while at the Assembly to negotiate an interest in attracting the National Recreational Owners Gathering to East Gippsland in 2012.

Cr Ellis also reported on the retirement of Andrea Klindworth the former Executive Officer of Gippsland Regional Waste Management Group.

3.3. CR MICHAEL FRESHWATER

Cr Freshwater reported that he also attended the National General Assembly of the Australian Local Government Association in Canberra and attended a brief National Timber Towns meeting.

Cr Freshwater advised that he attended the Lindenow Lions Club changeover on 15 June 2009 and the Bairnsdale Lions Club changeover on 27 June 2009, noting the charitable distributions made by the Clubs to the community.

3.4. CR WILLIAM GAMBLE

Cr Gamble reported a number of Councillors had undertaken a tour of the vegetable growing areas Lindenow and Wuk Wuk meeting with industry representatives. He also reported that he attended the National General Assembly of the Australian Local Government Association in Canberra and noted the relevance of climate change to the East Gippsland region.

3.5. CR PETER NEAL

Cr Neal reported that during the past month he attended the following events and meetings:-

Transitional Towns Forum conducted by the Municipal Association of Victoria in Melbourne on 4 June 2009.

Community Learning Project Student Presentation at the Alpine School Snowy River Campus, School for Student Leadership on 13 June 2009.

Sunrise Rotary Club changeover dinner on 13 June 2009.

Release of first draft of the "All Abilities Playground" project on 15 June 2009.

Positive Ageing Reference Group meeting on 16 June 2009.

Leadership Training course in Melbourne on 18 and 19 June 2009.

National General Assembly of the Australian Local Government Association in Canberra.

Municipal Association of Victoria Cycling Group meeting on 2 July 2009.

Melbourne Boat Show with Council Officer from the Economic Development Unit to promote the East Gippsland region.

3.6. CR TRUDY ANDERSON

Cr Anderson reported on the following groups and events she attended during the past month:-

Jabiru National – Benambra Mine update.

Alpine Advisory Committee.

Bogong High Plains Road Information Session on 29 June 2009.

Community information session in Omeo about filming of the Red Hill production.

Launch of the Omeo to Bright Transport Link.

Vegetable Growing industry representatives meetings in the Lindenow area.

3.7. MAYORAL REPORT

Cr Urie acknowledged the recent death of Arthur Beale OAM, who served as a member of the East Gippsland Disability Advisory Committee from 2004 to 2008 and was Chair in 2007, and spoke of his contribution to the Shire.

Cr Urie reported that during the past month she attended the following meetings and activities:-

National General Assembly of the Australian Local Government Association.

Australian Council of Local Government meeting.

Launch of Victoria's East, an East Gippsland Marketing Board initiative on 24 June 2009.

Lakes Entrance Rotary Club changeover dinner on 27 June 2009.

Cr Urie congratulated Shire staff for winning the Sir Rupert Hamer Records Management Award for innovation in records management in the Victorian Public Sector.

ITEM 4

NOTICES OF MOTION AND/OR RESCISSION

4. NOTICES OF MOTION AND/OR RESCISSION

4.1. NOTICE OF MOTION NO. 1/2009: ASSESSMENT OF BASTION POINT OCEAN ACCESS BOAT RAMP MALLACOOTA – CR BILL GAMBLE

Preamble by Cr Bill Gamble:

“Council’s proposal to upgrade an Ocean Access Facility at Mallacoota was first proposed well before 2005.

The proposals suggested were many and varied.

The last resolution of Council which clearly indicated Council’s ongoing intentions to have an upgraded facility constructed was 23rd August 2005, seeking approval for the construction of the Boat ramp at site 3 with 50% or 90% usability.

I propose that Council take no further action in relation to option 3 due to many unresolved issues, including, but not limited to; environmental, safety, sand movement, marine ecology, native vegetation, wilderness coast tourism, landscape character, social benefit and Aboriginal Heritage.”

Notice of Motion:

Take notice that it is my (Cr Bill Gamble) intention to move at an Ordinary Meeting of Council to be held on Tuesday, 7 July 2009 at 6.00 p.m. or at any adjournment thereof:

“That East Gippsland Shire Council notes the Planning Minister’s findings and recommendations, and having reassessed its position, move to establish a broadly based Community Advisory Committee and appoint an independent facilitator to assist East Gippsland Shire Council in developing the detailed design of the minor upgrade of the existing ramp, taking into account the issues listed in the Panel Report and the Planning Minister’s Assessment.”

Oral Submissions

1. Pearl Findlay-James, (Abalone Fishermen’s Cooperative Limited).
2. Pearl Findlay-James, (Destination Gippsland Limited).
3. Pearl Findlay-James, (East Gippsland Regional Business and Tourism Association).
4. Vaughan William Edgar, Mirrabooka Road, Mallacoota.
5. David Huxtable, Terra Nova Drive, Mallacoota (Save Bastion Point Campaign Representative).
6. Ian Lewis, Mallacoota. (Mallacoota Ocean Access Committee)
7. Kevin Lott, Commercial Road, Mallacoota.
8. Jean Nichels, Bastion Point Road, Mallacoota.
9. Michael Perry, Brady Street, Mallacoota.
10. Steve Waixel, Maurice Avenue, Mallacoota. (Mallacoota Business and Tourism Association)
11. Matthew Watts, Bastion Point Road, Mallacoota.

David Huxtable and Michael Perry both provided written copies of their verbal submissions.

David Huxtable also tabled a petition in respect of the Notice of Motion. The petition carries 155 signatures and contains the following plea:-

“We the undersigned residents of Mallacoota respectfully request Council adopt the recommendation detailed in the Planning Panel Report into the Ocean Access Boat Ramp Bastion Point Mallacoota. Quote: “The panel recommends that EGSC establish a broadly based community advisory committee and appoint an independent facilitator to assist EGSC in developing the detailed design of the minor upgrade of the existing ramp, consistent with the general scope set out(by the Panel p 152).”.”

Due to issues associated with the Information Privacy Act 2000, a copy of the petition is not reproduced here.

PROCEDURAL MATTER

Cr Jane Rowe / Cr Peter Neal

THAT IN RESPECT OF ITEM 4.1, IN ACCORDANCE WITH CLAUSE L7.18 OF THE PROCEDURES FOR MEETINGS LOCAL LAW, THE MAXIMUM SPEAKING TIMES FOR COUNCILLORS BE EXTENDED TO 10 MINUTES.

CARRIED UNANIMOUSLY 07/07/2009

Cr William Gamble / Cr Meredith Urie

That East Gippsland Shire Council notes the Planning Minister's findings and recommendations, and having reassessed its position, move to establish a broadly based Community Advisory Committee and appoint an independent facilitator to assist East Gippsland Shire Council in developing the detailed design of the minor upgrade of the existing ramp, taking into account the issues listed in the Panel Report and the Planning Minister's Assessment.

Amendment

Cr Jane Rowe / Cr Michael Freshwater

That Council notes the Planning Minister's findings and recommendations in relation to the proposed ocean access boat ramp, Bastion Point, Mallacoota and establishes a community advisory committee as detailed in its decision of 23 August 2005 to assist Council in working with Department of Sustainability and Environment, Marine Safety Victoria and Gippsland Ports to develop the specific construction design as highlighted in the Ministers assessment, subject to receiving government financial assistance to undertake the design work.

PROCEDURAL MATTER

The Chair ruled on a point of order not to accept the proposed Amendment as it did not satisfy the requirements of an Amendment as per Clause L7.6 of the Procedures for Meetings Local Law.

Motion of Dissent

Cr Jane Rowe / Cr Michael Freshwater

THAT THE POINT OF ORDER RULING BE OVERTURNED ON THE BASIS THAT THE PROPOSED AMENDMENT DOES QUALIFY AS AN AMENDMENT AS DEFINED BY CLAUSE L7.6 OF THE PROCEDURES FOR MEETINGS LOCAL LAW.

CARRIED 07/07/2009

For: Crs. Trudy Anderson, Michael Freshwater, Peter Neal and Jane Rowe.

Against: Crs. Richard Ellis, William Gamble and Meredith Urie.

The Amendment was Put and CARRIED 07/07/2009

For: Crs. Trudy Anderson, Richard Ellis, Michael Freshwater, Peter Neal and Jane Rowe.

Against: Crs.. William Gamble and Meredith Urie.

The amendment became the motion.

Further Amendment

Cr Richard Ellis / Cr Trudy Anderson

THAT COUNCIL NOTES THE PLANNING MINISTER'S FINDINGS AND RECOMMENDATIONS IN RELATION TO THE PROPOSED OCEAN ACCESS BOAT RAMP, BASTION POINT, MALLACOOTA AND ESTABLISHES A COMMUNITY ADVISORY COMMITTEE AS DETAILED IN ITS DECISION OF 23 AUGUST 2005 TO ASSIST COUNCIL IN WORKING WITH DEPARTMENT OF SUSTAINABILITY AND ENVIRONMENT, MARINE SAFETY VICTORIA AND GIPPSLAND PORTS TO DEVELOP THE SPECIFIC CONSTRUCTION DESIGN AS HIGHLIGHTED IN THE MINISTERS ASSESSMENT, SUBJECT TO RECEIVING GOVERNMENT FINANCIAL ASSISTANCE TO UNDERTAKE THE DESIGN WORK, AND THAT SUCH COMMITTEE PROVIDE SAFETY AND ECONOMIC ANALYSIS OF SUCH CONSTRUCTION DESIGNS AS AT THE CURRENT DATE AND THAT SUCH DESIGNS AND REPORTS BE BROUGHT FORWARD TO COUNCIL FOR FINAL ASSESSMENT PRIOR TO SUBMISSION TO THE MINISTER FOR ENVIRONMENT AND CLIMATE CHANGE TO SEEK COASTAL MANAGEMENT ACT CONSENT.

The further amendment was Put and CARRIED 07/07/2009

For: Crs. Trudy Anderson, Richard Ellis, Michael Freshwater and Jane Rowe.

Against: Crs.. William Gamble, Peter Neal and Meredith Urie.

The further amendment became the motion.

The motion and was put and CARRIED 07/07/2009

For: Crs. Trudy Anderson, Richard Ellis, Michael Freshwater and Jane Rowe.

Against: Crs.. William Gamble, Peter Neal and Meredith Urie.

PROCEDURAL MATTER

The meeting was adjourned for a short recess at 8.30 p.m.

The meeting was resumed at 8.58 p.m.

ITEM 5

DEFERRED

BUSINESS

5. **DEFERRED BUSINESS**

Nil

ITEM 6

OFFICERS'

REPORTS

6. OFFICERS' REPORTS

6.1. LIVEABILITY

Nil

6.2. SUSTAINABILITY

6.2.1. PLANNING APPLICATION 425/2008/P – 36 WYATT ROAD, JOHNSONVILLE - USE AND DEVELOPMENT OF LAND FOR RACING DOG KEEPING AND RACING DOG TRAINING

DEPARTMENT	Planning and Community
AUTHORED BY:	Bill Williams, Planning Officer
ENDORSED BY:	Kate Nelson, Director Planning and Community
DOCUMENT NO.	3552846

In attendance

Kate Nelson, Director Planning and Community
Aaron Hollow, Manager Development

1 OBJECTIVE

This planning application has been through the public notification process and has attracted objections. This report presents the planning background to the proposal and seeks Council's decision on the application.

2 BACKGROUND

Application No.	425/2008/P	
Address	36 Wyatt Road Johnsonville	
Zone	Farming Zone Schedule 1 (FZ1)	
Overlay	Design and Development Overlay 7 (DDO7)	
	Erosion Management Overlay (EMO)	
Permit requirements	Clause	Complies
	Clause 15 Environment	No
	Clause 17 Economic Development	Yes
	Clause 21.05 Objectives- Strategies- Implementation	Yes
	Clause 35.07 Farming 1 Zone	Yes
	Clause 43.02 Design and Development Overlay	No
	Clause 44.01 Erosion Management Overlay	Yes
	Clause 65 Decision Guidelines	No
<i>Why is a planning permit required?</i>	Use of the land for Racing Dog Keeping and Racing Dog Training, and Buildings and Works associated with Racing Dog Keeping and Racing Dog Training.	

Site Plan

A plan that includes details of the site location, the location of properties given notice of the application and nearby objectors is provided at **Attachment 1**.

The land is located on the northern side of the Princes Highway to the west of Johnsonville on a small rural living lot 7.492 hectares in area. The land is part of a complex of rural living sized lots within the highway corridor surrounded by broad scale farming. The subject land is formally described as Lot 1 on PS 219244R.

The land slopes broadly to the east and south to a natural drainage line which runs from east to west. A small dam is located in the drainage line and the land is developed with a brick dwelling with access from Wyatt Road. In addition to the dwelling the land is developed with five steel framed animal enclosures.

Wyatt Road is a gravel surface all weather road which extends from the highway to the south and to Hermans Road to the north. Between the northern boundary of the land and Hermans Road is the Bumberrah Cemetery. To the east of the land is a triangular sized lot developed with a timber dwelling towards the eastern end and used on an annual basis for the Salt Creek Campdraft.

Across Wyatt Road to the west of the subject land are three dwellings with access from Wyatt Road.

To the north of the cemetery the land is used for agriculture with the nearest dwelling approximately 480 metres away from the northern property boundary of the subject site.

To the south across the highway there are two dwellings located approximately 70 and 210 metres away from the southern property boundary of the subject site.

Description of Proposal

The use and development of the land has occurred and is currently established on the land without a planning permit.

This application seeks approval to formalise the use and development of the land for racing dog keeping and racing dog training for a maximum of 19 dogs.

The facilities will be located to the east of the existing dwelling and will consist of the following:

- A 17.28 metre by eight metre masonry block kennel with attached puppy yards;
- 10 spelling yards constructed of zincalume steel;
- Two handslipping yards to the immediate north and south of the spelling yards;
- Landscaping; and
- A 1.8 metre high colorbond security fence enclosing the proposed facility.

Plans of the proposal are provided at **Attachment 2**

3 CURRENT STATUS AND/OR ISSUES

Referrals	Environment Protection Authority, Department of Sustainability and Environment, and Council's Environmental Health Department. No objections to the issue of a permit was received from the agencies, however the EPA has provided further detailed advice in respect to the possible noise implications associated with this type of facility following the conduct of the Planning Consultation Meeting.
Notification	Public notices were sent to abutting owners and occupiers twice. The first notification attracted objections. The applicant was notified and advised that he had the option of providing additional information and amending the application. This occurred and it was considered that further public notification was required as the application was now amended. Public notices were sent to abutting owners and occupiers again. Objections were also received for the second notification.
Objections	A total of six objections were received.

Objections

Issues raised in the objections can be summarised as follows: -

- Noise from the dogs;
- Loss of property value;
- Adverse visual impacts;
- Possible off site waste contamination;
- The effect of the proposal on the operation of the cemetery;
- Effect on the amenity of the area; and
- The land has been used and developed without permission.
- Concern that the property may be converted to boarding kennels in the future.

It is also noted that a letter of support was received from five (5) surrounding landowners, including the Bumberrah Cemetery Trust indicating that they do not object to the application and that they do not believe that the noise generated by the facility is excessive.

4 CONSULTATION WITH STAKEHOLDERS

The applicant was advised that he needed a planning permit to use the land for more than five animals before he established the facility on the land. He was sent a planning application form and advised on the information requirements to accompany the planning application.

After three and a half months Council had not received an application for a planning permit and a Planning Infringement Notice was issued.

Officers subsequently met with the applicant and advised the requirements of the planning scheme and how to prepare the planning application.

After the application had been received and advertised the application attracted objections. The applicant was advised of the objections and provided with copies. Officers again met with the applicant advising him to obtain a copy of the *Code of Practice*

for the Greyhound Industry and to contact the Environment Protection Authority (EPA) for advice on the preparation of a response to the concerns of the objectors.

It was explained that the reasons for the readvertising was that there had been changes to the proposal that had originally been advertised as a response to the concerns of the objections.

Officers spoke with objectors advising them on the process of the application and the options available for input, review and discussion. Advice was also given to the objectors for the reasons why the application had been readvertised and for the delay in presenting the application to Council.

The application was presented to a Planning Consultation Meeting (PCM) and the Record of the meeting is provided at **Attachment 3**.

After the PCM Officers consulted with the EPA and researched possible options to reduce the transmission of noise to nearby residences.

5 IMPLICATIONS

Financial

Nil

Planning Scheme Requirements

Clause 15.05 Noise abatement

15.05-1 Objective

To assist the control of noise effects on sensitive land uses.

The relevant EPA guideline in relation to the control of noise requires a separation of 500 metres from kennels to the nearest residence which is defined as a sensitive land use. At this location the nearest residence is approximately 150 - 200 metres from the proposed facility.

Farming Zone Schedule 1

The subject land is within the Farming Zone as is the land surrounding the subject site. The purpose of the Farming Zone is to:

- *Provide for the use of land for agriculture, encourage the retention of productive agricultural land, ensure that non-agricultural uses, particularly dwellings, do not adversely affect the use of land for agriculture, and to protect and enhance natural resources and the biodiversity of the area.*

The Farming Zone provides a wide range of decision guidelines intended to assist Council's consideration of a proposed use of the land and associated buildings and works.

Council must consider whether the site is suitable for the use or development and whether the proposal is compatible with adjoining and nearby land uses.

As a general rule, this type of use would be encouraged to establish in areas zoned for Farming purposes given the possible implications for amenity impacts to surrounding properties. Areas designated for farming purposes facilitate all sorts of farming activities, some of which happen at irregular hours and that can generate additional noise. As a result expectations of residential amenity are reduced in the Farming Zone.

The subject site and the immediately surrounding lots could be described as rural living lots as a result past approval of small lots for housing in a Farming area. These rural living lots have been created in the past for a rural living and not an agricultural purpose. Issues associated with the impact of this application highlight issues that can be encountered by land uses that might normally be appropriate in farming areas, where the ad hoc creation of smaller lots for housing purposes has been allowed.

Design and Development Overlay 7

The entire property is covered by a Design and Development Overlay (DDO) covering the Highway corridors on the Princes Highway and Great Alpine Road

1.0 Design objectives

- *To ensure that development in the Highway corridors in non-urban areas is managed to minimise adverse effects on the safe and efficient flow of traffic along the highways;*
- *To encourage high standards of design and the use of appropriate materials in building and works to be constructed within the highway corridors;*
- *To prevent linear or ribbon development along the Highway corridors; and*
- *To protect significant native vegetation in the Highway road reserves.*

In addition the decision guidelines require an assessment of the following:

- *The proposed design and materials of the building and its likely impact on the visual amenity and character of the area.*

The DDO is designed to encourage development be set back at least 40 metres from the property boundary adjoining the Highway corridor. The development associated with this application is located approximately 190 metres from the highway on an elevated part of the land which slopes towards the highway. The development currently presents as a linear mass which is apparent from the highway. This application seeks to further develop the land with a kennel block, handslipping yards and a 1.8 metre high security fence enclosing the proposed facility.

It is considered that the existing proposal has an adverse visual impact within the highway corridor in both directions. The proposed further development of the facility will increase this detrimental visual impact. It is acknowledged that landscaping has the potential over time to partially or completely minimise this visual impact. However this will take considerable time to effectively establish without an irrigation system and appropriate water availability. It is estimated that this could take on average 10 to 15 years for the landscaping to effectively screen the proposed facility.

Response to objections

Noise from the dogs

The *Code of Practice for the Greyhound Industry March 2008* (which is not a statutory document in the Planning process) recommends that an operator of a facility ensures that the greyhound premises does not cause undue or unreasonable noise impacts on neighbouring properties. In addition the code requires all establishments to meet relevant noise standards as set by the *State Environment Protection Policy (N1)*. The planning scheme requires compliance with the *State Environment Protection Policy (N1)*.

The applicant has indicated that a number of measures will be taken to minimise the effect of noise such as a masonry kennel, barking muzzles and visual shields around the facility. It is considered that these measures have the potential to attenuate the transmission of noise when the dogs are in the kennel and are under constant supervision. It is less clear that when the dogs are outside the kennels that any of the proposed measures will effectively reduce noise being transmitted to adjoining and neighbouring dwellings. This would particularly be the case if the owner/operator is not always present on the site and would not be able to immediately attend to barking dogs.

Objectors have indicated that noise has impacted on them during the operation of this facility to date. Council Officers have visited the site on three occasions during the day and on three occasions during the evening. On four of the six occasions the dogs at this facility were heard to bark. It was considered that this level of noise was unreasonable and significantly disruptive to the amenity enjoyed by surrounding properties.

Consequently this would appear to breach *Element 5- Noise emissions of A Code of Practice for the Greyhound Industry March 2008* which has the following *Key objective*:

- *To ensure that greyhound premises do not cause unreasonable noise impacts on neighbouring properties; and*

The specific requirement to be met includes:

- *That all establishments must meet relevant noise standards as set out by the State Environment Protection Policy (N1).*

In a planning context the *State Environment Protection Policy (N1)* requires the following:

- *Planning should avoid conflicts between premises which generate substantial noise and local communities by ensuring that there is sufficient separation between the two. Good planning will, in the long term, benefit businesses by avoiding the need to retrofit expensive noise control measures, and benefit residents by protecting them from sources of noise near residences and other noise sensitive sites.*

EPA guidelines recommend a separation of 500 metres between a dog kennel and a noise sensitive uses such as a dwelling. As outlined above the nearest dwelling is approximately 150 - 200 metres from the proposed facility.

Advice obtained by officers from the EPA was that the only effective way of reducing the transmission of noise to nearby dwellings is via earth mounds surrounding the entire proposed facility. However further advice was that these mounds are only as effective as their weakest point which is an opening. Given the location of the dwellings, and the topography of the land which appears to funnel noise towards the west and south, it is

considered that any opening and most mounds would cause noise to leave the facility and contravene EPA guidelines. For a mound to be effective it is estimated that the height of the mound to the south, south west and south east would need to be in excess of 10 metres in height. Given the other constraints on the site - the Erosion Management Overlay and the location of the drainage line and the dam to the south, it is difficult to imagine that the option of mounding would be viable or effective.

The applicant stated at the PCM that there were at that time 10 dogs and six 11 week old pups. This application is to use the land for 19 dogs which has the capacity to further increase the possible noise level.

Given the establishment of the facility already on the land any attempts by the applicant in over a year to manage the facility to address noise complaints do not appear to have been successful.

Loss of property value

No evidence is available to Council to support this position.

Adverse visual effects

The location of the land is adjacent to the highway. Although well set back from the Highway, the location and orientation of the land and the position of the proposed facilities means that they are visible from the highway and from surrounding properties. A Design and Development Overlay is part of the planning scheme which is designed to protect the visual amenity, landscape and character of this rural area from the Highway.

The applicant has submitted proposed landscape plans to minimise the visual effects of the proposal. As outlined above an option is available to condition a permit which has the capacity to minimise the visual impacts over time. However it is considered that even with such a condition it likely that the proposed development will affect the visual amenity of the area for a considerable period of time.

Possible off site waste contamination

The *Code of Practice for the Greyhound Industry March 2008* and conditions required by Councils Environment Health Unit require waste to be contained on the site and managed in an environmentally sustainable manner.

The requirements of the Code in relation to the containment of waste on site are able to be satisfied by conditions on a permit.

The effect of the proposal on the operation of the cemetery

It has been submitted by an objector that the type of environment required at a burial is diminished by noise from dogs.

The cemetery abuts the land to the immediate north. Council is advised by the Bumberrah Cemetery Trust that although this cemetery is only used on average seven times a year the cemetery is visited at least once every day. It is considered that the nature of the ceremony associated with the burial and the associated visits is solemn. It is considered that barking dogs would detract from the solemnity of these visits and ceremonies.

The effect on the amenity of the area

The immediate area currently consists of a number of rural living lots on either side of the highway within an environment of broad scale mixed grazing and farming properties. The amenity of the area could be characterised as rural with the influence of the highway.

Amenity of the area includes visual amenity and noise and these have been addressed previously in this report. In this location with the pattern of lot sizes it is considered that residents could have an expectation of amenity reflecting a rural living situation.

The land has been used and developed without permission

As outlined above the land is currently used and developed with an existing facility without planning approval. This application has been made to address the requirements of the East Gippsland Planning Scheme. In situations like this, where use and development has commenced illegally, officers will usually work with the land owner to obtain facilitate a suitable outcome. While one option is to have the land owner lodge an application to attempt to legalise the use and development, it is sometimes difficult to determine whether or not this course of action will be successful, particularly where notice of the application will be required to be given. As such, officers cannot and do not provide land owners with any expectation about whether or not the proposal will be successful. This is the case in for this application.

During the assessment process Council officers have met with the applicant and advised of the objections and on a range of measures that could improve the application in relation to the concerns of the objectors.

6 CONCLUSIONS

This application seeks planning approval to retrospectively use and develop land to the west of the township of Johnsonville for racing dog keeping and racing dog training.

The application has been assessed against the requirements of the planning scheme as outlined above.

It is considered that the proposed use will not to comply with these requirements and the application is recommended for refusal.

7 APPENDICES

Nil

8 ATTACHMENTS

1. Site Plan
2. Plans of the proposal
3. Record of the Planning Consultation Meeting

RECOMMENDATION

That Council, being the Responsible Authority and having considered all the relevant planning matters, determines that planning application 425/2008/P is inconsistent with the requirements and objectives of the East Gippsland Planning Scheme and therefore resolves to refuse the application to use and development the land at 36 Wyatt Road Johnsonville for racing dog keeping and racing dog training on the following grounds:

- 1. the application is contrary to and inconsistent with the requirements of the State Planning Policy Framework;*
- 2. the application is inconsistent with the objectives of Clause 15.05 relating to noise abatement in the State Planning Policy Framework;*
- 3. the application is contrary to and inconsistent with the design objectives and decision guidelines of the Design and Development Overlay Schedule 7 of the East Gippsland Planning Scheme; and*
- 4. the proposal will be incompatible with and detrimental to the amenity enjoyed by adjoining and nearby residents.*

Cr Peter Neal / Cr William Gamble

THAT COUNCIL, BEING THE RESPONSIBLE AUTHORITY AND HAVING CONSIDERED ALL THE RELEVANT PLANNING MATTERS, DETERMINES THAT PLANNING APPLICATION 425/2008/P IS CONSISTENT WITH THE REQUIREMENTS AND OBJECTIVES OF THE EAST GIPPSLAND PLANNING SCHEME AND THEREFORE RESOLVES TO ISSUE A NOTICE OF DECISION TO GRANT A PERMIT FOR THE APPLICATION TO USE AND DEVELOPMENT THE LAND AT 36 WYATT ROAD JOHNSONVILLE FOR RACING DOG KEEPING AND RACING DOG TRAINING SUBJECT TO THE FOLLOWING CONDITIONS:

- 1. THE USE AND DEVELOPMENT AS SHOWN ON THE ENDORSED PLANS MUST NOT BE ALTERED WITHOUT THE WRITTEN CONSENT OF THE RESPONSIBLE AUTHORITY.**
- 2. THIS PERMIT WILL EXPIRE IF ONE OF THE FOLLOWING CIRCUMSTANCES APPLIES:**
 - THE DEVELOPMENT AND USE IS/ARE NOT STARTED WITHIN TWO YEARS OF THE DATE OF THIS PERMIT; OR**
 - THE DEVELOPMENT IS NOT COMPLETED WITHIN FOUR YEARS OF THE DATE OF THIS PERMIT.**

THE RESPONSIBLE AUTHORITY MAY EXTEND THE PERIODS REFERRED TO IF A REQUEST IS MADE IN WRITING BEFORE THE PERMIT EXPIRES OR WITHIN THREE MONTHS AFTERWARDS.

3. **PRIOR TO THE OPERATION OF THE PROPOSED FACILITY A WASTE MANAGEMENT PLAN MUST BE SUBMITTED TO AND APPROVED BY THE RESPONSIBLE AUTHORITY.**
5. **NO BUILDING OR WORKS SHALL BE COMMENCED UNTIL A LANDSCAPE PLAN PREPARED BY A SUITABLY QUALIFIED AND EXPERIENCED PERSON HAS BEEN SUBMITTED TO AND ENDORSED BY THE RESPONSIBLE AUTHORITY. THIS PLAN WHEN ENDORSED SHALL FORM PART OF THIS PERMIT. THIS PLAN SHALL SHOW:**
 - **PLANTING WITHIN AND AROUND THE PERIMETER OF THE LAND COMPRISING TREES AND SHRUBS CAPABLE OF SCREENING THE BUILDINGS AND STRUCTURES;**
 - **PLANTING SCHEDULE OF ALL PROPOSED VEGETATION (TREES, SHRUBS AND GROUND COVERS) WHICH INCLUDES BOTANICAL NAMES, COMMON NAMES, POT SIZE, MATURE SIZE AND TOTAL QUANTITIES OF EACH PLANT; AND**
 - **MAINTENANCE OF THE LANDSCAPE PLAN UNTIL THE PLANTS ARE ESTABLISHED AND ARE DEVELOPED TO A STAGE THAT WILL ACHIEVE THE REQUIRED LANDSCAPE PLAN OBJECTIVE.**

LANDSCAPING IN ACCORDANCE WITH THIS APPROVED PLAN AND SCHEDULE SHALL BE COMPLETED BEFORE THE BUILDINGS ARE OCCUPIED.

ONCE APPROVED THESE PLANS WILL BE ENDORSED TO FORM PART OF THIS PERMIT.

7. **SOIL EROSION CONTROL MEASURES MUST BE EMPLOYED THROUGHOUT THE CONSTRUCTION STAGE OF THE DEVELOPMENT IN ACCORDANCE WITH CONSTRUCTION TECHNIQUES FOR SEDIMENT POLLUTION CONTROL, EPA 1991, TO THE SATISFACTION OF THE RESPONSIBLE AUTHORITY.**
8. **DURING CONSTRUCTION WORKS, ADEQUATE STEPS MUST BE TAKEN TO STOP MOVEMENT OF SEDIMENT OFF SITE AND INTO DRAINAGE LINES AND WATERCOURSES. ADEQUATE STEPS INCLUDE:**
 - a) **CONTROL OF ON-SITE DRAINAGE BY INTERCEPTING AND REDIRECTING RUN-OFF IN A CONTROLLED MANNER TO STABILISED VEGETATED AREAS ON SITE.**
 - b) **INSTALLATION OF SEDIMENT CONTROL STRUCTURES WHEN CONSTRUCTION COMMENCES AND MAINTAINING THEM UNTIL THE SITE IS STABILISED.**
 - c) **RE-VEGETATING ALL DISTURBED AREAS AS QUICKLY AS POSSIBLE OR WITHIN 14 DAYS AFTER CONSTRUCTION WORKS ARE COMPLETED.**

NOTES

9. **ALL BUILDINGS ERECTED ON THIS SITE MUST COMPLY WITH THE REQUIREMENTS OF THE VICTORIAN BUILDING ACT AND REGULATIONS, THE BUILDING CODE OF AUSTRALIA AND RELEVANT COUNCIL LOCAL**

LAWS. NOTE THIS PERMIT DOES NOT APPROVE THE PLACEMENT OF HOARDINGS AND SCAFFOLDS OUTSIDE BUILDING LINES. PLEASE CONTACT COUNCIL'S LOCAL LAWS UNIT ON 51 539 500.

CARRIED 07/07/2009

*For: Crs. Trudy Anderson, Richard Ellis, Michael Freshwater, William Gamble
Peter Neal and Jane Rowe.*

Against: Cr. Meredith Urie.

6.2.2. REQUEST TO END A SECTION 173 AGREEMENT – 1950 PRINCES HIGHWAY, LINDENOW SOUTH**DEPARTMENT** Planning and Community**AUTHORED BY:** Richard Hoxley, Senior Statutory Planner**ENDORSED BY:** Kate Nelson, Director Planning and Community**DOCUMENT NO.** 2567254**In attendance**

Kate Nelson, Director Planning and Community

Aaron Hollow, Manager Development

1 OBJECTIVE

Council has received a request to end an agreement made in accordance with the requirements of Section 173 of the *Planning and Environment Act 1987*. The Agreement exists as a constraint to the subdivision of the land at 1950 Princes Highway, Lindenow South. This report seeks Council's decision on the request.

2 BACKGROUND

Section 173 Agreement V480089Y is registered to the titles of Lot 1 and Lot 2 on PS517792F, 1950 Princes Highway, Lindenow South.

The Section 173 Agreement was registered in 1998 following the approval of a planning permit 97/00250/PS on 4 September 1997 for the subdivision of two lots.

At the time of the subdivision the land was contained within the Broad Area Farming Zone under the former Bairnsdale Shire Planning Scheme. The Broad Area Farming Zone limited subdivision to one lot per 100 hectares. The zone also allowed the subdivision of land to create smaller lots if the smaller lot was to be created for the purpose of a dwelling provided that the small lot did not exceed two hectares in area and particular requirements could be satisfied.

The approval of permit 97/00250/PS granted the subdivision of the land into two lots which included the creation of a lot smaller than 100 hectares for the purpose of providing a site for a dwelling. In approving the creation of a smaller lot for a dwelling the provisions of the planning scheme required the owner to enter into an agreement to ensure the density of lots did not exceed two lots per 100 hectares.

The owner complied with the requirements of the permit and entered into the Section 173 Agreement which was subsequently registered on title. It is this Agreement that the owner now seeks to remove.

The approval of the East Gippsland Planning Scheme in 1999 resulted in a change in the zoning of the land and subdivision provisions. The zoning of the land changed to a Rural Zone under the East Gippsland Planning Scheme. The provisions of the Rural Zone enabled land to be subdivided into a minimum lot size of 40 hectares.

In 2003 the lots created following the approval of permit 97/00250/PS were subject to a further subdivision that realigned the boundaries between the two lots resulting in the creation of Lot 1 and Lot 2 on PS 517792F. The realignment of the lot boundaries was not affected by the Section 173 Agreement which subsequently carried over to the titles to the Lot 1 and Lot 2.

In November 2006 planning permit application 485/2006/P was lodged for the subdivision of the Lot 1 and Lot 2 on PS 517792F into four lots and the removal of the Section 173 Agreement V480089Y. The proposed lots range in size between 40 hectares and 59.94 hectares.

Removal of the Section 173 Agreement was included as part of the application as it impeded subdivision of the land into four lots as proposed despite the subdivision complying with the provisions of the East Gippsland Planning Scheme at the time.

At the time of application 485/2006/P being considered the land was within a Rural Zone Schedule 1 that allowed for subdivision of land with a minimum lot size of 40 hectares. The application for the subdivision was determined as being appropriate and consistent with the requirements of the planning scheme with the lots being 40 hectares or greater.

Since the approval of permit 485/2006/P the zoning of the land has changed to Farming Zone Schedule 1. The minimum lot size of 40 hectares has not changed.

The owner of the land is now seeking approval from Council to remove the Section 173 Agreement as was included as part of planning permit application 485/2006/P.

A copy of the approved plan for the subdivision of the land into four lots is provided at **Attachment 1**.

The Section 173 Agreement covenants the following:

The owners with the intent that their covenant hereunder shall run with the land hereby covenant and agree that:

- i) they will comply with the conditions of the Permit;*
- ii) they will not apply to subdivide the subject land in any manner whereby the density of small lots exceeds two lots per 100 hectares of the tenement that existed as at 4th September 1991; and*
- iii) this Agreement may only be ended wholly or in part as to any part of the subject land by agreement between the Responsible Authority and all persons who are bound by any covenant in this agreement in accordance with Section 177 of the Planning and Environment Act 1987.*

A full copy of the Section 173 Agreement is provided at **Attachment 2**.

3 CURRENT STATUS AND/OR ISSUES

Section 173 Agreement V480089Y is included on the title of Lot 1 and Lot 2 on PS 517792F, 1950 Princes Highway, Lindenow South.

The agreement was created when the previous planning controls limited subdivision to a density of two lots per 100 hectares. The planning scheme controls have since changed and the land is able to be subdivided into lots having a minimum area of 40 hectares.

4 IMPLICATIONS

Financial

Nil

Legislative

The *Planning & Environment Act 1987* pursuant to Section 177 (2) provides the framework for a Section 173 Agreement to be ended wholly or in part as follows:

(2) An agreement may be ended wholly or in part or as to any part of the land by the responsible authority with the approval of the Minister or by the agreement between the responsible authority and all persons who are bound by any covenant in the agreement.

The applicant is seeking to end Section 173 Agreement V480089Y wholly as it applies to Lot 1 and Lot 2 on PS 517792F via agreement between the responsible authority (Council) and all the owners of Lots 1 and 2 bound by any covenant in the agreement.

Planning Scheme and Strategies

The Planning Scheme requires that land to be subdivided in a Farming Zone must meet requirements of the schedule. The minimum size of lots to be created under Schedule 1 is 40 hectares.

Planning permit 485/2006/P allows the land to be subdivided into four lots with each lot being 40 hectares or greater.

Can Council end the Agreement?

As outlined earlier in this report, the *Planning and Environment Act* sets out the process for ending a Section 173 Agreement.

The Section 173 Agreement applies to Lot 1 and Lot 2 on PS 517792F.

Legal advice has confirmed that, should Council wish to end the agreement, it can rely on a number of decisions made by senior and legally qualified VCAT members.

In this case Council sought to impose a restriction on the land to be subdivided based on the relevant planning controls of the day. The planning controls that apply to the land have since changed.

Were the agreement to remain in place the approved subdivision could not proceed.

5 CONSULTATION WITH STAKEHOLDERS

On 31 July 2006 an application for a planning permit was received for the subdivision of the land being Lot 1 and Lot 2 on PS 517792F at 1950 Princes Highway, Lindenow South into four lots and removal of a Section 173 Agreement.

The application was advertised to neighbouring properties. No objections were received. The planning permit application was approved.

In order to facilitate the approved subdivision the landowner has sought to end Section 173 Agreement V480089Y.

6 CONCLUSIONS

Council has the legal ability to end the Section 173 Agreement as requested. The subdivision of the land is consistent with the current planning scheme controls that apply to the land.

7 APPENDICES

Nil

8 ATTACHMENTS

1. Approved plan of subdivision
2. Section 173 Agreement AE800635N

RECOMMENDATION

That Council determines to end Section 173 Agreement V480089Y (Lot 1 and Lot 2 on PS 517792F 1950 Princes Highway, Lindenow South) by agreement between the responsible authority and all persons bound by any covenant in the agreement in accordance with Section 177 (2) of the Planning and Environment Act 1987.

Cr Michael Freshwater / Cr Peter Neal

THAT THE RECOMMENDATION BE ADOPTED.

CARRIED UNANIMOUSLY 07/07/2009

6.2.3. PLANNING APPLICATION NO. 632/2007/P- 3854 PRINCES HIGHWAY, BELLBIRD CREEK: BUILDING AND WORKS (TELECOMMUNICATIONS FACILITY)

DEPARTMENT Planning and Community
AUTHOR Bill Williams, Planning Officer
ENDORSED BY: Kate Nelson, Director Planning and Community
DOCUMENT NO. 3565951

In attendance

Kate Nelson, Director Planning and Community
 Aaron Hollow, Manager Development

1 OBJECTIVE

This planning application has been through an assessment process. This process has revealed that approval of the application would breach a condition on a previous planning permit requiring the land to be regenerated as native forest. This report presents the planning background to the proposal and seeks Council's decision on the application.

2 BACKGROUND

Application No.	632/2007/P	
Address	3854 Princes Highway Bellbird Creek	
Zone	Farming Zone (Schedule 1)	
Overlay	Part Environmental Significance Overlay 88 (Part ESO 88)	
	Part Design and Development Overlay7 (Part DDO 7)	
Permit requirements	Clause	Complies
	15.09 Conservation of native flora and fauna	No
	18.13 Telecommunications	Yes
	21.05 Public Health and Safety	Yes
	35.07 Farming Zone	Yes
	43.02 Design and Development Overlay	Yes
	52.17 Native vegetation	No
	52.19 Telecommunications Facility	Yes
	65 Decision Guidelines	No
<i>Why is a planning permit required?</i>	A planning permit is required for building and works in a Farming Zone; on land covered by a Design and Development Overlay-Schedule 7(DDO7); and on land covered by an Environmental Significance Overlay where the identified environmental values of the site require protection.	

Site Plan

The land is located on the southern side of the Princes Highway in Bellbird Creek and bounded by the Princes Highway to the north, Hippo Track to the west, Wheelers Ridge track to the south, and Bellbird Creek to the east.

The land is partially cleared rural property, surrounded mostly by state forest and currently developed with a dwelling. The property consists of gently rising terrain that rises to approximately 200 metres elevation. The land has been selectively logged in accordance with planning permits 401/2005/P and 402/2005/P. Both these permits require the area which has been selectively logged, to be regenerated as native forest and not utilised for cattle grazing or other activities.

The subject site is one of two parcels of Farming Zoned land located on the southern side of the Highway. The other land parcel on the south side of the highway is developed with the Bellbird Creek Hotel which fronts the Highway. One other parcel of Farming Zoned land is covered with native vegetation and located on the immediate northern side of the highway. All other surrounding land is State Forest, containing a network of gravel tracks providing vehicle access. To the west of the site is Hippo Track, which leads to a gas and power easement, the proposed location and route for power supply to the site.

A plan that includes details of the site location, the location of properties given notice of the application, and nearby objectors is provided at **Attachment 1**.

Description of Proposal

The proposal is to erect a telecommunications facility including one 81 metre guyed mast tower with an associated cable tray, equipment shelter and access track.

The proposed tower is designed to accommodate three panel antennas and two parabolic link dishes to form part of the telecommunications system.

Details of the proposal are provided at **Attachment 2**.

3 CURRENT STATUS AND/OR ISSUES

Referrals	Department of Sustainability and Environment (Section 52 referral only)
Notification	The application was advertised by means of written notification to adjoining properties and a public notice in the Snowy River Mail in accordance with the provisions of the <i>Planning and Environment Act 1987</i> .
Objections	One (Department of Sustainability and Environment)

Objections

Issues raised in the objection can be summarised as follows:

- *Approval of the facility will breach conditions of native vegetation harvesting and regeneration planning permits 401/2005/P and 402/2005/P, through preventing regeneration of the land;*
- *The conservation significance of the site is very high and in accordance with Victoria's Native Vegetation Management- A Framework for Action and vegetation clearing is generally not permitted and requires Ministerial consent to do so; and*
- *The application does not address the three- step process as required by the Framework, in particular offsets.*

4 CONSULTATION WITH STAKEHOLDERS

The application was advertised by means of written notification to adjoining properties and a public notice in the Snowy River Mail in accordance with the provisions of the *Planning and Environment Act 1987*.

The Department of Sustainability and Environment (DSE) has objected to the proposal. Advice was initially received from DSE in relation to the status and intent of Condition 4 of planning permits 401/2005/P and 402/2005/P. Copies of planning permits 401/2005/P and 402/2005/P are provided at **Attachment 3**.

The advice was that condition 4 had been required by DSE as a Section 55 referral authority requiring the land to be regenerated as native forest and not utilised for cattle grazing or other activities. DSE advised that approximately nine hectares of native vegetation will be removed from the land to enable development of this proposal and that additional offsets would be required for the areas that that won't be allowed to regenerate.

The applicant was advised of the situation and asked to advise whether the required offsets could be achieved on site. The applicant was further advised that Council and DSE would be prepared to amend planning permits 401/2005/P and 402/2005/P to remove Condition 4 to allow this important facility to be approved on the site if suitable offsets could be found. The applicant advised that the required offsets could not be achieved on the site.

Council officers and DSE conducted an assessment of possible alternative locations that had the potential to achieve the required coverage objectives without success.

Council advised the applicant of this result and suggested that they consider the option of the Bush Broker system. (This Bush Broker system allows an offset to be achieved if another landowner with a comparable Ecological Vegetation Class (ECV) of vegetation is prepared to protect vegetation on their land in perpetuity with a Covenant on the title to the land and with agreed management practices).

DSE assisted the applicant by identifying the type of vegetation (ECV) required to be offset. Council put the applicant in contact with the Trust for Nature which administered the Bush Broker system. A site was found which would have allowed the required offset to be achieved. The applicant relayed this information to their client Telstra Corporation which advised that the cost of the Bush Broker system exceeded the budget allocated for the siting of the proposed telecommunications facility.

At this point the applicant was asked to withdraw the application as there was no ability to approve the application without an offset, however they have elected not to do this and are seeking a decision by Council. It is understood that until such time as this application is formally refused, no further work will be undertaken to pursue a new application in this general area.

5 IMPLICATIONS

Financial

Nil

Planning Scheme Requirements

State Planning Policy Framework (SPPF)

The State planning policies that are considered to be relevant to the proposal include:

Clause 15.09 Conservation of native flora and fauna

The objective of this provision is to protect and conserve biodiversity, native vegetation and the provision of habitat for native plants and animals and control of pest plants and animals. The removal of approximately nine hectares of native vegetation without the ability to provide necessary off-sets is contrary to the policy.

Clause 18.13 Telecommunications

This provision is to recognise the importance of telecommunications to all aspects of modern life and the essential contribution of modern telecommunications facilities to local communities and the State and national economy. This proposed facility if able to be approved would fill in an existing gap and improve the coverage of the telecommunications system in this area of East Gippsland.

Local Planning Policy Framework (LPPF)

The LPPF is comprised of the Municipal Strategic Statement (MSS) and local policies.

There are four principal elements of the MSS which are of relevance to the proposal. These policies are:

- Clause 21.02 Municipal Profile;
- Clause 31.03 Key issues;
- Clause 21.05 Objectives- Strategies- Implementation; and
- Clause 21.06 Strategies for Sub-regions, Towns and Localities.

The proposal has been assessed against these policies. The facility would assist in meeting these policy objectives by providing essential telecommunications services to support the local community and tourism role as well as economic activity in the area and region.

Zoning

The subject site is within a Farming Zone (Schedule 1). The application is defined as a Telecommunications Facility within the planning scheme. A permit is required for the facility proposed.

The zone directs consideration of a range of agricultural and environmental outcomes.

The proposal will not result in a loss of agricultural land and is considered not to impact on achieving the required agricultural outcomes.

However the application will result in the permanent loss of native vegetation and the biodiversity of the area.

Overlays

Clause 42.01 Environmental Significance Overlay 88

Part of the land the subject of this application is covered by this overlay. The overlay requires consideration of the environmental values listed in ESO88 in the schedule to the overlay. The environmental value stated as requiring protection is the Long-footed Potoroo which requires vegetation as habitat. The proposed removal of regenerating native vegetation will permanently remove habitat and does not positively satisfy the overlay requirement.

Clause 43.02 Design and Development Overlay (DDO7)

This overlay directs consideration towards minimising vegetation removal and habitat loss within the highway corridor to comply with the policy framework of the planning scheme. This proposal will remove vegetation and will not satisfy this required protection.

Particular provisions

Clause 52.17 Native vegetation

The purpose of this provision is to protect and conserve native vegetation. Where native vegetation is to be removed net gain must be achieved in accordance with the procedures outlined in the Native Vegetation Framework.

As outlined above this proposal will remove vegetation and the applicants have not been able to demonstrate that they can satisfy the offset requirements. Officers have worked with the applicant to source suitable land, including working with Trust for Nature, however securing an appropriate offset arrangement has proven unsuccessful.

Clause 52.19. Telecommunications facility

This provision applies to the construction and works associated with the use of the land for a telecommunications facility. The purpose of the provision is to encourage the provision of telecommunications infrastructure and services to meet community needs with minimal impact on the amenity of the area.

Response to objection

Approval of the facility will breach conditions of native vegetation harvesting and regeneration planning permits 401/2005/P and 402/2005/P, through preventing regeneration of the land.

The application will breach condition 4 of existing permits on the land preventing the regeneration of native vegetation on the part of the land where the telecommunication facility is proposed to be located.

The conservation significance of the site is very high and in accordance with Victoria's Native Vegetation Management- A Framework for Action and vegetation clearing is generally not permitted and requires Ministerial consent to do so.

The conservation significance of the land is high reflected by the Environmental Significance Overlay covering the land. Vegetation removal would be required to be in accordance with the framework. This application does not comply with the framework as no offset can be provided.

The application does not address the three- step process as required by the Native Vegetation Framework, in particular offsets.

As outlined above this application does not comply with the framework as no offset can be provided.

6 CONCLUSIONS

This application seeks to establish a telecommunications facility on land in Bellbird Creek.

This application is considered to satisfy the desire to provide improved telecommunications in an area of need.

However it will not satisfy other provisions as vegetation would be removed without the required offset planting and net gain, resulting in a loss of habitat, biodiversity and a range of environmental values required to be protected by the Planning Scheme. Despite exploration of alternative offset arrangements, no satisfactory outcome has been identified. As such the application cannot be recommended for approval as it would be contrary to a condition of a permit issued by Council.

This application highlights a dilemma in respect to approvals in some areas of East Gippsland. While Council is very keen to ensure that mobile communications infrastructure is enhanced, constraints such as the need to comply with Victoria's Native Vegetation Framework, can make this very difficult. In this case, despite the efforts of the officers involved, the mandatory offset has not been able to be achieved. As the applicant has not withdrawn, officers have no choice but to recommend refusal of the application. It is anticipated that the telecommunication facilities will be able to be provided in this area through locations other than on this particular site or via co- location with other existing facilities.

Should a new application be submitted, every effort will be made to facilitate that application to comply with the requirements of the planning scheme.

7 APPENDICES

Nil

8 ATTACHMENTS

- 1 Site Plan
- 2 Details of the proposal
- 3 Planning permits 401/2005/P and 402/2005/P

RECOMMENDATION

That Council, being the Responsible Authority and having considered all the relevant planning matters, determines that planning application 632/2007/P is inconsistent with the requirements and objectives of the East Gippsland Planning Scheme and therefore resolves to refuse to grant a permit for the use and development of land at 3854 Princes Highway Bellbird Creek for use and development of a telecommunications facility subject to the following conditions: -

- 1. The application is inconsistent with the State and Local Planning Policy Frameworks contained within the East Gippsland Planning Scheme;*
- 2. The application will result in native vegetation loss without satisfying the requirements for offset planting and net gain as required by Clause 52.17 of the East Gippsland Planning Scheme;*
- 3. The proposal is inconsistent with the purposes and objectives of the Environmental Significance Overlay; and*
- 4. The proposal would result in invalidating a current planning permit which has been acted upon on the land.*

Cr Jane Rowe / Cr Michael Freshwater

THAT COUNCIL DEFERS CONSIDERATION OF PLANNING APPLICATION NO. 632/2007/P PENDING DISCUSSIONS WITH THE STATE MINISTER FOR ENVIRONMENT AND CLIMATE CHANGE IN RESPECT OF NATIVE VEGETATION OFFSET REQUIREMENTS FOR THE SITE.

CARRIED UNANIMOUSLY 07/07/2009

6.2.4. REQUEST TO END A SECTION 173 AGREEMENT – 574 LINDENOW-GLENALADALE ROAD, LINDENOW SOUTH**DEPARTMENT** Planning and Community**AUTHORED BY:** Richard Hoxley, Senior Statutory Planner**ENDORSED BY:** Kate Nelson, Director Planning and Community**DOCUMENT NO.** 3567248**In attendance**

Kate Nelson, Director Planning and Community

Aaron Hollow, Manager Development

1 OBJECTIVE

Council has received a request to end an agreement made in accordance with the requirements of Section 173 of the *Planning and Environment Act 1987*. The Agreement exists as a constraint to an amendment to the subdivision of the land at 574 Lindenow-Glenaladale Road, Lindenow South. This report seeks Council's decision on the request.

2 BACKGROUND

Section 173 Agreement AF680741T is registered to Lot 3 on LP22655, 574 Lindenow-Glenaladale Road, Lindenow South.

The Section 173 Agreement was registered in 2008 following the approval of a planning permit 26/2007/P for the subdivision of the land into eight lots. Condition 4 of the planning permit required the owner of the land to enter into a Section 173 Agreement whereby no building could be built outside of the building envelopes within Lots 1, 2, 3, 4, 5, 7 and 8 in accordance with the endorsed plans. A copy of the endorsed plan was included as an attachment to the Section 173 Agreement. A copy of the Planning Permit 26/2007/P and endorsed plans is provided at **Attachment 1**.

On 9 October 2008 the applicant lodged an amended plan for approval to alter the configuration of lots 6, 7 and 8. The applicant advised that changes were necessary to relocate the driveway entrance to lot 8 which was originally positioned along the northern boundary and was inaccessible given the wet nature of the area. A copy of the amended plan is provided at **Attachment 2**.

On assessment of the amended plan it was found that the reconfiguration of lots 6, 7 and 8 affected the building envelopes of lots 7 and 8. Given the Section 173 Agreement had already been completed and registered on title it was determined that the amended plan could not be approved as the revised plan would be inconsistent with the plan under Attachment 'A' of the Section 173 Agreement.

The Section 173 Agreement covenants the following:

The Owner covenants and agrees that the Owner will not build, construct, or erect or cause or permit to be built, constructed or erected and Building on the Subject Land or any part of the Subject Land outside a Building Envelope without the prior written consent of Council.

A copy of the Section 173 Agreement AF680741T is provided at **Attachment 3**.

The applicant was advised that although the proposed changes to the configuration of lots 6, 7, and 8 was acceptable, the amended plan could not be approved as the revised plan would be inconsistent with the plan under Attachment 'A' of the Section 173 Agreement.

The applicant was advised that the most efficient course of action would require the owner to enter into a new Section 173 agreement, register the new agreement on title, and then request removal of the original Section 173 Agreement. The applicant was further advised that when preparing a new Agreement that it not include a plan but instead refer to the plans endorsed as part of the planning permit. This would avoid this same situation from arising in the future should, for any reason, the endorsed plans need to be amended again.

The owner has followed the advice and has entered into a new Section 173 agreement and the agreement has been registered on title.

The owner of the land is now seeking approval from Council to remove the original Section 173 Agreement.

3 CURRENT STATUS AND/OR ISSUES

Section 173 Agreement AF680741T is included on the title Lot 3 on LP22655, 574 Lindenow-Glenaladale Road, Lindenow South.

4 IMPLICATIONS

Financial

Nil

Legislative

The *Planning & Environment Act 1987* pursuant to Section 177 (2) provides the framework for a Section 173 Agreement to be ended wholly or in part as follows:

(2) An agreement may be ended wholly or in part or as to any part of the land by the responsible authority with the approval of the Minister or by the agreement between the responsible authority and all persons who are bound by any covenant in the agreement.

The applicant is seeking to end Section 173 Agreement AF680741T wholly as it applies to Lot 3 on LP22655 via agreement between the responsible authority (Council) and all persons bound by any covenant in the agreement.

Clarity for current future land owners

Ending the Section 173 Agreement AF680741T and registration of a new agreement will provide certainty for any future land owners and avoid any confusion between the location of the building envelopes and the title boundaries.

Ending the Section 173 Agreement AF680741T and registration of a new agreement will also provide greater flexibility for the current owner should, for any reason, the endorsed plans need to be amended again in the future.

5 CONCLUSIONS

Council has the legal ability to end the Section 173 Agreement as requested. The subdivision of the land is consistent with the current planning scheme controls that apply to the land. Building envelopes are retained as a restriction as originally required by the planning permit.

6 APPENDICES

Nil

7 ATTACHMENTS

1. Planning Permit 26/2007/P and endorsed plans
2. Amended subdivision plan
3. Section 173 Agreement AF680741T

RECOMMENDATION

That Council determines to end Section 173 Agreement AF680741T (Lot 3 on LP22655, 574 Lindenow-Glenaladale Road, Lindenow South) by agreement between the responsible authority and all persons bound by any covenant in the agreement in accordance with Section 177 (2) of the Planning and Environment Act 1987.

Oral Submission

Ms Nicole Reynolds (Crowther & Sadler Pty Ltd) Bairnsdale

Cr Richard Ellis / Cr Trudy Anderson

THAT THE RECOMMENDATION BE ADOPTED.

CARRIED UNANIMOUSLY 07/07/2009

6.2.5. STATUTORY PLANNING MONTHLY REPORT – MAY 2009

DEPARTMENT	Planning and Community
AUTHOR	Amber Parker, Statutory Planning Administration Officer
ENDORSED BY:	Kate Nelson, Director Planning and Community
DOCUMENT NO.	3567100

In attendance

Kate Nelson, Director Planning and Community
Aaron Hollow, Manager Development

1 OBJECTIVE

The purpose of this report is to provide a summary of strategic indicators relevant to the Council's statutory planning function.

2 BACKGROUND

Council, as part of its Council Plan requires regular reporting on strategic indicators relevant to certain functions. This report provides an update to Council in regard to processing of applications for planning permits on a monthly basis.

3 CURRENT STATUS AND/OR ISSUES**Current Application Status**

The table below provides a summary of the status of applications being lodged, determined and pending finalisation by East Gippsland Shire.

The number of new applications and applications to amend existing permits that have been lodged are recorded to indicate the level of activity by month for the current year and for previous years.

All decisions that conclude Council's dealing with an application are listed in the Decision Section of the Table. This includes all decisions where the application outcome has been finalised, including decisions by VCAT.

The number of applications pending includes all applications that remain unresolved at the end of the reported month. This includes circumstances where a Notice of Decision to Grant a Permit has been issued by delegation or by Council.

	Lodged		Decisions							Pending
	New Apps	Am'ded Apps	Permits App'ved	Permits Am'ded	Permits C'celled	W'dn/N PR	Apps Refused	Apps Lapsed	Appeals Lodged	
2006	845	131	703	118	0	59	24	19	14	
2007	709	148	703	159	0	40	13	27	11	
2008	677	89	612	78	0	33	10	4	11	199
2009	164	26	192	20	0	8	5	3	1	
Jan	26	5	49	6	0	2	0	1	0	172
Feb	51	5	52	3	0	0	0	0	0	174
Mar	25	7	37	2	0	4	4	0	1	160
Apr	62	9	54	9	0	4	1	2	0	169
May	54	7	46	6	0	2	0	0	0	176

Decisions under delegated authority

46 applications were determined under delegated authority in May 2009, a list of which is provided at **Appendix 1**. This figure does not include amended applications.

The average statutory time for delegated decisions determined was 46 days. The nominal statutory period is 60 days. A graph showing the average statutory days to process applications since January 2007 is shown at **Attachment 1**.

4 IMPLICATIONS

Financial

Nil

Legislative

The *Local Government Act 1989* and the *Planning and Environment Act 1987* enabled Council to delegate certain duties and functions to officers within the municipality.

Council Plan

Strategy 2.1 of the Council's Plan states:

Provide strong leadership through responsible and transparent decision-making.

5 CONSULTATION WITH STAKEHOLDERS

Not applicable

6 CONCLUSIONS

This report is provided for information only.

7 APPENDICES

1. List of decisions under delegated authority.

8 ATTACHMENTS

1. Graph showing average statutory times for delegated decisions.

RECOMMENDATION

That Council notes planning permits issued in May 2009 in accordance with authority delegated to Development Unit Staff, as provided at Appendix 1.

Cr Richard Ellis / Cr Peter Neal

THAT THE RECOMMENDATION BE ADOPTED.

CARRIED UNANIMOUSLY 07/07/2009

6.2.6. PLANNING SCHEME AMENDMENT C80 – MARLO ROAD, MARLO

DEPARTMENT Planning and Community

AUTHORED BY Nick Kearns, Manager Planning Projects

ENDORSED BY Kate Nelson, Director Planning and Community

DOCUMENT NO. 3572919

In Attendance:

Kate Nelson, Director Planning and Community

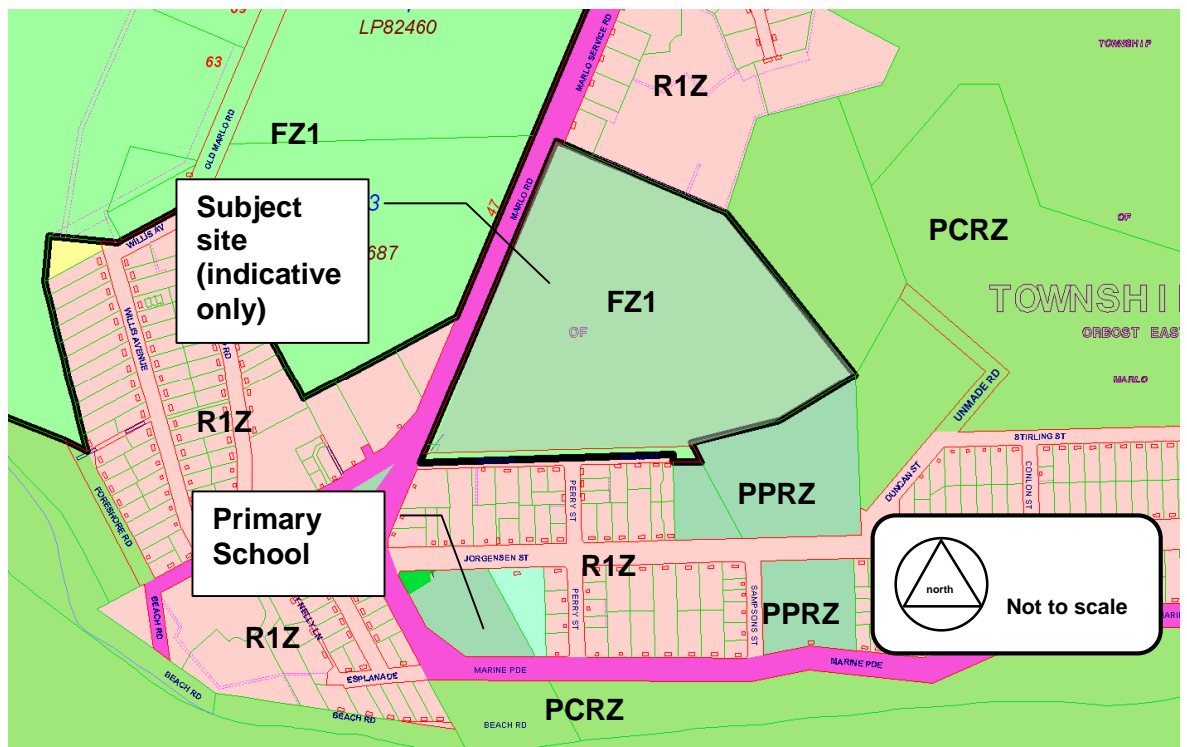
Nick Kearns, Manager Planning Projects

1 OBJECTIVE

The objective of this report is to seek authorisation from the Minister for Planning and subsequent exhibition of an amendment to rezone land within Marlo to establish a new urban residential estate.

2 BACKGROUND

A request has been lodged by Fastnet Consulting Pty Ltd on behalf of Hassta Holding Pty Ltd to rezone land on Marlo Road, Marlo. The amendment request proposes to change the zoning of the land from Farming Zone (Schedule 1) to Residential 1 Zone and to place a Development Plan Overlay over the land.



R1Z	RESIDENTIAL 1 ZONE	FZ1	FARMING ZONE
PCRZ		PPRZ	PUBLIC PARK AND RECREATION ZONE

Existing conditions

The land is located at the intersection of Marlo Road and Ward Street. It has an area of 13.64 hectares, and a frontage of 427 metres to Marlo Road.

The land is relatively flat and is generally cleared, excepting some perimeter vegetation along Ward Street.

The land is currently used for agistment purposes.

The land to both the north and south is zoned Residential 1 and is the land diagonally opposite – generally to the west. Otherwise the land backs onto a large Crown Land reserve.

The land is unaffected by Overlays.

The proposal

The request seeks to rezone the land from Farming Zone (Schedule 1) to Residential 1 and to include a new schedule to the Development Plan Overlay – Schedule 7 Marlo Road, Marlo, Development Plan Area.

The draft outline development plan accompanying the request shows an intention to create 114 residential lots, averaging 800 square metres in area. The lots would be serviced by an internal road layout connecting to both Marlo Road and to Ward Street. A large open space reserve is proposed generally central to the estate.

All service infrastructure is available to the site.

A copy of the draft outline development plan is provided at **Attachment 1**.

A full copy of the consultant (town planning) submission is provided at **Attachment 2**.

3 CURRENT STATUS AND/OR ISSUES

Part 3 of the *Planning and Environment Act 1987* enables the Shire to make changes to the Planning Scheme, including, where requested, the ability to approve an amendment. Authorisation from the Minister for Planning is required, nevertheless, before it may be prepared and exhibited.

4 IMPLICATIONS

State and Local Planning Policy Frameworks

State Planning Policy Framework (SPPF)

Clause 11.03-1- Settlement: Planning is to anticipate and respond to the needs of existing and future communities through provision of zoned and serviced land for housing, employment, recreation and open space, commercial and community facilities and infrastructure. Planning is to recognise the need for, and as far as practicable contribute towards:

- Health and safety;
- Diversity of choice;

- Adaptation in response to changing technology;
- Economic viability;
- A high standard of urban design and amenity;
- Energy efficiency;
- Prevention of pollution to land, water and air;
- Protection of environmentally sensitive areas and natural resources;
- Accessibility; and
- Land use and transport integration.

Clause 14.01 Planning for urban settlement

Objectives of this Clause are:

- To ensure a sufficient supply of land is available for residential, commercial, industrial, recreational, institutional and other public uses; and
- To facilitate the orderly development of urban areas.

In implementing the above objectives, Planning authorities should plan to accommodate projected population growth over at least a 10 year period, taking account of opportunities for redevelopment and intensification of existing urban areas as well as the limits of land capability and natural hazards, environmental quality and the costs of providing infrastructure.

The SPPF encourages residential land development that ensures an adequate supply of land to meet community needs for a variety of housing types. It attempts to ensure that this process takes account of natural hazards, environmental quality and infrastructure provision and therefore encourages settlement where existing infrastructure provision exists. This state policy requires that the potential for nutrient contamination of waterways is minimised as part of any consideration of land use and development proposals. In essence these settlement and environment policies encourage the use and development of land where all basic services are available.

The amendment supports and gives effect to the above policies. The development will facilitate the expansion of the urban area, such that it takes advantage of and is integrated with existing infrastructure and settlement pattern.

Clause 15.01 Protection of catchments, waterways and groundwater

The objective of this Clause is to assist the protection and, where possible, restoration of catchments, waterways, water bodies, groundwater, and the marine environment.

In implementing this objective, Council must be mindful of the need to appropriately retard and manage drainage within the site, as well as to protect the adjoining waterways from any contaminants which may be present on the land.

Clause 15.09 Conservation of native flora and fauna

The land is generally cleared, excepting vegetation that may be affected along the perimeter of the site, along Ward Street.

The proponent proposes that any incidental vegetation removal would be covered by the relevant clauses of the new schedule to the Development Plan Overlay.

Local Planning Policy Framework (LPPF)

Within Clause 21.06 Strategies for Sub-Regions, Towns & Localities, the municipality is divided into four sub-regions – Highland, Valleys and Forest, Agricultural Hinterland and Lakes and Coastal. Marlo is included in the Coastal sub-region. The town is described as a popular fishing town. Policies and Strategies of the locality are to...*encourage development of vacant land within existing boundaries by means of infill development, prior to allowing the creation of additional lots.*

The proponent feels that the creation of additional lots can be considered in light of the recommendations of the adopted Urban Design Framework.

What is the strategic basis for the amendment or proposal?

The proponents describe the strategic justification for the proposal as being largely attributable to its conformity with the adopted Urban Design Framework.

Reticulated water, power and sewerage is available to the site.

Relationship of the proposal to the adopted Urban Design Framework*Principal Strategy*

The land is included in the <15 year town boundary, and potentially suitable for higher residential development. The strategy, furthermore, indicates that the land should be rezoned to Residential 1.

East Gippsland Planning Scheme amendment C68

The Urban Design Framework recommended the placement of new design controls over residentially zoned land in the town, forming part of East Gippsland Planning Scheme amendment C68. These new design controls are proposed to be included in a schedule to the Design and Development Overlay (Schedule 11 – a generic control). In essence, the new schedule establishes approval ‘triggers’ for: buildings with a height of more than 5 metres and where the buildings and works exceed an area of 300 square metres.

The Shire has only recently received the report of the independent panel in relation to amendment C68 and the matter has not been reported to Council. Nevertheless, in anticipation of amendment C68 proceeding, it is suggested that those permit ‘triggers’ should be enshrined, in the interim, within an agreement that would be placed on title – and later removed following either approval of amendment C68 (in some form agreed to by Council) or some other amendment to the Planning Scheme, which would place a new schedule to the Design and Development Overlay on the land. This would ensure that the Design and Development Overlay is applied consistently across the residential areas in the town.

Development Contributions

The proponent has agreed to enter into a voluntary Section 173 Agreement with Council to commit payment of development contributions. The agreement would be executed prior to the adoption of the amendment, and would include provision for:

- Contribution to any upgrades to the adjoining local road network (if required);
- Landscaping and playground equipment; and

- Public art or other (hard) landscape features.

Development Plan Overlay

The Development Plan Overlay is a statutory document forming part of the amendment. The overlay sets out general parameters for future development of the land including the establishment of open space, road layout, cycle and pedestrian paths and general services.

The Development Plan Overlay requires that a Development Plan be submitted and approved by the Council (as a non statutory policy document) prior to subdivision of the land. The overlay states that once such a Development Plan has been approved by Council, subdivision that is in conformity with the plan may occur without further notification to adjoining land owners, and in stages.

Financial

The proponents would meet all fees associated with the request, as is Council's usual practice.

Amenity/Environment

Most of the land is already cleared and is unaffected by any statement of environmental significance. It is considered that there are sufficient safeguards within the Planning Scheme that specifically affect the land in relation to environmental protection.

Legislative

The request would be processed in line with the requirements of the *Planning and Environment Act 1987*.

5 CONSULTATION WITH STAKEHOLDERS

The proposal would be exhibited publicly in line with the requirements of the *Planning and Environment Act 1987*. Where there are concerns raised about the proposal, there are formal processes of review to guide Council consideration.

6 CONCLUSIONS

It is considered that the proposal can be sufficiently justified for the purpose of seeking authorisation and for exhibition, on the basis of promoting an orderly infill of urban residential zoning within Marlo, and as recommended within the adopted Urban Design Framework.

The rezoning is to be supported by the application of a new schedule to the Development Plan Overlay. An additional requirement for the inclusion of design and development controls, consistent with amendment C68, would also be placed on the land via an agreement.

It is not intended that the notional development plan attached to this report will be concurrently exhibited with this amendment, other than to inform any interested parties of the proposal.

It is recommended that Council request authorisation from the Minister for Planning to prepare and exhibit the amendment subject to finalising an agreement with the Shire

addressing development contributions required and for the inclusion of appropriate design and development controls.

Documentation for the purpose of requesting authorisation and exhibition will be prepared once initial approval is received from the Department of Planning and Community Development. A draft of the proposed new schedule to the Development Plan Overlay is at **Attachment 3**.

7 APPENDICES

Nil

8 ATTACHMENTS

1. Draft outline Development Plan
2. Town Planning submission
3. Draft Schedule to the Development Plan Overlay

RECOMMENDATION

That Council, having considered all relevant planning matters:

1. *requests the Minister for Planning to authorise amendment C80 to the East Gippsland Planning Scheme to rezone land at the corner of Marlo Road and Ward Street, Marlo (Lot 2 PS 144829) from Farming Zone (Schedule 1) to Residential 1 Zone with a Development Plan Overlay – Schedule 7; and*
2. *exhibits amendment C80 upon receiving authorisation of the Minister for Planning for the amendment, subject to preparing a voluntary Section 173 agreement for:*
 - *Determining contributions and responsibilities for:*
 - *Upgrades to the adjoining local road network (as required).*
 - *Landscaping and playground equipment.*
 - *Public art and other (hard) landscape features.*
 - *Placing appropriate design and development controls on the land, consistent with East Gippsland Planning Scheme amendment C68.*

Cr Richard Ellis / Cr Peter Neal

THAT THE RECOMMENDATION BE ADOPTED.

CARRIED UNANIMOUSLY 07/07/2009

Attendance

Cr Trudy Anderson left the Council Chamber at 9.23 p.m.

6.2.7. PLANNING SCHEME AMENDMENT C75 – OSTLERS ROAD, LAKES ENTRANCE

DEPARTMENT Planning and Community
AUTHORED BY Nick Kearns, Manager Planning Projects
ENDORSED BY Kate Nelson, Director Planning and Community
DOCUMENT NO. 3539434

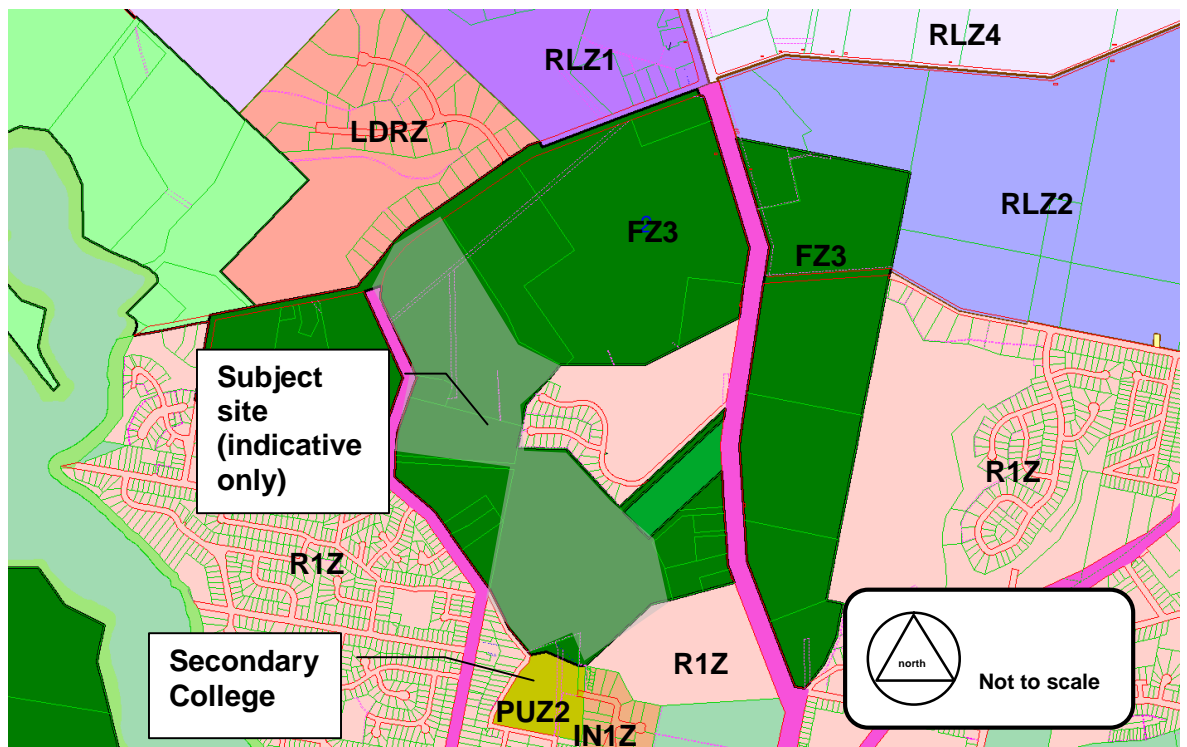
In Attendance:
 Kate Nelson, Director Planning and Community
 Nick Kearns, Manager Planning Projects

1 OBJECTIVE

The objective of this report is to seek authorisation from the Minister for Planning and subsequent exhibition of an amendment to rezone land within Lakes Entrance to establish a new urban residential estate.

2 BACKGROUND

A request has been lodged by Fastnet Consulting Pty Ltd on behalf of Beloti Pty Ltd and Geomin Nominees to rezone land between Ostlers Road and Outlook Avenue, Lakes Entrance. The amendment request proposes to change the zoning of the land from Farming Zone (Schedule 3) to Residential 1 Zone and to place a Development Plan Overlay over the land.



R1Z	RESIDENTIAL 1 ZONE	FZ	FARMING ZONE
LDRZ	LOW DENSITY RESIDENTIAL ZONE	RLZ	RURAL LIVING ZONE

Existing conditions

The land is located generally central to the main urban area of Lakes Entrance. It extends from Ostlers Road, in the north, to Outlook Avenue, in the south, and also borders both Palmers Road and Myer Street. The land has an approximate area of 65 hectares.

The topography of the land is undulating with a significant gully running generally north south through the property, with some cleared areas and patches of native vegetation.

A former oil well is located within the southern section of the land, and is accessed via the end of Whitters Street.

The land is developed with a series of farmlets and is used for limited grazing purposes and agistment.

The land to the west is zoned Residential, as is the land affecting parts of the eastern and southern portions (inclusive of the Shire's Palmers Road Office). The land to the north is zoned Low Density Residential. Immediately to the south, also adjoining Outlook Avenue, is the Lakes Entrance Secondary College.

The land is affected by an Erosion Management Overlay, and partly by a Vegetation Protection Overlay, along the Ostlers Road and Palmers Road frontages.

The proposal

The request seeks to rezone the land from Farming Zone (Schedule 3) to Residential 1 and to include a new schedule to the Development Plan Overlay – Schedule 6 Ostlers Road, Lakes Entrance, Development Plan Area.

The draft outline development plan presented, for the purposes of illustrating the suitability of the land for residential development, essentially provides for the creation of residential lots around an internal gully, which would become both a drainage retention area and open space link. The creation of these lots would be supported by an internal road network connecting Myer Street and Palmers Road, and enabling additional expansion to properties bordering the land – which are not part of the amendment. The lower area of the proposed open space area would include the former oil well.

The proponent has indicated that the development would yield just over 280 lots, with lots sizes ranging from 600 square metres to 1,600 square metres.

All service infrastructure is available to the site.

A copy of the draft outline development plan is provided at **Attachment 1**.

A full copy of the consultant (town planning) submission is provided at **Attachment 2** (the appendices are available separately for viewing on request).

The consultants have submitted a number of supporting documents (included as appendices to the main submission) including a Traffic Engineering Report, prepared by Cardno Grogan Richards Pty Ltd, an Engineering Report, prepared by Crossco Consultants Pty Ltd, and an Environmental Site Assessment report, prepared by Environmental and Earth Science. In summary, these documents support the proposal, being:

- The proposed road connections can meet the requirements for the anticipated traffic generation and would meet the requirements under Clause 56 of the Planning Scheme – being for Residential Development;
- The land can be adequately drained, and incorporate water sensitive urban design features; and
- The contamination within the lower portion of the site, associated with former oil well can be appropriately treated and managed.

3 CURRENT STATUS AND/OR ISSUES

Part 3 of the *Planning and Environment Act 1987* enables the Shire to make changes to the Planning Scheme, including, where requested, the ability to approve an amendment. Authorisation from the Minister for Planning is required, nevertheless, before it may be prepared and exhibited.

4 IMPLICATIONS

State and Local Planning Policy Frameworks

State Planning Policy Framework (SPPF)

Clause 11.03-1- Settlement: Planning is to anticipate and respond to the needs of existing and future communities through provision of zoned and serviced land for housing, employment, recreation and open space, commercial and community facilities and infrastructure. Planning is to recognise the need for, and as far as practicable contribute towards:

- Health and safety;
- Diversity of choice;
- Adaptation in response to changing technology;
- Economic viability;
- A high standard of urban design and amenity;
- Energy efficiency;
- Prevention of pollution to land, water and air;
- Protection of environmentally sensitive areas and natural resources;
- Accessibility; and
- Land use and transport integration.

Clause 14.01 Planning for urban settlement

Objectives of this Clause are:

- To ensure a sufficient supply of land is available for residential, commercial, industrial, recreational, institutional and other public uses.
- To facilitate the orderly development of urban areas.

In implementing the above objectives, Planning authorities should plan to accommodate projected population growth over at least a 10 year period, taking account of opportunities for redevelopment and intensification of existing urban areas as well as the limits of land capability and natural hazards, environmental quality and the costs of providing infrastructure.

The SPPF encourages residential land development that ensures an adequate supply of land to meet community needs for a variety of housing types. It attempts to ensure that this process takes account of natural hazards, environmental quality and infrastructure provision and therefore encourages settlement where existing infrastructure provision exists. This state policy requires that the potential for nutrient contamination of waterways is minimised as part of any consideration of land use and development proposals. In essence these settlement and environment policies encourage the use and development of land where all basic services are available.

The amendment supports and gives effect to the above policies. The development will facilitate the expansion of the urban area, such that it takes advantage of and is integrated with existing infrastructure and settlement pattern.

The adopted Urban Design Framework indicates that there are 449 available lots within the urban zoned areas of the town in 2007, with demand for an additional 1,180 dwellings to 2031, equating to an 8 year supply (of residential zoned land). The addition of this new land would increase that supply to around 13 years supply – 11 years – given that it is two years since the Framework was adopted. This marginal increase in the supply of new dwellings is considered acceptable on the basis of the following:

- The population of the town is aging at a rate substantially higher than other areas of Victoria, with the median age of the town being 10 years higher than for other areas of Victoria.
- There is likely to be few new dwellings, particularly medium density dwellings built within the older core area of the town into the future owing to concerns about flooding and sea-level rise.

It is considered that in order to accommodate the anticipated growth in the town's population, additional expansion of urban land – to Ostlers Road – will be needed, and that this supply will disproportionately exceed the nominal 10 year land supply. This is supported in the Urban Design Framework.

Clause 15.01 Protection of catchments, waterways and groundwater

The objective of this Clause is to assist the protection and, where possible, restoration of catchments, waterways, water bodies, groundwater, and the marine environment.

In implementing this objective, Council must be mindful of the need to appropriately retard and manage drainage within the site, as well as to protect the adjoining waterways from any contaminants which may be present on the land.

Clause 15.06 Soil Contamination

The objective of this Clause is to ensure that potentially contaminated land is suitable for its intended future use and development, and that contaminated land is used safely. To meet this objective, the proponent is required to satisfy Council that any existing contamination can be appropriately dealt with, as is the case with the former oil well.

Compliance with Ministerial Direction No. 1

A former oil well is located within the southern section of the property. Most of the structures associated with the well have been removed, excepting some concrete storage tanks, the foundations, and the well head, which is capped.

Two reports have been provided in relation to the former oil well, and more particularly in relation to potential contamination and suggested remedial measures. The Environmental Site Assessment indicates that the level of heavy metals meets acceptable standards, however, there are elevated levels of TPH (petroleum hydrocarbons) within the north eastern section of the area – directly associated with the storage tanks.

The proponent has agreed to remove all contaminated infrastructure and soil from the land.

Clause 15.09 Conservation of native flora and fauna

The proponent has provided a Vegetation Quality Assessment to support the proposal. The assessment identifies significant vegetation on the land and makes recommendations with regard to its further management, as well as identifying appropriate vegetation offset areas.

The land is densely covered by pastoral grasses and blackberry, generally reflecting its historical farming use. There are, however, several patches of native vegetation. These patches have been assessed within the context of forming 'habitat zones'.

The Vegetation Quality Assessment has identified five habitat zones. The summary map, showing these areas, is provided at **Attachment 3** (The documentation supporting the map is available on request). Generally, the most significant vegetation is located in the northern sections of the property, consisting of some native trees, but with little ground cover and understorey. The assessment quantifies the loss of native vegetation as equating to the need to provide 1.49 habitat hectares as an offset, which would be generally confined to the vegetation proposed to be preserved within the main central reserve.

This approach is consistent with other similar (subdivisional) proposals, and should meet the requirements of the Department of Sustainability and Environment, having regard to the implementation of the native vegetation framework. Nevertheless, consistent with similar amendment proposals, the suggested Development Plan Overlay contains a number of obligations with respect to native vegetation – including with regard to replanting and replacement.

Local Planning Policy Framework (LPPF)

Within Clause 21.06 Strategies for Sub-Regions, Towns & Localities, the municipality is divided into four sub-regions – Highland, Valleys and Forest, Agricultural Hinterland and Lakes and Coastal. Lakes Entrance, which is the second largest urban area in the Shire, is identified primarily as a tourist and retirement town. In recognising this major function, a key strategy is to promote residential growth within this area, and as recommended in the Lakes Entrance Strategy Plan 1987. To this end, Council, in 2005, rezoned the Lakes View Golf Course to Residential 1, to enable the creation of 44 residential lots, and has since been evaluated in the context of the urban design framework for the town.

The land is fully serviced and is considered capable of being developed for residential purposes at the densities proposed.

Lakes Entrance Strategy Plan (1987)

The Lakes Entrance Strategy Plan had identified this land as being suitable for development into normal density residential allotments, based on an outline development plan which provided for the development of discrete 'cells', with multiple access points from Palmers Road and Myer Street. A copy of the conceptual outline development plan, as outlined in the strategy, was incorporated into the Planning Scheme, with the approval of amendment C33. The proposal generally accords with this plan.

Clause 22.11 Aboriginal Heritage Policy objectives include:

- To promote the identification, protection, and management of Aboriginal cultural heritage values.
- To ensure that the views of local Aboriginal communities are taken into account in providing for the conservation and enhancement of places, sites and objectives of Aboriginal cultural heritage value.

In response to these policies, the proponents have commissioned the preparation of a Cultural Heritage Management Plan, which would be finalised prior to the lodgement of a planning permit application to subdivide the land.

What is the strategic basis for the amendment or proposal?

The proponents describe the strategic justification for the proposal as being largely attributable to its conformity with State and Local Planning Policy Frameworks, as well as optimising use of the site given development constraints and serviceability.

Reticulated water, power and sewerage is available to the site. The development, furthermore, provides a logical extension of the urban area in line with the requirements of the Planning Scheme and in line with the previous strategy for the area – *Lakes Entrance Strategy Plan (1987)*, which is a referenced document within the Planning Scheme.

The proposal also responds positively to the demand for new residential allotments within the town.

Relationship of the proposal to the adopted Urban Design Framework*Principal strategy*

The Ostlers Road area is explicitly identified in the adopted Urban Design Framework as a priority area for new residential development – as a preference for other areas further to the west (on the other side of North Arm) and north of Golf Links Road.

East Gippsland Planning Scheme Amendment C68

The Urban Design Framework recommended the placement of new design controls over residentially zoned land in the town, forming part of East Gippsland Planning Scheme amendment C68. These new design controls are proposed to be included in a schedule to the Design and Development Overlay (Schedule 13). In essence, the new schedule establishes approval 'triggers' for: buildings with a height of more than 7.5 metres; where the buildings and works exceed an area of 150 square metres, and where there is a slope greater than 15 percent.

The Shire has only recently received the report of the independent panel in relation to amendment C68 and the matter has not been reported to Council. Nevertheless, in anticipation of amendment C68 proceeding, it is suggested that those permit 'triggers' should be enshrined, in the interim, within an agreement that would be placed on title – and later removed following either approval of amendment C68 (in some form agreed to by Council) or some other amendment to the Planning Scheme, which would place a new schedule to the Design and Development Overlay on the land. This would ensure that the Design and Development Overlay is applied consistently across the residential areas in the town.

Development Contributions

The proponent has agreed to enter into a voluntary Section 173 Agreement with Council to commit payment of development contributions. The agreement would be executed prior to the adoption of the amendment, and would include provision for:

- Treatment and management of the former oil well.
- Contribution to the upgrade of Ostlers Road, Myer Street and Palmers Road.
- Playground equipment.
- Shared walking/cycling paths within the proposed open space areas.
- Maintenance of open space areas, including drainage detention basins, where required.
- Public art.

Development Plan Overlay

The Development Plan Overlay is a statutory document forming part of the amendment. The overlay sets out general parameters for future development of the land including the establishment of open space, road layout, cycle and pedestrian paths and general services.

The Development Plan Overlay requires that a Development Plan be submitted and approved by the Council (as a non statutory policy document) prior to subdivision of the land. The overlay states that once such a Development Plan has been approved by Council, subdivision that is in conformity with the plan may occur without further notification to adjoining land owners, and in stages.

Financial

The proponents would meet all fees associated with the request, as is Council's usual practice.

Amenity/Environment

Most of the land is already cleared and is unaffected by any statement of environmental significance. It is considered that there are sufficient safeguards within the Planning Scheme that specifically affect the land in relation to vegetation protection and erosion management. The notional subdivision layout has also been designed in consideration of water sensitive urban design issues and to ensure that drainage is appropriately dealt with on site.

Legislative

The request would be processed in line with the requirements of the *Planning and Environment Act 1987*.

5 CONSULTATION WITH STAKEHOLDERS

The proposal would be exhibited publicly in line with the requirements of the *Planning and Environment Act 1987*. Where there are concerns raised about the proposal, there are formal processes of review to guide Council consideration.

6 CONCLUSIONS

It is considered that the proposal can be sufficiently justified on the basis of promoting an orderly expansion of the Lakes Entrance urban area, consistent with the provisions of the Planning Scheme and would furthermore promote a more efficient future infill of land to the north in line with the previous strategy for the area. It is furthermore not considered that the subdivision of land at this point at the densities proposed would place any unacceptable strain on the townships physical and service infrastructure.

The rezoning is to be supported by the application of a new schedule to the Development Plan Overlay. An additional requirement for the inclusion of design and development controls, consistent with amendment C68, would also be placed on the land via an agreement.

It is not intended that the notional development plan attached to this report will be concurrently exhibited with this amendment, other than to inform any interested parties of the proposal.

It is recommended that Council request authorisation from the Minister for Planning to prepare and exhibit the amendment subject to finalising an agreement with the Shire addressing development contributions required and for the inclusion of appropriate design and development controls.

Documentation for the purpose of requesting authorisation and exhibition will be prepared once initial approval is received from the Department of Planning and Community Development. A draft of the proposed new schedule to the Development Plan Overlay is at **Attachment 4**.

7 APPENDICES

Nil

8 ATTACHMENTS

1. Draft outline development plan
 2. Town planning submission
 3. Vegetation Quality Assessment map
 4. Draft Schedule to the Development Plan Overlay
-

RECOMMENDATION

That Council, having considered all relevant planning matters:

1. *requests the Minister for Planning to authorise amendment C75 to the East Gippsland Planning Scheme to rezone land between Ostlers Road and Outlook Avenue, Lakes Entrance, from Farming Zone (Schedule 3) to Residential 1 Zone with a Development Plan Overlay – Schedule 6.*
2. *exhibits amendment C75 upon receiving authorisation of the Minister for Planning for the amendment, subject to preparing a voluntary Section 173 agreement for:*
 - *Determining contributions and responsibilities for:*
 - *Treatment and decontamination of the former oil well site, including appropriate contributions for the upgrade and landscape of the area in line with approved plans and specifications;*
 - *Contributions for the upgrade of Ostlers Road, Palmers Road and Myer Street;*
 - *Shared walking/cycling paths within the proposed open space areas and within the adjoining (linking) road network; and*
 - *Development and maintenance of open space areas, including drainage detention basins, where required, and for playground equipment, landscaping and public art.*
 - *Placing appropriate design and development controls on the land, consistent with East Gippsland Planning Scheme amendment C68.*

Cr Richard Ellis / Cr Michael Freshwater

THAT THE RECOMMENDATION BE ADOPTED.

CARRIED UNANIMOUSLY 07/07/2009

Attendance

Cr Trudy Anderson returned to the Council Chamber at 9.24 p.m.

6.2.8. ADOPTION OF PLANNING SCHEME AMENDMENT C77 – DWYERS BAIRNSDALE, MAIN STREET BAIRNSDALE

DEPARTMENT Planning and Community

AUTHORED BY Nick Kearns, Manager Planning Projects

ENDORSED BY Kate Nelson, Director Planning and Community

DOCUMENT NO. 3562203

In Attendance:

Kate Nelson, Director Planning and Community
Nick Kearns, Manager Planning Projects

1 OBJECTIVE

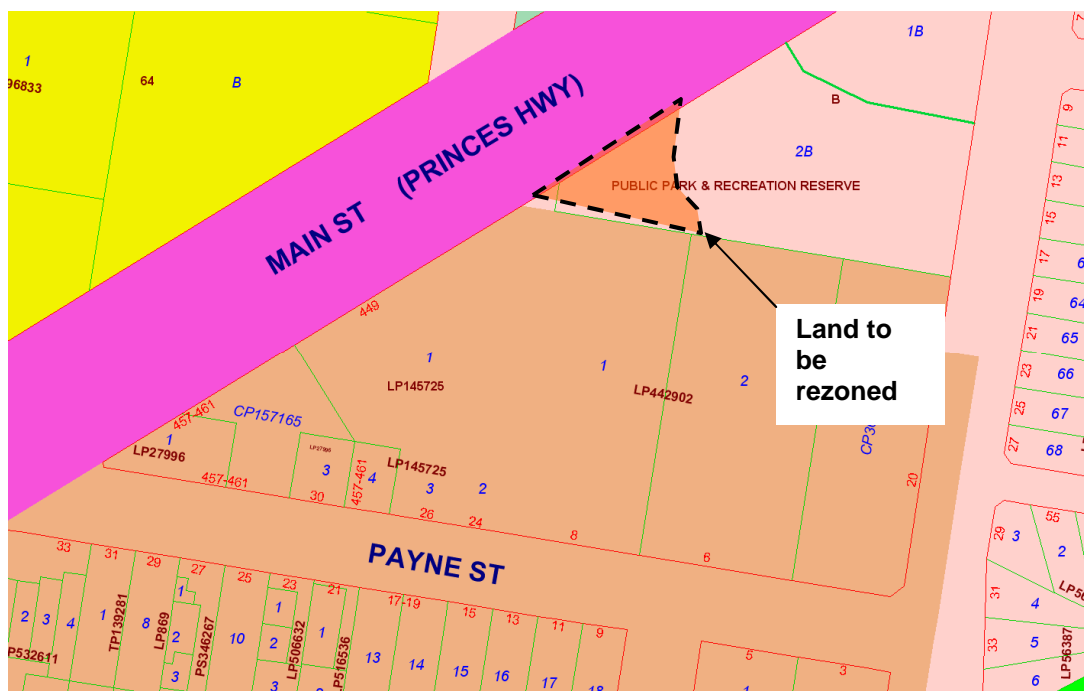
The objective of this report is to adopt and approve an amendment to the East Gippsland Planning Scheme to rezone land on Main Street Bairnsdale, associated with the expansion of the Dwyers Bairnsdale car dealership

2 BACKGROUND

Council initially considered the amendment request for the amendment at its meeting of 7 April 2009 (refer to **Item 6.1.1**).

The proposal is to rezone the land from Residential 1 to Industrial 1.

The land affected by the amendment is located includes part of 447 and 449 Main Street Bairnsdale. It has an area of 1.5 hectares.



Location map

Councillors will recall that the land is in two parts – the eastern part being owned by the Returned Services League Bairnsdale (RSL), and the western part being part of the Dwyers car dealership, and that part of the land had originally been a Crown Land Reserve – the Vin Barton Arboretum.

The eastern part of the land formed part of a larger Crown Allotment (2B) which was transferred to the RSL from the Crown in 2003. The purpose of the transfer was to allow for the development of car parking in association with the clubrooms redevelopment.

The RSL redeveloped the clubroom facilities and constructed the car park as part of a subsequent Planning Application.

The section of land forming the subject land (Lot 1) is residual to the requirements of the RSL. Additional land in RSL ownership at the rear of the site, adjacent to the Technical College, provides opportunity for landscaping, car parking, storage and future needs at a better location.

The condition of sale required the use of the land generally for amenity readily available to the public for community and recreational purposes.

The Crown has subsequently agreed to the transfer of land from RSL to Dwyers by providing consent to the recently approved subdivision application with three conditions, namely:

- The execution of a Section 173 Legal Agreement which encumbers another section of land in RSL ownership to be retained as amenity for public and community recreational purposes consistent with the Landscape Plan as prepared. Secondly, that the land be maintained in perpetuity allowing for continued public recreational purposes. This Legal Agreement (AG258623X) was executed on 19 December 2008, with a copy provided at **Attachment 1**.
- The landscape works are to be completed prior to completion of the subdivision.
- Members of the public must have the right to access to the area at all times.

Consent to the subdivision was provided by DSE based on the removal and loss of the existing planted vegetation contained within Lot 1.

As part of the preparation of the Landscape Plan, the existing planted vegetation contained within Lot 1 has been located, measured and assessed. The Landscape Plan has been prepared on the basis of replacement and enhancement of this loss to be provided within the area of encumbrance as detailed in the legal agreement

A copy of the exhibited amendment documentation is provided at **Attachment 2**, which generally explains the merits of the proposal, and matters relevant to the preparation of amendment.

3 CURRENT STATUS AND/OR ISSUES

The amendment was prepared in line with the authorisation granted by the Minister for Planning and exhibited in line with the requirements of the *Planning and Environment Act 1987*. That authorisation also enabled the Shire to approve the amendment under Section 35B of the *Planning and Environment Act 1987* once certified by the Secretary of the Department of Planning and Community Development.

No submissions were received.

If Council chooses to adopt the amendment, approval would be delegated to the Chief Executive Officer following certification from the Department of Planning and Community Development. Council may, alternatively choose to abandon the amendment.

4 IMPLICATIONS

Financial

The proponent has met all fees associated with processing this amendment.

Legislative

The request has been processed in line with the requirements of the *Planning and Environment Act 1987*.

5 CONSULTATION WITH STAKEHOLDERS

The proposal was exhibited in line with the requirements of the *Planning and Environment Act 1987*. The proposal was also referred to a number of referral authorities.

6 CONCLUSIONS

The proposal would represent a minor change to the predominant zoning of properties along the western entry to Bairnsdale – being along Main Street. It would correct an anomaly in the current zoning and enable Dwyers Bairnsdale to make a minor expansion to their business.

No submissions were received within the exhibition period and so it is not recommended that Council change the amendment. The amendment, furthermore, would result in a map change only.

It is recommended that Council adopt the amendment and delegate its approval to the Chief Executive Officer following certification by the Secretary of the Department of Planning and Community Development.

7 APPENDICES

Nil

8 ATTACHMENTS

1. Copy of agreement
 2. Exhibited amendment documentation
-

RECOMMENDATION

That Council, having considered all relevant planning matters:

- 1. Adopts amendment C77 to the East Gippsland Planning Scheme to rezone land at 447 Main Street Bairnsdale (inclusive of part PC 370320D and Lot 1 PS625172K) from Residential 1 Zone to Industrial 1 Zone.*
- 2. Delegates the approval of Amendment C77 to the East Gippsland Planning Scheme to the Chief Executive Officer following its certification by the Secretary of the Department of Planning and Community Development.*

Oral Submission

Ms Nicole Reynolds (Crowther & Sadler Pty Ltd) Bairnsdale

Cr Peter Neal / Cr Jane Rowe

THAT THE RECOMMENDATION BE ADOPTED.

CARRIED UNANIMOUSLY 07/07/2009

6.2.9. ADOPTION OF COMBINED PLANNING SCHEME AMENDMENT (C72) AND PLANNING PERMIT APPLICATION (451/2008/P) – FOR THE DEVELOPMENT OF SHOPS, OFFICES AND MEDICAL CENTRE AT HOWITT AVENUE, LUCKNOW (EASTWOOD VILLAGE SHOPPING CENTRE)

DEPARTMENT Planning and Community
AUTHORED BY Nick Kearns, Manager Planning Projects
ENDORSED BY Kate Nelson, Director Planning and Community
DOCUMENT NO. 3574197

In Attendance:

Kate Nelson, Director Planning and Community
 Nick Kearns, Manager Planning Projects

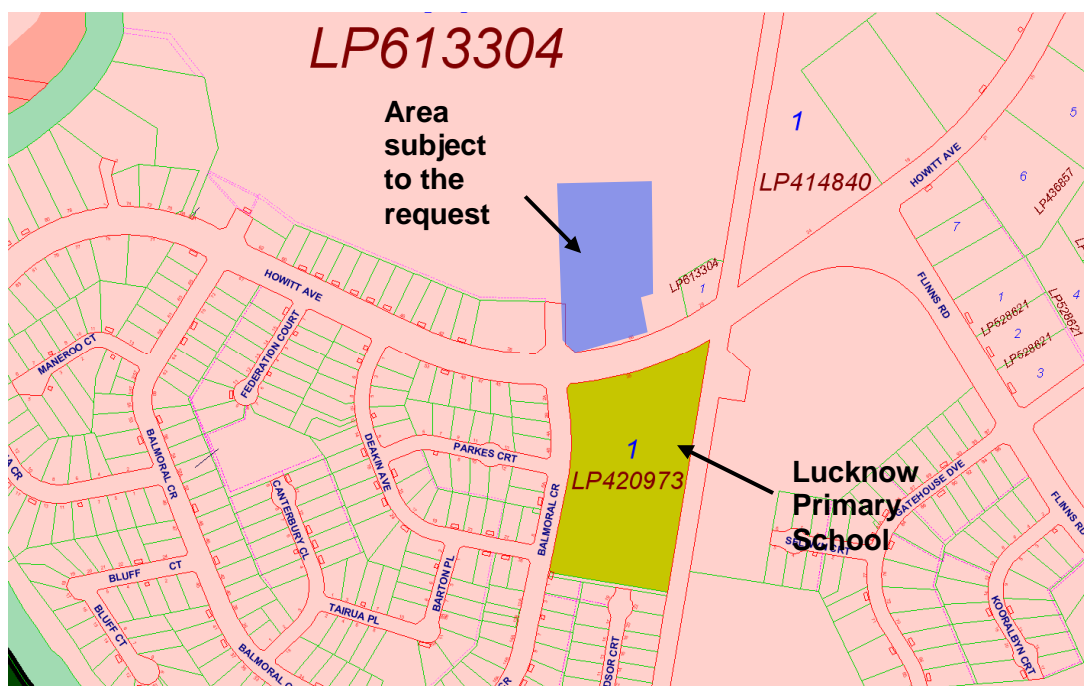
1 OBJECTIVE

The objective of this report is to adopt and approve a combined Planning Scheme amendment and planning permit to enable the development of a new shopping centre within the Eastwood residential estate, Lucknow.

2 BACKGROUND

The land is located at the corner of Howitt Avenue and Evergreen Way, Lucknow. It is described as proposed Lot 1 PS620116X.

The land has a frontage of 88.23 metres to Howitt Avenue and 129.56 metres to Evergreen Way. The area of the property is 1.65 hectares.



The land is currently zoned Residential 1.

Council initially considered the request for the proposal at its meeting of 3 February 2009 (refer to **Item 6.1.1**, to rezone the land to Business 1 Zone.

A copy of the exhibited amendment documentation is provided at **Attachment 1**, which generally explains the merits of the proposal, and matters relevant to the preparation of amendment. In summary, nevertheless, the proposal involves the rezoning of the land to the Business 1 Zone and approval of a new neighbourhood shopping centre (Planning Permit 451/2008/P) comprising:

- 3,190 square metres of shops;
- 400 square metres of offices; and
- a 470 square metres medical centre;

3 CURRENT STATUS AND/OR ISSUES

The amendment was prepared in line with the authorisation granted by the Minister for Planning and exhibited in line with the requirements of the *Planning and Environment Act 1987*. That authorisation requires the amendment, if adopted by Council, to be referred to the Minister for Planning for approval.

Two submissions were received in relation to the proposal, which are provided at **Attachment 2**. The submissions are not in opposition to the amendment but have raised issues with regard to some of the conditions in the draft planning permit. Those issues relate to:

- The provision of litter bins.
- Loading and operating times.
- The provision of a public toilet and change facility.
- Acoustic and landscape buffers.
- The need for children's crossing.
- Potential Light spill.

In response to these issues raised, it is proposed to adopt the proposal in line with an updated planning permit, including the following additional requirements:

- Request a management plan for the complex, covering such things as:
 - Hours of operation.
 - Arrangements for managing the adjoining car parks
 - Management of deliveries and waste collection.*The stand-alone condition with respect to waste would then be deleted.*
- Inclusion of a general 'amenity' condition to ensure that the area is not (in future) detrimentally affected by noise or litter.
- Inclusion of a specific condition to limit delivery times.
- Request revised plans to show the proposed public toilets and dedicated baby change facility, and details in relation to the acoustic screening along the northern boundary and external lighting. *The stand-alone condition in relation to lighting is proposed to be deleted.*
- Include a new condition, requesting the provision of a Landscape Concept Plan, in addition to detailed landscape plans. This will include the need to more clearly define landscape buffers.
- The requirements detailed as part of the required Section 173 agreement will include consideration for pedestrian and school crossings.

Additional updates to the planning permit, although not raised

- The ability for the development to be staged.
- Inclusion of a requirement to ensure that all plant and equipment is suitably screened.

A copy of the updated (draft) planning permit, with changes highlighted, is provided at **Appendix 1**.

4 IMPLICATIONS

Financial

The proponent has met all fees associated with processing this amendment.

Legislative

The request has been processed in line with the requirements of the *Planning and Environment Act 1987*.

5 CONSULTATION WITH STAKEHOLDERS

The proposal was exhibited in line with the requirements of the *Planning and Environment Act 1987*. The proposal was also referred to a number of referral authorities.

Submissions have been received and considered.

6 CONCLUSIONS

The proposal will facilitate the development of a supermarket, offices and medical centre, providing much needed local retail facilities to the growing Eastwood residential estate.

The changes proposed in the updated (draft) planning permit address the issues raised in submissions, which were not in opposition to the amendment.

It is recommended that Council adopt the proposal, with the changes suggested in the updated (draft) planning permit at Appendix 1 and forward it to the Minister for Planning for approval.

7 APPENDICES

1. Updated (draft) planning permit 451/2008/P

8 ATTACHMENTS

1. Town planning submission, plans and supporting documentation
 2. Submissions
-

RECOMMENDATION

That Council, having considered all relevant planning matters:

1. *Adopts amendment C72 to the East Gippsland Planning Scheme to rezone land at Howitt Avenue Lucknow from Residential 1 to Business 1;*
2. *Adopts draft planning permit 451/2008/P for the staged development and use of shops, offices and medical centre, including advertising signs and reduction in car parking requirements, in accordance with the endorsed plans, as updated in Appendix 1; and.*
3. *Forwards Amendment C72 to the East Gippsland Planning Scheme and draft planning permit 451/2008/P to the Minister for Planning under Section 31 of the Planning and Environment Act for approval.*

Conflict of Interest

Having declared a Conflict of Interest in this Item, Cr Meredith Urie vacated the Chair and left the Council Chamber at 9.33 p.m., prior to consideration of this item. The Deputy Mayor Cr Michael Freshwater assumed the Chair.

Cr Richard Ellis / Cr Peter Neal

THAT THE RECOMMENDATION BE ADOPTED.

CARRIED UNANIMOUSLY 07/07/2009

Attendance

Cr Meredith Urie returned to the Council Chamber at 9.38 p.m. following voting on the above item and resumed the Chair.

6.3. PRODUCTIVITY

6.3.1. EAST GIPPSLAND LIVESTOCK EXCHANGE ADVISORY COMMITTEE MINUTES – 11 MAY 2009

DEPARTMENT Commercial

AUTHORED BY Matt Youell, General Manager Commercial

DOCUMENT NO. 3572516

In attendance:

Matt Youell, General Manager Commercial

1 OBJECTIVE

This report provides for Council's information the Minutes of the East Gippsland Livestock Exchange Advisory Committee (EGLEAC) meeting held on 11 May 2009 and to consider a motion by the Advisory Committee. A copy of the Minutes of the EGLEAC meeting is provided at **Attachment 1**.

2 BACKGROUND

The Advisory Committee is required to report to Council on the outcomes of its meetings and all matters affecting the operation of the East Gippsland Livestock Exchange.

Councillors are also advised that any recommendations made by the Advisory Committee are to be endorsed by Council prior to implementation of the recommendations.

3 CURRENT STATUS AND/OR ISSUES

EGLEAC considered various issues resulting in actions/investigations to be undertaken by relevant Committee members and Council Officers. The Advisory Committee moved the following motion for Council's consideration:

MOTION: ***“COUNCIL OFFICERS TO RECOMMEND TO COUNCIL THE ‘TERMS OF REFERENCE’ FOR THE LIVESTOCK EXCHANGE ADVISORY COMMITTEE BE AMENDED TO ALLOW FOR TWO VICTORIAN FARMERS FEDERATION REPRESENTATIVES.”***

It is also worth noting that the current membership for the Advisory Committee expires on 30 June 2009. Council officers will prepare a report for the August Council meeting regarding the review of the Terms of Reference and membership representation of the Advisory Committee, prior to advertising for Expression of Interest (EOI) of membership.

4 IMPLICATIONS

Financial

Nil

5 CONSULTATION WITH STAKEHOLDERS

The Advisory Committee has been advised that Council will be considering the Minutes of the EGGLEAC meeting of 11 May 2009.

6 CONCLUSIONS

The minutes of the EGGLEAC meeting held on 11 May 2009 are presented for information and noting by Council. Council Officers will prepare a report for the August Council meeting outlining the review of the Term of Reference and membership of the EGGLEAC.

7 APPENDICES

Nil

8 ATTACHMENTS

1. Minutes of the East Gippsland Livestock Exchange Advisory Committee meeting held on 11 May 2009.

RECOMMENDATION

That Council

1. *note the Minutes of the East Gippsland Livestock Exchange Advisory Committee (EGLEAC) meeting held on 11 May 2009; and*
2. *instructs Council Officers to review the Terms of Reference and membership of the EGGLEAC and prepare a report for the August 2009 Council Meeting.*

Cr Trudy Anderson / Cr Michael Freshwater

THAT THE RECOMMENDATION BE ADOPTED.

CARRIED UNANIMOUSLY 07/07/2009

6.4. GOVERNANCE

6.4.1. REVIEW – INSTRUMENT OF DELEGATION COUNCIL TO CHIEF EXECUTIVE OFFICER

DEPARTMENT	Corporate and Economic Development
AUTHORED BY	Graeme Hill, Administration Coordinator
ENDORSED BY	John Websdale, Director Corporate and Economic Development
DOCUMENT NO.	3494893

In Attendance:

John Websdale, Director Corporate and Economic Development
Andrew Fearn-Wannan, Manager Administration and Human Resources

1 OBJECTIVE

This report presents the Instrument of Delegation Council to Chief Executive Officer for adoption.

2 BACKGROUND

Section 98(1) of the *Local Government Act* 1989 provides that Council may, by instrument of delegation, delegate to a member of staff any power, duty or function under the *Local Government Act* 1989 or any other Act, other than certain specified powers.

The Instruments of Delegation have been prepared using templates provided by Maddocks Solicitors, as part of an update service and includes any relevant legislative changes.

3 CURRENT STATUS AND/OR ISSUES

Executive Group and relevant staff have reviewed the Instruments of Delegation and believe they are appropriate for the ongoing administrative efficiency of the Council.

The Instrument of Delegation Council to Chief Executive Officer at **Appendix 1** is presented for review.

The *Local Government Act* 1989 provides that Council must review within the period of 12 months after a general election all delegations, which are in force and have been made by the Council under Section 98(1)

4 IMPLICATIONS

Financial

There are no financial implications associated with the adoption of this recommendation.

Human Resources

The Administration Coordinator will be responsible for the ongoing management of the Instruments of Delegation.

Legislative

Section 98 of the *Local Government Act* 1989 provides Council with the ability to delegate functions to staff.

5 CONSULTATION WITH STAKEHOLDERS

The delegations have been reviewed by staff and presented to Councillors for consideration.

6 CONCLUSIONS

In accordance with Section 98(6) of the *Local Government Act* 1989, Council is presented with the Instruments of Delegation Council to the Chief Executive Officer for adoption.

7 APPENDICES

1. Instrument of Delegation Council to Chief Executive Officer

8 ATTACHMENTS

Nil

RECOMMENDATION

That Council, in the exercise of the powers conferred by section 98(1) of the Local Government Act 1989 (the Act) and the other legislation referred to in the attached instrument of delegation as provided in appendix 1, resolves that:

1. ***there be delegated to the person holding the position, acting in or performing the duties of Chief Executive Officer the powers, duties and functions set out in the attached Instrument of Delegation to the Chief Executive Officer, subject to the conditions and limitations specified in that Instrument;***
2. ***the instrument comes into force immediately the common seal of Council is affixed to the instrument;***
3. ***on the coming into force of the instrument all previous delegations to the Chief Executive Officer are revoke;***
4. ***the duties and functions set out in the instrument must be performed, and the powers set out in the instruments must be executed, in accordance with any guidelines or policies of Council that it may from time to time adopt;***
5. ***it is noted that the instrument includes a power of delegation to members of Council staff, in accordance with section 98(3) of the Act; and***
6. ***signs and seals the Instrument of Delegation as provided at Appendix 1.***

Cr William Gamble / Cr Richard Ellis

THAT THE RECOMMENDATION BE ADOPTED.

CARRIED UNANIMOUSLY 07/07/2009

6.4.2. REVIEW – INSTRUMENT OF DELEGATION COUNCIL TO STAFF

DEPARTMENT	Corporate and Economic Development
AUTHORED BY	Graeme Hill, Administration Coordinator
ENDORSED BY	John Websdale, Director Corporate and Economic Development
DOCUMENT NO.	3494881

In Attendance:

John Websdale, Director Corporate and Economic Development
Andrew Fearn-Wannan, Manager Administration and Human Resources

1 OBJECTIVE

This report presents an updated *Instrument of Delegation Council to Members of Council Staff* (Instrument) for consideration and adoption by Council.

2 BACKGROUND

Section 98(1) of the *Local Government Act* 1989 provides that Council may, by instrument of delegation, delegate to a member of staff any power, duty or function under the Local Government Act or any other Act, other than certain specified powers.

The Instrument is for those Acts where there is no ability for sub delegation by the Chief Executive Officer.

3 CURRENT STATUS AND/OR ISSUES

The revised Instrument at **Appendix 1** enables Council staff to fulfil their legal and administrative functions. The delegation has been prepared using templates provided by Maddocks Lawyers and includes any of the relevant legislation changes and any staff position title changes since the Council last adopted the Instrument in September 2008. The recommendation also includes for the Chief Executive Officer to be authorised to amend the delegations schedule without formal Council consideration if amendment is rendered necessary simply as a result of changes to Officer titles.

Management Group and other relevant Officers have reviewed the delegations and believe they are appropriate for the ongoing administrative efficiency of the Council.

Some of the delegations are subject to conditions or limitations including some that have no effect unless supported by Council. These conditions and limitations are listed in the delegation documents.

The *Local Government Act* 1989 provides that Council must review within the period of 12 months after a general election all delegations, which are in force and have been made by the Council under Section 98(1).

A register of delegations must be maintained and available for public inspection.

4 IMPLICATIONS

Financial

There are no financial implications associated with the adoption of this recommendation.

Human Resources

The Administration Coordinator will be responsible for the ongoing management of the Instruments of Delegation.

Legislative

Section 98(1) of the *Local Government Act 1989* provides that Council may, by instrument of delegation, delegate to a member of staff any power, duty or function under the *Local Government Act 1989* or any other Act, other than certain specified powers.

5 CONSULTATION WITH STAKEHOLDERS

The revised Instrument has been developed in consultation with Councillors and staff.

6 CONCLUSIONS

The revised Instrument is presented for adoption by Council has been updated to reflect changes to relevant legislation and staff position titles that have occurred since the previous Instrument of Delegation was adopted in September 2008.

7 APPENDICES

1. Revised Instrument of Delegation from Council to Members of Council Staff.

8 ATTACHMENTS

Nil

RECOMMENDATION

That Council, in the exercise of the powers conferred by section 98(1) of the Local Government Act 1989 (the Act) and the other legislation referred to in the attached instrument of delegation as provided in appendix 1, resolves that:

1. ***there be delegated to the members of Council staff holding, acting in or performing the duties of the offices or positions referred to in Appendix 1 Instrument of Delegation to Members of Council staff, the powers, duties and functions set out in that instrument, subject to the conditions and limitations specified in that Instrument;***
2. ***the instrument comes into force immediately the common seal of Council is affixed to the instrument;***

3. *on the coming into force of the instrument all previous delegations to members of Council staff (other than the Chief Executive Officer) are revoked;*
4. *the duties and functions set out in the instrument must be performed, and the powers set out in the instruments must be executed, in accordance with any guidelines or policies of Council that it may from time to time adopt;*
5. *that the Chief Executive Officer be authorised to amend the delegations schedule without formal Council consideration if amendment is rendered necessary simply as a result of changes to Officer titles; and*
6. *signs and seals the Instrument of Delegation as provided at Appendix 1.*

Cr William Gamble / Cr Peter Neal

THAT THE RECOMMENDATION BE ADOPTED.

CARRIED UNANIMOUSLY 07/07/2009

6.4.3. COUNCIL PROCUREMENT POLICY**DEPARTMENT** Commercial**AUTHORED BY** Corinne Farley Contracts Management Coordinator**ENDORSED BY** Matt Youell General Manager Commercial**DOCUMENT NO.** 3544671**In Attendance:**

Matt Youell General Manager Commercial

1 OBJECTIVE

This report presents the Draft Procurement Policy (Policy) (refer **Appendix 1**) for consideration and adoption by Council.

2 BACKGROUND

In November 2008, amendments to the *Local Government Act* 1989 (the Act) were passed which included a new section, S186a that requires Council to prepare, approve and comply with a Procurement Policy encompassing the principles, processes and procedures applied to all purchases of goods, services and works by Council. The Policy must have regard to Ministerial Guidelines made under the section and Council must review its Policy annually and make it available for public inspection.

As a result of the legislative amendments, Council must prepare or update their Policy prior to November 2009.

3 CURRENT STATUS AND/OR ISSUES

The draft Policy has been developed in line with current management policies and procedures, the Local Government Procurement Best Practice Guideline (LGPBPG) August 2008 and the Act. The Policy applies to all contracting and procurement activities at Council and is binding upon Councillors, Council Officers (including temporary employees), contractors and consultants, whilst engaged by Council.

The Policy provides a framework that ensures procurement procedures and processes conform to Section 186 of the Act and to ensure a transparent competitive process is conducted prior to purchasing any goods or services or before carrying out works.

4 IMPLICATIONS**Financial**

This Policy aims to achieve best value for money by purchasing the best quality and value for price.

Amenity/Environment

Under the Policy, procurement purchases consideration must be given to sustainable options as part of the process.

Council Policy

Upon adoption this will be the Council Policy and it should be read in conjunction with the delegations Council to Chief Executive Officer and Council to staff

Human Resources

The Contracts Unit provides the central resource for the policy.

Legislative

Section 186a of the Act requires Council to prepare and approve a Procurement Policy.

5 CONSULTATION WITH STAKEHOLDERS

Consultation has occurred with Management Group and other relevant staff. The approved policy is to be made available at the Council Offices and on Council's website.

6 CONCLUSIONS

The policy meets the requirements of the *Local Government Act 1989* Section 186A and is presented to Council for endorsement.

7 APPENDICES

1. Draft Procurement Policy

8 ATTACHMENTS

Nil

RECOMMENDATION

That Council adopts the Procurement Policy provided at Appendix 1.

Cr Peter Neal / Cr Trudy Anderson

THAT THE RECOMMENDATION BE ADOPTED.

CARRIED UNANIMOUSLY 07/07/2009

6.4.4. ANNUAL COMMUNITY SATISFACTION SURVEY 2009

DEPARTMENT Office of the Chief Executive Officer

AUTHORED BY Steve Kozlowski, Chief Executive Officer

DOCUMENT NO. 3564829

IN ATTENDANCE

Steve Kozlowski, Chief Executive Officer

1 OBJECTIVE

This report is presented to advise Council of the results of the *Local Government Community Satisfaction Survey 2009*. A copy of the survey is provided at **(Attachment 1)**.

2 BACKGROUND

The Department for Victorian Communities undertakes a Community Satisfaction Survey for Local Government on an annual basis. The survey has been conducted for the past eleven years, with the bulk of Victoria's 79 municipalities participating this year.

An independent market research organisation, Wallis Consulting Group conducted the survey in each municipality, using a sample size of 350 telephone interviews with the "head of the household". The results were then placed in a database and benchmarked against previous years' results, together with other "like group" Councils.

3 CURRENT STATUS AND/OR ISSUES

Telephone interviews for the 2009 survey were conducted during February and March, with the results released on 1 June.

A summary of the 2009 results, including the results for specific performance areas, is provided at **(Appendix 1)**.

The results of the 2009 survey indicate that of the 13 measures surveyed, community satisfaction in 12 have remained unchanged but has increased in the area of waste management from the 2008 results. The survey also reveals that five times as many residents (21%) believe the Shire's performance has improved over the past twelve months as those who believe it has deteriorated (4%). The bulk of residents believe the performance of the Shire has improved or remained the same (87%). Community satisfaction in the range of measures for East Gippsland Shire compares favourably with similar Councils in Victoria.

The long term trends since 1998 **(Attachment 2)** indicate significant improvements in most measures. There has been a positive reduction over time in the number of residents believing improvement is needed in 11 of the measures, with two measures showing a growing need for improvement over the same time period.

After analysing the results, four areas are noted for improved focus. These are: Planning, Traffic management & parking, Roads & footpaths and Community Engagement. All are typical concerns within most rural communities. There are a number of significant activities and initiatives the Shire has already planned or is implementing to address these measures.

Planning	Traffic & Parking	Roads & Footpaths	Community Engagement
Major restructure of unit has resulted in 14 major projects valued at \$65M being facilitated	Bairnsdale long term car park using leased Victrack land will be completed by end of 2009.	Urban improvement program (UIP) for Bairnsdale and Lakes Entrance included in 5 year Cap Ex Program	Accelerated Face to Face program conducted with the newly elected Council
The series of recommendations of the SGS Independent review of October 2007 continue to be implemented.	Lakes Entrance Traffic/car park study (LETCS) as part of the Lakes Entrance Integrated Planning Project being undertaken to establish car park requirements	Significant increase in the 5 year Cap Ex Program to fund road construction and black resheeting of roads	Emphasis in draft Council Plan to develop a community plan for all townships to be resourced under a partnership with State Government
State Government plans to reform the Planning system have been supported	Bairnsdale Growth Strategy (BGS) will be completed by the second half of the year. It includes consideration of Bairnsdale Heavy Vehicle By pass (BHVB) plan	Town access and mobility plans being developed	
		\$630,000 allocated in 2008/09 to specific footpath projects under the Local Government Community Infrastructure Program	

4 IMPLICATIONS

Financial

East Gippsland Shire contributed \$4,000 towards the cost of the survey at the request of the Department for Victorian Communities. The Department bears the remainder of the cost.

5 CONSULTATION WITH STAKEHOLDERS

The Community Satisfaction Survey is one of a number of ways in which Council receives feedback on service delivery issues. It provides Council with an opportunity to benchmark its results and is considered to be a valuable tool for setting Council objectives and strategies.

6 CONCLUSIONS

This survey provides valuable feedback and helps Council determine its current program and longer-term objectives and strategies. The 2009 results indicate a positive improvement in public perception of the Shire's performance over time and confirm the allocation of priority to a number of initiatives in the draft Council Plan 2009-2013.

7 APPENDICES

1. East Gippsland Performance 2008/09 – Individual and Relative comparison

8 ATTACHMENTS

1. Local Government Community Satisfaction Survey 2009, prepared by Wallis Consulting Group
2. Needs Improvement trend analysis for 1998-2009 - Community Satisfaction Survey

RECOMMENDATIONS

That Council: -

1. *notes this report and the summary of East Gippsland Shire's results from the Local Government Community Satisfaction Survey 2009 as provided at Appendix 1; and*
2. *ensures that the Shire's results from the 2009 survey are utilised in future Council and Business Planning for the Shire.*

Cr Trudy Anderson / Cr William Gamble

THAT THE RECOMMENDATION BE ADOPTED.

CARRIED UNANIMOUSLY 07/07/2009

ITEM 7

URGENT AND OTHER BUSINESS

7. URGENT AND OTHER BUSINESS

Nil

Cr Jane Rowe / Cr Peter Neal

THAT COUNCIL MOVE INTO 'IN CAMERA' PURSUANT TO SECTION 89 (2) (D) OF THE LOCAL GOVERNMENT ACT 1989, TO CONSIDER ITEMS 8.1 TO 8.3 AS THESE ITEMS RELATE TO CONTRACTUAL MATTERS.

CARRIED UNANIMOUSLY 07/07/2009

Attendance

Cr Rowe left the Council Chamber at 10.01 p.m.

ITEM 8 FOR CONSIDERATION IN CAMERA

***Consideration of confidential matters under Section 89(2) of the
Local Government Act 1989***

8. FOR CONSIDERATION *IN CAMERA*

COMMERCIAL IN CONFIDENCE

In Attendance:

Chris Waites, Director Infrastructure
Matt Youell, General Manager Commercial

8.1. CONTRACT 885/089 REHABILITATION OF HUMPHREYS ROAD, FORGE CREEK

DEPARTMENT	Infrastructure Commercial
AUTHORED BY	John Wilkin, Project Supervisor Corinne Farley, Contracts Management Coordinator
ENDORSED BY	Chris Waites, Director Infrastructure Matt Youell, General Manager Commercial
DOCUMENT NO.	3510426

Report and Attachments

Located in Council's Confidential Minute Book

Cr Peter Neal / Cr Richard Ellis

THAT COUNCIL:

1. **ACCEPTS THE TENDER SUBMITTED BY CRANES ASPHALTING AND BITUMEN SEALING PTY LTD FOR CONTRACT NO 885/089, REHABILITATION OF HUMPHREYS ROAD, FORGE CREEK FOR THE CONTRACT AMOUNT OF \$205,511.50; AND**
2. **SIGNS AND SEALS THE CONTRACT IN THE FORM PROPOSED.**

CARRIED UNANIMOUSLY 07/07/2009

Attendance

Cr Rowe returned to the Council Chamber at 10.07 p.m.

8.2. CONTRACT 873/089 CONSTRUCTION OF EASTERN CREEK DIVERSION PIPELINE

DEPARTMENT	Infrastructure Commercial
AUTHORED BY	John Wilkin, Project Supervisor Corinne Farley, Contracts Management Coordinator
ENDORSED BY	Chris Waites, Director Infrastructure Matt Youell, General Manager Commercial
DOCUMENT NO.	3520672

Report and Attachments

Located in Council's Confidential Minute Book

Cr Peter Neal / Cr Trudy Anderson

THAT COUNCIL:

1. **ACCEPTS THE TENDER SUBMITTED BY WHELANS EARTHMOVING PTY LTD FOR CONTRACT NO 873/089, CONSTRUCTION OF EASTERN CREEK DIVERSION PIPELINE, LAKES ENTRANCE, FOR THE CONTRACT AMOUNT OF \$493,461.05; AND**
2. **SIGNS AND SEALS THE CONTRACTS IN THE FORM PROPOSED.**

CARRIED UNANIMOUSLY 07/07/2009

8.3. CONTRACT 871/089 SEALING OF RUNWAY 18-36 TAXIWAY AND AIRCRAFT APRON AT MALLACOOTA AERODROME

DEPARTMENT Infrastructure
Commercial

AUTHORED BY John Wilkin, Project Supervisor
Corinne Farley, Contracts Management Coordinator

ENDORSED BY Chris Waites, Director Infrastructure
Matt Youell, General Manager Commercial

DOCUMENT NO. 3524380

Report and Attachments

Located in Council's Confidential Minute Book

Cr Trudy Anderson / Cr Richard Ellis

THAT COUNCIL:

- 1. ACCEPTS THE TENDER SUBMITTED BY ORBOST CIVIL AND CIVIC PTY LTD FOR CONTRACT NO 871/089, SEALING OF RUNWAY 18-36 MALLACOOTA AERODROME FOR THE CONTRACT AMOUNT OF \$695,974.20; AND**
- 2. SIGNS AND SEALS THE CONTRACTS IN THE FORM PROPOSED.**

CARRIED UNANIMOUSLY 07/07/2009

9. MEETING CLOSED

The meeting closed at 10.10 p.m.

Confirmed _____

Cr Meredith Urie, Mayor

Date: 4 August 2009