

Strathbogie Shire Council

# **Extraordinary Council Meeting Agenda, including Annual Statutory Meeting**

November 8, 2022

## **Acknowledgement of Country**

We acknowledge the traditional custodians of the lands on which we strive, the peoples of the rivers and the hills of the Strathbogie Shire region who walked these lands for generations.

We pay our respects to the elders of the past, and the speakers of the first words, who lived in harmony with this country.

We acknowledge the elders of the present, who seek to regain their culture, and to teach the elders of the future their law, their history and their language.

We pay our respects to them and extend that respect to all Aboriginal and Torres Strait Islander peoples today.

We honour their spirit – and the memory, culture, art and science of the world's oldest living culture through 60,000 years.

# Agenda

## Extraordinary Council Meeting, including Annual Statutory Meeting

**Tuesday November 8 2022 at 6pm**

**Meeting to be held at Euroa Community Conference Centre and livestreamed  
on Council's website:**

<https://www.strathbogje.vic.gov.au/council/our-council/council-meetings-and-minutes/>

### **Council:**

Cr David Andrews (Lake Nagambie Ward)  
Cr Laura Binks (Mt Wombat Ward)  
Cr Reg Dickinson (Lake Nagambie Ward)  
Cr Sally Hayes-Burke (Seven Creeks Ward)  
Cr Kristy Hourigan (Seven Creeks Ward)  
Cr Paul Murray (Hughes Creek Ward)  
Cr Chris Raeburn (Honeysuckle Creek Ward)

### **Officers:**

Julie Salomon – Chief Executive Officer  
Amanda Tingay – Director Community and Planning  
Dawn Bray – Director People and Governance  
Vlad Adamek – Director Sustainable Infrastructure  
Kristin Favaloro – Executive Manager Communications and Engagement

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*In accordance with Governance Rule 11 of Strathbogie Shire Council's Governance Rules, the Chief Executive Officer will preside over proceedings until the election of the Mayor is concluded.*

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Julie Salomon  
**CHIEF EXECUTIVE OFFICER**

November 4, 2022

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## 5. **ANNUAL STATUTORY MEETING**

### 5.1 **Report by Outgoing Mayor**

The outgoing Mayor, Councillor Laura Binks, will address the meeting.

### 5.2 **Determination of Mayoral Term**

Sections 25 and 26 of the *Local Government Act 2020* (the Act) require that Councillors must elect a Councillor to be Mayor of the Council. A Mayor is to be elected no later than one month after the date of a general election.

Under Section 26(3), the Council must resolve whether to elect a Mayor for a term of one (1) year or two (2) years prior to electing a Mayor.

Under section 26(4), if the Mayor is elected for a 1 year term, the next election of the Mayor must be held on a day to be determined by the Council that is as close to the end of the 1 year term as is reasonably practicable.

It has been practice at Strathbogie Shire to appoint a Mayor for one (1) year. It is considered prudent to retain this practice given the growing demands on the Mayoral role under the Act.

### ***RECOMMENDATION***

***That the term of appointment for the Mayor be one year.***

### 5.3 **Provision of a Mayoral Motor Vehicle**

Under clause 13 of the Council Expenses Policy Council may determine whether or not a motor vehicle is provided for use by the Mayor.

Council has, in past years, determined that a vehicle would be provided for use by the Mayor and/or Councillors. The offer of the provision of a vehicle is at the discretion of the elected Mayor.

Council may also determine whether the Mayor sacrifices an amount for the additional cost of having full private use of the Mayoral vehicle.

In past years, the serving Mayor agreed to sacrifice an amount of \$200 per month from the Mayoral Allowance. The Council Expenses Policy identifies that this monthly contribution is currently paid by the Mayor.

It is recommended that the practice of the Mayoral contribution to the upkeep of the Mayoral vehicle continues. Further, it is considered appropriate that the contribution be indexed in accordance with the rate cap set by the State Government for the 2022/23 financial year of 1.75%, and be applied to index the vehicle contribution, which not been indexed since 2020. This would increase the contribution to \$235 per month.

#### **RECOMMENDATION**

##### ***That Council:***

- 1. Determine that a vehicle be made available for the Mayor with full private use.***
- 2. Determine the monthly contribution to the upkeep of that vehicle, to be deducted from the Mayor's allowance, be \$235 per calendar month.***

#### 5.4 **Election of Mayor**

Section 18 of the Act defines the role of the Mayor is to:

- (a) chair Council meetings; and
- (b) be the principal spokesperson for the Council; and
- (c) lead engagement with the municipal community on the development of the Council Plan; and
- (d) report to the municipal community, at least once each year, on the implementation of the Council Plan; and
- (e) promote behaviour among Councillors that meets the standards of conduct set out in the Councillor Code of Conduct; and
- (f) assist Councillors to understand their role; and
- (g) take a leadership role in ensuring the regular review of the performance of the Chief Executive Officer; and
- (h) provide advice to the Chief Executive Officer when the Chief Executive Officer is setting the agenda for Council meetings; and
- (i) perform civic and ceremonial duties on behalf of the Council.

The Mayor also has specific powers outline under section 19 of the Act:

- (a) to appoint a Councillor to be the chair of a delegated committee;
- (b) to direct a Councillor, subject to any procedures or limitations specified in the Governance Rules, to leave a Council meeting if the behaviour of the Councillor is preventing the Council from conducting its business;
- (c) to require the Chief Executive Officer to report to the Council on the implementation of a Council decision.

Under section 25(1) of the Act, a Mayor must be elected at a meeting that is open to the public. Any Councillor is eligible to be elected as Mayor.

Governance Rule 10 of the Governance Rules requires voting to be carried out by a show of hands.

Governance Sub Rule 11.1 states that any nominations for the office of Mayor must be in writing and in a form provided by the Chief Executive Officer and seconded by another Councillor.

Governance Sub Rule 11.2.1 states that if only one Councillor is a candidate for Mayor, the meeting must declare that Councillor to be duly elected as Mayor.

If there is more than one nomination the Councillors present at the meeting must vote for one of the candidates in accordance with Governance Sub Rule 11.2.2.

The Mayor must be elected by an absolute majority of the Councillors as per Governance Sub Rule 11.2.3; if an absolute majority of the Councillors cannot be achieved, Council may resolve to conduct a new election at a later specified time and date or may continue with an election in accordance with Governance Sub Rules 11.2.4 to 11.2.7.

### **5.5 Response by Elected Mayor**

In accordance with Rule 13 of the Governance Rules a ceremonial speech of up to three minutes may be made by the elected Mayor.

### **5.6 Determination of the establishment of the Office of Deputy Mayor**

Council may establish an office of Deputy Mayor under the Act and under Rule 12 of the Governance Rules.

If Council establishes this office, the Deputy Mayor must perform the role of the Mayor and may exercise any of the powers of the Mayor if:

- (a) the Mayor is unable for any reason to attend a Council meeting or part of a Council meeting; or
- (b) the Mayor is incapable of performing the duties of the office of Mayor for any reason, including illness; or
- (c) the office of Mayor is vacant.

If Council chooses not to appoint a Deputy Mayor, then an Acting Mayor can be appointed when the Mayor is unable for any reason to attend a Council meeting or part of a Council meeting, the Mayor is incapable of performing the duties of the office of Mayor for any reason, including illness or the office of Mayor is vacant.

It is considered prudent to establish the Office of Deputy Mayor given the long-standing tradition of doing so at Strathbogie Shire and to provide clarity and consistency around roles and responsibilities should the Mayor be unavailable. It is also considered a more efficient means of dealing with Council business in the Mayor's absence.

### ***RECOMMENDATION***

#### ***That Council:***

- 1. Establish the Office of Deputy Mayor.***
- 2. Confirm the term for the Deputy Mayor term be one year, to be consistent with the term of the Mayor.***

### **5.7 Election of Deputy Mayor**

Under Rule 12 of the Governance Rules any election for the office of Deputy Mayor is regulated by Rules 9-11 (inclusive) of this Chapter, as if the reference to the Chief Executive Officer is a reference to the Mayor; and Mayor is a reference to the Deputy Mayor (as the case may be).

### **5.8 Response by Elected Deputy Mayor**

In accordance with Rule 13 of the Governance Rules, a ceremonial speech of up to three minutes may be made by the elected Deputy Mayor.

## 6. **EXTRAORDINARY COUNCIL MEETING**

### **OFFICER REPORTS**

#### 6.1 **INFRASTRUCTURE**

##### 6.1.1 **Suspension of the Road Management Plan and the Tree Management Plan**

Author: Waste and Environment Coordinator and Manager Asset Planning

Responsible Director: Director Sustainable Infrastructure

#### **EXECUTIVE SUMMARY**

The last three years La Nina activity has seen increased rain fall which in turn created a higher volume of maintenance activity on our roads and drainage network. This weather pattern has also seen periods of strong winds which have increased the number of tree failure, particularly along the Shire's rural road network.

The impacts on our road network and the urban and rural trees Council is responsible for have been further exacerbated during the October 2022 flood event.

This report is to inform Council and the community that due to sustained level of damage and ongoing rain and windy conditions, the Chief Executive Officer has enacted Clause 9 Force Majeure of the Road Management Plan and is recommending that the Council amend the existing Force Majeure clause in the Tree Management Plan to provide clearer explanation as to how it is enacted and how the standard of service reverts back to that outlined in the Plan, and then enact this amended clause to suspend service level compliance.

The enactment of these clauses will be reviewed by 30 January 2023, by which time officers will have completed a comprehensive assessment of the damage to Council's road network and community infrastructure. This assessment will inform the development of an action plan with associated timelines and budget required from State and Federal Government to rectify damage.

#### **RECOMMENDATION**

***That Council, in response to the October 2022 flood event:***

1. ***Note that the Chief Executive Officer has exercised the powers to enact Clause 9 Force Majeure effective 27 October 2022 which suspends service level compliance as detailed in the Strathbogrie Shire Council Road Management Plan 2021;***

**6.1.1 Suspension of the Road Management Plan and the Tree Management Plan (cont.)****RECOMMENDATION (cont.)**

- 2. Authorise officers to amend the Force Majeure clause on page 29 of the Tree Management Plan: Urban and Rural Strategies Force Majeure to read as follows:**

**Force Majeure**

**Council will make every endeavour to meet all aspects of its Tree Management Plan: Urban and Rural Strategies (TMP). However, in the event of natural disasters and other events including, but not limited to, fires, floods, storms, droughts and the like, together with human factors, such as lack of Council staff or suitably qualified contractors, because of section 83 of the Victorian Wrongs Act 1958, as amended, Council reserves the right to suspend compliance with its TMP.**

**In the event that the Chief Executive Officer (CEO) of the Council has to, pursuant to section 83 of the above Act, consider the limited financial resources of the Council and its other conflicting priorities, meaning Council's TMP cannot be met, the CEO will write to Council's Officer in Charge of its TMP and inform them that some, or all, of the service levels, timeframes and response times are to be suspended.**

**Once the events beyond the control of Council have abated, or if the events have partly abated, Council's CEO will write to Council's Officer responsible for Council's TMP and inform them which parts of Council's TMP are to be reactivated including the required reactivation timeframes;**

- 3. Enact the 'Force Majeure' clause in the Tree Management Plan: Urban and Rural Strategies effectively suspending service level inspections and compliance;**
- 4. Note that whilst the Force Majeure clauses remain enacted, officers will make every endeavour to meet all aspects of its Road Management and Tree Management Plans to ensure the safety of our community, and**
- 5. Note that the enactment of both of the above clauses will be reviewed 30 January 2023 and will receive a further report in the February 2023 Council meeting advising of the outcome of this review and if further enactment of these clauses is required.**

**PURPOSE AND BACKGROUND**

Strathbogie Shire Council, along with other rural, regional, and metropolitan Councils within Victoria have been impacted by the October 2022 flood event. This has and continues to be further exacerbated higher-than-normal rain and is placing significant strain on officers, contractors, and financial resources to maintain the services levels to our residents as detailed in the Road Management Plan 2021 (RMP) and the Tree Management Plan: Urban and Rural Strategies (TMP).

### 6.1.1 Suspension of the Road Management Plan and the Tree Management Plan (cont.)

Due to these ongoing conditions and the impacts to Councils roads network and community infrastructure, the Chief Executive Officer (CEO) has enacted Clause 9 Force Majeure of the Road Management Plan and is recommending that the Council insert and then enact a Force Majeure clause in the Tree Management Plan to effectively suspend service level compliance with both plans.

Whilst these clauses are enacted the safety of our community will remain a priority and staff will be deployed as required to fulfil these obligations.

#### **ISSUES, OPTIONS AND DISCUSSION**

One of the overarching governance principles in section 9 of the Local Government Act 2020 is that priority is to be given to achieving the best outcomes for the municipal community, including future generations.

Strathbogie Shire Council is committed to providing a safe environment for the residents and travelling public; however, our road infrastructure has sustained a significant increase of reactive road maintenance repairs over recent years.

Due to the large amount of water currently impacting on Council's road network and the health of our rural trees it is becoming unsustainable for staff to meet the service levels as articulated in both the RMP and TMP.

Councils RMP describes road assets within road reserves for which Council is responsible. The document sets inspection intervals and response times as well as stating management systems which this Council will implement to ensure that its responsibilities within the Act are met.

Council's TMP provides the framework for the maintenance, renewal and risk management of all tree assets growing on Council owned and managed land.

The below clauses are extracts from both plans that are being enacted:

#### **Road Management Plan:**

Clause 9 "FORCE MAJEURE" (page 21)

*Council will make every endeavour to meet all aspects of its RMP. However, in the event of natural disasters and other events including, but not limited to, fires, floods, droughts and the like, together with human factors, such as lack of Council staff or suitably qualified contractors, because of section 83 of the Victorian Wrongs Act 1958, as amended, Council reserves the right to suspend compliance with its RMP. In the event that the CEO of the Council has to, pursuant to section 83 of the above Act, consider the limited financial resources of the Council and its other conflicting priorities, meaning Council's RMP cannot be met, they will write to Council's Officer in charge of its RMP and inform them that some, or all, of the timeframes and response times are to be suspended. Once the events beyond the control of Council have abated, or if the events have partly abated, Council's CEO will write to Council's Officer responsible for Council's RMP and inform them which parts of Council's RMP are to be reactivated and the timeframes for each part of the RMP to be reactivated.*

### 6.1.1 Suspension of the Road Management Plan and the Tree Management Plan (cont.)

Under its Road Management Plan, the Force Majeure clause specifically relates to:

- Section 5 - Standards for Inspection
- Section 6 - Service Levels'
- Section 7 - Standards for Maintenance and Repair
- Appendix 3 – Inspection Targets
- Appendix 4 – Maintenance Targets and Response Times for Roads

#### **Tree Management Plan:**

Force Majeure (page 29)

*Council will make every endeavour to meet all aspects of its Tree Management Plan. In the event of a natural disaster or other events such as fires, floods, or droughts or due to lack of available Council staff or suitably qualified contractors, Council reserves the right to suspend compliance with its Tree Management Plan.*

Under its Tree Management Plan, the Force Majeure clause specifically relates to:

- Section 13 - Tree Maintenance by Council and Assessment of Proposed Works
- Section 14 – Maintenance Scope
- Section 15 – Tree Inspection Regime to Identify and Mitigate Risks
- Appendix 3 – High and Medium Risk Land Use Areas

Given the extenuating circumstances the enactment of the Force Majeure clause relates to, it is proposed that Council endorse the amendment to this Clause as follows:

- *Council will make every endeavour to meet all aspects of its Tree Management Plan: Urban and Rural Strategies (TMP). However, in the event of natural disasters and other events including, but not limited to, fires, floods, storms, droughts and the like, together with human factors, such as lack of Council staff or suitably qualified contractors, because of section 83 of the Victorian Wrongs Act 1958, as amended, Council reserves the right to suspend compliance with its TMP. In the event that the Chief Executive Officer (CEO) of the Council has to, pursuant to section 83 of the above Act, consider the limited financial resources of the Council and its other conflicting priorities, meaning Council's TMP cannot be met, the CEO will write to Council's Officer in Charge of its TMP and inform them that some, or all, of the service levels, timeframes and response times are to be suspended. Once the events beyond the control of Council have abated, or if the events have partly abated, Council's CEO will write to Council's Officer responsible for Council's TMP and inform them which parts of Council's TMP are to be reactivated including the required reactivation timeframes.*

The enactment of these clauses will be reviewed by 30 January 2023 by which time officers will have completed a comprehensive assessment of the damage to Council's road network and community infrastructure. This assessment will inform the development of an action plan with associated timelines and budget required from State and Federal Government to rectify damage.

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### 6.1.1 Suspension of the Road Management Plan and the Tree Management Plan (cont.)

#### **COMMUNITY ENGAGEMENT**

One of the overarching governance principles in section 9 of the Local Government Act 2020 is that the municipal community is to be engaged in strategic planning and strategic decision making.

Council has informed the community that we are suspending our compliance requirements with both the RMP and TMP due to the ongoing rain events that our Shire is experiencing. Once conditions have eased and a plan to address the damage has been completed, we will inform that community that both plans will be reactivated.

#### **POLICY CONSIDERATIONS**

##### Council Plans and Policies

Council is able to suspend its compliance requirements under each of the Plans.

##### Regional, State and National Plans and Policies

One of the overarching governance principles in section 9 of the *Local Government Act 2020* is that regional, state and national plans and policies are to be taken into account in strategic planning and decision-making.

Council has response and recovery obligations under the *Emergency Management Act 2013* and as we are a small Council this burden falls on the limited Council resources. As such advocacy for funding is an important element of our Shire's Recovery Plan.

#### **LEGAL CONSIDERATIONS**

One of the overarching governance principles in section 9 of the *Local Government Act 2020* is that Council decisions are to be made and actions taken in accordance with the relevant law.

The CEO is able to exercise her Force Majeure powers under the Road Management Plan, and the Council has power under the Tree Management Plan in the case of a natural disaster.

#### **Conflict of Interest Declaration**

All officers, and/or contractors, involved in the preparation of this report have signed a written declaration that they do not have a conflict of interest in the subject matter of this report.

#### **Transparency**

One of the overarching governance principles in section 9 of the *Local Government Act 2020* is that the transparency of Council decisions, actions and information is to be ensured.

This report is being tabled at an open Council meeting for the community to have transparency into enactment of the Force Majeure clauses in both plans.

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### 6.1.1 Suspension of the Road Management Plan and the Tree Management Plan (cont.)

#### **FINANCIAL VIABILITY CONSIDERATIONS**

One of the overarching governance principles in section 9 of the *Local Government Act 2020* is that the ongoing financial viability of the Council is to be ensured.

There are no financial implications for Council because of the enactment of the Force Majeure clauses.

#### **SUSTAINABILITY CONSIDERATIONS**

One of the overarching governance principles in section 9 of the *Local Government Act 2020* is that the economic, social and environmental sustainability of the municipal district, including mitigation and planning for climate change risks, is to be promoted.

##### **Economic**

Our community and businesses are being impacted by the ongoing flood conditions and staff have response and recovery responsibilities to support our community during this time.

##### **Social**

Our community and businesses are being impacted by the ongoing flood conditions and staff have response and recovery responsibilities to support our community during this time.

##### **Environmental**

South east Australia is currently experiencing a strong La Nina event which increases the chance of above average rainfall. It is expected that the El Nino South Oscillation (ENSO) index will return to neutral conditions in early 2023.

##### **Climate change**

The current ongoing flooding events are caused by climate change as south east Australia is currently experiencing a La Nina event which leads to higher than normal levels of rainfall.

#### **HUMAN RIGHTS CONSIDERATIONS**

The recommendation does not limit any human rights under the Victorian Charter of Human Rights and Responsibilities Act 2006.

#### **CONCLUSION**

The CEO has exercised her powers under the Road Management Plan and is recommending that the Council exercise their power under the Tree Management Plan to suspend compliance with both plans. This will be reviewed by 30 January 2023.

It is also recommended that the Council delegate its power to suspend the Tree Management Plan to the CEO and authorise staff to update the plan accordingly.

#### **ATTACHMENTS**

Nil

The next monthly meeting of the Strathbogie Shire Council is scheduled to be held next Tuesday, November 15, 2022, at the Euroa Community Conference Centre, at 6pm.

***THERE BEING NO FURTHER BUSINESS, THE MEETING CLOSED AT ..... P.M.***