

Agenda

Meeting of Council
Thursday, 7 October 2021

To be held via Video Conference
(Zoom)

Commencing at 5:00pm

Council:

Cr Libby Stapleton (Mayor)
Cr Gary Allen
Cr Paul Barker
Cr Mike Bodsworth
Cr Kate Gazzard
Cr Rose Hodge
Cr Liz Pattison
Cr Adrian Schonfelder
Cr Heather Wellington

AGENDA FOR THE MEETING OF SURF COAST SHIRE COUNCIL
TO BE HELD VIA VIDEO CONFERENCE (ZOOM)
ON THURSDAY 7 OCTOBER 2021 AT 5:00PM

PRESENT:

OPENING:

The Surf Coast Shire local government area spans the traditional lands of the Wadawurrung People and the Eastern Maar People. The main Council office in Torquay where this meeting is held is on Wadawurrung Country. As this meeting is also live-streamed we wish to acknowledge the Traditional Owners of the lands on which each person is viewing the meeting and pay respect to Elders past and present. Council also acknowledges other Aboriginal people that may be attending or watching the meeting today.

PLEDGE:

As Councillors we carry out our responsibilities with diligence and integrity and make fair decisions of lasting value for the wellbeing of our community and environment.

APOLOGIES:

CONFLICTS OF INTEREST:

Note to Councillors and Officers

Declaration of Interest

In accordance with Section 130 of the Local Government Act 2020 (the Act), there is an obligation to declare a conflict of interest in certain situations including matters being considered by Council.

A conflict of interest can be a general conflict of interest under section 127 of the Act, or a material conflict of interest under section 128 of the Act.

A Councillor, a non-Councillor member of a delegated committee or member of Council staff has a general conflict of interest in a matter if an impartial, fair-minded person would consider that the person's private interests could result in that person acting in a manner contrary to their public duty.

A Councillor, a non-Councillor member of a delegated committee or member of Council staff has a material conflict of interest in respect of a matter if they or another affected person (as defined in section 128(3)) would gain a benefit or suffer a loss depending on the outcome of the matter.

Please note that some general exemptions apply and are set out in section 129 of the Act.

Disclosure of Interest

A Councillor must make full disclosure of a conflict of interest by either advising Council at the meeting immediately before the matter is considered at the meeting, or advising the Chief Executive Officer in writing prior to the meeting. While the matter is being considered or any vote taken, the Councillor with the conflict of interest must leave the room and notify the Chairperson that they are doing so. This notification must include the nature of the conflict and whether the interest is a general or material conflict of interest.

A Council officer must disclose the conflict of interest when providing information and before the information is considered.

Councillors and Council staff will also be required to complete a conflict of interest declaration form.

BUSINESS:

1. GOVERNANCE & INFRASTRUCTURE 4

1.1 *Early Resumption of Deferred Item - Point Grey Land Manager Consent 4*

1.2 *Point Grey Land Manager Consent 5*

1. GOVERNANCE & INFRASTRUCTURE

1.1 Early Resumption of Deferred Item - Point Grey Land Manager Consent

Author's Title: Coordinator Governance
Department: Governance & Risk
Division: Governance & Infrastructure

General Manager: Stevan Muskett
File No: F18/221-3
Trim No: IC21/1635

Appendix:

Nil

Officer Conflict of Interest:

In accordance with Local Government Act 2020 –
Section 130:

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Yes

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No

Reason: Nil

Status:

Defined as confidential information in accordance
with Local Government Act 2020, Section 3(1):

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Yes

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No

Reason: Nil

Purpose

The purpose of this report is to enable Council to consider a previously deferred item ahead of the meeting that the item was originally deferred to.

Summary

At its meeting on 28 September 2021, Council resolved to defer agenda item 4.1 (Point Grey Land Manager Consent) until the October Council meeting, which is scheduled for 26 October 2021. A Council meeting was subsequently called for 7 October 2021 to consider the deferred agenda item. Although the date of the October Council meeting was not identified in the resolution deferring the item, to ensure certainty of process, it is recommended that Council resolve to change that deferral prior to the item being considered at this meeting.

Recommendation

That Council agrees to consider deferred agenda item 4.1 from the 28 September 2021 Council meeting at this meeting dated 7 October 2021, instead of at the Council meeting scheduled for 26 October 2021.

Options

Option 1 – That Council agrees to consider deferred agenda item 4.1 from the 28 September 2021 Council meeting at this meeting dated 7 October 2021, instead of at the Council meeting scheduled for 26 October 2021.

This option is recommended by officers as it will enable Council to consider the deferred item early, which is the purpose for which this meeting was called.

Option 2 – That Council does not agree to consider deferred agenda item 4.1 from the 28 September 2021 Council meeting at this meeting dated 7 October 2021, instead of at the Council meeting scheduled for 26 October 2021

This option is not recommended by officers as this meeting will then be unable to proceed.

Conclusion

The recommendation contained within this report will enable Council to alter the deferral period of agenda item 4.1 from the 28 September 2021 Council meeting, which will then permit the consideration of that item at this meeting.

1.2 Point Grey Land Manager Consent

Author's Title: Acting General Manager Governance and Infrastructure **General Manager:** John Bertoldi

Department: Governance and Infrastructure

File No: F18/221-3

Division: Governance & Infrastructure

Trim No: IC21/1636

Appendix:

1. Point Grey - Plan (D21/129681)
2. Point Grey - Title (D21/129684)

Officer Conflict of Interest:

In accordance with Local Government Act 2020 – Section 130:

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Yes

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No

Reason: Nil

Status:

Defined as confidential information in accordance with Local Government Act 2020, Section 3(1):

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Yes

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No

Reason: Nil

Purpose

The purpose of this report is to enable Council to consider a request that it provide consent for a planning application to be considered where the application relates to a development on land that includes parcels for which Council is the Public Land Manager in the context of the Planning and Environment Act 1987.

Summary

The Great Ocean Road Coast and Parks Authority (GORCAPA) is seeking Council's consent to make Planning Permit Application No. 18/0508 (PPA18/0508) for land where Council is the Coordinating Road Authority under the Road Management Act 2004 and therefore the Public Land Manager for the purpose of the Planning and Environment Act 1987 (P&E Act).

Council, as the Responsible Authority under the P&E Act, has already determined PPA18/0508 and has exercised its authority under the P&E Act. Council is not able to reconsider its decision as the Responsible Authority. Planning Permit Application No. 18/0508 is currently being considered by the Victorian Civil and Administration Tribunal (VCAT) as a result of an application by an objector. Through the VCAT Hearing process it has been identified that the application relates to two allotments that are designated as Government Road, with Council identified as the Road Manager. This was not known by GORCAPA (or Great Ocean Road Coastal Committee as predecessor) or Council when the application was initially submitted and it was believed that GORCAPA had control of all the land subject to the planning permit application.

It is a requirement of the planning scheme that the Public Land Manager provide consent to the planning permit application being made and so VCAT has put its consideration on hold so that GORCAPA can request this consent from Council. Consent is limited to the making of the planning permit application only, and other approvals may require separate and further consideration before any permit, if issued, can progress through to completion and operation. These matters are not the subject of this report and it is important for Council to consider the matter before it in the context of its relevant powers and authorities.

Officers have considered the role of the two allotments in relation to Council-delivered services and assets and have not identified any reasons to refuse Public Land Manager consent.

Recommendation

That Council:

1. In its capacity as the Public Land Manager of Allotments 2052 and 2059, Township of Lorne, Parish of Lorne, provides its consent to the Great Ocean Road Coast and Parks Authority to make a planning permit application to use the land for a place of assembly and to construct buildings and works pursuant to Clauses 36.02-1 and 36.02-2 of the Surf Coast Planning Scheme, generally as described and shown in the documents and plans accompanying Planning Permit Application 18/0508.
2. Affirms that Allotments 2052 and 2059, Township of Lorne, Parish of Lorne have no relation to the local road network or road-related assets managed by Council and are surplus to its municipal needs.
3. Authorises the Chief Executive Officer to commence the process to transfer ongoing land management responsibilities for Allotments 2052 and 2059 to the Great Ocean Road Coast and Parks Authority.

1.2 Point Grey Land Manager Consent

Report

Officer Direct or Indirect Interest

No officer involved in the preparation of this report has any conflicts of interest.

Background

On the 3 December 2018, the Great Ocean Road Coast Committee (GORCC) lodged a planning permit application with the Surf Coast Shire Council (Council) for a development at Point Grey, Lorne. Council considered the application under the Planning and Environment Act 1987 and the Surf Coast Planning Scheme and subsequently resolved on 26 June 2020 to issue a Notice of Decision to Grant a Planning Permit for the development (NOD). An objector filed an application for review of the NOD to VCAT. VCAT held hearings on this matter on 12 – 15 April 2021.

On 16 April 2021, VCAT made an order seeking submissions addressing the implications arising from a change to some of the land parcels subject of the application. In response investigation was undertaken into the land management for the subject land parcels and through this it was confirmed that the Council is the Public Land Manager of 2 allotments within the area subject to the permit (Allotment 2052 and 2059 - being roads for which the Council is the Crown Land Administrator). These roads are in a Public Park and Recreation Zone (PPRZ) under the Surf Coast Planning Scheme (Planning Scheme).

Clause 36.02-3 of the zone specifies that an application for a permit by a person other than the relevant public land manager must be accompanied by the written consent of the public land manager, indicating that the public land manager consents generally or conditionally to the application for permit being made. Without this consent the application is incomplete and a planning permit cannot be granted. In this case the request for consent is being made retrospectively, but the Tribunal may use its powers to correct this administrative oversight.

At the time of lodging the planning permit application and when the NOD was issued, neither the Council nor GORCC were aware that the Council was the Public Land Manager of these two allotments. Following this realisation the Great Ocean Road Coast and Parks Authority (GORCAPA – formally GORCC) requested consent of the Council as the Public Land Manager of the roads to make the application for Planning Permit.

This report had been presented to Councillors at the July 2021 Council Meeting where Council resolved the following:

1. *Defers any decision to grant consent to Great Ocean Road Coast and Parks Authority (GORCAPA) to make Planning Permit Application No 18/0508 as it affects Allotments 2052 and 2059 for the purposes of clause 36.02-3 of the Surf Coast Planning Scheme until its scheduled meeting in September 2021.*
2. *Directs the Chief Executive Officer to invite a representative of the Great Ocean Road Coast and Parks Authority (GORCAPA) to brief Councillors on the proposed development at Point Grey prior to the September Council Meeting.*

In response to action 1 this report is being presented at this Council Meeting.

In response to action 2 representatives of GORCAPA presented to a councillor briefing on 14 September 2021 outlining further work on the engagement of the Lorne community that had been undertaken since July including possible amendments to the current development plan that may be considered. Although this shows the Authorities preparedness for ongoing engagement on the development this is not material to the decision regarding Council's role in issuing consent to the GORCAPA to make a planning permit application as Public Land Manager.

Discussion

The parcels of land in question is occupied primarily by a car park which services the Point Grey precinct and associated open space. Although Council has been identified as the designated Public Land Manager for 2 allotments the car park is not identified on Council's Register of Public Road and Council has no records of undertaking any management or maintenance responsibility for the car park. It is relevant to note that Council was formally identified as the Crown Land Administrator by way of a rectification to the Crown Land folio on 13 February 2017 which transferred this responsibility from DELWP. There is no record of Council being advised of this change in responsibility.

1.2 Point Grey Land Manager Consent

As can be seen in the appendix the car park cannot be accessed directly from the Great Ocean Road or Council's road network but must be accessed via roads on GORCAPA managed public reserves. Council has no facilities within this precinct as all the facilities within the precinct are managed by GORCAPA.

In considering whether to issue consent to make the Planning Permit Application the following have been considered by Council Officers:

- Does Council have any existing Plans or Strategies relating to the future use of the subject land?
- Does Council foresee the future need to develop the subject land?
- Does Council have existing assets or services on the subject land that would be impacted by the granting of consent?

Officers have not identified a valid reason to deny Public Land Manager consent to the making of the Planning Permit Application. Furthermore the subject land is deemed to be surplus to Council needs as there is no identified future use for the land as it is a portion of road reserve surrounded by GORCAPA managed public land. Consideration of the transfer of land management responsibility for the subject land from Council to GORCAPA should be considered.

Council Plan

Theme 5 High Performing Council

Objective 5.1 Ensure Council is financially sustainable and has the capability to deliver strategic objectives

Strategy Nil

Reporting and Compliance Statements:

Local Government Act 2020 – LGA 2020

Implications	Applicable to this Report
Governance Principles (Consideration of the Governance Principles under s.9 of LGA 2020)	Yes
Policy/Relevant Law (Consideration of the Governance Principles under s.9 of LGA 2020)	Yes
Environmental/Sustainability Implications (Consideration of the Governance Principles under s.9 of LGA 2020)	No
Community Engagement (Consideration of Community Engagement Principles under s.56 LGA 2020 and Council's Community Engagement Policy SCS-017)	No
Public Transparency (Consideration of Public Transparency Principles under s.58 of LGA 2020)	No
Strategies and Plans (Consideration of Strategic Planning Principles under s.89 of LGA 2020)	Yes
Financial Management (Consideration of Financial Management Principles under s.101 of LGA 2020)	Yes
Service Performance (Consideration of Service Performance Principles under s.106 of LGA 2020)	Yes
Risk Assessment	Yes
Communication	Yes
Human Rights Charter	No

Governance Principles - Local Government Act 2020 (LGA 2020)

The issue of consent will support future works to be undertaken by GORCAPA.

Policy/Relevant Law

Council has the powers to provide consent as the public land manager.

Strategies/Plans

Council has no strategic plans or strategies related to the subject land

1.2 Point Grey Land Manager Consent

Financial Management

The consideration of the future transfer of land management for the subject land would result in reduced future liabilities subject to the land.

Service Performance

Council has no service need for the subject land.

Risk Assessment

There are identified Workplace Health and Safety implications associated with this report.

Communication

GORCAPA will be informed of the outcome of this report.

Options

Option 1 – Grant Public Land Manager consent to the issue of the Planning Permit and commence the process to transfer land management of the subject land to GORCAPA

This option is recommended by officers as Council has no valid reason to deny consent and as there is no identified use for the subject land by Council the transfer of management would remove future liabilities from Council.

Option 2 – Grant Public Land Manager consent to the issue of the Planning Permit

This option is not recommended by officers as although supportive of the issue of consent this maintains ongoing responsibility of Council for land which is surplus to needs.

Option 3 – Deny Public Land Manager Consent

This option is not recommended by officers as there is no identified reason to deny consent.

Conclusion

There is no valid identified reason for Council to deny Public Land Manager consent to the issue of a Planning Permit for the subject land. Furthermore the subject land is surplus to Council needs and the transfer of land management responsibilities to GORCAPA should be considered.

1.2 Point Grey Land Manager Consent

APPENDIX 1 POINT GREY - PLAN



1.2 Point Grey Land Manager Consent

APPENDIX 2 POINT GREY - TITLE

Delivered by LANDATA®, timestamp 15/04/2021 10:18 Page 2 of 2

PLAN OF CROWN ALLOTMENT	EDITION 1	OP125210
LOCATION OF LAND COUNTY : POLWARTH PARISH : LORNE (3015) TOWNSHIP : LORNE (5478) CROWN ALLOTMENT : 2052, 2053, 2054 AND 2059 SPI : 2052\PP5478, 2053\PP5478 AND 2054\PP5478 TITLE REFERENCE : C/F VOL.11800 FOL.476 AND C/F VOL.11800 FOL.456		NOTATIONS:
SCALE OF ENLARGEMENT 1:100		
ORIGINAL SHEET SIZE: A3		
SCALE 1:600 6 0 6 12 18 24 LENGTHS ARE IN METRES		S
FILE REF: PO-15561 SURVEYORS REF: SS-000090 DRAWN: MH 7/04/2020 EXAMINED: JD 15/06/2020		CERTIFICATION BY SURVEYOR I, Neville Brayley of 2 Lonsdale Street, Melbourne, VIC, 3000 certify that this plan has been prepared from a survey made under my direction and supervision in accordance with the Surveying Act 2004 and completed on 14/02/2020, that this plan is accurate and correctly represents the adopted boundaries and that the survey accuracy accords with that required by regulation 7(1) of the Surveying (Cadastral Surveys) Regulations 2015. Digitally signed by Neville Brayley 02/10/2020 Licensed Surveyor, Surveying Act 2004
SURVEYOR-GENERAL VICTORIA DEPARTMENT OF ENVIRONMENT, LAND, WATER AND PLANNING		Digitally signed by: Novillo Brayley, Licensed Surveyor, Surveyor's Plan Version (1), 02/10/2020, SPEAR Ref: S153958C Certified by Craig Leslie Sandy Surveyor-General 04:02 PM 02/10/2020