

SPM(4) – 9 APRIL 2024

Special Council Meeting

Minutes

The **Special Council Meeting** of the **Alpine Shire Council** was held in the Council Chambers, Great Alpine Road, Bright on **9 April 2024** and commenced at **5:00pm**.

PRESENT

COUNCILLORS

Cr John Forsyth - Mayor

Cr Katarina Hughes (attendance via electronic means)

Cr Ron Janas

Cr Sarah Nicholas

OFFICERS

Will Jeremy - Chief Executive Officer

Helen Havercroft - Director Customer and Community

Alan Rees - Director Assets

APOLOGIES

Cr Simon Kelley – Deputy Mayor

Cr Tony Keeble

Cr Kelli Prime

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1. Recording and livestreaming of Council meetings

The CEO read the following statement:

All council meetings are filmed with both video and audio being recorded.

The reasoning behind recording council meetings is to hold us more accountable and improve transparency of Council's decision-making to our community.

The full meeting is being streamed live on Council's YouTube channel which is "Alpine Shire Council" and will also be available on the YouTube channel shortly after this meeting.

2. Acknowledgement of traditional custodians, and recognition of all people

The Mayor read the following statement:

Alpine Shire Council acknowledges the Taungurung peoples as the Traditional Custodians of the lands on which we are meeting today. Council also acknowledges all of the Traditional Custodians of the wider lands of the area known as the Alpine Shire.

We also acknowledge those people who have contributed to the rich fabric of our community and strive to make wise decisions that will improve the quality of life for all.

3. Apologies

Cr Simon Kelley, Deputy Mayor;

Cr Tony Keeble; and

Cr Kelli Prime

4. Declarations by Councillors of conflict of interest

5. Presentation of reports by officers

5.1 CHIEF EXECUTIVE OFFICER - WILL JEREMY

5.1.1 Addendum report

INTRODUCTION

This report relates to the inclusion of an addendum report to incorporate on the title of the land to be purchased an additional carriageway easement in favour of the existing landowners.

Cr Nicholas

Cr Janas

That Council:

- 1. Considers an addendum report at this meeting to consider the additional carriageway easement across the right hand boundary in addition to the rear of the land. The item was not included in the original agenda but is considered urgent business to allow the Chief Executive Office to sign the Contract of Sale.*
- 2. The late inclusion of this report is in accordance with Council's Governance Rules Chapter 3, Part C, item C2.6".*

Carried

BACKGROUND

In August 2023, Council delegated authority to the Chief Executive Officer to execute the Contract of Sale for the purchase of land fronting the Kiewa Valley Highway in Tawonga South for the provision of public toilets, parking, and a picnic area within the town's main business area.

This additional carriageway access from the right hand boundary of the plot had not been raised previously with Council officers as part of the negotiation, was not included in the 'Tawonga South Amenities - preliminary concept plan' and was not captured in the Council resolutions from the August 2023 Council Meeting which provided the CEO with the mandate to progress the subdivision and purchase of the land on behalf of Council. A further resolution of Council is therefore necessary to explicitly capture the agreement to incorporate on the title of the land to be purchased an additional carriageway easement in favour of the existing landowners.

5.1.2 Tawonga South Land Purchase

INTRODUCTION

This report relates to the purchase of land fronting the Kiewa Valley Highway in Tawonga South.

Cr Nicholas

Cr Janas

That Council:

- 1. Notes the negotiated price of \$392,682; subject to Contract, for the purchase of 1,168m² of land comprising part of 244-252 Kiewa Valley Highway, Tawonga South, exclusive of GST, Stamp Duty, conveyancing costs and statutory charges relating to the subdivision process, and inclusive of any further contribution from Council towards the costs associated with the subdivision of the land;*
- 2. Commits in developing the subject land to maintaining carriageway access across both the rear and the right hand boundary of the subject land as viewed from the Kiewa Valley Highway and as noted in the draft Plan of Subdivision (attachment 5.1.3c to this report); and*
- 3. Authorises the Chief Executive Officer to sign the Contract of Sale.*

Carried

BACKGROUND

In the August 2023 Ordinary Council Meeting the following resolutions were carried:

- 1. That Council*
- 2. Delegates to the CEO the authority to commit, subject to Contract, to the purchase of approximately 1,175m² of land comprising part of 244-252 Kiewa Valley Highway, Tawonga South, at a per square metre rate of \$336.20/m² exclusive of GST, Stamp Duty, conveyancing costs and statutory charges relating to the subdivision process, and inclusive of any further contribution from Council towards the costs associated with the subdivision of the land;*
- 3. Commits in developing the subject land to maintaining carriageway access to the rear of the remaining land comprising 244-252 Kiewa Valley Highway generally in accordance with the attached 'Tawonga South Amenities - preliminary concept plan'; and*
- 4. Authorises the Chief Executive Officer to sign the Contract of Sale.*

Surveying has subsequently been carried out and the final area of the proposed subdivision has been established as 1,168m², compared to the estimated area of 1,175m² on the 'Tawonga South Amenities - preliminary concept plan' (attachment 1). This allows confirmation of the purchase price being \$392,682 excluding GST, stamp duty, conveyancing costs and statutory charges relating to the subdivision process.

A draft Plan of Subdivision was submitted by the landowners for review by Council officers on 23 November 2023 (attachment 5.1.2.b), seeking permission to lodge with the titles office for registration.

On 6 December 2023, in order to protect both Council and landowner interests through the subdivision and subsequent land sale process, the landowners were advised that a Contract of Sale of Land is required to be signed by both parties prior to the plan of subdivision being lodged with the titles office.

On 12 January 2024, the landowners submitted a revised draft Plan of Subdivision (attachment 3) containing details of an encumbering carriageway easement in favour of the landowners which was not shown on the previous draft Plan of Subdivision.

The Council resolution of August 2023 commits in developing the subject land to maintaining carriageway access to the rear of the remaining land comprising 244-252 Kiewa Valley Highway [when viewed from the Kiewa Valley Highway] generally in accordance with the attached 'Tawonga South Amenities - preliminary concept plan' (attachment 5.2.1.a).

However, the revised draft Plan of Subdivision submitted by the landowners on 12 January 2024 contains an additional carriageway access from the right hand side boundary of the plot [when viewed from the Kiewa Valley Highway] to the remaining land comprising 244-252 Kiewa Valley Highway, also when viewed from the Kiewa Valley Highway.

ISSUES

Additional Carriageway Easement

This additional carriageway access from the right hand boundary of the plot had not been raised previously with Council officers as part of the negotiation, was not included in the 'Tawonga South Amenities - preliminary concept plan' and was not captured in the Council resolutions from the August 2023 Council Meeting which provided the CEO with the mandate to progress the subdivision and purchase of the land on behalf of Council. A further resolution of Council is therefore necessary to explicitly capture the agreement to incorporate on the title of the land to be purchased an additional carriageway easement in favour of the existing landowners.

A preliminary concept plan has been prepared on the basis of a single carriageway access through the rear of the plot. Detailed engineering design has not been progressed for the site. It cannot therefore be confirmed with certainty at this point in time how the inclusion of an additional carriageway easement through the right hand side boundary of the plot will interface with vehicular access into and out of the proposed car park. However, it is considered that there is sufficient flexibility within the available land to accommodate the additional carriageway easement without imposing a significant constraint on the development of the parcel by Council.

Facilitating the development of an additional carriageway easement as has been requested by the landowners will avoid the necessity for the landowners to construct an additional crossover from their land onto the Kiewa Valley Highway (subject to necessary permits) in close proximity to the existing crossover which services the land subject to purchase by Council. An additional crossover in this location would be a poor outcome for the community, potentially impacting on users of the shared trail which runs along the boundary of the plot on the Kiewa Valley Highway, and impacting on the visual amenity in this location.

Project Delivery Preparations

The subdivision process has progressed slowly during 2024 due to constraints in the external resourcing providing support to Council's team.

A Council project manager has been appointed to manage the delivery of the project and, in parallel with the subdivision process, Council's project delivery team has been working on the preparation of the tender documentation package to enable them to hit the ground running once the Contract of Sale of Land has been signed.

The draft proposed 2024/25 capital works budget contains a recommendation to include capital funding to support delivery of the project during the 2024/15 financial year, subject to the remaining steps of Council's normal budgeting process.

POLICY IMPLICATIONS

The following approval is being sought through the recommendations in this report:

- Exemption from the requirement under Council's Procurement Policy to publish an Invitation to Tender on Council's website which is open to a response from any supplier; and
- Authority to commit to expenditure which is greater than the financial delegation to the CEO under 'S5 Instrument of Delegation to CEO', being \$200,000 Ex GST.

The recommendations are in accordance with the following Strategic Objective of the Council Plan 2021-2025:

- 4.5 Assets for our current and future needs

FINANCIAL AND RESOURCE IMPLICATIONS

Purchase of land in Tawonga South is unbudgeted in 2023/24 financial year. Based on Council's Financial Plan, Council has the financial capacity to commit to this purchase at the recommended price of \$392,682 without impacting significantly on its working capital ratio. This price does not include GST, stamp duty, legal costs associated with the purchase or statutory fees associated with the subdivision of the land; however this price is inclusive of Council's contribution towards any further costs associated with the subdivision process required to create a separately titled parcel of land.

The estimated cost for fully developing this land as per the proposed Concept Plan is \$540,000, which includes public amenities, car parking, a 2.5m wide shared trail connection to the river, and associated landscaping. The development of the site could be staged, and there is the potential to secure external funding to contribute towards the cost of this development.

Annual maintenance costs have not been estimated.

RISK MANAGEMENT

Risk	Likelihood	Impact	Mitigation Action / Control
The additional encumbering easement in favour of the existing landowners restricts Council's ability to develop the land to deliver the best outcome for the community.	Possible	Minor	<ul style="list-style-type: none"> Engineering design has not yet been finalised and there is considered to be sufficient flexibility in the siting of the planned infrastructure on the site to accommodate the additional carriageway access.

CONSULTATION

Since the August 2023 Council Meeting, Council officers have engaged with the landowners and with Council's appointed solicitor. There has been no further engagement with other stakeholders or the broader community. A status update will be shared with the community following the meeting at which this report is considered by Council.

CONCLUSION

The landowners of 244-252 Kiewa Valley Highway have requested the inclusion in the draft Plan of Subdivision of Land of an encumbering easement providing access across the right hand side boundary of the parcel of land proposed for purchase by Council. This is in addition to the existing agreement to provide access across the rear boundary of the plot.

It is recommended that Council accepts this request on the basis that the inclusion of an additional easement crossing the boundary of the plot does not present a significant risk to Council achieving its planned objectives for the land, and avoids the undesirable impact that an additional crossover from the remaining land comprising 244-252 Kiewa Valley Highway onto the Kiewa Valley Highway would present to pedestrians and cyclists using the shared trail, and to the broader amenity of this area.

DECLARATION OF CONFLICT OF INTEREST

In accordance with section 130 of the *Local Government Act 2020*, and Chapter 7 section A6 of Council's Governance Rules, the following officers declare that they have no interests to disclose in providing this report.

- Chief Executive Officer

ATTACHMENT(S)

- 5.1.2a Tawonga South Amenities - preliminary concept plan
- 5.1.2b Initial Draft Plan of Subdivision of Land
- 5.1.3c Revised Draft Plan of Subdivision of Land

5.2 DIRECTOR ASSETS - ALAN REES

5.2.1 Porepunkah Transfer Station Cap Construction

File Number: CT22039

INTRODUCTION

This report relates to a contract variation for the Porepunkah Landfill Rehabilitation Cap Construction Stage 2 from an unbudgeted spend to enable the works to be completed.

Cr Nicholas

Cr Hughes

That Council:

- 1. Approve a variation to Contract No.22039 Porepunkah Landfill Rehabilitation Cap Construction Stage 2 to Extons Pty Ltd to the value of \$169,299.*
- 2. Approve unbudgeted expenditure of \$30,653 to enable Porepunkah Landfill Rehabilitation Cap Construction Stage 2 to be completed and will be funded from the Waste Reserve.*
- 3. Delegates authority to the Chief Executive Officer to sign the contract variation at the appropriate time.*

Carried Unanimously

BACKGROUND

To finalise the Porepunkah Landfill cap construction to the requirements and standards of the Environment Protection Agency (EPA) Council requires the original contract with Extons Pty Ltd (Extons) to be varied by \$169,299 above the original award amount of \$1,283,272 (13%). This is due to unforeseen variations to the scope and latent condition encountered during construction.

ISSUES

Contract Variation

As part of the adopted 2023/24 Budget, Council allocated \$1,560,000 for the provision for Porepunkah Landfill Cap Construction Stage 2 works. The scope included design fees, project management, required testing and cap construction costs.

Council awarded the contract to Extons for the CT22039 Porepunkah Landfill Cap Construction Stage 2 for \$1,283,272 at the Ordinary Council Meeting held on 4 October 2022. Due to unforeseen additional scope and latent conditions encountered during excavation, a further \$169,299 is required to complete the Cap Construction.

To date there have been other additional costs outside cap construction incurred for monitoring, auditing, testing and design awarded under a separate contract (SMEC) totalling \$138,082.

Unbudgeted Expenditure

This means that there is a shortfall in the total adopted budget of \$30,653 to fund the variation to the contract with Extons to finalise the Porepunkah Landfill Cap Construction Stage 2.

The cap must be constructed to the standards and design set out and approved by the EPA. The additional scope and latent conditions are required to be completed to achieve this approval. These are outlined as follows:

1. Geosynthetic Clay Liner testing
2. Survey to confirm Benchmarks on site
3. Additional Subgrade from quarry for Area 9 (subgrade shortage on site)
4. Removal of stockpiled vegetation from Area 9
5. Relocate vegetation stockpile for EPA inspection
6. Tests and geologists report importing clean fill confining layer material to the site.
7. Removal of chemical bins and bumped green waste from Area 9
8. Relocation of Waste during anchor trench excavations.

POLICY IMPLICATIONS

The recommendation is in accordance with the following Strategic Objective of the Council Plan 2021-2025:

- 4.5 Assets for our current and future needs

FINANCIAL AND RESOURCE IMPLICATIONS

A summary of the financial implications are provided in the table below.

Item	Item Amount
Total Adopted Budget Porepunkah Landfill Capping 23/24FY	\$1,560,000
Total Original Contract Award for Porepunkah Capping Works (Extons)	\$1,283,272
Total other costs associated with Porepunkah Capping Works (monitoring, auditing, testing and design (awarded under separate contract to SMEC)	\$138,082
Total Variation to Porepunkah Capping Works Award (Extons)	\$169,299
Total Value of Works Required	\$1,590,653
Total Unbudgeted Expenditure Required (shortfall)	- \$30,653

The unbudgeted expenditure can be funded from the Waste Reserve.

RISK MANAGEMENT

The key risks of the project are as follows:

Risk	Likelihood	Impact	Mitigation
Reputational Risk of not meeting EPA requirements	Possible	Minor	<ul style="list-style-type: none"> Complete the works in accordance with the EPA requirements
Safety/Environmental Risks of pollution entering groundwater if the design is not constructed in accordance with the EPA Approved Design	Possible	Moderate	<ul style="list-style-type: none"> Construct in accordance with the EPA Approved Design.

CONSULTATION

All aspects of the project have been communicated with the following:

- Director Assets
- Manager Engineering and Assets
- Environmental Protection Agency

CONCLUSION

The scope variation of \$169,299 to finalise the Porepunkah Landfill cap construction creates an additional budget requirement of \$30,653 above adopted Council 23/24 budget of \$1,560,000.

In line with the requirement set out in Council's Procurement Policy, all variations that require additional budget need a new approval by Council based on the total value of the contract.

DECLARATION OF CONFLICT OF INTEREST

In accordance with Section 130 of the *Local Government Act 2020* and Chapter 7, section A6 of the Council's Governance Rules, the following officers declare that they have no interest to disclose in providing this report.

- Director Assets
- Manager Engineering and Assets
- Project Manager

ATTACHMENT(S)

Nil

5.2.2 Contract CT23028 Transfer Station Upgrade - Retaining Wall and Concrete Slab (Porepunkah Loading Dock)

File Number: CT23028

INTRODUCTION

This report relates to approval of a variation and an unbudgeted spend to enable the completion of the Porepunkah Transfer Station Upgrade - Retaining Wall and Concrete Slab (Porepunkah Loading Dock).

Cr Janas

Cr Nicholas

That Council:

- 1. Approve a variation to Contract No. CT23028 Porepunkah Transfer Station Upgrade - Retaining Wall and Concrete Slab to Naubro Kerb Pty Ltd for the value of \$109,975*
- 2. Approve unbudgeted expenditure of \$50,457 to enable Porepunkah Transfer Station Upgrade -Retaining Wall and Concrete Slab to be completed and will be funded from the Waste Reserve.*
- 3. Delegates authority to the Chief Executive Officer to sign the contract variation at an appropriate time.*

Carried Unanimously

BACKGROUND

Council is to complete transfer station upgrades as part of a commitment to Department of Energy, Environment and Climate Action (DECCA) for disposal drop-off points for Food Organics Garden Organics (FOGO) and glass (in the long term) at all three of the Council Transfer Station facilities in Myrtleford, Mount Beauty, and Porepunkah.

Works in Mount Beauty and Myrtleford have been completed. Construction works for the retaining wall and slabs for Porepunkah Transfer Station is currently underway.

Council awarded the tender to Naubro Kerb Pty Ltd (Naubro) for the retaining wall and concrete slab at its Ordinary Council Meeting in September 2023.

During the construction of the retaining wall and concrete slab, variations to the scope of works have occurred due to the following latent conditions:

1. Waste encountered during the construction of the piers requiring alterations to the construction method.
2. The requirement to manufacturer and install new handrails meet the building code and safety requirements.

This work necessitates a contract variation. The variation value is \$109,975 (49%).

ISSUES

Contract Variation

The transfer station upgrade works at Council's three transfer stations was not a budgeted item at the time that the 23/24 FY budget was adopted by Council.

This was due to Council being in the process of finalising the project scope with DEECA and the final amount of grant funding from the Transfer Station Upgrade Fund was not confirmed. DEECA confirmed they would fully fund the project and provide a grant totalling \$335,630 to fund upgrade works at all three transfer stations.

Council completed the transfer station upgrade works at Myrtleford and Mount Beauty Transfer Stations, early in the 23/24 FY under separate contracts, to the total value of \$52,344. The remaining budget post these works was a total of \$283,286.

At the September 2023 OCM Council awarded Naubro Kerb Pty Ltd a contract for the CT23028 Transfer Station Upgrade - Construction of Slab and Retaining Wall for \$223,768. After construction began in February 2024 the contractor encountered latent conditions that required an additional expenditure of \$109,975.

Unbudgeted Expenditure

The result of the required contract variation leaves a shortfall in grant funding totalling \$50,457 that must be met from Council funds. This amount can be funded from the Waste Reserve.

POLICY IMPLICATIONS

The recommendation is in accordance with the following Strategic Objective of the Council Plan 2021-2025:

- 4.5 Assets for our current and future needs

FINANCIAL AND RESOURCE IMPLICATIONS

A summary of the financial implications are provided in the table below.

Item	Item Amount
Total Funding for the Transfer Station Upgrades (Myrtleford, Mount Beauty, Porepunkah).	\$335,630
Total Spent on Mount Beauty and Myrtleford Transfer Station Upgrade Works	\$52,344
Total Original Contract Approved for Porepunkah Retaining Wall and Slab Works	\$223,768
Total Variation to the Contract for Porepunkah Retaining Wall and Slab Works	\$109,975

Item	Item Amount
Total Value of Works Required	\$386,087
Total Unbudgeted Expenditure Required (shortfall)	-\$50,457

The unbudgeted expenditure can be funded from Council's Waste Reserve.

RISK MANAGEMENT

The key risks of the project are as follows:

Risk	Likelihood	Impact	Mitigation
Reputational risk of having transfer station facility closed for protracted period	Possible	Minor	<ul style="list-style-type: none"> Complete, the already delayed works, as swiftly as possible.
Safety risk of not providing safe work place for members of publics	Possible	Moderate	<ul style="list-style-type: none"> Install a compliance handrail and ensure appropriate use to prevent falls into the skip 3m below the loading level.

CONSULTATION

All aspects of the project have been communicated with the following:

- Director Assets
- Manager Engineering and Assets
- DEECA Landowner
- DEECA Transfer Station Upgrade Funding Officers

CONCLUSION

The scope variations required to finalise the retaining wall and concrete slab at the Porepunkah Transfer Station require a contract variation of \$109,975. The impact of this variation is that \$50,457 is unbudgeted expenditure.

In line with the requirement set out in Council's Procurement Policy, all variations that require additional budget need a new approval by Council based on the total value of the contract.

DECLARATION OF CONFLICT OF INTEREST

In accordance with Section 130 of the *Local Government Act 2020* and Chapter 7, section A6 of the Council's Governance Rules, the following officers declare that they have no interest to disclose in providing this report.

- Director Assets
- Manager Engineering and Assets
- Project Manager

ATTACHMENT(S)

Nil

There being no further business the Chairperson declared the meeting closed at 5.26p.m.

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Chairperson