

CITY OF MOUNT GAMBIER

Meeting to be held at the Council Chamber, Civic Centre, 10 Watson Terrace, Mount Gambier  
on Tuesday 17<sup>th</sup> September, 2013 at 6.00 p.m.

AGENDA

## CONSIDERATION FOR EXCLUSION OF PUBLIC

moved that the following Items be received, discussed and considered in confidence by excluding the public pursuant to Section 90 (2) of the Local Government Act 1999, and an order be made that the public (with the exception of other Council Members and Council Officers now present) be excluded from the meeting in order for the items to be considered in confidence as the Council is satisfied that the item is a matter that can be considered in confidence pursuant to the grounds referenced in Section 90 (3) of the said Act:

<u>Item No.</u>	<u>Subject Matter</u>	<u>S90 (3) Grounds</u>
<b>Corporate and Community Services Committee</b>		
<b>25</b>	<b><u>CORPORATE AND COMMUNITY SERVICES REPORT NO. 45/2013 - Legal Action – Costs Awarded</u></b>	<b>(i)</b>
	<b>CONSIDERATION FOR KEEPING MATTERS CONFIDENTIAL</b>	

seconded

**IN CONFIDENCE**

**CORPORATE AND COMMUNITY SERVICES COMMITTEE**

**25. CORPORATE AND COMMUNITY SERVICES REPORT NO. 45/2013 - Legal Action – Costs Awarded - Ref. AF12/113, AF/12/246**

- Goal:* (i) *Governance*  
(ii) *Environment*
- Strategic Objective:* (i) *Demonstrate innovative and responsible organisational governance.*  
(ii) *Support the preservation and enhancement of the City's unique natural and built heritage for future generations.*

**Cr Richardson moved it be recommended:**

- (a) Corporate and Community Services Report No. 45/2013 be received;**
- (b) The Mayor and Chief Executive Officer be authorised to affix the Council seal to any documentation required to seek the payment/recovery of costs accrued/awarded as part of the legal action against Mr S Waye and Amberich Pty Ltd (Mr K Pearson).**

**Cr Persello seconded**

**Carried**

**CONSIDERATION FOR KEEPING MATTERS CONFIDENTIAL**

moved that an order be made pursuant to Section 91 (7) of the Local Government Act 1999 that the documents in relation to the following items, which have been considered by Council on a confidential basis pursuant to Section 90 (3) be kept confidential as follows:

<u>Item No.</u>	<u>Subject Matter</u>	<u>Element To Be Kept Confidential</u>	<u>Duration</u>
<b>Corporate and Community Services Committee</b>			
25	<b><u>CORPORATE AND COMMUNITY SERVICES REPORT NO. 45/2013 - Legal Action – Costs Awarded</u></b>	All details	12 months

seconded

**IN CONFIDENCE****CORPORATE AND COMMUNITY SERVICES REPORT NO. 45/2013****SUBJECT: LEGAL ACTION – COSTS AWARDED****Ref: AF12/113, AF/12/246**

*Goal:* (i) *Governance*  
(ii) *Environment*

*Strategic Objective:* (i) *Demonstrate innovative and responsible organisational governance.*  
(ii) *Support the preservation and enhancement of the City's unique natural and built heritage for future generations.*

**INTRODUCTION**

Council has been involved in two ongoing matters involving legal issues pursuant to the Development Act, 1993 which include the following:

- The construction of a garage structure without first obtaining Development Approval at 9 Francis Street, Mount Gambier by Mr S Waye; and
- The operation a scrap metal recycling business and the storage of scrap metal on five (5) site within the City of Mount Gambier without first obtaining the necessary Development Approval from Council by Amberich Pty Ltd (Mr Pearson).

**DISCUSSION**

These two matters have been ongoing, with numerous arguments being heard before the Environment, Resources and Development Court.

To date, Council has been successful in all matters heard before the Court and has been awarded costs. The Development Act also provides Council with the ability to recover costs as a debt from a person whose failure to comply gave rise to any action undertaken by Council.

Council is able to undertake appropriate action to secure payment of all of the outstanding amounts awarded to Council. This includes to note a charge against property owned by these two people. To note a charge against a property, Council must determine to endorse the charge and affix the Council seal to the documentation.

**CONCLUSION**

These two legal matters have been ongoing for quite some time and have involved complex and time consuming processes.

To date, Council has been successful and has been awarded costs by the Environment, Resources and Development Court. The Development Act also provides Council with the ability to recover costs as a debt from a person.

Corporate and Community Services Report No. 45/2013 cont'd...

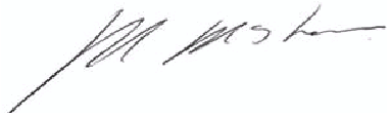
**RECOMMENDATION**

- (a) Corporate and Community Services Report No. 45/2013 be received;
- (b) The Mayor and Chief Executive Officer be authorized to affix the Council seal to any documentation required to seek the payment/recovery of costs accrued/awarded as part of the legal action against Mr S Waye and Amberich Pty Ltd (Mr K Pearson).



Tracy TZIOUTZIOUKLARI  
**STRATEGIC PROJECT OFFICER**

Sighted:



Mark McSHANE  
**CHIEF EXECUTIVE OFFICER**

27<sup>th</sup> August, 2013  
TT.MJT

(Refer to Item                      of Corporate and Community Services Committee Minutes)

MINUTES OF THE MEETING OF THE CITY OF MOUNT GAMBIER HELD AT THE COUNCIL CHAMBER, CIVIC CENTRE, 10 WATSON TERRACE, MOUNT GAMBIER ON TUESDAY, 17<sup>th</sup> SEPTEMBER, 2013 AT 6.03 P.M.

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**CONSIDERATION FOR EXCLUSION OF PUBLIC**

Cr White moved that the following Items be received, discussed and considered in confidence by excluding the public pursuant to Section 90 (2) of the Local Government Act 1999, and an order be made that the public (with the exception of other Council Members and Council Officers now present) be excluded from the meeting in order for the items to be considered in confidence as the Council is satisfied that the item is a matter that can be considered in confidence pursuant to the grounds referenced in Section 90 (3) of the said Act:

<b><u>Item No.</u></b>	<b><u>Subject Matter</u></b>	<b><u>S90 (3) Grounds</u></b>
<b>Corporate and Community Services Committee</b>		
25	<b><u>CORPORATE AND COMMUNITY SERVICES REPORT NO. 45/2013 - Legal Action – Costs Awarded</u></b>	(i)
	<b>CONSIDERATION FOR KEEPING MATTERS CONFIDENTIAL</b>	

Cr Lee seconded

**Carried**

**IN CONFIDENCE**

**CORPORATE AND COMMUNITY SERVICES COMMITTEE**

**25. CORPORATE AND COMMUNITY SERVICES REPORT NO. 45/2013 - Legal Action – Costs Awarded - Ref. AF12/113, AF/12/246**

- Goal: (i) Governance  
(ii) Environment
- Strategic Objective: (i) Demonstrate innovative and responsible organisational governance.  
(ii) Support the preservation and enhancement of the City's unique natural and built heritage for future generations.

Cr Richardson moved it be recommended:

- (a) Corporate and Community Services Report No. 45/2013 be received;
- (b) The Mayor and Chief Executive Officer be authorised to affix the Council seal to any documentation required to seek the payment/recovery of costs accrued/awarded as part of the legal action against Mr S Waye and Amberich Pty Ltd (Mr K Pearson).

Cr Persello seconded

Carried

**Cr Maher moved the recommendation of the Corporate and Community Services Committee as contained in item 25 be adopted.**

Cr Mutton seconded

Carried

**CONSIDERATION FOR KEEPING MATTERS CONFIDENTIAL**

Cr Lee moved that an order be made pursuant to Section 91 (7) of the Local Government Act 1999 that the documents in relation to the following items, which have been considered by Council on a confidential basis pursuant to Section 90 (3) be kept confidential as follows:

<u>Item No.</u>	<u>Subject Matter</u>	<u>Element To Be Kept Confidential</u>	<u>Duration</u>
<b>Corporate and Community Services Committee</b>			
25	<b><u>CORPORATE AND COMMUNITY SERVICES REPORT NO. 45/2013 - Legal Action – Costs Awarded</u></b>	All details	12 months

Cr Persello seconded

Carried

Meeting closed at 8.35 p.m.

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