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**I hereby give notice that a Confidential Council Meeting will be held on:**

**Date:** Tuesday, 21 May 2019  
**Time:** 6.00 p.m.  
**Location:** Council Chamber  
Civic Centre  
10 Watson Terrace  
Mount Gambier

# **AGENDA**

## **Confidential Council Meeting 21 May 2019**

**Graeme Maxwell**  
Chief Executive Officer

**17 May 2019**

## 27 NEW CONFIDENTIAL ITEMS

**27.1 ENGAGEMENT OF LEGAL REPRESENTATION FOR APPEAL TO THE ENVIRONMENT RESOURCES AND DEVELOPMENT COURT - DEVELOPMENT APPLICATION 381/0334/2018 - 1 PICK AVENUE, MOUNT GAMBIER - MOUNT GAMBIER AGRICULTURAL AND HORTICULTURAL SOCIETY INC. – REPORT NO. AR19/19698**

### CONSIDERATION FOR EXCLUSION OF THE PUBLIC

Pursuant to section 90(2) of the *Local Government Act 1999* the Council orders that all members of the public, except Mayor L Martin, Councillors S Perryman, C Greco, P Jenner, K Amoroso, F Morello, B Hood, M Bruins and Council Officers N Serle, B Cernovskis, P Lee, J Nagy, S McLean, M McCarthy, T Tzioutziouklaris and F McGregor be excluded from attendance at the meeting for the receipt, discussion and consideration in confidence of Agenda Item 27.1 AR19/19698 Engagement of legal representation for appeal to the Environment Resources and Development Court - Development Application 381/0334/2018 - 1 Pick Avenue, Mount Gambier - Mount Gambier Agricultural and Horticultural Society Inc..

The Council is satisfied that, pursuant to section 90(3) (g) and (h) of the Act, the information to be received, discussed or considered in relation to the Agenda Item is:

- information concerning matters that must be considered in confidence in order to ensure that the Council does not:
  - breach any law, order or direction of a court or tribunal constituted by law,
  - breach any duty of confidence, or
  - breach any other legal obligation or duty
- legal advice

The Council is satisfied that the principle that the meeting be conducted in a place open to the public has been outweighed in the circumstances because this report relates to the engagement of legal representation in relation to an appeal lodged with the Environment, Resource and Development Court, by the Mount Gambier Agricultural and Horticultural Society. The appeal relates to a decision of Council Assessment Panel made on 21 February 2019 regarding development application 381/0334/2018.



<b>Meeting:</b>	<b>Council</b>
<b>Meeting Date:</b>	<b>21 May 2019</b>
<b>Report No:</b>	<b>AR19/19698</b>
<b>CM9 Reference:</b>	<b>AF19/220</b>
<b>Author:</b>	<b>Jessica Porter, Planning Officer</b>
<b>Authoriser:</b>	<b>Judy Nagy, General Manager City Growth</b>
<b>Summary:</b>	<b>Council has received a Notice of Appeal from the Environment, Resources and Development Court against a decision of the Council Assessment Panel, which was made on 21 February 2019 to refuse Development Plan Consent for additional campsites at the showgrounds (Development Application 381/0334/2018).</b>
<b>Community Plan Reference:</b>	<b>Goal 2: Our Location Goal 3: Our Diverse Economy</b>

The Council is satisfied that, pursuant to Section 90(2) & (3) of the *Local Government Act 1999*, the information to be received, discussed or considered in relation to this agenda item is:

- (g) information concerning matters that must be considered in confidence in order to ensure that the Council does not: breach any law, order or direction of a court or tribunal constituted by law, breach any duty of confidence, or breach any other legal obligation or duty
- (h) legal advice.

#### **REPORT RECOMMENDATION**

1. That 27.1 Report No. AR19/19698 titled 'Engagement of legal representation for appeal to the Environment Resources and Development Court - Development Application 381/0334/2018 - 1 Pick Avenue, Mount Gambier - Mount Gambier Agricultural and Horticultural Society Inc.' as presented on 21 May 2019 be noted.



## BACKGROUND

On 26<sup>th</sup> October 2018, Council received a development application from the Mount Gambier Agricultural and Horticultural Society Inc, seeking to establish an additional twenty one (21) camping sites for Motorhomes, Campervans, Caravans and Tents on the site of the existing showgrounds, in addition to the eight (8) existing camping sites, at the Mount Gambier Showgrounds, 1 Pick Avenue, Mount Gambier.

The development application was assessed and processed in accordance the Development Act 1993, Development Regulations 2008 and the Mount Gambier (City) Development Plan (consolidated 21 April 2016). The assessment process involved the public notification of the application, which resulted in seven (7) representations being received by Council. Subsequently, the development application was presented to the Council Assessment Panel for a decision to be made.

At its meeting held on Thursday 21<sup>st</sup> February 2019, the Council Assessment Panel resolved the following:

- (a) *That Council Assessment Panel Report No. PR19/1119 be noted.*
- (b) *The Applicant and Owner be advised that having regard to the Development Plan and all supporting documentation, the proposed development is considered to be at serious variance with the Council's Development Plan, the application be refused Development Plan Consent, for the following reasons;*
  - (1) *The proposed expansion of the camping ground prejudices the delivery of the objectives for the area.*
  - (2) *The proposed development will detrimentally effect on the amenity of the location.*
  - (3) *A camping ground is not an envisaged form of development within the Public Purposes (Show Grounds) Zone.*
  - (4) *The camping ground is not an ancillary use to the use of the land as showgrounds.*

The Applicant and Representors were advised of this decision via Council correspondence dated 25<sup>th</sup> and 27<sup>th</sup> February 2019 respectively. Pursuant to Section 38 (12) (b) of the Development Act 1993, Council advised the Environment, Resources and Development Court that it had made a decision on a Category 3 Development Application and that seven (7) representations had been received.

On 16th April 2019, Council received a Notice of Appeal from the Environment, Resources and Development Court (ERD-19/63), advising that an appeal against Council's decision had been lodged by the Mount Gambier Agricultural and Horticultural Society Inc. on 12th April 2019.

## DISCUSSION

On Wednesday 24<sup>th</sup> April 2019, Council a received Notice from the ERD Court, advising that a Preliminary Conference is to be held at the ERD Court in Adelaide, on Monday 13<sup>th</sup> May 2019. As the appeal process has commenced. Council has now engaged legal representation to act on behalf of Council in relation to this matter.

## CONCLUSION

The information contained in this report is for noting. Details regarding the progress of the Appeal will be presented to Members in due course.

## ATTACHMENTS

Nil





**CONSIDERATION FOR KEEPING ITEMS CONFIDENTIAL**

1. In accordance with Sections 91(7) and 91(9) of the *Local Government Act 1999* the Council orders that the report 27.1 AR19/19698 Engagement of legal representation for appeal to the Environment Resources and Development Court - Development Application 381/0334/2018 - 1 Pick Avenue, Mount Gambier - Mount Gambier Agricultural and Horticultural Society Inc. and its attachments, the discussion and the resolution/s and minutes arising from the report, having been considered by the Council in confidence under Section 90(2) & (3) (g) and (h) be kept confidential and not available for public inspection until 21 June 2020.
2. Further that Council delegates the power of review revoke, but not the extension, of the confidential order to the Chief Executive Officer on a monthly basis in accordance with the provisions of Section 91(9)(c) of the *Local Government Act 1999*.

CONFIDENTIAL

**MINUTES OF CONFIDENTIAL COUNCIL MEETING  
HELD AT THE COUNCIL CHAMBER, CIVIC CENTRE, 10 WATSON TERRACE, MOUNT  
GAMBIER  
ON TUESDAY, 21 MAY 2019 AT 6.00 P.M.**

**PRESENT:** Mayor Lynette Martin (OAM), Cr Kate Amoroso, Cr Max Bruins, Cr Ben Hood, Cr Paul Jenner, Cr Christian Greco, Cr Frank Morello, Cr Steven Perryman

**IN ATTENDANCE:**

Acting Chief Executive Officer	-	Dr J Nagy
General Manager Community Wellbeing	-	Ms B Cernovskis
General Manager Council Business Services	-	Mrs P Lee
General Manager City Infrastructure	-	Mr N Serle
Manager Development Services	-	Mrs T Tzioutziouklaris
Manager Executive Administration	-	Mr M McCarthy
Media and Communications Coordinator	-	Ms S McLean
Executive Administration Officer	-	Mrs F McGregor

**27.1 ENGAGEMENT OF LEGAL REPRESENTATION FOR APPEAL TO THE ENVIRONMENT RESOURCES AND DEVELOPMENT COURT - DEVELOPMENT APPLICATION 381/0334/2018 - 1 PICK AVENUE, MOUNT GAMBIER - MOUNT GAMBIER AGRICULTURAL AND HORTICULTURAL SOCIETY INC. – REPORT NO. AR19/19698**

**RESOLUTION 2019/127**

Moved: Cr Steven Perryman  
Seconded: Cr Ben Hood

**CONSIDERATION FOR EXCLUSION OF THE PUBLIC**

Pursuant to section 90(2) of the *Local Government Act 1999* the Council orders that all members of the public, except Mayor L Martin, Councillors S Perryman, C Greco, P Jenner, K Amoroso, B Hood, M Bruins, F Morello and Council Officers N Serle, B Cernovskis, P Lee, J Nagy, T Tzioutziouklaris, M McCarthy, S McLean and F McGregor be excluded from attendance at the meeting for the receipt, discussion and consideration in confidence of Agenda Item 27.1 AR19/19698 Engagement of legal representation for appeal to the Environment Resources and Development Court - Development Application 381/0334/2018 - 1 Pick Avenue, Mount Gambier - Mount Gambier Agricultural and Horticultural Society Inc..

The Council is satisfied that, pursuant to section 90(3) (g) and (h) of the Act, the information to be received, discussed or considered in relation to the Agenda Item is:

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- legal advice

The Council is satisfied that the principle that the meeting be conducted in a place open to the public has been outweighed in the circumstances because this report relates to the engagement of legal representation in relation to an appeal lodged with the Environment, Resource and Development Court, by the Mount Gambier Agricultural and Horticultural Society. The appeal relates to a decision of Council Assessment Panel made on 21 February 2019 regarding development application 381/0334/2018.

**CARRIED**

The Mayor sought the approval of at least two-thirds of the members present at the meeting to suspend meeting procedures:



Purpose of the Suspension: to discuss Item 27.1

Carried by more than two-thirds of the members present at the meeting.

Meeting Procedures were suspended at 9.07 p.m.

The Mayor determined that the period of suspension should be brought to an end;

Carried by more than two-thirds of the members present at the meeting.

The Period of Suspension came to an end and Meeting Procedures resumed at 9.18 p.m.

#### **RESOLUTION 2019/128**

Moved: Cr Max Bruins

Seconded: Cr Ben Hood

1. That 27.1 Report No. AR19/19698 titled 'Engagement of legal representation for appeal to the Environment Resources and Development Court - Development Application 381/0334/2018 - 1 Pick Avenue, Mount Gambier - Mount Gambier Agricultural and Horticultural Society Inc.' as presented on 21 May 2019 be noted.
2. Council seek legal advice as to its position should it elect not to defend the decision.

**CARRIED**

#### **RESOLUTION 2019/129**

Moved: Cr Max Bruins

Seconded: Cr Kate Amoroso

#### **CONSIDERATION FOR KEEPING ITEMS CONFIDENTIAL**

1. In accordance with Sections 91(7) and 91(9) of the *Local Government Act 1999* the Council orders that the report 27.1 AR19/19698 Engagement of legal representation for appeal to the Environment Resources and Development Court - Development Application 381/0334/2018 - 1 Pick Avenue, Mount Gambier - Mount Gambier Agricultural and Horticultural Society Inc. and its attachments, the discussion and the resolution/s and minutes arising from the report, having been considered by the Council in confidence under Section 90(2) & (3) (g) and (h) be kept confidential and not available for public inspection until 21 June 2020.
2. Further that Council delegates the power of review revoke, but not the extension, of the confidential order to the Chief Executive Officer on a monthly basis in accordance with the provisions of Section 91(9)(c) of the *Local Government Act 1999*.

**CARRIED**

