

AGENDA OF ORDINARY OPERATIONAL STANDING COMMITTEE MEETING

Meeting to be held in the Conference Room, Civic Centre, 10 Watson Terrace, Mount Gambier
on Tuesday, 12 February 2019 at 5:45 p.m.

PRESENT Mayor Lynette Martin OAM

Cr Christian Greco (Presiding Member)
Cr Kate Amoroso
Cr Paul Jenner
Cr Steven Perryman

COUNCIL OFFICERS	General Manager Community Wellbeing	- Ms B Cernovskis
	General Manager Council Business Services	- Mrs P Lee
	General Manager City Growth	- Dr J Nagy
	General Manager City Infrastructure	- Mr N Serle
	Executive Administration Officer	- Mrs F McGregor

WE ACKNOWLEDGE THE BOANDIK PEOPLES AS THE TRADITIONAL CUSTODIANS OF THE LAND WHERE WE MEET TODAY. WE RESPECT THEIR SPIRITUAL RELATIONSHIP WITH THE LAND AND RECOGNISE THE DEEP FEELINGS OF ATTACHMENT OUR INDIGENOUS PEOPLES HAVE WITH THIS LAND.

1. APOLOGY(IES)

Apology(ies) received from Cr

That the apology from Cr _____ be received.

Moved:

Seconded:

2. CONFIRMATION OF OPERATIONAL STANDING COMMITTEE MINUTES

Meeting held on 11 December 2018

That the minutes of the Operational Standing Committee meeting held on 11 December 2018 as attached be confirmed.

Moved:

Seconded:

3. QUESTIONS

3.1. With Notice

Nil submitted.

3.2. Without Notice

4. DEPUTATIONS

The Presiding Member has granted permission for a deputation from the Mount Gambier Bowls Club.



8.7. Consideration for Exclusion of the Public

Item No. 8.8

The following Agenda Item 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 Mayor Martin, Cr Greco , Cr Amoroso, Cr Jenner, Cr Perryman, and Council Staff B Cernovskis, P Lee, J Nagy, N Serle and F McGregor) be excluded from the meeting in order for the Agenda Item (Illegal development - Mr RKH Pearson (Amberich Pty Ltd)) to be considered in confidence.

The Operational Standing Committee is satisfied that, pursuant to section 90(3)(a) of the Act the information to be received, discussed or considered in relation to this Agenda Item is information the disclosure of which would involve the unreasonable disclosure of:

Information concerning the personal affairs of any person (living or dead), which could reasonably be expected to prejudice the maintenance of law, including by affecting (or potentially affecting) the prevention, detection or investigation of a criminal offence or the right to a fair trial.

The Council is satisfied that the information to be received, discussed or considered in relation to this item is information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of the occupier of the property.

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 as the matter is personal to the occupier of the property.

Item No.	Subject Matter	S90(3) Grounds
8.8	Illegal Development – Mr RKH Pearson (Amberich Pty Ltd) - Report No. AR19/4134	(a)(f)

Moved:

Seconded:



8.8. Illegal Development – Mr RKH Pearson (Amberich Pty Ltd) Report No. AR19/4134

COMMITTEE	Operational Standing Committee
MEETING DATE:	12 February 2019
REPORT NO.	AR19/4134
RM8 REFERENCE	AF12/113
AUTHOR	Tracy Tzioutziouklaris
SUMMARY	This scrap metal/recycling business has a well documented history of continuing to operate from numerous sites without meaningful attempts to obtain the required Development Approvals from Council and is continuing to operate in breach of the Development Act 1993. This report is an update concerning Mr Pearson's activities.
COMMUNITY REFERENCE	PLAN Goal 1: Our People
	Goal 2: Our Location
	Goal 3: Our Diverse Economy
	Goal 4: Our Climate, Natural Resources, Arts, Culture and Heritage

REPORT RECOMMENDATION
(a) That Operational Standing Committee Report No. AR19/4134 titled ' <i>Illegal Development – Mr RKH Pearson (Amberich Pty Ltd)</i> ' as presented to the Operational Standing Committee on 12 February 2019 be noted.

Moved:

Seconded:



Background

Council at its meeting held on 17th April, 2018 determined:

- (a) *That Operational Standing Committee Report No. AR18/12877 titled ‘Illegal Development – Mr RKH Pearson (Amberich Pty Ltd)’ as presented to the Operational Standing Committee on 12 February 2019 be noted.*
- (b) *Council undertake action pursuant to Section 85 of the Development Act to correct the breach of the Development Act 1993 in relation to the storage of scrap metal associated with a scrap metal recycling business at 3 Pollard Close Mount Gambier.*
- (c) *Council Request Mellor Olsson Lawyers to advise Mr Pearson, as director of Amberich Pty Ltd/Envirocycle that the existing use of 26 Avey Road, Mount Gambier is that of a detached dwelling. The siting of scrap metal/car bodies and the like on this property will require Development Approval to be first obtained from Council prior to this activity occurring.*
- (d) *Should scrap metal/car bodies and/or similar materials continue to be placed on the subject land at 26 Avey Road, Mount Gambier allotment without Development Approval being sought and obtained Council proceed to undertake section 85 prosecution action pursuant to the Development Act 1993 to correct the breach of the Act.*
- (e) *When considering the ongoing disregard and reluctance to operate the scrap metal recycling business in accordance with legislative requirements requiring ongoing legal action, Council seek to ensure the Intervention Order against Mr R K H Pearson continues to remain in place so as to ensure the ongoing health safety and wellbeing of Council employees.*

Council has previously been involved in prolonged and numerous legal actions regarding the operation of a scrap metal recycling business and the storage of scrap metal by Mr K Pearson (Amberich Pty Ltd/Envirocycle) on numerous sites throughout the City of Mount Gambier without first obtaining the necessary Development Approvals from Council.

The history of legal action in relation to Amberich Pty Ltd (Mr Pearson) is extensive. The final hearing for these matters were heard before Judge Cole of the Environment, Resources and Development Court on Monday 22nd June, 2015.

On the 23rd July, 2015 Judge Cole delivered an Order which required:

“Mr Pearson to enter into a bond for a period of three years to be of good behaviour:

1. *That he remove all scrap items, goods and materials from the land at 211 Wehl Street North, Mount Gambier by 30 July, 2015; and*
2. *That he cease to use, and thereafter refrain from using, the land at 211 Wehl Street North as a store or junk yard or a scrap metal yard or for a metal recycling business, unless or until such time as development approval is obtained for any such use.”*

Since July, 2015 Council has, on a number of occasions, formally advised Mr Pearson of the requirements of his Good Behaviour Bond and to cease using 211 Wehl Street North, Mount Gambier for the storage of scrap metal as part of his business.

It is highlighted that the Environment, Resources and Development Court has recognized that given these ongoing issues Mr Pearson should be well aware of the requirements of the Development Act



and the need to obtain Development Approval prior to using a property associated with his scrap metal recycling business.

After a physical confrontation in the Council Office with Council's former Director Operational Services, Council was successful in obtaining an Intervention Order preventing Mr Pearson from attending the Council Offices. This Intervention Order was issued by the Magistrates Court on 25th November, 2015 and is still current.

Discussion

A member of the community drew Council Officer's attention to the use of a property at 3 Pollard Close, Mount Gambier for the storage of scrap metal.

The property at 3 Pollard Close is owned by Mr and Mrs Q & A Iannella.

Coincidentally, Council's Contract Building Officer attended the property at 3 Pollard Close for an inspection in relation to Building Fire Safety requirement in January, 2018. At this time it was observed that there was a substantial amount of scrap metal being stored within the building.

A truck trailer, a large skip bin and a car, which appeared unregistered and unroadworthy were observed on the subject land.

After an inspection of the property with the property owner, Mr A Iannella it was observed:

- Substantial quantities of metal supermarket shelving is being stored within the building.
- Four or five skip bins, also full of metal shelving, are being stored within the building
- A truck trailer, used for storage, remains parked on the land
- A number of assembled shelves are being stored within the building.

At the time of the inspection, it was confirmed with the property owner that the metal materials being stored within the building are owned by Mr K Pearson.

Mr A Iannella was advised:

- The property is located within the Light Industry Zone
- The existing land use of the property is that of a Light Industrial Workshop
- The storage of scrap metal and other items on the property is a change in land use to that of a "Junk Yard"
- A junk yard is a non-complying land use within the Light Industry Zone
- Any Development Application would need to be publicly notified, referred to the Environment Protection Authority for advice and comments and referred to the Development Assessment Commission for Concurrence
- The storage of scrap metal and other materials on the subject property without Development Approval was a breach of the Development Act 1993
- It was agreed the scrap metal materials would be removed from the site by Friday 27th April, 2018
- A further inspection of the property be scheduled for early in May, 2018

On Tuesday 15th January, 2019 a preliminary hearing before Environment, Resources and Development Court was held in relation to this matter. At this hearing Mr Pearson indicated that he would be pleading not guilty to the charges against him and Amberich Pty Ltd. Mr Pearson also indicated he would be seeking legal representation.



This matter has been adjourned to a Directions Hearing to be held on Tuesday 19th February, 2019. Mr Pearson was ordered to attend in person to enter his plea. If he does plead not guilty as indicated at the preliminary hearing, the matter will go to argument. If he changes his plea to guilty, the matter is likely to be adjourned for submissions on penalty.

Conclusion

The use of land for the storage of scrap metal/recyclables where the land has not previously been used for this purpose is a change in land use and requires Development Approval to be granted by Council, prior to the use of the land for that purpose.

Amberich/Envirocycle which is a scrap metal/recycling business operated by Mr K Pearson has a well documented history of continuing to operate from numerous sites without meaningful attempts to obtain the required Development Approvals from Council.

Given previous action and outcomes as part of legal action before the Environment, Resources and Development Court, Mr Pearson (Amberich/Envirocycle) should be well aware of the requirements of the Development Act and the need to obtain Development Approval prior to using a property associated with his scrap metal recycling business.



Tracy TZIOUTZIOUKLARIS
MANAGER BUSINESS AND STRATEGIC PLANNING



Judy NAGY
GENERAL MANAGER – CITY GROWTH

29 January 2019
MTT



8.9. Consideration for Keeping Items Confidential

That an order be made pursuant to Section 91(7) and recorded in the publicly released version of the minutes in accordance with Section 91(9) of the Local Government Act, 1999 that the document in relation to Item 8.8 which has been considered by the Council on a confidential basis pursuant to Section 90(3) be kept confidential.

Item	Subject Matter	S90(3) Grounds	Element To Be Kept Confidential	Duration
8.8	Illegal Development - Mr RKH Pearson (Amberich Pty Ltd) - Report No. AR19/4134	(a)and (f)	All details	Until the matter has been resolved. Where duration exceeds 12 months To be reviewed at least once

Moved:

Seconded:

Meeting closed at p.m.

AR19/3339



MINUTES OF ORDINARY OPERATIONAL STANDING COMMITTEE MEETING

Minutes of Meeting held in the Conference Room, Civic Centre, 10 Watson Terrace, Mount Gambier on Tuesday, 12 February 2019 at 5:45 p.m.

PRESENT Mayor Lynette Martin OAM

Cr Christian Greco (Presiding Member)
Cr Kate Amoroso (arrived at 5.51 p.m.)
Cr Paul Jenner
Cr Steven Perryman via telephone in accordance with clause 10,
Operational Standing Committee Terms of
Reference

COUNCIL OFFICERS

General Manager Community Wellbeing	- Ms B Cernovskis
General Manager Council Business Services	- Mrs P Lee
General Manager City Growth	- Dr J Nagy
General Manager City Infrastructure	- Mr N Serle
Manager Development Services	- Mrs T Tzioutziouklaris
Executive Administration Officer	- Mrs F McGregor

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1. APOLOGY(IES)

Nil

2. CONFIRMATION OF OPERATIONAL STANDING COMMITTEE MINUTES

Meeting held on 11 December 2018

That the minutes of the Operational Standing Committee meeting held on 11 December 2018 as attached be confirmed.

Moved: Cr Greco

Seconded: Mayor Martin

Carried

3. QUESTIONS

3.1. With Notice

Nil submitted.

3.2. Without Notice

Nil submitted.

4. DEPUTATIONS

The Presiding Member granted permission for a deputation from the Mount Gambier Bowls Club.



8.7. Consideration for Exclusion of the Public

Item No. 8.8

The following Agenda Item 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 Mayor Martin, Cr Greco , Cr Amoroso, Cr Jenner, Cr Perryman, and Council Staff B Cernovskis, P Lee, J Nagy, N Serle, T Tzioutziouklaris and F McGregor) be excluded from the meeting in order for the Agenda Item (Illegal development - Mr RKH Pearson (Amberich Pty Ltd)) to be considered in confidence.

The Operational Standing Committee is satisfied that, pursuant to section 90(3)(a) of the Act the information to be received, discussed or considered in relation to this Agenda Item is information the disclosure of which would involve the unreasonable disclosure of:

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Item No.	Subject Matter	S90(3) Grounds
8.8	Illegal Development – Mr RKH Pearson (Amberich Pty Ltd) - Report No. AR19/4134	(a)(f)

Moved: Cr Greco

Seconded: Mayor Martin

Carried



8.8. Illegal Development – Mr RKH Pearson (Amberich Pty Ltd) Report No. AR19/4134

REPORT RECOMMENDATION
(a) That Operational Standing Committee Report No. AR19/4134 titled ' <i>Illegal Development – Mr RKH Pearson (Amberich Pty Ltd)</i> ' as presented to the Operational Standing Committee on 12 February 2019 be noted.

Moved: Cr Greco

Seconded: Cr Amoroso

Carried



8.9. Consideration for Keeping Items Confidential

That an order be made pursuant to Section 91(7) and recorded in the publicly released version of the minutes in accordance with Section 91(9) of the Local Government Act, 1999 that the document in relation to Item 8.8 which has been considered by the Council on a confidential basis pursuant to Section 90(3) be kept confidential.

Item No.	Subject Matter	S90(3) Grounds	Element To Be Kept Confidential	Duration
8.8	Illegal Development - Mr RKH Pearson (Amberich Pty Ltd) - Report No. AR19/4134	(a)and (f)	All details	Until the matter has been resolved. Where duration exceeds 12 months To be reviewed at least once

Moved: Cr Greco

Seconded: Cr Jenner

Carried

Meeting closed at 7.37 p.m.

AR19/6487

CONFIRMED THIS

DAY OF

2019

.....
PRESIDING MEMBER



AGENDA OF ORDINARY COUNCIL MEETING

Meeting to be held at the Council Chamber, Civic Centre, 10 Watson Terrace, Mount Gambier
on Tuesday, 19 February 2019 at 6.00 p.m.

PRESENT

Mayor Lynette Martin OAM

Cr Ben Hood
Cr Steven Perryman
Cr Sonya Meziniec
Cr Kate Amoroso
Cr Max Bruins
Cr Christian Greco
Cr Paul Jenner

COUNCIL OFFICERS

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

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1. APOLOGY(IES)

Apology(ies) received from Cr Frank Morello

That the apology from Cr Morello be received.

Moved:

Seconded:

2. LEAVE OF ABSENCE

Nil

3. CONFIRMATION OF COUNCIL MINUTES

Ordinary Meeting held on 15 January 2019

Special Meeting held on 23 January 2019

That the minutes of the Ordinary Council meeting held on 15 January 2019 and the minutes of the Special Meeting held on 23 January 2019 as attached be confirmed as accurate records of the proceedings of the meetings.

Moved:

Seconded:



18.7. Consideration for Exclusion of the Public

Item No. 18.8

The following Agenda Item 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 Mayor L Martin, Councillors – K Amoroso, M Bruins, C Greco, B Hood, P Jenner, S Mezinec, S Perryman and Council Staff B Cernovskis, P Lee, J Nagy, N Serle, M McCarthy, T Tzioutziouklaris and M Telford) be excluded from the meeting in order for the Agenda Item (Illegal development - Mr RKH Pearson (Amberich Pty Ltd)) to be considered in confidence.

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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 as the matter is personal to the occupier of the property.

Item No.	Subject Matter	S90(3) Grounds
18.8	Illegal Development – Mr RKH Pearson (Amberich Pty Ltd) - Report No. AR19/4134	(a)(f)

Moved:

Seconded:



18.8. Illegal Development – Mr RKH Pearson (Amberich Pty Ltd) Report No. AR19/4134

- (a) That Operational Standing Committee Report No. AR19/4134 titled '*Illegal Development – Mr RKH Pearson (Amberich Pty Ltd)*' as presented to the Operational Standing Committee on 12 February 2019 be noted.

Moved:

Seconded:



18.9. Consideration for Keeping Items Confidential

That an order be made pursuant to Section 91(7) and recorded in the publicly released version of the minutes in accordance with Section 91(9) of the Local Government Act, 1999 that the document in relation to Item 18.8 which has been considered by the Council on a confidential basis pursuant to Section 90(3) be kept confidential.

Item No.	Subject Matter	S90(3) Grounds	Element To Be Kept Confidential	Duration
18.8	Illegal Development - Mr RKH Pearson (Amberich Pty Ltd) - Report No. AR19/4134	(a)and (f)	All details	Until the matter has been resolved. Where duration exceeds 12 months To be reviewed at least once every 12 months.

Moved:

Seconded:

Meeting closed at p.m.

AR19/5129



MINUTES OF ORDINARY COUNCIL MEETING

Meeting held at the Council Chamber, Civic Centre, 10 Watson Terrace, Mount Gambier
on Tuesday, 19 February 2019 at 6.00 p.m.

PRESENT

Mayor Lynette Martin OAM

Cr Ben Hood
Cr Steven Perryman (arrived at 6.03 p.m.)
Cr Sonya Mezinec
Cr Kate Amoroso
Cr Max Bruins
Cr Christian Greco
Cr Paul Jenner

COUNCIL OFFICERS

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

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1. APOLOGY

Apology received from Cr Frank Morello

That the apology from Cr Morello be received.

Moved: Mayor Martin

Seconded: Cr Bruins

Carried

2. LEAVE OF ABSENCE

Nil

Cr Perryman arrived at 6.03 pm

3. CONFIRMATION OF COUNCIL MINUTES

Ordinary Meeting held on 15 January 2019

Special Meeting held on 23 January 2019



18.7. Consideration for Exclusion of the Public

Item No. 18.8

The following Agenda Item 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 Mayor L Martin, Councillors - K Amoroso, M Bruins, C Greco, B Hood, P Jenner, S Mezinec, S Perryman and Council Staff B Cernovskis, P Lee, J Nagy, N Serle, M McCarthy, T Tzioutziouklaris, S McLean and M Telford) be excluded from the meeting in order for the Agenda Item (Illegal development - Mr RKH Pearson (Amberich Pty Ltd)) to be considered in confidence.

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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 as the matter is personal to the occupier of the property.

Item No.	Subject Matter	S90(3) Grounds
18.8	Illegal Development - Mr RKH Pearson (Amberich Pty Ltd) - Report No. AR19/4134	(a)(f)

Moved: Cr Greco

Seconded: Cr Bruins

Carried



18.8. Illegal Development - Mr RKH Pearson (Amberich Pty Ltd) Report No. AR19/41347

- (a) That Operational Standing Committee Report No. AR19/4134 titled '*Illegal Development - Mr RKH Pearson (Amberich Pty Ltd)*' as presented to the Operational Standing Committee on 12 February 2019 be noted.

Moved: Cr Greco

Seconded: Cr Jenner

Carried



18.9. Consideration for Keeping Items Confidential

That an order be made pursuant to Section 91(7) and recorded in the publicly released version of the minutes in accordance with Section 91(9) of the Local Government Act, 1999 that the document in relation to Item 18.8 which has been considered by the Council on a confidential basis pursuant to Section 90(3) be kept confidential.

Item No.	Subject Matter	S90(3) Grounds	Element To Be Kept Confidential	Duration
18.8	Illegal Development - Mr RKH Pearson (Amberich Pty Ltd) - Report No. AR19/4134	(a)and (f)	All details	Until the matter has been resolved. Where duration exceeds 12 months To be reviewed at least once every 12 months.

Moved: Cr Greco

Seconded: Cr Mezinec

Carried

