

OPERATIONAL SERVICES COMMITTEE

Meeting to be held in the Conference Room, Operational Services Area, Level One of Civic Centre, 10 Watson Terrace, Mount Gambier, on Tuesday 14<sup>th</sup> February 2017 at 7.30 a.m.

AGENDA

**18. CONSIDERATION FOR EXCLUSION OF PUBLIC**

Cr moved that 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 Councillors - C Greco, D Mutton, P Richardson and I Von Stanke and Council Officers - M McShane, D Morgan and S Moretti) be excluded from the meeting in order for the agenda item (Legal Action - 211 Wehl Street North, Mount Gambier - Mr K Pearson (Amberich Pty Ltd)) to be considered in confidence.

The Committee is satisfied that, pursuant to section 90(3)(b) of the Act the information to be received, discussed or considered in relation to this Agenda Item is information the disclosure of which could reasonably be expected:

- S.90(3)(g) - 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, any duty of confidence, or other legal obligation or duty; and
- S.90(3)(h) - legal advice.

The Committee 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 a person. The information that is to be received, discussed or considered in relation to this item relates to the commencement of legal action involving prosecution proceedings pursuant to the Development Act 1993.

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 of a personal nature.

<u>Item No.</u>	<u>Subject Matter</u>	<u>S90 (3) Grounds</u>
19.	<u>OPERATIONAL SERVICES REPORT NO. 2/2017</u> - Legal Action - 211 Wehl Street North, Mount Gambier - Mr K Pearson (Amberich Pty Ltd) - Ref. AF12/113	(g) (h)

seconded

**IN CONFIDENCE**

**19. OPERATIONAL SERVICES REPORT NO. 3/2017 - Legal Action - 211 Wehl Street North, Mount Gambier - Mr K Pearson (Amberich Pty Ltd) - Ref. AF12/113**

moved it be recommended:

- (a) Operational Services Report No. 3/2017 be received;
- (b) Council undertake the most appropriate action to correct the breaches of the Development Act 1993 in accordance with advice from Council's legal representation in relation to this matter.

seconded

**20. CONSIDERATION FOR KEEPING MATTERS CONFIDENTIAL**

Cr moved that an order be made pursuant to Section 91 (7) and recorded in the publicly released version of the minutes in accordance with S91(9) of the Local Government Act, 1999 that the document in relation to item 19 which has been considered by the Council on a confidential basis pursuant to Section 90 (3) be kept confidential as follows:

<u>Date</u>	<u>Subject Matter</u>	<u>S.90(3) Grounds</u>	<u>Element To Be Kept Confidential</u>	<u>Duration</u>
19.	<u>OPERATIONAL SERVICES REPORT NO. 3/2017</u> - Legal Action - 211 Wehl Street North, Mount Gambier - Mr K Pearson (Amberich Pty Ltd) - Ref. AF12/113	(g) (h)	All details	13 months or until the matter is resolved, whichever is the later

seconded

The meeting closed at \_\_\_\_\_ a.m.

AF13/66

SW

## IN CONFIDENCE

### OPERATIONAL SERVICES REPORT NO. 3/2017

**SUBJECT: LEGAL ACTION - 211 WEHL STREET NORTH, MOUNT GAMBIER - MR K PEARSON (AMBERICH PTY LTD)**

**REF: AF12/113**

---

#### **Introduction**

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

The ongoing legal action has also involved numerous matters with Amberich Pty Ltd (Mr K Pearson) regarding the unlawful use of the property at 211 Wehl Street North, Mount Gambier. The history of legal action in relation to Amberich Pty Ltd (Mr Pearson) and the use of this property is extensive.

The last hearing for these matters were heard before Judge Cole of the Environment, Resources and Development Court on Monday 22<sup>nd</sup> June, 2015.

On the 23<sup>rd</sup> July, 2015 the Environment, Resources and Development Court Ordered:

- "1. Mr Robert Keith Hamilton Pearson is sentenced to committal to prison for a term of nine calendar months, which term will be suspended on condition that Robert Keith Hamilton Pearson enter into a bond (in the form of the bond annexed hereto) in the sum of \$100 for a period of three years to be of good behaviour, that he remove all scrap items, goods and materials from the land at 211 Wehl Street North, including but not limited to, scrap metal, ship bins, car bodies, storage containers and similar recyclable materials, by 30 June 2015; and that he cease to use, and thereafter refrain from using, the land at 211 Wehl Street North as a store or a junk yard or a scrap metal yard or for a scrap metal recycling business, unless or until such a time as development approval is obtained for any such use.*
- 2. Robert Keith Hamilton Pearson shall pay the costs of the City of Mount Gambier, to be agreed or taxed."*

Mellor Olsson Lawyers have been Council's legal representation in relation to these on going matters with Mr Keith Pearson, Amberich Pty Ltd/Envirocycle Scrap Metal and have an extensive working knowledge of the issue.

#### **Discussion**

It has been observed that 'junk and/or scrap metal items' namely a truck trailer and a car body have recently been located on the property at 211 Wehl Street North, Mount Gambier.

Council by letter has requested that both the truck trailer and the car body be removed from the property by 16<sup>th</sup> of January, 2016 and no further items be placed on the property so as to ensure ongoing compliance with both the Good Behaviour Bond and the Court Order.

At an inspection undertaken on Monday 23<sup>rd</sup> January, 2017 it was observed that the following items were located on the property:

- The truck trailer (Container);
- Two car bodies (different vehicles to the one originally observed located onsite);
- A forklift
- A car panel/part;

Operational Services Report No. 3/2017 cont'd...

- Timber pallets;
- Numerous bathroom hand basins; and
- A metal crate/cage.

A further inspection to determine the contents of the truck trailer/container was undertaken on Tuesday 31<sup>st</sup> January, 2017. Inside the trailer/container a two seater lounge chair, some drawers from what could have been a chest of drawers/bed side table, a lounge chair, a mattress and a lifting trolley were observed.

Other items noted to be located on the property included:

- 3 timber pallets piled up next to the truck trailer/container;
- An empty metal cage/crate;
- Numerous hand basins;
- A white ute which is driven by Mr Pearson;
- A dark blue commodore which appeared to be unregistered and in an undrivable condition;
- A dark grey ford which appeared to be unregistered and in an undriveable condition;
- A door part/panel from another unknown vehicle;
- Another metal cage/crate.
- Another car parked in the driveway which appeared to be registered, in good condition and appeared to be driveable.
- Household rubbish bin which contained some sort of metal object. (This bin was put out for roadside collection by Council).

Mr Pearson has had two discussions with Council's legal representation who has advised that Mrs M Pearson is no longer living at the property and the truck trailer/container is being used to store Mrs Pearson's furniture. The house is now being rented by another person. The car wrecks located on site belong to his son.

Council records identify the owners of the property at 211 Wehl Street North, Mount Gambier as Mrs M Pearson, Mr RKH Pearson and Mrs R Glynne. Previously the property was owned by Mr H and Mrs M Pearson.

The use of the truck trailer/container for the storage of furniture not being used in association with the dwelling is defined as a storage building and requires Development Approval to be obtained from Council.

The placement of the two car bodies, timber pallets, forklift, numerous hand basins, car panels and metal cages/crates on the subject land is a breach of the Court Orders issued by the Environment, Resources and Development Court dated 23<sup>rd</sup> July, 2015.

The person primarily responsible for this matter has been uncooperative and generally unwilling to accept responsibility to correct the breach of the Development Act over an extensive period of time and in relation to numerous related matters. This person has previously demonstrated that if Council does not take appropriate action at the earliest opportunity the breach of the Development Act escalates and becomes a significant matter to manage involving significant use of resources.

Alternatively Council may wish to take no action in relation to this matter.

## **Conclusion**

The placement of a truck trailer/container, car bodies, and other material identified as being recently located on the subject property constitute a breach of the Development Act 1993 and the Orders as issued by the Environment, Resources and Development Court.

Operational Services Report No. 3/2017 cont'd...

The person responsible for this action has demonstrated unwillingness and is uncooperative in correcting the breach of the Act and Court Orders.

**RECOMMENDATION**

- (a) Operational Services Report No. 3/2017 be received;
- (b) Council undertake the most appropriate action to correct the breaches of the Development Act 1993 in accordance with advice from Council's legal representation in relation to this matter.



**Tracy TZIOUTZIOUKLARIS**  
MANAGER BUSINESS & STRATEGIC PLANNING

sighted:



**Mark McSHANE**  
CHIEF EXECUTIVE OFFICER

6<sup>th</sup> February, 2017  
TT:SW

(Refer Item        of Operational Services Committee Minutes)

OPERATIONAL SERVICES COMMITTEE

Meeting held in the Conference Room, Operational Services Area, Level One of Civic Centre, 10 Watson Terrace, Mount Gambier, on Tuesday 14<sup>th</sup> February 2017 at 7.30 a.m.

MINUTES

**18. CONSIDERATION FOR EXCLUSION OF PUBLIC**

Cr Greco moved that 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 Councillors - C Greco, F Morello, P Richardson and I Von Stanke and Council Officers - M McShane, D Morgan, M McCarthy, T Tzioutziouklaris and S Moretti) be excluded from the meeting in order for the agenda item (Legal Action - 211 Wehl Street North, Mount Gambier - Mr K Pearson (Amberich Pty Ltd)) to be considered in confidence.

The Committee is satisfied that, pursuant to section 90(3)(b) of the Act the information to be received, discussed or considered in relation to this Agenda Item is information the disclosure of which could reasonably be expected:

- S.90(3)(g) - 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, any duty of confidence, or other legal obligation or duty; and
- S.90(3)(h) - legal advice.

The Committee 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 a person. The information that is to be received, discussed or considered in relation to this item relates to the commencement of legal action involving prosecution proceedings pursuant to the Development Act 1993.

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 of a personal nature.

<u>Item No.</u>	<u>Subject Matter</u>	<u>S90 (3) Grounds</u>
19.	<u>OPERATIONAL SERVICES REPORT NO. 2/2017</u> - Legal Action - 211 Wehl Street North, Mount Gambier - Mr K Pearson (Amberich Pty Ltd) - Ref. AF12/113	(g) (h)

Cr Von Stanke seconded

Carried

**IN CONFIDENCE**

19. **OPERATIONAL SERVICES REPORT NO. 3/2017** - Legal Action - 211 Wehl Street North, Mount Gambier - Mr K Pearson (Amberich Pty Ltd) - Ref. AF12/113

Cr Von Stanke moved it be recommended:

- (a) Operational Services Report No. 3/2017 be received;
- (b) Council undertake the most appropriate action to correct the breaches of the Development Act 1993 in accordance with advice from Council’s legal representation in relation to this matter.

Cr Greco seconded

**Carried**

20. **CONSIDERATION FOR KEEPING MATTERS CONFIDENTIAL**

Cr Greco moved that an order be made pursuant to Section 91 (7) and recorded in the publicly released version of the minutes in accordance with S91(9) of the Local Government Act, 1999 that the document in relation to item 19 which has been considered by the Council on a confidential basis pursuant to Section 90 (3) be kept confidential as follows:

<u>Date</u>	<u>Subject Matter</u>	<u>S.90(3) Grounds</u>	<u>Element To Be Kept Confidential</u>	<u>Duration</u>
19.	<b><u>OPERATIONAL SERVICES REPORT NO. 3/2017</u></b> - Legal Action - 211 Wehl Street North, Mount Gambier - Mr K Pearson (Amberich Pty Ltd) - Ref. AF12/113	(g) (h)	All details	13 months or until the matter is resolved, whichever is the later

Cr Von Stanke seconded

**Carried**

The meeting closed at 7:48 a.m.  
AF13/66  
SM

CONFIRMED THIS

DAY OF

2017.

.....  
PRESIDING MEMBER

CITY OF MOUNT GAMBIER

Meeting to be held at the Council Chamber, Civic Centre, 10 Watson Terrace, Mount Gambier  
on Tuesday, 21<sup>st</sup> February, 2017 at 6.00 p.m.

AGENDA

**CONSIDERATION FOR EXCLUSION OF PUBLIC**

moved that 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 Councillors - : Mayor Andrew Lee, Cr Christian Greco, Cr Mark Lovett, Cr Josh Lynagh, Cr Sonya Meziniec, Cr Frank Morello, Cr Des Mutton, Cr Steven Perryman, Cr Hanna Persello, Cr Penny Richardson and Cr Ian Von Stanke and Council Officers: Mark McShane, Daryl Sexton, Gary Button, Barbara Cernovskis, Michael McCarthy, Tracy Tzioutziouklaris, Melissa Telford and Ashlee Lavia now present) be excluded from the meeting in order for the agenda item (Legal Action - 211 Wehl Street North, Mount Gambier - Mr K Pearson (Amberich Pty Ltd)) to be considered in confidence.

The Council is satisfied that, pursuant to section 90(3)(b) of the Act the information to be received, discussed or considered in relation to this Agenda Item is information the disclosure of which could reasonably be expected:

- S.90(3)(g) - 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, any duty of confidence, or other legal obligation or duty; and
- S.90(3)(h) - legal advice.

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 a person. The information that is to be received, discussed or considered in relation to this item relates to the commencement of legal action involving prosecution proceedings pursuant to the Development Act 1993.

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 of a personal nature.

<u>Item No.</u>	<u>Subject Matter</u>	<u>S90 (3) Grounds</u>
<b><u>OPERATIONAL SERVICES COMMITTEE - 14<sup>TH</sup> FEBRUARY, 2017</u></b>		
19.	<b><u>OPERATIONAL SERVICES REPORT NO. 2/2017 - Legal Action - 211 Wehl Street North, Mount Gambier - Mr K Pearson (Amberich Pty Ltd) - Ref. AF12/113</u></b>	(g) (h)

seconded



**IN CONFIDENCE**

19. **OPERATIONAL SERVICES REPORT NO. 3/2017** - Legal Action - 211 Wehl Street North, Mount Gambier - Mr K Pearson (Amberich Pty Ltd) - Ref. AF12/113

Cr Von Stanke moved it be recommended:

- (a) Operational Services Report No. 3/2017 be received;
- (b) Council undertake the most appropriate action to correct the breaches of the Development Act 1993 in accordance with advice from Council's legal representation in relation to this matter.

Cr Greco seconded

**Carried**

**CONSIDERATION FOR KEEPING MATTERS CONFIDENTIAL**

moved that an order be made pursuant to Section 91 (7) and recorded in the publicly released version of the minutes in accordance with S91(9) of the Local Government Act, 1999 that the document in relation to item 19 which has been considered by the Council on a confidential basis pursuant to Section 90 (3) be kept confidential as follows:

<u>Item No.</u>	<u>Subject Matter</u>	<u>S.90(3) Grounds</u>	<u>Element To Be Kept Confidential</u>	<u>Duration</u>
<b><u>OPERATIONAL SERVICES COMMITTEE - 14<sup>TH</sup> FEBRUARY, 2017</u></b>				
19.	<b><u>OPERATIONAL SERVICES REPORT NO. 3/2017</u></b> - Legal Action - 211 Wehl Street North, Mount Gambier - Mr K Pearson (Amberich Pty Ltd) - Ref. AF12/113	(g) (h)	All details	13 months or until the matter is resolved, whichever is the later

seconded

Meeting closed at .....

MJT

MINUTES OF MEETING OF THE CITY OF MOUNT GAMBIER HELD AT THE COUNCIL CHAMBER, CIVIC CENTRE, 10 WATSON TERRACE, MOUNT GAMBIER ON TUESDAY 21<sup>ST</sup> FEBRUARY, 2017 AT 6.00 P.M.

---

**CONSIDERATION FOR EXCLUSION OF PUBLIC**

Cr Greco moved that 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 Councillors - : Mayor Andrew Lee, Cr Christian Greco, Cr Mark Lovett, Cr Josh Lynagh, Cr Sonya Meziniec, Cr Frank Morello, Cr Des Mutton, Cr Steven Perryman, Cr Hanna Persello and Cr Ian Von Stanke and Council Officers: Mark McShane, Daryl Sexton, Barbara Cernovskis, Michael McCarthy, Tracy Tzioutziouklaris, Melissa Telford and Ashlee Lavia now present) be excluded from the meeting in order for the agenda item (Legal Action - 211 Wehl Street North, Mount Gambier - Mr K Pearson (Amberich Pty Ltd)) to be considered in confidence.

The Council is satisfied that, pursuant to section 90(3)(b) of the Act the information to be received, discussed or considered in relation to this Agenda Item is information the disclosure of which could reasonably be expected:

- S.90(3)(g) - 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, any duty of confidence, or other legal obligation or duty; and
- S.90(3)(h) - legal advice.

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 a person. The information that is to be received, discussed or considered in relation to this item relates to the commencement of legal action involving prosecution proceedings pursuant to the Development Act 1993.

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 of a personal nature.

<u>Item No.</u>	<u>Subject Matter</u>	<u>S90 (3) Grounds</u>
<b><u>OPERATIONAL SERVICES COMMITTEE - 14<sup>TH</sup> FEBRUARY, 2017</u></b>		
19.	<b><u>OPERATIONAL SERVICES REPORT NO. 2/2017 - Legal Action - 211 Wehl Street North, Mount Gambier - Mr K Pearson (Amberich Pty Ltd) - Ref. AF12/113</u></b>	(g) (h)

Cr Lovett seconded

**Carried**

**IN CONFIDENCE**

**19. OPERATIONAL SERVICES REPORT NO. 3/2017 - Legal Action - 211 Wehl Street North, Mount Gambier - Mr K Pearson (Amberich Pty Ltd) - Ref. AF12/113**

Cr Von Stanke moved it be recommended:

- (a) Operational Services Report No. 3/2017 be received;
- (b) Council undertake the most appropriate action to correct the breaches of the Development Act 1993 in accordance with advice from Council's legal representation in relation to this matter.

Cr Greco seconded

Carried

**Cr Greco moved the recommendation of the Operational Services Committee as contained in item 19 be adopted.**

Cr Lovett seconded

Carried

## CONSIDERATION FOR KEEPING MATTERS CONFIDENTIAL

Cr Greco moved that an order be made pursuant to Section 91 (7) and recorded in the publicly released version of the minutes in accordance with S91(9) of the Local Government Act, 1999 that the document in relation to item 19 which has been considered by the Council on a confidential basis pursuant to Section 90 (3) be kept confidential as follows:

<u>Item No.</u>	<u>Subject Matter</u>	<u>S.90(3) Grounds</u>	<u>Element To Be Kept Confidential</u>	<u>Duration</u>
<b><u>OPERATIONAL SERVICES COMMITTEE - 14<sup>TH</sup> FEBRUARY, 2017</u></b>				
19.	<b><u>OPERATIONAL SERVICES REPORT NO. 3/2017 - Legal Action - 211 Wehl Street North, Mount Gambier - Mr K Pearson (Amberich Pty Ltd) - Ref. AF12/113</u></b>	(g) (h)	All details	13 months or until the matter is resolved, whichever is the later

Cr Lovett seconded

Carried

Meeting closed at 6.54 p.m.

MJT