

**MINUTES OF CITY OF MOUNT GAMBIER COUNCIL MEETING
HELD AT THE COUNCIL CHAMBER, CIVIC CENTRE, 10 WATSON TERRACE, MOUNT
GAMBIER
ON TUESDAY, 21 FEBRUARY 2023 AT 6.00 P.M.**

PRESENT: Mayor Lynette Martin (OAM), Cr Ben Hood, Cr Frank Morello, Cr Josh Lynagh, Cr Kate Amoroso, Cr Max Bruins, Cr Paul Jenner (arrived at 6:01p.m.), Cr Sonya Mezinec

OFFICERS IN ATTENDANCE:	Chief Executive Officer	- Mrs S Philpott
	General Manager City Infrastructure	- Ms B Cernovskis
	General Manager Corporate and Regulatory Services	- Mr D Barber
	General Manager City and Community Growth	- Mrs S La Greca
	Manager Governance and Property	- Mr M McCarthy
	Manager Financial Services	- Mrs J Scoggins
	Manager Organisational Development	- Mrs R Datta
	Media and Communications Coordinator	- Mr J McDonald
	Communications Officer	- Ms M Brookes
	Manager Library and Community Development	- Mrs G Davison
	Executive Administrator	- Ms T Chant

23 NEW CONFIDENTIAL ITEMS

23.1 SECTION 270 INTERNAL REVIEW - MITCHELL STREET TREES - LEGAL ADVICE - REPORT NO. AR23/10258

RESOLUTION 2023/18

Moved: Cr Max Bruins
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 the Mayor, Councillors and S Philpott, B Cernovskis, D Barber, S La Greca, M McCarthy, J Scoggins, R Datta, J McDonald, M Brookes, G Davison and T Chant be excluded from attendance at the meeting for the receipt and consideration in confidence of Agenda Item 23.1 AR23/10258 Section 270 Internal Review - Mitchell Street Trees - Legal Advice.

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 the matter for consideration includes associated legal advice obtained in relation to the nuisance matters being associated with the subject matter of the report, and attachments to the Internal Review report contain 3rd party information for which Council has no express or implied licence to publish and so disclosure could reasonably be expected to breach a law or duty of confidence in relation to that content.

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: Discussion of Item 23.1

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

Meeting Procedures were suspended at 07:20 PM

The Mayor sought approval to extend the suspension for a further 5 minutes.

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

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 07:39 PM

RESOLUTION 2023/19

Moved: Cr Max Bruins

Seconded: Cr Paul Jenner

1. That Council Report No. AR23/10258 titled 'Section 270 Internal Review - Mitchell Street Trees - Legal Advice' as presented on 21 February 2023 be noted.
2. That, having reconsidered the outcomes and recommendations of the Section 270 Internal Review, the further arborists report, the provisions of section 245 of the *Local Government Act 1999*, and legal advice on potential nuisance arising from tree litter and other sources in a suburban setting, Council resolves:
 - (i) To Vary part 2(a) of its decision of 15 June 2021 as contained in resolution 2021/154 that:

Empak Homes and the property owner of 8/6 Jardine Street be advised:

 - (a) *After an extensive investigation into the health and risk assessment of the Lagunaria patersonia (Norfolk Island Hibiscus) planted along the western side of Mitchell Street, the trees are not considered by Council to warrant their removal at this time.*
 - (ii) To take the following action in relation to the *Lagunaria patersonia (Norfolk Island Hibiscus) trees on the western side of Mitchell Street:*
 - (a) Investigate the costs and the timeframe of a trial of the fruit suppressing stem injections as identified in the Arborist report as a potential solution to reducing the setting of fruit by

reducing flowering of the formation of fruit post flowering for the upcoming flowering/fruited cycle of the *Lagunaria patersonia* (Norfolk Island Hibiscus)

- (b) Obtain quotes for the complete removal of all 14 trees.
3. That a report be brought back to council detailing the costs to trial of the fruit suppression injections to enable council to determine whether it wishes to proceed with a trial of the fruit suppressing stem injections prior to considering other more drastic measures such as removal given the State Heritage overlays associated with development approval.
 4. That the consultant representative of the original applicants be advised of Council's next actions as set out in resolution (2) & (3).

CARRIED

RESOLUTION 2023/20

Moved: Cr Max Bruins
Seconded: Cr Ben Hood

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 23.1 AR23/10258 Section 270 Internal Review - Mitchell Street Trees - Legal Advice and its attachments, 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 the matter has been considered by Council, with Resolutions/Minutes to be released immediately following consideration by Council, the covering report AR23/10258 and legal advice (Attachment 1) be retained in confidence and reviewed annually in accordance with the *Local Government Act 1999*.
2. Further that Council delegates the power to review, revoke, but not extend the confidential order to the Chief Executive Officer in accordance with the provisions of Section 91(9)(c) of the *Local Government Act 1999*.

CARRIED

