



City of  
Mount Gambier

Civic Centre, 10 Watson Terrace  
Mount Gambier SA 5290

PO Box 56  
Mount Gambier SA 5290

Telephone 08 87212555  
Facsimile 08 87249791  
[city@mountgambier.sa.gov.au](mailto:city@mountgambier.sa.gov.au)

[mountgambier.sa.gov.au](http://mountgambier.sa.gov.au)

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

**Date: Tuesday, 15 February 2022**

**Time: 6.00 p.m.**

**Location: Council Chamber  
Civic Centre  
10 Watson Terrace  
Mount Gambier**

# **CONFIDENTIAL AGENDA**

**Council Meeting  
15 February 2022**

**Sarah Philpott  
Chief Executive Officer  
10 February 2022**

## 26 NEW CONFIDENTIAL ITEMS

### 26.1 EPA NOTICE – REPORT NO. AR22/7711

#### 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 (Council Officers) be excluded from attendance at the meeting for the receipt, discussion and consideration in confidence of Agenda Item 26.1 AR22/7711 EPA Notice.

The Council is satisfied that, pursuant to section 90(3) (g), (h) and (i) 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
- information relating to:
  - actual litigation, or
  - litigation that the Council or Council committee believes on reasonable grounds will take place,
  - involving the Council or an employee of the Council

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 due to legal considerations.



**26.1 EPA NOTICE – REPORT NO. AR22/7711**

<b>Committee:</b>	<b>Council</b>
<b>Meeting Date:</b>	<b>15 February 2022</b>
<b>Report No.:</b>	<b>AR22/7711</b>
<b>CM9 Reference:</b>	<b>AF13/64</b>
<b>Author:</b>	<b>Mark McDonald, Manager Waste and ReUse</b>
<b>Authoriser:</b>	<b>Barbara Cernovskis, General Manager City Infrastructure</b>
<b>Summary:</b>	<p><b>The City of Mount Gambier Council has been found to have contravened section 45(5) of the Environment Protection Act 1993 by failing its obligations to apply daily cover on three separate occasions. This report outlines the historic steps that have triggered the investigation and the corrective actions that have been developed and implemented to improve daily operations.</b></p> <p><b>Additionally, this report requests that Council delegate authority to the Chief Executive Officer to respond in writing to the Environmental Protection Authority to accept the civil penalty on behalf of Council and make payment for the determined amount \$17,820.</b></p>
<b>Strategic Plan Reference:</b>	<b>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
- (i) information relating to: actual litigation, or litigation that the Council or Council committee believes on reasonable grounds will take place, involving the Council or an employee of the Council.

**REPORT RECOMMENDATION**

1. That Council Report No. AR22/7711 titled 'EPA Notice' as presented on 15 February 2022 be noted.
2. Council authorise the CEO to respond in writing confirming Councils participation in civil penalty negotiations.
3. Council authorise the CEO to accept the determined civil penalty on behalf of Council and make payment for the determined amount \$17,820.



## TYPE OF REPORT

Corporate

## BACKGROUND

Caroline Landfill operates under EPA environmental authorisation licence 2504 as a fully engineered landfill. One of the conditions of this licence is S-281:

### 3.4 DAILY COVER AND ALTERNATIVE DAILY COVER (S-281)

The licensee must, on or before the close of each day's operation cover all exposed waste with:

3.4.1 no less than 150mm of Daily Cover; or

3.4.2 an Alternative Daily Cover as approved in writing by the EPA.

There has been a history for some years whereby the EPA have expressed concerns about the daily cover conditions not being adequately met at Caroline Landfill. This culminated in two expiation notices being issued. One in November 2019 and again in February 2020 for breaches of the daily cover requirements with \$1,000 fines in each case. Following these expiation notices, work has been undertaken to train the operational staff on correct daily cover requirements and to improve the documented procedures to ensure compliance.

To meet the daily cover requirement of a 150mm layer covering the waste requires significant quantities of clean fill. This material is sourced from excavation of the landfill cells and is limited with each cell being constructed mostly above ground due to the high groundwater levels. To reduce the amount of clean fill used, in 2019, Council applied for approval to use alternative daily cover in the form of a paper-based cover applied in liquid form. This was approved by the EPA and Council proceeded to purchase a small Hydro Mulcher machine.

The small Hydro Mulcher machine was subsequently found to be unsuitable posing Work Health and Safety risks for operational staff. This machine has since been replaced with a fit for purpose Hydro Mulcher and staff re-trained on the application of alternative daily cover.

Despite these improvements the EPA has not been satisfied the Daily Cover requirements have been adequately met and pursued an investigation into further alleged breaches of the daily cover conditions. As a result, the EPA have determined a civil penalty of \$17,820 (Attachment 1).

## PROPOSAL

Based on legal advice sought, it is recommended Council notify the EPA that it is prepared to participate in negotiations and do not wish to make submissions to reduce the penalty amount. Council pay the determined amount \$17,820.

The cost of legal representation, and Council Officers time to prepare a submission would far exceed any potential penalty reduction. In the interests of efficiency and expediency, it is recommended Council should accept the penalty and continue to by strengthening Councils working relationship with the EPA improving documented procedures aligned with best practice waste management standards.

## LEGAL IMPLICATIONS

In considering legal advice, the EPA has taken the path most favourable to Council in that it has applied the maximum discount available under *EPA Policy for Calculation of Civil Penalties under the Environment Protection Act 1993*.

It is not recommended Council elect to be prosecuted due to the assumption that the EPA has sufficient evidence to substantiate its allegation of breaches of daily cover being committed and would be prepared to follow through with a prosecution.

## STRATEGIC PLAN

3.5 Reusing, recycling and waste management



We will work with the community to ensure there is better understanding of the impacts and responsible options available for reuse, recycling and waste management, including investigations as to how the city and region can be more self-sufficient.

- 3.5.2 Investing in sustainable waste management practices and progressive technology at the Council's Caroline Landfill facility, including methane collection and solar power options [Service Provider (Direct)].

## **COUNCIL POLICY**

As part of the procedure improvement process Policy W115 Waste Management – Receival of Waste – Caroline Landfill will be reviewed and improved to ensure that it accurately represents the position of Council.

## **ECONOMIC IMPLICATIONS**

Based on legal advice sought, it is recommended Council notify the EPA that it is prepared to participate in negotiations and do not wish to make submissions to reduce the penalty amount.

Agreeing to pay \$17,820 is the most efficient course of action in which the matter will be resolved quickly in order to remain focussed on continual improvement and implementing best practice management at Caroline Landfill.

## **ENVIRONMENTAL IMPLICATIONS**

Caroline Landfill plays a significant role in waste management at a regional level.

It is recommended Council accept the civil penalty and commit to continual improvement processes to ensure compliance with the *Environment Protection Act 1993* to avoid further breaches.

## **SOCIAL IMPLICATIONS**

Caroline Landfill is a vital regional resource for the community as the only licensed landfill in the south east region of South Australia. Without an alternative site, all waste to be landfilled would have to be transported (at significant cost) to another licensed landfill. This would place additional financial burden on the community with the cost of kerbside waste collections rising dramatically due to the high cost of transporting waste.

## **CULTURAL IMPLICATIONS**

Nil

## **RESOURCE IMPLICATIONS**

It is important Council continue to invest in Caroline Landfill by developing staff, purchasing fit for purpose plant and equipment and implement best practice procedures. Caroline Landfill is estimated to have between a 50 to 100 year life and presents a significant risk and investment over time for Council. Financial and resource implications for Council are reflected in the Long Term Financial Plan and the Annual Business Plan.

## **VALUE FOR MONEY**

Accepting the EPA determined civil penalty is the best value for money option.

Electing to enter written submissions to reduce the penalty will potentially incur additional costs associated legal representation and Council Officer time required to make the submissions. The potential reduction would be outweighed by the cost to submit a submission.

## **RISK IMPLICATIONS**

Caroline Landfill is a significant site for Council that attracts a high level of risk. In order to maintain this facility for the region, it is important Council has a solid working relationship with the EPA to ensure best practice waste management techniques are employed.

The EPA understand the significance of Caroline Landfill in the regional context as the only licenced landfill in the south east of South Australia. However, the EPA want to see operational improvements.



Therefore, operational staff have been working with the EPA to strengthen the relationship, improve communication and elevate best practice compliance

## **EQUALITIES AND DIVERSITY IMPLICATIONS**

Nil

## **ENGAGEMENT AND COMMUNICATION STRATEGY**

The Media and Comms team will be engaged to draft a notice to the public of the civil penalty and the outline the work Council are undertaking to prevent further breaches.

## **IMPLEMENTATION STRATEGY**

CEO authorised to enter into negotiations with EPA and pay civil penalty.

Continue improving procedures and plans in collaboration with the EPA that include:

- Landfill Environment Management Plan (LEMP) that outlines all operational guidelines for best practice procedures.
- Daily Cover procedures.
- Cell fill plan.
- Stockpile management plan.
- Leachate, Groundwater and Landfill Gas Management Plan.

Further works planned include:

- Development of training programs for all Waste Management Staff to ensure a comprehensive understanding of regulatory requirements and best practice standards.
- Procedures relating to all conditions of the EPA Licence 2504.
- Master Plan for Caroline Landfill.
- Update Caroline Landfill Asset Management Plan to reflect current best practice.

## **CONCLUSION AND RECOMMENDATION**

It is recommended Council authorise the CEO to respond to the EPA agreeing to negotiate the civil penalty in writing and make arrangements for payment of the determined fee without entering submissions for consideration in determining the penalty.

## **ATTACHMENTS**

1. EPA Notice - Daily Cover [↓](#) 





**Environment Protection Authority**

GPO Box 2607 Adelaide SA 5001  
T (08) 8204 2004  
Country areas 1800 623 445

FORM 1

EPA CE-21-0288

**NOTICE OF INTENTION TO  
NEGOTIATE A CIVIL PENALTY**

Our Reference: INV/2021/24

Date: 5 January 2022

Ms Sarah Philpott  
Chief Executive Officer  
City of Mount Gambier Council  
PO Box 56  
Mount Gambier SA 5290

Dear Ms Philpott

It is alleged that between 24 May 2021 and 15 September 2021 that the City of Mount Gambier Council contravened section 45(5) of the *Environment Protection Act 1993*.

The maximum penalty prescribed for this contravention by a body corporate is \$120,000.

**The particulars of the alleged contravention are:**

1. On 24 May 2021, the City of Mount Gambier Council breached condition S-281 of its environmental authorisation, licence number 2504, by failing to apply daily cover or alternative daily cover to waste on or before the close of business each day at the Caroline Landfill.
2. On 2 August 2021, the City of Mount Gambier Council breached condition S-281 of its environmental authorisation, licence number 2504, by failing to apply daily cover or alternative daily cover to waste on or before the close of business each day at the Caroline Landfill.
3. On 15 September 2021, the City of Mount Gambier Council breached condition S-281 of its environmental authorisation, licence number 2504, by failing to apply daily cover or alternative daily cover to waste on or before the close of business each day at the Caroline Landfill.

Pursuant to section 104A of the *Environment Protection Act 1993*, the Environment Protection Authority (EPA), being satisfied that the City of Mount Gambier Council have

Page 1 of 7







**Environment Protection Authority**

GPO Box 2607 Adelaide SA 5001  
T (08) 8204 2004  
Country areas 1800 623 445

committed this offence, serves this Notice on the City of Mount Gambier Council advising of the EPA's intention to negotiate a civil penalty.

The purpose of this form is to notify the City of Mount Gambier Council of the EPA's intention to negotiate a civil penalty with you as an alternative to a criminal prosecution and to provide you with an opportunity to accept the penalty in accordance with the *EPA Policy for calculation of civil penalties* available from the EPA website at [https://www.epa.sa.gov.au/files/14240\\_civil\\_penalties\\_calculations\\_2019.pdf](https://www.epa.sa.gov.au/files/14240_civil_penalties_calculations_2019.pdf).

In accordance with the policy, the EPA has considered the factual allegations presented to it and made a penalty determination of **\$17,820** (refer attached Tables (1) & (3)).

If the City of Mount Gambier Council choose to accept the penalty of \$17,820 you will have the opportunity to submit to the EPA adjusting criteria to request a penalty reduction.

**PARTICIPATION IN CIVIL PENALTY NEGOTIATIONS IS VOLUNTARY**

The attached nomination form (Form 2) asks you whether you are prepared to participate in civil penalty negotiations with the EPA.

**The terms of the negotiations are detailed in the policy provided with this form.**

If you have any questions about negotiated civil penalties or the process please contact Stephen Barry Manager Investigation & Incident Management on 8204 2050.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Circelli', is written over a large, faint, diagonal watermark that says 'CONFIDENTIAL'.

Tony Circelli  
Chief Executive  
Environment Protection Authority  
Date: 5 January 2022







**Environment Protection Authority**

GPO Box 2607 Adelaide SA 5001  
T (08) 8204 2004  
Country areas 1800 623 445

**Your opportunity to make submissions**

If you elect to participate in civil penalty negotiations, you may choose to make submissions on any matters that you wish the EPA to consider. These submissions should be forwarded to the EPA in writing with the enclosed Nomination Form (Form 2). You have 28 days to return the Form 2 to the EPA with any written submissions that you wish to make. The negotiation period will conclude 3 calendar months after the service of this notice (Form 1) on you or at a later time if an extension is sought from the EPA due to exceptional circumstances and granted.

**Disclosure of information by you**

You are not obliged to disclose any information concerning the allegation during the course of civil penalty negotiations. The provision of information by you during the negotiations is completely voluntary and you may wish to obtain independent legal advice on what information to provide.

The Environment Protection Act 1993 contains specific provisions covering the subsequent use of information disclosed during civil penalty negotiations. In particular, section 104A(11) states:

Evidence of information given or evidence of the production of documents by a person is not admissible in criminal proceedings against the person if—

- (a) the person gave the evidence or produced the documents in the course of negotiations or proceedings under this section for the recovery of an amount as a civil penalty in relation to a contravention of this Act; and
- (b) the conduct alleged to constitute the offence is substantially the same as the conduct that was alleged to constitute the contravention.

You should be aware that this limitation applies only to subsequent criminal proceedings related to the matter being negotiated. If, during the course of negotiations, other contraventions are disclosed, the EPA may act on those contraventions and you may not be entitled to benefit from the confidentiality afforded by this provision. Additionally, this provision does not prevent the use or disclosure of information disclosed during negotiations in any subsequent civil proceedings brought by the EPA or another party.

It should be noted that section 104A(11) does not affect the admissibility of any information disclosed prior to negotiations commencing or after negotiations have ceased. Such evidence will be admissible in any subsequent criminal proceedings in accordance with prevailing legislative and common law rules of evidence.





**Environment Protection Authority**

GPO Box 2607 Adelaide SA 5001

T (08) 8204 2004

Country areas 1800 623 445

To eliminate any confusion as to when negotiations have commenced, the EPA will not commence negotiations until it has received a signed Form 2 from you indicating your willingness to participate.

You should also be aware that the EPA may be required to disclose any information or documents furnished by you during negotiations, in accordance with other statutory or common law requirements.

In accordance with section 109(3)(ka) of the Act, details of negotiated civil penalty agreements will be made available to the public via the EPA's public register.

CONFIDENTIAL





**Environment Protection Authority**

GPO Box 2607 Adelaide SA 5001  
T (08) 8204 2004  
Country areas 1800 623 445

FORM 2

EPA file ref: INV/ 2021/24

**NOMINATION TO PARTICIPATE IN  
CIVIL PENALTY NEGOTIATIONS**

I .....

Am authorised to speak for and on behalf of the City of Mount Gambier Council, Civic Centre  
10 Watson Terrace, Mount Gambier, SA 5290, and hereby acknowledge receipt of the  
attached 'Notice of intention to negotiate a civil penalty. (Form 1)

I have considered the information contained in the Form 1 and indicate:

(Place a tick in one of the boxes below to indicate your preference)

☐

**No**, I do not wish to participate in negotiations with the EPA to determine a civil  
penalty to be paid in respect of the alleged contravention.

I understand that if I choose not to participate in civil penalty negotiations, the  
EPA may commence a criminal prosecution against me in relation to the alleged  
contraventions

OR

☐

**Yes**, I am prepared to participate in negotiations with the EPA to determine a  
civil penalty and I wish to make written submissions on matters I want the EPA  
to take into account for the purpose of determining a penalty.

or

☐

**Yes**, I am prepared to participate in negotiations with the EPA to determine a  
civil penalty and I do not wish to make any submissions in matters that I want  
the EPA to take into account for the purpose of determining a penalty.

Signed.....  
*The alleged offender (or authorised representative)*

Date ...../...../.....

Position of representative.....

Please return this completed form to:  
**The Chief Executive**  
**Environment Protection Authority**  
GPO Box 2607 Adelaide 5001 within 28 days of receipt.

Page 5 of 7





**Environment Protection Authority**

GPO Box 2607 Adelaide SA 5001  
T (08) 8204 2004  
Country areas 1800 623 445

**Table 1** Calculating foundation penalties

<b>Foundation Penalty Calculations</b>	
Insert the details of the provision contravened (below) and place the maximum penalty prescribed for that offence in the column (A)	\$ 120,000 (A) (maximum penalty)
Contravened s45(5) of the <i>Environment Protection Act 1993</i> .	
i) <b>Category one offence</b> that alleges environmental harm where the harm has actually occurred: multiply the maximum penalty prescribed for the offence by 70%	multiply (A) by
or	
ii) <b>Category two offence</b> that alleges environmental harm where actual harm has not occurred, but there is a potential for harm to the environment: multiply the maximum penalty prescribed for the offence by 45%	
or	
iii) <b>Category three offence</b> that does not allege actual or potential harm, but poses a heightened risk of harm such as administrative offences: multiply the maximum penalty by 45%	45% (delete as appropriate)
<b>Foundation penalty</b>	\$ 54,000 (B)





**Environment Protection Authority**

GPO Box 2607 Adelaide SA 5001  
T (08) 8204 2004  
Country areas 1800 623 445

**Table 3**

**Assessment of risk associated with administrative offences that do not allege actual or potential harm, but pose an increased risk of harm (Category 3)**

<b>Offences that do not contain elements of environmental harm</b>				
Circle one number in each line	Minor	Moderate	Major	Points total
<b>Level of risk of environmental harm or harm to human health arising from the contravention</b>	1	2	3	1
<b>conversion of points total to a percentage</b>				<b>x 100</b>
multiply the points total by 100				<b>= 100</b>
divide by the maximum points possible (3)				<b>÷ 3</b>
<b>total (C)</b> (rounded down to nearest whole number)				<b>= 33% (C)</b>
<b>insert the foundation penalty (B) from Table 1</b>				<b>x</b> <b>\$ 54,000 (B)</b>
to determine the base penalty multiply (B) by (C)				<b>=</b>
<b>base penalty (D)</b>				<b>\$ 17,820 (D)</b>



**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 26.1 AR22/7711 EPA Notice 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), (h) and (i) be kept confidential and not available for public inspection until negotiations and subsequent actions arising from those negotiations have concluded.
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*.

CONFIDENTIAL

**MINUTES OF CITY OF MOUNT GAMBIER COUNCIL MEETING  
HELD AT THE COUNCIL CHAMBER, CIVIC CENTRE, 10 WATSON TERRACE, MOUNT  
GAMBIER  
ON TUESDAY, 15 FEBRUARY 2022 AT 6.00 P.M.**

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

<b>OFFICERS IN ATTENDANCE:</b>	General Manager City Infrastructure	- Ms B Cernovskis
	General Manager Corporate and Regulatory Services	- Mr D Barber
	General Manager City and Community Growth	- Mr T Coote
	Manager Governance and Property	- Mr M McCarthy
	Manager Finance	- Mrs J Scoggins
	Manager Libraries and Community Development	- Mrs G Davison
	Executive Administrator	- Ms S Wilson

**OFFICERS AS OBSERVERS:** Chief Executive Officer (*virtual*) - Mrs S Philpott

**26 NEW CONFIDENTIAL ITEMS**

**26.1 EPA NOTICE – REPORT NO. AR22/7711**

**RESOLUTION 2022/30**

Moved: Cr Sonya Meziniec

Seconded: Cr Frank Morello

**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 Council Officers B Cernovskis, D Barber, T Coote, M McCarthy, J Scoggins, G Davison, S Philpott (*virtual - observer*) and S Wilson be excluded from attendance at the meeting for the receipt, discussion and consideration in confidence of Agenda Item 26.1 AR22/7711 EPA Notice.

The Council is satisfied that, pursuant to section 90(3) (g), (h) and (i) 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
- information relating to:
  - actual litigation, or



- litigation that the Council or Council committee believes on reasonable grounds will take place,
- involving the Council or an employee of the Council

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 due to legal considerations.

**CARRIED**

#### **RESOLUTION 2022/31**

Moved: Cr Paul Jenner

Seconded: Cr Frank Morello

1. That Council Report No. AR22/7711 titled 'EPA Notice' as presented on 15 February 2022 be noted.
2. Council authorise the CEO to respond in writing confirming Councils participation in civil penalty negotiations.
3. Council authorise the CEO to accept the determined civil penalty on behalf of Council and make payment for the determined amount \$17,820.

**CARRIED**

#### **RESOLUTION 2022/32**

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 26.1 AR22/7711 EPA Notice 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), (h) and (i) be kept confidential and not available for public inspection until negotiations and subsequent actions arising from those negotiations have concluded.
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**

