

## **AGENDA OF ORDINARY OPERATIONAL STANDING COMMITTEE MEETING**

Meeting to be held in the Conference Room, Civic Centre, 10 Watson Terrace, Mount Gambier  
on Tuesday, 14 November 2017 at 7:30 a.m.

**PRESENT** Mayor Andrew Lee

Cr Christian Greco (Presiding Member)

Cr Ian Von Stanke

Cr Steven Perryman

Cr Des Mutton

Cr Mark Lovett

<b>COUNCIL OFFICERS</b>	Chief Executive Officer	- Mr M McShane
	General Manager Community Wellbeing	- Ms B Cernovskis
	General Manager Council Business Services	- Mrs P Lee
	General Manager City Infrastructure	- Mr N Serle
	Manager Business & Strategic Planning	- Mrs T Tzioutziouklaris
	Team Leader Administration (City Infrastructure)	- Ms S Wilson

**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 10 October 2017.

That the minutes of the Operational Standing Committee meeting held on 10 October 2017 be confirmed as an accurate record of the proceedings of that meeting.

Moved:

Seconded:

### **3. QUESTIONS**

#### **3.1. With Notice**

Nil submitted.

#### **3.2. Without Notice**

### **4. DEPUTATIONS**

Nil



## 8. CONFIDENTIAL ITEMS

### 8.1. Consideration for Exclusion of the Public

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 A Lee, Councillors - C Greco, M Lovett, J Lynagh, S Mezinac, F Morello, D Mutton, S Perryman, H Persello, P Richardson and I Von Stanke and Council Officers - M McShane, B Cernovskis, P Lee, N Serle, T Tzioutziouklaris and S Wilson) be excluded from the meeting in order for the Agenda Item (Legal Action - 1/29 Willow Avenue, Mount Gambier - EMT Holdings Pty Ltd) to be considered in confidence.

The Committee is satisfied that, pursuant to section 90(3)(i) of the Act the information to be received, discussed or considered in relation to this Agenda Item is information relating to:

- Information relating to actual litigation, or litigation that the council or council committee believes on reasonable grounds will take place, between Council and a third party.

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 it involves legal action before a court.

Item No.	Subject Matter	S90(3) Grounds
8.2	Legal Action - 1/29 Willow Avenue, Mount Gambier - EMT Holdings Pty Ltd - Report No. AR17/44088	(i)

Moved:

Seconded:



**8.2. Legal Action - 1/29 Willow Avenue, Mount Gambier - EMT Holdings Pty Ltd - Report No. AR17/44088**

<b>COMMITTEE</b>	Operational Standing Committee
<b>MEETING DATE:</b>	14 November 2017
<b>REPORT NO.</b>	AR17/44088
<b>RM8 REFERENCE</b>	AF17/290
<b>AUTHOR</b>	Tracy Tzioutziouklaris
<b>SUMMARY</b>	A breach of the Development Act has occurred and been ongoing at 1/29 Willow Avenue, Mount Gambier. It is recommended that enforcement action be undertaken to correct the breach of the Act.
<b>COMMUNITY PLAN REFERENCE</b>	Goal 2: Our Location

<b>REPORT RECOMMENDATION</b>
<p>(a) Operational Standing Committee Report No. AR17/44088 titled '<i>Legal Action - 1/29 Willow Avenue, Mount Gambier - EMT Holdings Pty Ltd</i>' as presented to the Operational Standing Committee on 14 November 2017 be noted.</p> <p>(b) That Council undertake the most appropriate action before the Environment, Resources and Development Court to correct the breach of the Development Act 1993 in accordance with advice from Council's legal representation in relation to this matter.</p>

Moved:

Seconded:



## Background

Council has been involved in ongoing matters and discussion with the owner of the property at 1/21 Willow Avenue, Mount Gambier.

Council records identify the owner of this property as EMT Holdings Pty Ltd.

The history of this matter is as follows:

Development Application 381/0391/2012 lodged 29/11/2012 by EMT Holdings Pty Ltd

- Seeking to construct two single storey semi-detached dwellings on a vacant allotment at 3/29 Willow Avenue, Mount Gambier.
- Development Approval was granted on 15<sup>th</sup> March 2013, subject to twelve conditions of approval.
- 18<sup>th</sup> March, 2014 twelve month extension granted to commence the development by 15 March 2016.
- 19<sup>th</sup> December 2016 Council confirmed that the approval has lapsed as no work had been undertaken to commence the development.

Development Application 381/0325/2014 Lodged 30/09/2014 by EMT Holdings Pty Ltd

- Seeking to construct a detached dwelling and associated garage on a vacant allotment at 1/29 Willow Avenue, Mount Gambier.
- Development Approval was granted on 19 February 2015 subject to nine conditions of approval.

Development Application 381/0030/2016 lodged by R & M Homes on behalf of M Kasparian

- Seeking to construct a detached dwelling and garage at 2/29 Willow Avenue, Mount Gambier
- Development Approval granted 04/03/2016
- Dwelling completed.

Development Application 381/0207/2017 lodged by Cotton Constructions on behalf of A Grittens

- Seeking to construct a detached dwelling at 3/29 Willow Avenue, Mount Gambier.
- Development Approval granted 19/07/2016.
- Dwelling completed.

## Discussion

The subject land is located within the Residential Zone.

It has been observed by Council's Planning Officers that the subject land at 1, 2 and 3/29 Willow Avenue, Mount Gambier was being used as a storage yard associated with a building construction business.

Within the Residential Zone a Store/Builders Yard is a Non-Complying form of development, and would require Category 3 public notification (this involves formal notification to the adjoining property owners as well as the general public) should the Council Development Assessment Panel determine to proceed with an assessment of the Development Application.



Council Officers have advised the property owner, EMT Holdings that the properties at 1, 2 and 3/29 Willow Avenue, Mount Gambier were being used as a builder's yard (store) without first obtaining the necessary development Approvals from Council by letters dated:

- 6<sup>th</sup> November, 2015
- 29<sup>th</sup> January, 2016
- 8<sup>th</sup> February, 2016; and
- 12<sup>th</sup> September, 2016

At the time of these letters the property owner was further advised that Development Approval would need to be obtained from Council to use the subject properties as a storage/builders yard.

Mellor Olsson Lawyers, on behalf of Council, further advised the property owner that a breach of the Development Act had occurred namely a change in use of the property from residential to a storage and/or building yard use without development approval. In addition, there are structures located on the land which constitute buildings and therefore require development approval. This advice was provided in writing by letters dated:

- 24 July, 2017; and
- 30 August, 2017.

At this time the property owner was advised to remove the items from the subject land by the close of business on Thursday 24 August, 2017.

It is highlighted that the properties at 2/29 and 3/29 Willow Avenue, Mount Gambier have been sold to independent parties and dwellings have been constructed on both of these properties. The materials and buildings associated with the storage/builders yard are now contained wholly within the subject property at 1/29 Willow Avenue, Mount Gambier.

An onsite inspection undertaken by Council Officers on 26<sup>th</sup> and 28<sup>th</sup> September, 2017 confirmed that all 'items' associated with the storage/builders yard remain on the subject land at 1/29 Willow Avenue, Mount Gambier.

The person responsible for the activities undertaken on this land has displayed a general unwillingness to accept responsibility to correct the breach of the Development Act over an extensive period of time. At times it has been difficult to obtain any response to Council's correspondence and to obtain the property owners intention for the future use of the subject property. It also appears that additional buildings and materials have been brought onto the land to be used in association with the storage/builders yard without any attempt to obtain the necessary approvals.

## **Conclusion**

A breach of the Development Act has occurred and been ongoing at 1/29 Willow Avenue, Mount Gambier, namely a change in use of the property from residential to a storage and/or building yard use with development approval. In addition, structures have been located on the land which constitute buildings/building work and therefore require also development approval to be obtained prior to their placement on the subject site.



**Willow Avenue - Photographs - Site Inspection undertaken 28 September 2017**





## **MINUTES OF ORDINARY OPERATIONAL STANDING COMMITTEE MEETING**

Meeting held in the Conference Room, Civic Centre, 10 Watson Terrace, Mount Gambier  
on Tuesday, 14 November 2017 at 7:30 a.m.

**PRESENT** Mayor Andrew Lee

Cr Ian Von Stanke  
Cr Des Mutton  
Cr Mark Lovett

<b>COUNCIL OFFICERS</b>	Chief Executive Officer	- Mr M McShane
	General Manager Community Wellbeing	- Ms B Cernovskis
	General Manager Council Business Services	- Mrs P Lee
	General Manager City Infrastructure	- Mr N Serle
	Manager Governance & Property	- Mr M McCarthy
	Team Leader Administration (City Infrastructure)	- Ms S Wilson

### **ACTING PRESIDING MEMBER:**

The Chief Executive Officer invited nominations for the position of Acting Presiding Member for this meeting of the Operational Standing Committee due to the absence of Cr C Greco.

Cr Mutton nominated Cr Von Stanke to be Acting Presiding Member of this meeting.

There being no further nominations, Cr Von Stanke was elected as Acting Presiding Member of the Operational Services Committee for this meeting.

**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)**

Apologies received from Crs S Perryman and C Greco.

That the apologies from Crs S Perryman and C Greco be received.

Moved: Cr Von Stanke

Seconded: Cr Mutton

Carried

### **2. CONFIRMATION OF OPERATIONAL STANDING COMMITTEE MINUTES**

Meeting held on 10 October 2017.

That the minutes of the Operational Standing Committee meeting held on 10 October 2017 be confirmed as an accurate record of the proceedings of that meeting.

Moved: Cr Mutton

Seconded: Cr Von Stanke

Carried

### **3. QUESTIONS**

#### **3.1. With Notice**

Nil submitted.



## 8. CONFIDENTIAL ITEMS

### 8.1. Consideration for Exclusion of the Public

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 A Lee, Councillors - I Von Stanke, D Mutton and M Lovett and Council Officers - B Cernovskis, P Lee, N Serle, M McCarthy and S Wilson) be excluded from the meeting in order for the Agenda Item (Legal Action - 1/29 Willow Avenue, Mount Gambier - EMT Holdings Pty Ltd) to be considered in confidence.

The Committee is satisfied that, pursuant to section 90(3)(i) of the Act the information to be received, discussed or considered in relation to this Agenda Item is information relating to:

- Information relating to actual litigation, or litigation that the council or council committee believes on reasonable grounds will take place, between Council and a third party.

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 it involves legal action before a court.

Item No.	Subject Matter	S90(3) Grounds
8.2	Legal Action - 1/29 Willow Avenue, Mount Gambier - EMT Holdings Pty Ltd - Report No. AR17/44088	(i)

Moved: Cr Lovett

Seconded: Cr Mutton

Carried



**8.2. Legal Action - 1/29 Willow Avenue, Mount Gambier - EMT Holdings Pty Ltd - Report No. AR17/44088**

**COMMITTEE RECOMMENDATION**

- (a) Operational Standing Committee Report No. AR17/44088 titled '*Legal Action - 1/29 Willow Avenue, Mount Gambier - EMT Holdings Pty Ltd*' as presented to the Operational Standing Committee on 14 November 2017 be noted.
- (b) That Council undertake the most appropriate action before the Environment, Resources and Development Court to correct the breach of the Development Act 1993 in accordance with advice from Council's legal representation in relation to this matter.

Moved: Cr Mutton

Seconded: Cr Von Stanke

Carried

**8.3. 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 8.2 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
8.2	Legal Action - 1/29 Willow Avenue, Mount Gambier - EMT Holdings Pty Ltd - Report No. AR17/44088	(i)	All details	Until:  The matter is resolved or abandoned, to be reviewed at least once in every year.

Moved: Cr Lovett

Seconded: Cr Von Stanke

Carried

Meeting closed at 8:13 a.m.

AR17/46230

CONFIRMED THIS

DAY OF

2017.

.....

PRESIDING MEMBER



**AGENDA OF ORDINARY COUNCIL MEETING**

Meeting to be held at the Council Chamber, Civic Centre, 10 Watson Terrace, Mount Gambier  
on Tuesday, 21 November 2017 at 6.00 p.m.

**PRESENT**

Mayor Andrew Lee  
Cr Christian Greco  
Cr Mark Lovett  
Cr Josh Lynagh  
Cr Sonya Mezinac  
Cr Frank Morello  
Cr Des Mutton  
Cr Steven Perryman  
Cr Hanna Persello  
Cr Penny Richardson  
Cr Ian Von Stanke

**COUNCIL OFFICERS**

Chief Executive Officer	-	Mr M McShane
General Manager Community Wellbeing	-	Ms B Cernovskis
General Manager Council Business Services	-	Mrs P Lee
General Manager City Infrastructure	-	Mr N Serle
Manager Governance and Property	-	Mr M McCarthy
Media and Communications Coordinator	-	Ms S McLean
Administrative Officer Executive Support	-	Mrs F McGregor

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**1. APOLOGY(IES)**

Apology(ies) received from Cr

That the apology from Cr be received.

Moved: Seconded:

**2. LEAVE OF ABSENCE**

Nil

**3. CONFIRMATION OF COUNCIL MINUTES**

Ordinary Meeting held on 17 October 2017.

That the minutes of the Ordinary Council meeting held on 17 October 2017 be confirmed as an accurate record of the proceedings of that meeting.

Moved: Seconded:



## 17. CONFIDENTIAL ITEMS

### 17.1. Consideration for Exclusion of the Public

#### Item 17.2

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 A Lee, Councillors - C Greco, M Lovett, J Lynagh, S Mezinac, F Morello, D Mutton, S Perryman, H Persello, P Richardson and I Von Stanke and Council Officers - M McShane, B Cernovskis, P Lee, N Serle, M McCarthy, S McLean and F McGregor) be excluded from the meeting in order for the Agenda Item (Legal Action - 1/29 Willow Avenue, Mount Gambier - EMT Holdings Pty Ltd) to be considered in confidence.

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Item No.	Subject Matter	S90(3) Grounds
17.2	Legal Action - 1/29 Willow Avenue, Mount Gambier - EMT Holdings Pty Ltd - Report No. AR17/44088	(i)

Moved:

Seconded:



**IN-CONFIDENCE**

**17.2. Legal Action - 1/29 Willow Avenue, Mount Gambier - EMT Holdings Pty Ltd - Report No. AR17/44088**

- (a) Operational Standing Committee Report No. AR17/44088 titled '*Legal Action - 1/29 Willow Avenue, Mount Gambier - EMT Holdings Pty Ltd*' as presented to the Operational Standing Committee on 14 November 2017 be noted.
- (b) That Council undertake the most appropriate action before the Environment, Resources and Development Court to correct the breach of the Development Act 1993 in accordance with advice from Council's legal representation in relation to this matter.

Moved:

Seconded:



## **MINUTES OF ORDINARY COUNCIL MEETING**

Meeting held at the Council Chamber, Civic Centre, 10 Watson Terrace, Mount Gambier  
on Tuesday, 21 November 2017 at 6.00 p.m.

### **PRESENT**

Mayor Andrew Lee  
Cr Christian Greco  
Cr Mark Lovett  
Cr Josh Lynagh  
Cr Sonya Meziniec  
Cr Frank Morello  
Cr Hanna Persello  
Cr Penny Richardson  
Cr Ian Von Stanke

### **COUNCIL OFFICERS**

Chief Executive Officer	-	Mr M McShane
General Manager Community Wellbeing	-	Ms B Cernovskis
General Manager Council Business Services	-	Mrs P Lee
General Manager City Infrastructure	-	Mr N Serle
Manager Governance and Property	-	Mr M McCarthy
Media and Communications Coordinator	-	Ms S McLean
Administrative Officer Executive Support	-	Mrs F McGregor

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### **1. APOLOGIES**

Apologies received from Cr Des Mutton and Cr Steven Perryman.

That the apology from Cr Des Mutton and Cr Steven Perryman be received.

Moved: Cr Morello

Seconded: Cr Lovett

Carried

### **2. LEAVE OF ABSENCE**

Nil



## 17. CONFIDENTIAL ITEMS

### 17.1. Consideration for Exclusion of the Public

#### Item 17.2

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Item No.	Subject Matter	S90(3) Grounds
17.2	Legal Action - 1/29 Willow Avenue, Mount Gambier - EMT Holdings Pty Ltd - Report No. AR17/44088	(i)

Moved: Cr Persello

Seconded: Cr Morello

Carried



**IN-CONFIDENCE**

**17.2. Legal Action - 1/29 Willow Avenue, Mount Gambier - EMT Holdings Pty Ltd - Report No. AR17/44088**

- (a) Operational Standing Committee Report No. AR17/44088 titled '*Legal Action - 1/29 Willow Avenue, Mount Gambier - EMT Holdings Pty Ltd*' as presented to the Operational Standing Committee on 14 November 2017 be noted.
- (b) That Council undertake the most appropriate action before the Environment, Resources and Development Court to correct the breach of the Development Act 1993 in accordance with advice from Council's legal representation in relation to this matter.

Moved: Cr Von Stanke

Seconded: Cr Meziniec

Carried





**17.3. 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 17.2 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
17.2	Legal Action - 1/29 Willow Avenue, Mount Gambier - EMT Holdings Pty Ltd - Report No. AR17/44088	(i)	All details	Until:  The matter is resolved or abandoned, to be reviewed at least once in every year.

Moved: Cr Greco

Seconded: Cr Morello

Carried



**17.3. 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 17.2 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
17.2	Legal Action - 1/29 Willow Avenue, Mount Gambier - EMT Holdings Pty Ltd - Report No. AR17/44088	(i)	All details	Until:  The matter is resolved or abandoned, to be reviewed at least once in every year.

Moved:

Seconded:

Meeting closed at                      p.m.

AR17/44595

