

**ADELAIDE HILLS COUNCIL  
ORDINARY COUNCIL MEETING  
Tuesday 26 April 2022  
AGENDA BUSINESS ITEM**

**Item:** 11.1 Motion on Notice

**Originating from:** Cr Chris Grant

**Subject:** Property Lobethal Road, Lenswood

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**1. Property Lobethal Road, Lenswood – 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:

- Acting Chief Executive Officer, David Waters
- Director Corporate Services, Terry Crackett
- Acting/Director Development & Regulatory Services, Melissa Bright
- Director Infrastructure & Operations, Peter Bice
- Executive Manager Governance & Performance, Lachlan Miller
- Corporate Planning & Performance Coordinator, Kira-marie Laverty
- Minute Secretary, Pam Williams

be excluded from attendance at the meeting for Agenda Item 18.1: (Property Lobethal Road, Lenswood) in confidence.

The Council is satisfied that it is necessary that the public, with the exception of Council staff in attendance as specified above, be excluded to enable Council to consider the report at the meeting on the following grounds:

- Section 90(3)(a) of the *Local Government Act 1999*, 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 a person;
- Section 90(3)(h) of the *Local Government Act 1999*, the information to be received, discussed or considered in relation to this Agenda Item is information the disclosure of which would waive privilege to legal advice received by the Council; and
- Section 90(3)(i) of the *Local Government Act 1999*, the information to be received, discussed or considered in relation to this Agenda Item is information relating to actual litigation, or litigation that the council believes on reasonable grounds will take place, involving the council.

Accordingly, on this basis the principle that meetings of the Council should be conducted in a place open to the public has been outweighed by the need to keep the information and discussion confidential.

**1. MOTION**

**I move that:**

- 1. Council notes the long history of compliance action taken by the Council under both the *Development Act 1993*, and the *Local Nuisance and Litter Control Act 2016*, in relation to:**

- 1.1 continuing unauthorised use of the land as a junkyard/scrap storage facility/builder's storage facility;**
- 1.2 the continuing unsightly condition of the land when viewed from the public realm; and**
- 1.3 ongoing nuisance caused by wandering livestock and animals**

**which issues continue to bring about adverse impacts within the locality.**

- 2. The Council instructs the Chief Executive Officer to take such further action/s as he may be advised to take under the *Local Nuisance and Litter Control Act 2016*, and/or the *Planning, Development and Infrastructure Act 2016*, (which action/s may involve the commencement legal proceedings and/or the exercise of step-in rights) to address the above issues on an ongoing basis.**
- 3. Wherever possible, such action should seek to recover the Council's costs associated with the relevant action/s.**

**2. BACKGROUND**

For at least 11 years the property at 1615 Lobethal Road Lenswood has been in an unsightly condition with numerous small and large piles of timber, vegetation, building materials, metals, garbage, derelict and unused items and old and decrepit vehicles and trailers. These create an ugly and unsightly appearance which is deleterious to the neighbourhood.

Further, the property is heavily stocked with goats and sheep which frequently escape onto neighbouring properties and onto Lobethal Road and other roads, creating traffic hazards and nuisance.

The creek which runs through property, Cock Wash Creek, has garbage in it and pigs freely roam, defecate and wallow in that creek. This situation is causing considerable upset to neighbours, landholders downstream and other members of the community.

Tourists and other visitors are said to comment and complain about the unsightly nature of the property. It is completely out of keeping with the surrounding areas, which can be described accurately as a picturesque rural landscape. The unsightly state of the property in question doubtless has impacted on the business of the Lenswood Post Office and General Store which is surrounded on three sides by the unsightly property. The community is disappointed and frustrated that this situation has persisted for so many years, and, not unsurprisingly, look to the AHC to remedy the situation.

AHC has powers to prosecute landholders where their land is in unsightly condition, including the *Local Nuisance and Letter Control Act 2016*, relevant parts are:

## **Local Nuisance and Litter Control Act 2016**

### **Part 4 - Offences**

#### **Division 1 - Local nuisance**

##### **17 - Meaning of local nuisance**

- (1) For the purposes of this Act, local nuisance is:
- a) Any adverse effect on an amenity value of an area that:
    - i) is caused by –
      - A. noise, odour, smoke, fumes, aerosols or dust; or
      - B. animals, whether dead or alive; or
      - C. any other agent or class of agent declared by Schedule 1, and
    - ii) unreasonably interferes with or is likely to interfere unreasonably with the enjoyment of the area by persons occupying a place within, or lawfully resorting to, the area; or
  - b) insanitary conditions on premises that unreasonably interfere with or are likely to interfere unreasonably with the enjoyment of premises occupied by persons in the vicinity; or
  - c) unsightly conditions, of a kind declared by Schedule 1, on premises caused by human activity or a failure to act; or
  - d) a contravention of, or failure to comply with a provision of an environment protection policy, or of any other Act or law, declared by Schedule 1; or
  - e) anything declared by Schedule 1 to constitute local nuisance, but does not include anything declared by Schedule 1 not to constitute local nuisance.

Note –

Schedule 1 may be added to or amended by regulation – see section 51(2)(a) and (b).

- (2) For the purposes of subsection (1)(b), conditions on premises will be taken to be insanitary if an authorised officer reasonably believes that –
- a) the premises are so filthy or neglected that there is a risk of infestation by rodents or other pests; or
  - b) offensive material or odours are emitted from the premises.

- (3) In this section, animals includes insects.

##### **18 - Causing local nuisance**

- (1) A person who carries on an activity intentionally or recklessly and with the knowledge that local nuisance will result is guilty of an offence.

Maximum penalty:

- a) in the case of a body corporate—\$60 000;
- b) in the case of a natural person—\$30 000.

- (2) A person who carries on an activity that results in local nuisance is guilty of an offence.  
Maximum penalty:

- a) in the case of a body corporate—\$20 000;
- b) in the case of a natural person—\$10 000.

Expiation fee: \$500.

**Schedule 1 - Meaning of local nuisance (section 17)**

**Part 2 - Things that are local nuisance**

**3 - Unightly conditions on premises (section 17(1)(c))**

For the purposes of section 17(1)(c), the following unsightly conditions are declared:

- a) conditions on premises involving—
  - i) excessive or unconstrained rubbish, waste or vegetation; or
  - ii) stockpiled, excessive or unconstrained disused or derelict items or material that a reasonable person would consider to be rubbish or waste in the circumstances; or
  - iii) (omitted as not relevant here)
- b) conditions involving a building on the premises having been left partially demolished or in a state of disrepair, dilapidation or damage where, in the opinion of an authorised officer, the conditions have had an adverse effect on the amenity value of the area or caused the premises to be significantly out of conformity with the general appearance of neighbouring premises.

**3. OFFICER'S RESPONSE – Melissa Bright, A/Director Development & Regulatory Services**

➤ **Strategic Management Plan/Functional Strategy/Council Policy Alignment**

*Strategic Plan 2020-24 – A brighter future*

Goal 5 A progressive organisation

Objective O5 We are accountable, informed and make best decisions in the best interests of the whole community.

Priority O5.2 Make evidence-based decisions and prudently assess the risks and opportunities to our community before taking action.

➤ **Legal Implications**

The legislative instruments available to Council's authorised officers are:

- *Planning, Development and Infrastructure Act 2016 (PDI Act 2016)*
- *Local Nuisance & Litter Control Act 2016 (LNLC Act 2016)*
- *Impounding Act 1920*
- *Road Traffic Act 1961*
- *Public Health Act 2011*
- *Local Government Act 1999*

➤ **Risk Management Implications**

Options presented to Council will assist in mitigating the risk of:

*Unsightly, unauthorised and nuisance causing activities continuing at the subject property leading to ongoing community concern, environmental degradation and amenity impacts within the locality.*

Inherent Risk	Residual Risk	Target Risk
High (3B)	Medium (3C)	Low

The options presented to Council promote a mix of existing controls and the introduction of new mitigation actions.

➤ **Financial and Resource Implications**

This matter could involve the expenditure of unbudgeted resources or the material reallocation of current resources. It has been advised that each civil proceeding will cost around \$25,000. Cost recovery is dependent on the court and the ruling but on average around 60 per cent of costs are awarded to the successful party.

➤ **Customer Service and Community/Cultural Implications**

Council has received a petition from Community members in relation to this property. See earlier agenda item.

➤ **Sustainability Implications**

Not applicable.

➤ **Engagement/Consultation conducted in the development of the report**

Consultation on the development of this report was as follows:

*Council Committees:* Not Applicable.

*Council Workshops:* Not Applicable.

*Advisory Groups:* Not Applicable.

*External Agencies:* Environment Protection Agency, Hills and Fleurieu Landscape Board, RSPCA, SA Police.

*Community:* Campbell Stafford and Irene Filsell.

Council staff met with two representatives of the Lenswood community following their deputation to Council at its March 2022 Meeting. Actions taken by Council under the abovementioned legislation were discussed, as were other options available to the community to address the impact that the matter is having on the town. These include the community coming together to look at ways of further enhancing the overall appearance and feel of the settlement

and perhaps provide an alternative focus for community members and visitors. Should there be a groundswell of support from within sections of the community, Council would no doubt be willing to provide some support to the community in their pursuits, as we have in other townships. In doing so, this may lead to a range of improvements that could be implemented in partnership with Council.

#### 4. ANALYSIS

There has been a long history of compliance action in relation to both the visual appearance/amenity issues and wandering stock. Within its statutory powers (and the limitations contained within the scope of those powers), Council has been working with the owner of the property for many years in an attempt to improve the condition of the property and the livestock. Since 2018 Council has received more than 60 complaints relating to this property and staff have investigated each of them. As a result of these investigations a number of notices and expiations have been issued. A detailed summary of compliance action taken to date was provided in response to a Question on Notice (Item 10.1) at the 22 February 2022 Council Meeting and is included in **Appendix 1**.

Council has also sought support and review from SA Police, Environment Protection Agency, Landscape SA Hills and Fleurieu and RSPCA. Those agencies, too, are limited in their ability to act by the scope of the legislation under which they operate.

For some time the administration has been working under legal advice to explore alternative options for managing the situation. Based on this advice there are a number of options available to take further action, with the options considered most appropriate having regard to the history of the matter including:

- Environment Resources and Development Court Contempt Proceedings (PDI Act 2016) – quasi criminal in nature, court may impose a fine and/or term of imprisonment. Higher burden of proof with costs estimated at \$10-15,000 and potential for full cost recovery low.
- Civil Enforcement Proceedings (s213 PDI Act 2016) – may result in orders that the unlawful use be ceased and the land cleaned up. Proceedings are more onerous and costly to prepare. Costs estimated at \$10-30,000, if successful costs may be recovered at a rate of 50-70%.
- Criminal Prosecution (s215 PDI Act 2016) – Punitive, maximum fine up to \$120,000 for unauthorised development and can also seek make good orders. Evidentiary burden of proof is high and assumes no evidence to suggest the land has existing use rights. Costs estimated at \$10-15,000, If successful, legal costs may be recovered but at a lower rate to civil proceedings.
- Criminal Prosecution (s18 and s30 LNLC Act 2016) – Punitive, and can be coupled with charges under the PDI Act. Criminal burden of proof high, minimal additional cost if included with a PDI Act prosecution.

An overview of all the available options has been provided in table form and is included in **Appendix 2**, with the most suitable pathways highlighted in green, to distinguish them from other pathways which may not be considered as appropriate.

It is noted that the pathway options presented are not necessarily mutually exclusive, for example, if responding in the strongest possible terms, the Council may consider combining a criminal prosecution with civil enforcement proceedings, which actions may be filed simultaneously (but would generally proceed in sequence i.e. prosecution followed by civil proceedings, to ensure that the defendant's rights before the criminal justice system are not compromised in any way).

Alternatively, Council may wish to prosecute first, whilst keeping the option of civil proceedings available to it in case a prosecution does not bring about the desired change in behaviour.

Or, if getting an outcome 'on the ground' is the highest priority, then civil enforcement proceedings may be the most appropriate vehicle (with the option of commencing a criminal prosecution later if further breaches are committed).

Notwithstanding the options available, the table has not included any specific guidance on evidence. This will be a key consideration particularly for any prosecution or civil enforcement proceedings where the burden of proof is high. The potential for significant costs and administrative resource implications as a result of undertaking any action will need to be carefully considered.

In addition, no advice about the Council's prospects of success in relation to any particular course of action has been provided. This will also be a key consideration in pursuing any of the available options.

Ultimately, despite electing to pursue a preferred course of action as outlined above it may be that the community's expectations on the way this particular property is presented cannot be met.

While Council will continue to apply its statutory powers in line with the Council's Enforcement Policy, it is recommended that other constructive and sustainable options also be explored with the community to further mitigate the detrimental impacts this property is currently having on the local community and amenity.

## **5. APPENDICES**

- (1) 22 February 2022 Question on Notice
- (2) Overview of Options

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# **Appendix 1**

*22 February 2022 Question on Notice*

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TUESDAY 22 FEBRUARY 2022  
ZOOM VIRTUAL MEETING ROOM**

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**10. QUESTIONS ON NOTICE**

With the leave of the meeting, Item 10.1 was considered at this point in the meeting.

**10.1 Property at Lobethal Road Lenswood (Cr Chris Grant)**

Cr Pauline Gill joined the meeting at 6.44pm.

Regarding that land located at, and adjacent to, 1615 Lobethal Road, Lenswood:

1. What actions have been taken to date to remedy, amongst other things, the use of the land as a junkyard; the unsightliness of the property; stock wandering onto neighbouring land; stock wandering onto a public road; the presence of pigs, sheep and goats in the watercourse; and any other breaches of laws that may have come to the attention of AHC?
2. Under what legislative instruments has action been taken, to what extent has compliance been achieved, are there other legal avenues yet to be exercised that are relevant to this matter? For example, delegations under the Environmental Protection Act 1993 or other powers under the Local Government Act 1999 not yet exercised.

Officer's Response - Melissa Bright, A/Director Development & Regulatory Services

Within our statutory boundaries, Council has been working with the owner of the property for many years to improve the condition of the property and the livestock at 1615 Lobethal Road, Lenswood. Council has received more than 60 complaints relating to this property and we have investigated each of them. As a result of our investigations we have issued a number of notices and expiations and sought legal advice on all available options for Council and others to appropriately address the issues.

The legislative instruments available to Council's authorised officers are:

- *Planning, Development and Infrastructure Act 2016*
- *Local Nuisance & Litter Control Act 2016*
- *Impounding Act 1920*
- *Road Traffic Act 1961*
- *Public Health Act 2011*
- *Local Government Act 1999*

Other relevant legislation but not enforced by Council's authorised officers include:

- *Landscape South Australia Act 2019*

Following is a summary of the current status under each of the available legislations.

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**Planning, Development and Infrastructure Act 2016**

In November 2011 Council initiated enforcement action against the landowner of 1615 Lobethal Road, Lenswood for an unauthorised change of land use. Council considered that the land was being used for the storage of materials in the nature of a builders yard/junk yard. As a result of the landowner's continued failure to comply with a number of directives and enforcement notices to cease placing objects and materials on the road verge and around the landowner's property, Council initiated proceedings in the Environment, Resources and Development (ERD) Court pursuant to Section 85 of the *Development Act 1993*. Council was successful in obtaining an Order from the Court on 23 July 2018 to have the owner clean up his property.

The order contained directions to cease using the property as a junk yard but permitted goods/items to be stored within the building envelope. It is important to note that, like many other properties in the Hills, items/goods are permitted to be stored on the land if they are considered to be incidental to the use of the Land or of minor nature (such as vehicles, items to be used on the land etc.). Authorised officers regularly monitor compliance with the order and recent inspections have determined that the items are incidental to the land use and not at significant variance to the order.

Council was awarded costs, and further enforcement action has seen these outstanding funds recently paid.

**Local Nuisance & Litter Control Act 2016**

In July 2021 Council issued an abatement notice pursuant to Section 30(1)(a) of the *Local Nuisance and Litter Control Act 2016* for unsightliness. The notice required the following:

*Take action to discontinue the following activity of disposing of, displaying or storing disused, derelict or waste material on the Premises in areas visible from Lobethal Road, as indicated on the enclosed map:*

- (a) *Until further notice.*

*Cease carrying on or permitting any person to carry on the following activity of collecting derelict or disused material and storing them on the Premises:*

- (a) *Unless all material and items are stored inside of approved enclosed structures on the premises so as not to be visible from Lobethal Road.*

*Take the following action:*

- (a) *Move or dispose of all items and material from the areas indicated on the enclosed Map.*

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- (b) *Refrain from storing or depositing derelict items, waste material and/or items and materials that are not directly used in conjunction with the approved use of the land (Pome Fruit production).*

These conditions have been complied with but the notice is still in effect and authorised officers inspect this property regularly. While it is agreed that this property does not look well maintained nor tidy it is the opinion of our authorised officers that the property does not currently constitute as unsightly as defined under the Act:

*3—Unsightly conditions on premises (section 17(1)(c))*

*For the purposes of section 17(1)(c), the following unsightly conditions are declared:*

- (a) *conditions on premises involving—*
- (i) excessive or unconstrained rubbish, waste or vegetation; or*
  - (ii) stockpiled, excessive or unconstrained disused or derelict items or material that a reasonable person would consider to be rubbish or waste in the circumstances; or*
  - (iii) graffiti (other than authorised graffiti) that has been left on the premises—*
    - (A) in the case of offensive graffiti—for more than 7 days; or*
    - (B) in any other case—for more than 28 days, where, in the opinion of an authorised officer, the conditions have had an adverse effect on the amenity value of the area or caused the premises to be significantly out of conformity with the general appearance of neighbouring premises; or*
- (b) *conditions involving a building on the premises having been left partially demolished or in a state of disrepair, dilapidation or damage where, in the opinion of an authorised officer, the conditions have had an adverse effect on the amenity value of the area or caused the premises to be significantly out of conformity with the general appearance of neighbouring premises.*

**Appendix 1** (see Council 22 February 2022 agenda) includes some photos of other properties that are considered, and have been successfully prosecuted, for unsightly.

Prior to the enforcement action Council had received 11 complaints regarding the unsightly nature of the property. We have since received 2 complaints.

In August 2017 Council issued an abatement notice pursuant to Section 30(1)(a) of the *Local Nuisance and Litter Control Act 2016* for wandering livestock. The notice required the following:

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*Take action to discontinue the following activity of keeping animals on the premises that may be able to escape from any inadequately fenced or constructed compound designed to hold them:*

- (b) *until such time as suitable and appropriate fencing is installed to prevent the escape of any animals kept on the land; and*

*Prepare the following plan of action for the purposes of:*

- (c) *preventing any future contravention of Part 4 Division 1 of the Act.*

*Provide drawn plans to show the methods of containment that will be used to prevent any animals that are kept on the land from escaping and creating a nuisance to surrounding residents and a hazard to users of Lobethal Road, Lenswood to the satisfaction of the Council.*

Following repeated expiations, Council initiated action including obtaining a warrant to enter the property, to complete the required works contained within the abatement notice in August 2021. The property owner commenced the required works one day prior to Council contractors arriving on site.

While the conditions within the notice have been completed, the notice is still in effect to ensure the animals continue to be contained. Prior to the enforcement action Council had received 16 complaints regarding wandering livestock. We have since received 8 complaints largely relating to the piglets who arrived after the fencing was complete.

It is the current opinion of Council's authorised officers that the fencing is adequate but that the location of the pigs is not appropriate and cannot be adequately contained within some fenced areas of the property. Council continues to work with the owner to encourage the containment of the piglets in a more suitable location on the property and expiations are issued for any animals evidenced by authorised officers not to be adequately contained.

#### **Impounding Act 1920**

Under the *Impounding Act 1920* Council is able to establish and maintain a pound for large animals. Council does not currently have adequate holding facilities for goats and pigs and no other alternative holding facilities within the region were discovered. Establishing and maintaining a holding facility was not considered a practical solution.

The *Impounding Act* also provides for landholders to impound and destroy stray livestock:

*41—Goats, pigs, poultry etc may be destroyed*

*(1) The owner or any person in charge of any enclosed land—*

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*(a) who has given notice in writing to the owner of any goats, pigs, or poultry, of his intention to destroy all goats, pigs, or poultry found trespassing thereon, may kill by any means, except by the use of poison, any goats, pigs, or poultry the property of such owner found trespassing thereon; or*

*(b) who has advertised twice in any two or more public newspapers published in the State and circulating in the locality his intention to destroy all goats, pigs, or poultry found trespassing thereon, may kill, by any means except by the use of poison, any goats, pigs, or poultry found trespassing thereon, and, if not sooner claimed by the owner thereof, may six hours after such killing remove, bury, or destroy the carcasses of any goats, pigs, or poultry so killed.*

*(2) This section shall not apply to any full bred Angora, Saanen, Toggenburg, British Alpine, or Anglo Nubian goat*

This advice has been provided to landholders surrounding the property but they were not interested in undertaking these steps.

Note that the State Government is in the process of drafting the new Biosecurity Act and will repeal the current *Impounding Act 1920*. It is proposed that the new Biosecurity Act will modernise and simplify the approach to stray and abandoned livestock.

**Road Traffic Act 1961**

There are currently no parking controls in place for the verge surrounding and outside of the property. Therefore any vehicle parked in this space is not a breach of any existing rules. Time limited parking in front of the post office (neighbouring property) could be a future consideration.

However, Council has previously expiated for the parking of a heavy vehicle which is considered to be a breach of this Act.

**Public Health Act 2011**

Council received a complaint in August 2021 from a plumber who advised that the property's septic was overflowing near the creek. A site inspection found that while it did not appear to be leaking at the time, the septic tank had no lid. The disposal area also could not be located due the accumulation of materials on site. The owner was requested to seal/secure the septic tank and provide details of the disposal area. No response was received and a Compliance Notice was issued requiring that the septic system be replaced or repaired by October 2021. An expiation was issued for failure to comply with a Compliance Notice in November 2021.

The expiation has recently been paid and further follow-up on the repair/replacement of the system has been scheduled to determine whether the works have been undertaken.

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**Landscape South Australia Act 2019**

Council is unable to take action under the *Landscape South Australia Act* and has therefore reported the access of the livestock to the watercourse to Landscape SA Hills and Fleurieu on more than one occasion. Most recently we have been requested to forward photos and this information has been provided.

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## **Appendix 2**

*Norman Waterhouse Overview of Options*

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### Planning Development and Infrastructure Act 2016

Issue	Option	Pros	Cons	Approximate cost (excl GST)	Comments
<b>Unauthorised use of land as a junkyard, scrap yard and/or builder's storage facility</b>	ERD Court contempt proceedings (for a breach of the terms of the ERD Court Orders dated 23 July 2018)	<ul style="list-style-type: none"> <li>Contempt proceedings are quasi-criminal in nature</li> <li>Court may impose a fine and/or term of imprisonment</li> <li>Term of imprisonment may be suspended on condition that the land be cleaned up</li> </ul>	<ul style="list-style-type: none"> <li>Higher burden of proof (beyond reasonable doubt)</li> <li>The breach must be knowing and deliberate (i.e. the Council will need to prove that the ERD Court Order was properly served, and the contemnor was aware of its terms)</li> <li>Contempt proceedings won't necessarily result in the land being cleaned up (although a contemnor may voluntarily do so to reduce the likely severity of any penalty)</li> </ul>	\$10-15,000 (assuming a guilty plea, with sentencing)  Cost recovery in contempt matters is generally low (approx 25% of costs actually incurred)	Because the ERD Court Orders was limited to specific parts of the land (as identified in the plan attached to the Order), contempt proceedings won't necessarily result in an enduring solution for the whole of the land  Not recommended as a sole solution for this reason, but worth considering, in conjunction with another option e.g. s 214 civil enforcement proceedings (below)
	Enforcement notice – s 213	<ul style="list-style-type: none"> <li>Relative quick and inexpensive enforcement tool</li> </ul>	<ul style="list-style-type: none"> <li>Repetitious - previous enforcement notices do not appear to be having the desired effect.</li> </ul>	\$350-700 to settle the terms of a draft enforcement notice, assuming no appeal	Given past history (including non-compliance with the ERD Court Orders and subsequent nuisance abatement notices), escalation is required. Not recommended for this reason.
	Civil enforcement proceedings – s 214	May result in orders that <ul style="list-style-type: none"> <li>the unlawful use/s be</li> </ul>	<ul style="list-style-type: none"> <li>Proceedings are more onerous and costly to</li> </ul>	\$10-30,000	Given previous ERD Court proceedings, this action may



		<p>ceased over the whole of the land (including within buildings);</p> <ul style="list-style-type: none"> <li>• the land be cleaned up</li> <li>• that the owner refrain from recommencing the uses i.e. restraining-type orders</li> <li>• May also seek an order for payment of exemplary damages</li> </ul>	<p>prepare, compared to a prosecution</p> <ul style="list-style-type: none"> <li>• Delay in achieving an outcome – sending a warning letter on legal letterhead is generally recommended before proceedings are commenced; matter will also go through a mandatory s16 conference process before proceeding to hearing</li> </ul>	<p>If successful, costs may be recovered (usually at a rate of 50-70% of costs actually incurred)</p>	<p>seem repetitious.</p> <p>However, an advantage may be that more expansive Court orders are obtained, which can apply to the whole of the land.</p> <p>Future breach of a court order would then become a contempt of Court.</p> <p>Worth considering particularly if coupled with a criminal prosecution (below) or contempt proceedings (above).</p>
	Criminal prosecution – s 215	<ul style="list-style-type: none"> <li>• Punitive</li> <li>• Maximum \$120,000 fine for unauthorised development (for a natural person)</li> <li>• If successful, can also seek ‘make good’ orders under s 222; or adverse publicity orders under s 223</li> <li>• Proceedings are less onerous and cheaper to commence</li> <li>• Any fine is payable to the council</li> </ul>	<ul style="list-style-type: none"> <li>• Evidentiary burden of proof is higher than civil enforcement proceedings (beyond reasonable doubt)</li> <li>• Assumes no evidence to suggest that the land has existing use rights for any of the uses in question</li> <li>• Make good orders would be limited to taking specific action; can’t obtain restraining orders</li> </ul>	<p>\$10-15,000 (assuming a guilty plea and sentencing).</p> <p>If successful, legal costs may be recovered, but at a lower rate than in civil enforcement proceedings. However, costs may be offset by any fine which would be payable to the Council.</p>	<p>Given previous ERD Court civil proceedings, criminal prosecution would seem to be an appropriate escalation.</p> <p>A potential disadvantage is that make good orders won’t extend to restraining future conduct.</p> <p>Therefore, worth considering in conjunction with s 214 civil enforcement proceedings (above)</p>

	Civil penalty – s 225	<ul style="list-style-type: none"> <li>• A new enforcement tool, designed to enable the authority to achieve a civil (financial) penalty as an alternative to prosecution</li> <li>• Civil penalty may imposed via negotiation with the alleged offender, or on application to the ERD Court</li> <li>• Intended to be a financial deterrent</li> </ul>	<ul style="list-style-type: none"> <li>• Not appropriate for more serious breaches</li> <li>• Not appropriate in cases where the offender is not acting in a commercially rational manner.</li> </ul>	<p>\$Nil if negotiated directly with the offender</p> <p>\$10,000 if imposed via application to the ERD Court</p> <p>Successful proceedings may also result in a costs order (60-70% recovery of actual costs)</p>	Civil penalty is financial only – no capacity to seek make good or restraining orders. Not recommended for this reason.
	Voluntary enforceable undertaking – s 230	<ul style="list-style-type: none"> <li>• Another new enforcement tool, whereby the alleged offender makes an undertaking to do, or not do, something, which undertaking is legally binding an enforceable</li> </ul>	<ul style="list-style-type: none"> <li>• Not appropriate for more serious breaches, or where there is low confidence that an undertaking will be honoured</li> </ul>		Enforceable undertaking is not appropriate for a recidivist, or someone with a history of not complying with legal directions. Not recommended for this reason.
<b>Local Nuisance and Local Nuisance Act 2016</b>					
<b>Unsightly premises</b>  NB: Further action should await the outcome of, and compliance timeframe/s within, the most	Issue expiation notice/s for breach/es of the 1 April 2022 abatement notice	<ul style="list-style-type: none"> <li>• Cheap, quick enforcement tool</li> </ul>	<ul style="list-style-type: none"> <li>• If expiation fee not paid, debt recovery proceedings required, (or expiation notice may be withdrawn and prosecution can be commenced)</li> <li>• Not appropriate where previous expiations</li> </ul>	\$Nil	Previous expiation notices do not seem to have produced behavioural change. Not recommended for this reason.

recent nuisance abatement notice dated 1 April 2022			issued, and where escalation is required		
	Exercise step in rights – s 31	<ul style="list-style-type: none"><li>• Council undertakes relevant clean-up action as required by the 1 April 2022 nuisance abatement notice, and recovers cost as a debt</li><li>• Should bring about immediate improvement in the state of the land</li><li>• Council controls the process and outcome</li></ul>	<ul style="list-style-type: none"><li>• A once-off, point-in-time solution, which won't prevent future breaches.</li><li>• Can't 'step-in' to enforce directions requiring ongoing compliance</li></ul>	Unsure, but say up to \$5,000.  Cost recoverable as a debt which may be secured against the land	Not recommended
	Criminal prosecution <ul style="list-style-type: none"><li>• Offence of causing nuisance – s18</li><li>• Failure to comply with the 1 April 2022 abatement notice - s 30</li></ul>	<ul style="list-style-type: none"><li>• Punitive</li><li>• Can be coupled with charges under the PDI Act (e.g. can lay charges for unauthorised development, and failure to comply with nuisance abatement notice)</li></ul>	<ul style="list-style-type: none"><li>• Criminal burden of proof (on the balance of probabilities)</li><li>• Maximum fines are substantially less than equivalent offences under the PDI Act</li></ul>	Minimal additional cost if additional charges are included within a PDI Act prosecution	Worth considering including s 30 charge with a prosecution for unauthorised development under the PDI Act
	Civil enforcement proceedings – s33	Similar processes, outcomes, and costs as with s 214 proceedings under the PDI Act (above)			
	Civil penalty - s 34	Similar issues as with civil penalties under PDI Act (above)			Not recommended
<b>Wandering stock</b>	Similar options arise as in the case of unsightly premises (above).				If a prosecution is commenced, worth considering including additional charge/s for failing to

		comply with 21 January 21 nuisance abatement notice.
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6. **Property Lobethal Road Lenswood – Duration of Confidentiality**

Subject to the CEO, or his delegate, disclosing information or any document (in whole or in part) for the purpose of implementing Council's decision(s) in this matter in the performance of the duties and responsibilities of office, Council, having considered Agenda Item 11.1 in confidence under sections 90(2) and 90(3)(a), (h) and (i) of the *Local Government Act 1999*, resolves that an order be made under the provisions of sections 91(7) and (9) of the *Local Government Act 1999* to retain the Items in confidence as detailed in the Duration of Confidentiality Table below:

Item	Duration of Confidentiality NB: Item to be reviewed every 12 months if not released
Report	Two year term
Related Attachments	Two year term
Minutes	NIL
Other (presentation, documents, or similar)	NIL