



THE COMMITTEE AGENDA & REPORTS

for the meeting

Tuesday 17 March 2020
at 5:30 pm

in the Colonel Light Room
Adelaide Town Hall

Members - The Right Honourable the Lord Mayor [Sandy Verschoor];
Councillor Hyde (Deputy Lord Mayor) (Chair)
Councillors Abrahamzadeh, Couros, Donovan, Hou, Khera, Knoll,
Martin, Moran and Simms (Deputy Chair).

1. Acknowledgement of Country

At the opening of the Committee Meeting, the Chair will state:

'Council acknowledges that we are meeting on traditional Country of the Kaurna people of the Adelaide Plains and pays respect to Elders past and present. We recognise and respect their cultural heritage, beliefs and relationship with the land. We acknowledge that they are of continuing importance to the Kaurna people living today.

And we also extend that respect to other Aboriginal Language Groups and other First Nations who are present today.'

2. Apologies and Leave of Absence

Nil

3. Confirmation of Minutes – 3/3/2020 [TC]

That the Minutes of the meeting of The Committee held on 3 March 2020, be taken as read and be confirmed as an accurate record of proceedings.

4. CEO Update

4.1. Eighty Eight O'Connell

4.2. Telecommunications Smarthub

5. Exclusion of the Public

5.1. Exclusion of the Public to Consider in Confidence [2018/04291] [Page 2]:

6.1. Workshop - Eighty Eight O'Connell [s 90(3) (b) & (d)]

6.2. Workshop – Telecommunications Smarthub [s 90(3) (b) & (h)]

6. All reports in this section will be presented to Council in Confidence

Strategic Alignment – Liveable

6.1. Workshop - Eighty Eight O'Connell [2018/02324] [Page 6]

Strategic Alignment – Smart

6.2. Workshop – Telecommunications Smarthub [2018/02304] [Page 13]

7. Closure

Exclusion of the Public

ITEM 5.1 17/03/2020
The Committee

Program Contact:
Mark Goldstone, Chief
Executive Officer 8203 7234

2018/04291
Public

Approving Officer:
Mark Goldstone, Chief
Executive Officer

EXECUTIVE SUMMARY

It is the recommendation of the Chief Executive Officer that the public be excluded from this Committee meeting for the consideration of the following information and matters contained in the Agenda.

- 6.1. Workshop - Eighty Eight O'Connell [s 90(3) (b) & (d)]
- 6.2. Workshop – Telecommunications Smarthub [s 90(3) (b) & (h)]

The Order to Exclude for Items 6.1 & 6.2:

1. Identifies the information and matters (grounds) from s 90(3) of the *Local Government Act 1999 (SA)* utilised to request consideration in confidence.
 2. Identifies the basis – how the information falls within the grounds identified and why it is necessary and appropriate to act in a meeting closed to the public.
 3. In addition identifies for the following grounds – s 90(3) (b), (d) or (j) - how information open to the public would be contrary to the public interest.
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ORDER TO EXCLUDE FOR ITEM 6.1

THAT THE COMMITTEE

1. Having taken into account the relevant consideration contained in s 90(3) (b) & (d) and s 90(2) & (7) of the *Local Government Act 1999 (SA)*, this meeting of The Committee dated 17/3/2020 resolves that it is necessary and appropriate to act in a meeting closed to the public as the consideration of Item 6.1 [Workshop - Eighty Eight O'Connell] listed on the Agenda in a meeting open to the public would on balance be contrary to the public interest.

Grounds and Basis

This item contains certain information of a confidential nature (not being a trade secret) the disclosure of which could reasonably expect to confer a commercial advantage on a person with whom the Council is conducting business, prejudice the commercial position of the Council and prejudice the commercial position of the person who supplied the information and confer a commercial advantage on a third party.

More specifically, the parties have entered in a legally binding Non-Disclosure Agreement (NDA) in order to protect the Proponent's Intellectual Property and commercial interests and the public disclosure of certain information in this Committee Workshop would not only potentially result in legal challenges due to a contractual breach of the NDA, but could reasonably prejudice the commercial position of Council given that the City of Adelaide Council land holding is the subject of commercial negotiations.

Public Interest

The Committee is satisfied that the principle that the meeting is conducted in a place open to the public has been outweighed in the circumstances given that information within this report pertains to commercial negotiations for a City of Adelaide land holding. Not receiving this report in confidence creates a legal risk for Council due to the NDA with the Proponent. Furthermore, the release of such information may severely prejudice the Council's ability to secure a developer to undertake development of the land for the benefit of the City of Adelaide and community in this matter.

2. Pursuant to s 90(2) of the *Local Government Act 1999 (SA)*, this meeting of The Committee dated 17/3/2020 orders that the public (with the exception of members of Corporation staff and any person permitted to remain) be excluded from this meeting to enable this meeting to receive, discuss or consider in confidence Item 6.1 [Workshop - Eighty Eight O'Connell] listed in the Agenda, on the grounds that such item of business, contains information and matters of a kind referred to in s 90(3) (b) & (d) of the Act.

ORDER TO EXCLUDE FOR ITEM 6.2

THAT THE COMMITTEE

1. Having taken into account the relevant consideration contained in s 90(3) (b) & (h) and s 90(2) & (7) of the *Local Government Act 1999 (SA)*, this meeting of The Committee dated 17/3/2020 resolves that it is necessary and appropriate to act in a meeting closed to the public as the consideration of Item 6.2 [Workshop – Telecommunications Smarthub] listed on the Agenda in a meeting open to the public would on balance be contrary to the public interest.

Grounds and Basis

This item contains certain information of a confidential nature (not being a trade secret) the disclosure of which could reasonably be expected to confer a commercial advantage on a person with whom the Council is conducting business, prejudice the commercial position of the Council and prejudice the commercial position of the person who supplied the information.

Public Interest

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 given that information within this update pertains to non-binding commercial negotiations for the Council.

The release of such information may severely prejudice the Council's ability to influence a proposal for the benefit of the Council and the community in this matter.

2. Pursuant to s 90(2) of the *Local Government Act 1999 (SA)*, this meeting of The Committee dated 17/3/2020 orders that the public (with the exception of members of Corporation staff and any person permitted to remain) be excluded from this meeting to enable this meeting to receive, discuss or consider in confidence Item 6.2 [Workshop – Telecommunications Smarthub] listed in the Agenda, on the grounds that such item of business, contains information and matters of a kind referred to in s 90(3) (b) & (h) of the Act.

DISCUSSION

1. s 90(1) of the *Local Government Act 1999 (SA)*, directs that a meeting of a Council Committee must be conducted in a place open to the public.
2. s 90(2) of the *Local Government Act 1999 (SA)*, states that a Council Committee may order that the public be excluded from attendance at a meeting if the Council Committee considers it to be necessary and appropriate to act in a meeting closed to the public to receive, discuss or consider in confidence any information or matter listed in s 90(3).
3. s 90(3) prescribes the information and matters that a Council may order that the public be excluded from.
4. s 90(4) of the *Local Government Act 1999 (SA)*, advises that in considering whether an order should be made under s 90(2), it is irrelevant that discussion of a matter in public may:
 - 4.1 cause embarrassment to the council or council committee concerned, or to members or employees of the council or
 - 4.2 cause a loss of confidence in the council or council committee, or
 - 4.3 involve discussion of a matter that is controversial within the council area, or
 - 4.4 make the council susceptible to adverse criticism.
5. s 90(7) of the *Local Government Act 1999 (SA)* requires that an order to exclude the public:
 - 5.1 Identify the information and matters (grounds) from s 90(3) of the *Local Government Act 1999 (SA)* utilised to request consideration in confidence.
 - 5.2 Identify the basis – how the information falls within the grounds identified and why it is necessary and appropriate to act in a meeting closed to the public.
 - 5.3 In addition identify for the following grounds – s 90(3) (b), (d) or (j) - how information open to the public would be contrary to the public interest.
6. s 87(10) of the *Local Government Act 1999 (SA)* has been utilised to identify in the Agenda and on the Report for the meeting, that the following matters are submitted seeking consideration in confidence.
 - 6.1 Information contained in Item 6.1 – Workshop - Eighty Eight O'Connell
 - 6.1.1 Is subject to Existing Confidentiality Orders.
 - 6.1.2 The grounds utilised to request consideration in confidence is s 90(3) (b) & (d)
 - (b) information the disclosure of which—
 - (i) could reasonably be expected to confer a commercial advantage on a person with whom the council is conducting, or proposing to conduct, business, or to prejudice the commercial position of the council; and
 - (ii) would, on balance, be contrary to the public interest.
 - (d) commercial information of a confidential nature (not being a trade secret) the disclosure of which—
 - (i) could reasonably be expected to prejudice the commercial position of the person who supplied the information, or to confer a commercial advantage on a third party; and
 - (ii) would, on balance, be contrary to the public interest;
 - 6.2 Information contained in Item 6.2 – Workshop – Telecommunications Smarthub
 - 6.1.1 Is not subject to an Existing Confidentiality Order.
 - 6.1.2 The grounds utilised to request consideration in confidence is s 90(3) (b) & (h)
 - (b) information the disclosure of which—
 - (i) could reasonably be expected to confer a commercial advantage on a person with whom the council is conducting, or proposing to conduct, business, or to prejudice the commercial position of the council; and
 - (ii) would, on balance, be contrary to the public interest.
 - (h) legal advice

ATTACHMENTS

Nil

- END OF REPORT -

Confidential Item 6.1

Eighty Eight O'Connell

Section 90 (3) (b) & (d) of the *Local Government Act 1999 (SA)*

Pages 6 to 12

Confidential Item 6.2

Telecommunications Smarthub

Section 90 (3) (b) & (h) of the *Local Government Act 1999 (SA)*

Pages 13 to 29
