

2018/04291  
Public

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**Approving Officer:**  
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## EXECUTIVE SUMMARY

Section 90(2) of the *Local Government Act 1999 (SA)* (the Act), states that a Council may order that the public be excluded from attendance at a meeting if the Council 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 section 90(3) of the Act.

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

For the following Committee Report seeking consideration in confidence

- 18.1** Confidential Recommendations of the City Finance and Governance Committee – 20 June 2023 [section 90(3) (a) & (j) of the Act]

For the following CEO's Report seeking consideration in confidence

- 19.1** Commercial Opportunity [section 90(3) (d) of the Act]

The Order to Exclude for Items 18.1 & 19.1:

1. Identifies the information and matters (grounds) from section 90(3) of the Act 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 – section 90(3) (b), (d) or (j) of the Act - how information open to the public would be contrary to the public interest.

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## ORDER TO EXCLUDE FOR ITEM 18.1

### THAT COUNCIL:

1. Having taken into account the relevant consideration contained in section 90(3) (a) & (j) and section 90(2) & (7) of the *Local Government Act 1999 (SA)*, this meeting of the Council dated 27 June 2023 resolves that it is necessary and appropriate to act in a meeting closed to the public as the consideration of Item 18.1 [Confidential Recommendations of the City Finance and Governance Committee - 20 June 2023] 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 confidential information that must be considered in confidence in order to protect the personal affairs of the nominee.

Public discussion and disclosure of information in this report prior to a resolution being determined by Council may potentially implicate the nominee's reputation in the business community.

The disclosure of information in this report would breach 'Cabinet in confidence' information presented to the Capital City Committee (the CCC) established under the *City of Adelaide Act 1998* which has provided for a State/Capital City inter-governmental forum (the CCC) to operate and the associated duty of confidence and duty as a member of the inter-governmental forum.

#### Public Interest

The Committee is satisfied that the principle that the meeting be conducted in a place open to the public has been outweighed in the circumstances because the disclosure of this information would divulge information provided on a confidential basis and could undermine the CCC operations and prejudice the position of the State Government and/or Council in relation to current/future proposals prior to State Government and/or City of Adelaide evaluation and deliberation.

2. Pursuant to section 90(2) of the *Local Government Act 1999 (SA)* (the Act), this meeting of the Council dated 27 June 2023 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 18.1 [Confidential Recommendations of the City Finance and Governance Committee – 20 June 2023] listed in the Agenda, on the grounds that such item of business, contains information and matters of a kind referred to in section 90(3) (a) & (j) of the Act.

## ORDER TO EXCLUDE FOR ITEM 19.1

#### THAT COUNCIL:

1. Having taken into account the relevant consideration contained in section 90(3) (d) and section 90(2) & (7) of the *Local Government Act 1999 (SA)*, this meeting of the Council dated 27 June 2023 resolves that it is necessary and appropriate to act in a meeting closed to the public as the consideration of Item 19.1 [Commercial Opportunity] 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 commercial information of a confidential nature the disclosure of which could reasonably be expected to prejudice the commercial position of the person who supplied the information.

The receipt, consideration, and discussion of the information open to the public would, on balance, be contrary to the public interest.

#### 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 because the disclosure of this information may result in release of information prior to the finalisation of 'commercial in confidence' negotiations and may severely prejudice Council's ability to discuss/participate or influence a proposal for the benefit of the Council and community in this matter.

2. Pursuant to section 90(2) of the *Local Government Act 1999 (SA)* (the Act), this meeting of the Council dated 27 June 2023 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 19.1 [Commercial Opportunity] listed in the Agenda, on the grounds that such item of business, contains information and matters of a kind referred to in section 90(3) (d) of the Act.

## DISCUSSION

1. Section 90(1) of the *Local Government Act 1999 (SA)* (the Act) directs that a meeting of Council must be conducted in a place open to the public.
2. Section 90(2) of the Act, states that a Council may order that the public be excluded from attendance at a meeting if Council 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 section 90(3) of the Act.
3. Section 90(3) of the Act prescribes the information and matters that a Council may order that the public be excluded from.
4. Section 90(4) of the Act, advises that in considering whether an order should be made to exclude the public under section 90(2) of the Act, it is irrelevant that discussion of a matter in public may -
  - (a) *cause embarrassment to the council or council committee concerned, or to members or employees of the council; or*
  - (b) *cause a loss of confidence in the council or council committee; or*
  - (c) *involve discussion of a matter that is controversial within the council area; or*
  - (d) *make the council susceptible to adverse criticism.*
5. Section 90(7) of the Act requires that an order to exclude the public:
  - 5.1 Identify the information and matters (grounds) from section 90(3) of the Act 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 – section 90(3) (b), (d) or (j) of the Act - how information open to the public would be contrary to the public interest.
6. Section 83(5) of the Act has been utilised to identify in the Agenda and on the Report for the meeting, that the following reports are submitted seeking consideration in confidence.
  - 6.1 Information contained in Item 18.1 – Confidential Recommendations of the City Finance and Governance Committee – 20 June 2023
    - 6.1.1 Is subject to an Existing Confidentiality Order dated 20/6/2023.
    - 6.1.2 The grounds utilised to request consideration in confidence is section 90(3) (a) & (j) of the Act
      - (a) information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead);
      - (j) information provided in confidence with a request for consideration in confidence.
  - 6.2 Information contained in Item 19.1 – Commercial Opportunity
    - 6.1.1 Is not subject to an Existing Confidentiality Order.
    - 6.1.2 The grounds utilised to request consideration in confidence is section 90(3) (d) of the Act
      - (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

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## ATTACHMENTS

Nil

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- END OF REPORT -