

**Program Contact:**

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Governance

2018/04291

Public

**Approving Officer:**

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Executive Officer

## 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 Reports seeking consideration in confidence

**18.1** Confidential Recommendation of the City Planning, Development and Business Affairs Committee – 1 August 2023 [section 90(3) (b) & (d) of the Act]

**18.2** Confidential Audit and Risk Report – 4 August 2023 [section 90(3) (i) of the Act]

For the following Chief Executive Officer's Report seeking consideration in confidence

**19.1** Strategic Property Matter [section 90(3) (b) & (d) of the Act]

The Order to Exclude for Items 18.1, 18.2 and 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) (b) & (d) and section 90(2) & (7) of the *Local Government Act 1999 (SA)*, this meeting of the Council dated 8 August 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 Recommendation of the City Planning, Development and Business Affairs Committee – 1 August 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 is confidential as it contains certain confidential information (not being a trade secret) the disclosure of which could reasonably be expected to confer a commercial advantage on a person which 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 to a third party.

The disclosure of information in this report could reasonably prejudice the commercial position of the Council with respect to its commercial dealings with the land as well as prejudice the commercial position of parties who have supplied intellectual property and commercial in confidence 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 because the disclosure of this information in the report, including certain financial and contractual information, may prejudice Council's future commercial dealings regarding its strategic land holding. In addition, information within this report contains the intellectual property and commercial in confidence information of parties who have supplied information which if released could negatively impact Council. On this basis, the disclosure of such information may severely prejudice the City of Adelaide's ability to influence the proposal for the benefit of the City of Adelaide 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 8 August 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 Recommendation of the City Planning, Development and Business Affairs Committee – 1 August 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) (b) & (d) of the Act.

## ORDER TO EXCLUDE FOR ITEM 18.2

#### THAT COUNCIL:

1. Having taken into account the relevant consideration contained in section 90(3) (i) and section 90(2) & (7) of the *Local Government Act 1999 (SA)*, this meeting of the Council dated 8 August 2023 resolves that it is necessary and appropriate to act in a meeting closed to the public as the consideration of Item 18.2 [Confidential Audit and Risk Report – 4 August 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 is confidential because the report includes information on Council litigation.

The disclosure of information in this report is likely to prejudice the outcome of the Council's actual litigation.

The Audit and Risk 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 relates to actual litigation of the Council.

2. Pursuant to section 90(2) of the *Local Government Act 1999 (SA)* (the Act), this meeting of the Council dated 8 August 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 18.2 [Confidential Audit and Risk Report – 4 August 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) (i) 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) (b) & (d) and section 90(2) & (7) of the *Local Government Act 1999 (SA)*, this meeting of the Council dated 8 August 2023 resolves that it is necessary and appropriate to act in a meeting closed to the public as the consideration of Item 19.1 [Strategic Property Matter] 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. This Item provides commercially sensitive information concerning possible negotiation positions and financial negotiation ranges. The disclosure of information in this report could reasonably prejudice the position of Council as it includes information provided to Council on a confidential basis.

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 may result in release of information prior to the commencement and finalisation of a 'commercial in confidence' negotiation process with the vendor.

2. Pursuant to section 90(2) of the *Local Government Act 1999 (SA)* (the Act), this meeting of the Council dated 8 August 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 [Strategic Property Matter] 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) (b) & (d) of the Act.
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# 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 Recommendation of the City Planning, Development and Business Affairs Committee – 1 August 2023
    - 6.1.1 Is subject to an Existing Confidentiality Order dated 1/8/2023.
    - 6.1.2 The grounds utilised to request consideration in confidence is section 90(3) (b) & (d) of the Act
      - (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 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 18.2 – Confidential Audit and Risk Report – 4 August 2023
    - 6.1.1 Is subject to an Existing Confidentiality Order dated 4/8/2023.
    - 6.1.2 The grounds utilised to request consideration in confidence is section 90(3) (i) of the Act
      - (i) Information relating to the 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.
  - 6.3 Information contained in Item 19.1 – Strategic Property Matter
    - 6.3.1 Is subject to an Existing Confidentiality Order dated 17/7/2023.
    - 6.3.2 The grounds utilised to request consideration in confidence is section 90(3) (b) & (d) of the Act
      - (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 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.

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## ATTACHMENTS

Nil

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- END OF REPORT -