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Public

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 Reports for Recommendation to Council seeking consideration in confidence

- 22** Confidential Audit and Risk Committee Report [section 90(3) (i) of the Act]
- 23** Confidential Recommendations of the City Finance and Governance Committee [section 90(3) (b), (g) & (j) of the Act]

The Order to Exclude for Items 22 and 23:

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.

ORDER TO EXCLUDE FOR ITEM 22

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 27 February 2024 resolves that it is necessary and appropriate to act in a meeting closed to the public as the consideration of Item 22 [Confidential Audit and Risk Committee Report] 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 of a confidential nature because the report includes information on Council litigation.

The disclosure of information in this report could reasonably be expected to prejudice the outcome of Council's actual litigation

Public Interest

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 Council.

2. Pursuant to section 90(2) of the *Local Government Act 1999 (SA)* (the Act), this meeting of the Council dated 27 February 2024 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 22 [Confidential Audit and Risk Committee Report] 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 23

THAT COUNCIL:

1. Having taken into account the relevant consideration contained in section 90(3) (b), (g) & (j) and section 90(2) & (7) of the *Local Government Act 1999 (SA)*, this meeting of the Council dated 27 February 2024 resolves that it is necessary and appropriate to act in a meeting closed to the public as the consideration of Item 23 [Confidential Recommendations of the City Finance and Governance Committee] 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 matters that must be considered in confidence as they relate to an open tender process and contain information relating on ongoing licensing negotiations.

The disclosure of information in this report could reasonably provide third parties information that could provide an advantage to them in negotiations with Council. It also includes matters relating to an open tender process for the provision of services.

The disclosure of information in this report would breach 'Cabinet in Confidence' information presented to the Capital City Committee (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 in principle 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 ongoing licencing negotiations and an open tender process.

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 would be acting contrary to the CCC operational provisions, 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 February 2024 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 23 [Confidential Recommendations of the City Finance and Governance Committee] 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), (g) & (j) 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 22 – Confidential Recommendations of the Audit and Risk Committee – 16 February 2024
 - 6.1.1 Is subject to an Existing Confidentiality Order dated 16/2/2024.
 - 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 ground will take place, involving the council or an employee of the council.
 - 6.2 Information contained in Item 23 – Confidential Recommendations of the City Finance and Governance Committee
 - 6.2.1 Is subject to an Existing Confidentiality Order dated 20/2/2024
 - 6.2.2 The grounds utilised to request consideration in confidence is section 90(3) (b), (g) & (j) 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 to prejudice the commercial position of the council; and
 - (ii) would, on balance, be contrary to the public interest
 - (g) matters that must be considered in confidence in order to ensure that the council does not breach any law, order or direction of a court or tribunal constituted by law, any duty of confidence, or other legal obligation or duty.
 - (j) information the disclosure of which—
 - (i) would divulge information provided on a confidential basis by or to a Minister of the Crown, or another public authority or official (not being an employee of the council, or a person engaged by the council);

ATTACHMENTS

Nil

- END OF REPORT -