

Exclusion of the Public

Tuesday, 5 August 2025

City Planning,
Development and Business
Affairs Committee

Program Contact:
Anthony Spartalis, Chief
Operating Officer

Public

Approving Officer:
Michael Sedgman, Chief
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 City Planning, Development and Business Affairs Committee meeting for the consideration of information and matters contained in the Agenda.

For the following workshop seeking consideration in confidence

10.1 Performance on Waste and Resource Recovery (PWRR) Tool [section 90(3) (b) of the Act]

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

11.1 West Franklin Stage 2 Update [section 90(3) (h) & (i) of the Act]

11.2 20th Century Local Heritage – Investigations Report [section 90(3) (m) of the Act]

The Order to Exclude for Items 10.1, 11.1 and 11.2:

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 10.1

THAT THE CITY PLANNING, DEVELOPMENT AND BUSINESS AFFAIRS COMMITTEE:

1. Having taken into account the relevant consideration contained in section 90(3) (b) and section 90(2) & (7) of the *Local Government Act 1999 (SA)*, this meeting of the City Planning, Development and Business Affairs Committee dated 5 August 2025 resolves that it is necessary and appropriate to act in a meeting closed to the public as the consideration of Item 10.1 [Performance on Waste and Resource Recovery (PWRR) Tool] 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 commercial 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.

Public Interest

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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' negotiation with the proponent and a competitor receiving the information to the detriment of the proponent who supplied information at this point in time, may materially and adversely affect the financial viability of the proponent for any future projects and because the disclosure of Council's commercial position may severely prejudice Council's ability to discuss/participate or influence a proposal for the benefit of the Council and the community in this matter and in relation to other contract negotiations.

2. Pursuant to section 90(2) of the *Local Government Act 1999 (SA)* (the Act), this meeting of the City Planning, Development and Business Affairs Committee dated 5 August 2025 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 10.1 [Performance on Waste and Resource Recovery (PWRR) Tool] 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) of the Act.

ORDER TO EXCLUDE FOR ITEM 11.1

THAT THE CITY PLANNING, DEVELOPMENT AND BUSINESS AFFAIRS COMMITTEE:

1. Having taken into account the relevant consideration contained in section 90(3) (h) & (i) and section 90(2) & (7) of the *Local Government Act 1999 (SA)*, this meeting of the City Planning, Development and Business Affairs Committee dated 5 August 2025 resolves that it is necessary and appropriate to act in a meeting closed to the public as the consideration of Item 11.1 [West Franklin Stage 2 Update] 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 it considers actual litigation and contains detailed legal advice for Council's consideration.

The disclosure of information in this report could reasonably prejudice Council in its decision-making process in relation to the next phase of the legal proceedings.

2. Pursuant to section 90(2) of the *Local Government Act 1999 (SA)* (the Act), this meeting of the City Planning, Development and Business Affairs Committee dated 5 August 2025 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 11.1 [West Franklin Stage 2 Update] 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) (h) & (i) of the Act.

ORDER TO EXCLUDE FOR ITEM 11.2

THAT THE CITY PLANNING, DEVELOPMENT AND BUSINESS AFFAIRS COMMITTEE:

1. Having taken into account the relevant consideration contained in section 90(3) (m) and section 90(2) & (7) of the *Local Government Act 1999 (SA)*, this meeting of the City Planning, Development and Business Affairs Committee dated 5 August 2025 resolves that it is necessary and appropriate to act in a meeting closed to the public as the consideration of Item 11.2 [20th Century Local Heritage – Investigations 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 confidential as the material presented contains information regarding potential new Local Heritage Places to be included in a future draft Code Amendment that is not appropriate to be made public prior to the commencement of public engagement, due to the identification of individual properties in the draft Code Amendment.

The disclosure of information in this report could reasonably breach confidentiality of information prior to public engagement of the draft Code Amendment.

2. Pursuant to section 90(2) of the *Local Government Act 1999 (SA)* (the Act), this meeting of the City Planning, Development and Business Affairs Committee dated 5 August 2025 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 11.2 [20th Century Local Heritage – Investigations 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) (m) 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 10.1 – Performance on Waste and Resource Recovery (PWRR) Tool
 - 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) (b) 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;
 - 6.2 Information contained in Item 11.1 – West Franklin Stage 2 Update
 - 6.2.1 Is not subject to an existing Confidentiality Order.
 - 6.2.2 The grounds utilised to request consideration in confidence is section 90(3) (h) & (i) of the Act
 - (h) legal advice.
 - (i) information relating to 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 11.2 – 20th Century Local Heritage – Investigations Report
 - 6.3.1 Is not subject to an existing Confidentiality Order.
 - 6.3.2 The grounds utilised to request consideration in confidence is section 90(3) (m) of the Act
 - (m) information relating to a proposal to prepare or amend a designated instrument under Part 5 Division 2 of the *Planning, Development and Infrastructure Act 2016 (SA)* before the draft instrument or amendment is released for public consultation under that Act.

ATTACHMENTS

Nil

- END OF REPORT -