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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 Chief Executive Officer Reports seeking consideration in confidence

12.1 Unnamed public road off Tom's Court Permit [section 90(3) (d) & (j) of the Act]

The Order to Exclude for Item 12.1

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.

THAT COUNCIL

1. Having taken into account the relevant consideration contained in section 90(3) (d) & (j) and section 90(2) & (7) of the *Local Government Act 1999 (SA)*, this meeting of the Council dated 12 April 2021 resolves that it is necessary and appropriate to act in a meeting closed to the public as the consideration of Item 12.1 [Unnamed public road off Tom's Court Permit] 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 due to containing information that relates directly to commercial contracts currently under negotiation by parties other than Council, including the potential dates and terms of contracts. This information was provided to Council by a third party on the basis it would be kept in confidence.

The disclosure of information in this report could reasonably impact commercial negotiations, as well as jeopardise the interests of a public authority involved in the process who have also requested the information be kept in confidence.

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 with the proponent and a competitor receiving the information to the detriment of the proponent who supplied the information at this point. Information released prior to conclusion of the commercial negotiations may impact the operations of the public authority which has provided information to support Council's decision making.

2. Pursuant to section 90(2) of the *Local Government Act 1999 (SA)* (the Act), this meeting of the Council dated 12 April 2021 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 12.1 [Unnamed public road off Tom's Court] Permit 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) & (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 report is submitted seeking consideration in confidence.
 - 6.1 Information contained in Item 12.1 – Unnamed public road off Tom's Court
 - 6.1.1 Is subject to an Existing Confidentiality Order dated 5 April 2022
 - 6.1.2 The grounds utilised to request consideration in confidence is section 90(3) (d) & (j) 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.
 - (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); and
 - (ii) would, on balance, be contrary to the public interest.

ATTACHMENTS

Nil

- END OF REPORT -