

Exclusion of the Public

Friday, 17 June 2022

Audit and Risk Committee

Program Contact:

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Manager Governance

2018/04291

Public

Approving Officer:

Clare Mockler, Chief
Executive Officer

EXECUTIVE SUMMARY

Section 90(2) of the *Local Government Act 1999 (SA)* (the Act), states that a Council Committee may order that the public be excluded from attendance at a meeting if the Council Committee 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 Audit and Risk Committee meeting for the consideration of information and matters contained in the Agenda.

- 10.1** Major Project – Accounting Treatment [section 90(3) (b) & (d) of the Act]
- 10.2** Activity of Strategic Risk & Internal Audit Group [section 90(3) (i) of the Act]

The Order to Exclude for Items 10.1 and 10.2:

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 AUDIT AND RISK COMMITTEE

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 Audit and Risk Committee dated 17 June 2022 resolves that it is necessary and appropriate to act in a meeting closed to the public as the consideration of Item 10.1 [Major Project – Accounting Treatment] 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, prejudice the commercial position of the council and prejudice the commercial position of the person who supplied the information and confer a commercial advantage on a third party.

The disclosure of information in this report could reasonably prejudice the commercial position and the 'commercial in confidence' information containing confidential contractual information. Disclosure of this information may adversely impact project delivery, prejudice the ability to fulfil contractual obligations contained in the contract and contravene confidentiality clauses contained within the contract.

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 may result in release of information prior to the finalisation of 'commercial in confidence' contractual obligations and may materially and adversely affect the delivery of the projects and because the disclosure of Council's commercial position may severely prejudice Council's ability to fulfil contractual obligations contained in the contract and contravene confidentiality clauses contained within the contract.

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 is commercial in nature.

2. Pursuant to section 90(2) of the *Local Government Act 1999 (SA)* (the Act), this meeting of the Audit and Risk Committee dated 17 June 2022 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 [Major Project – Accounting Treatment] 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 10.2

THAT THE AUDIT AND RISK COMMITTEE

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 Audit and Risk Committee dated 17 June 2022 resolves that it is necessary and appropriate to act in a meeting closed to the public for the consideration of Item 10.2 [Activity of Strategic Risk & Internal Audit Group] listed on the Agenda.

Grounds and Basis

This Item is 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.

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 Audit and Risk Committee dated 17 June 2022 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 10.2 [Activity of Strategic Risk & Internal Audit Group] 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.
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DISCUSSION

1. Section 90(1) of the *Local Government Act 1999 (SA)* (the Act), directs that a meeting of a Council Committee must be conducted in a place open to the public.
2. Section 90(2) of the Act, states that a Council Committee may order that the public be excluded from attendance at a meeting if the Council Committee 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 87(10) of the Act has been utilised to identify in the Agenda and on the Report for the meeting, that the following matters are submitted seeking consideration in confidence.
 - 6.1 Information contained in Item 10.1 – Major Project – Accounting Treatment
 - 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) & (d) of the Act
Section 90 (3) (b) and (d) of the Local Government Act 1999 (SA)
 - (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
 - (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 10.2 – Activity of Strategic Risk & Internal Audit Group
 - 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) (i) of the Act
Section 90(3)(i) of the Local Government Act 1999 (SA)
 - (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.

ATTACHMENTS

Nil

- END OF REPORT -