

2018/04291  
Public

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**Approving Officer:**  
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## 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 Report of the Audit & Risk Committee meeting seeking consideration in confidence

**12.1** Advice of Kadaltilla / Park Lands Authority in Confidence to Note - 28 July 2022 [section 90(3) (b) & (d) of the Act]

**12.2** Confidential Audit and Risk Committee Report – 4 August 2022 [section 90(3) (b) & (i) of the Act]

For the following Chief Executive Officer Reports seeking consideration in confidence

**13.1** North Adelaide Railway Station – Expression of Interest Results [section 90(3) (b) & (d) of the Act]

**13.2** Award of Contract (August) [section 90(3) (b) & (d) of the Act]

**13.3** Expression of Interest Process [section 90(3) (b) & (d) of the Act]

The Order to Exclude for Items 12.1, 12.2, 13.1, 13.2 & 13.3:

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 12.1

### 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 9 August 2022 resolves that it is necessary and appropriate to act in a meeting closed to the public as the consideration of Item 12.1 [Advice of Kadaltilla / Park Lands Authority in Confidence to Note - 28 July 2022] 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 commercial information (not being a trade secret) of a confidential nature which the proponent has requested be considered in confidence on the grounds that the proposal details their intellectual property, and the release of this information prematurely may be contrary to public interest. The disclosure of information in this report could reasonably be expected to prejudice the commercial position and negotiations of the Council and proponent with external parties.

### Public Interest

Kadaltilla was 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 between the proponent and their suppliers and may materially and adversely affect the financial viability of the proponent in relation to contract negotiations which on balance would be contrary to the public interest.

2. Pursuant to section 90(2) of the *Local Government Act 1999 (SA)* (the Act), this meeting of the Council dated 9 August 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 12.1 [Advice of Kadaltilla / Park Lands Authority in Confidence to Note - 28 July 2022] 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 12.2

### THAT COUNCIL

1. Having taken into account the relevant consideration contained in section 90(3) (b) & (i) and section 90(2) & (7) of the *Local Government Act 1999 (SA)*, this meeting of the Council dated 9 August 2022 resolves that it is necessary and appropriate to act in a meeting closed to the public as the consideration of Item 12.2 [Confidential Audit and Risk Committee Report – 4 August 2022] 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 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 Council dated 9 August 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 12.1 [Confidential Audit and Risk Committee Report – 4 August 2022] 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) & (i) of the Act.

## ORDER TO EXCLUDE FOR ITEM 13.1

### 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 9 August 2022 resolves that it is necessary and appropriate to act in a meeting closed to the public as the consideration of Item 13.1 [North Adelaide Railway Station – Expression of Interest Results] 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 commercial information (not being a trade secret) of a confidential nature which the proponent has requested be considered in confidence on the grounds that the proposal details their intellectual property, and the release of this information prematurely may be contrary to public interest. The disclosure of information in this report could reasonably be expected to prejudice the commercial position and negotiations of the Council and proponent with external parties.

### 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 between the proponent and their suppliers and may materially and adversely affect the financial viability of the proponent in relation to contract negotiations which on balance would be contrary to the public interest.

2. Pursuant to section 90(2) of the *Local Government Act 1999 (SA)* (the Act), this meeting of the Council dated 9 August 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 13.1 [North Adelaide Railway Station – Expression of Interest Results] 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 13.2

### 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 9 August 2022 resolves that it is necessary and appropriate to act in a meeting closed to the public as the consideration of Item 13.2 [Award of Contract (August)] listed on the Agenda in a meeting open to the public would on balance be contrary to the public interest.

### Grounds and Basis

The disclosure of information in this report could reasonably prejudice the commercial position and identity of the contractor who supplied 'commercial in confidence' material containing commercial pricing and methodology information. This report contains reference to 'commercial in confidence' tender response documentation, disclosure of which at this point in time may confer a commercial advantage on a third party, prejudice the ability for Council to undertake/participate in future discussion or negotiation and prejudice the Council's commercial position and opportunity to discuss or negotiate an option yet to be determined by the Council at this point in time.

### 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 will result in release of contractor commercial pricing and methodology information, a competitor receiving the information to the detriment of the interested parties and the person who supplied the information at this point in time (and for approximately three years from the date of this report) 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.

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 increases the heightened legal and reputational risk exposure. This is in accordance with Council's Procurement Policy and seeks to protect the commercial interests of the participants in the tender process.

2. Pursuant to section 90(2) of the *Local Government Act 1999 (SA)* (the Act), this meeting of the Council dated 9 August 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 13.2 [Award of Contract (August)] 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 13.3

### 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 9 August 2022 resolves that it is necessary and appropriate to act in a meeting closed to the public as the consideration of Item 13.3 [Expression of Interest Process] 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 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 Committee is satisfied that the principle that the meeting be conducted in a place open to the public has been outweighed in the circumstance given that the information in this report, including certain financial information and further direction, may prejudice Council's future commercial dealings with regard to 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 9 August 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 13.3 [Expression of Interest Process] 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.

# 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 12.1 – Advice of Kadaltilla / Park Lands Authority in Confidence to Note - 28 July 2022
    - 6.1.1 Is subject to an Existing Confidentiality Order 28/7/2022.
    - 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 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 12.2 – Confidential Audit and Risk Committee Report – 4 August 2022
    - 6.2.1 Is subject to an Existing Confidentiality Order 4/8/2022.
    - 6.2.2 The grounds utilised to request consideration in confidence is section 90(3) (b) & (i) 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
      - (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 13.1 - North Adelaide Railway Station – Expression of Interest Results

6.3.1 Is subject to an Existing Confidentiality Order 2/8/2022.

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 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

6.4 Information contained in Item 13.2 – Award of Contract (August)

6.4.1 Is subject to an Existing Confidentiality Order 2/8/2022.

6.4.2 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 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

6.5 Information contained in Item 13.3 - Expression of Interest Process

6.5.1 Is subject to an Existing Confidentiality Order 2/8/2022.

6.5.2 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 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

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## ATTACHMENTS

Nil