

# Exclusion of the Public

Tuesday, 7 February 2023  
**City Planning,  
Development and Business  
Affairs Committee**

**Program Contact:**  
Alana Martin, Manager  
Governance 8203 7092

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 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

**7.1** Unnamed public road off Tom's Court [section 90(3) (h) of the Act]

The Order to Exclude for Items 7.1:

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.

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## ORDER TO EXCLUDE FOR ITEM 7.1

### THAT COUNCIL

1. Having taken into account the relevant consideration contained in section 90(3) (h) and section 90(2) & (7) of the *Local Government Act 1999 (SA)*, this meeting of the City Planning, Development and Business Affairs Committee dated 7 February 2023 resolves that it is necessary and appropriate to act in a meeting closed to the public for the consideration of Item 7.1 [Unnamed public road off Tom's Court] listed on the Agenda.

#### Grounds and Basis

This Item is confidential because it includes legal advice given to Council to support Council in assessing the acquisition proposal and associated legal risks.

The disclosure of information in this report would reasonably be expected to prejudice the Council's position if there were future legal challenges by a party aggrieved by the Council's decision.

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 Council's legal advice is privileged and disclosure of this information would be prejudicial to the Council's position.

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 7 February 2023 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 7.1 [Unnamed public road off Tom's Court] 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) 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 7.1 – Unnamed public road off Tom's Court
    - 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) (h) of the Act
      - (h) legal advice

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## ATTACHMENTS

Nil

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- END OF REPORT -