

2018/04291
Public

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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 Recommendation Reports seeking consideration in confidence

- 16.1 Confidential Audit and Risk Committee Report - 3 February 2023 [section 90(3) (i) of the Act]
- 16.2 Confidential City Planning, Development and Business Affairs Committee Report – 7 February 2023 [section 90(3) (h) of the Act]

The Order to Exclude for Item 16.1 and 16.2:

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 16.1

THAT COUNCIL

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 Council dated 14 February 2023 resolves that it is necessary and appropriate to act in a meeting closed to the public for the consideration of Item 16.1 [Confidential Audit & Risk Committee Report] listed on the Agenda.

Grounds and Basis

This Item is confidential because the report includes information on Council litigation.

The disclosure of information in this report is likely to prejudice the outcome of the 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 the Council.

2. Pursuant to section 90(2) of the *Local Government Act 1999 (SA)* (the Act), this meeting of the Council dated 14 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 16.1 [Confidential Audit & Risk Committee 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) (i) of the Act.

ORDER TO EXCLUDE FOR ITEM 16.2

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 Council dated 14 February 2023 resolves that it is necessary and appropriate to act in a meeting closed to the public for the consideration of Item 16.2 [Confidential City Planning, Development and Business Affairs Committee Report] 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 Council dated 14 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 16.2 [Confidential City Planning, Development and Business Affairs Committee 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) (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 16.1 – Confidential Audit and Risk Committee Report - 3 February 2023
 - 6.1.1 Is subject to an Existing Confidentiality Order dated 3/2/2023.
 - 6.1.2 The grounds utilised to request consideration in confidence is section 90(3) (i) of the Act
 - (i) litigation
 - 6.2 Information contained in Item 16.2 – Confidential City Planning, Development and Business Affairs Committee Report – 7 February 2023
 - 6.2.1 Is subject to an Existing Confidentiality Order dated 7/2/2023.
 - 6.2.2 The grounds utilised to request consideration in confidence is section 90(3) (h) of the Act
 - (h) legal advice

ATTACHMENTS

Nil

- END OF REPORT -