



Item No: 1.3
Title: Notice of Intention to Deal with Matters in Confidential Session
Department: Governance

13 May 2019 Ordinary Council Meeting

Trim Reference: F2018/00020-07 - D13520175

Summary

It is necessary for the Council to adopt a resolution to formalise its intention to deal with certain matters in a closed and confidential Session. The report is incorporated in the "Confidential" business paper which has been circulated.

The *Local Government Act 1993* requires the Chief Executive Officer to identify those matters listed on the business paper which may be categorised as confidential in terms of section 10A of the *Local Government Act 1993*. It is then a matter for Council to determine whether those matters will indeed be categorised a confidential.

Recommendation

That the Council resolve that the following matters be dealt with in closed session, pursuant to s. 10A(2)(d)(g) of the Local Government Act 1993 for the following reasons:

Item 7.1 Meeting Record of the Crown Lands Negotiation Program Committee held on 4 February 2019, 14 February 2019 and 4 March 2019

Reason for considering in closed session:

2(d) commercial information of a confidential nature that would, if disclosed:

- (i) prejudice the commercial position of the person who supplied it, or***
- (ii) confer a commercial advantage on a competitor of the Council, or***
- (iii) reveal a trade secret.***

In accordance with section 10A(2)(d) of the [Local Government Act 1993](#), the information contained within Item 6.1 Meeting Record of the Crown Lands Negotiation Program Committee held on 4 February 2019, 14 February 2019 and 4 March 2019 is confidential as they contain commercial information of a confidential nature that if disclosed would prejudice the

commercial position of the person who supplied it and/or confer a commercial advantage on a competitor of the Council.

On balance, release of this report and attachments would not be in the public interest. Central Coast Council is a party to the Comprehensive Central Coast Crown Land Negotiation Program (the Negotiation Program) that is being run by the Department of Industry – Crown Lands. Information shared with Council by the other parties during the course of the Negotiation Program is done so on the basis of good faith and that the Council, and other parties involved in the negotiation, will not disclose their information. Further, the information included as part of the Negotiation Program includes details other parties have shared with Council in good faith and with the expectation that the information would remain confidential. Release of the report would prejudice the position of Council in the Negotiation Program and the other parties to it, and impact Council's ability to obtain and share such information in the future.

Item 7.2 Confidential legal advice prospect of challenging JRPP decision – Toukley Unit Development

Reason for considering in closed session:

2(g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.

In accordance with section 10A(2)(g) of the Local Government Act and because consideration of the matter in open Council would, on balance, be contrary to the public interest as it would affect Council's ability to manage legal matters effectively and in the best interests of the Central Coast community.

Context

Section 10A of the *Local Government Act 1993* (the Act) states that a Council may close to the public so much of its meeting as comprises:

- 2(a) personnel matters concerning particular individuals (other than Councillors),*
- 2(b) the personal hardship of any resident or ratepayer,*
- 2(c) information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business,*

- 2(d) *commercial information of a confidential nature that would, if disclosed:*
 - (i) *prejudice the commercial position of the person who supplied it, or*
 - (ii) *confer a commercial advantage on a competitor of the Council, or*
 - (iii) *reveal a trade secret,*
- 2(e) *information that would, if disclosed, prejudice the maintenance of law,*
- 2(f) *matters affecting the security of the Council, Councillors, Council staff or Council property,*
- 2(g) *advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege,*
- 2(h) *information concerning the nature and location of a place or an item of Aboriginal significance on community land.*

It is noted that with regard to those matters relating to all but 2(a), 2(b) and 2(d)(iii) it is necessary to also give consideration to whether closing the meeting to the public is, on balance, in the public interest.

Further, the Act provides that Council may also close to the public so much of its meeting as comprises a motion to close another part of the meeting to the public (section 10A(3)).

As provided in the Office of Local Government Meetings Practice Note August 2009, it is a matter for the Council to decide whether a matter is to be discussed during the closed part of a meeting. The Council would be guided by whether the item is in a confidential business paper, however the Council can disagree with this assessment and discuss the matter in an open part of the meeting.

Attachments

Nil