

Date: 18 April 2019

Location: Alexandrina Council Office – 11 Cadell St Goolwa, Large Meeting Room

Meeting opened at 9:04am

1. ATTENDANCE

Present:

John Coombe OAM (Acting Chairperson) (via teleconference)
Councillor David Kemp
Councillor Bronwyn Lewis (Deputy Elected Member Representative)
Councillor Melissa Rebbeck (part meeting only)

In attendance:

Councillor Peter Charles (Deputy Elected Member Representative)
Leonie Boothby, Executive Officer
Elizabeth Williams, General Manager Resources
James Lomax, Area Manager YMCA SA

2. APOLOGIES

Councillor Melissa Rebbeck (part meeting only)

The Board determined to revise the order of the agenda to allow Cr Rebbeck to participate in discussion of confidential agenda item 9.4 Executive Officer Engagement.

9.4 Executive Officer engagement

Moved: Cr David Kemp

Seconded: John Coombe OAM

FRACA000200

That pursuant to Sections 90(2) and (3) (b) of the Local Government Act 1999, the Board orders that the public be excluded from the meeting with the exception of the Executive Officer, Ms Leonie Boothby and General Manager Resources Alexandrina Council, Ms Elizabeth Williams on the basis that the Board considers it necessary and appropriate to act in a manner closed to the public in order to receive, discuss and consider information by way of a report and associated documents in relation to agenda item 9.4 Executive Officer Engagement and the Board is satisfied that the meeting should be conducted in a place open to the public is outweighed in relation to the matter because receiving, considering and discussing the report and associated documentation contains/involves:

(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 [Authority]; and
- (ii) would, on balance, be contrary to the public interest;

Substantiation:

Details with regard to the proposed appointment and contract documentation will be considered as part of this report item. These matters are deemed to not be in the public interest as it may jeopardise the effectiveness of the contract negotiation process if candidates are privy to the details of the expressions of interest. Once the appointment and contract are finalised the report and minutes will be released as public documents.

CARRIED

Cr Lewis declared a material conflict of interest in this agenda item and left the room at 9:07am.

Cr Rebbeck joined the meeting at 9:21am.

Moved: Cr David Kemp

Seconded: Cr Melissa Rebbeck

FRACA000201

1. That the Authority Board receive and note the confidential report from McArthur on the Executive Officer selection process;
2. That the Authority Chairperson (or anyone acting in that position) further investigate the job offer to the preferred candidate subject to legal advice;
3. That the current Executive Officer remain in place (in a caretaker capacity only) until the new Executive Officer commences in the role; and
4. That pursuant to Sections 91(7) and (9) of the Local Government Act 1999 (SA) (Act), the Board orders that the report, attachments and associated documents of the Board meeting held on 18 April 2019 in relation to confidential item number 9.4 Executive Officer engagement; having been considered and dealt with by the Board on a confidential basis under Part 3 of the Act, are to be kept confidential and not available to the public for a period of twelve months from the date of this confidentiality order, or until the instrument of engagement is executed, whichever occurs first on the basis that they contain the following information or matter:
90 (3) (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 [Authority]; and
 - (ii) would, on balance, be contrary to the public interest;

Substantiation:

A decision with regard to the proposed appointment and documentation has been considered as part of this report item. These matters are deemed to not be in the public interest as it may jeopardise the effectiveness of the contract negotiation process if candidates are privy to the details of the preferred applicant decision. Once the appointment and instrument of engagement are finalised, the report and minutes can be released as public documents.

and

That pursuant to section 91(9)(c) of the Act the Authority delegates to the Executive Officer the power to revoke the order made in this resolution at any time.

CARRIED

Cr Lewis returned to the meeting at 9:36am.

3 MINUTES OF THE PREVIOUS MEETING

Moved: John Coombe OAM

Seconded: Cr Bronwyn Lewis

FRACA000202 That the minutes of the previous Fleurieu Regional Aquatic Centre Authority meeting held on 22 February 2019 as circulated be confirmed as a true and accurate record.

CARRIED

4 BUSINESS ARISING

4.4 Board requests for information - 22 February 2019 meeting

Moved: Cr David Kemp

Seconded: Cr Bronwyn Lewis

FRACA000203 That the Authority note the information provided.

CARRIED

Additional request for information: Cr Rebbeck provided customer request for consideration of swimming lessons that cater for children with special needs; specifically, autism. James Lomax asked that Cr Rebbeck suggest that the customer contact him directly so that he can try to assist in meeting the specific needs.

Cr Rebbeck left the meeting at 9:41 am.

4.5 Resolutions Report and Work Program

Moved: John Coombe OAM

Seconded: Cr David Kemp

FRACA00204 That the Authority note the Work Program and Resolutions Report as at 18 April 2019.

CARRIED

5 PRESENTATIONS

Nil.

6 REPORTS

6.1 Audit & Risk Management Committee Minutes 4 April 2019

Moved: Cr Bronwyn Lewis

Seconded: Cr David Kemp

FRACA00205 That the Authority receive the unconfirmed minutes of the Fleurieu Regional Aquatic Centre Authority Audit & Risk Management Committee meeting held on 4 April 2019.

CARRIED

6.2 Annual review of 10-Year Strategic Management Plans

Moved: Cr David Kemp

Seconded: Cr Bronwyn Lewis

FRACA00206 That the Authority notes the review and that the 10-Year Strategic Management Plans will be updated as required following endorsement of the 2019-20 Authority Budget.

CARRIED

6.3 YMCA New Initiatives

Moved: Cr David Kemp

Seconded: Cr Bronwyn Lewis

FRACA00207 That the Authority adopt the following YMCA new initiatives from 1 July 2019:

1. Free child memberships for children of all existing and new All Access (16 years and over; including concession and Mates Rates) and Foundation Members (subject to set terms and conditions);
2. Reciprocal rights for YMCA SA members (subject to set terms and conditions); and
3. That a review be undertaken in twelve months' time.

CARRIED

Action: James Lomax to develop draft parameters for the review for consideration by the Board at its next meeting.

6.4 FAC Opening Hours

Moved: Cr Bronwyn Lewis

Seconded: Cr David Kemp

FRACA00208 That the Authority approve the following changes to Fleurieu Aquatic Centre opening hours:

1. Hydrotherapy Pool:
 - Public access: Monday – Wednesday 7am-7pm; Thursday and Friday 7am-12pm & 3pm-7pm; Saturday and Sunday 8am-2pm
 - Outside of the above hours (in line with general pool hours) the pool can be booked by health providers

2. Gym:

- Monday to Thursday 6am-9pm; Friday 6am-7pm; Saturday and Sunday 8am-5pm
- Public holidays 8am-5pm (please note; specific opening hours are in place for Good Friday, Christmas Day, ANZAC Day, Christmas Eve and New Year's Day)

CARRIED

6.5 Draft 3-Year Business Plan (incorporating draft FAC Business & Marketing Plan 2019-20) & Budget 2019-20

Moved: Cr David Kemp

Seconded: Cr Bronwyn Lewis

FRACA000209

1. That the Authority recommend to the constituent Councils the draft 3-Year Business Plan 2019-2022 (incorporating the 2019-2020 Fleurieu Aquatic Centre Business & Marketing Plan) to be reviewed by the new Board; and
2. That the Authority recommend to the constituent Councils the draft 2019-20 Budget with Operating Expenses of \$3,364,050, an operating deficit of \$685,526, estimated cash as at 30 June 2020 of \$791,060 and capital expenditure of \$41,966 to be reviewed by the new Board.

CARRIED

6.6 Local Government Electricity Tender for 2019

Moved: John Coombe OAM

Seconded: Cr David Kemp

FRACA000210 That the Authority delegates authority to the Executive Officer (or anyone acting in that position) to:

1. Accept a tender from and enter into a contract with, the successful tenderer recommended by Local Government Association Procurement for the supply of electricity to the Fleurieu Aquatic Centre;
2. Advise Local Government Association Procurement of that acceptance within the specified time;
3. Make, vary and/or discharge the contract; and
4. Sign all relevant documentation in this matter

CARRIED

7. MATTERS FOR DISCUSSION

Nil

8 URGENT BUSINESS WITHOUT NOTICE

9. CONFIDENTIAL REPORTS

9.1 Review of confidential items

Moved: Cr Bronwyn Lewis

Seconded: Cr David Kemp

FRACA000211

That pursuant to Section 90(2) of the Local Government Act 1999, the Authority orders that the public be excluded from the meeting, with the exception of the Executive Officer, Ms Leonie Boothby and General Manager Resources Alexandrina Council, Ms Elizabeth Williams to enable the matter of the Annual Review of Confidential Orders be considered in confidence.

The Authority is satisfied that, pursuant to Section 90(3)(g) of the Act, the information to be received, discussed, or considered in relation to the agenda item is information relating to matters that must be considered in confidence to ensure that the Authority does not breach any duty of confidence.

The Authority is satisfied that the principle that the meeting be conducted in a place open to the public has been outweighed by the need to discuss these matters in confidence.

CARRIED

Moved: Cr David Kemp

Seconded: Cr Bronwyn Lewis

FRACA000212

1. That the Authority note the confidential orders that have lapsed or that have been assessed by the Executive Officer as appropriate to release during the review period;
2. That the Authority endorse continuation of the following confidential orders:
 - That pursuant to Section 91(7)(b) and (9)(a) of the Local Government Act 1999, the report, attachments and associated documents in relation to FRAC000028 “Facility Management & Operation Request for Tender”, remain in confidence until the Management Agreement has concluded or until the next annual review of outstanding confidential orders as it is a matter related to tenders for the supply of goods, the provision of services or the carrying out of works and the public release of the information during the management agreement may jeopardise the Authority’s ability to secure the best value for money. (Section 90(3)(k)).
 - That pursuant to Section 91(7) and (9)(a) of the Local Government Act 1999, the report, attachments and associated documents in relation to FRACA000070 “Appointment of External Auditor”, remain in confidence until the contract with the external auditor has concluded or until the next annual review of outstanding confidential orders as it is a matter related to contracts for the supply of goods, the provision of services or the carrying out of works and the public release of the information during the management agreement may jeopardise the Authority’s ability to secure the best value for money (Section 90(3)(k)).
 - That pursuant to Section 91(7) and (9) of the Local Government Act 1999, the report and associated documents in relation to FRACA000091 “Competitive Neutrality Review”, remain in confidence until the next annual review of outstanding confidential orders as the information received, discussed or considered in relation to the agenda item is information that could reasonably be expected to confer a commercial advantage or prejudice the position of the Authority and would, on balance, be contrary to the public interest (Section 90(3)(d) and (h)).
 - That pursuant to Section 91(7) and (9) of the Local Government Act 1999, the report and associated documents in relation to FRACA000094 “Draft Operational Management Key Performance Indicators 2017/18”, remain in confidence until the next annual review of outstanding confidential orders as the information received, discussed or considered in relation to the agenda item is information that could reasonably be expected to confer a commercial advantage or prejudice the position of the Authority and would, on balance, be contrary to the public interest (Section 90(3)(d))
 - That pursuant to Section 91(7) and (9) of the Local Government Act 1999, the report, the unredacted Competitive Neutrality Review July 2017 report in relation to FRAC000097 “Competitive Neutrality Review”, remain in confidence until the next annual review of outstanding confidential orders as the information received, discussed or considered in relation to the agenda item is information that could reasonably be expected to confer a commercial advantage or prejudice the position of the Authority and would, on balance, be contrary to the public interest (Section 90(3)(d) and (h))
 - That pursuant to Section 91(7) and (9) of the Local Government Act 1999, the report, attachments and associated documents in relation to FRAC000112 “Audit & Risk Management Committee – Appointment of Independent Chairperson”, remain in confidence until the next annual review of outstanding confidential orders as the information received, discussed or considered in relation to the agenda item is information that involves a matter that must be considered in confidence in order to ensure that the Authority does not breach any duty of Confidence (Section 90(3)(a)).
 - That pursuant to Section 91(7) and (9) of the Local Government Act 1999, that the report and associated documents in relation to FRAC00137 “Draft YMCA Operational Management Key Performance Indicators”, remain in confidence until the next annual review of outstanding confidential orders as the information received, discussed or considered in relation to the agenda item is information that could

reasonably be expected to confer a commercial advantage or prejudice the position of the Authority and would, on balance, be contrary to the public interest (Section 90(3)(d)).

- That pursuant to Section 91(7) and (9) of the Local Government Act 1999, associated documents in relation to FRAC00137 “Draft YMCA Operational Management Key Performance Indicators”, remain in confidence until the next annual review of outstanding confidential orders as the information received, discussed or considered in relation to the agenda item is information that could reasonably be expected to confer a commercial advantage or prejudice the position of the Authority and would, on balance, be contrary to the public interest (Section 90(3)(d)).
- That pursuant to Section 91(7) and (9) of the Local Government Act 1999, the report, attachments and associated documents in relation to FRACA00161 “Competitive Neutrality Review”, remain in confidence until the next annual review of outstanding confidential orders as the information received, discussed or considered in relation to the agenda item is information that could reasonably be expected to confer a commercial advantage or prejudice the position of the Authority and would, on balance, be contrary to the public interest (Section 90(3)(h)); and

3. That the public be re-admitted to the meeting

CARRIED

9.2 Facility management and operation contract

Moved: Cr David Kemp

Seconded: Cr Bronwyn Lewis

FRACA000213 That the Authority:

Under the provisions of Section 90(2) of the Local Government Act 1999 make an order that the public be excluded from the meeting, except for the Executive Officer, Ms Leonie Boothby and General Manager Resources Alexandrina Council, Ms Elizabeth Williams; in order to consider in confidence a report relating to Section 90(3)(b) of the Local Government Act 1999:

(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;

relating to future contractual negotiations for Facility Management and Operation of the Fleurieu Aquatic Centre, being information that must be considered in confidence in order to ensure that the Authority does not disclose information that may prejudice the commercial position of the Authority; and

Accordingly, on this basis, the Authority is satisfied that public interest in conducting meetings in a place open to the public has been outweighed by the need to keep the information and discussion confidential.

Substantiation:

The matter of the agenda item relating to future contractual negotiations for Facility Management and Operation of the Fleurieu Aquatic Centre pursuant to Section 90(3)(b) of the Local Government Act 1999 (“the Act”) being information that must be considered in confidence to ensure that information that may prejudice the commercial position of the Authority is not divulged.

There is strong public interest in enabling members of the public to observe the Authority’s transparent and informed decision-making. This helps to ensure accountability, maintain transparency of public expenditure, facilitate public participation, assist public awareness and allow for the scrutiny of information. Attendance at a meeting of the Authority is one means of satisfying this interest. The public will only be excluded from a meeting of the Authority when the need for confidentiality pursuant to Section 90(2) of the Act outweighs the public interest of open decision-making.

In this matter, the reasons that receipt, consideration or discussion of the information or matter in a meeting open to the public would be contrary to the public interest are that discussion will include the disclosure of information that may prejudice the commercial position of the Authority, or confer a commercial advantage on a third party. On balance, the

above reasons which support the need for confidentiality pursuant to Section 90(2) of the Act outweigh the factors in favour of the public interest of open decision making.

CARRIED

Moved: Cr David Kemp

Seconded: Cr Bronwyn Lewis

FRACA000215 That the Authority, having considered this matter in confidence under Section 90(2) and 90(3)(b) of the Local Government Act 1999, makes an order pursuant to Section 91(7) and (9), that the agenda report, minutes and associated documents in relation to the 18 April 2019 confidential item 9.2, Facility Management and Operation – contractual negotiations, be kept confidential and not available for public inspection other than information required to be released in accordance with any relevant requirements of Section 91(8) of the Local Government Act 1999; and in accordance with (2) above and Section 91(9)(c) of the Local Government Act 1999, authorises the Executive Officer to review and revoke the order.

CARRIED

9.3 Draft YMCA Operational Management Key Performance Indicators 2019-20

Moved: Cr Bronwyn Lewis

Seconded: Cr David Kemp

FRACA000216 That the Authority:

Under the provisions of Section 90(2) of the Local Government Act 1999 make an order that the public be excluded from the meeting, with the exception of the Executive Officer, Ms Leonie Boothby and General Manager Resources Alexandrina Council, Ms Elizabeth Williams; in order to consider in confidence a report relating to Section 90(3)(d) of the Local Government Act 1999:

(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;

relating to the consideration of draft Key Performance Indicators for YMCA South Australia for management and operations of the Fleurieu Aquatic Centre for 2019-2020, being information that must be considered in confidence in order to ensure that the Authority does not disclose commercial information of a confidential nature (not being a trade secret); and

Accordingly, on this basis, the Authority is satisfied that public interest in conducting meetings in a place open to the public has been outweighed by the need to keep the information and discussion confidential to prevent the disclosure of commercial information of a confidential nature (not being a trade secret).

Substantiation:

The matter of the agenda item being consideration of draft Key Performance Indicators for YMCA South Australia for management and operations of the Fleurieu Aquatic Centre for 2019-2020 pursuant to Section 90(3)(d) of the Local Government Act 1999 (“the Act”) being information that must be considered in confidence to ensure that commercial information of a confidential nature (not being a trade secret); is not divulged.

There is strong public interest in enabling members of the public to observe the Authority’s transparent and informed decision-making. This helps to ensure accountability, maintain transparency of public expenditure, facilitate public participation, assist public awareness and allow for the scrutiny of information. Attendance at a meeting of the Authority is one means of satisfying this interest. The public will only be excluded from a meeting of the Authority when the need for confidentiality pursuant to Section 90(2) of the Act outweighs the public interest of open decision-making.

In this matter, the reasons that receipt, consideration or discussion of the information or matter in a meeting open to the public would be contrary to the public interest are that discussion will include discussion pertaining to the disclosure of commercial information of a confidential nature (not being a trade secret) that may prejudice the commercial position of the person who supplied the information or confer a commercial advantage on a third party.

On balance, the above reasons which support the need for confidentiality pursuant to Section 90(2) of the Act outweigh the factors in favour of the public interest of open decision making.

CARRIED

Moved: Cr David Kemp

Seconded: Cr Bronwyn Lewis

FRACA000217 That that Authority endorse the Key Performance Indicators for YMCA South Australia for management and operations of the Fleurieu Aquatic Centre for 2019-2020 (as detailed in the report for Agenda Item 9.3 Draft Operational Management Key Performance Indicators 2019-2020) and;

Having considered this matter in confidence under Section 90(2) and 90(3)(d) of the Local Government Act 1999, makes an order pursuant to Section 91(7) and (9), that the agenda report and associated documents in relation to the 18 April 2019 confidential item 9.3, Draft Operational Management Key Performance Indicators 2019-2020, be kept confidential and not available for public inspection other than information required to be released in accordance with any relevant requirements of Section 91(8) of the Local Government Act 1999; and

In accordance with (3) above and Section 91(9)(c) of the Local Government Act 1999, authorises the Executive Officer to review and revoke the order.

CARRIED

Moved: Cr Bronwyn Lewis

Seconded: John Coombe OAM

FRACA000218 That a vote of thanks be provided to the outgoing Executive Officer.

CARRIED

NEXT MEETING

To be advised following appointment of the new Executive Officer and independent Board members.

CLOSURE

Meeting closed at 10:41am.