

CITY OF MOUNT GAMBIER

Meeting to be held at the Council Chamber, Civic Centre, 10 Watson Terrace, Mount Gambier  
on Tuesday 16<sup>th</sup> September, 2014 at 6.00 p.m.

AGENDA

## **CONSIDERATION FOR EXCLUSION OF PUBLIC**

moved that the following item(s) be received, discussed and considered in confidence by excluding the public pursuant to Section 90 (2) of the Local Government Act, 1999 and an order be made that the public (with the exception of Council Members and Council Officers now present in their official capacity) be excluded from the meeting in order for the item(s) to be considered in confidence as the Council (or Committee) is satisfied that the item is a matter that can be considered in confidence pursuant to the grounds referenced in Section 90 (3) of the said Act:

*Section 90(3)(a) - the information to be received, discussed or considered in relation to this Agenda Item is information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead).*

*Section 90(3)(g) - the information to be received, discussed or considered in relation to this Agenda Item is information concerning matters that must be considered in confidence in order to ensure that the Council does not breach any duty of confidence.*

The information contained within the Agenda Item has been provided to Council for the purpose of administering the Commercial Lease for the Main Corner Commercial Kitchen and contains information that is both 'commercial-in-confidence' and concerning the personal affairs of the Lessee's Company Directors.

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 as the matters under consideration concern the personal affairs and matters that are 'commercial-in-confidence' and to which the Council owes a duty of confidence.

ITEM NO.	SUBJECT MATTER	S90(3) GROUNDS
<u>Corporate and Community Services Committee Minutes</u>		
16.	<u>CORPORATE AND COMMUNITY SERVICES REPORT NO. 63/2014</u> - Leasing - Main Corner Commercial Kitchen	(a) (g)
17.	<u>CONSIDERATION FOR KEEPING MATTERS CONFIDENTIAL</u>	

seconded

**IN CONFIDENCE**

**16. CORPORATE AND COMMUNITY SERVICES REPORT NO 63/2014 - Leasing – Main Corner Commercial Kitchen – Ref AF11/2260**

Goal: Governance

Strategic Objective: Demonstrate innovative and responsible organisational governance.

Cr Smith moved it be recommended:

- (a) Corporate and Community Services Report No. 63/2014 be received.
- (b) The power to grant consent to the proposed transfer/disposal of shares (deemed assignment) in 'Sorrentos at the Main' as Lessee of the Main Corner Commercial Kitchen be delegated to the Chief Executive Officer.

Cr Persello seconded

**AMENDMENT**

**Cr Maher moved that the matter be left lie on the table to enable further clarification.**

**Cr Richardson seconded**

**The amendment was put and**

**Carried**

**Cr Smith called for a division:**

**The declaration of the result of the vote was set aside.**

**Voting by Division being:**

**Members voting for the Amendment**

**Members voting against the Amendment**

**Cr Maher  
Cr Richardson  
Cr Lee**

**Cr Persello  
Cr Smith**

**Cr Maher declared the amendment**

**Carried**

**and as the motion was put and**

**Carried**

**17. CONSIDERATION FOR KEEPING MATTERS CONFIDENTIAL**

moved that an order be made pursuant to Section 91 (7) and recorded in the publicly released version of the minutes in accordance with S91(9) of the Local Government Act, 1999 that the document in relation to item 15 which has been considered by the Corporate and Community Services Committee on a confidential basis pursuant to Section 90 (3) be kept confidential as follows:

Item No.	Meeting Date	Subject Matter	S90(3) Grounds	Elements to be kept confidential	Duration, Circumstances for Release
16.	16/9/2014	<u>LEASING</u> – Main Corner Commercial Kitchen	(g)	All Details	6 months

seconded

Resume open session.

**CORPORATE AND COMMUNITY SERVICES REPORT NO.63/2014**

**SUBJECT: LEASING – MAIN CORNER COMMERCIAL KITCHEN**

**Ref: AF11/2260**

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*Goal: Governance*  
*Strategic Objective: Demonstrate innovative and responsible organisational governance.*

Council has received a request from the Company Directors of 'Sorrentos at the Main' as Lessee of the Main Corner Commercial Kitchen for consent to be granted to a proposed transfer/disposal of 50% of the company shares from one Director to a new Director.

Such a transaction is a deemed assignment under the Lease and Council consent must first be obtained prior to the transfer.

Members may recall granting consent to an identical transaction associated with this lease approximately 2 years ago, conditional upon the outgoing shareholder only being released from a personal guarantee after the maximum period allowed under the Retail & Commercial Leases Act.

Council should note it has limited grounds upon which to refuse to grant consent to the transaction, being deficiencies in the experience or financial position of the incoming shareholder in comparison to that of the exiting shareholder.

Council's Governance Officer and Chief Executive Officer have undertaken a due diligence assessment including a review of the Business & Financial Plan and the Curriculum Vitae and financial status of the incoming shareholder/Director. The Governance Officer and Chief Executive Officer are satisfied that Council's risk will not vary significantly by consenting to the share transfer and deemed assignment, provided a personal guarantee is maintained with the outgoing shareholder/Director for the maximum allowable period of 2 years.

Members may also recall that the previous transaction was delayed due a lack of a quorum at the Council meeting when the matter was first presented for consideration due to the declaration of several Conflicts of Interest by Members in relation to the agenda item. A potential repeat of this situation has been raised as a matter of some concern by the Lessee as for business reasons they are keen to progress this matter without any unnecessary delay.

Members should also note that this issue is not a designated decision or significant decision prohibited by the Local Government Act 1999 or Council's Caretaker Policy.

**RECOMMENDATION**

- (a) Corporate and Community Services Report No. 63/2014 be received.
- (b) The power to grant consent to the proposed transfer/disposal of shares (deemed assignment) in 'Sorrentos at the Main' as Lessee of the Main Corner Commercial Kitchen be delegated to the Chief Executive Officer.

Corporate and Community Services Report No. 61/2014 cont'd...



Michael McCARTHY  
**GOVERNANCE OFFICER**

Sighted:



Mark McSHANE  
**CHIEF EXECUTIVE OFFICER**

28<sup>th</sup> August, 2014  
MMcC

(Refer to Item                      of Corporate and Community Services Committee Minutes)

CITY OF MOUNT GAMBIER

Minutes of Meeting held at the Council Chamber, Civic Centre, 10 Watson Terrace, Mount Gambier  
on Tuesday 16<sup>th</sup> September, 2014 at 6.00 p.m.

**CONSIDERATION FOR EXCLUSION OF PUBLIC**

Cr Smith moved that the following item(s) be received, discussed and considered in confidence by excluding the public pursuant to Section 90 (2) of the Local Government Act, 1999 and an order be made that the public (with the exception of Council Members and Council Officers now present in their official capacity) be excluded from the meeting in order for the item(s) to be considered in confidence as the Council (or Committee) is satisfied that the item is a matter that can be considered in confidence pursuant to the grounds referenced in Section 90 (3) of the said Act:

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*Section 90(3)(g) - the information to be received, discussed or considered in relation to this Agenda Item is information concerning matters that must be considered in confidence in order to ensure that the Council does not breach any duty of confidence.*

The information contained within the Agenda Item has been provided to Council for the purpose of administering the Commercial Lease for the Main Corner Commercial Kitchen and contains information that is both 'commercial-in-confidence' and concerning the personal affairs of the Lessee's Company Directors.

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 as the matters under consideration concern the personal affairs and matters that are 'commercial-in-confidence' and to which the Council owes a duty of confidence.

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16.	<b><u>CORPORATE AND COMMUNITY SERVICES REPORT NO. 63/2014 - Leasing - Main Corner Commercial Kitchen</u></b>	(a) (g)
17.	<b><u>CONSIDERATION FOR KEEPING MATTERS CONFIDENTIAL</u></b>	

Cr Von Stanke seconded

**Carried**



**IN CONFIDENCE**

**16. CORPORATE AND COMMUNITY SERVICES REPORT NO 63/2014 - Leasing – Main Corner Commercial Kitchen – Ref AF11/2260**

*Pursuant to Division 3 - Conflict of Interest, Sections 73 and 74 Part 4 of the Local Government Act 1999, Cr Shearing disclosed an interest in Item 16 (due to partner being the owner of a restaurant) and did not:*

- (a) propose or second a motion relating to the matter; or*
- (b) take part in discussion by the Council relating to that matter; or*
- (c) while such discussion is taking place, be in, or in the close vicinity of the room in which or other place at which that matter is being discussed; or*
- (d) vote in relation to that matter.*

*Cr Shearing vacated the meeting at 7.12 p.m.*

*Pursuant to Division 3 - Conflict of Interest, Section 74 Part 4 of the Local Government Act 1999, Cr Von Stanke disclosed an interest in Item 16 (due to being related to proposed Lessee) however the Member sought the benefit of Section 74(4a)(c) and (6) of the said Act, as the interest was only in respect of a non pecuniary interest, as defined.*

*Goal: Governance*

*Strategic Objective: Demonstrate innovative and responsible organisational governance.*

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- (b) The power to grant consent to the proposed transfer/disposal of shares (deemed assignment) in 'Sorrentos at the Main' as Lessee of the Main Corner Commercial Kitchen be delegated to the Chief Executive Officer.

Cr Persello seconded

**AMENDMENT**

Cr Maher moved that the matter be left lie on the table to enable further clarification.

Cr Richardson seconded

The amendment was put and

Carried

Cr Smith called for a division:

The declaration of the result of the vote was set aside.

Voting by Division being:

Members voting for the Amendment

Cr Maher  
Cr Richardson  
Cr Lee

Members voting against the Amendment

Cr Persello  
Cr Smith

Cr Maher declared the amendment

Carried

and as the motion was put and

Carried

Cr Maher moved the recommendation of the Corporate and Community Services Committee as contained in item 16 be adopted.

Motion lapsed for want of a seconder

**Cr White moved the report be received.**

**Cr Smith seconded**

**Carried**

Cr Shearing resumed the meeting at 7.24 p.m.

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Cr Maher moved that an order be made pursuant to Section 91 (7) and recorded in the publicly released version of the minutes in accordance with S91(9) of the Local Government Act, 1999 that the document in relation to item 15 which has been considered by the Corporate and Community Services Committee on a confidential basis pursuant to Section 90 (3) be kept confidential as follows:

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**Cr Von Stanke seconded**

**Carried**

Resume open session.

15. **CONSIDERATION FOR EXCLUSION OF PUBLIC**

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Cr Lee seconded

**Carried**

**IN CONFIDENCE**

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Cr Persello seconded

**AMENDMENT**

Cr Maher moved that the matter be left lie on the table to enable further clarification.

Cr Richardson seconded

The amendment was put and **Carried**

Cr Smith called for a division:

The declaration of the result of the vote was set aside.

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**Members voting for the Amendment**

**Members voting against the Amendment**

Cr Maher  
Cr Richardson  
Cr Lee

Cr Persello  
Cr Smith

Cr Maher declared the amendment **Carried**

and as the motion was put and **Carried**

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Cr Smith seconded **Carried**

Resume open session.