



Civic Centre, 10 Watson Terrace
Mount Gambier SA 5290

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I hereby give notice that a Council Meeting will be held on:

Date: Tuesday, 21 June 2022
Time: 6.00 p.m.
Location: Council Chamber
Civic Centre
10 Watson Terrace
Mount Gambier

CONFIDENTIAL AGENDA

Council Meeting **21 June 2022**

A handwritten signature in black ink, appearing to read "Sarah Philpott", is positioned above the printed name and title.

Sarah Philpott
Chief Executive Officer
17 June 2022

26 NEW CONFIDENTIAL ITEMS

26.1 EXECUTION OF DEED - FIRST RIGHT OF REFUSAL – REPORT NO. AR22/38437

CONSIDERATION FOR EXCLUSION OF THE PUBLIC

Pursuant to section 90(2) of the *Local Government Act 1999* the Council orders that all members of the public, except the Mayor, Councillors and (Council Officers) be excluded from attendance at the meeting for the receipt, discussion and consideration in confidence of Agenda Item 26.1 AR22/38437 Execution of Deed - First Right of Refusal.

The Council is satisfied that, pursuant to section 90(3) (a), (b) and (d) of the Act, the information to be received, discussed or considered in relation to the 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)
- information the disclosure of which could reasonably be expected to confer a commercial advantage on a person with whom the Council is
 - conducting business; or
 - proposing to conduct business; or
 - to prejudice the commercial position of the Council
- commercial information of a confidential nature (not being a trade secret) the disclosure of which 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

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 information to be considered relates to the personal and commercial business affairs of the proponent and negotiation of business arrangements.



26.1 EXECUTION OF DEED - FIRST RIGHT OF REFUSAL – REPORT NO. AR22/38437

Committee:	Council
Meeting Date:	21 June 2022
Report No.:	AR22/38437
CM9 Reference:	AF13/64
Author:	Elisa Solly, Property Support Officer
Authoriser:	Darren Barber, General Manager Corporate and Regulatory Services
Summary:	This report is to provide an update on securing a First Right of Refusal for the Elders Building, 2 Watson Terrace, Mount Gambier
Strategic Plan Reference:	Goal 1: Our People
	Goal 2: Our Location
	Goal 3: Our Diverse Economy
	Goal 4: Our Climate, Natural Resources, Arts, Culture and Heritage
	Goal 5: Our Commitment

The Council is satisfied that, pursuant to Section 90(2) & (3) of the *Local Government Act 1999*, the information to be received, discussed or considered in relation to this agenda item is:

- (a) information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead)
- (b) information the disclosure of which could reasonably be expected to confer a commercial advantage on a person with whom the Council is conducting business; or proposing to conduct business; or to prejudice the commercial position of the Council
- (d) commercial information of a confidential nature (not being a trade secret) the disclosure of which 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.

REPORT RECOMMENDATION

1. That Council Report No. AR22/38437 titled 'Execution of Deed - First Right of Refusal' as presented on 21 June 2022 be noted.
2. That Council acknowledge the strategic Civic and Cultural significance of acquiring the Elders Building in its entirety and securing a First Right of Refusal in the event that the building becomes available for purchase.
3. That Council endorse a consideration amount of \$5,000 (+GST) to secure a First Right of Refusal for the Elders building, 2 Watson Terrace, Mount Gambier contained within Certificate of Title Volume 5156 Folio 245, funded by savings from the 2021/2022 budget.
4. That the Mayor and Chief Executive Officer be authorised to sign and affix the Common Seal to any documentation necessary to give effect to and to protect Council's interests in securing a First Right of Refusal for the Elders building, 2 Watson Terrace, Mount Gambier contained within Certificate of Title Volume 5156 Folio 245.



TYPE OF REPORT

Corporate

BACKGROUND

At its meeting held 20 April 2021 Council resolved the following:

“Moved: Cr Sonya Meziniec

Seconded: Cr Ben Hood

- 1. That Council Report No. AR21/21895 titled ‘Country Arts SA - Sir Robert Helpmann Theatre Master Plan’ as presented on 20 April 2021 be noted.*
- 2. That Council support Country Arts SA to progress with the design scope and principles outlined in Option 2 of the Sir Robert Helpmann Theatre Master Plan attached to this report.*
- 3. That Council acknowledge the strategic Civic and Cultural significance of acquiring the Elders Building in its entirety and endorse the administration to seek and secure a first right of refusal to purchase the building when it becomes available for purchase.

That a further report be presented to Council to consider any significant financial or contractual conditions that may apply to achieving this outcome.*
- 4. That Council deepen its relationship with Country Arts SA and sustain a strategic and collaborative approach to progress development of the Civic and Cultural precinct within the heart of Mount Gambier.*

Carried”

The Administration have since engaged with the property owner of the Elders Building who has agreed in principle to granting Council a first right of refusal to purchase the building in the event that it becomes available for purchase in the future.

Council presented a draft Deed for First Right of Refusal and the owner has verbally advised of his agreement to sign the Deed for a consideration amount of \$5,000 payable by Council.

PROPOSAL

Following negotiations with the property owner of the Elders Building located at 2 Watson Terrace, Mount Gambier, that Council endorse a consideration amount of \$5,000 to secure a right of refusal.

The Mayor and Chief Executive Officer be authorised to sign and affix the Common Seal of Council to any documentation necessary to give effect to and to protect Council’s interests in securing a First Right of Refusal for the Elders Building.

LEGAL IMPLICATIONS

If at any time during the Term, the owner decides to sell the property they must comply with the terms of the First Right of Refusal Deed and provide Council with Notice of Desire to Sell and an opportunity to purchase the property. This right remains active until the expiry of 60 days in accordance with the First Right of Refusal Deed.

A further report would be presented to Council at the relevant time to consider the Notice of Desire to Sell. It cannot be determined when, if at all, a Notice of Desire to Sell would eventuate, however the First Right of Refusal is a caveatable interest that will survive any estate ownership transfers.

STRATEGIC PLAN

Goal 1 – Our People

1.2 Community Growth

1.3 Sense of Community



Goal 2 – Our Location

2.2 Regional Collaboration

2.5 Focusing on activation, revitalisation and placemaking in our CBD

Goal 3 – Our Diverse Economy

3.4 Tourism is contributing to a diverse economy and creating opportunity

Goal 4 – Our Climate, Natural Resources, Arts, Culture and Heritage

4.4 Recreational and cultural pursuits

4.5 A City brought to life with public art

COUNCIL POLICY

[A900 Asset Management Policy](#)

[B300 Budget Framework Policy](#)

[P415 Prudential Management](#)

[P420 Procurement and Disposal of Land and Assets](#)

ECONOMIC IMPLICATIONS

Securing a First Right of Refusal will have positive economic implications noting the strategic civic and cultural significance of the building and its location by consolidating land ownership and use within the Mount Gambier Civic and Cultural Precinct.

ENVIRONMENTAL IMPLICATIONS

It is not considered that the subject matter of this report has any environmental implications.

SOCIAL IMPLICATIONS

Securing a First Right of Refusal will have positive social implications noting the strategic civic and cultural significance of the building and its location by consolidating land ownership and use within the Mount Gambier Civic and Cultural Precinct.

CULTURAL IMPLICATIONS

Securing a First Right of Refusal will have positive cultural implications noting the strategic civic and cultural significance of the building and its location by consolidating land ownership and use within the Mount Gambier Civic and Cultural Precinct, which comprises the state heritage Cave Garden.

RESOURCE IMPLICATIONS

Being essentially administrative in nature, it is not considered that there are any significant resource implications to Council, however a subsequent purchase would require resource considerations.

VALUE FOR MONEY

A consideration amount of \$5,000 is considered to be fair and reasonable to secure Council a first right of refusal interest in the Elders Building in the event of any future sale.

RISK IMPLICATIONS

Noting the strategic and cultural significance of the Elders Building and the location within the Civic precinct it would present a risk that the owner may decide to sell the property without any prior consultation or engagement with Council. The first right of refusal mitigates that risk.

EQUALITIES AND DIVERSITY IMPLICATIONS

It is not considered that the subject of this report presents any equality or diversity implications.



ENGAGEMENT AND COMMUNICATION STRATEGY

Negotiations with the property owner will continue to ensure that Council secures a first right of refusal for any future sale of the Elders Building.

IMPLEMENTATION STRATEGY

Being essentially administrative in nature, once endorsed the Administration will engage with the property owner to execute the Deed and following this, Council will provide the owner with a consideration amount of \$5,000 (+GST) within seven (7) days of execution.

CONCLUSION AND RECOMMENDATION

That Council acknowledge the strategic Civic and Cultural significance of acquiring the Elders Building in its entirety and endorse the Administration to secure a First Right of Refusal for the Elders Building the event that the building becomes available for purchase in the future.

That Council endorse a consideration amount of \$5,000 (+GST) to secure a First Right of Refusal.

That the Mayor and Chief Executive Officer be authorised to sign and affix the Common Seal to any documentation necessary to give effect to and to protect Council's interests in securing a First Right of Refusal for the Elders building, 2 Watson Terrace, Mount Gambier.

ATTACHMENTS

Nil

CONFIDENTIAL



**MINUTES OF CITY OF MOUNT GAMBIER COUNCIL MEETING
HELD AT THE COUNCIL CHAMBER, CIVIC CENTRE, 10 WATSON TERRACE, MOUNT
GAMBIER
ON TUESDAY, 21 JUNE 2022 AT 6.00 P.M.**

PRESENT: Cr Sonya Meziniec, Cr Max Bruins, Cr Ben Hood, Cr Paul Jenner, Cr Frank Morello

OFFICERS IN ATTENDANCE:

General Manager City Infrastructure	- Ms B Cernovskis
General Manager Corporate and Regulatory Services	- Mr D Barber
General Manager City and Community Growth	- Mr T Coote
Manager Governance and Property	- Mr M McCarthy
Manager Financial Services	- Mrs J Scoggins
Media and Communications Coordinator	- Mrs A Watson
Media and Communications Coordinator	- Mr J McDonald
Communications Officer	- Ms M Brookes
Executive Administrator	- Ms S Wilson

26 NEW CONFIDENTIAL ITEMS

26.1 EXECUTION OF DEED - FIRST RIGHT OF REFUSAL – REPORT NO. AR22/38437

RESOLUTION 2022/72

Moved: Cr Sonya Meziniec
Seconded: Cr Ben Hood

CONSIDERATION FOR EXCLUSION OF THE PUBLIC

Pursuant to section 90(2) of the *Local Government Act 1999* the Council orders that all members of the public, except the Mayor, Councillors and Council Officers B Cernovskis, D Barber, T Coote, M McCarthy, J Scoggins, A Watson, J McDonald, M Brookes and S Wilson be excluded from attendance at the meeting for the receipt, discussion and consideration in confidence of Agenda Item 26.1 AR22/38437 Execution of Deed - First Right of Refusal.

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CARRIED

RESOLUTION 2022/73

Moved: Cr Sonya Meziniec

Seconded: Cr Paul Jenner

1. That Council Report No. AR22/38437 titled 'Execution of Deed - First Right of Refusal' as presented on 21 June 2022 be noted.
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4. That the Mayor and Chief Executive Officer be authorised to sign and affix the Common Seal to any documentation necessary to give effect to and to protect Council's interests in securing a First Right of Refusal for the Elders building, 2 Watson Terrace, Mount Gambier contained within Certificate of Title Volume 5156 Folio 245.

CARRIED

RESOLUTION 2022/74

Moved: Cr Ben Hood

Seconded: Cr Frank Morello

CONSIDERATION FOR KEEPING ITEMS CONFIDENTIAL

1. In accordance with Sections 91(7) and 91(9) of the *Local Government Act 1999* the Council orders that the report 26.1 AR22/38437 Execution of Deed - First Right of Refusal and its attachments, the discussion and the resolution/s and minutes arising from the report, having been considered by the Council in confidence under Section 90(2) & (3) (a), (b) and (d) be kept confidential and not available for public inspection until 2 years have elapsed from the execution of arrangements or abandonment of negotiations associated with the proposal.
2. Further that Council delegates the power to review, revoke, but not extend the confidential order to the Chief Executive Officer in accordance with the provisions of Section 91(9)(c) of the *Local Government Act 1999*.

CARRIED

