

3. CONFIDENTIAL ITEMS

3.1. Consideration for Exclusion of the Public

Item No. 3.2

Pursuant to section 90(2) of the Local Government Act 1999 the Council orders that all members of the public (with the exception of Mayor L Martin, Cr Sonya Mezinac, Cr Kate Amoroso, Cr Ben Hood, Cr Frank Morello, Cr Paul Jenner and Cr Steven Perryman, Cr Max Bruins, Cr Christian Greco and Council Officers – Graeme Maxwell, Pamela Lee, Barbara Cernovskis, Nick Serle and Judy Nagy) be excluded from attendance at the meeting in order for the receipt, discussion and consideration in confidence of Agenda Item 3.2 ‘*Execution of Agreement – Legal Advice*’ Report No. AR19/12051.

The Council is satisfied that, pursuant to section 90(3) (g), (h) and (j) of the Act, the information to be received, discussed or considered in relation to the agenda item is:

Matters that must be considered in confidence in order to ensure that the Council does not breach any law, order or direction of a court or tribunal constituted by law, any duty of confidence, or other legal obligation or duty.

Legal advice

Information the disclosure of which would divulge information provided on a confidential basis by or to a Minister of the Crown, or another public authority or official (not being an employee of the Council, or a person engaged by the Council).

In addition, the disclosure of this information would, on balance, be contrary to the public interest. The public interest in public access to the meeting has been balanced against the public interest in the continued non-disclosure of the information. The benefit to the public at large resulting from the withholding the information outweighs the benefit to it of disclosure of the information.

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 received and discussed relates to information provided to Council on a confidential basis creating a duty of confidence, advice received from Councils solicitors on a solicitor client basis, the disclosure of which may jeopardise the position of Council in relation to the subject matter.

Item No.	Subject Matter	S90(3) Grounds
3.2	‘ <i>Execution of Agreement – Legal Advice</i> ’ Report No AR19/12051	(g), (h) and (j)

Moved:

Seconded:



IN-CONFIDENCE

3.2. Execution of Agreement - Legal Advice - Report No. AR19/12051

COMMITTEE	Council
MEETING DATE:	18 March 2019
REPORT NO.	AR19/12051
RM8 REFERENCE	AF11/1291
AUTHOR	Judy Nagy
SUMMARY	This report presents information on the template grant agreement proposed to be entered into with the Commonwealth for funding for the Community and Recreation Hub.
COMMUNITY 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

REPORT RECOMMENDATION

- (a) That Council Report No. AR19/12051 titled '*Execution of Agreement – Legal Advice*' as presented to the Council on 18 March 2019 be noted.
- (b) That the legal summary on the Commonwealth Grant Agreement be received.
- (c) Having considered a prudential report on the Community and Recreation Hub project at the Council meeting on 23 January 2019 and the favourable confirmation of \$15Million Commonwealth funding contribution toward the project, that Council commit to the progression of the project including execution of the Commonwealth Grant Agreement.
- (d) Formal funding agreement be pursued with the State Government and District Council of Grant for their respective contributions toward the Community and Recreation Hub.
- (e) That the Chief Executive Officer and Mayor be authorised to affix the Council Common Seal to the Commonwealth Grant Agreement and any other documentation necessary to give effect to the immediate progression of the project and grant agreements envisaged in resolutions (b) and (c).

Moved:

Seconded:



Background

In January 2019, having considered the result of a community survey, detailed project information and a prudential report in relation to the proposed Community and Recreation Hub project, Council resolved to endorse a full business case for lodgement with the Federal Government of a funding application to the Commonwealth Regional Growth Fund for an amount of \$15Million.

Progression by Council of the Community Recreation Hub project has been dependent upon the commitment of Commonwealth, State and District Council of Grant funding in the amount of \$25.35Million.

Discussion

By letter dated 5 March 2019 from the Deputy Prime Minister the Hon Michael McCormack MP Council has been advised of the favourable consideration of its Regional Growth Fund application for the Community and recreation hub and has been provided with a template Grant Agreement which must be returned by midday (Eastern Standard Time) on Monday 18 March 2019.

The template Grant Agreement has been provided to Council's solicitors to review Council's key obligations and responsibilities under the agreement. The summary advice on key provisions of the agreement are contained in the attached letter. (Attachment 1)

Whilst certain obligations, responsibilities and associated risks contained in the grant agreement may be considered onerous, they are relatively standard for grant funding arrangements of such value under government funding programs.

Further, the time period within which Council must respond, whilst very short, is not unexpected considering the nature of such funding program assessment and announcement timeframes, particularly with a Federal Election scheduled to occur in the coming months.

Conclusion

Having considered a prudential report on the Community and Recreation Hub project at the Council meeting held on 23 January 2019 and with receipt of favourable confirmation of the Commonwealth \$15Million funding contribution toward the project, Council must now determine whether to commit to proceeding with the project including execution of the Commonwealth Grant Agreement.

In light of this significant development it is further recommended that Council proceed (in confidence) to formalize similar funding agreements with the State Government and District Council of Grant to secure their committed funds toward the project.

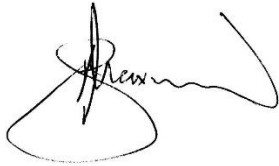
Attachments

[Attachment 1 \(AR19/12054\): Key Obligations and Responsibilities Regional Growth Fund Agreement](#)





Judy NAGY
GENERAL MANAGER CITY GROWTH



Graeme MAXWELL
CHIEF EXECUTIVE OFFICER

15 March 2019
MMcC



3.3. Consideration for keeping Items Confidential

That an order be made pursuant to Section 91(7) and recorded in the publicly released version of the minutes in accordance with Section 91(9) of the Local Government Act, 1999 that the document in relation to Item 3.2 which has been considered by the Council on a confidential basis pursuant to Section 90(3) be kept confidential.

Item No.	Subject Matter	S90(3) Grounds	Element To Be Kept Confidential	Duration
3.2	<i>'Execution of Agreement – Legal Advice'</i> Report No AR19/12051	(g), (h) and (j)	All Details	Until: Council has been released from its duty of confidence by the party that provided the information. To be reviewed annually in accordance with s91(9)

Moved:

Seconded:



4. REPORT ATTACHMENTS

Report attachments commence on the next page.





By Email: jnagy@mountgambier.sa.gov.au
Ref: MST\M00293944F05701921

15 March 2019

Dr J Nagy
General Manager City Growth
City of Mount Gambier
PO Box 56
MOUNT GAMBIER SA 5290

Dear Dr Nagy

Regional Growth Fund Grant Agreement

I refer to our recent discussions, in particular your email of 13 March 2019, where we were instructed that the Council had received notification that the Deputy Prime Minister has approved Commonwealth funding of up to \$15 million (**Grant**) to the Council for the construction of the Mount Gambier Regional Sport and Recreation Centre (**Project**).

The Council has been provided with a sample Grant Agreement (version February 2019) pursuant to the Regional Growth Fund (**Grant Agreement**). You have asked us to consider the Grant Agreement, and to provide a letter of advice regarding the key provisions under the Grant Agreement, and in particular, the Council's key obligations and responsibilities under same.

Please note that as the Grant Agreement is still in template form, many of the schedule items have not yet been completed. Our advice, therefore, is limited to consideration of the general provisions of the Grant Agreement. The schedule items provide a commercial context to the general provisions. If it would assist, we can provide an updated letter of advice once the relevant schedule items have been engrossed into the Grant Agreement.

We set out below the Council's key obligations and responsibilities under the Grant Agreement. Please note that we have only referred to key provisions in this letter. The Grant Agreement contains numerous other provisions which the Council will need to comply with in its performance of Project and management of the Grant.

1. The Grant Agreement

The Grant Agreement:

- a) is intended to represent the entire agreement between the Council and the Commonwealth in respect of the Grant and the Project. Anything not provided for in the Grant Agreement is not enforceable by either the Council or the Commonwealth. The Council should take care to ensure that any prior discussions it has had with respect to the Grant or the Project is expressly provided for in the Grant Agreement; and
- b) is governed by the laws of the Australian Capital City, and not South Australia. If there are any disputes in respect of the Grant Agreement and/or the Project, the courts of the Australian Capital City will have jurisdiction.

2. Council's Key Obligations

The Council:

- a) must use the Grant for the Project only.
- b) is solely and fully responsible for the Project. The Council is not relieved of this obligation because of:
 - i. the giving, or withholding, of any approval or the exercise, or non-exercise, of any right by the Commonwealth;
 - ii. any payment to, or the withholding of, any payment from the Council.
- c) must commence the Project by a date to be specified in the Grant Agreement (stated to be 1 April in the Project Details document proposed to be submitted by the Council to the Department of Infrastructure, Regional Development and Cities (**DIRDC**))
- d) must achieve practical completion of the Project by a date to be specified in the Grant Agreement.
- e) must complete the Project by a date to be specified in the Grant Agreement (stated to be 31 January 2022 in the Project Details document proposed to be submitted by the Council to the DIRDC)
- f) must conduct an official opening of the completed Project. Subject to completion of the draft Grant Agreement, the Commonwealth may also require the Council to conduct official opening of different stages of the Project.
- g) must operate and maintain the capital works as a recreation and sports centre during the Designated Use Period (which period is currently unknown).

3. Legislation, Policies and Guidelines

In addition to complying with the terms of the Grant Agreement, the Council is also required to comply with:

- a) all applicable legislation and regulations, including:
 - i. the Building Code;
 - ii. the Australian Government Building and Construction WHS Accreditation Scheme; and
 - iii. the Australian Industry Participation Plans.
- b) the Regional Growth Fund Guidelines (**Program Guidelines**). Please let us know if you would like us to provide you with a further report regarding the Council's key obligations under the Program Guidelines; and
- c) any of the Commonwealth's policies as notified, referred to or made available by the Commonwealth.

It is critical that the Council passes these obligations onto all contractors appointed by the Council to undertake works for the Project.

4. **Publicity and Acknowledgements**

- a) The Council:
 - i. must not make any public announcements, including by social media, in connection with the Grant without the Commonwealth's prior written approval;
 - ii. must acknowledge the Commonwealth's support in all materials and publications in connection with the Project, including the Grant and the Funding Agreement;
 - iii. must not use the Commonwealth Coat of Arms without the Commonwealth's prior written approval.
- b) Where the Council requires the Commonwealth's approval for an event, the Council must:
 - i. provide at least 3 options for dates for the event at least 56 days prior to the first proposed date for the event; and
 - ii. invite the Commonwealth's representative to officiate at the event no later than 56 days before the event.
- c) Where the Council requires the Commonwealth's approval for a public announcement, the Council must provide a draft of the proposed publicity for approval by the Commonwealth at least 10 business days prior to the proposed release.

5. **Payment of the Grant to the Council**

- a) The Grant will, subject to the Council's compliance of the Grant Agreement, be paid by the Commonwealth to the Council on completion of agreed milestones. We note that the Council has prepared a set of milestones to submit to the DIRDC for approval. Please ensure that all of the proposed milestones and milestone dates are achievable.
- b) A final 10% of the Grant will be withheld by the Commonwealth until the Council submits a completion report. This may have a cash flow effect on the Council.
- c) The Commonwealth may withhold payment of the Grant if Council if it reasonably is of the view that:
 - i. the Council has not complied with the Grant Agreement;
 - ii. the Council is unlikely to be able to undertake the Project or manage the Grant; or
 - iii. there is a serious concern relating to the Council.
- d) The Council must hold the Grant in a bank account in the Council's name which it controls.

6. **Spending the Grant**

- a) On each anniversary of the Project start date (stated to be 1 April in the Project Details document proposed to be submitted by the Council to the DIRDC) and within 3 months of the Project completion date (stated to be 31 January 2022 in the Project Details document proposed to be submitted by the Council to the DIRDC), the Council must submit an independently audited financial acquittal report verifying that the Grant has been spent in accordance with the Grant Agreement.

- b) If any amount of the Grant has not been spent in accordance with the Grant Agreement or is additional to the requirements of the Project, the Commonwealth may:
 - i. require the Council to repay that amount to the Commonwealth;
 - ii. require the Council to deal with that amount as directed; or
 - iii. deduct that amount from subsequent payments of the Grant.

7. **Other Contributions**

- a) We note from the Project Details prepared by the Council that in addition to the Commonwealth Grant, the Council is also anticipating the following funds (each referred to **Other Contributions** in the Grant Agreement):
 - i. State Government for the amount of \$10 million; and
 - ii. District Council of Grant for the amount of \$350,000.
- b) If the Other Contributions are not received by the Council, the Commonwealth may suspend any payment of the Grant or terminate the Grant Agreement.

It is therefore critical that the Council secures the Other Contributions through executed agreements as a matter of urgency and priority. Depending on the timing of execution of these additional agreements, the Council may need to reserve its rights with respect to the State Government and/or the District Council of Grant.

8. **Intellectual Property**

The Council must:

- a) if requested, provide the Commonwealth with a copy of all materials relating to the Project in a format requested by the Commonwealth;
- b) provide the Commonwealth with a permanent, non-exclusive irrevocable, royalty free licence to use, modify, communicate, reproduce, publish and adapt all material relating to the Project (including reporting material) for certain Commonwealth purposes; and
- c) obtain written moral rights consents from all authors of the Council's reporting material and Project material to allow the Commonwealth to use the material as contemplated by the Grant Agreement. Where external assistance is obtained by the Council for the preparation of any Project material, the Council should ensure that moral rights are obtained as part of the engagement process.

9. **Access and Specified Personnel**

- a) The Council must give the Commonwealth access to the Project.
- b) The Commonwealth may require the Council to remove any personnel involved with the Project, including any subcontractors appointed by the Council. The Commonwealth is not required to provide any reasons for its request for removal of personnel.

10. **Child Safety and Native Title**

- a) There are provisions in the Grant Agreement dealing with child safety and native title. We have assumed that the Council's employees and contractors will not need to

interact with children as part of the Project. We have also assumed that there are no native title issues in respect of the Project and the Project premises.

- b) We have also assumed that the Project site is not land held, expressly or on trust, for the benefit of Aboriginal peoples or Torres Strait Islanders.

Please let us know if our assumptions are not correct.

11. **Step In Rights**

- a) The Commonwealth may issue a notice to the Council for the Commonwealth to 'step in' (**Step In Notice**) to undertake the Project where it is reasonably of the view that:
 - i. the Council has not complied with the Grant Agreement;
 - ii. the Council is unlikely to be able to undertake the Project or manage the Grant; or
 - iii. there is a serious concern relating to the Council.
- b) If the Commonwealth issues a Step In Notice, the Commonwealth may also appoint a Grant Administrator as well as a Management Advisor to oversee the Project and the management of the Grant.
- c) The Council must cooperate with the Grant Administrator and/or Management Advisor (if appointed) and comply with their directions.
- d) The Grant Agreement is unclear as to who is responsible for the costs of appointing the Grant Administrator and/or Management Advisor.

12. **Indemnities**

The Council indemnities the Commonwealth against any claim, loss or damage arising in connection with the Project, which indemnity is reduced proportionally to the extent to which the Commonwealth has contributed to the claim, loss or damage.

13. **Subcontractors**

- a) The Council:
 - i. is responsible for the actions of its subcontractors;
 - ii. must provide the Commonwealth with details of its subcontractors; and
 - iii. must not engage or appoint a subcontractor without the Commonwealth's prior written consent (see our comments at Item 13 b below regarding the tender processes for the engagement of subcontractors).
- b) In running tender processes for the appointment of subcontractors, the Council must require each tenderer to:
 - i. confirm that it will comply with the Building Code from the time it submits a tender and if successful, during the time of performing the contract works;
 - ii. submit a Workplace Relations Management Plan (if applicable);

- iii. confirm that it is accredited to the Work Health and Safety Accreditation Scheme and will comply with the National Construction Code (if applicable);
- iv. confirm that it is not subject to an exclusion sanction;
- v. demonstrate a positive commitment to training and skill development for the workforce;
- vi. provide details of the number of current apprentice and trainee employees;
- vii. advise whether it has had any adviser decisions, adjudication, certificates or unsatisfied judgment debts over the preceding 3 year period.

Please ensure that the Council complies with the above in the procurement processes relating to the Project.

14. Conflict of Interest

- a) The Council warrants that, to the best of its knowledge, neither it nor its officers have any actual, perceived or potential conflicts of interest in respect of the Project.
- b) The Council must promptly notify the Commonwealth if a conflict of interest arises during the term of the Grant Agreement.

15. Assignment

The Council may not assign the Grant Agreement without the prior written consent of the Commonwealth. There is no requirement for the Commonwealth to act reasonably in considering the Council's request.

16. Record Keeping and Reporting

The Council must:

- a) keep financial accounts and records in respect of the Grant and the project for a period of 5 years after the Project completion date (stated to be 31 January 2022 in the Project Details document proposed to be submitted by the Council to the DIRDC);
- b) provide reporting material (including milestone reports) to the Commonwealth as provided for in the Grant Agreement.

17. Insurance

The Grant Agreement does not recognise the Council's membership of the Local Government Mutual Liability Scheme and its entitlement to its benefits. We recommend that the Council discusses this with the DIRDC in finalising the Grant Agreement.

18. Reduction, Suspension and Termination due to Breach

- a) If the Council breaches the Grant Agreement and the Commonwealth is of the view that the breach is not capable of remedy, the Commonwealth may, by written notice to the Council, reduce the scope of the Grant Agreement.
 - i. If the scope of the Grant Agreement is reduced by the Commonwealth, the amount of the Grant is reduced in proportion to the reduction in scope of the Grant Agreement.

- b) If the Council breaches the Grant Agreement and the Commonwealth is of the view that the breach is capable of remedy but the Commonwealth reasonably believes that the Council is unlikely to be able to perform the Project or manage the Grant, the Commonwealth may, by written notice to the Council:

- i. suspend the Council from further performance of the Project; or
- ii. require the breach to be remedied.

If the Council remedies the breach to the Commonwealth's satisfaction, the Council may direct the Council to recommence performance of the Project.

If the Council fails to remedy the breach to the Commonwealth's satisfaction, the Commonwealth may reduce the scope of the Grant Agreement and the amount of the Grant is reduced in proportion to the reduction in scope of the Grant Agreement.

- c) If the Council:

- i. breaches the Grant Agreement and the Commonwealth is of the view that the breach is not capable of remedy, or where the Council has failed to remedy the breach;
- ii. provides false or misleading statements in relation to the Grant;

the Commonwealth may terminate the Grant Agreement, following which the Council must stop performance of the Council's obligations under the Grant Agreement and comply with the Commonwealth's instructions regarding the return of the Grant to the Commonwealth.

19. Termination for Convenience by the Commonwealth

- a) The Commonwealth may, by notice on the Council, cancel or reduce the scope of the Grant Agreement if there is a change in government policy. **This can occur even if the Council has not committed a breach under the Grant Agreement.**
- b) Upon receipt of a notice from the Commonwealth, the Council must stop or reduce performance of the Project in accordance with the notice and comply with the Commonwealth's instructions regarding the Grant.
- c) If the event of the Grant Agreement being reduced in scope or terminated, the Commonwealth will only be liable to:
 - i. pay any part of the Grant that is due and owing as at the date of the Commonwealth's notice; and
 - ii. reimburse the Council for any reasonable and substantiated expenses unavoidably incurred by the Council due to the reduction in scope of cancellation of the Grant Agreement.
- d) If the scope of the Grant Agreement is reduced by the Commonwealth, the amount of the Grant is reduced in proportion to the reduction in scope of the Grant Agreement.

In negotiating contracts for the Project, it is critical that the Council reserves its rights to terminate for convenience, in the event that the Commonwealth exercises its right to terminate the Grant Agreement for convenience.

20. Capital Works

- a) The Council is responsible for obtaining all necessary approvals for the performance of the Project.
- b) The Annexure to the Capital Works Schedule to the Grant Agreement is currently incomplete. Thus, many of the critical dates relating to the Council's obligations in respect of the performance of capital works is not yet known, including, particulars relating to the capital works.
- c) The Council must advise the Commonwealth within 5 business days of commencing the Project.
- d) The Council must ensure that capitals works for the Project are carried out by contractors who are registered with the SA body that regulates the construction industry.
- e) The Council must obtain the prior written consent of the Commonwealth if the Council proposes to vary:
 - i. the price of the capital works;
 - ii. the budget for the capital works;
 - iii. the milestones for completion of the capital works;
 - iv. the fitness of the completed the capital works; or
 - v. the location for the capital works.
- f) The Council must own all assets bought or created with the Grant (**Assets**), unless the Commonwealth has given approval for a third party to be the owner.
- g) The Council must not encumber or dispose of an Asset during the Activity Period (which is not yet defined) without the Commonwealth's prior written approval. If an Asset is lost or damaged during the Activity Period, the Council must reinstate the Asset.
- h) There are clauses in the Grant Agreement requiring the Council to secure rights to the Project site (**Site**). We have assumed that the Council is the registered proprietor of the Site and we have therefore not set out those provisions in this letter. Please let us know if our assumption is not correct.
- i) The Commonwealth may require the Council to grant security to the Commonwealth over the Site.
- j) The Council must not dispose of the Site during the Operational Period (which is also not yet defined) without the prior written consent of the Commonwealth.
- k) If the Council does not use the Site as a recreational and sports centre for the Designated Use Period (which is also not yet defined), the Council will have to make payments to the Commonwealth which are deemed to be a pre-estimate of the loss of public utility to the Commonwealth. The proposed repayment amounts are not currently known.
- l) If the Council causes any contamination to the Site, the Council must make good such contamination or damage to the environment. Has the Council undertaken any

investigations regarding existing contamination at the Site? We recommend that it be attended to, if not yet done.

21. Latent Conditions

- a) The Council must ensure that there are no latent conditions at the Site which will affect the Project.
- b) If the Council discovers a latent condition at the Site, the Council must:
 - i. notify the Commonwealth and provide the Commonwealth with access to the Site as well as the details relating to the latent condition;
 - ii. take all steps necessary to avoid or mitigate the impacts of the latent condition.
- c) The Council must **not** use any part of the Grant to avoid or mitigate the impact of a latent condition.
- d) If a latent condition is discovered at the Site and the Commonwealth is of the view that:
 - i. the impacts of the latent condition cannot be avoided or mitigated effectively;
 - ii. the Council failed to avoid or mitigate the impacts of the latent condition;the Commonwealth may terminate the Grant Agreement.

Has the Council undertaken a comprehensive testing of the site? The potential ramifications for the discovery of latent conditions is significant and we strongly recommend that the Council attends to this as a matter of urgency and priority, if not yet done.

22. Workplace Relations Management Plan and Work Health and Safety Accreditation Scheme

Depending on the value of the Council's contracts for the capital works, the Council may need to:

- e) apply for the approval of a Workplace Relations Management Plan;
- f) notify the Office of the Federal Safety Commissioner of the relevant contract.

In General

We note that the Council will be entering into discussions with DIRDC regarding finalisation of the Grant Agreement. Please let us know if we can assist with this process. We would recommend that we be instructed to conduct a final review of the Grant Agreement once the various Schedules have been engrossed.

Please do not hesitate to contact me if you would like to discuss any of the above, or if you have any queries at all.

Yours faithfully
Norman Waterhouse

A handwritten signature in blue ink, appearing to read 'M Tam', with a stylized flourish at the end.

Mabel Tam
Principal
Direct Line: (08) 8210 1218
e-mail: mtam@normans.com.au

MINUTES OF SPECIAL COUNCIL MEETING

Meeting held at the Council Chamber, Civic Centre, 10 Watson Terrace, Mount Gambier
on Monday, 18 March 2019 at 8:00 a.m.

PRESENT Mayor Lynette Martin OAM

Cr Ben Hood
Cr Sonya Mezinac
Cr Max Bruins
Cr Christian Greco
Cr Frank Morello
Cr Paul Jenner

COUNCIL OFFICERS	Chief Executive Officer	-	Mr G Maxwell
	General Manager Community Wellbeing	-	Ms B Cernovskis
	General Manager Council Business Services	-	Mrs P Lee
	General Manager City Growth	-	Dr J Nagy
	General Manager City Infrastructure	-	Mr N Serle

WE ACKNOWLEDGE THE BOANDIK PEOPLES AS THE TRADITIONAL CUSTODIANS OF THE LAND WHERE WE MEET TODAY. WE RESPECT THEIR SPIRITUAL RELATIONSHIP WITH THE LAND AND RECOGNISE THE DEEP FEELINGS OF ATTACHMENT OUR INDIGENOUS PEOPLES HAVE WITH THIS LAND.

1. APOLOGY(IES)

Apologies received from Cr Steven Perryman and Cr Kate Amoroso.

That the apology from Cr Perryman and Cr Amoroso be received.

Moved: Mayor Martin

Seconded: Cr Jenner

Carried

2. LEAVE OF ABSENCE

Nil



3. CONFIDENTIAL ITEMS

3.1. Consideration for Exclusion of the Public

Item No. 3.2

Pursuant to section 90(2) of the Local Government Act 1999 the Council orders that all members of the public (with the exception of Mayor L Martin, Cr Sonya Meziniec, Cr Ben Hood, Cr Frank Morello, Cr Paul Jenner, Cr Max Bruins, Cr Christian Greco and Council Officers – Graeme Maxwell, Pamela Lee, Barbara Cernovskis, Nick Serle and Judy Nagy) be excluded from attendance at the meeting in order for the receipt, discussion and consideration in confidence of Agenda Item 3.2 *'Execution of Agreement – Legal Advice' Report No. AR19/12051*.

The Council is satisfied that, pursuant to section 90(3) (g), (h) and (j) of the Act, the information to be received, discussed or considered in relation to the agenda item is:

Matters that must be considered in confidence in order to ensure that the Council does not breach any law, order or direction of a court or tribunal constituted by law, any duty of confidence, or other legal obligation or duty.

Legal advice

Information the disclosure of which would divulge information provided on a confidential basis by or to a Minister of the Crown, or another public authority or official (not being an employee of the Council, or a person engaged by the Council).

In addition, the disclosure of this information would, on balance, be contrary to the public interest. The public interest in public access to the meeting has been balanced against the public interest in the continued non-disclosure of the information. The benefit to the public at large resulting from the withholding the information outweighs the benefit to it of disclosure of the information.

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 received and discussed relates to information provided to Council on a confidential basis creating a duty of confidence, advice received from Council's solicitors on a solicitor client basis, the disclosure of which may jeopardise the position of Council in relation to the subject matter.

Item No.	Subject Matter	S90(3) Grounds
3.2	<i>'Execution of Agreement – Legal Advice' Report No AR19/12051</i>	(g), (h) and (j)

Moved: Cr Meziniec

Seconded: Cr Hood

Carried



IN-CONFIDENCE

3.2. Execution of Agreement - Legal Advice - Report No. AR19/12051

COUNCIL RESOLUTION	
(a)	That Council Report No. AR19/12051 titled ' <i>Execution of Agreement – Legal Advice</i> ' as presented to the Council on 18 March 2019 be noted.
(b)	That the legal summary on the Commonwealth Grant Agreement be received.
(c)	Having considered a prudential report on the Community and Recreation Hub project at the Council meeting on 23 January 2019 and the favourable confirmation of \$15Million Commonwealth funding contribution toward the project, that Council commit to the progression of the project including execution of the Commonwealth Grant Agreement.
(d)	Formal funding agreement be pursued with the State Government and District Council of Grant for their respective contributions toward the Community and Recreation Hub.
(e)	That the Chief Executive Officer and Mayor be authorised to affix the Council Common Seal to the Commonwealth Grant Agreement and any other documentation necessary to give effect to the immediate progression of the project and grant agreements envisaged in resolutions (b) and (c).

Moved: Cr Mezinec

Seconded: Cr Bruins

Carried



3.3. Consideration for Keeping Items Confidential

That an order be made pursuant to Section 91(7) and recorded in the publicly released version of the minutes in accordance with Section 91(9) of the Local Government Act, 1999 that the document in relation to Item 3.2 which has been considered by the Council on a confidential basis pursuant to Section 90(3) be kept confidential.

Item No.	Subject Matter	S90(3) Grounds	Element To Be Kept Confidential	Duration
3.2	<i>'Execution of Agreement – Legal Advice'</i> Report No AR19/12051	(g), (h) and (j)	All Details	Until: Council has been released from its duty of confidence by the party that provided the information. To be reviewed annually in accordance with s91(9)

Moved: Cr Jenner

Seconded: Cr Hood

Carried

