

Expression of Interest Process

ITEM 5.1.1 25/11/2021

Council

Strategic Alignment - Enabling Priorities

Program Contact:

Shaun Coulls, Associate Director,
Strategic Property and
Commercial 8203 7036

Approving Officer:

Tom McCready, Acting Director
City Shaping

VS2021/6493

Confidential - s 90(3) (b) & (d) commercial advantage/prejudice commercial position of council/commercial information of a confidential nature

EXECUTIVE SUMMARY

On 24 August 2021 the City of Adelaide through its agent, Jones Lang LaSalle (JLL), launched the Expression of Interest (EOI) campaign for the sale and redevelopment of the 211 Pirie Street land together with the adjoining Pirie Flinders UPark car park.

The EOI sought interest from strategic developers to realise early and accelerated development of the 211 Pirie Street land. The adjoining car park asset was offered as a value-add opportunity with interested parties required to demonstrate an improved value proposition above its value to Council.

The EOI release was supported by an extensive marketing campaign including press and on-line advertising and broader reach through JLL's database and networks. The EOI closed on 30 September 2021 with three EOI submissions received prior to the closing time.

EOI submissions were assessed by an Evaluation Panel with oversight by a Probity Advisor to ensure fairness in the evaluation process. Following the receipt of proponent clarification responses, the Evaluation Panel agreed to exclude the proponent, Ultimate Property One Management, with their submission deemed non-conforming.

Following the evaluation of the remaining EOI submissions the Evaluation Panel unanimously agreed that NEXTDC was the highest ranked submission demonstrating clear delivery certainty and a strong commercial offer. The Evaluation Panel noted that the submission from the lower ranked proponent, Pelligra, lacked clarity with its commercial offer for the Pirie Flinders UPark well below Council's market valuation.

The Evaluation Panel has recommended the selection of NEXTDC as the preferred proponent for purpose of negotiating contractual documentation enabling the sale and redevelopment of the 211 Pirie Street land.

Council endorsement of the Evaluation Panel recommendation is sought by way of a Special Council meeting in order to expedite contractual negotiations noting NEXTDC's proposed program to finalise a contractual negotiation in late 2021 and commence the design and planning process in early 2022.

Consideration in confidence is sought because the information within this report contains commercial in confidence information together with proponent intellectual property.

RECOMMENDATION

That Council

1. Notes the commercial offer from NEXTDC for an amount of \$10.1 million (excluding GST) for the purchase of the 211 Pirie Street land.
2. Approves the Evaluation Panel's recommendation that NEXTDC be selected as the preferred proponent for the purpose of negotiating contractual documentation for the sale and redevelopment of the 211 Pirie Street land.
3. Authorises that the Chief Executive Officer be delegated authority to negotiate and execute a Contract for Sale with NEXTDC or its nominated entity together with associated legal documentation required at law or otherwise ancillary to the sale and redevelopment of the 211 Pirie Street land.

4. Authorises the Chief Executive Officer to sign and affix as necessary the common seal with the signature of the Lord Mayor for all legal documentation to give effect to the sale and redevelopment of the 211 Pirie Street land including the Contract for Sale and all documentation contemplated to be executed under the Contract for Sale or otherwise required at law or as part of or ancillary to the sale of 211 Pirie Street land.
 5. Receives the Prudential Report at Attachment A to Item 5.1.1 on the Agenda for the Special meeting of the Council held on 25 November 2021 to address the prudential matters for the sale of the 211 Pirie Street land in accordance with Section 48 of the *Local Government Act 1999 (SA)* (the Act).
 6. In accordance with Section 91 (7) & (9) of the *Local Government Act 1999 (SA)* and on the grounds that Item 5.1.1 [Expression of Interest Process] listed on the Agenda for the Special meeting of the Council held on 25 November 2021 was received, discussed and considered in confidence pursuant to Section 90 (3) (b) & (d) of the *Local Government Act 1999 (SA)*, the special meeting of the Council do order that:
 - 6.1. The resolution, the report, the discussion and any other associated information submitted to this meeting and the Minutes of this meeting in relation to the matter remain confidential and not available for public inspection until 31 December 2028.
 - 6.2. The confidentiality of the matter be reviewed in December 2022.
 - 6.3. The Chief Executive Officer be delegated the authority to review and revoke all or part of the order herein and directed to present a report containing the Item for which the confidentiality order has been revoked.
-

IMPLICATIONS AND FINANCIALS

City of Adelaide 2020-2024 Strategic Plan	Strategic Alignment – Enabling Priorities 5.04 Implement the Strategic Property Review
Policy	The sale of the 211 Pirie Street land by way of an open EOI meets the requirements of Council's Acquisition and Disposal of Land and Infrastructure Assets Policy which seeks a fair and transparent disposal process ensuring Council obtains the best outcome and value.
Consultation	The 211 Pirie Street land has been the subject of extensive community consultation for the purpose of the revocation of its community land status.
Resource	The next steps as outlined in this report will be undertaken by the Strategic Property & Commercial Program.
Risk / Legal / Legislative	The 211 Pirie Street EOI was undertaken in accordance with a probity framework under the guidance of a Probity Advisor. The next steps as outlined in this report will be the subject of external legal review.
Opportunities	The redevelopment will reinforce Adelaide as a destination of choice for innovative and world-leading technologies. NEXTDC's datacentre will provide the necessary digital infrastructure to support the presence of global high-tech companies and key industries within South Australia.
21/22 Budget Allocation	The Property & Commercial Program's 2021/22 budget incorporates \$100,000 to implementation the Strategic Property Action Plan.
Proposed 22/23 Budget Allocation	Not as a result of this report
Life of Project, Service, Initiative or (Expectancy of) Asset	Not as a result of this report
21/22 Budget Reconsideration (if applicable)	Not as a result of this report
Ongoing Costs (e.g. maintenance cost)	Not as a result of this report
Other Funding Sources	The sale and redevelopment of the 211 Pirie Street land will realise a \$100 million capital investment within the city by NEXTDC.

GROUNDS AND BASIS FOR CONSIDERATION IN CONFIDENCE

Grounds

Section 90(3) (b) & (d) of the *Local Government Act 1999* (SA)

- (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 prejudice the commercial position of the council; and
 - (ii) would, on balance, be contrary to the public interest.
- (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.

Basis

This Item contains certain confidential information (not being a trade secret) the disclosure of which could reasonably be expected to confer a commercial advantage on a person which whom the council is conducting business, prejudice the commercial position of the council and prejudice the commercial position of the person who supplied the information and confer a commercial advantage to a third party.

The disclosure of information in this report could reasonably prejudice the commercial position of the council with respect to its commercial dealings with the land as well as prejudice the commercial position of parties who have supplied intellectual property and commercial in confidence information.

Public Interest

The Committee is satisfied that the principle that the meeting be conducted in a place open to the public has been outweighed in the circumstance given that the information in this report, including certain financial information and further direction, may prejudice Council's future commercial dealings with regard to its strategic land holding. In addition, information within this report contains the intellectual property and commercial in confidence information of parties who have supplied information which if released could negatively impact Council. On this basis, the disclosure of such information may severely prejudice the City of Adelaide's ability to influence the proposal for the benefit of the City of Adelaide and community in this matter.

DISCUSSION

Background

1. The 211 Pirie Street land, located adjacent the Pirie Flinders UPark car park, is a key Council land holding with frontages to Pirie Street and Frome Street and a site area of 1,569m². The land is strategically located within Pirie Street which is undergoing a resurgence including the 81-83 Pirie Street redevelopment, proposed Hyatt hotel development and new food and beverage offerings. The site also offers proximity to Rundle Street and Lot 14.
2. The 211 Pirie Street land is under-utilised and not representative of highest and best use having been occupied by Volleyball SA for over 20 years following a temporary development approval for beach volleyball courts. The land is located within the Capital City Zone providing flexibility with regard to use together with no height restriction.
3. On 14 April 2020 Council received the Strategic Property Action Plan approving in principle the sale of under-performing assets estimated in the order of \$25 to \$30 million.

4. At the above meeting Council endorsed a range of asset opportunities including the sale and redevelopment of the 211 Pirie Street land (potentially with the adjoining Pirie Flinders UPark) subject to further investigations and revocation of the land's community land status.
5. On 15 December 2020 Council received a divestment strategy for the 211 Pirie Street land together with the adjoining Pirie Flinders UPark. Council resolved at this meeting to authorise the Chief Executive Officer to initiate an Expression of Interest (EOI) with the 211 Pirie Street land to be offered as the core opportunity and the adjoining Pirie Flinders UPark to be included as a value-add offering. The EOI would be informed by the identified desired outcomes.
6. At the meeting of 15 December 2020 Council resolved to commence the community land revocation process for the purpose of the sale and redevelopment of the 211 Pirie land. Extensive public consultation followed during February and March 2021 in accordance with Council's Community Consultation Policy.
7. On 13 July 2021 Council resolved to formerly revoke the 211 Pirie Street land from its community land classification enabling sale and redevelopment. This followed necessary approvals by Council and the Minister for Planning & Local Government in accordance with the Act.

Market Sounding and EOI Process

8. A market sounding process was undertaken by Council's appointed agent, Jones Lang LaSalle (JLL), prior to the release of the EOI. The market sounding sought to obtain market intelligence and appetite with regard to:
 - 8.1. The 211 Pirie Street land sale opportunity including the guidance offered by the desired outcomes.
 - 8.2. The merit of the Pirie Flinders UPark value-add opportunity including market appetite for a premium price above its market value.
9. The market sounding targeted a broad range of known and active purchaser groups including local and interstate developers and investors. This covered a range of market segments including mixed-use, commercial, hotel, residential and build to rent developers/ operators.
10. The above market sounding process was undertaken under the guidance of Council's engaged Probity Advisor.
11. A range of feedback was received from the developer and investor market including:
 - 11.1. The complexities of dealing with Government which was considered to be multi-layered.
 - 11.2. Purchaser interest in the 211 Pirie Street land only with development timing in nearly all cases subject to commercial pre-commitment or residential pre-sales.
 - 11.3. Separate purchaser interest in the Pirie Flinders UPark only with groups willing to purchase the 211 Pirie Street land to assist in the car park acquisition (with no clear plans to develop the 211 Pirie Street land). Purchasers expressed an unwillingness to pay anything over the market value for the Pirie Flinders UPark asset.
12. Further risks identified by developers and investors included financing risk associated with vacant land, market depth for office tenants, perception of limited amenity for residential development, ability to re-purpose or develop car park air rights and car park acquisition risk given future changes to transport modes. These risks were taken into consideration when developing the EOI documentation.
13. On 24 August 2021 Council, through its agent JLL, released the 211 Pirie Street land and Pirie Flinders UPark opportunity to the open market. The EOI release was supported by an extensive marketing campaign including:
 - 13.1. Local and national press advertising.
 - 13.2. The Advertiser Business Journal Editorial.
 - 13.3. On-site signage to Pirie Street and Frome Street.
 - 13.4. Listing campaign across multiple online portals.
 - 13.5. E-brochure to over 2,100 subscribers.
 - 13.6. Promotion via the JLL global investor centre with promotion across JLL's database and global offices promoting to national and global markets.
14. The EOI Information Memorandum as available [here](#) (Link 1) sought interest from strategic developers to unlock the 211 Pirie Street site either on a stand-alone basis or with the adjoining car park. Key requirements as set out within the EOI Information Memorandum comprised:

- 14.1. The core offer of the 211 Pirie Street land as the driver for the sale outcome with early and accelerated delivery to avoid the possibility of the site remaining vacant for an extended period (mitigating site land banking).
 - 14.2. Demonstrated capability to commence of construction within 18 months of contract execution.
 - 14.3. Inclusion of the Pirie Flinders UPark to a purchaser who can demonstrate a compelling rationale for the two properties to be sold together for an improved value and development outcome providing broader benefits to the City of Adelaide.
 - 14.4. A compelling rationale for the Pirie Flinders UPark to reflect a value proposition to Council above its value, noting a desire by Council to operate the car park to service city users and provide an income stream.
 - 14.5. Potential to explore a range of options for the car park including air rights or cantilevered development, direct connection between the car park and 211 Street development site or a long-term redevelopment of the combined sites.
15. The EOI sought that the redevelopment act as a catalyst for employment, development and continued growth within the City of Adelaide. Although a range of uses were possible on the site a list of desired outcomes were outlined providing guidance to interest parties. Innovative proposals were sought to unlock the 211 Pirie Street land enabling early and accelerated development.
 16. The desired outcomes outlined opportunities for high-quality mixed-use development, ground floor activation, open/green space, innovative commercial space (i.e., advanced economy businesses, start-ups), housing opportunities (i.e., build to rent, key worker, owner occupier) and sustainability features.
 17. The EOI marketing campaign generated 4,400 clicks on the online portals with nearly 50 interested parties seeking access to the EOI Information Memorandum and engaging directly with the JLL selling team. JLL's outline of the market sounding and EOI process is available [here](#) (Link 2).

EOI Evaluation Approach

18. An Evaluation Plan was established to provide guidance to the evaluation approach incorporating key probity considerations. The Evaluation Plan was informed by the Evaluation Panel and the appointed Probity Advisor and is available [here](#) (Link 3).
19. The appointed Evaluation Panel incorporated external and City of Adelaide representation encompassing expertise across finance, governance, property and commercial. Individual membership comprised:
 - 19.1. Mark Booth, Director, BRM Advisory.
 - 19.2. Tom McCready, Acting Director, City Shaping
 - 19.3. Shaun Coulls, Acting Associate Director, Strategic Property & Commercial
 - 19.4. Grace Pelle, Manager Finance & Procurement
20. The Evaluation Panel was supported by the commercial advisor, JLL, together with the Probity Advisor, Nexia Edwards Marshall, to oversee the evaluation process.
21. The Evaluation Panel agreed on the following evaluation criteria weightings prior to the opening of EOI submissions:

Core Criteria	Weightings
Development Capability and Capacity	25%
Certainty of Delivery	25%
Alignment with Desired Outcomes	15%
Commercial Terms	35%
Total Core Criteria	100%
Value-Add Criteria	20%
Total Core and Value-Add Criteria	120%

22. Proponent scores were multiplied by the above criteria weightings. The additional value-add criterion considered those proposals which included the Pirie Flinders UPark, noting that a value proposition was required above its value.

Proponent Evaluation

23. The Expression of Interest closed on 30 September 2021 with a total of three (3) submissions received prior to the closing time. JLL has noted that the high level of interest during the campaign and the resulting low number of formal submissions is reflective of the market which has the benefit of multiple property opportunities.
24. EOI submissions were received from the following three interstate groups:
 - 24.1. Ultimate Property One Management Pty Ltd
 - 24.2. Pelligra
 - 24.3. NEXTDC
25. Following the initial consideration of EOI submissions the Evaluation Panel sought clarifications from all three proponents with each proponent also given the opportunity to improve their commercial offer.
26. Based on the clarification responses, which included the opportunity to address key aspects of the evaluation criteria, the Evaluation Panel agreed to exclude Ultimate Property One Management from the evaluation process on the basis that it was non-conforming. Key reasoning comprised:
 - 26.1. The submission related to the Pirie Flinders UPark only. This was inconsistent with the EOI Information Memorandum which required submissions to address the 211 Pirie Street land.
 - 26.2. The submission had insufficient information for the purposes of the EOI assessment.
27. A detailed assessment was undertaken with respect to the remaining two proponent submissions. Pelligra confirmed through the clarification process that it would consider the 211 Pirie Street land in isolation or together with the Pirie Flinders car park. NEXTDC was however only interested in the 211 Pirie Street land given potential security concerns associated with secure data centre operations above an operating car park. A summary of evaluation considerations relating to the two proponents is set out below.

Pelligra

28. The Evaluation Panel considered that Pelligra clearly demonstrated the experience, capability and capacity to develop.
29. Pelligra, headquartered in Victoria, was noted as having national operations across property development, investment and management with assets of some \$1 billion. Recent property acquisitions and refurbishments were identified as Lionsgate (\$250m investment in former Holden Plant, Elizabeth) and 89 Pirie Street (\$40m investment). Although Pelligra had been acquiring city property its projects were largely interstate.
30. The Evaluation Panel noted that Pelligra presented separate approaches for the 211 Pirie Street site in isolation and as a combined property holding. Although the Evaluation Panel considered that each approach was generally adequate it lacked clarity with respect to delivery certainty with no detailed delivery program provided.
31. Pelligra's submission responded well to the desired objectives offering a range of uses (which were dependant on its option for the 211 Pirie Street land and combined asset holdings). Uses across both sites comprised retail, offices, expanded car park as well as rooftop offers for childcare, gym and volleyball courts. Future potential for residential uses on the 211 Pirie Street site was also highlighted. However, the Evaluation Panel noted that Pelligra's ability to deliver on the desired outcomes, including the residential component, enabling early and accelerated development was uncertain.
32. Pelligra's commercial arrangement lacked clarity incorporating various options including 99-year leasehold for the 211 Pirie Street land or alternatively freehold ownership by Pelligra, car park sale and leaseback (terms of this arrangement were not provided) and joint venture arrangement (terms of the arrangement were not provided).
33. Pelligra's commercial offer equated to \$23 million including:
 - 33.1. \$7 million offer for the 211 Pirie Street land (above Council's valuation of \$6.5m).
 - 33.2. \$16 million for the Pirie Flinders UPark asset (well below Council's valuation of \$25 million).
34. Pelligra's commercial offer did not satisfy the additional value-add criterion given that it did not present a value proposition for the car park above its value and was in fact \$9 million below valuation. In addition, the commercial terms of the sale and leaseback arrangement were not provided. This created a further risk to future UPark income noting that the Pirie Flinders UPark received net income of \$1.76 million in 2020/21.

NEXTDC

35. The Evaluation Panel noted that NEXTDC had clearly demonstrated the experience, capability and capacity to develop. NEXTDC, an ASX 100-listed Australian technology company, specialises in innovative data centre services including cloud-based solutions. The company, headquartered in Brisbane, owns and operates nine data centres nationwide with a further nine centres in the design and construction phase. South Australia is the only state not represented within the NEXTDC portfolio. This growth is expected to see NEXTDC's annual revenue reach \$285 to \$295 million in 2022.
36. The NEXTDC submission set out an indicative timeline with milestone dates for the proposed data centre on the 211 Pirie Street land. NEXTDC sought to expedite site purchase and delivery by way of contract execution in December 2021 with construction commencement in January 2023. NEXTDC would fund, own and operate the facility with no pre-commitment required.
37. NEXTDC's submission proposed a defence standard datacentre representing a \$100 million capital investment comprising:
 - 37.1. Reception, break out spaces, end of trip, meeting rooms and hardware including data racks.
 - 37.2. Mission Critical Centre providing smart hub functionality and a 'Centre of Excellence' enabling collaboration for SMEs, enterprise and government to accelerate digital transformation. This included 50 seat training theatre, events space, training/ lab and meeting facilities.
 - 37.3. Opportunities for incubator and research and development together with programs for cadetships, internships, graduate placements and PhD research in partnership with the University of South Australia and University of Adelaide.
38. The NEXTDC proposal supported aspects of the desired outcomes relating to innovative commercial office (advanced economy businesses and start-ups) and sustainability together with early and accelerated delivery. Although the proposal was noted by the Evaluation Panel as not addressing all of the desired outcomes it was considered to present a significant city impact including:
 - 38.1. Connection to Lot 14 and integration with Council's Ten Gigabit Adelaide network.
 - 38.2. Provision of digital infrastructure to support the growth of key industries including defence, space, hi-tech/creative industries, international education, cultural/ sustainable tourism.
 - 38.3. Growth of hi-tech companies in South Australia based on NEXTDC's existing partnership network including, but not limited to, Accenture, Microsoft, Amazon, Google, IBM and Oracle (noting that growth is currently constrained without the necessary digital infrastructure offered by the proposed data centre).
 - 38.4. Improved capacity for local business and research institutions to carry out Artificial Intelligence and Machine Learning reinforcing Adelaide as a destination for innovative and world-leading technologies.
 - 38.5. Connection between the proposed Adelaide data centre and NEXTDC's interstate network providing the opportunity to trade, partner and compete globally.
 - 38.6. The opportunity for further capital investment within the city by way of a second datacentre following the development at 211 Pirie Street.
39. NEXTDC presented a purchase offer for the 211 Pirie Street land of \$10.1m which was \$3.6 million above Council's valuation. NEXTDC's offer equates to \$6,437 per square metre setting a new sales benchmark within the precinct (the current sales benchmark of \$5,700 per square metre relates to the recent sale of the nearby Royal Society for the Blind building).
40. As part of its commercial offer NEXTDC proposed an initial payment amount of \$100,000 with a 10% deposit upon contract execution. The balance would be paid at 30 days from contract execution. These terms would be subject to negotiation.
41. A further summary of the Pelligra and NEXTDC proposals with respect to the evaluation criteria is available [here](#) (Link 4).

Evaluation Panel Recommendation

42. The Evaluation Panel agreed on the following total weighted scores based on its assessment of the two conforming EOI submissions (including the two Pelligra options):

Proponent	Total Weighted Score
NEXTDC - 211 Pirie Street land only	445
Pelligra - 211 Pirie Street site and Pirie Flinders UPark	305
Pelligra - 211 Pirie Street land only	300

43. On this basis, the Evaluation Panel unanimously agreed that NEXTDC was the highest ranked submission demonstrating clear delivery certainty and a strong commercial offer.
44. The Evaluation Panel noted that the submission from the lower ranked proponent, Pelligra, lacked clarity with respect to its proposal and commercial offer with the purchase price for the Pirie Flinders UPark well below Council's market valuation.
45. The Evaluation Panel has recommended the selection of NEXTDC as the preferred proponent for the purpose of negotiating contractual documentation enabling the sale and redevelopment of the 211 Pirie Street land.
46. Brenton Ellery, Nexia Edwards Marshall, as the appointed Probity Advisor has provided correspondence as available [here](#) (Link 5) confirming that he is not aware of any probity issues resulting from the evaluation process.
47. The Department for Trade and Investment (DTI) is aware of the NEXTDC submission given that the department has been working closely with NEXTDC for the last 18 months. DTI has confirmed its support to NEXTDC's proposal for the 211 Pirie Street land noting that it will contribute towards South Australia's growth targets and jobs. In particular, DTI has advised that the proposal will encourage more technology companies to reside within the state while acting as a gateway for international organisations to connect to Adelaide. The letter of support from DTI is available [here](#) (Link 6).

Prudential Reporting

48. The City of Adelaide is required under Section 48 of the Act to consider a report addressing the prudential issues when engaged in projects exceeding the indexed amount of \$4.7 million.
49. The sale of land does not constitute an activity that requires the preparation of a prudential report under the Prudential Management Policy or the Act. Notwithstanding, BRM Advisory was commissioned to prepare a prudential report as a matter of good governance to ensure Council is fully informed with respect to the extent to which the provisions of the Prudential Management Policy and Section 48 of the Act have been satisfied in the due diligence processes that have accompanied the sale of the land.
50. The Prudential Issues Report for the sale of the 211 Pirie Street land addressing the issues pursuant to Section 48(2) of the Act is provided at **Attachment A**.
51. The prudential report has noted that the prudential issues set out under Section 48(2) of the Act have been met or partially met (with respect to Section 48(2)(c) noting that the City of Adelaide has not quantified the economic impact) or are not yet met (with respect to Section 48(2)(h) with risks associated with the land sale to be addressed through the Contract for Sale).
52. In particular, the prudential report notes the following with respect to the land sale:
- 52.1. The land sale is consistent with Council's strategic management plans and is aligned to relevant state and national plans.
- 52.2. The project is not expected to negatively impact businesses in the proximity, noting that NEXTDC has forecast 150 jobs during construction, at least 20 full time jobs and 230 indirect jobs when the data centre is operational together with visitation to its Mission Critical Centre.
- 52.3. Improvements to Council's financial position resulting from sale proceeds and an on-going increase in rates (in perpetuity) generated by the development. This would more than offset the loss of revenue from the Volleyball SA lease (actual net rental of \$14,800 was received in 2020/21). In addition, the land sale will not result in any recurrent costs or whole of life costs.
- 52.4. Realisation of a gain on sale of \$5.2 million based on the sale price of \$10.1 million (excluding GST) and the current value carried in the City of Adelaide's balance sheet at \$4.9 million.

- 52.5. A positive impact on the Operating Surplus Ratio, Net Financial Liabilities Ratio and Cash Flow from Operations Ratio (through increases in revenue).
- 52.6. A positive impact on the Prudential Borrowing Limits (including a decrease in Asset Test Ratio as borrowings decrease by more than the value of saleable property assets, increase in rates revenue improving Council's ability to service interest expenses and improved Leverage Test Ratio through reduction in total borrowings and increased revenue from Council rates).
53. Section 48(5) of the Act specifies that the prudential report be made available for public inspection. The attached report has been prepared on the basis of providing information to Council for its consideration. It is necessary that the final report to be made available to the public exclude any information which is considered to be commercial in confidence.

Next Steps:

54. NEXTDC has indicated that it wishes to accelerate contractual negotiations enabling site acquisition and redevelopment (with construction commencement forecast in early 2023).
55. Subject to Council's approval of the Evaluation Panel's recommendation, it is proposed to proceed to contractual negotiations and subsequent execution of a Contract for Sale with NEXTDC. Key matters to be addressed as part of this process include:
- 55.1. Conditions precedent to settlement including NEXTDC due diligence and board approval.
- 55.2. Confirmation of project milestone dates supporting project delivery.
- 55.3. Commercial terms including deposit and settlement timing noting that settlement is anticipated to take place in the 2021/22 financial year.
- 55.4. The design and development assessment process noting that Council will not have vendor approval rights (Council's role will be limited to its comment via the SCAP assessment process). Example imagery of NEXTDC's interstate operations is available [here](#) (Link 7).
- 55.5. Timing associated with the occupation of Volleyball SA.
56. Volleyball SA's lease has expired, and they are currently holding over on a monthly basis. In this regard, Council has identified a section of the former netball courts in Bonython Park/Tulya Wardli (Park 27) for repurposing into a beach volleyball facility subject to Volleyball SA receiving sufficient funding.
57. The State Government has advised that they will work with Volleyball SA, Council and Council's preferred proponent to assist Volleyball SA to transition to the new location. This will include assistance to explore applicable grants through the Office for Recreation, Sport and Racing together with potential community sponsorships.
58. The contractual negotiation will include discussion with regard to the occupation of Volleyball SA and the timing of the notice to vacate. This will consider Volleyball SA's need to occupy the land over the summer period together with the benefits that Volleyball SA's activities will provide on-site during this period.
59. Negotiations between Council and NEXTDC would remain confidential. An announcement on the successful proponent and nature of the NEXTDC proposal will be made following contract execution. This will be supported by a communications and media plan.

DATA AND SUPPORTING INFORMATION

Link 1 – EOI Information Memorandum

Link 2 – JLL Letter - Market Sounding and EOI process

Link 3 – EOI Evaluation Plan

Link 4 – EOI Proponent Summary

Link 5 – Nexia Edwards Marshall Letter – Probity Advice

Link 6 – DTI Letter – NEXTDC Conformation of Support

Link 7 – NEXTDC Example Imagery

ATTACHMENTS

Attachment A – 211 Pirie Street land – Section 48 Prudential Report (Confidential)

- END OF REPORT -

Confidential

Confidential Item 5.1.1 - Attachment A

Disclaimer: This document is for the exclusive use of the person named on the front of this document ('**Recipient**'). This document must not be relied upon by any person who is not the Recipient. BRM Advisory does not take responsibility for any loss, damage or injury caused by use, misuse or misinterpretation of the information in this document by any person who is not the Recipient. This document may not be reproduced in whole or in part without permission.

BRM ADVISORY
BUSINESS RESOURCE MANAGEMENT

Level 8, 420 King William Street, Adelaide SA 5000
Tel 08 8168 8400 Fax: 08 8168 8499

ABN: 65 067 721 797

TABLE OF CONTENTS

EXECUTIVE SUMMARY	I
1. INTRODUCTION	1
1.1 Background.....	1
1.2 The Project.....	2
1.3 Legal Framework and Prudential Issues	2
2. PRUDENTIAL REVIEW	4
2.1 Relationship with Strategic Management Plans	4
2.2 Objectives of the Development Plan	5
2.3 Contribution to Economic Development.....	6
2.4 Level of Consultation.....	7
2.5 Revenue, Revenue Projections and Potential Financial Risks.....	8
2.6 Recurrent and Whole of Life Costs.....	9
2.7 Financial Viability	10
2.8 Risk Management.....	11
2.9 Project Delivery	12
2.10 Sale or Disposition of Land	13
ATTACHMENT ONE: LOCAL GOVERNMENT ACT, 1999 SECTION 48.....	14

EXECUTIVE SUMMARY

S48 (2)	Description	Comments	Finding
(a)	The relationship with strategic management plans .	The sale of the Land is consistent with CoA strategic management plans and is aligned with relevant state and national plans	Requirements of S48 (2) (a) have been met.
(b)	The objectives of the Development Plan .	The Project does not involve the CoA in any activity which constitutes development under the PDI Act, or for obtaining any subsequent development approvals.	Requirements of S48 (2) (b) have been met.
(c)	The expected contribution to the economic development of the local area. The impact on businesses in the proximity . Impacts on fair competition in the marketplace.	The sale of the Land will catalyse investment that positively impacts economic development in the city. The CoA has not quantified this economic impact. The Project is not expected to negatively impact businesses nor raise competition issues.	Requirements of S48 (2) (c) have been partially met.
(d)	Consultation with the local community and community influence on the project.	The CoA undertook community consultation on the revocation of the community land status of the Land.	Requirements of S48 (2) (d) have been met.
(e)	Revenue projections and potential financial risks .	The CoA financial position will be improved from the proceeds of sale and the on-going increase in Council Rates.	Requirements of S48 (2) (e) have been met.
(f)	Recurrent and whole-of-life costs , any financial arrangements	The Project will not result in any recurrent costs, nor are there any whole of life cost. The Proponent will be contractually bound to pay for the Land.	Requirements of S48 (2) (f) have been met.
(g)	Financial viability of the project.	The Project will have a positive impact on the CoA's financial indicators.	Requirements of S48 (2) (g) have been met.
(h)	Risks associated with the project, and steps taken to manage, reduce or eliminate risks.	The Project does not require a risk assessment. The CoA intends to mitigate risk through the Contract for Sale.	Requirements of S48 (2) (h) have not yet been met.
(i)	Appropriate mechanisms or arrangements for carrying out the project .	The Project has been conducted consistent with the Acquisition and Disposal of Land and Infrastructure Assets Policy.	Requirements of S48 (2) (i) have been met.
(j)	If the project involves the sale of land , the valuation of the land by a qualified valuer	The CoA obtained a valuation prepared by a qualified valuer.	Requirements of S48 (2) (j) have been met.
	An appropriate level of due diligence is applied to the proposed project.	An appropriate level of 'due diligence' has been applied to the Project to ensure Elected Members have been informed about the Project and its various impacts.	Complies with Prudential Management Policy.

1. INTRODUCTION

1.1 Background

- 1.1.1 The City of Adelaide owns the land at 211 Pirie Street, Adelaide (the Land). The Land is a 1,569m² parcel with frontages to Pirie Street and Frome Street and is currently improved and used as a beach volleyball court. The relevant certificate of title is Volume 5471 Folio 983 Allotment 6.
- 1.1.2 In early April 2020 the CoA prepared a Strategic Property Review which aimed to:
- 1.1.2.1 Provide a future roadmap and a strategic approach to Council's property activities.
 - 1.1.2.2 Identify under-performing assets which no longer provide public value.
 - 1.1.2.3 Commercialise returns from under-performing assets for reinvestment into city shaping and income generating opportunities (optimising the performance of the property portfolio).
 - 1.1.2.4 Leverage existing strategic holdings aligned to city wide initiatives and city shaping projects.
 - 1.1.2.5 Support city liveability, growth and investment through city shaping projects.
 - 1.1.2.6 Enable new revenue opportunities providing funds for community benefits.
- 1.1.3 On 14 April 2020 Council received the Strategic Property Action Plan and approved, in principle, the sale of under-performing assets estimated in the order of \$25 million to \$30 million. The Land was included as an asset which was under-utilised and not representative of highest and best use.
- 1.1.4 At the meeting on 14 April 2020 Council endorsed a range of asset opportunities including the sale and redevelopment of the Land, potentially with the adjoining Pirie Flinders UPark car park, subject to further investigations and the revocation of the Land's community land status.
- 1.1.5 On 15 December 2020 Council received a divestment strategy for the Land together with the adjoining Pirie Flinders UPark and resolved to authorise the Chief Executive Officer to initiate an Expression of Interest (EOI) process for the Land with the adjoining Pirie Flinders UPark included as part of the EOI as a value-add offering.
- 1.1.6 The CoA engaged JLL to conduct the EOI process. The EOI was released on 24 August 2021 and supported by an extensive marketing campaign. The EOI sought interest from developers for the Land on a stand-alone basis or with the adjoining Pirie Flinders UPark. The key requirements of the EOI were:
- 1.1.6.1 The Land as the driver for the sale outcome with early and accelerated delivery to avoid the site remaining vacant for an extended period.

- 1.1.6.2 Demonstrated capability to commence construction within 18 months of contract execution.
 - 1.1.6.3 The inclusion of the Pirie Flinders UPark where a developer could demonstrate a compelling rationale for the two properties to be sold together for an improved value and development outcome. The value proposition for the car park to be above its value, noting the CoA desire to continue to operate the car park.
 - 1.1.6.4 The development to act as a catalyst for employment and growth.
 - 1.1.6.5 Identified desired outcomes were for high-quality mixed-use development, ground floor activation, open/green space, innovative commercial space (i.e., advanced economy businesses, start-up), housing opportunities (i.e., build to rent, key worker, owner occupier) and sustainability features.
- 1.1.7 The CoA appointed an Evaluation Panel with oversight from a Probity Advisor and support from JLL as commercial advisor. The Evaluation Panel comprised
- Mark Booth, Director, BRM Advisory;
- Tom McCready, Director, City Shaping;
- Shaun Coulls, Associate Director, Strategic Property & Commercial; and
- Grace Pelle, Manager Finance & Procurement.
- 1.1.8 The EOI process closed on 30 September 2021 and drew three responses. The responses were evaluated after seeking respondent clarifications in accordance with the Evaluation Plan.
- 1.1.9 The Evaluation Panel unanimously agreed that the highest ranked response, submitted by NEXTDC Limited (NEXTDC), be recommended to Council as the preferred proponent for the purposes of negotiating contractual documentation relating to the sale of the Land.
- 1.1.10 NEXTDC proposes to construct a global Tier IV standard data centre utilising world-class energy efficient data centre design principles, providing for the highest standard of operational performance, security, and sustainability.

1.2 The Project

- 1.2.1 The Project is the sale of 211 Pirie Street, Adelaide to NEXTDC (or nominees) for \$10.1 million (excluding GST).

1.3 Legal Framework and Prudential Issues

- 1.3.1 The Local Government Act 1999 (Act) Section 48 states that a council must develop and maintain prudential management policies, practices and procedures for the assessment of projects to ensure that the council—

- (a) acts with due care, diligence and foresight; and
- (b) identifies and manages risks associated with a project; and
- (c) makes informed decisions; and
- (d) is accountable for the use of council and other public resources.

1.3.2 The CoA adopted a Prudential Management Policy on 27 February 2018 (Decision ID#18298) which satisfies the requirements of the Act. The Prudential Management Policy and the Act 1999 require Council to consider a report addressing the prudential issues set out in subsection 2 of Section 48 when a project meets certain criteria, specified in (1) (b), namely where a council:

- (b) *engages in any project (whether commercial or otherwise and including through a subsidiary or participation in a joint venture, trust, partnership or other similar body)—*
 - (i) *where the expected operating expenses calculated on an accrual basis of the council over the ensuing five years is likely to exceed 20 per cent of the council's average annual operating expenses over the previous five financial years (as shown in the council's financial statements); or*
 - (ii) *where the expected capital cost of the project over the ensuing five years is likely to exceed \$4 000 000 (indexed); or.*
 - (iii) *where the council considers that it is necessary or appropriate.*

1.3.3 The CoA Prudential Management Policy defines a project as:

"a new and discrete undertaking or activity that would involve the expenditure of money, deployment of resources, incurring or assuming a liability, or accepting an asset."

1.3.4 Under the Policy and the Act the sale of Land does not constitute activity that requires the preparation of a prudential report.

1.3.5 The CoA, as a matter of good governance to ensure Council is fully informed, has commissioned this report to ascertain the extent to which the provisions of the Prudential Management Policy and Section 48 of the Act have been satisfied in the due diligence processes that have accompanied the Project.

1.3.6 The prudential issues set out Section 48 of the Act are reproduced in full as Attachment One.

1.3.7 It is noted that the author was Chair of the Evaluation Panel and that this does not constitute an interest in the project for the purposes of section 48(4a) of the Act.

2. PRUDENTIAL REVIEW

2.1 Relationship with Strategic Management Plans

Section 48 (2) (a) the relationship between the project and relevant strategic management plans;

Elements	Relevant Documents	Prudential Review Comments
Council Plans	Strategic Plan 2020 – 2024 2021-22 Annual Business Plan and Budget 2021-30 Long Term Financial Plan Infrastructure and Asset Management Plans	The Project will facilitate the development of a modern data centre that will assist the CoA to progress the 'Strong Economies' Community Outcome in the Strategic Plan. One of the enabling priorities in the Strategic Plan is to implement the Strategic Property Review. The Project is identified in this review. The LTFP contains provisions for the implementation of the Strategic Property Review.
Regional Plans		None identified.
State Plans	Growth State 30 Year Plan for Greater Adelaide	Growth State is the South Australian Government's plan for economic growth. It responds to the needs of industry and focuses on building South Australia as a place to invest, expand existing business or create a new one. The development of the Tier IV data centre, which is facilitated by the Project, will provide important underpinning infrastructure for many of the nine industry sectors which the State Government has identified as key areas for growth. The Department for Trade and Investment has been working with the Proponent for the past 18 months and is supportive of the proposal.
National Plans	Smart Cities Plan	The Australian Government Smart Cities Plan (2016) sets out the Government's vision for productive and liveable cities that encourage innovation, support growth and create jobs. The Plan has three pillars: Smart Investment, Smart Policy and Smart Technology and recognises there is an opportunity for cities to leverage new technologies leveraging open and real time data and drive the use of energy efficient technologies. The development provides underpinning infrastructure for this to occur within the CoA.
<p>Findings: Requirements of Section 48 (2) (a) have been met. The sale of the Land is consistent with CoA strategic management plans and is aligned with relevant state and national plans.</p>		

2.2 Objectives of the Development Plan

Section 48 (2) (b) the objectives of the Development Plan in the area where the project is to occur;

Elements	Relevant Documents	Prudential Review Comments
Development Plan	Planning, Development and Infrastructure Act 2016 Planning and Design Code	The Project is the sale of Land which does not constitute development under the PDI Act and therefore the objectives of the Development Plan are not relevant. It should be noted that the sale of the Land will lead to development on the Land. The Proponent is responsible for obtaining at its cost all required development approvals.
Development Zone	None	The Land is located within the Capital City Zone. The Capital City Zone supports a variety of development uses including commercial and provides flexibility with regard to use and height restrictions.
Approving Authority	Planning, Development and Infrastructure Act 2016	Not relevant.
<p>Findings: Requirements of Section 48 (2) (b) have been met. The Project does not involve the CoA in any activity which constitutes development under the PDI Act, or for obtaining any subsequent development approvals.</p>		

2.3 Contribution to Economic Development

Section 48 (2) (c) the expected contribution of the project to the economic development of the local area, the impact that the project may have on businesses carried on in the proximity and, if appropriate, how the project should be established in a way that ensures fair competition in the market place;"

Elements	Relevant Documents	Prudential Review Comments
Contribution to economic development	EOI response	<p>The Proponent has stated they will invest capital of \$100 million in the development of the data centre.</p> <p>According to the Proponent the construction of the data centre will create 150 jobs during construction and at least 20 full time jobs are expected to be created when the data centre is operational. Further, the Proponent has estimated that the data centre is expected to deliver indirect employment of up to 230 jobs.</p> <p>The data centre will provide digital infrastructure that can be leveraged to promote opportunities to the CoA, the South Australia Government and support key priority sectors such as Defence, Space, Hi-tech and Creative Industries, as well as International Education and Cultural and Sustainable Tourism.</p>
Impact on businesses in the proximity	None	The Project is not expected to negatively impact on businesses in the proximity.
Fair competition	None	The sale of Land was undertaken through an open EOI and does not involve CoA undertaking a Significant Business Activity, accordingly it does not raise any material competition issues.
<p>Findings: Requirements of Section 48 (2) (c) have been partially met. The sale of the Land will catalyse investment that positively impacts economic development in the CoA. The requirements are partially met as the CoA has not independently quantified the economic impact.</p>		

2.4 Level of Consultation

Section 48 (2) (d) the level of consultation with the local community, including contact with persons who may be affected by the project and the representations that have been made by them, and the means by which the community can influence or contribute to the project or its outcomes;

Elements	Relevant Documents	Prudential Review Comments
Level of consultation	Local Government Act 1999 City of Adelaide Act 1998 Community Consultation Policy	<p>The CoA Community Consultation Policy, prepared pursuant to Section 50 of the Act, sets out the steps that Council intends to take to deliver effective community consultation, whilst fulfilling Council's requirements under the Act.</p> <p>Under the Act, consultation is required on the revocation of community land.</p> <p>Community consultation on the community land revocation process commenced on 25 February 2021 and closed on 29 March 2021, which extended beyond the 21 day requirement in the Community Consultation Policy.</p> <p>The proposal to revoke the community land status identified the purpose was for the sale and redevelopment of the Land for a mixed-use development including opportunities for ground level retail activation.</p> <p>Council resolved to revoke the community land classification of the Land on 13 July 2021.</p>
Community influence or contribution to the Project	None	<p>On 11 May 2021 Council considered the submissions received from the public consultation process for the proposed revocation of community land status and it was considered that key concerns had been sufficiently addressed with further feedback received to inform the proposed sale and redevelopment of the Land.</p> <p>The community has (properly) not been consulted on the sale of the Land to the Proponent.</p>
<p>Findings: Requirements of Section 48 (2) (d) have been met. The CoA undertook community consultation on the revocation of the community land status of the Land.</p>		

2.5 Revenue, Revenue Projections and Potential Financial Risks

Section 48 (2) (e) if the project is intended to produce revenue, revenue projections and potential financial risks”

Elements	Relevant Documents	Prudential Review Comments
Revenue projections	2021-22 Business Plan and Budget 2022-31 Long Term Financial Plan	<p>The CoA will receive \$10.1 million (excluding GST) from the sale of the Land.</p> <p>The Project will result in a loss of \$14,800 per annum in lease income from SA Volleyball.</p> <p>The Project will generate an increase in revenue from:</p> <ul style="list-style-type: none"> • Development Application fees; and • Council Rates. <p>The increase in Council Rates will more than offset the loss of lease revenue.</p> <p>The CoA should include the financial impact of the Project in future updates of the Long Term Financial Plan.</p>
Potential financial risks	Project Risk Register	<p>The Project is the sale of Land. A Project Risk Register has not been prepared. The key risks are that the Proponent does not:</p> <ul style="list-style-type: none"> • settle on the Land; and • undertake the proposed development, either in the timeframe indicated or at all. <p>The CoA has sought to mitigate these risks through the EOI process by evaluating the financial capacity of the Proponent.</p>
<p>Findings:</p> <p>Requirements of Section 48 (2) (e) have been met.</p> <p>The CoA financial position will be improved from the proceeds of sale and the on-going increase in Council Rates generated by the development.</p>		

2.6 Recurrent and Whole of Life Costs

Section 48 (2) (f) the recurrent and whole-of-life costs associated with the project including any costs arising out of proposed financial arrangements;”

Elements	Relevant Documents	Prudential Review Comments
Recurrent costs	None	The CoA will not incur any recurrent costs from the disposal of the Land.
Whole of life costs	None	As the Project involves the disposal of an asset, the sale of Land, the CoA will receive income from the transaction and the whole of life cost is not relevant.
Financial arrangements	2022-31 Long Term Financial Plan Treasury and Cash Investment Policy	The Proponent will be contractually liable to pay the CoA for the Land. The Proponent will settle the Land in one lump sum. We have sighted the draft Heads of Agreement proposed by the Proponent to bind the parties.
<p>Findings: Requirements of Section 48 (2) (f) have been met. The Project will not result in any recurrent costs, nor are there any whole of life cost. The Proponent will be contractually bound to pay for the Land.</p>		

2.7 Financial Viability

Section 48 (2) (g) the financial viability of the project, and the short and longer term estimated net effect of the project on the financial position of the council;

Elements	Relevant Documents	Prudential Review Comments
Financial viability	2022-31 Long Term Financial Plan	<p>The Land is carried in the CoA's Balance Sheet at \$4.900 million which reflects a 25% discount due to the community land status applicable at the time. The sale of the Land will result in a profit of \$5.200 million being brought to account in FY2022.</p> <p>This will have a positive impact on the following financial indicators:</p> <ul style="list-style-type: none"> • Operating Surplus Ratio (increased revenue). • Net Financial Liabilities Ratio (reduction in borrowings due to repayment of debt). • Cashflow from Operations Ratio (increase in Council Rates). <p>The Project will also have a positive impact on the Prudential Borrowing Limits due to:</p> <ul style="list-style-type: none"> • a decrease in Asset Test Ratio as borrowings decrease by more than value of saleable property assets; • increased revenue from Council rates which increases the CoA's ability to service interest expense; and • improvement in the Leverage Test Ratio through reduction in total borrowings and increased revenue from Council Rates.
<p>Findings: Requirements of Section 48 (2) (g) have been met. The Project will have a positive impact on the CoA's financial indicators.</p>		

2.8 Risk Management

Section 48 (2) (h) any risks associated with the project, and the steps that can be taken to manage, reduce or eliminate those risks (including by the provision of periodic reports to the chief executive officer and to the council);"

Elements	Relevant Documents	Prudential Review Comments
Risk assessment	Enterprise Risk Management Framework Draft Heads of Agreement	<p>The CoA has adopted an Enterprise Risk Management Framework consistent with the International Standard for Risk Management, AS/NZS/ISO31000: 2009 for the identification and management of risk.</p> <p>The Risk Management Framework does not require the preparation of a Project Risk Register for the sale of Land.</p> <p>The Proponent submitted a draft Heads of Agreement as part of their response to the Expression of Interest process.</p> <p>The draft Heads of Agreement is being reviewed by the CoA legal advisor and will inform a Contract for Sale of the Land. The Contract for Sale will be subject to various due diligence conditions.</p>
Risk mitigation	Draft Heads of Agreement	The CoA and the Proponent will enter into a binding Contract for Sale subject to various due diligence conditions.
<p>Findings: Requirements of Section 48 (2) (h) have been partially met. The CoA intends to mitigate risk through the Contract for Sale.</p>		

2.9 Project Delivery

Section 48 (2) (i) the most appropriate mechanisms or arrangements for carrying out the project;"

Elements	Relevant Documents	Prudential Review Comments
<p>Project Delivery</p>	<p>Acquisition and Disposal of Land and Infrastructure Assets Policy Procurement Policy</p>	<p>The CoA adopted the Acquisition and Disposal of Land and Infrastructure Assets Policy. The CoA has undertaken the EOI process consistent with the Policy Objectives and Principles.</p> <p>The CoA has satisfied the requirements of the Policy in progressing the sale of Land. The CoA Procurement Policy, approved by Council on 13 December 2016, covers CoA's requirements in relation to the procurement of goods, works and services.</p> <p>The CoA has utilised a combination of internal resources and external consultants to guide the approach to market and the ultimate delivery of the Project. The procurements have been undertaken consistent with the Procurement Policy.</p>
<p>Findings: Requirements of Section 48 (2) (i) have been met. The CoA has conducted the EOI process consistent with the Acquisition and Disposal of Land and Infrastructure Assets Policy.</p>		

2.10 Sale or Disposition of Land

Section 48 (2) (j) if the project involves the sale or disposition of land, the valuation of the land by a qualified valuer under the Land Valuers Act 1994;”

Elements	Relevant Documents	Prudential Review Comments
Valuation of land	Valuation Report	<p>The CoA commissioned JLL to prepare a valuation for the Land.</p> <p>The valuations were prepared by Certified Practicing Valuers who are qualified to provide such valuations.</p> <p>JLL adopted a market value of \$6,500,000 for the Land as at 14 October 2020 based on a Direct Comparison Approach.</p> <p>It is likely that the Land has increased in value since the date of the valuation. However, we note that the Proponent has offered \$10.1 million (excluding GST) for the Land which is more than 55% above the valuation.</p>
<p>Findings: Requirements of Section 48 (2) (j) have been met. The CoA obtained a valuation prepared by a qualified valuer.</p>		

ATTACHMENT ONE: LOCAL GOVERNMENT ACT, 1999 SECTION 48

Section 48 – Prudential requirements for certain activities

- (aa1) A council must develop and maintain prudential management policies, practices and procedures for the assessment of projects to ensure that the council—
- (a) acts with due care, diligence and foresight; and
 - (b) identifies and manages risks associated with a project; and
 - (c) makes informed decisions; and
 - (d) is accountable for the use of council and other public resources.
- (a1) The prudential management policies, practices and procedures developed by the council for the purposes of subsection (aa1) must be consistent with any regulations made for the purposes of this section.
- (1) Without limiting subsection (aa1), a council must obtain and consider a report that addresses the prudential issues set out in subsection (2) before the council—
- (b) engages in any project (whether commercial or otherwise and including through a subsidiary or participation in a joint venture, trust, partnership or other similar body)—
 - (i) where the expected operating expenses calculated on an accrual basis of the council over the ensuing five years is likely to exceed 20 per cent of the council's average annual operating expenses over the previous five financial years (as shown in the council's financial statements); or
 - (ii) where the expected capital cost of the project over the ensuing five years is likely to exceed \$4 000 000 (indexed); or
 - (iii) where the council considers that it is necessary or appropriate.
- (2) The following are prudential issues for the purposes of subsection (1):
- (a) the relationship between the project and relevant strategic management plans;
 - (b) the objectives of the Development Plan in the area where the project is to occur;
 - (c) the expected contribution of the project to the economic development of the local area, the impact that the project may have on businesses carried on in the proximity and, if appropriate, how the project should be established in a way that ensures fair competition in the market place;
 - (d) the level of consultation with the local community, including contact with persons who may be affected by the project and the representations that have been made by them, and the means by which the community can influence or contribute to the project or its outcomes;
 - (e) if the project is intended to produce revenue, revenue projections and potential financial risks;
 - (f) the recurrent and whole-of-life costs associated with the project including any costs arising out of proposed financial arrangements;
 - (g) the financial viability of the project, and the short and longer term estimated net effect of the project on the financial position of the council;
 - (h) any risks associated with the project, and the steps that can be taken to manage, reduce or eliminate those risks (including by the provision of periodic reports to the chief executive officer and to the council);
 - (i) the most appropriate mechanisms or arrangements for carrying out the project;
 - (j) if the project involves the sale or disposition of land, the valuation of the land by a qualified valuer under the Land Valuers Act 1994.
- (2a) The fact that a project is to be undertaken in stages does not limit the operation of subsection (1)(b) in relation to the project as a whole.
- (3) A report is not required under subsection (1) in relation to—
- (a) road construction or maintenance; or
 - (b) drainage works.

- (4) A report under subsection (1) must be prepared by a person whom the council reasonably believes to be qualified to address the prudential issues set out in subsection (2).
- (4a) A report under subsection (1) must not be prepared by a person who has an interest in the relevant project (but may be prepared by a person who is an employee of the council).
- (4b) A council must give reasonable consideration to a report under subsection (1) (and must not delegate the requirement to do so under this subsection).
- (5) A report under subsection (1) must be available for public inspection at the principal office of the council once the council has made a decision on the relevant project (and may be available at an earlier time unless the council orders that the report be kept confidential until that time).
- (6) However, a council may take steps to prevent the disclosure of specific information in order to protect its commercial value or to avoid disclosing the financial affairs of a person (other than the council).
- (6a) For the purposes of subsection (4a), a person has an interest in a project if the person, or a person with whom the person is closely associated, would receive or have a reasonable expectation of receiving a direct or indirect pecuniary benefit or a non-pecuniary benefit or suffer or have a reasonable expectation of suffering a direct or indirect detriment or a non-pecuniary detriment if the project were to proceed.
- (6b) A person is closely associated with another person (the relevant person)—
- (a) if that person is a body corporate of which the relevant person is a director or a member of the governing body; or
 - (b) if that person is a proprietary company in which the relevant person is a shareholder; or
 - (c) if that person is a beneficiary under a trust or an object of a discretionary trust of which the relevant person is a trustee; or
 - (d) if that person is a partner of the relevant person; or
 - (e) if that person is the employer or an employee of the relevant person; or
 - (f) if that person is a person from whom the relevant person has received or might reasonably be expected to receive a fee, commission or other reward for providing professional or other services; or
 - (g) if that person is a relative of the relevant person.
- (6c) However, a person, or a person closely associated with another person, will not be regarded as having an interest in a matter—
- (a) by virtue only of the fact that the person—
 - (i) is a ratepayer, elector or resident in the area of the council; or
 - (ii) is a member of a non-profit association, other than where the person is a member of the governing body of the association or organisation; or
 - (b) in a prescribed circumstance.
- (6d) In this section, \$4 000 000 (indexed) means that that amount is to be adjusted for the purposes of this section on 1 January of each year, starting on 1 January 2011, by multiplying the amount by a proportion obtained by dividing the CPI for the September quarter of the immediately preceding year by the CPI for the September quarter, 2009.
- (6e) In this section—
- employee** of a council includes a person working for the council on a temporary basis;
- non-profit association** means a body (whether corporate or unincorporate)—
- (a) that does not have as its principal object or 1 of its principal objects the carrying on of a trade or the making of a profit; and
 - (b) that is so constituted that its profits (if any) must be applied towards the purposes for which it is established and may not be distributed to its members.
- (7) The provisions of this section extend to subsidiaries as if a subsidiary were a council subject to any modifications, exclusions or additions prescribed by the regulations.

Confidential Report for Council (Chief Executive Officer's Report)

2. Item 5.1.1 - Expression of Interest Process [VS2021/6493] [C]

Moved by Councillor Abrahamzadeh,
Seconded by Councillor Knoll –

That Council

1. Notes the commercial offer from NEXTDC for an amount of \$10.1 million (excluding GST) for the purchase of the 211 Pirie Street land.
2. Approves the Evaluation Panel's recommendation that NEXTDC be selected as the preferred proponent for the purpose of negotiating contractual documentation for the sale and redevelopment of the 211 Pirie Street land.
3. Authorises that the Chief Executive Officer be delegated authority to negotiate and execute a Contract for Sale with NEXTDC or its nominated entity together with associated legal documentation required at law or otherwise ancillary to the sale and redevelopment of the 211 Pirie Street land.
4. Authorises the Chief Executive Officer to sign and affix as necessary the common seal with the signature of the Lord Mayor for all legal documentation to give effect to the sale and redevelopment of the 211 Pirie Street land including the Contract for Sale and all documentation contemplated to be executed under the Contract for Sale or otherwise required at law or as part of or ancillary to the sale of 211 Pirie Street land.
5. Receives the Prudential Report at Attachment A to Item 5.1.1 on the Agenda for the Special meeting of the Council held on 25 November 2021 to address the prudential matters for the sale of the 211 Pirie Street land in accordance with Section 48 of the *Local Government Act 1999 (SA)* (the Act).
6. In accordance with Section 91 (7) & (9) of the *Local Government Act 1999 (SA)* and on the grounds that Item 5.1.1 [Expression of Interest Process] listed on the Agenda for the Special meeting of the Council held on 25 November 2021 was received, discussed and considered in confidence pursuant to Section 90 (3) (b) & (d) of the *Local Government Act 1999 (SA)*, the special meeting of the Council do order that:
 - 6.1. The resolution, the report, the discussion and any other associated information submitted to this meeting and the Minutes of this meeting in relation to the matter remain confidential and not available for public inspection until 31 December 2028.
 - 6.2. The confidentiality of the matter be reviewed in December 2022.
 - 6.3. The Chief Executive Officer be delegated the authority to review and revoke all or part of the order herein and directed to present a report containing the Item for which the confidentiality order has been revoked.

Discussion ensued, during which the Deputy Lord Mayor, Councillor Couros entered the Colonel Light Room at 5.35pm

The motion was then put and carried unanimously