

**ADELAIDE HILLS COUNCIL
ORDINARY COUNCIL MEETING
Tuesday 28 January 2020
CONFIDENTIAL AGENDA BUSINESS ITEM**

Item: 19.1
Originating Officer: James Sinden, Manager ICT
Responsible Director: Terry Crackett, Director Corporate Services
Subject: Open Office Pty Ltd Novation Deed
For: Decision

1. Open Office Pty Ltd Contract Deed – Exclusion of the Public

Pursuant to section 90(2) of the *Local Government Act 1999* the Council orders that all members of the public, except:

- CEO, Andrew Aitken
- Director Infrastructure & Operations, Peter Bice
- Director Development & Regulatory Services, Marc Salver
- Director Corporate Services, Terry Crackett
- Director Community Capacity, David Waters
- Executive Manager Governance & Performance, Lachlan Miller
- Governance & Risk Coordinator, Steve Watson
- Minute Secretary, Pam Williams

be excluded from attendance at the meeting for Agenda Item 19.1 Open Office Pty Ltd Novation Deed in confidence.

The Council is satisfied that it is necessary that the public, with the exception of Council staff in attendance as specified above, be excluded to enable Council to consider the report at the meeting on the following grounds:

Section 90(3) (d) of the *Local Government Act 1999*, that the information to be received, discussed or considered in relation to this Agenda Item is commercial information of a confidential nature (not being a trade secret) the disclosure of which could reasonably be expected to prejudice the commercial position of the person/agency/business who supplied the information by disclosing contractual commitments.

Accordingly, on this basis the principle that meetings of the Council should be conducted in a place open to the public has been outweighed by the need to keep the information and discussion confidential.

2. Open Office Pty Ltd Novation Deed – Confidential Item

SUMMARY

Open Office Pty Ltd is a supplier of local government software specific to Council and are currently in the process of completing a corporate restructure. This includes the transfer of its business operations into a new corporate entity, Open Office Holdings Pty Ltd and the introduction of an external investor, Pemba Capital Partners to the agreement held with Council.

As Council has a contractual agreement with Open Office Pty Ltd, there is an obligation to seek agreement from Council to undertake these changes.

The purpose of this report is to seek a resolution of Council for the CEO to be authorised to execute and affix the Common Seal to a novation Deed received from Open Office Pty Ltd. This will transfer rights and obligations under the agreement within the terms of the Deed from the Effective Date to Open Office Holdings Pty Ltd.

RECOMMENDATION

Council resolves that:

1. **The report be received and noted**
2. **The Novation Deed from Open Office Pty Ltd, Open Office Holdings Pty Ltd and Adelaide Hills Council is executed under Council's Seal.**
3. **That the Mayor and Chief Executive Officer be authorised to execute all documents necessary, including applying the Council Seal (as required), for executing the Novation Deed.**

1. GOVERNANCE

➤ Strategic Management Plan/Council Policy

Goal 4	Explore
Strategy 4.3	We will offer greater access to services and realise business efficiencies through online services.

➤ ICT & IS Strategic Plan 2017-2020

Goal 2	Collaborate
Strategy 2.3	We will collaborate with our systems providers to enhance and improve service delivery

➤ Legal Implications

Note that this is covered in the analysis section of this report but in summary the following key items are;

- This document is a Deed which requires a resolution of Council to execute
- Legal advice is that Council cannot unreasonably withhold consent

➤ **Risk Management Implications**

The authorisation of the CEO to execute the novation deed and affix the common seal will assist in mitigating the risk of:

Breach of contractual obligations with Open Office Pty Ltd.

Inherent Risk	Residual Risk	Target Risk
High (4C)	Medium (3D)	Medium

In managing the risk associated to the request legal advice has been received on the impact where Council cannot unreasonably withhold agreement to the novation deed.

➤ **Financial and Resource Implications**

Not applicable

➤ **Customer Service and Community/Cultural Implications**

Not applicable

➤ **Environmental Implications**

Not applicable

➤ **Engagement/Consultation conducted with Council Committee, Regional Subsidiary, Advisory Group, the Administration and Community**

Consultation on the development of this report was as follows:

Council Committees: Not applicable

Advisory Groups: Not applicable

*Administration: Manager ICT
Director Corporate Services
Executive Manager Governance & Performance*

Community: Not applicable

2. BACKGROUND

In 2013 Council undertook a Tender process for the renewal of Core Business System Solutions where Melbourne based business, Open Office Pty Ltd was contracted as the provider of software solutions as outlined in their proposal.

The software provided by them is used extensively across Council Departments and assists with the undertaking of administrative functions.

In summary the software supports the following activities;

- Accounts Receivable
- Accounts Payable
- Cash Receipting
- General ledger
- Health & Waste Management Applications & Registers
- Human Resources
- Infringements
- Procurement
- Payroll
- Town Planning & Building Applications & Registers
- Rating

Open Office provided correspondence to Council on its intention to restructure its Australian business operations into a new corporate entity as follows;

OPEN OFFICE HOLDINGS PTY LTD

ACN 632 276 694

ABN 43 632 276 692

This also includes the introduction of an internal investor in Pemba Capital Partners to help Open Office increase the breadth and range of its offerings to customers.

3. ANALYSIS

As part of the due diligence process, Council Administration has undertaken consideration of the request and has sought legal advice to understand obligations in relation to the current Agreement and the novation Deed.

In summary the following activities were conducted;

- Meeting held with Council staff to discuss correspondence received from Open Office Pty Ltd
- Reviewing of Open Office Agreement currently in place with Council
- Telephone Meeting with Phillip Simone the CEO Open Office Pty Ltd to discuss the proposal
- Seeking legal advice from Council Lawyers with regards to our contractual obligations

In summary the advice from Council Lawyers was as follows;

1. The document is a Deed, which means that for the Council to execute it correctly, it must affix the common seal which will require a resolution of Council for authorisation.
2. Under the existing agreement in place, Council is not able to unreasonably withhold consent to an assignment.
3. If Council chooses not to agree to the novation, then Council would have to show that we are not being unreasonable in doing so.

Correspondence from Open Office indicates that as a result of the changes to the business structure, all Open Office personnel who undertake and provide service and software maintenance obligations under the agreement will continue to maintain, service and be a point of contact in relation to ongoing management arrangements of the agreement.

The business is to continue under the same management structure located at the same address with the same personnel Council has been dealing with.

After consideration of the above, the Administration agreed to proceed to recommendation to request authorisation from Council sign the Deed.

4. OPTIONS

Council has the following options:

- I. Authorise the CEO to sign and affix the common seal to the Deed with Open Office Pty Ltd, Open Office Holdings Pty Ltd and Adelaide Hills Council because Council cannot unreasonably withhold consent to an assignment (Recommended)
- II. To not proceed with authorisation of the CEO to sign and affix the common seal to the Deed with Open Office Pty Ltd, Open Office Holdings Pty Ltd and Adelaide Hills Council, which may result in a temporary or permanent interruption of the delivery of Open Office services to Council. (Not Recommended)

5. APPENDIX

Nil

3. Open Office Pty Ltd Novation Deed – Period of Confidentiality

Subject to the CEO, or his delegate, disclosing information or any document (in whole or in part) for the purpose of implementing Council's decision(s) in this matter in the performance of the duties and responsibilities of office, Council, having considered Agenda Item 19.1 in confidence under sections 90(2) and 90(3)(d) of the *Local Government Act 1999*, resolves that an order be made under the provisions of sections 91(7) and (9) of the *Local Government Act 1999* that the report, related attachments and the minutes of Council and the discussion and considerations of the subject matter be retained in confidence until a public announcement is made from Open Office with regards to the new business entity and investment partner but no later than 12 months from the adoption of the recommendation within this report.

Pursuant to section 91(9)(c) of the *Local Government Act 1999*, Council delegates the power to revoke the confidentiality order either partially or in full to the Chief Executive Officer.