



**14.1** **LIFTING OF THE CONFIDENTIALITY STATUS OF INFORMATION CONSIDERED BY COUNCIL IN CLOSED MEETINGS OF COUNCIL**

**EXECUTIVE MEMBER:** KYLIE BENNETTS, DIRECTOR, OFFICE OF THE CEO

**PREPARED BY:** MURRAY CHICK, COORDINATOR GOVERNANCE

**1. PURPOSE**

- 1.1 For Council to consider passing a resolution to lift the confidentiality and make public certain confidential information in relation to decisions made by Council during parts of meetings that were closed to members of the public due to confidentiality reasons under the Local Government Act 1989 (the Act).

**2. EXECUTIVE SUMMARY**

- 2.1 This report is the second of, as a minimum, twice yearly reports that Council will receive, to enable Council to consider whether certain information currently designated confidential can now be made not confidential pursuant to section 77 (2) of the Local Government Act 1989 and consequently be made public and placed on Council's website.
- 2.2 This report covers decisions made at Council and Planning Committee meetings during the period from 1 July 2018 to 28 February 2019. The report also covers a further review of confidential resolutions carried previously by Council during the period from the commencement of this Council until 30 June 2018 (the releasing of these confidential resolutions was previously considered by Council at its 18 July 2018 Council meeting).

**3. RECOMMENDATION**

That Council:

- 3.1 Resolves that the confidential information, as contained in Attachment 1, be deemed to be not confidential pursuant to section 77 (2) of the Local Government Act 1989 and that this information be publicly released on Council's website.

**4. KEY POINTS/ISSUES**

- 4.1 The Act, allows in specific circumstances for Council and its Planning Committee, by resolution, to close a meeting to members of the public so that it can consider and determine matters designated as confidential.
- 4.2 As part of the recent Governance Review a process has been developed to enable Council to consider whether confidential information can now be made public.

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- 4.3 The process involves Governance developing and maintaining a list of all confidential information that was considered by this Council and its Planning Committee at meetings that were closed to members of the public. This confidential information is then examined by officers and the relevant Executive Leadership Team member with a view to determining which information currently designated as confidential can now be recommended to Council to be made public either in full or in part.
- 4.4 For the period 1 July 2018 to 28 February 2019, 17 confidential resolutions have been carried in total, 14 at Council meetings and three at Planning Committee meetings.
- 4.5 Of these 17 confidential resolutions, five Council meeting confidential resolutions have now been released to the public in accordance with the resolutions adopted by Council. These resolutions made public relate to the awarding of the contract for the Customer Experience Program Delivery Partner; the appointment of an external member to the Audit and Risk Committee; the appointment to the Community Grants Reference Committee and the awarding of Contract 2175 for the Provision of maintenance of parking meters and associated services.
- 4.6 In addition, and in accordance with the resolutions adopted by Council, six confidential attachments have also been made public. Four of these confidential attachments relate to the Community Grants Program 2018/19 recommendations for funding and one confidential attachment relates to the Cultural Development Fund 2018/19 Round 2 recommendations and the other relates to Key Arts Organisations funding recommendations.
- 4.7 Of the remaining 12 confidential resolutions for the period 1 July 2018 to 28 February 2019 three relate to Planning matters. Two Planning Committee resolutions relate to matters which were subject to compulsory conferences conducted under the Victorian Civil and Administration Tribunal (VCAT) Act 1998. The VCAT Act prohibits the public release of any information that was subject to a VCAT compulsory conference. The VCAT Act states that this information must remain private and this has been confirmed by legal advice.
- 4.8 However, legal advice states that Council can release publicly any VCAT Orders made which contain the Order itself, reasons for the decision, what the planning permit allows and a copy of any planning permit conditions. The release of these two Orders informs the community as to the result of the planning permit application whilst still ensuring Council is not breaching any of its legal obligations. The two orders made by VCAT have now been made public.
- 4.9 The other Planning Committee confidential resolution related to a VCAT hearing in relation to 253-273 Normanby Road South Melbourne where release of this information would have prejudiced Council's position prior to a VCAT hearing. As the VCAT hearing has now been completed and a determination has been made it is now appropriate for Council to make public the Council resolution, report and three attachments. In addition, a copy of the VCAT Order has been placed on Council's website.



- 4.10 Of the remaining nine confidential Council reports / resolutions, these have been reviewed by officers and Executive Management and it is recommended that eight of these resolutions cannot be made public at this stage as they are live issues where Council is still in negotiation with other parties, or they contain commercially sensitive information and / or disclosure will prejudice the Council and other parties.
- 4.11 The remaining report is in relation to the 20 February 2019 confidential report on Marlborough Street Affordable Housing – Social Housing Growth Fund. Given that the timing for applications for funding closed on 27 February 2019 officers recommend that the Council resolution can be released in full and the Council report be released in part with relevant redactions to protect commercially sensitive information.
- 4.12 In addition, as part of the review it was identified that two confidential attachments relating to Integrated Water Management Forums –attachment 1 - Final Draft Strategic Direction Statement Dandenong IWM Forum and Attachment 2 - Final Draft Strategic Direction Statement Yarra IWM Forum can now be released as they have been publicly released by the Minister.
- 4.13 It is anticipated that over the next six-month period when Council receives a further report on the lifting of confidentiality that some items currently confidential will be recommended to be made public as they will no longer be in live negotiation and disclosure would not prejudice Council or other parties.
- 4.14 Attachment 2 summarises in table format the number of confidential resolutions made by Council during its term against the total number of resolutions carried. It also contains the number of resolutions where Council has lifted confidentiality either by way of this regular review process and / or through separate resolutions carried throughout Council's term. This table shows how Council's current practice has significantly reduced Council's percentage of confidential resolutions compared to public resolutions. Out of a total of 665 resolutions carried in Council's term, if the recommendation in this report is adopted, Council will have 36 resolutions that, at this stage, are still required to remain confidential.

## **5. CONSULTATION AND STAKEHOLDERS**

- 5.1 This list of all confidential items compiled by Governance was analysed by management to determine legally what confidential information could now be recommended to Council to be made not confidential pursuant to section 77 (2) of the Act.

## **6. LEGAL AND RISK IMPLICATIONS**

- 6.1 Section 89(1) of the Act states that any meeting of a Council or a Special Committee (e.g. Planning Committee) must be open to members of the public unless section 89(2) applies.
- 6.2 Section 89(2) of the Act allows Council and Special Committee meetings to resolve that the meeting be closed to members of the public if the meeting is discussing any of the following:

Personnel matters;



- The personal hardship of any resident or ratepayer;
- Industrial matters;
- Contractual matters;
- Proposed developments;
- Legal advice;
- Matters affecting the security of Council property;
- Any other matter which the Council or the Special Committee considers would prejudice the Council or any person;
- A resolution to close the meeting to members of the public.

- 6.3 The VCAT Act 1998 prohibits the public release of any information that was subject to a VCAT compulsory conference. The VCAT Act states that this information must remain private and this has been confirmed by legal advice.

## **7. FINANCIAL IMPACT**

- 7.1 This report has no financial impacts on Council.

## **8. ENVIRONMENTAL IMPACT**

- 8.1 This report has no environmental impacts on Council.

## **9. COMMUNITY IMPACT**

- 9.1 The intent of this report is to, where Council is legally able, make public as many of Council and Planning Committee decisions that were made in closed meetings of Council and or the committee.

## **10. ALIGNMENT TO COUNCIL PLAN AND COUNCIL POLICY**

- 10.1 The public transparency of decisions made by Council is a key ingredient in achieving a financially sustainable, high performing, well governed organisation that puts the community first.

## **11. IMPLEMENTATION STRATEGY**

### **11.1 TIMELINE**

- 11.1.1 Upon Council resolving that certain information is now not confidential Council's website will be updated accordingly.

### **11.2 COMMUNICATION**

- 11.2.1 Where Council has determined that certain confidential information is now no longer confidential, this information will be made available to the public on Council's website under Council's 'Meetings and Agendas' pages at the relevant meeting that the matter was discussed. Text will placed on the

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website stating that the resolution, report or attachment has now been made public

## **12. OFFICER DIRECT OR INDIRECT INTEREST**

12.1 No officers involved in the preparation of this report have any direct or indirect interest in the matter.

**TRIM FILE NO:** 16/01/834

**ATTACHMENTS**

- 1. Proposed schedule of confidential information to be made public**
- 2. Table of confidential resolutions compared to public resolutions**