

## 19.1 2019 Annual Review of Confidential Orders

Purpose of Report	Annual Review Confidential Orders
Director	Chief Executive Officer
Author	Governance Officer
Disclosure of Interest	Conflict of interest declarations may have been made in relation to items referred to in this report.
File Ref	GF/9.73.1/1
Strategic Plan Reference	Theme Five – Organisational Excellence Strategy 5.2 – Govern in a responsible and responsive way
Risk Assessment	Unlikely / Major - Medium
Budget Allocation 2018/19	\$ 0
Request for Budget Variation	\$ 0
Budget Spent to Date	\$ 0
Attachments	<ol style="list-style-type: none"> <li>1. TABLE 1: Register of Confidential Items Fully Released since previous Annual Review</li> <li>2. TABLE 2: Register of Confidential Items Currently Held Under a Confidentiality Order</li> <li>3. Excerpt of the <i>Local Government Act 1999</i>, section 90 &amp; 91</li> </ol>
In Confidence	Yes – Section 90(3)(a),(b),(d),(e) and (k) Report & Minutes of Item 19.1 of 9 April 2019 to be <b>released immediately</b> .

### Summary

The *Local Government Act 1999* requires Council to review all current confidential items at least once a year. The last review was conducted in April 2018.

There are currently 18 confidentiality orders in place requiring certain documents (minutes, reports and/or attachments) from items discussed at Council (or Committee) meetings to be retained in confidence. These orders have been assessed and it is recommended to:

- make further orders relating to eight (8) of the items, to extend the period of time that they will be retained in confidence;
- nine (9) orders are retained until their existing expiry date;
- one (1) order is assessed by the Audit & Risk Committee within the next 12 months.

## RECOMMENDATION

1. Pursuant to Sections 90(2) and 90(3)(a),(b),(d),(e) and (k) of the *Local Government Act 1999*, the Council orders that the public be excluded from attendance at that part of this meeting relating to Item 19.1 – 2019 Annual Review of Confidential Orders, excepting the following persons:

- Mr BJ Gower - Chief Executive Officer
- Mr PA Duka – Director Corporate Services
- Mr PE Halton – Director Engineering Services
- Mr SW Chapple – Director Development Services
- Ms CP Allen – Executive Assistant / Minute Taker

to enable the Council to consider Item 19.1– Annual Review of Confidential Orders in confidence on the basis the Council considers it necessary and appropriate to act in a meeting closed to the public (excepting those persons listed above) in order to receive, discuss or consider in confidence the following information or matter relating to Item 19.1 – 2019 Annual Review of Confidential Orders:

- information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead);
- information the disclosure of which—
  - (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 to prejudice the commercial position of the council; and
  - (ii) would, on balance, be contrary to the public interest;
- 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;
- matters affecting the security of the council, members or employees of the council, or council property, or the safety of any person;
- tenders for the supply of goods, the provision of services or the carrying out of works;

Specifically the present matters relate to:

- Information relating to actual litigation involving the Council, being litigation and compensation relating to the Penola bypass; and
- Council's internal controls; and
- Personal attributes, nominations and details regarding nominees for Australia Day Awards, and
- Potential sale values on Council land; and
- The extension of the cleaning services contract with Keeping Kleen Pty Ltd trading as Mod Cleaning; and
- A tender for dredging services associated with the Beachport Boat Ramp; and
- A tender for green waste mulching; and
- A remission of rates request; and
- A tender for the purchase of a Prime Mover Truck; and
- A tender for the purchase of new wheel (4WD 12T) Loader; and

- A tender to undertake drainage upgrade works in Arthur Street, Penola; and
- A tender for banking services; and
- The Millicent Community Club; and
- A tender for the operation of Council's five waste facilities and associated transport of waste; and
- Information pertaining to unpaid rates, and
- A tender for a records storage facility.

2. 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 or matter confidential.

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## RECOMMENDATION 1

1. Pursuant to section 91(9)(a), having reviewed the confidentiality order made on 8 May 2012 and 10 April 2018 under section 90(2) and (3)(b) of the *Local Government Act 1999*, pursuant to Section 91(7) of that Act, the Council orders **that the following document(s) (or part) shall be kept confidential** being document(s) (or part) relating to a matter dealt with by the Council on a confidential basis under Sections 90(2) and 90(3)(b) of the Act:

- **The reports and documents of Item 11.1.3 Penola Bypass Road - Road Openings - Compensation of 8 May 2012 Ordinary Council meeting**

on the grounds that the document(s) (or part) relates to information about the payment of compensation that could prejudice the commercial position of council by impacting on Council's negotiating position and is, on balance contrary to the public interest because it is in the public interest to retain Council's negotiations in confidence.

This order shall operate **until further order of the Council** and will be reviewed at least annually in accordance with the Act.

2. Pursuant to Section 91(9)(c) of the Act, the Council delegates to the Chief Executive Officer the power to revoke this order and must advise the Council of the revocation of this order as soon as possible after such revocation has occurred.

## RECOMMENDATION 2

1. Pursuant to section 91(9)(a), having reviewed the confidentiality order made on 29 May 2012 and 10 April 2018 under section 90(2) and (3)(b) of the *Local Government Act 1999*, pursuant to Section 91(7) of that Act, the Council orders **that the following document(s) (or part) shall be kept confidential** being document(s) (or part) relating to a matter dealt with by the Council on a confidential basis under Sections 90(2) and 90(3)(b) of the Act:

- **The reports and documents of Item 4.3.1.1 Penola Bypass Road - Road Openings - Compensation of 29 May 2012 Ordinary Council meeting**

on the grounds that the document(s) (or part) relates to information about the payment of compensation that could prejudice the commercial position of council by impacting on Council's negotiating position and is, on balance contrary to the public interest because it is in the public interest to retain Council's negotiations in confidence.

This order shall operate **until further order of the Council** and will be reviewed at least annually in accordance with the Act.

2. Pursuant to Section 91(9)(c) of the Act, the Council delegates to the Chief Executive Officer the power to revoke this order and must advise the Council of the revocation of this order as soon as possible after such revocation has occurred.

### RECOMMENDATION 3

1. Pursuant to section 91(9)(a), having reviewed the confidentiality order made on 12 December 2017 under section 90(2) and (3)(a) of the *Local Government Act 1999*, pursuant to Section 91(7) of that Act, the Council orders **that the following document(s) (or part) shall be kept confidential**, being document(s) (or part) relating to a matter dealt with by the Council on a confidential basis under Sections 90(2) and 90(3)(a) of the Act:

- **The attachment of Item 17.2 2018 Aust Day Awards Nominations of 12 December 2017 Ordinary Council Meeting**

on the grounds that the document(s) (or part) is:

- (i) Information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead).

Specifically, the present matter relates to information pertaining to the personal affairs of persons nominated for Australia Day Awards.

The disclosure of this information would be unreasonable because the information is sensitive to the people nominated and is not a matter of public knowledge.

This order shall operate **until further order of the Council** and will be reviewed at least annually in accordance with the Act.

2. Pursuant to Section 91(9)(c) of the Act, the Council delegates to the Chief Executive Officer the power to revoke this order and must advise the Council of the revocation of this order as soon as possible after such revocation has occurred.

#### RECOMMENDATION 4

1. Pursuant to section 91(9)(a), having reviewed the confidentiality order made on 13 February 2018 and 10 April 2018 under section 90(2) and (3)(d) of the *Local Government Act 1999*, pursuant to Section 91(7) of that Act, the Council orders **that the following document(s) (or part) shall be kept confidential**, being document(s) (or part) relating to a matter dealt with by the Council on a confidential basis under Sections 90(2) and 90(3)(d) of the Act:

- **The Report of Item No. 17.1 Council Land Options – Mount Gambier Road Millicent of 13 February 2018 Ordinary Council Meeting**

on the grounds that the document(s) (or part) relates to 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.

Specifically the present matter relates to potential sale values on Council land.

This order shall operate **until further order of the Council** and will be reviewed at least annually in accordance with the Act.

2. Pursuant to Section 91(9)(c) of the Act, the Council delegates to the Chief Executive Officer the power to revoke this order and must advise the Council of the revocation of this order as soon as possible after such revocation has occurred.

#### RECOMMENDATION 5

1. Pursuant to section 91(9)(a), having reviewed the confidentiality order made on 13 March 2018 under section 90(2) and (3)(a) of the *Local Government Act 1999*, pursuant to Section 91(7) of that Act, the Council orders **that the following document(s) (or part) shall be kept confidential**, being document(s) (or part) relating to a matter dealt with by the Council on a confidential basis under Sections 90(2) and 90(3)(a) of the Act:

- **The Report and Attachments of Item No 17.3 Remission of Rates Request of 13 March 2018 Ordinary Council Meeting**

On the grounds that the document(s) (or part) relates to information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead).

Specifically, the present matter relates to a remission of rates request.

This order shall operate until **14 August 2020** and will be reviewed at least annually in accordance with the Act.

2. Pursuant to Section 91(9)(c) of the Act, the Council delegates to the Chief Executive Officer the power to revoke this order and must advise the Council of the revocation of this order as soon as possible after such revocation has occurred.

## RECOMMENDATION 6

1. Pursuant to section 91(9)(a), having reviewed the confidentiality order made on 11 December 2018 under section 90(2) and (3)(b)&(d) of the *Local Government Act 1999*, pursuant to Section 91(7) of that Act, the Council orders **that the following document(s) (or part) shall be kept confidential**, being document(s) (or part) relating to a matter dealt with by the Council on a confidential basis under Sections 90(2) and 90(3)(b)&(d) of the Act:

- **The Minutes of Item 17.2 Motion on Notice – Millicent Community Club of 11 December 2018 Ordinary Council Meeting**

On the grounds that the document(s) (or part) is:

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

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.

Specifically the present matter relates to the Millicent Community Club.

This order shall operate **until further order** and will be reviewed at least annually in accordance with the Act.

2. Pursuant to Section 91(9)(c) of the Act, the Council delegates to the Chief Executive Officer the power to revoke this order and must advise the Council of the revocation of this order as soon as possible after such revocation has occurred.

## RECOMMENDATION 7

1. Pursuant to section 91(9)(a), having reviewed the confidentiality order made on 15 January 2019 under section 90(2) and (3)(a) of the *Local Government Act 1999*, pursuant to Section 91(7) of that Act, the Council orders **that the following document(s) (or part) shall be kept confidential**, being document(s) (or part) relating to a matter dealt with by the Council on a confidential basis under Sections 90(2) and 90(3)(a) of the Act:

- **The Attachments of Item 19.1 Review of Eligible Section 184 – Sale of Properties for Unpaid Rates of 15 January 2019 Ordinary Council Meeting**

On the grounds that the document contains:

Information the disclosure of which would involve the unreasonable disclosure or information concerning the personal affairs of any person (living or dead).

Specifically, the present matter relates to information pertaining to unpaid rates.

The disclosure of this information would be unreasonable because the information is sensitive / confidential and is not a matter of public knowledge.

This order shall operate **until further order of the Council** and will be reviewed at least annually in accordance with the Act.

2. Pursuant to Section 91(9)(c) of the Act, the Council delegates to the Chief Executive Officer the power to revoke this order and must advise the Council of the revocation of this order as soon as possible after such revocation has occurred.



## RECOMMENDATION 8

1. Pursuant to section 91(9)(a), having reviewed the confidentiality order made on 12 February 2019 under section 90(2) and (3)(b) of the *Local Government Act 1999*, pursuant to Section 91(7) of that Act, the Council orders **that the following document(s) (or part) shall be kept confidential**, being document(s) (or part) relating to a matter dealt with by the Council on a confidential basis under Sections 90(2) and 90(3)(b) of the Act:

- **The Minutes, Report & Attachments of Item 19.1 Millicent Community Club of 12 February 2019 Ordinary Council Meeting**

On the grounds that the document(s) (or part) is:

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

Specifically, the present matter relates to the Millicent Community Club.

This order shall operate **until further order of the Council** and will be reviewed at least annually in accordance with the Act.

2. Pursuant to Section 91(9)(c) of the Act, the Council delegates to the Chief Executive Officer the power to revoke this order and must advise the Council of the revocation of this order as soon as possible after such revocation has occurred.

## RECOMMENDATION

1. That having considered Agenda Item 19.1 2019 *Annual Review of Confidential Orders* in confidence under section 90(2) and (3)(a),(b),(d),(e) and (k) and of the *Local Government Act 1999*, the Council, pursuant to section 91(7) of that Act orders that the **Minutes and Report related to this item be released to the public.**

## Background & Analysis

As this report relates to items currently held in confidence it is recommended to also consider this item in confidence.

The *Local Government Act 1999* (the Act) specifies circumstances in which Council can order the public to be excluded from a meeting so it can receive, discuss or consider matters in confidence. Minutes, reports and documents from items considered in confidence can also be ordered to remain confidential under section 91(7) of the Act. Council maintains a register that details items that are currently held under confidentiality orders and the conditions under which they are kept.

Section 91(9)(a) of the Act requires confidentiality orders operating for a period exceeding 12 months to be reviewed at least once in every year. The last review was considered at the Ordinary Meeting of Council on 10 April 2018 (Folio 7546 - 7553, CM 758-765, Item 17.1).

As part of the annual review process, Council must ascertain whether the information (e.g. minutes, reports, documents) relating to each item can be released to the public. Confidential items can be released when:

- an existing order expires due to the passage of time; or
- an order is revoked by Council; or
- an order is revoked by an employee of the council (only when provided with delegated authority under s91(9)(c) through council resolution, usually only given to the CEO).

If there is a requirement for information to remain confidential beyond that specified in an existing order, a new order must be made in accordance with the Act. Only Council may make a new order. It is not possible to place a new order on items where an existing order has expired or been revoked (and information released to the public). Council or a Council Committee may delegate to an employee of the Council (e.g. Chief Executive Officer) the power to revoke an order made in accordance with section 91(7) of the Act.

During the review period, the CEO has exercised the delegated power to revoke orders where permitted. Table 1 attached contains the list of items that have been fully released since the last annual review.

Table 2 attached contains all remaining items currently held under confidentiality orders that are to be considered as part of this annual review. The last column in table 2 provides recommendations for further orders to be made and to retain some existing orders as they currently are.

## Risk Management

Risks have been identified as detailed in the table below.

Risks	Likelihood	Consequence	Rating	Mitigating Action
Inappropriate use of or unclear confidentiality orders causing a breach of legislation or policy.	Unlikely	Major	Medium	Ensure orders are made in accordance with the <i>Local Government Act 1999</i> and Code of Practice.
A confidentiality order expires causing the release of sensitive reports, documents or minutes prematurely.	Unlikely	Major	Medium	Undertake annual review of confidentiality orders. Place new orders as required.

## Policy Considerations

Public Access to Council and Committee Meetings and Associated Documents Code of Practice.

## Financial Implications

There are no known financial implications related to this report. Many of the items held under confidentiality orders relate to financial matters.

**Legislative Implications**

Section 90 and 91 of the *Local Government Act 1999* (refer attached).

**Environmental/Sustainability Impacts**

There are no known environmental or sustainability impacts related to these matters.

**Communication & Consultation**

Once items are no longer under a confidentiality order, they are released for public access, including via Council's Website.

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