

## ITEM NUMBER: 18.1

### CONFIDENTIAL REPORT

### HOARDING FEE RELIEF

*Pursuant to Section 83(5) of the Local Government Act 1999 the Report attached to this agenda and the accompanying documentation is delivered to the Council Members upon the basis that the Council consider the Report and the documents in confidence under Part 3 of the Act, specifically on the basis that Council will receive, discuss or consider:*

- 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.**

**Recommendation – Exclusion of the Public – Section 90(3)(d) Order**

1. That pursuant to Section 90(2) of the *Local Government Act 1999* Council hereby orders that the public be excluded from attendance at this meeting with the exception of the Chief Executive Officer and Staff in attendance at the meeting in order to consider Report No: 273/25 Hoarding Fee Relief in confidence.
  2. That in accordance with Section 90(3) of the *Local Government Act 1999* Council is satisfied that it is necessary that the public be excluded to consider the information contained in Report No: 273/25 Hoarding Fee Relief on the following grounds:
    - d. pursuant to section 90(3)(d) of the Act, 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 who supplied the information.
  3. The Council is satisfied, the principle that the meeting be conducted in a place open to the public, has been outweighed by the need to keep the information or discussion confidential.
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CONFIDENTIAL

**Item No:** 18.1

**Subject:** HOARDING FEE RELIEF

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## Summary

At its meeting on 22 April 2025, Council considered, in confidence, a request from Lucy Commercial for a reduction in hoarding fees due to extenuating financial circumstances related to a development project at 19 St Johns Row, Glenelg.

Council acceded to that request and made the order under section 91(7) of the *Local Government Act 1999* to retain the information in confidence.

It is now recommended that the confidentiality order be revoked.

A request has been received from a resident for greater transparency in reporting and decision making in relation to hoarding fee relief applications from developers. This request has been considered by Administration and responses to each aspect of the request have been provided in this report.

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## Recommendation

**That Council:**

- 1. revokes the confidentiality order and releases the report, attachment and minutes related to Report No: 98/25 – Hoarding Fee Relief Request;**
  - 2. considers all future requests for fee relief from commercial developers in the public agenda; and**
  - 3. includes in Council's Annual Report the total value of relief provided and impact on the Council Operating Budget for that year.**
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## Background

At its meeting on 22 April 2025, Council considered, in confidence, a request from Lucy Commercial for a reduction in hoarding fees due to extenuating financial circumstances related to a development project at 19 St Johns Row, Glenelg. Attached to the report is the Council report for information.

*Refer Attachment 1*

Council acceded to the request and provided relief for a period of six months ending on 31 August 2025, to the value of \$66,805.28.

At the Council meeting on 24 June 2025, Councillor Miller asked a question on notice in relation to the value of subsidies and fee reliefs provided to developers over the past decade in the City of Holdfast Bay.

Whilst the majority of the information requested was able to be provided, the fee relief provided to Lucy Commercial was unable to be disclosed due to the report, attachment and minutes of the original report being held in confidence.

## Report

Following the meeting on 24 June, Councillor Miller received a letter from a resident requesting the confidential information relating to the fee relief provided to Lucy Commercial be disclosed due to the significant public interest in the matter, particularly in light of recent rate increases.

The current impediment to the request made for the immediate disclosure of the amount of the Lucy Commercial relief is that the information is subject to a confidentiality order under section 91(7) of the *Local Government Act 1999* (having been considered and determined under section 90(2) and (3)(d) of the LG Act). As there is no power delegated to the Chief Executive Officer to review and revoke the confidentiality order, the matter must be considered by Council.

Legal advice has been sought in regard to this request with the advice indicating, whilst it would be appropriate for commercial reasons, to discuss and to decide the matter in a confidential Council meeting, it would be difficult for the Council to justify the maintenance of the matter in confidence under section 91(7) of the LG Act. This advice is further reinforced by the fact that there are no evident reasons in either the Council report and/or the Council minutes which can be relied upon to objectively support the maintenance of the section 91(7) order.

It is therefore recommended that Council revokes the confidentiality order and releases the report, attachment and minutes relating to Report No: 98/25 – Hoarding Fee Relief Request.

The resident raised concerns with the disclosure of substantial rebates to developers to all ratepayers, highlighting the principle of transparency of local government decision making. In addition to the request for disclosure of the fee relief provided to Lucy Commercial, the resident is seeking Council:

1. provide full public reporting of future developer rebates and fee reductions;
2. provide a clear criteria when such rebates are appropriate and justified;
3. undertake community consultation before approving significant fee reduction;
4. provide annual reporting to ratepayers of the total value of rebates provided and their impact on Council finances;
5. alignment with Local Government Association guidelines on transparency and best practice in local government operations.

Consideration has been given to the requests from the resident. It is Administration's view it is reasonable for future reports tabled with Council in relation to fee relief to commercial developers are considered in public. Given the material nature of the amounts of relief being requested, it is appropriate these decisions are transparent.

In relation to decisions being made against a criteria, it is the view of Administration that a formalised criteria is not necessary. Reports to Council provide all relevant information required for Council to make a decision and justification for fee relief is provided based on the unique circumstances of the development. In the event Council does not believe it has all of the information available to them to make a decision, further information can be requested from Administration, a mechanism used by Council often.

With regard to the annual reporting to ratepayers, Administration believes there is merit in including reporting in the Annual Report of the fee relief provided to developers. Again, given the material nature of the amounts of relief requested, and at instances provided, Council does have an obligation to be transparent about the nature of the impact of the relief on the Council's budget. While hoarding fees are not budgeted for, due to the unpredictability of the revenue stream, any fee relief is a loss of potential revenue that Council should disclose.

In relation to community consultation, it is to be noted that such consultation is not subject to any statutory imperative either as part of public consultation policy requirements of the *Local Government Act 1999* or, as proposed, under the draft Community Engagement Charter.

Council could consider including such requests within its consultation policy, however this is not recommended. There are several reasons for this position including:

- it is an application by a third party, albeit in most instances likely to be a corporate third party in relation to financial dealings with the Council, being a process that would, fail to justify a consultation or engagement process. These considerations might be further articulated as confidentiality or, even, privacy concerns;
- information provided by an applicant is, at least in part, likely to entail consideration of personal and/or commercial, sensitive, confidential information, the essence of which should not be available as part of a consultation/engagement process. Indeed, it is likely to be information that, if considered at a Council meeting, would most likely be considered in confidence and redacted from any subsequent publication of the matter until it ceased to be of commercial value. This position does not, preclude that the report and minutes should be public given it involves a waiver of fees that would otherwise be payable to the Council if the associated project proceeded;
- it concerns a waiver of potential income and not an expenditure of actual income;
- it is part of the 'everyday' operational dealings/ administrative matters of council with third parties that does not warrant the financial and time commitment required to delay a decision pending a public process. It would be both detrimental to good business practice and, potentially, to both the Council and the applicant;
- it is an action that is not within the realm of the current draft Community Engagement Charter. It is not within any of the four categories of engagement (being Significant, Standard, Local or Inform(ative) ) sufficient to invoke any mandatory engagement process, insofar as there is no immediate and obvious community impact that, objectively and reasonably, supports a consultation or engagement process;

- it is an operational matter that does not entail any actual expenditure of Council funds as set out in an adopted budget. There is, therefore, no cost-benefit imperative under consideration;
- given the nature of the matter is a proposition from a third-party in the form of an application for financial relief by way of non-payment or part-payment of a Council fee, there is no public policy reason for it to be delayed and to incur financial resources to test the views of the community;
- it would have the potential to have a considerable and negative impact upon both the Council and the third party proposing to undertake business in the council area and might even be considered as contrary to the Objects of the Local Government Act and role and functions of the Council; and
- there may, in certain applications, be an urgent consideration.

## Budget

Not applicable

## Life Cycle Costs

Not applicable

## Strategic Plan

Statutory compliance

## Council Policy

Code of Practice – Access to Meetings and Documents

## Statutory Provisions

*Local Government Act 1999*, section 90

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**Written By:** Chief Executive Officer

**Chief Executive Officer:** Ms P Jackson