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Confidentiality - Council Policy

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| Policy Owner | <i>Customer Support and Governance Manager</i> |
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| Related Legislation | <i>Local Government Act 2009 Local Government Regulation 2012 Right to Information Act 2009 Information Privacy Act 2009 Crime and Corruption Act 2001</i> |
| Related Documents | <i>Employee Code of Conduct Meetings - Council Policy</i> |

| Policy Version | Approval Date | Adopted/Approved |
|-----------------------|----------------------|------------------------------------|
| <i>1</i> | <i>21/11/2012</i> | <i>Ordinary Meeting of Council</i> |
| <i>2</i> | <i>18/03/2015</i> | <i>Ordinary Meeting of Council</i> |
| <i>3</i> | <i>21/11/2018</i> | <i>Ordinary Meeting of Council</i> |

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1. PURPOSE

This policy provides guidance to Councillors pursuant to section 171(3) of the *Local Government Act 2009* (the LG Act) and to Council Staff pursuant to section 200(5) of the LG Act, regarding the proper handling of confidential information. The policy aims to assist in determining what might be considered confidential information and how this information should be handled.

2. SCOPE

This policy applies to confidential information held by Council, Councillors and all Council employees, including contractors.

3. POLICY

Legislative and Policy Context

Section 171(3) of the LG Act sets out provisions relating to the use of confidential information by Councillors. It states:

(3) A Councillor must not release information that the Councillor knows, or should reasonably know, is information that is confidential to the local government.

Note—

A contravention of subsection (3) is misconduct that is dealt with by the tribunal.

Section 200(5) of the LG Act sets out the provisions relating to the use of confidential information by employees. It states:-

200 Use of information by local government employees

(5) A person who is, or has been, a local government employee must not release information that the person knows, or should reasonably know, is information that -

(a) is confidential to the local government; and

(b) the local government wishes to keep confidential.

Maximum penalty-100 penalty units or 2 years imprisonment.

The *Information Privacy Act 2009*, the *Public Sector Ethics Act 1994* (section 9(c)) and Council's Employee Code of Conduct also require that information be managed responsibly and in the public interest.

Introduction

Council operates in an environment of public accountability in which it seeks to inform the public of issues under consideration and the nature of decisions made by Council and its committees. Therefore, information should ordinarily be released to the public unless there are compelling reasons which indicate that this is not in the public interest.

At the same time, Council is conscious of the need to handle Council information in a way that promotes and maintains the public's trust and confidence in the integrity of the local government.

It is accepted that Councillors and Employees will be in receipt of confidential information that may or may not be part of a formal Council meeting. It is the Councillors and Employees responsibility to ensure that such information is treated confidentially, so as not to harm, prejudice or compromise the interests of Council or any individual or organisation, or enable any individual or organisation to gain a financial advantage.

Whilst endeavouring in the interests of public accountability to limit the number of matters which are considered in confidential sessions, Council acknowledges that it is appropriate to consider certain matters in closed meetings.



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Responsibilities of Councillors and Employees

Councillors and Council Employees must be aware of their responsibilities and agree they should:-

- a. exercise due care when handling or using information acquired in their role as a Councillor and Council Employee;
- b. acknowledge that there will be information that must be treated as confidential because to release it would reduce public trust and confidence in the integrity of the Council;
- c. acknowledge that disclosure of confidential information constitutes a breach of the LG Act and Council's Employee Code of Conduct;
- d. if uncertain, presume information is confidential, and seek advice from the Chief Executive Officer (CEO) prior to any release of it;
- e. undertake not to disclose, and to use their best endeavours to prevent disclosure of, confidential information to any person or organisation, specifically:-
 - a. avoid discussing confidential Council information with family, friends and business associates; and
 - b. ensure documents containing confidential information are properly safeguarded at all times – including materials stored at private or business residences.

Confidential Information

The following types of information shall be deemed to be confidential to Council unless or until Council resolves to the contrary in a particular instance:-

- a. Commercial in confidence information — including where the release of information would affect a third party's competitive advantage; this is particularly relevant in a competitive tender situation.
- b. Information derived from government departments or ministers that has been classified as confidential.
- c. Information of a personal nature or about personal matters, for example the personal details of Councillors or Council staff.
- d. Information relating to a property disposal or acquisition process where release of the information may prejudice Council (see also section 171(1) of the LG Act).
- e. Financial and legal analysis where the disclosure of that information may compromise Council or someone else.
- f. Information that could result in action being taken against Council for defamation.
- g. Information involving legal advice to Council or a legal issue or a matter before the courts.
- h. Information that is expressly given to Councillors or Council Employees in confidence.
- i. Information examined or discussed at Councillor Information/Strategy/Agenda Discussion Sessions (or briefings) ("Sessions") is **not** confidential, unless the Mayor, Session Chairperson or CEO declares that such information (or part thereof) is confidential.
- j. Pursuant to section 275 of the *Local Government Regulation 2012*, where Council so resolves, information and discussions in a meeting about:-
 - i. the appointment, dismissal or discipline of employees
 - ii. industrial matters affecting employees
 - iii. the Council's budget (prior to formal adoption)
 - iv. rating concessions
 - v. contracts proposed to be made by Council
 - vi. starting or defending legal proceedings involving Council



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- vii. any action to be taken by the local government under the Planning Act, including deciding applications made to it under that Act
- viii. any other business for which a public discussion would be likely to prejudice the interests of Council or someone else, or enable a person to gain a financial advantage.

It is acknowledged that some of the above classes of information may need to be disclosed from time to time for legal proceedings or in accordance with the *Right to Information Act 2009*.

Nevertheless, this procedure deems that as a minimum:-

- a. The Mayor or CEO may make a declaration that information concerning a specific matter is to be treated as confidential to Council, and the information will remain confidential unless or until Council resolves to the contrary.
- b. An item on a Council ordinary or committee meeting agenda – and the information contained in the documentation or supporting material – that is declared confidential by the CEO is to remain confidential unless or until Council or the committee resolves to the contrary.
- c. If the Mayor or a Councillor in a meeting asks that a matter be treated as confidential, Council will formally resolve as to whether all information concerning the matter is confidential.
- d. If a meeting of a committee resolves that an item – and the information contained in the documentation or supporting material – is to be confidential, it remains confidential unless or until Council resolves to the contrary.
- e. If Council exercises its powers under section 275 of the *Local Government Regulation 2012* to close its meeting to members of the public, all information in relation to the matters discussed during that closed meeting or the closed portion of the meeting is confidential, unless and until the Council resolves to the contrary.
- f. Confidential information shall be clearly identified as confidential.
- g. Any information of a type deemed to be confidential is to be presumed by Councillors and Employees to be confidential to Council and must not be released without seeking advice from the CEO or delegate.
- h. If a Councillor or Employee has any doubt as to whether Council considers information to be confidential, the Councillor or Employee is to act on the assumption that Council does so intend until the doubt is resolved at a subsequent meeting of Council.
- i. Names and/or addresses of complainants shall be withheld UNLESS LEGALLY REQUIRED.

Consideration of Confidential Material – Council Meetings

The following procedures will apply to the preparation of an agenda and material for consideration at meetings of the Council:-

1. If it is considered by the Chief Executive Officer that Council should consider a matter in a closed meeting, the CEO will clearly indicate such recommendation on the agenda.
2. The CEO will make a declaration that all information contained in the documentation and associated material is information confidential to Council.
3. The CEO will ensure that the documentation and material is clearly marked as confidential.
4. The reason for the recommendation will be set out in the material.

The following procedures will apply to a recommendation by the CEO that a matter be considered in a closed meeting:-

1. Council will consider the recommendation in open session unless to do so would result in the public release of the information concerning the matter.



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2. Council shall determine by resolution whether the matter is confidential or not for the purposes of declaring that a meeting should be a closed one (pursuant to section 275 of the Local Government Regulation 2012):-

275 Closed meetings

1) *A local government or committee may resolve that a meeting be closed to the public if its councillors or members consider it necessary to close the meeting to discuss—*

(a) the appointment, dismissal or discipline of employees; or

(b) industrial matters affecting employees; or

(c) the local government's budget; or

(d) rating concessions; or

(e) contracts proposed to be made by it; or

(f) starting or defending legal proceedings involving it; or

(g) any action to be taken by the local government under the Planning Act, including deciding applications made to it under that Act; or

(h) other business for which a public discussion would be likely to prejudice the interests of the local government or someone else, or enable a person to gain a financial advantage.

2) *A resolution that a meeting be closed must state the nature of the matters to be considered while the meeting is closed.*

3) *A local government committee must not make a resolution (other than a procedural resolution) in a closed meeting.*

3. Council will resolve that:

- a) the matter is to be considered in a closed meeting, and all information relating to that matter is confidential to Council, or
- b) the matter will be considered in open session.

4. Information considered at a closed meeting of Council shall remain confidential unless determined otherwise by:-

- a) the Chief Executive Officer; or
- b) Council resolution.

Release of Confidential Information

Any release of confidential information for any purpose to any person or organisation (other than those who are entitled to the information, such as other Councillors or Council staff) is a breach of section 171(3) and 200(5) of the LG Act.

Release includes:-

- a. orally telling any person about the information or any part of the information
- b. providing the original or a copy of documentation or any part of the documentation that is marked confidential
- c. paraphrasing – putting into your own words – any confidential information and providing that in writing or orally.

Breach of this Policy - Councillors

A breach of this Policy by a Councillor may constitute a breach of section 171(3) of the LG Act. Complaints will therefore be dealt with in accordance with Chapter 6, Part 2, Division 6 Conduct and performance of Councillors of the LG Act.



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Breach of this Policy - Employees

The misuse or 'leaking' of confidential information, whether deliberate or accidental, can constitute misconduct or, depending on the circumstances, corrupt conduct. Consequences may extend to dismissal, prosecution or civil legal action against the individual and organisation involved.

A breach of this policy may constitute a breach of section 200(5) of the LG Act and of Council's Employee Code of Conduct (section 4.5). In cases of reasonable suspicion of corrupt conduct, the CEO must report to the Crime and Corruption Commission pursuant to section 38 of the *Crime and Corruption Act 2001*.

ATTACHMENTS:

Nil

DEFINITIONS:

'Council Officer/Employee' - means all persons employed by Western Downs Regional Council, including persons employed or engaged under a contract.

'Councillor information sessions' are non-decision making forums convened by Councillors, the CEO and, as directed by the CEO, other Council officers and contractors that create an opportunity for Councillors, officers and contractors to discuss matters of proposed policy or other strategic or community sensitive issues, as well as providing a forum for Councillors to be made aware of issues of significance to the organisation and/or to the community.

'Information' comes in any number of forms including letters, reports/documents, facsimiles, attachments, audio or video recordings, emails, electronic media, and/or other forms of information including discussions during meetings.

REVIEW TRIGGER:

- Periodic review - post-election
- Change in legislation

