

This policy, which incorporates the statutory requirements prescribed for a Public Transparency policy in accordance with Clause 57 and 58 of the *Local Government Act 2020*, was adopted by resolution of Darebin City Council on 20 July 2020.

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|--------------------------------|---|
| <b>Legislation/ Regulation</b> | <i>Local Government Act 2020</i>  |
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| <b>Policy Owner/ Sponsor</b>   | Manager, Governance and Corporate Strategy  |
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# Public Transparency Policy 2020

| <p><b>1. Purpose</b></p>                       | <p>The purpose of this policy is to:</p> <ul style="list-style-type: none"> <li>• increase public trust and confidence in the Council and its decision-making through greater understanding and awareness;</li> <li>• facilitate access to information held by the Council in a timely manner;</li> <li>• support good governance and accountability;</li> <li>• provide greater clarity around Council and its decision making; and ensure compliance with legislative obligations.</li> </ul>  |      |             |                              |   |                      |  |                               |   |                             |   |
|--|--|------|-------------|------------------------------|---|----------------------|--|-------------------------------|---|-----------------------------|---|
| <p><b>2. Scope</b></p>                         | <p>This policy applies to Councillors, Council staff and other personnel (including contractors) of the Council.</p> <p>This policy covers:</p> <ul style="list-style-type: none"> <li>• Documentary information</li> <li>• Process information including the basis upon which decisions are made</li> <li>• How information will be made available to the public.</li> </ul>  |      |             |                              |   |                      |  |                               |   |                             |   |
| <p><b>3. Definitions and Abbreviations</b></p> | <p><b>Act</b> - means the <i>Local Government Act 2020 (Vic)</i>.</p> <p><b>Closed Meeting</b> - means when Council resolves to close the meeting to the general public in accordance with the provisions of the Act.</p> <p><b>Consultation</b> - means the process of seeking input on a matter.</p> <p><b>Community</b> - means the residents and ratepayers of, and visitors to, the Municipal District and may, depending on the context, refer to all of those people or to particular subsets of those people.</p> <p><b>Confidential Information</b> - means confidential information as defined in section 3(1) of the Act:</p> <table border="1" data-bbox="395 1632 1331 1993"> <thead> <tr> <th>Type</th> <th>Description</th> </tr> </thead> <tbody> <tr> <td>Council business information</td> <td>Information that would prejudice the Council's position in commercial negotiations if prematurely released.</td> </tr> <tr> <td>Security information</td> <td>Information that is likely to endanger the security of Council property or the safety of any person if released.</td> </tr> <tr> <td>Land use planning information</td> <td>Information that is likely to encourage speculation in land values if prematurely released.</td> </tr> <tr> <td>Law enforcement information</td> <td>Information which would be reasonably likely to prejudice the investigation into an alleged breach of the law or the fair trial or hearing of any person if released.</td> </tr> </tbody> </table> | Type | Description | Council business information | Information that would prejudice the Council's position in commercial negotiations if prematurely released. | Security information | Information that is likely to endanger the security of Council property or the safety of any person if released. | Land use planning information | Information that is likely to encourage speculation in land values if prematurely released. | Law enforcement information | Information which would be reasonably likely to prejudice the investigation into an alleged breach of the law or the fair trial or hearing of any person if released. |
| Type   | Description  |      |             |                              |   |                      |  |                               |   |                             |   |
| Council business information                   | Information that would prejudice the Council's position in commercial negotiations if prematurely released.  |      |             |                              |   |                      |  |                               |   |                             |   |
| Security information                           | Information that is likely to endanger the security of Council property or the safety of any person if released.   |      |             |                              |   |                      |  |                               |   |                             |   |
| Land use planning information                  | Information that is likely to encourage speculation in land values if prematurely released.  |      |             |                              |   |                      |  |                               |   |                             |   |
| Law enforcement information                    | Information which would be reasonably likely to prejudice the investigation into an alleged breach of the law or the fair trial or hearing of any person if released.  |      |             |                              |   |                      |  |                               |   |                             |   |

|   |   |
|---|---|
| Legal privileged information                      | Information to which legal professional privilege or client legal privilege applies   |
| Personal information                              | Information which would result in the unreasonable disclosure of information about any person or their personal affairs if released.  |
| Private commercial information                    | Information provided by a business, commercial or financial undertaking that relates to trade secrets or that would unreasonably expose the business, commercial or financial undertaking to disadvantage if released |
| Confidential meeting information                  | Records of a Council and delegated committee meetings that are closed to the public to consider confidential information  |
| Internal arbitration information                  | Confidential information relating internal arbitration about an alleged breach of the Councillor code of conduct  |
| Councillor Conduct Panel confidential information | Confidential information relating to a Councillor Conduct Panel matter  |
| Confidential information under the 1989 Act       | Information that was confidential information for the purposes of section 77 of the Local Government Act 1989   |
| Information prescribed by regulations             | Information prescribed by the Act's regulations to be confidential information  |
| Confidential information under other legislation  | Information that is deemed confidential by virtue of any other legislation  |

**Council** - means Darebin City Council.

**Council Information** - means all documents and other information held by Council.

**Council Website** - means Council's website at [www.darebin.vic.gov.au](http://www.darebin.vic.gov.au)

**FOI** means freedom of information

**FOI Act** means the *Freedom of Information Act 1982 (Vic)*

**Governance Rules** - means the governance rules adopted by Council under section 60 of the Act, as amended from time to time.

**Meeting** – means a meeting of Council or a Delegated Committee

**Municipal Community** means:

- a) people who live in the municipal City of Darebin;
- b) people and bodies who are ratepayers of Darebin;
- c) traditional owners of land in the municipal City of Darebin; and
- d) people and bodies who conduct activities in the municipal City of Darebin.

**Personal Information** - means personal information as defined in section 3(1) of the *Privacy and Data Protection Act 2014 (Vic)*.

|                                      |   |
|--------------------------------------|---|
|                                      | <p><b>Public Interest Test</b> means the standard test Council will apply when determining whether release of information is contrary to the public interest. Council will consider the harm likely to be created by releasing the information and the public benefit in being transparent. When considering possible harm to the community or members of the community. Potential harm to the City will only be a factor if it would also damage the community, such as where it involves a loss of public funds or prevents Council from performing functions.</p> <p><b>Public Transparency Principles</b> – means the Public Transparency Principles set out in section 58 of the Act and reproduced in 7.2 of this Policy.</p> <p><b>Requestor</b> - means a person making a request to access Council information under and in accordance with this Policy.</p> <p><b>Transparency</b> means enabling others to see and understand how the organisation operates in an honest way. It also means to ensure the availability of all information needed in order to collaborate, cooperate and make decisions effectively.</p>  |
| <p><b>4. Policy Statement(s)</b></p> | <p>Transparency and access to government information is a core principle of democratic governance. Systems that are open, accountable and honest are fundamental to building trust within the community and enabling fully informed engagement in the democratic process. Without Transparency and engagement, the core responsibilities of local government cannot be achieved.</p> <p>Transparency and information sharing better enable the Municipal Community to contribute to policy formulation, assist regulation compliance, support decision making and evaluate service delivery performance.</p> <p>The <i>Local Government Act 2020</i> (Vic) (the Act) supports Council’s commitment to the principles of open, honest and accountable governance. One of the overarching principles of the new Act is that the transparency of Council decisions, actions and information is to be ensured. This policy formalises Councils’ commitment to transparency in its decision-making processes and the public awareness of the availability of Council information.</p> <p>This policy fulfils Councils’ requirement to adopt and maintain a public transparency policy under s 57 of the Act and gives effect to the Public Transparency Principles outlined in s 58.</p> |
| <p><b>5. Responsibilities</b></p>    | <p>As listed at section 9 of this policy.</p>   |

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|--|--|
| <p><b>6. Breach/Non-compliance of Policy</b></p> | <p>Breaches of policies are treated seriously. Any concerns about non-compliance should be reported immediately to the owner of this policy.</p> <p>If a member of the community wishes to question a decision about the release of information:</p> <ul style="list-style-type: none"> <li>• This should be raised directly with the officer handling the matter in the first instance.</li> <li>• If still not satisfied and would like to further review the decision, this can be reported to the Freedom of Information Officer at the Council.</li> <li>• If still not satisfied and would like to contest the decision, this can be reported in accordance with Councils Complaints Handling Procedures.</li> </ul> <p>If not satisfied with Council’s response, the concerns can be raised directly through:</p> <p><b>Victorian Ombudsman</b><br/> Level 9 North Tower 459 Collins Street Melbourne<br/> 3000<br/> Tel: 03 9613 6222<br/> Website: <a href="http://www.ombudsman.vic.gov.au/complaints">www.ombudsman.vic.gov.au/complaints</a></p> <p>Or, where the complaint relates to management of privacy</p> <p><b>Office of the Victorian Information Commissioner</b><br/> PO. Box 24274<br/> Melbourne, Vic 3000<br/> Telephone: 1300 00 6842<br/> Email: <a href="mailto:enquiries@ovic.vic.gov.au">enquiries@ovic.vic.gov.au</a> Website:<br/> <a href="http://www.ovic.vic.gov.au">www.ovic.vic.gov.au</a></p> |
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## 7. PUBLIC TRANSPARENCY AND DECISION MAKING

### 7.1 What Is Public Transparency

Transparency and accountability go hand in hand. Openness, accountability, and honesty define local government transparency and Council’s obligation to share information with the community.

Transparency is central to the ability of the community to hold its elected and appointed officials accountable. Public transparency, in the local government context, requires that the work of the Council is:

- Conducted openly;
- Accompanied by information made freely and proactively available to the community and stakeholders; and
- Supportive of participation in decision making.

Exceptions should be minimal and in accordance with law. An explanation should always be provided as to why information will not be released or why a decision cannot be made with full transparency.

## 7.2 Public Transparency Principles

Council commits to the following principles for Public Transparency as set out in s 58 of the Act:

- a) Council decision making processes must be transparent except when the Council is dealing with information that is confidential by virtue of this Act or any other Act.
- b) Council information must be publicly available unless—
  - i. The information is confidential by virtue of this Act or any other Act; or
  - ii. Public availability of the information would be contrary to the public interest.
- c) Council information must be understandable and accessible to members of the municipal community.
- d) Public awareness of the availability of Council information must be facilitated.

Council will give effect to and implement the Public Transparency Principles in accordance with this Policy.

## 7.3 Decision Making at Council Meetings

**7.3.1** Council must make decisions in accordance with its obligations under the Act, Rules and adopted policies.

**7.3.2** Council must ensure that decisions made at Council Meetings are:

- a) Undertaken in accordance with *the Act* and the Governance Rules.
- b) Conducted in an open and transparent forum, unless closed in accordance with the provisions in the Act and Governance Rules.
- c) Informed through community engagement, in accordance with the Community Engagement Principles and the Council's Community Engagement Policy.
- d) Made fairly and on the merits, and where any person whose rights will be directly affected by a decision of the Council, that person will be entitled to communicate their views and have their interests considered, in accordance with the law.

**7.3.3** Decisions made at Council meetings are informed by Council reports that are prepared by officers and included in the agenda. Council meeting agendas are made available to the community in advance of each meeting in accordance with the Governance Rules. Council meetings will be open to the public to attend or view unless closed accordance with the provisions in the Act and Governance Rules.

**7.3.4** Council must display records of its meetings in accordance with its Governance Rules. The public will be able to access the minutes and video recording of meetings via Council's website.

**7.3.5** Where Council closes a meeting to the public, or closes part of a meeting to the public, on the grounds that an item is confidential, it will specify the title of that matter in agenda and the legal basis upon which the meeting is closed in accordance with the Act. The Minutes will also show the basis on which the meeting is closed.

**7.3.6** Where possible, resolutions that are made when a meeting is closed on the grounds that the item is confidential will include provision for all or part of the information to be made public providing that release of the information:

- is not contrary to law; or
- is not in breach of contractual requirements; or
- would be contrary to the public interest.

Refer to points 8.2 and 8.3 for further information.

**7.3.7** Council will publish an agenda prior to a Council meeting, ensuring that the municipality may ask a public question about items that will be considered at that meeting in accordance with its Governance Rules.

## **7.4 Decision Making by Council Officers**

**7.4.1** Will be undertaken in accordance with the Act, including the Governance Rules, and other legislation.

**7.4.2** Will be open and transparent, including considerations upon which decisions are based.

**7.4.3** Will be in keeping with the documented accountabilities of the organisation, including delegations or authorisations.

**7.4.4** Will be made fairly and based on merit.

## **7.5 Advisory Committees, Councillor Briefings and Informal Meetings**

For any meeting of an Advisory Committee established by Council attended by at least one Councillor or a scheduled or planned meeting to discuss the business of *Council* or to brief Councillors, and which is attended by at least half of the Councillors and one member of Council staff; and which is not a *Council meeting*, *Delegated Committee* meeting or *Community Asset Committee* meeting the *Chief Executive Officer* must ensure that a summary of the meeting is:-

- a) Tabled at the next convenient Council meeting; and
- b) Recorded in the minutes of that Council meeting.

The summary of the meeting will include

- a) The time, date and location of the meeting.
- b) The councillors in attendance.
- c) The topics discussed.
- d) The positions of council officers in attendance, and

- e) The organisation that any attendees external to council are representing; and
- f) Any conflicts of interest declared, including the reason.

## 7.6 Audit and Risk Committee Reporting

In accordance with the Overarching Governance Principles and Audit and Risk Committee Charter, any non-conformance with statutory or legislative requirements will be reported to the Audit and Risk Committee.

The Audit and Risk Committee will prepare biannual audit and risk report that describes the activities, issues and related recommendations of the Committee in accordance with the Act.

## 7.7 Community Engagement and Public Participation

The Council will engage with the Community when developing a strategy, plan or change that impacts them. In our reporting we will tell our community how we have undertaken community engagement and public participation throughout the process, what was learned from this and how it informed the approach taken.

# 8. COUNCIL INFORMATION

## 8.1 Availability and Accessibility of Council Information

**8.1.1** Council delivers a range of services to residents, business and visitors to the municipality and our services and functions are documented. Council will publish information about Council services and administration activities on Council's website or will make them available upon request.

**8.1.2** All Council Information will be made available to the public, unless the:

- Council Information is Confidential Information; or
- release of the Council Information is assessed by the Chief Executive Officer as being contrary to the public interest.

**8.1.3** Information will be made available and maintained on the Council website in a timely manner, accessible in plain language, format and provision of a multi-lingual interpreting service.

**8.1.4** The FOI Act 1982 gives a person right of access to documents that Council hold. Council is committed to proactive and informal release of information in accordance with the Freedom of Information Professional Standards issued by the Victorian Information Commissioner.

**8.1.5** Community members who can't find the information sought are encouraged to call Council before making an FOI application. An application may not be required to get the documents. Council staff will advise the requestor what documents are available for inspection and assist with getting the requested information.

- 8.1.6** A list of available information is provided in the Part II Statement (Statement) published on Council's website in accordance the FOI Act. This Statement requires government agencies and local councils to publish a number of statements designed to assist members of the public in accessing the information it holds.
- 8.1.7** Requests for information will be responded to in alignment with this policy and the Public Transparency Principles and the FOI Act. Consideration will be given to accessibility and cultural requirements with reference to the Equality Framework of the Council.
- 8.1.8** Information requested to be released will be assessed with regard to confidentiality in accordance with the Act and public interest test where appropriate. This may include providing a copy, arranging inspection or viewing or otherwise providing access to the document. An applicant may otherwise be advised that access to a document can be obtained via another method such as a statutory release scheme or for purchase.
- 8.1.9** A list of Council Information publicly available which will generally, subject to this Policy, be made available either on the Council Website, at the Council Offices or on request is set out at **Appendix 1** to this Policy.
- 8.1.10** Council publishes a range of newsletters, reports and handbooks for residents' businesses and visitors. These documents can be accessed from the website or by calling Council for a copy.
- By downloading from [www.darebin.vic.gov.au](http://www.darebin.vic.gov.au)
  - By telephoning the Council on (03) 8470 8888

Some of these publications are available at Council's Libraries.

## **8.2 Information Not Available**

- 8.2.1** Some Council information that informs decision making by Council may not be made publicly available. This will only occur if the information is confidential information (see definition of Confidential Information) or if its release would be contrary to the public interest or not in compliance with the *Privacy and Data Protection Act 2014* (Vic).
- 8.2.2** In the interests of transparency, Council may, by resolution, determine to release information to the public even though it is Confidential Information. However, this will not happen if the release:
- is contrary to law; or
  - is in breach of contractual requirements; or
  - would be contrary to the public interest (see clause 8.3).

## **8.3 Public Interest Test**

- 8.3.1** When determining whether release would be contrary to the public interest, Council will apply the Public Interest Test.
- 8.3.2** When assessing whether making certain Council Information publicly available would be contrary to the public interest, the Chief Executive Officer will have regard to, among other things:

- a) the sensitivity of the Council Information;
- b) whether the Council Information comprises a draft, or otherwise is no longer current; and
- c) any adverse effect that releasing the Council Information would have on the effectiveness of Council's decision-making processes.

**8.3.3** Without limiting clause 8.3.2, factors that might lead to a decision that the release of Council Information is contrary to the public interest might include whether release would be likely to:

- a) disclose Personal Information or Health Information;
- b) disclose information or opinions of a preliminary nature such that they might:
  - i. mislead the Community with respect to Council's position on a matter; or
  - ii. have a substantial adverse effect on the economy of the Municipal District;
- c) prejudice discussions or negotiations between Council and any other party, in relation to a contract, legal proceedings or any other matter;
- d) relate to internal working documents that have not been approved or submitted to Council, especially where their release may mislead the public;
- e) impair or otherwise impact on:
  - i. Council's ability to obtain information in future that is similar in nature to the Council Information;
  - ii. negotiations with respect to employment arrangements for Officers; or
  - iii. defence, prosecution and settlement of legal proceedings; or
- f) impact on the reasonable allocation of Council's resources, including in responding to requests for Council Information that are assessed by the Chief Executive Officer as being frivolous, vexatious or repetitious in nature.
- g) relate to directions to Council staff regarding negotiations in contractual or civil liability matters, where release may damage the Council's capacity to negotiate the best outcome for the community; and
- h) relate to correspondence with members of the community, where release may inappropriately expose a person's private dealings.

**8.3.4** The public interest determination will also consider factors referenced in the *Privacy and Data Protection Act 2014* (Vic), where applicable.

## 9. ROLES AND RESPONSIBILITIES

| Party/parties                  | Roles and responsibilities   | Timelines |
|--------------------------------|--|-----------|
| Council                        | Champion the commitment and principles for public transparency through leadership, modelling practice and decision-making.   | Ongoing   |
| Executive Leadership Team      | Champion behaviours that foster transparency and drive the principles through policy, process and leadership. Monitor implementation of this policy.   | Ongoing   |
| Senior Management Team         | Manage areas of responsibility to ensure public transparency, good governance and community engagement is consistent with this policy.   | Ongoing   |
| All Staff                      | Public transparency is the responsibility of all employees as appropriate to their role and function. All staff respond to requests for information and facilitate provision of information in consultation with their manager and in alignment with the Policy. | Ongoing   |
| Manager Governance             | To monitor implementation of this policy and conduct periodic reviews to drive continuous improvement.   | Ongoing   |
| Freedom of Information Officer | To receive and investigate concerns about compliance with this policy and provide recommendations and response on action.  | Ongoing   |

## 10. MONITORING, EVALUATION AND REVIEW

Council will monitor and review this Policy periodically to ensure that it continues to reflect expectations of the Community with respect to availability and accessibility of the Council information.

## 11. REVIEW

This policy will be reviewed within 6 months after General election and every four years thereafter unless the Council determines that an earlier review is required.

## APPENDIX 1 –INFORMATION PUBLICLY AVAILABLE

The following information will be available publicly, either by way of electronic publication on Council's website, inspection or on request, to ensure the Municipal Community is informed and can benefit from access to information regarding Council's functions and operations:

- Council and Delegated Committee meeting agendas and minutes
- Councillor and Employee codes of conduct;
- Council policies and organisational policies;
- annual reports;
- election campaign donation returns;
- interstate and international travel details of Councillors and Council staff;
- summary of personal interest returns;
- submissions received under s 223 of the *Local Government Act 1989* during the previous 12 months until its repeal;
- Councillor and employee register of gifts, benefits and hospitality
- donations and grants made by Council during the financial year;
- agreements to establish regional libraries;
- register of leases entered into by Council as a lessor (where Council is the owner);
- register of authorised officers appointed by Council;
- organisations of which Council was a member during the financial year and details of membership fees and services provided;
- instruments of delegation;
- register of processes and operating procedures where appropriate;
- application processes for approvals, permits, grants, access to Council services;
- decision making processes;
- guidelines and manuals;
- road management plans;
- register of roads;
- community engagement processes;
- complaint handling processes; and
- any other registers or records required by legislation.