



**COUNCILLOR
CONFIDENTIALITY AND PROCEDURE
POLICY**

26 March 2012

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CONTEXT

1. Maroondah City Council operates increasingly in an environment of public accountability and scrutiny. Council seeks to comprehensively inform the public of issues under consideration and the nature of the decisions that it makes.
2. In order to contribute to the environment of open decision-making, Council aims to ensure that the number of matters which are considered “In Camera” – Council meeting closed to members of the public - are kept to a minimum.
3. It is necessary to balance the need for Council to consider certain matters “In Camera” against the fundamental principle of open decision-making. Items classified as confidential generally relate to reports containing:
 - 3.1 commercial in confidence information, which has been provided by tenderers, contractors or joint venturers;
 - 3.2 information that would be of direct financial or other disadvantage to Council if it were circulated publicly;
 - 3.3 information relating to staff or other personnel issues; and
 - 3.4 information that is still only partly formulated and may, if released, give a misleading view to the community of what Council is planning.

OBJECTIVES

4. In line with the Council Plan and State Government legislation the objectives of this policy are to:
 - 4.1 recognise that Councillors will be in receipt of confidential information that is not always part of a formal Council Meeting;
 - 4.2 balance a Councillor’s right and duty to be informed, and to inform and consult with constituents, about the business before the Council with the interest the Council has in preventing disclosure of confidential information; and
 - 4.3 assist the Council to make decisions under section 89 of the Local Government Act (the “Act”) as to which matters may be considered “In Camera.”
5. This policy does not override:
 - 5.1 an individual Councillor’s statutory obligations in respect of the

use of information and the necessity of disclosing any conflict of interests in a matter under consideration by Council (sections 77, 78 and 79 of the Act); and

- 5.2 the Council's obligations under the Local Government Act or associated regulations or any other legislation or subordinate legislation to disclose or publish information required by law to be disclosed or published.

SOURCE AND CATEGORISATION OF CONFIDENTIAL INFORMATION

6. "Information" includes letters, reports, documents, facsimiles, attachments, tapes, electronic media and all other forms/modes of communication.
7. Confidential Information may also be derived from outside the Council, including:
 - 7.1 commercial in confidence information provided by contractors or tenderers, joint venture partners and wholly owned subsidiaries of Council;
 - 7.2 confidential information from Government departments or Ministers;
 - 7.3 financial and legal analysis where the disclosure of that information may prejudice the Council's position or that of a third party; and
 - 7.4 information presented to Councillors at meetings outside of formal Council meetings.
8. Confidential information shall not be:
 - 8.1 disclosed to any third party without the Council's consent; and
 - 8.2 incorporated in the agenda or minutes of any Council meeting or Council Assembly (except by reference) unless in the agenda or minutes of a closed ("In-Camera") meeting of the Council or Council Assembly.

CONSIDERATION OF CONFIDENTIAL MATERIAL – MEETINGS OF COUNCIL

9. The following procedures will apply to the preparation of confidential material for consideration at Meetings of Council:
 - 9.1 Officers in attendance will make a recommendation as to the categorisation of material as confidential;

- 9.2 the material will be clearly identified as confidential; and
 - 9.3 the reason for confidentiality will be set out in that material.
10. The following procedures will apply to the consideration of confidential material by Councillors at Meetings of Council:

- 10.1 upon moving that an issue be dealt with “In Camera,” the Mover must clearly state the reason for the motion in accord with the provisions of section 89(2) of the Act, for instance

“The matter is one that Council considers would prejudice Council or any person.”

- 10.2 the following standard paragraphs shall form part of “In Camera” resolutions :

Items Council wishes to remain confidential -

“THAT THIS RESOLUTION AND/OR REPORT ARE TO REMAIN CONFIDENTIAL (insert sunset provisions if applicable - eg, INDEFINITELY or UNTIL.....) AND THAT THIS DECISION BE REFLECTED IN THE MINUTES OF THE OPEN FORUM OF THIS MEETING.”

OR

Items Council wishes to make public -

“THAT THIS RESOLUTION BE REPRODUCED IN THE MINUTES OF THE OPEN FORUM OF THIS MEETING (insert if applicable AND THE REPORT BE MADE AVAILABLE FOR PUBLIC INSPECTION).”

INFORMATION TO BE DEEMED CONFIDENTIAL

- 11. Section 77 of the Act refers to information which a “person knows, or should reasonably know” is confidential information.
- 12. Without in any way limiting the application of the Act, this policy deems that at a minimum, a person “should reasonably know” that:
 - 12.1 an agenda item which is marked “Confidential” is intended to be confidential;
 - 12.2 if a meeting of Council resolves that an item is to be confidential, it is intended to be confidential;

- 12.3 if the Mayor, as Chairperson of a Council meeting, or the Chief Executive Officer asks that a matter be treated as confidential and no attendee present indicates an intention not to respect that request, the matter is intended to be confidential. In the event that an attendee does indicate to the contrary, Council will formally resolve, by majority, as to whether the issue shall remain confidential;
 - 12.4 if Council exercises its power under section 89(2) of the Act to close its meeting to members of the public, matters discussed during that closed meeting or the closed portion of the meeting are intended to be confidential;
 - 12.5 information, which is expressed to be given to Councillors in confidence, is intended to be confidential;
 - 12.6 information which is not expressly declared to be confidential but which contains information about the personal affairs of any party or is information which could result in any action being taken against Council for defamation is intended to be confidential;
 - 12.7 legal advice given to Council is presumed to be confidential unless or until Council, or the Chief Executive Officer declares it not to be confidential; and
 - 12.8 if the Chief Executive Officer exercises powers under section 77(2)(c) to designate in writing information as confidential.
13. This policy deems that if a person has any doubt as to whether Council intends to keep information confidential, it is preferable to act on the assumption that Council does so intend until the doubt is resolved at a subsequent meeting of Council.

CONTEXT APPLICATION OF POLICY AND SECTIONS LOCAL GOVERNMENT ACT

14. **Section 77** is limited to a present or former Councillor or a present or former member of a Council Committee, who must not improperly use information for advantage or to harm Council or to release confidential information.

Council recognises that it does not have the power to restrain third parties (ie, sources outside Council) from disseminating confidential information in their possession - regardless of whether Council resolved or intended it to be treated as confidential.

15. **Section 76D** provides for a penalty of up to 600 penalty units or imprisonment or both for breach of section 77. At the time of adoption of this policy (2011-12 financial year) a penalty unit as provide for by the Monetary Unit Act 2004 has a value of \$122.14 that equates to a maximum monetary penalty of up to \$73,284.

REVISION HISTORY

- Policy initially adopted by Council 5 July 1999
- Revised & updated by Council 26 March 2012

ADDENDUM – PROVISIONS LOCAL GOVERNMENT ACT 1989

Section 77 Confidential information

- (1) A person who is, or has been, a Councillor or a member of a special committee, must not release information that the person knows, or should reasonably know, is confidential information.
- (2) For the purposes of this section, information is “confidential information” if—
 - (a) the information was provided to the Council or a special committee in relation to a matter considered by the Council or special committee at a meeting closed to members of the public and the Council or special committee has not passed a resolution that the information is not confidential; or
 - (b) the information has been designated as confidential information by a resolution of the Council or a special committee which specifies the relevant ground or grounds applying under section 89(2) and the Council or special committee has not passed a resolution that the information is not confidential; or
 - (c) subject to sub-section (3), the information has been designated in writing as confidential information by the Chief Executive Officer specifying the relevant ground or grounds applying under section 89(2) and the Council has not passed a resolution that the information is not confidential.
- (3) Confidential information referred to in sub-section (2)(c) ceases to be confidential at the expiry of the period of 50 days after the designation is made unless sub-section (2)(a) or (2)(b) applies to the information.

Section 76D Misuse of Position

- (1) A person who is, or has been, a Councillor or member of a special committee must not misuse his or her position—
 - (a) to gain or attempt to gain, directly or indirectly, an advantage for themselves or for any other person; or
 - (b) to cause, or attempt to cause, detriment to the Council or another person.

Penalty: 600 penalty units or imprisonment for 5 years or both.

- (2) For the purposes of this section, circumstances involving the misuse of a position by a person who is, or has been, a Councillor or member of a special committee include—
 - (a) making improper use of information acquired as a result of the position he or she held or holds; or
 - (b) disclosing information that is confidential information within the meaning of section 77(2); or
 - (c) directing or improperly influencing, or seeking to direct or improperly influence, a member of Council staff in contravention of section 76E; or
 - (d) exercising or performing, or purporting to exercise or perform, a power, duty or function that he or she is not authorised to exercise or perform; or
 - (e) using public funds or resources in a manner that is improper or unauthorised; or
 - (f) failing to disclose a conflict of interest as required under this Division.

Section 89 Meetings to be Open to the Public

- (1) Unless sub-section (2) applies, any meeting of a Council or a special committee must be open to members of the public.
- (2) A Council or special committee may resolve that the meeting be closed to members of the public if the meeting is discussing any of the following—
 - (a) personnel matters;
 - (b) the personal hardship of any resident or ratepayer;
 - (c) industrial matters;
 - (d) contractual matters;
 - (e) proposed developments;
 - (f) legal advice;
 - (g) matters affecting the security of Council property;
 - (h) any other matter which the Council or special committee considers would prejudice the Council or any person;
 - (i) a resolution to close the meeting to members of the public.
- (3) If a Council or special committee resolves to close a meeting to members of the public the reason must be recorded in the minutes of the meeting.