

MANAGEMENT OF CONFIDENTIAL INFORMATION

Intent To ensure Councillors and Officers of Cairns Regional Council understand the requirements for management of all confidential information.

Scope This policy applies to all persons who are or have been a Councillor and to all persons who are or have been an employee, contracted staff or volunteer of Cairns Regional Council regarding information they have acquired whilst engaged by Council.

PROVISIONS

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. 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 staff will be in receipt of confidential information acquired during the normal conduct of their duties with Council. It is Council's 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.

This policy aims:

- Assist Council in determining what is considered to be confidential information to external parties and how this information should be handled;
- Provide guidance to Councillors in complying with section 171 of the *Local Government Act 2009* regarding the proper handling of confidential information;
- Provide guidelines relating to the management of confidential and sensitive information in respect to Council reports, communication with Councillors and employees of the Council, communication with members of the public and provide guidance to Council Officers in complying with section 200(5) of the *Local Government Act 2009*.

This policy does not override an individual Councillor's or staff statutory obligations in respect of the use of information, nor does it override Council's obligations under the *Local Government Act 2009*, *Information Privacy Act 2009* or any other legislation or subordinate legislation to disclose or publish information where this is required by law. <http://www.legislation.qld.gov.au/OQPChome.htm>

Definitions

For clarity the following definitions are provided:

'Confidential information' is information generally not known by, or available upon request to, the public which:

- Identifies and relates to a particular individual; or
- Carries a risk that – if released or improperly used – would cause harm to the council or a member of the community, or give an unfair advantage to someone.

'Information' is knowledge communicated or received concerning some fact or circumstance; news and knowledge on various subjects, however acquired. Information comes in any number of forms including letters, reports/documents, facsimiles, attachments, tapes, emails, electronic media, and/or other forms of information including discussions during formal and informal meetings.

'Workshops and/or Briefing Sessions' are non-decision making forums convened by Councillors, the CEO and, as directed by the CEO, other Council officers that create an opportunity for Councillors and officers 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.

'External Parties' is anybody that is not employed by Council.

'Employed by Council' includes persons appointed by Council, contracted on a casual or temporary basis, consultant agreements or contractual arrangements.

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:

- 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.
- Information derived from government departments or Ministers that have been classified as confidential.
- Information of a personal nature or about personal affairs, for example the personal details of Councillors or Council staff.
- Information relating to a property disposal or acquisition process where release of the information may prejudice Council (also see section 171A of the *Local Government Act 2009*).
- Financial and legal analysis where the disclosure of that information may compromise Council or someone else.
- Information that could result in action being taken against Council for defamation.
- Information involving legal advice to Council or a legal issue or a matter before the courts.
- Information that is expressly given to Councillors or staff in confidence.
- Information examined or discussed at Councillor workshops or briefing sessions, unless the CEO or relevant General Manager declares that such information (or part thereof) is not confidential.
- Information about:
 - the appointment, dismissal or discipline of employees
 - industrial matters affecting employees
 - the Council's budget
 - rating concessions
 - contracts proposed to be made by Council
 - starting or defending legal proceedings involving Council
 - any action to be taken by the local government under the *Sustainable Planning Act 2009*, including deciding applications made to it under that Act.

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* and the *Information Privacy Act 2009*.

When an external party is requesting access to Council records, the Councillor and/or Officer is to assume that all information produced, managed by or given to the Council is assumed to be confidential. Access can only be provided to external parties under the relevant legislative, local law, policy and administrative access. In addition, where there is a dispute and/or confusion about access, the external party has a legal right to apply under the *Right to Information Act 2009* or *Information Privacy Act 2009* to access and this application would be assessed on its merits.

The Council ensures that privacy and confidentiality of information it holds and takes all reasonable precautions to ensure that personal information (about individuals), commercial-in-confidence information (about organisations), or other sensitive information is not misused, intentionally or unintentionally, either within the Council or shared with third parties.

All personal information collected, stored and handled by the Council shall be done so in compliance with the Queensland Information Privacy Principles. Refer to Council's "Privacy" policy for further information on this matter.

Closed Session Reports

Under Section 275 of the *Local Government Regulation 2012* Council may resolve that a meeting be closed to the public if its councillors or members consider it necessary to close the meeting to discuss –

- the appointment, dismissal or discipline of employees; or
- industrial matters affecting employees; or
- the local government's budget; or
- rating concessions; or
- contracts proposed to be made by it; or
- starting or defending legal proceedings involving the Council; or
- any action to be taken by the Council under the *Planning Act*, including deciding applications made to it under that Act; or
- 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.

The Chief Executive Officer has the responsibility of preparing the agenda for a Council meeting. In doing that the agenda will indicate items in open and closed session. A resolution that a meeting be closed must state the nature of the matters to be considered while the meeting is closed and the resolution (other than a procedural resolution) must not be made in a closed meeting.

Whilst the resolution arising from such matters must be considered in Open Session, Council has the option to make any reports or material prepared about a closed session matter only available under the provisions of the *Right to Information Act 2009*, the *Information Privacy Act 2009* or legal proceedings.

Should it be determined that the report should remain a confidential document then the wording of the resolution must not refer to the subject report.

An Embargo Register is maintained by the agenda secretary. All reports in the Embargo Register will be confidential for two years, with the exception of matters relating to staff (which will be confidential for five years) or unless otherwise expressly stated.

Nevertheless, this policy deems that as a minimum:

- The CEO may make a declaration that information (other than Council reports) 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.
- An item on a Council 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 resolves to the contrary.
- 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.
- 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.
- Confidential information shall be clearly identified as confidential.
- Any information of a type deemed to be confidential is to be presumed by Councillors and staff to be confidential to Council and must not be released without seeking advice from the CEO.
- If a Councillor has any doubt as to whether Council considers information to be confidential, the Councillor is to act on the assumption that Council does so intend until the doubt is resolved at a subsequent meeting of Council.

The Embargo Register (#444639) will be maintained by the Chief Executive Officer so that Councillors can clearly identify which matters are covered by this embargo. In general, the schedule of confidential matters as per Section 275 of the *Local Government Regulation 2012* will apply. However, specific strategic planning initiatives could also be included to ensure that a corporate position is resolved prior to any media release.

Responsibilities of Councillors and Staff

Councillors and staff must make themselves aware of the types of information Council deems to be confidential and the personal responsibilities they have to ensuring there is no disclosure of this information:

- exercise due care when handling or using information acquired in their role with Council;
- 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;
- acknowledge that disclosure of confidential information constitutes a breach of the *Local Government Act 2009* and this policy, and that the individual could face personal liability for damages caused to third parties;
- if uncertain, presume information is confidential, and seek advice from the CEO prior to any release of it;
- undertake not to disclose, and to use their best endeavours to prevent disclosure of, confidential information to any person or organisation, specifically:
 - avoid discussing confidential Council information with family, friends and business associates; and
 - ensure documents containing confidential information are properly safeguarded at all times – including materials stored at private or business residences.

Use of Information by Councillors

Councillors must handle information in a way that promotes and maintains the public's trust and confidence in the integrity of the Council. Improper release of Council information by a Councillor is considered a breach of section 171 of the *Local Government Act 2009*.

A breach of section 171(3) of the *Local Government Act 2009* includes a release such as:

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

A person may make a complaint about a breach by a Councillor of section 171(3) by giving notice of the complaint to the Council's CEO. A breach of section 171(3) is "misconduct" (see the definition of "misconduct" in section 176(3) of the *Local Government Act 2009*). Allegations of misconduct must be referred by the Council's CEO to the Department of Infrastructure, Local Government and Planning (see section 176C of the *Local Government Act 2009*).

Thereafter the Department of Infrastructure, Local Government and Planning must refer the complaint to the Local Government Remuneration and Discipline Tribunal (see section 177A of the *Local Government Act 2009*). If the Local Government Remuneration and Discipline Tribunal decides that a Councillor has breached section 171(3), section 180(5) provides that the Local Government Remuneration and Discipline Tribunal may make one or more orders or recommendations relating to the misconduct.

Use of Information by Staff

Section 200 of the *Local Government Act 2009* states:

- (1) This section applies to all local government employees, including the Chief Executive Officer.
- (2) A **local government employee** includes—
 - (a) a contractor of the local government; and
 - (b) a type of person prescribed under a regulation.
- (3) A person who is, or has been, a local government employee must not use information acquired as a local government employee to—
 - (a) gain (directly or indirectly) an advantage for the person or someone else; or
 - (b) cause detriment to the local government.Maximum penalty — 100 penalty units or 2 years imprisonment.
- (4) Subsection (3) does not apply to information that is lawfully available to the public.
- (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.

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 Council staff or Councillors) is a breach of section 200(9) of the *Local Government Act 2009*. Release includes:

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

A breach of section 200 by an employee will be deemed to be a breach of the Staff Code of Conduct and the CEO may instigate any appropriate action deemed necessary in accordance with the code.

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This policy is to remain in force until otherwise determined by Council.

General Manager Responsible for Review:

Human Resources & Organisational Change

ORIGINALLY ADOPTED: 30/05/2002

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DUE FOR REVISION: 15/06/2017

REVOKED/SUPERSEDED:



Peter Tabulo
Chief Executive Officer