



GENERAL POLICY

Management of Confidential Information



2015

MAPOON ABORIGINAL SHIRE COUNCIL
Main Street, Mapoon Qld 4874

MASC General Policy: Management of Confidential Information

Intent To ensure Councillors and Employees of Mapoon Aboriginal Shire 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 Mapoon Aboriginal Shire 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 to support Councillors and staff in balancing the right and duty to inform the public and consult with the community about Council business with the interest Council has in preventing disclosure of confidential information.

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:

'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.

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:

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- 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 (see also section 171(1) 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 *Privacy Act 2009*.

Closed Session Reports

Under Section 275 of the *Local Government Regulation 2012* Council may resolve to consider a meeting to be closed to the public to discuss matters of a confidential nature.

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. However, this is essentially a recommendation and the final decision of what is handled in closed session is determined by the 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.

Should it be determined that once the matter has been resolved by Council that the report material can be publicly available, a statement to that effect should be included in the resolution, i.e. "That this report be made available to the public at the time of publishing the minutes of the Ordinary Meeting" (or some other date such as at the conclusion of the project). This allows all Councillors and officers to clearly determine future public access to the material.

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.

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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.

Confidential Reports must be under one of the following headings:

- Contractual Reports
- Budgetary Reports
- Prejudicial Reports
- Legal Reports
- Staff Reports
- Workshops and/or Briefing Sessions

Should the Chief Executive Officer or relevant General Manager consider that a matter under discussion should remain confidential, then a recommendation will be made for the consideration of Councillors present. This decision must be ratified when the matter is brought to a subsequent meeting of Council, but the embargo would apply in the interim.

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.

Should the Chief Executive Officer or relevant General Manager be satisfied that part or all of the material should be publicly available, then a recommendation to that effect will be put to the Closed Session of a full Council meeting. Should Council resolve to remove the embargo, this decision will be duly noted in the Embargo Register.

Responsibilities of Councillors and Staff

Councillors and staff must be aware of their responsibilities and agree they should:

- 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;

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- acknowledge that disclosure of confidential information constitutes a breach of the *Local Government Act 2009*;
- 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

Section 171 of the *Local Government Act 2009* states:

(1) A person who is, or has been, a Councillor must not use information that was acquired as a Councillor to—

- (a) gain, directly or indirectly, a financial advantage for the person or someone else; or*
- (b) cause detriment to the local government.*

Maximum penalty—100 penalty units or 2 years imprisonment.

(2) (2) Subsection (1) does not apply to information that is lawfully available to the public.

(3) (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.

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) 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 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 Chief Executive of the Department of Local Government (see section 176C of the *Local Government Act 2009*).

Thereafter the Chief Executive of the Department of Local Government 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 any one or more of the following orders or recommendations: -

- (a) an order that the Councillor be counselled about the misconduct, and how not to repeat the misconduct;
- (b) an order that the Councillor make an admission of error or an apology;
- (c) an order that the Councillor participate in mediation with another person;
- (d) a recommendation to the Department's Chief Executive to monitor the Councillor or the local government for compliance with the Local Government Acts;
- (e) an order that the Councillor forfeit an allowance, benefit, payment or privilege;
- (f) an order that the Councillor reimburse the local government;

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- (g) a recommendation to the Minister that the Councillor be suspended for a specified period, either wholly or from performing particular functions;

Examples of particular functions—attending Council meetings or offices representing the Council at public functions

- (h) a recommendation to the Minister that the Councillor be dismissed;
- (i) a recommendation to the Crime and Corruption Commission or the Commissioner of Police that the Councillor's conduct be further investigated.
- (j) an order that the Councillor pay to the local government an amount of not more than the monetary value of 50 penalty units.

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.

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

General Manager Responsible for Review: Corporate Services