

**CONTROL:**

|                      |                            |
|----------------------|----------------------------|
| Policy Type:         | Governance                 |
| Authorised by:       | Council                    |
| Head of Power:       | Local Government Act 2009  |
| Responsible Officer: | Chief Executive Officer    |
| Adopted / Approved:  | Minute No. 2022.06.20-OM-3 |
| Last Reviewed:       | June 2022                  |
| Review:              | June 2024                  |
| Version              | 4                          |

## **1. INTRODUCTION**

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### **1.1 PURPOSE:**

To provide assistance to Councillors and staff in managing information.

### **1.2 POLICY OBJECTIVES:**

This policy provides guidance to councillors in complying with section 171 of the Local Government Act 2009 ("LGA") and staff under section 200 of the LGA regarding the proper handling of confidential information. It aims to assist Council in determining what might be considered confidential information and how this information should be handled.

### **1.3 COMMENCEMENT OF POLICY:**

This Policy will commence on adoption. It replaces all other specific Confidentiality policies of Council (whether written or not).

### **1.4 SCOPE:**

This policy applies to confidential information held by Council and councillors.

## **2. POLICY**

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### **2.1 CONTEXT:**

It is accepted that councillors and staff will be in receipt of information that may or may not be part of a formal Council meeting.

This policy aims to support councillors and staff in balancing the right and duty to inform the public and consult with constituents about Council business with the interest Council has in preventing disclosure of confidential information.

This policy does not override an individual councillor's or officer's statutory obligations in respect of the use of information, nor does it override Council's obligations under the Local Government Act 2009 or any other legislation or subordinate legislation to disclose or publish information where this is required by law.

## 2.2 POLICY STATEMENT:

Councillors and staff must use Council information in a way that promotes and maintains the public's trust and confidence in the integrity of the local government.

## 3. STANDARDS AND PROCEDURES

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### 3.1 SPECIFIC AND STANDARD

#### 3.1.1 POLICY 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 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 staff will be in receipt of confidential information that may or may not be part of a formal Council meeting. 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.

#### 3.1.2 RESPONSIBILITIES OF COUNCILLORS

- Councillors must be aware of their responsibilities and agree they should:
  - exercise due care when handling or using information acquired in their role as a councillor;
  - not access council information except to the extent that it is necessary to do so in order to perform their official duties.
  - 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 LGA;
  - 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.

#### 3.1.3 RESPONSIBILITIES OF COUNCIL STAFF

- Council 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;
  - not access council information except to the extent that it is necessary to do so in order to perform their official duties.
  - 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 LGA;
- 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.

### 3.1.4 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 has been classified as confidential.
  - Information of a personal nature or about personal affairs, for example the personal details of councillors or council staff.
  - Information regarding the criminal history of an employee.
  - Information regarding grievance and resulting investigations.
  - Information provided to Council on the condition that it is kept confidential.
  - Information dealing with the security of property including but not limited to CCTV video files.
  - Information dealing with the appointment, dismissal, discipline, appraisal, and payroll details of employees.
  - Information dealing with industrial matters affecting employees.
  - Information associated with the preliminary budget.
  - Information dealing with rating concessions for individuals.
  - Information associated with contracts proposed by Council.
  - Information associated with starting or defending legal proceedings.
  - Information dealing with trade secrets of any person or body.
  - Names and/or addresses of complainants or witnesses.
  - Information dealing with issues or breaches resulting from the Fit for Work policy.
  - Information regarding incident investigations including witness statements but not including recommendation reports.
  - Information relating to a property disposal or acquisition process where release of the information may prejudice Council (see also section 171(1) of the LGA).
  - 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 in confidence.
  - Information examined or discussed at councillor briefing sessions, unless the CEO declares that such information (or part thereof) is not confidential.
  - any action to be taken by the local government under the Planning Act 2016, 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.
- Nevertheless, this policy deems that as a minimum:
  - The 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.
  - An item on a Council 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.
- 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 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.
  - 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 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.
  - 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:
    - If it is considered by the Chief Executive Officer (CEO) that the council should consider a matter in a closed meeting, the CEO will clearly indicate such recommendation on the agenda.
    - The CEO will make a declaration that all information contained in the documentation and associated material is information confidential to the council.
    - The CEO will ensure that the documentation and material is clearly marked as confidential.
    - 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:
    - Council will consider the recommendation in open session unless to do so would result in the public release of the information concerning the matter.
    - 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.
    - Upon moving that an issue be dealt with in a closed meeting, the mover must clearly state the reason for the motion.
    - 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.
  - Information considered at a closed meeting of Council shall remain confidential unless or until Council resolves otherwise.

### **3.1.5 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 of the LGA for Councillors, or section 200 of the LGA for staff. 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.

**3.1.6 DISPOSAL OF CONFIDENTIAL INFORMATION**

- Copies or images of confidential information should be disposed of securely. When destruction is authorised, consideration should be given to shredding unwanted copies of written documents or use of other secure disposal methods.

**3.1.7 RETURN OF CONFIDENTIAL INFORMATION**

- Where a person has possession of confidential Information:
  - For a particular purpose and no longer needs access to the Confidential Information for that purpose or for any other authorised purpose; or
  - Ends their service, contract or other association with the Council; that person shall within 7 days, return the Confidential Information to:
    - Where the person is a staff member or contractor, their Manager; or
    - Where the person is a councillor the Chief Executive Officer.
- When Confidential Information is returned the Chief Executive Officer or Manager shall ensure that the Confidential Information is either kept securely or destroyed, having regard to the circumstances.

**3.1.8 BREACH OF THIS POLICY**

The Council takes very seriously its commitment to ensuring the confidentiality of information and all councillors and staff are required to comply with this policy. Anyone who breaches this policy shall be dealt with under the provisions of the LGA.

If an employee breaches this policy, they may be subject to disciplinary action which may include Formal Warning, Demotion, Dismissal, Suspension, or Transfer. In serious cases this may include termination of employment. Agents and contractors (including temporary contractors) who are found to have breached this Policy may have their contracts with the Council terminated or not renewed.

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**4. REFERENCE AND SUPPORTING INFORMATION**

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**4.1 DEFINITIONS:**

To assist in interpretation, the following definitions shall apply:

| Word / Term                  | Definition   |
|------------------------------|--|
| Council                      | means Diamantina Shire Council.  |
| Councillor 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. |
| 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 meetings.  |
| Staff                        | all employees of a local government and a contractor of a local government. (Refer to Section 200 of the LGA)  |

**4.2**

**4.3 RELATED POLICIES, LEGISLATION AND DOCUMENTS:**

| Links to supporting documentation                                   |
|---|
| Local Government Act 2009 (LGA)<br>Local Government Regulation 2012 |
| Code of Conduct   |

**4.4 VERSION CONTROL:**

| Previous Version Number | Adopted/Approved Date                         |
|-------------------------|---|
| 1 (Original)            | October 20 2014, Minute No. 2014.10.20-OM-15  |
| 2                       | January 15 2018; Minute No. 2018.01.15-OM-5   |
| 3                       | December 16 2019; Minute No. 2019.12.16-OM-16 |