

## ITEM 7 POLICY REVIEW: USE OF CONFIDENTIAL INFORMATION

The proper use of Council information is a requirement for all Council officials under Council's Codes of Conduct. This report recommends the adoption by Council of the reviewed *Use of Confidential Information Policy*.

The Independent Commission Against Corruption (the ICAC) recommends that agencies (including councils) introduce policy and procedures for the management of confidential information. The purpose is to manage the risks of potential corrupt conduct by the release of confidential information to individuals not entitled to view it. These risks include financial, functional and reputational costs.

### RECOMMENDATION

The Use of Confidential Information Council Policy be adopted.

### REPORT AUTHORISATIONS

Report of: Kylee Cowgill, Manager Governance and Information  
Authorised by: Kerry Hunt, Director Corporate and Community Services - Creative, Engaged and Innovative City (Acting)

### ATTACHMENTS

- 1 Draft Use of Confidential Information policy

### BACKGROUND

The improper use of confidential information can constitute corrupt conduct as defined by the *Independent Commission Against Corruption Act 1988*. It is therefore considered essential that Council develop and promote policies relating to the use of confidential information to manage such risks.

The Use of Confidential Information Policy was first developed and adopted in 2008 by the Executive Management Committee as a management policy. It sits within the Codes of Conduct suite of policies, underpinning and supporting the requirements of the Codes and provides information and guidance in relation to the proper use of Council information.

### PROPOSAL

Following its review it is now recommended that Council adopt the Use of Confidential Information Policy as a 'Council' policy as it relates to all Council officials.

This policy relates specifically to information classified as confidential. Council information that is not generally considered confidential is subject to the *Public Access to Documents and Information held by Council Policy*.

Council's Codes of Conduct state that the release of any Council information must only be undertaken in accordance with established Council policies and procedures and in compliance with relevant legislation.

Other than a change of policy type, no substantial changes have been made or are recommended to the policy, with a minor administrative change to provide clarification that contractors are covered by Council's Code of Business Ethics which includes a clause directly relating to confidentiality.

### CONSULTATION AND COMMUNICATION

This policy was reviewed for consistency with the corruption prevention advice and policy development guide issued by the ICAC for the management of confidential information. It was also reviewed to ensure it continues to meet the requirements of the Model Code of Conduct issued by the Office of Local Government.

The Executive Management Committee considered the contents of the policy and proposed change in policy type, and recommended this policy be submitted to Council for adoption.

## PLANNING AND POLICY IMPACT

This report contributes to the delivery of Wollongong 2022 goal “We are a connected and engaged community”. It specifically delivers on the following:

Community Strategic Plan	Delivery Program 2012-2017	Annual Plan 2016-17
Strategy	5 Year Action	Annual Deliverables
4.4.4 Policies and procedures are simplified to ensure transparency and efficiency	4.4.4.1 Ensure policies and procedures are regularly reviewed, updated and promoted	<p>Ensure the implementation of mitigation strategies for all fraud/corruption risks identified with immediate focus on the very high/high rated risks.</p> <p>Conduct rolling review of Council's policy register.</p>

## RISK ASSESSMENT

Council’s Corporate Risk Register identifies *Fraud, corruption or maladministration events, Inadequate IT security* and *Failure to manage, maintain or monitor compliance with policies* as corporate risks to be proactively managed.

## CONCLUSION

The *Use of Confidential Information* Policy is consistent with the objectives of the Codes of Conduct and the ICAC’s policy development guide for policies governing the use of confidential information.



ADOPTED BY COUNCIL: [TO BE COMPLETED BY CORP SUPPORT]

## BACKGROUND

Council operates in an environment which requires compliance with good governance principles including those of public accountability and transparency. Council seeks to inform the public of issues under consideration and the nature of the decisions made by Council. Accordingly, Council officials are expected to perform their functions and duties in a manner that allows the public to be informed about Council's activities and practices.

However, Council acknowledges there are certain documents and types of information that are confidential and must not be disclosed to third parties.

## OBJECTIVE

The main objectives of this policy are to –

- ensure that Councillors, staff, volunteers and contractors are made aware of their obligations, responsibilities and duties concerning access to and disclosure of, Confidential Information associated with any Council business or activities
- provide guidance to Councillors and staff in identifying, assessing, managing and reporting on the use and/or misuse of Confidential Information.

## POLICY STATEMENT

The NSW Local Government Act 1993 (the 'Act'), requires all councils to adopt a Code of Conduct that is consistent with the provisions and minimum standards as set out in the Local Government Model Code of Conduct.

This policy sets out the basis on which Council officials will manage Confidential Information in accordance with the Codes of Conduct.

## USE OF CONFIDENTIAL INFORMATION

## COUNCIL POLICY

## STATEMENT OF PROCEDURES

**1 POLICY COVERAGE**

This policy is applicable to any person covered under Council's Codes of Conduct, including the following:

- Councillors, including the Lord Mayor and Deputy Lord Mayor
- Council Staff (regardless of classification)
- Delegates of Council, including volunteers
- Members of Council's committees, reference groups and working parties

Contractors to Council are required to comply with Council's *Code of Business Ethics*.

**2 DEFINITIONS**

**Confidential Information** means any information with restrictions placed on the communication or dissemination of that information<sup>1</sup>.

Confidential Information may include information provided 'in-confidence', whether oral, written, electronic or in any other form, which is used to inform policy positions, is only to be internally distributed and is not to be shared.

**Council Official** means the Lord Mayor, Councillors, staff, delegates of Council and members of Council's committees, reference groups and working parties.

**Staff** means all employees regardless of classification.

**LG Act** means the Local Government Act 1993.

**The Regulation** means the Local Government (General) Regulation 2005.

**GIPA Act** means the Government Information (Public Access) Act 2009.

All other definitions set out in the Local Government Act 1993 (Act) and Council's Codes of Conduct apply equally to this policy.

**3 STATUTORY PROVISIONS**

Section 10A of the *Local Government Act 1993* allows Council or a Committee of Council to close to the public so much of its meeting as comprises the discussion of a range of matters as set out in the section. Documents and information considered during the closed parts of a meeting are Confidential Information for the purposes of this Policy.

Reports which are to be dealt with in closed session will be distributed electronically via individual mailboxes to Councillors, Executive and staff nominated by the General Manager. The General Manager will provide directly to the Corporate Support Services Unit a list of staff members who are to receive information to be discussed in closed session.

Council's Code of Meeting Practice incorporates the requirements of the LG Act, the Regulations, and Council's Codes of Conduct, and should be referred to for further detail.

Disclosure of Confidential Information associated with a closed meeting of Council is a breach of the LG Act as well as Council's Codes of Conduct and associated policies.

Schedule 1 of the GIPA Act outlines information where there is the conclusive presumption of overriding public interest against disclosure. The GIPA Act also provides for application of the public interest test when considering whether information should remain restricted or be released. This type of information is contained under the following broad headings: Responsible and Effective Government; Law Enforcement and Security; Individual Rights; Judicial Processes and Natural Justice; Business Interests of Agencies and Other Persons; Environment, Culture, Economy and General Matters; Secrecy Provisions; and Legal Professional Privilege. Documents which fall into any of these categories are considered to be Confidential Information for the purposes of this policy.

<sup>1</sup> ICAC Website: [Preventing Corruption / Knowing your Risks / Confidential Information](#)

## USE OF CONFIDENTIAL INFORMATION

## COUNCIL POLICY

### 4 COUNCILLOR BRIEFING SESSIONS AND INFORMATION NOTES

Councillor briefing sessions:

- are by their very nature informal and not bound by the Code of Meeting Practice
- enable staff to present proposals and opinions to Councillors some of which may not be acceptable to Councillors and therefore never presented to Council
- allow Councillors and staff to have in-depth discussions and contribute freely
- assist Councillors in making informed decisions if and when the issues are presented to Council for decision.

Any information or presentation provided at Councillor Briefing Sessions that is confidential in nature is to be clearly identified as such and the confidential section/s of reports/presentations are to contain a 'confidential' watermark. Any confidential documentation distributed at the session will be collected at the conclusion of the presentation.

Following the Briefing Session the relevant Director or Divisional Manager is to make a 'public interest' determination in relation to the release of the confidential section/s of the report/presentation.

Councillor Information Notes that contain Confidential Information must be clearly identified and watermarked as confidential.

Information presented at Councillor Briefing Sessions and contained within Information Notes not classified as 'Confidential' is considered Council information, as defined in the Codes of Conduct. Council Officials must only release Council information in accordance with established Council policies and procedures and in compliance with relevant legislation.

### 5 MANAGING CONFIDENTIAL INFORMATION

It is important to ensure that the release of any Council information occurs in accordance with established Council policies and procedures and in compliance with relevant legislation. Councillors and members of staff have an obligation to ensure that Confidential Information is managed appropriately. This means ensuring that:

- Confidential Information is appropriately watermarked, titled, protected, secured and stored (in accordance with Council's Records Management Policy)
- access to and usage of Confidential Information is limited to appropriate and legitimate Council purposes, not for non-official purposes or personal use or gain
- the release of Confidential Information may be authorised by the General Manager, Public Officer (in relation to access under the GIPA Act), legislative requirement, or Order of a Court, Tribunal or Commission. The classification of information as 'confidential' will be reviewed at any time access is sought to that information
- information discussed during a closed session of a Council meeting and associated documentation must not be disclosed to others not in attendance at the closed session [S664(1A) LG Act]
- no personal benefit is obtained, either directly or indirectly from access to any information obtained during the exercise of official functions or duties.

### 6 DISCLOSURE OF INFORMATION HELD BY COUNCIL

Disclosure of information held by Council must be undertaken in accordance with Council's *Public Access to Documents and Information Held by Council* policy.

### 7 USE OF CONFIDENTIAL INFORMATION HELD BY COUNCIL

Council information is to be held securely and used only for the purposes for which it was created or collected. Council's Codes of Conduct, under the section titled 'Use of Certain Council Information' states:

9.6 *In regard to information obtained in your capacity as a Council official, you must:*

- (a) only access Council information needed for Council business*
- (b) not use that Council information for private purposes*



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- (c) *not seek or obtain, either directly or indirectly, any financial benefit or other improper advantage for yourself, or any other person or body, from any information to which you have by virtue of your office or position with Council*
- (d) *only release Council information in accordance with established Council policies and procedures and in compliance with relevant legislation.*

The improper use of Confidential Information can constitute corrupt conduct as defined by the *Independent Commission Against Corruption Act 1988*.

It is the responsibility of each Council official to comply with the provisions outlined in this policy. Failure to comply with the provisions set out in this policy will constitute a breach of the Council's Codes of Conduct.

### 8 REPORTING BREACHES

The Codes of Conduct and Internal Reporting policy contain provisions relating to the reporting of breaches of Council's policies and the Codes of Conduct.

### 9 SUMMARY OF OBLIGATIONS

Council officials are expected to carry out their duties in a manner that allows the public to be informed about Council's activities and practices. However, in preserving Confidential Information, Council officials:

- should exercise caution in the use of any information gained in the course of their employment or business with Council if disclosed may disadvantage or harm the reputation or interests of Council or Council officials
- are obliged to identify and recognise information that is confidential and act in such a manner which protects the confidential nature of the information in the best interests of Council
- must act with respect and integrity in maintaining Confidential Information
- should be aware that disclosure of Confidential Information, either orally, electronically, in written or any other form constitutes a breach of Council's Codes of Conduct and may result in disciplinary action or other sanctions.

### 10 RELATED LEGISLATION AND POLICY

This policy should be read and considered in accordance with provisions set out in:

- Local Government Act 1993
- Independent Commission Against Corruption Act 1988

And the following Council policies:

- Codes of Conduct
- Privacy Management Plan
- Internal Reporting
- Public Access to Documents and Information held by Council
- Access to Council Information and Staff by Councillors
- Information Security
- Corporate Records Management

### 11 FURTHER INFORMATION

Further information on practices relating to the management of Confidential Information can be found in:

- Section 2.5 of the NSW Ombudsman's *Good Conduct and Administrative Practice: Guidelines for State and Local Government*, 2006 (2nd edition) ([www.ombo.nsw.gov.au](http://www.ombo.nsw.gov.au))
- NSW Ombudsman's *Security of Information: Public Sector Agencies* Factsheet 19, 2010, 2012 ([www.ombo.nsw.gov.au](http://www.ombo.nsw.gov.au))
- Independent Commission Against Corruption website ([www.icac.nsw.gov.au](http://www.icac.nsw.gov.au))
- Local Government Reform – Promoting Better Practice: Reviews ([www.dlg.nsw.gov.au](http://www.dlg.nsw.gov.au)).

USE OF CONFIDENTIAL INFORMATION

COUNCIL POLICY

SUMMARY SHEET	
Responsible Division	Governance and Information
Date adopted by Council	[To be inserted by Corporate Governance]
Date of previous adoptions	Management policy adopted by EMC: 16 September 2014, 6 August 2013, 21 January 2008
Date of next review	May 2019
Legislative or other requirement for review	Every two years, as recommended by the ICAC for such policies introduced to manage corruption risks
Responsible Manager	Manager Governance and Information
Authorised by	Director Corporate and Community Services

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