

3 Presentation of officer reports

3.1 Consideration of Public Submissions - Proposed Public Transparency Policy

Abstract

The purpose of this report is for councillors to consider the written submissions received during the community consultation on the Proposed Public Transparency Policy and to hear from those submitters who indicated in their written submission that they wish to address Council in support of their written submission.

The Local Government Act 2020 (the Act) requires Council to adopt and maintain a Public Transparency Policy.

On 20 July 2020, Council resolved the proposed Public Transparency Policy be endorsed for public consultation. The public consultation period commenced on 23 July 2020 and closed at 5.15pm on 6 August 2020.

Officers received four written submissions (including two late submissions) which directly raised matters in regard to the provisions in the proposed Public Transparency Policy. Three submitters have requested to be heard in support of their written submission.

A final report will be presented to Council on 24 August 2020 for a decision.

Officers' recommendation

That the Services Special Committee resolve to:

1. Receive and note the verbal and written submissions received in relation to the proposed Public Transparency Policy.
2. To thank the submitters for their verbal and written submissions.
3. To refer the proposed Public Transparency Policy to Council for determination at the Council meeting on 24 August 2020.

Responsible director: Phillip Storer
Chief Executive Officer

1. Purpose

The purpose of this report is for councillors to consider the written submissions received during the community consultation on the Proposed Public Transparency Policy and to hear from those submitters who indicated in their written submission that they wish to address Council in support of their written submission.

2. Policy implications and relevance to community plan and council plan

This report is consistent with the Council Plan 2017-21, in particular strategy 7.2, which states “*Ensure transparent decision making through open governance processes*”.

It also supports Strategic Objective 7 of the Boroondara Community Plan 2017-27, to “*Ensure that ethical, financial and socially responsible decision making reflect community needs and are based on principles of accountability, transparency, responsiveness and consultation*”.

3. Background

Transparency, accountability and good governance are key themes in the Local Government Act 2020 (the Act).

The Act stipulates a Council provides good governance if it performs its role in accordance with nine overarching governance principles and five supporting principles. Public transparency is one of the five supporting principles. The public transparency principles are:

- Principle A
Decision making processes must be transparent except when the Council is dealing with information that is confidential under the Act or any other Act.
- Principle B
Council information must be publicly available unless -
 - the information is confidential by virtue of the Act or any other Act; or
 - public availability of the information would be contrary to the public interest.
- Principle C
Council information must be understandable and accessible to members of the municipal community.
- Principle D
Public awareness of the availability of Council information must be facilitated.

The Act requires Council to adopt and maintain a Public Transparency Policy on or before 1 September 2020.

The proposed Public Transparency Policy endorsed for public consultation (**Attachment 1**) was developed incorporating the requirements of the Act, guidance from Local Government Victoria, collaboration with colleagues at other councils and assistance from Council's lawyers.

4. Outline of key issues/options

Officers received four written submissions (including two late submissions) which directly raised matters in regard to the provisions in the proposed Public Transparency Policy. Three submitters have requested to be heard in support of their written submission. A copy of the written submissions are at **Attachment 2**.

A summary of the written submissions and the officer's response to the matters raised in the submissions is at **Attachment 3**.

5. Consultation/communication

On 20 July 2020, Council resolved the proposed Public Transparency Policy be endorsed for public consultation. The public consultation period commenced on 23 July 2020 and closed at 5.15pm on 6 August 2020.

The proposed Public Transparency Policy was advertised through:

- Public Notice in The Age newspaper.
- Public Notice on Council's website; and
- the 'Have Your Say' section on Council's website.

Following the hearing of submissions, officers will finalise the proposed Public Transparency Policy and present it to Council for consideration at the Council meeting on 24 August 2020.

If adopted by Council, the Public Transparency Policy will be made available on Council's website and intranet, for inspection at the Council offices and a copy provided to each councillor.

6. Financial and resource implications

The costs to develop the Public Transparency Policy will be met within the current budget and includes the cost of community consultation via the Council communication channels.

7. Governance issues

Officers involved in the preparation of this report have no conflict of interest.

The list of prescribed human rights contained in the Victorian Charter of Human Rights and Responsibilities has been reviewed in accordance with Council's Human Rights Compatibility Assessment Tool and it is considered the proposed actions contained in this report represent no breaches of, or infringements upon, those prescribed rights.

8. Social and environmental issues

The public consultation process on the proposed Public Transparency Policy has assisted to reinforce public confidence in the integrity of Council's decision-making processes and in Council's ability to ensure good corporate governance within the municipality.

Manager: David Thompson, Governance

Report officer: Helen Pavlidis, Governance Projects Officer

Public Transparency Policy

Insert Policy date here

Responsible Directorate: Chief Executive Office
Authorised By: Council
Date of Adoption: <Date>
Review Date: September 2024
Policy Type: Council>



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1 Purpose

The purpose of this Policy is to:

- 1.1 give effect to the Public Transparency Principles;
- 1.2 describe the ways in which Council Information will be made publicly available;
- 1.3 specify which Council Information will be made publicly available as of course; and
- 1.4 describe the categories of Council Information that may be unavailable to the public.

This Policy is adopted under section 57 of the Act.

2 Objective

The objective of this Policy is to formalise Council's support for transparency in its decision-making processes and availability of Council Information and to achieve the purpose stated in Part 1 of this Policy.

3 Scope

This Policy applies to Councillors and Officers.

4 Definitions

In this Policy, the following words and phrases mean:

"Act" means the *Local Government Act 2020*.

"Chief Executive Officer" includes an Acting Chief Executive Officer.

"Closed Meeting" means a Meeting that is closed to members of the public.

"Community" means the residents and ratepayers of, and visitors to, the Municipal District and may, depending on the context, refer to all of those people or to particular subsets of those people.

"Confidential Information" means confidential information as defined in section 3(1) of the Act.

"Council" means Boroondara City Council.

"Council Information" means all documents and other information held by Council.

"Council meeting" has the same meaning as in the Act.

"Council Offices" means the offices of Council located at 8 Inglesby Road, Camberwell.

"Council Website" means Council's website at www.boroondara@boroondara.vic.gov.au

“Delegated Committee” means a Delegated Committee established under section 63 of the Act.

“Governance Rules” means the governance rules adopted by Council under section 60 of the Act, as amended from time to time.

“Health Information” means health information as defined in section 3(1) of the *Health Records Act 2001*.

“Meeting” means a meeting of Council or a Delegated Committee.

“Municipal District” means the municipal district of Council.

“Officer” means a member of Council staff, and includes the Chief Executive Officer.

“Personal Information” means personal information as defined in section 3(1) of the *Privacy and Data Protection Act 2014*.

“Public Transparency Principles” means the public transparency principles set out in section 58 of the Act and reproduced in Part 5 of this Policy.

“Requestor” means a person making a request to access Council Information under and in accordance with this Policy.

5 Responsibility for this Policy

- 5.1 The Chief Executive Officer is responsible for the application and operation of this Policy.
- 5.2 The Chief Executive Officer may, from time to time, authorise another Officer or Officers to fulfil any of the Chief Executive Officer’s functions and duties under this Policy.
- 5.3 Where another Officer is or other Officers are authorised under clause 5.2, any reference in this Policy to the Chief Executive Officer is to be read as a reference to that Officer or those Officers.

6 Public Transparency Principles

- 6.1 The Public Transparency Principles are set out in section 58 of the Act as follows:
 - 6.1.1 Council decision-making processes must be transparent, except when Council is dealing with information that is confidential by virtue of the Act or any other Act.
 - 6.1.2 Council Information must be publicly available, unless:
 - (a) the information is confidential by virtue of the Act or any other Act; or
 - (b) public availability of the information would be contrary to the public interest.
 - 6.1.3 Council Information must be understandable and accessible to members of the Municipal District.
 - 6.1.4 Public awareness of the availability of Council Information must be facilitated.

- 6.2 Council will give effect to and implement the Public Transparency Principles in accordance with this Policy.

7 Council Decision-Making Processes

- 7.1 Council will ensure that the decision-making processes that it adopts are transparent and open to the Community so that the Community is provided with an opportunity for meaningful engagement with Council and its decision-making processes.
- 7.2 Council and delegated committee meetings will be live streamed from 16 November 2020 onwards or until such time as Council resolves otherwise.
- 7.3 Without limiting the generality of clause 7.1 and clause 7.2, Council's decision-making processes will:
- 7.3.1 be conducted in accordance with the Act and the Governance Rules;
 - 7.3.2 unless considering Confidential Information, be conducted in a forum that is open to, and accessible by, the Community; and
 - 7.3.3 be informed by the:
 - (a) views of those members of the Community whose rights and interests will be directly affected by the decision; and
 - (b) responses, if any, to any process of community engagement conducted by Council in respect of the decision, whether in accordance with its Community Engagement Policy or otherwise.
- 7.4 Further details of Council's decision-making process can be found in Chapter 1 of the Governance Rules.

8 Availability of Council Information

- 8.1 All Council Information will be made available to the public, unless the:
- 8.1.1 Council Information is Confidential Information; or
 - 8.1.2 release of the Council Information is assessed by the Chief Executive Officer as being contrary to the public interest.
- 8.2 A list of the categories of Council Information which will generally, subject to this Policy, be made available either on the Council Website, at the Council Offices or on request is set out at Appendix 1 to this Policy.

9 Publications

Council publishes a range of newsletters, reports and handbooks for residents, businesses and visitors to the Municipal District. These publications are available on the Council Website, at the Council Offices or on request to Council.

10 Accessibility of Council Information

- 10.1 Council Information will be made available on the Council Website, at the Council Offices and/or on request.
- 10.2 Council will, to the extent possible, facilitate access to Council Information by:
 - 10.2.1 making Council Information available in accordance with this Policy;
 - 10.2.2 endeavouring to make Council Information accessible electronically and in hard copy, where requested; and
 - 10.2.3 endeavouring to convert Council Information to different accessible formats where necessary for members of the Community for whom:
 - (a) English is their second language; or
 - (b) disability requires an alternative means of access to be provided.
- 10.3 Where a request is made for access to Council Information that is not on the Council Website or otherwise available at the Council Offices, the Chief Executive Officer will:
 - 10.3.1 review the request;
 - 10.3.2 assess whether the Council Information requested is Confidential Information, or its release would be contrary to the public interest; and
 - 10.3.3 notify the Requestor of the outcome of that assessment.
- 10.4 If the Council Information requested is assessed under clause 10.2 as not being Confidential Information, or its release is assessed as not being contrary to the public interest, the Council Information will be provided to the Requestor.
- 10.5 The Council Information will be provided to the Requestor by email unless the:
 - 10.5.1 Requestor seeks access in a different form, including by reference to the matters stated in clause 10.2.3, in which case the Council Information will be provided in that form, unless it is impracticable to do so; or
 - 10.5.2 Chief Executive Officer, having regard to the nature of the Council Information requested, determines that the Council Information should be provided in a different form, such as by inspection.
- 10.6 Council will provide such support to the Requestor as it considers reasonable to ensure that the Council Information provided is understood by them.

- 10.7 If, under clause 10.3, the Council Information requested is assessed as being Confidential Information, or its release is assessed as being contrary to the public interest, the Requestor will be advised:
- 10.7.1 that the request has been denied;
 - 10.7.2 of the reasons for the request being denied; and
 - 10.7.3 of alternative mechanisms by which they may seek access to the Council Information (e.g. by making a request made under the *Freedom of Information Act 1982*).
- 10.8 Any request for access to Council Information by way of an alternative mechanism under clause 10.7.3 will be assessed according to the process applicable to it.
- 10.9 Where:
- 10.9.1 Council Information requested is assessed under clause 10.3 as being Confidential Information, or its release is assessed as being contrary to the public interest; but
 - 10.9.2 it is practicable for that Council Information to be provided with deletions so that it is suitable for release to the Requestor; and
 - 10.9.3 the Chief Executive Officer believes that the Requestor would want the Council Information in that format,
- the Council Information will be provided in that format.

11 Council Information that is Not Available

Some Council information may not be made publicly available. This will occur if the information is Confidential Information, or its release would be contrary to the public interest.

11.1 Confidential Information

11.1.1 What constitutes Confidential Information is set out in section 3(1) of the Act and includes information within the following categories:

Type	Description
Council business information	Information that would prejudice Council's position in commercial negotiations if prematurely released.
Security information	Information that is likely to endanger the security of Council property or the safety of any person if released.
Land use planning information	Information that is likely to encourage speculation in land values if prematurely released.
Law enforcement information	Information which would be reasonably likely to prejudice the investigation into an alleged breach of the law or the fair trial or hearing of any person if released.
Legal privileged information	Information to which legal professional privilege or client legal privilege applies.
Personal information	Information which would result in the unreasonable disclosure of information about any person or their personal affairs if released.
Private commercial information	Information provided by a business, commercial or financial undertaking that relates to trade secrets or that, if released, would unreasonably expose the business, commercial or financial undertaking to disadvantage.
Confidential meeting information	Records of Council and Delegated Committee meetings that are closed to the public to consider confidential information.
Internal arbitration information	Information provided to, or produced by, an arbiter for the purpose of an internal arbitration process, other than the findings and the reasons.

Type	Description
Councillor Conduct Panel information	Information: <ul style="list-style-type: none"> • provided to, or produced by, a Principal Councillor Conduct Registrar, for the purposes of an application to form a Councillor Conduct Panel; or • provided to, or produced by, a Councillor Conduct Panel for the purposes of conducting a hearing, other than a decision or reasons for a decision; or • comprising any part of a statement of reasons or other document under the control of a Councillor Conduct Panel that the Councillor Conduct Panel determines contains confidential information.
Confidential information under the 1989 Act	Information that was confidential information for the purposes of section 77 of the <i>Local Government Act 1989</i> .

11.1.2 In the interests of transparency, Council may, by resolution, determine to release information to the public even though it is Confidential Information.

11.1.3 A decision under clause 11.1.2 will generally only be made if Council, on the advice of the Chief Executive Officer, is satisfied that releasing the Confidential Information would not:

- (a) be inconsistent with any legal or contractual obligation;
- (b) cause disadvantage to any person, including Council; and
- (c) otherwise be contrary to the public interest.

11.2 Contrary to the Public Interest

- 11.2.1 Council Information will not be made publicly available if doing so would be contrary to the public interest.
- 11.2.2 When assessing whether making certain Council Information publicly available would be contrary to the public interest, the Chief Executive Officer will have regard to, among other things:
- (a) the sensitivity of the Council Information;
 - (b) whether the Council Information comprises a draft, or otherwise is no longer current; and
 - (c) any adverse effect that releasing the Council Information would have on the effectiveness of Council's decision-making processes.
- 11.2.3 Without limiting clause 11.2.2, factors that might lead to a decision that the release of Council Information is contrary to the public interest might include whether release would be likely to:
- (a) disclose Personal Information or Health Information;
 - (b) disclose information or opinions of a preliminary nature such that they might:
 - (i) mislead the Community with respect to Council's position on a matter; or
 - (ii) have a substantial adverse effect on the economy of the Municipal District;
 - (c) prejudice discussions or negotiations between Council and any other party, in relation to a contract, legal proceedings or any other matter;
 - (d) impair or otherwise impact on:
 - (i) Council's ability to obtain information in future that is similar in nature to the Council Information;
 - (ii) negotiations with respect to employment arrangements for Officers; or
 - (iii) defence, prosecution and settlement of legal proceedings; or
 - (e) impact on the reasonable allocation of Council's resources, including in responding to requests for Council Information that are assessed by the Chief Executive Officer as being frivolous, vexatious or repetitious in nature.

12 Public Awareness of Availability of Council Information

Council will ensure public awareness of this Policy and the availability of Council Information by:

- 12.1 publishing this Policy on the Council Website;
- 12.2 making this Policy available for public inspection at Council's offices;
- 12.3 converting this Policy to such accessible formats, having regard to clause 10.2.3, as the Chief Executive Officer determines; and
- 12.4 ensuring that all Officers:
 - 12.4.1 are aware of this Policy and its effect; and
 - 12.4.2 direct members of the Community to this Policy when access to Council Information is sought.

13 Human Rights Charter

This Policy has been assessed against the *Charter of Human Rights and Responsibilities Act 2006* as being consistent with that Act and, in particular, as promoting the rights of members of the Community:

- 13.1 not to have their privacy interfered with (section 13); and
- 13.2 take part in public life (section 18), by having the opportunity to:
 - 13.2.1 participate in the conduct of Council's affairs; and
 - 13.2.2 have access to Council and Council Information.

14 Dissatisfaction with the Application of this Policy

- 14.1 If a Requestor is dissatisfied with Council's application of, or believes that Council has acted inconsistently with, this Policy, they can report their dissatisfaction to Council's Manager Governance by:
 - 14.1.1 email to boroondara@boroondara.vic.gov.au; or
 - 14.1.2 telephone on 9278 4470.
- 14.2 If the Requestor believes that the matter remains unresolved, it can be reported to the Victorian Ombudsman by:
 - 14.2.1 making a complaint online at <https://www.ombudsman.vic.gov.au/complaints>; or
 - 14.2.2 telephone on 03 9613 6222.

15 Application of this Policy

- 15.1 This Policy applies to all Council Information, except Council Information which is made available, or is otherwise accessible, under another Act (other than an Act which refers to this Policy).
- 15.2 Without limiting the generality of clause 15.1, this Policy does not apply to Council Information which is:
 - 15.2.1 required to be made available under the *Planning and Environment Act 1987*;
 - 15.2.2 required to be made available under the *Building Act 1993*; or
 - 15.2.3 otherwise required to be made available on payment of a fee or charge.

16 Monitoring, Evaluation and Review

Council will review this Policy periodically to ensure that it continues to reflect the expectations of the Community with respect to the availability and accessibility of Council Information.

Appendix 1

For the purposes of clause 8 of this Policy the following Council Information will generally, and subject to this Policy, be made available either on the Council Website or on request by a member of the Community.

1. Documents such as:

- Plans and Reports adopted by Council;
- Council Policies;
- Project and Service Plans;
- Service Agreements, Contracts, Leases and Licences; and
- relevant technical reports and/or research that inform Council's decision-making.

2. Process information such as:

- application processes for approvals, permits, grants, access to Council services;
- decision-making processes;
- Guidelines and Manuals;
- Community Engagement Processes; and
- Complaints Handling Processes.

3. The following Council Information will be available on Council's website:

- Meeting Agendas;
- Minutes of Meetings;
- Audit and Risk Committee Charter;
- Terms of Reference for Delegated Committees;
- Gift Registers for Councillors and Council Staff;
- Travel Registers for Councillors and Council Staff;
- Registers of Conflicts of Interest disclosed by Councillors and Council Staff;
- Registers of Leases entered into by Council;
- Register of Delegations;
- Register of Authorised Officers;
- Register of Election Campaign Donations;
- Summary of Personal Interests; and
- any other Registers or Records required by the Act or any other Act

5

From: [REDACTED]
Sent: Wednesday, 5 August 2020 9:38 PM
To: Boroondara
Subject: Governance Rule, Public Transparency Policy and Expenses Policy - public comment
Attachments: Governance Rules etc.docx

The Manager Governance
Boroondara City Council

Please find attached a submission on behalf of Lighter Footprints in relation to the draft Governance Rules, Public Transparency Policy and Expenses policy. If you have any questions regarding this email, please contact me by phoning [REDACTED] or by email on [REDACTED].

Joy Mettam

Manager Governance
Boroondara City Council
Private Bag 1, Camberwell VIC 3124
boroondara@boroondara.vic.gov.au

The Governance Rules, Public Transparency Policy and Expenses Policy

Lighter Footprints Inc welcomes the opportunity to comment on three draft documents the City of Boroondara has produced in order to fulfill its obligations with respect to the Victorian Local Government Act 2020. These documents are the Governance Rules, the Public Transparency Policy and the Expenses Policy.

Who is Lighter Footprints?

Lighter Footprints is a non-partisan community group of concerned residents (now around 2000) from the Boroondara and Whitehorse municipalities who came together in 2006 to see what we could do about the challenge of climate change. As citizens and ratepayers, we believe that accountable and transparent decision-making is fundamental to democracy at all levels of government.

We see these documents as basic to democracy in local government

These documents are essential elements in managing Council decision making at all levels of the organisation. They provide the rules whereby decisions are made, the availability and accessibility of information relating to these decisions and the reimbursement of expenses. These three aspects fall within the framework of good governance, a concept that is basic to high quality and more democratic decision making.

We note that the approach and format adopted by Boroondara towards these documents is closely modelled on previous Council policy documents on specific governance matters and in accordance with guidance from Local Government Victoria. As such, they are constructed as a list of rules which nominate but provide no elaboration of the basic principles behind the rules or guidance on how they should be applied.

These documents should be seen as the foundations for a democratic and well governed council that is accountable to its constituents, transparent in all its decision making and open to scrutiny. We believe that by structuring the documents as a set of rules, the opportunity to establish this foundation has been lost. While this approach is compliant with the requirements of the Act, it has failed to produce a living document that guides and influences the actions of all people affected by these rules and policies.

In order to achieve this, we believe that these documents should be embedded in a governance framework that:

- spells out in detail the values and responsibilities that are integral to the actions and culture of the organisation at all levels;
- clearly describes the roles and responsibilities of those implementing these rules; and

- demonstrates to local residents that their Council is strongly committed to a robust implementation of the concepts of good governance and democracy.

We recommend that

- the Council develop a Governance Charter that sets the context for the application of these three policies.

What is good governance?

We note the comment by the Governance Institute of Australia that there is not one conclusive definition of governance. Their definition however, makes recognition of the scope of the concept and its inherent values:¹:

Governance encompasses the system by which an organisation is controlled and operates, and the mechanisms by which it, and its people, are held to account. Ethics, risk management, compliance and administration are all elements of governance.

CPA Australia defines Governance as:

... The process by which decisions are taken and implemented, the process by which organisations go about achieving their goals and producing their outputs, and the process by which organisations are directed, controlled and held to account.

The implication of both definitions is that governance will be most apparent in the organisation's decision making processes. The values underlying good decision making include:

- accountability of the decision makers to the people on whose behalf they are making decisions;
- transparency of the decision-making processes to enable effective scrutiny by those affected by these decisions; and
- the implementation of measures that are specific, timely, relevant, quantifiable and accessible so that continuous monitoring and regularly reporting on outcomes can happen.

What would a Governance Charter look like?

A Governance Charter would provide an overarching framework to guide to Councillors and Council officers in the implementation of the governance rules and the transparency policy. It should include:

- a statement of the vision for the municipality's future;
- a clear exposition of the principles and values that should guide the actions of Councillors and Council officers to achieve this vision;
- identification of the roles and responsibilities of Councillors and Council officers in the management of Council operations and performance;
- an obligation to collect and maintain high quality and relevant information to measure and report on performance and results; and
- a statement of Council's commitment to transparency, accountability and openness to scrutiny at all levels of decision making and operation.

¹ <https://web.governanceinstitute.com.au/resources/what-is-governance/>

Some of this is already done to some extent. All three papers list principles that relate to that particular policy document. There is also a short statement in the Annual Report whereby the Council commits itself to provide leadership and good governance.

However, these statements tend to be formulated as rules suggesting that they are to be obeyed rather than applied with thought and commitment. The application of these principles needs to go beyond simple compliance and to be fully integrated into council decision making so that the best possible outcomes are achieved at all levels and all times.

Our concerns with specific issues in the Governance Rules

We have a number of concerns with specific matters covered by the Governance Rules and the Public Transparency Policy. These are discussed below.

Meeting procedures; notice of meeting

We note that the rules require that the public should receive 'reasonable' notice of each public meeting. We see this as insufficiently precise and potentially anti-democratic because it fails to recognise the importance of giving the public adequate time to access the agenda papers and allow proper consideration of the issues raised.

We recognise that there will always be a need to call meetings quickly but this should be the exception not the rule. It should be possible for most Council business to be anticipated well in advance and not require the late submission of new items or the delayed lodgment of agenda papers.

We recommend that

- meeting agenda and agenda papers should be posted on the Council website at least three business days before any public meeting except in unusual circumstances.

The Council Prayer and Acknowledgement of Country

We do not support the different treatment of these two important procedures. We recognise the traditional aspect of the prayer and that it continues to have meaning to a declining number of Australians. It is, however an anachronism from a different time in Australia's history when we were a much less diverse population demographically, culturally and faith-wise.

In more recent years, there has developed a broad acceptance amongst a majority of Australians of the values and ideals expressed in the Acknowledgement of Country. This reflects a broad commitment to the vision of reconciliation and 'closing the gap'. It also grows out of the widespread recognition of indigenous cultural and environmental values and their significance in creating a better understanding of our connection to land and need to care for it.

We recommend that:

- all Council Meetings commence with both the Council Prayer and the Acknowledgement of Country;
- all other public meetings involving Councillors be opened with an Acknowledgement to Country. If the Councillor involved is unwilling to do, they should nominate another person to do this.

Public Question Time

We view Public Question Time as an indispensable element of democracy in local government. It is a basic component in ensuring councillors are accountable for the decisions they make and an opportunity for the public to scrutinize these decisions. Public question time allows members of the public to obtain information on matters of concern to themselves. It also helps inform public debate on matters concerning the residents and provide a forum for further investigation.

The rigid prescriptions that Boroondara places around its Public Question Time may be justified on the grounds that it contributes to running an orderly meeting. Such limitations can, however severely inhibit the potential for democratic debate of council decisions. We acknowledge the need for an orderly, respectful process. We believe, however that the restrictions on the number of questions, types of questions that can be asked and their timing and format have been used many times to prevent public debate or to silence an individual from asking uncomfortable questions.

The Rules state that a question may be disallowed if it does not comply with two conditions: firstly, that it has been put in writing to a Councillor or staff member and received a written response; and secondly, that it relates to matters on the current meeting agenda. This requirement highlights a significant anomaly around the submission of questions. Unless the agenda is made available in sufficient time for the first condition to be met, it will be impossible to determine whether the question will also comply with the second condition.

We recommend that:

- the number of questions that an individual can ask at any one meeting or throughout the year be raised to allow further questioning that can arise from the initial response;
- Public Question Time be scheduled for the beginning of the meeting to facilitate greater accessibility by the public
- adequate time be set aside at each public council meeting to allow for questions that fall outside the current restrictions including on matters not covered by the meeting agenda;
- the public be given the opportunity to put questions on notice for a later meeting and without the need to relate to issues listed on that meeting's agenda;
- all questions and answers be fully recorded in the minutes;
- as part of the induction training for new councillors, attention be given to ensuring that they understand the important role of Public Question Time as a means to further democracy in local government;
- closed meetings not be used as an alternative to decide significant matters with the intention of avoiding public disclosure of matters that may be

embarrassing to the Council or to individual Councillors except where matters of confidentiality apply

Deputations

The current rules allow the Mayor in consultation with the Chief Executive Officer to refuse a request for a deputation to speak to a Council meeting. We note that the CEO is required to notify all councillors of the request and to inform the person responsible for the deputation when and where the request will be heard. We understand there is no obligation to report on the refusal of the request. This can lead to a perception of collusion that should be addressed.

We recommend that:

- the Mayor be required to provide reports to Council on the reasons why a deputation request was rejected and this report be recorded in the minutes of the meeting.

Minutes

As noted in the Ombudsman's report 'Investigation into the transparency of local government decision making December 2016'²:

Minutes are the formal record of council decisions. The requirement to keep minutes of meetings and make them available to the public is one of the key transparency measures

The Ombudsman's report points to the importance of minutes:

Records of council meetings are important because they provide the community with access to information about current and historical issues, debates and decisions made by their elected representatives. Clear and accurate records ensure a council can be held accountable for the decisions it makes on behalf of the community.

When judged against these comments, the minutes format described in the Governance Rules and currently used by Boroondara contributes little to the transparency of debate and decision making that takes place in council meetings. Anybody reading the minutes of a Boroondara Council meeting without attending the meeting would gain no insight into why a particular decision was reached, what factors were taken into account, whether there was any considered opposition to the decision and how each Councillor voted.

Audio or visual recordings of meetings may be a useful supplement to written minutes to cover the detail of the meeting and to prevent the minutes from becoming become too voluminous.

We recommend that:

- written minutes should provide a record of each Councillor's vote, a summary of what factors were considered in reaching the decision and who spoke for or against the decision;

²

https://www.parliament.vic.gov.au/file_uploads/Ombudsman_Tansparency_of_Local_Government_decision_making_Dec_2016_T4x4JWjG.pdf

- all meetings should be recorded using visual or audio means, posted on the Council website within 24 hours of the meeting and to remain available for at least four years.

Measures to improve the level of debate in council meetings

We are concerned over the level and quality of debate that occurs during Council meetings. Too often, business is treated summarily, with little or no discussion and no apparent opposition. The decisions taken very rarely vary from the recommendation given in the agenda paper prepared by a council officer.

As pointed out in the Ombudsman's Report,

Debate between councillors can show the rationale behind decisions being made in meetings. By observing debate, the community can see how and why council has come to a decision.

... a Jack of debate in the chamber may be an indication that decision making is occurring in briefing sessions.

We oppose the use of en bloc votes for performance reporting. This includes the Annual Report, Quarterly Performance Reports and Monthly Financial Reports. All of these reports provide information that contributes to the transparency and scrutiny of council decision making and the accountability of the decision makers. They should therefore be open to discussion and debate when presented to the meeting.

We recommend that:

- further measures be investigated to improve the level and content of debate that happens during a council meeting; and
- all performance reporting be subject to debate when presented to the meeting. This will exclude the use of en-bloc votes when considering such reports.

The Public Transparency Policy

Transparency in the way Council makes its decision and carries out its responsibilities is essential in ensuring the organisation is accountable to the people it serves and open to scrutiny. The degree of transparency achieved will depend to a large extent on the amount, quality and accessibility of information made available by the organisation to the people it serves.

Two questions of immediate concern to us in relation to transparency are:

- the capacity of Boroondara residents to access council meetings and gain an understanding of and participate in the decision-making process undertaken at these meetings; and
- the availability of good quality information to enable accountability for and scrutiny of the delivery of these decisions and their outcomes.

In recent times with the advent of Covid-19, council meetings have become more accessible by being conducted on-line through Zoom. This is a temporary measure under the Local Government Act in line with the legislative requirement to either broadcast the meeting live or provide a recording on the Council website soon

thereafter. We regret that the Council has discontinued this practice as we saw it contributed to increased accessibility to these meetings.

We note that the Act requires Council to provide information to assist the community in understanding Council activities in a transparent and accessible way. The exception is where that information is confidential or not in the public interest.

We believe the Council has a duty to monitor and report on its performance. This requires measures that are specific and relevant to the matter being reported on, quantifiable and easily accessible. We are aware, however that the Council has been unable to meet requests to supply data on specific topics such as the operation of local laws for things like tree protection on private properties. This is either because resources have not been set aside to collect the necessary data or that it is not in an accessible form.

We recommend that:

- the Council adopt a permanent practice of recording their public meetings and making them available live and on their website for viewing at a later date; and
- the Council review its information systems to ensure it can provide timely quantitative measures of its various activities in a form that is easily accessible and available on request to all residents.

We thank you for facilitating community consultation on these documents and would welcome the opportunity to further discuss these matters with Councillors and Council officers.



Carolyn Ingvarson
Convenor
Lighter Footprints Inc

[REDACTED]

[REDACTED]

Joy Mettam
Member
Lighter Footprints Inc



(13)

From: Les Pradd [REDACTED]
Sent: Thursday, 6 August 2020 3:12 PM
To: Boroondara
Cc: [REDACTED]
Subject: Submission from the Boroondara Greens
Attachments: CoB Public Transparency Policy Submission - Boroondara Greens.docx; CoB Governance Rules Submission - Boroondara Greens.docx

Good afternoon

Attached are two submissions being made on behalf of the Boroondara Greens.

They relate to the review of the proposed Governance and Transparency Policies and we would like to make a presentation to the Council Meeting on Monday August 17 regarding these submissions.

Please contact either myself or Tim Sheehan [REDACTED] if you have any queries.

uSt wishes

Les Pradd

[REDACTED]

David Thompson
Manager Governance
City of Boroondara

6 August 2020

Dear Mr Thompson

This submission is made by the Boroondara Branch of the Greens and concerns the Public Transparency Policy endorsed for consultation by Council at its meeting held on 20 July 2020. We thank Council for the opportunity to make this submission.

The *Public Transparency Policy* seeks to implement sections 4(b) and 58 of the *Local Responsibilities Act 2006* (Vic). We have some concerns about the effectiveness of the policy in giving effect to the spirit and prescriptions of both Acts.

This is the first time Council has developed a transparency policy and the period for public consultation has been truncated. In the interest of implementing section 4(b) of the Act (see below), we recommend that the first review of the policy be undertaken 12 months after implementation of the new policy, with the public invited to make comments, rather than in 4 years' time as proposed.

4 Objectives of Act

The objectives of this Act are to ensure that -

- [...]
- (b) *Councils are constituted as representative bodies that are accountable, transparent, collaborative, efficient and engaged with their communities;*

One of the priorities of the *Public Transparency Policy* is that Council information be "understandable and accessible". Reviewing the items to be made available listed in Appendix 1 of the Policy and based on our own experience it is clear that some, but not all, would be difficult for the public to easily understand. We recommend that Council both survey the community to gain a better appreciation of their understanding of all such documents, conduct a best practice review of similar disclosures and then make changes to information provided where appropriate.

That information be "accessible" requires a reasonable time limit for its dissemination to the general public. We recommend a 10-business day deadline for the dissemination of requested information. This would ensure the accountability and transparency required by the Act.

A key question concerning this policy is whether Council believes that the implementation of this policy will result in any additional information being made available to the public. The implications of this policy were not discussed in the paper and that of itself is a concern.

To quote the Victorian Government document appended at the end of the policy -

The new Act assumes, instead, that all matters must be public, except in specific and limited circumstances.

Later those limited circumstances are defined as relating to matters either confidential or contrary to the public interest.

So the onus on disclosure now is not why disclose, but rather why not?

By way of example, monthly financial reports are not made available to the public for every month of the financial year. Will this practice change?

Further, the Customer First Program is the largest body of work in the history of Council. It is overseen by a Steering Committee of Councillors. Will the minutes (excluding any commercially sensitive information) be made available to the community for their review?

On the face of sections 4 and 58 of the Act - which this policy seeks to implement - there is no apparent explicit reason why those documents should not be made available, without the need to make a formal request.

A 2016 Victorian Ombudsman report¹ notes that Boroondara Council does not provide adequate (seven days) notice of Council Meetings as it is required to do under sections 89(4), 89(4A) and 82A(2)(a) of the Act. Boroondara Council is one of only four councils (out of 79) to not provide proper notice of meetings. While this report is now 4 years old our observation is that this practice has continued.

We recommend that the public be notified of all Council Meetings, be they special or ordinary, Services Special Committee or Urban Planning Committee, more prominently on the Council website and in a newspaper with reach in the community. Notice must occur seven days prior to the meetings. We also recommend placing information on meetings in every issue of the Boroondara Bulletin as we have received community feedback that this would heighten the level of involvement in Council affairs.

Very recently Council discontinued its production and dissemination of Council Meeting recordings. We strongly oppose this as the video or audio recording of Council Meetings improves accessibility and transparency. That the live broadcast of the meeting and the creation of minutes meet the statutory obligations of Council is no excuse to end a practice that has fulfilled the spirit of the Act, especially sections 4(b) and 58. The timing of this removal suggests that the Council will look to implement these new legislative requirements to the minimum level possible, demonstrating that the spirit of the law will not be satisfied.

Summary of recommendations:

We recommend that the Boroondara Council:

- Undertakes a community consultation and a best practice review of what constitutes understandable material in local government communications.

¹<https://assets.ombudsman.vic.gov.au/assets/Reports/Parliamentary-Reports/1-PDF-Report-Files/Investigation-into-the-transparency-of-local-government-decision-making.pdf?mtime=20191218113407>

- Undertakes a public review of this transparency policy after the first 12 months of operation
- Implements a 10-business day deadline for the dissemination of requested information
- Reinstate provision of video and audio recordings of all public meetings of Councilors
- Give notice of meetings prominently on the Council website, Council Bulletin and in newspapers with local coverage at least seven days prior to the meeting.

We would welcome the opportunity to speak to the Services Special Committee on 17 August 2020.

Any questions concerning this submission should be directed to either Les Pradd [REDACTED] or Tim Sheehan [REDACTED]

Yours sincerely

Alice Endersbee
Co-Convenor
Boroondara Greens

Kylie Rocha
Co-Convenor
Boroondara Greens

David Thompson
Manager Governance
City of Boroondara

6 August 2020

Dear Mr Thompson

This submission is made by the Boroondara Branch of the Greens and concerns the Governance Rules endorsed for consultation by Council at its meeting held on 20 July 2020. We thank Council for the opportunity to make this submission.

There are five matters that we wish to raise in this submission.

1. Chief Executive Officer Report to Council

Running a corporation and a council are different activities but there can be benefit in taking the best and most appropriate approach from one and using it in the other.

It is common practice for the first significant agenda item at Board Meetings in larger corporations to be a report from the Chief Executive Officer (CEO).

Usually the CEO takes this opportunity to inform the Board of the things that have been occupying his or her mind, where their time has been spent and will be devoted in future. It can also be an opportunity to flag issues and raise concerns. Undoubtedly different CEOs approach this report differently but it strikes us that there is considerable benefit in the CEO of the City of Boroondara providing a monthly report to Council Meetings.

Presumably the matters raised in such a report would not be new to Councillors and this suggestion is made more for the benefit of the citizens of Boroondara. The CEO presenting a monthly report to Council would provide the community with more information about council activities, hopefully stimulating further engagement and involvement.

We understand that a report such as this was provided in the past and recommend that the Local Law contain a requirement that the CEO provide a monthly report to Council covering the matters he or she deem most appropriate.

2. Meetings where questions can be asked

The Council website lists the public meetings where councillors are involved. There are 4 types of meeting and from the start of 2018 to 20 July 2020 Councillors have met 125 times.

Council rules state that questions can only be asked at Council Meetings, not Special Council Meetings, nor Services Special Committee Meetings or Urban Planning Committee Meetings. Since the start of 2018 questions could only be asked at 23% of all meetings combined.

We are not aware of any reason why this is the case and in our view it stifles debate, discussion and hence democracy.

Asking questions of elected officials in public is an essential part of the democratic process.

In addition, the requirement for a question to relate to a matter on the agenda for the meeting means that the opportunity for questions to be asked of Councillors in the City of Boroondara is extremely limited.

We recommend that questions be able to be asked at all public meetings of our elected representatives.

3. Rules regarding the asking of questions

All chambers of elected representatives have rules governing the process of asking questions. The rules determined by the City of Boroondara are possibly the lengthiest in Victoria, running to 3 pages. Most of these rules specify how and in what circumstances a question may be asked or disallowed.

Boroondara clearly has the most grounds for excluding questions and that list is a full page. A question cannot contain parts, there can be no preamble and the fewest number of words are allowed.

By way of comparison the rules at Monash, Stonnington and Whitehorse Councils do not exceed a page in total.

However, the issue that we are most concerned with is the requirement for the agenda to include the subject matter for the question.

This limitation, combined with the fact that questions can only be asked at a small portion of meetings of Councillors, constitutes an extreme limit on the public questioning of our elected representatives and diminishes democracy in Boroondara.

The right of electors to publicly question their elected representatives is fundamental to the conduct of a free and open society yet here in Boroondara you can only do it if it's the right meeting and the subject you are concerned with happens to be on the agenda. This should change.

4. Council Prayer

Anyone watching a Council Meeting for the first time would be interested to see how democracy is conducted at the local level.

The first thing they would notice would be the reading of the Council Prayer, which for some members of the community would be most welcome.

The census, conducted by the Australian Bureau of Statistics in 2016, shows that over 50% of the population of the City of Boroondara are not followers of the Christian faith and 37% have no religion. Presumably a sizeable proportion of those Boroondara citizens hearing the prayer at the commencement of a meeting might therefore feel excluded and/or offended.

The City of Stonnington starts its meeting with the following Statement of Affirmation:

We are reminded that as Councillors we are bound by our Oath of Office to undertake the duties of Councillor in the best interests of the people of the City of Stonnington and to faithfully and impartially carry out the functions, powers, authorities and discretions vested in us under the Local Government Act and any other Act.

A statement such as that would be more likely to be agreed to by the diverse groups in our City as an appropriate way to commence the meeting rather than a Council Prayer in the Christian tradition.

Harmony has been defined as a pleasing combination of different parts. We in the 'City of Harmony' should not start each meeting with the Council Prayer but rather a Statement of Affirmation.

5. Acknowledgement of Country

Reconciliation Australia state in their document "Welcome to and Acknowledgement of Country" -

An Acknowledgement of Country is an opportunity for anyone to show respect for Traditional Owners and the continuing connection of Aboriginal and Torres Strait Islander peoples to Country.

As such this is an important part of the reconciliation process. Our issue with the proposed Rules is that this Acknowledgement is optional, which implies that there are valid reasons to not say it.

We are yet to hear those reasons and none were contained in the paper supporting the new Rules.

We ask the question - Why make reading of the Acknowledgement of Country optional?

We would welcome the opportunity to speak to the Services Special Committee on 17 August 2020.

Any questions concerning this submission should be directed to either Les Pradd [REDACTED] or Tim Sheehan [REDACTED]

Yours sincerely

Alice Endersbee
Co-Convenor
Boroondara Greens

Kylie Rocha
Co-Convenor
Boroondara Greens

18..

From: Ian Hundley [REDACTED]
Sent: Thursday, 6 August 2020 9:19 PM
To: Boroondara
Subject: NEW COUNCIL POLICIES
Attachments: Hundley submission governance rules and public transparency 06 08 20 FINAL.pdf

Please find attached my submission on these matters as advised on "Your Say".

Ian Hundley
[REDACTED]

Att.

Proposed Governance Rules and Public Transparency Policy of Boroondara City Council**Submission by Ian Hundley****August 6, 2020**

The fact that Adem Somyurek, now in public disgrace and at the centre of a joint IBAC/Ombudsman inquiry, was responsible for guiding the Local Government Act 2020 through the Victorian Parliament, should not distract from the importance of democratic governance and public transparency in council affairs.

However, the idea that individual councils should be thought to be in any way unique on matters of public transparency which might require them to write their own rules I argued against when the legislation was being formulated. Principles of transparency should apply uniformly and it is unlikely that the writing of individualised policies by councils, even if informed by general principles, would improve matters. Individual councils are not that different one from the other in this respect and failure to meet reasonable standards is generally recognisable when it does occur. It is important that it be detectable by the public when there are failings.

The behaviour of individual councils is more often than not the result of established culture and this is nowhere more the case than at the City of Boroondara. The question remains, therefore: what in the new legislation may compel or persuade the City of Boroondara towards a more acceptably transparent mode of operation? Very little it seems to me.

These consultations

So what has Boroondara's performance been like in recent years?

The manner in which the council has chosen to seek submissions on the governance rules and the proposed public transparency policy on the Your Say section of the website does not invite confidence that they intend to attract much attention to this process. It says simply that "We are required to adopt..." such new provisions for governance and public transparency. There is no reference as to why this is so, or discussion of the legislated provisions which require this action. We are all left in the dark on that.

I proposed that as a significant gesture towards transparency the council should place public submissions on the proposed public transparency policy on the council website. Over a fortnight ago I wrote to the Mayor, Councillor Cynthia Watson to ask that be done in order to elevate the quality of the consultation process. In response the Mayor simply categorised my proposal as "feedback" for noting.

The reality is that the current environment in which local government operates heightens the requirement for transparency, as independent public reportage of council affairs has all but collapsed, a trend that has been evident for some time, but now accelerated by the COVID-19 pandemic. Regrettably though, whilst the requirement for transparent and

accountable conduct by the council is more urgent than ever, it will not be realised with the proposed public transparency policy.

Boroondara and the absence of transparency: some examples

In my experience, Boroondara City Council has for many years been failing to meet reasonable standards of public transparency. And it is also interesting to contemplate that where opacity rather than transparency is shown it often also reveals broader failure in operational performance by the council. I cite three examples.

I recall several years ago asking council for data on the approvals sought and granted by council for the removal of trees from private properties in Boroondara. These matters are regulated under what is now the Tree Protection Local Law 2016. The issue is somewhat controversial as canopy tree loss in many suburbs of Boroondara has been substantial for perhaps the last twenty years and the effectiveness of the regulation has for long been in question.

The response I received, however, was that the information was not available and it would require too much effort on council's part to aggregate the information I sought. Not long after, however, this information was made available on request. It is probable, I believe, that it was realised that such information, being central to the central objective of the local law to maintain canopy tree cover in the municipality, should be collected and made available publicly.

The response I received on this occasion set something of a pattern for future requests I made of council.

I have for some time also been seeking data on council's administration of the "Report and Consent" process under the Victorian Building Regulations. These regulations prescribe several minimum siting requirements for single dwelling developments, such as setbacks from boundaries and maximum fence heights. These requirements are required to be met except where approved by the council. Such matters are dealt with by council under the Report and Consent process. It is potentially the case that, depending on the manner in which these regulations are administered by the council, that the built environment in particular locations could be substantially impacted.

Data I had been provided on the council's administration of this process several years ago appeared to suggest that the numbers of approvals granted each year were very large and increasing over time. However, when I sought more recent data, it was refused, again on the grounds that it would require too much effort on council's part to aggregate the information. On this and subsequent occasions, however, an additional excuse was introduced in justification of council's refusal to provide the information: That there is no legal requirement for council to maintain such data.

It may be that such data on Report and Consent applications is in fact maintained by council, but they have decided to not provide it publicly.

The council's approach to the proposed North East Link freeway project also betrayed a high level of secrecy. It was announced publicly on 11 February 2020 that Boroondara was to join legal action on the project. The council held a meeting the preceding evening on the matter which was closed to the public on the grounds, as reflected in the minutes of the meeting that "...the premature disclosure of information could be prejudicial to the Council or other persons." The council subsequently withdrew from the legal action, announced publicly on 23 July 2020 without any report back or dialogue with its community. At a prior meeting on 13 July council had adopted quite extensive proposals to compensate for canopy tree cover arising from the North East Link project. These proposals had not been subject to any public participation either.

This failure to bring the public into its confidence on an issue that has potentially adverse effects for the Boroondara community as a whole and especially the very large numbers of householders who reside in general proximity of the project corridor betrays a chronic failing in public transparency by the council.

The recent action by the council to cease maintaining electronic records of council meeting proceedings provides some guidance on how transparent council intends to be in future.

There are many more such cases I could cite where the actions of the council demonstrated a lack of transparency, to the point I believe where it is now a systemic issue. The essential question now is whether the newly legislated provisions under the Local Government Act to which the council is now required to respond might improve things in that regard.

Live streaming and recording of council proceedings

On May 4, 2020, Boroondara Council commenced streamed live video and audio transmission of its meetings as the COVID-19 pandemic posed an unacceptable health risk for the continuation of physical meetings which are normally held in the council chamber in Camberwell. The council also retained the electronic record of each meeting on their website for members of the public to replay.

In fact, many other councils had been live streaming their meetings years before the social distancing requirements triggered by the COVID-19 pandemic. And they have been maintaining the record on their websites in recognition of the fact that it is a valuable record of proceedings, for future reference.

Whilst Boroondara is continuing streamed live video and audio transmission of its meetings, from the council meeting held on 30 June it ceased retaining the electronic record of future meetings on the Council website for members if the public to access. It was unannounced and appears to have not been a consequence of a formal decision of the council. It remains unexplained. The least we can say is that influential forces inside the council is very uncomfortable with the idea that members of the public may review electronic records of council proceedings.

The Victorian Ombudsman, Deborah Glass, in her December 2016 report *Investigation into the transparency of local government decision making* asked What does a transparent council look like? In her view such a council, inter alia, "Live streams its council meetings and provides access to the recordings of meetings on its website after the meeting." (p. 150)

Having now had the brief experience of reviewing live streaming of Boroondara Council proceedings during 2020, it clearly provides a significant insight into council decision-making that is impossible to comprehend from published minutes and agenda papers, the only other source of such information.

So what is the council's view of live streaming in future? Clause 7.2 of the proposed Public Transparency Policy states that "Council and delegated committee meetings will be live streamed from 16 November 2020 onwards or until such time as Council resolves otherwise."

It is difficult to know what this actually means or, if it is a drafting error what is actually intended. Significantly there is no commitment for the recordings of live streamed council proceedings to be maintained on the council web site.

Public Question Time at council meetings

Division 8 and Clauses 54, 55 and 56 of the proposed Governance Rules provide for Public Question Time at ordinary council meetings. For practical purposes the provisions are the same as those that apply under existing arrangements in the Meeting Procedure Local Law and which were adopted in 2015 to substantially reduce the effectiveness of Public Question Time.

In summary, it provides that an individual may ask no more than two questions at a meeting. There are far more obnoxious provisions, and especially those which restrict the subject matter of any question to a matter on the agenda of that meeting or to a matter which the questioner has previously represented in writing and had a written response in return from the council. It should be self-evident how much this may limit the scope of questioning by individual citizens.

One of the important responses offered in defence of the council's action was that members of the public, rather than pursuing or raising a matter at Public Question Time, are able to meet with councillors personally or call and discuss issues one on one, rather than in a public forum.

This, to my mind betrays one of the central tenants of Public Question Time: The fact that it is public. The idea that a member of the public may meet "one-on-one" with a council representative rather than, at his discretion, to raise the matter publicly is to limit the scope for transparency in council affairs.

Written records of council meetings

As of today the council appears to retain records of council meetings (official minutes and related agenda papers) for no longer than three years. At the time of writing, these documents are accessible on the council website for the period commencing January 2018. It appears that the associated practice is to dump the record of the first year at the completion of the third calendar year.

It used to maintain these records for a longer periods than it does currently, but a few years ago, without any public deliberation, adopted the current practice.

Under the proposed Public Transparency Policy (Appendix 1), both meeting minutes and agenda papers are to be retained on the council website, but it is not said for how long. This is inadequate. In my view these documents should be retained for no less than ten years. Ten years is now the planning period the council adheres to. The current practice which sees as few as two years of these records retained is demonstrably inadequate. We can only assume that the council intends to continue with this practice.

Boroondara Council administration and public transparency

Whilst the Boroondara Community Plan 2017-27 (Strategic Objective 7) declares that the organisation's decision-making are (to be) based on principles of accountability, transparency, responsiveness and consultation, it has, as I have sought to demonstrate here, fallen far short of this in practice.

It appears that the council administration walks on egg shells when information is sought by members of the public or when it is proposed that a matter may be opened up to genuine public dialogue. Risk to reputation, no matter how minor, appears to be of paramount concern.

On the face of it, it appears there no requirement in the Local Government Act 2020 shepherded through the parliament by Mr Somyurek for the council to observe a reasonable standard of transparency in future. Insofar as the governance rules and the public transparency policy are concerned Boroondara Council proposes to continue to act in the secretive and unaccountable manner that has characterised its behaviour for so many years.

Please note that I would be interested in speaking to this submission at a meeting of the council.



Boroondara City Council
Private Bag 1
Camberwell
VIC 3124

August 9, 2020

Dear Boroondara Council

Submission on the Draft Public Transparency Policy

Thank you for the opportunity to provide comment on Boroondara Council's draft Public Transparency Policy. I commend the Council's desire for transparency in its processes and decision-making.

The draft policy represents a good start. It incorporates the principles set out in section 57 of the Local Government Act. However, I urge the Council to consider the following issues:

1. The draft transparency policy has been prepared using a formal, legalistic structure and style. I have two concerns with this approach:
 - (a) First, the formal style, although precise, is, by its nature, more difficult to read. One of the objectives of transparency is to reduce the barriers to public participation in the decision-making process. This can be facilitated through the use of plain-language documents wherever possible. I am concerned that the use of formal language may itself be inconsistent with the principles set out in the Act, which require that "Council information must be understandable and accessible to members of the municipal community" (s. 58(c)). Other neighbouring Councils (e.g., Banyule Council) are proposing to adopt a transparency policy which uses plain language and is much more accessible.
 - (b) Second, the formal legalistic style is more appropriate for specifying rules (e.g., this person must or must not do X). In a statement of policy, in contrast, it is often desirable to set out what we *intend* or *hope* to do. The legalistic structure does

not lend itself to statements of intentions, or promises to use ‘best endeavours’, or statements of the standard to which we desire to be held. In contrast, for example, the Banyule Council document uses words like “we will consider” and we will “minimise”. These are not statements of rules to be followed, but statements of the standards to which they would like to be held. I urge Boroondara Council to incorporate statements of this kind (as set out further below).

2. The draft transparency policy does not explicitly mention that the use of confidential information (and, as a consequence, the need for confidential Council discussions) will be minimised, and that any such confidentiality will be time-limited. In my view this should be explicitly stated. For example, Banyule Council uses the following words: “We will ...
 - (a) Carefully consider and will minimise confidential reports and only close meetings to the public in accordance with the Local Government Act 2020.
 - (b) Ensure the title for any confidential reports will be included in the Ordinary Agenda with the relevant confidentiality clause.
 - (c) Determine expiry dates for any confidential reports.”
3. The draft transparency policy does not explicitly mention that it applies to decisions and processes followed by Council officers under delegation. Both Banyule and Darebin Councils include in their transparency policies clauses which explicitly refer to the decisions of Council officers. In my view this should be made clear. Any decision by a Council officer should be subject to the same transparency standard as that of the Council.
4. Although the policy explicitly states “all documents”, it would be valuable to clarify for the reader that this includes “all emails, notes, and other permanent records”, by the addition of this phrase.
5. Finally, the draft transparency policy does not make explicit the need for transparency around decisions to deny transparency. In my view, the public should be able to find out where there have been requests for information and where those requests have been fulfilled or denied. Specifically, in section 10 of the draft policy there should be a clause to the effect that “The Council will keep a record of requests for Council Information, and the content of those requests, and whether the requests were fulfilled in whole or in part. This record will be made public according to the principles set out in this policy.”

Sincerely,

Darryl Biggar



Public Transparency Policy (Draft)

Policy Details

Date of Adoption	Date approved by Council:
Responsible Department	Governance & Communications
Legislative Context	<p>The Banyule Public Transparency Policy is made in compliance of section 57 of the <i>Local Government Act 2020</i>. 57 Public transparency policy:</p> <p>(1) A Council must adopt and maintain a public transparency policy.</p> <p>(2) A public transparency policy must –</p> <ol style="list-style-type: none"> give effect to the public transparency principles; and describe the ways in which Council information is to be made publicly available; and subject to section 58(b), specify which Council information must be publicly available, including all policies, plans and reports required under this Act or any other Act; and include any other matters prescribed by the regulations. <p>(3) A Council must adopt the first public transparency policy under this section on or before 1 September 2020.</p> <p>(4) For the purposes of the public transparency policy and the public transparency principles, information includes documents.</p>
Victorian Charter of Human Rights and Responsibilities Act	<p>In developing this policy, the subject matter has been considered to determine if it raises any human rights issues. In particular, whether the scope of any human right established under the Victorian <i>Charter of Human Rights and Responsibilities Act 2006</i> is in any way limited, restricted or interfered with by the contents of this policy.</p> <p>It is considered that the Public Transparency Policy is consistent with the rights outlined in the Charter. The human rights most relevant to this policy are the rights to:</p> <ul style="list-style-type: none"> protection of privacy and reputation (section 13) right to public life (section 18) <p>The policy strengthens these rights.</p>
References	<ul style="list-style-type: none"> Local Government Victoria – Draft Public Transparency Policy and Fact Sheet Freedom of Information Act 1984 – Part II Statement Banyule Engagement Framework and Principles and Policy Banyule Complaint Handling Policy 'Act for the future' - Directions for a New Local Government Act Victorian Ombudsman Investigation into Decision Making and Transparency
Related documents	<ul style="list-style-type: none"> Banyule City Council – Freedom of Information Part II Statement (This document provides information on how to access information at Banyule). Banyule Service Promise Banyule Privacy Policy Banyule Community Engagement Policy

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Definitions and key terms used this policy

Community	A group of people, the members of which reside in the same geographical area or have a shared background, interest, affiliation or membership.
Stakeholder	Individuals or organisations, which affect, or can be affected by Council decisions.
Transparency	<p>Organisations are transparent when they enable others to see and understand how they operate in an honest way. To achieve transparency, an organisation must provide information about its activities and governance to stakeholders that is accurate, complete, and made available in a timely way.</p> <p>Transparency enables accountability. This does not mean all information should be made publicly available. There are certain types of information that may not be provided publicly, including private information such as client records, and 'commercial in confidence' material such as tender submissions.</p>
Engagement	A genuine process of working with people to build understanding, strengthen relationships and inform decisions.
Consultation	Seeking feedback or advice on a select topic or project.
Delegation	Giving decision-making power by Council and/or the Chief Executive Officer (CEO) to members of Council staff.

1. Purpose

This policy supports Council in its ongoing drive for good governance and the importance of open and accountable conduct, and how council information is to be made publicly available.

Council must adopt and maintain a public transparency policy under section 57 of the *Local Government Act 2020* (the Act). This policy gives effect to the **Public Transparency Principles** outlined in section 58 of the Act.

2. Public transparency principles

Council is committed to, and will uphold, the following principles:

- (a) **Council decision-making** processes must be transparent except when the Council is dealing with information that is confidential by virtue of this Act or any other Act;
- (b) **Council information must be publicly available** unless—
 - (i) the information is confidential by virtue of this Act or any other Act; or
 - (ii) public availability of the information would be contrary to the public interest;
- (c) **Council information must be understandable and accessible** to members of the municipal community;
- (d) **Public awareness of the availability** of Council information must be facilitated.

3. Public transparency

Transparency is a fundamental tenet of democratic governance. Openness, accountability and honesty are essential to build high levels of accountability and trust among citizens and enable fully informed engagement in the democratic process.

Without transparency, effective community engagement, planning, financial management and any number of other council responsibilities cannot be performed legitimately.

4. Council decision making

4.1 Council decisions made at Council meetings

Policy Principle

Decisions will:

- be undertaken in accordance with the Act and the Governance Rules;
- be conducted in an open and transparent forum, unless in accordance with the provisions in the Act and Governance Rules; and
- be made fairly and, on the merits, and where any person whose rights will be directly affected by a decision of the Council, that person will be entitled to communicate their views and have their interests considered.

We will:

- Ensure Council meetings are open to the public and accessible via livestream/audio.
- Carefully consider and will minimise confidential reports and only close meetings to the public in accordance with the *Local Government Act 2020*.
- Ensure the title for any confidential reports will be included in the Ordinary Agenda with the relevant confidentiality clause.
- Determine expiry dates for any confidential reports.
- Make Council meeting agendas available five days prior to the Council Meeting on Council's website, other than special meetings. Where this cannot be met, advice will be provided on Council's website.
- Communicate when we cannot meet the deadlines for agenda papers.

4.2 Decisions made by officers under delegation

Delegation to the Chief Executive Officer (CEO) and other staff are made as:

- It is not practical for Council and its CEO alone to exercise the many statutory powers given to Council; and
- Delegation facilitates the achievement of good governance by empowering appropriate members of staff to make decisions on behalf of Council and its CEO.

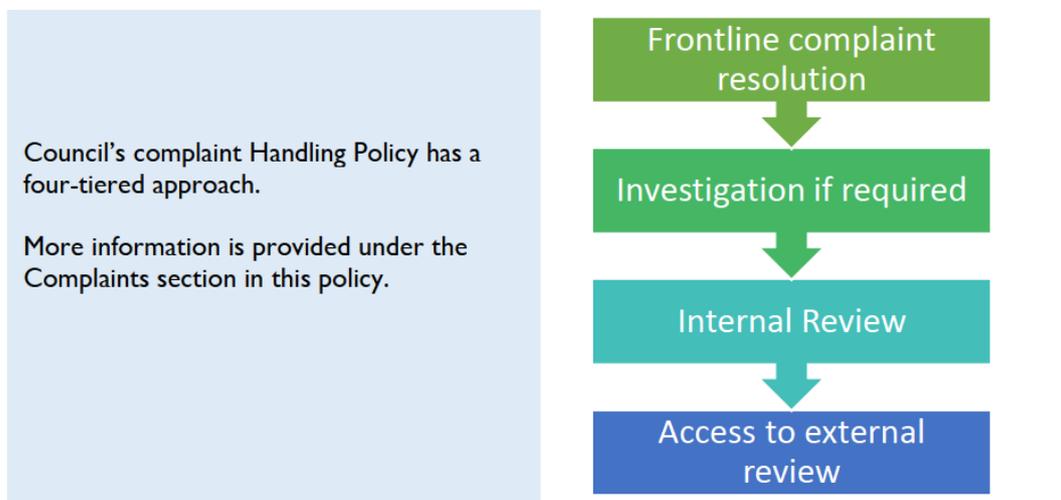
Policy Principle

Decisions will:

- be undertaken in accordance with the relevant Act and regulations the officer has delegation for;
- be made clear to the recipient of the decision; and
- be made fairly and, on the merits, and where any person whose rights will be directly affected by a Council decision, that person will be entitled to communicate their views and have their interests considered.

We will:

- Publish the Register of Delegation on Council’s website
- Ensure that any review process, including how to make a complaint is made clear, noting that there are some review processes, such as infringements, which are subject to the appeal rights as per the relevant legislation.
- Decisions made by officers under delegation are subject to Council’s Complaint Handling Policy, whereby a request to review the decision can be made.



4.3 Community engagement commitment

Policy Principle

Our community engagement commitment is to:

- foster mutual trust, goodwill and respect between Council, community and stakeholders;
- inform, involve and engage communities and stakeholders, and establish processes to facilitate community participation in shaping and influencing decisions affecting them; and
- promote and practice good governance through accountability, transparency and responsiveness.

We will:

- Engage with the community and those who are directly affected by a Council decision;
- Use Council's engagement online platform, Shaping Banyule to communicate all current engagement projects;
- Use Council social media platforms to communicate current engagement projects; and Use various methods as outlined in the Council Community Engagement Policy to engage as outlined below:
 1. **Strategic** – to inform strategic decisions related to policy, plans or programs
 2. **Statutory** – to obtain feedback to inform statutory approvals related to policy, plans, programs
 3. **Research** – to obtain evidence to review or design services programs
 4. **Dialogue** – to enable an ongoing dialogue with the community
 5. **Transactional** – to respond to queries or concerns
 6. **Awareness** – to create awareness through local media or other avenues.

5. Publicly available information

Policy Principle

- Banyule proactively releases information with a commitment to providing as much information as possible, for free or at the lowest possible cost.
- Council will make available on its website all publicly required information.
- Council will respond to requests for information in alignment with the Act, including the Public Transparency Principles and this policy.

We will publish on Council’s website:

- all publicly required information, except information outlined in section 7, subject to privacy, security or commercial considerations wherein only summaries or redacted information will be made available;
- the availability of documents in the document called a “Part II Statement” published in accordance the *Freedom of Information Act 1982*. Part II of the Freedom of Information Act 1982 requires government agencies and councils to publish a number of statements designed to assist members of the public in accessing the information it holds; and
- public notices as required by legislation.

5.1 Publicly available information

Council’s website provides public access to numerous documents, policies, registers and publications. A number of these are also available in print at Council offices and libraries. Certain publications may be mailed or emailed upon request. A summary of documents and publications is provided below:

Information that must be made available as required by an Act or regulation	Information available on Council website
<ul style="list-style-type: none"> • Council Plan • Strategic Resource Plan • Budget • Annual Report • Councillor Code of Conduct • Procurement Policy • Audit and Risk Committee Performance Reporting • Register of Election campaign donations • Summary of Personal Interests* • Register of Planning Permits • Register of Planning Applications on Advertising • Copy of Planning Permits and Endorsed Plans (by application, charges will apply) • Register of Building Permits, Occupancy Permits and Temporary Approvals • Copies of Building Permits, plans and documentation (by application, charges will apply) • Register of Animal Registrations • Register of Public Roads • FOI Part II Statement • Public Interest Disclosure Procedures 	<ul style="list-style-type: none"> • Terms of reference/charters of Council Committees (formally known as Advisory Committees) • Registers of travel undertaken by Councillors or Council Staff • Councillor Expense reimbursements* • Registers of gifts, benefits and hospitality offered/accepted by Councillors or Council Staff* • Council meeting agendas and minutes • Tender appointments in Council meetings open to the public (only the evaluation matrix is marked confidential of each tender over \$100,000. • Code of Conduct for Council Staff • Register of Delegation made by the CEO • Register of Authorised Officers • Register of Interstate and Overseas Travel by Councillors and Staff • Register of Land Leases entered into by Council • Register of Donations and Grants made by Council • Register of Contracts Awarded by Council*

* New requirements will be implemented with development of new policies or when new provisions are in operation under the *Local Government Act 2020*.

5.2 Access to information

Where the information is not available on Council's website, the following options are available:

Proactive release

A person or party may request a document with the relevant Council department. In some cases, the document is available for purchase or inspection under the specific legislation.

The Customer Service Centre is available to assist with requests. Call 9490 4222 or email enquiries@banyule.vic.gov.au.

Freedom of Information (FOI)

Under the *Freedom of Information Act 1982*, the Act establishes a general right of access to information. Exceptions and exemptions may be necessary for the protection of essential public interests, such as personal information, commercially sensitive or legal information.

Information on how to access information or make a FOI application is available on Council's website. [Policies and documents for Inspection and FOI](#)

6. Making information understandable and accessible

Policy Principle

- Council information that is publicly available will be understandable and accessible, and regularly reviewed and updated.
- Consideration will be given to accessibility and cultural requirements in accordance with the *Charter of Human Rights and Responsibilities Act 2006*.
- Council will use social media to publish or stream appropriate Council information, such as Council meetings, and other online tools, such as Shaping Banyule, to publish Council information and encourage community engagement and consultation on projects and community-related matters.

We will:

- assist the community in accessing its publicly available information and will inform the community of its right to make an application under the *Freedom of Information Act 1982* for information which is not considered publicly available information;
- will facilitate the awareness of access to Council information through Council's website and through community engagement opportunities; and
- provide ongoing training to staff to improve communication and report writing.
- uphold the Banyule Service Promise (outlined below).
- implement customer experience and continuous improvement projects that review Council services and information.
- ensuring printed materials are designed for legibility and advertise the availability of language translation.
- committ to making online information accessible to everyone and more user-friendly in general, regardless of disability or technology, and following best practice principles and Web Content Accessibility Guidelines (WCAG) standards.

The Banyule Service Promise

The Banyule Service Promise outlines Council's commitment to the Banyule community and customers on the type and level of service they can expect to receive.

Council developed the Service Promise with a community reference group based on five key customer service principles:



These principles inform how Council builds and delivers services, creates processes and procedures, writes policies, and supports staff to deliver exceptional service.

In particular, three of these principles support Council to make information clear and understandable:

- * Accountable: communicate clearly, accurately, in plain language and within appropriate time frames.
- * Proactive: use a range of communication methods to cater for all demographics.
- * Accessible: have a range of options to contact Council, assisting all individuals equally.

7. Information not available

Some Council information may not be made publicly available. This will only occur if the information is confidential information or if its release would be contrary to the public interest or not in compliance with the *Privacy and Data Protection Act 2014*.

Confidential information is defined in section 3 of the *Local Government Act 2020*. It includes the types of information listed in the following table.

Type	Description
Council business information	Information that would prejudice the Council's position in commercial negotiations if prematurely released.
Security information	Information that is likely to endanger the security of Council property or the safety of any person if released.
Land use planning information	Information that is likely to encourage speculation in land values if prematurely released.
Law enforcement information	Information which would be reasonably likely to prejudice the investigation into an alleged breach of the law or the fair trial or hearing of any person if released.
Legal privileged information	Information to which legal professional privilege or client legal privilege applies.
Personal information	Information which would result in the unreasonable disclosure of information about any person or their personal affairs if released.
Private commercial information	Information provided by a business, commercial or financial undertaking that relates to trade secrets or that would unreasonably expose the business, commercial or financial undertaking to disadvantage if released.
Confidential meeting information	Records of a Council and delegated committee meetings that are closed to the public to consider confidential information
Internal arbitration information	Confidential information relating internal arbitration about an alleged breach of the councillor code of conduct.
Councillor Conduct Panel confidential information	Confidential information relating to a Councillor Conduct Panel matter.
Confidential information under the 1989 Act	Information that was confidential information for the purposes of section 77 of the <i>Local Government Act 1989</i>

Council may decide, in the interests of transparency, to release information to the public even though it is confidential under the Act. However, this will not happen if its release is contrary to law, in breach of contractual requirements or it is likely to cause harm to any person or is not in the public interest to do so.

8. Public interest

Council is not required to make publicly available information if the release would be contrary to the public interest, in accordance with the *Local Government Act 2020*. When considering public interest, Council will apply the test that exists in the *Freedom of Information Act 1982*. Council may refuse to release information if it is satisfied that the harm to the community likely to be created by releasing the information will exceed the public benefit in it being released.

When considering possible harm from releasing information, Council will only concern itself with harm to the community or members of the community. Potential harm to Council will only be a factor if it would also damage the community, such as where it involves a loss of public funds or prevents Council from performing its functions.

Information that might be withheld because it is contrary to the public interest may include:

- internal working documents that have not been approved or submitted to Council, especially where their release may mislead the public;
- directions to Council staff regarding negotiations in contractual or civil liability matters, where release may damage the Council's capacity to negotiate the best outcome for the community; and
- correspondence with members of the community, where release may inappropriately expose a person's private dealings.

9. Human Rights Charter

This policy has been reviewed against and complies with section 13 of the *Charter of Human Rights and Responsibilities Act 2006*, as this policy aligns with and provides for the protection of an individual's right not to have their privacy unlawfully or arbitrarily interfered with. It is also in line with section 18 which recognises a person's right to participate in the conduct of public affairs. See appendix A.

10. Complaints

If a person wishes to question a decision about the release of information, this should be raised directly with the officer handling the matter in the first instance.

Following this, if the person is still not satisfied with the outcome and would like to contest the decision, this can be referred to the manager of the relevant area in line with Council's Complaint Handling Policy.

If not satisfied with Council's response, the concerns can be raised directly with the Victorian Ombudsman's office on (03) 9613 6222. or via the website – www.ombudsman.vic.gov.au.

11. Review of the policy

Council commits to monitoring processes, information sharing and decision making to understand the overall level of success in the policy's implementation.

A periodic review of this policy will be undertaken to ensure any changes required to strengthen or update the policy are made in a timely manner.

HUMAN RIGHTS CHARTER – ASSESSMENT OF COMPATIBILITY

APPENDIX A

In accordance with section 28 of the *Charter of Human Rights and Responsibilities Act 2006*, this statement of compatibility is made with respect to the Public Transparency Policy and supports two of the Charter’s human rights.

Objectives

- To ensure transparency and accountability strengthen governance and accountability
- To provide confidence to the community in the way Council operates
- To provide access to information and documents
- To ensure information is accessible and clear

Human Rights Assessment

What human rights are impacted? List each right - refer to Appendix A – Your Rights Explained for a detailed explanation of rights.	Will any person feel their rights are limited and why? Refer to 'Limiting Rights' on page 2 of the Human Rights Guidelines for advice.	What are the interests you have to balance? List any other interests of the community that need to be considered.	Is the limitation reasonable? Against each right limited, state why the limitation is reasonable.	What practical solutions are available to reduce the limitation? If a limited right is not reasonable, ensure comment made that the document was amended so the right is either not limited or reasonably limited.
1 Right to public life (18)	This policy supports and encourages the community to access Council services and information and participate in engagements or matters that impact them.		No limitation	Not required
2 Dignity: Protection of privacy and reputation	This policy supports and protects the privacy of individuals where possible and within the FOI Act.	The right to information and the rights of people’s personal information, including community members, customers and staff, to remain private.	No limitation	Not required

Public Transparency Policy		
Submitter	Summary of Issue(s)	Response
<p>Lighter Footprints Inc. Submission received from Carolyn Ingvarson, Convenor and Joy Mettam Member on behalf of Lighter Footprints Inc.</p>	<p><u>Clause 7.2 - Council decision making processes</u> The submitter has recommended Council adopt a permanent practice of streaming Council meetings live via the internet and posting a recording on Council's website for viewing at a later date.</p>	<p>There is no prescribed requirement in the <i>Local Government Act 2020</i> (the Act) to live stream or record Council and delegated committee meetings.</p> <p>The Public Transparency Policy (Policy) proposes Council and delegated committee meetings be lived streamed upon completion of the refurbishment of the Council Chamber to improve audio-visual capability. This is anticipated to be completed by the end of 2020.</p> <p>In relation to the recording of Council meetings, it is suggested this be considered by the newly elected Council and it be made discretionary in this version of the policy.</p> <p>It should be noted all reports to Council and delegated committee meetings and the decisions taken are and remain a matter of public record for those who wish to access them. The only exceptions are matters classified as confidential under the Act. Additionally, while Council has no obligation to allow submitters to be heard in relation to many of the items which come before it, the fact this is a standard part of Council's practice means those directly impacted by the matters on an agenda paper can be part of the proceedings and observe for themselves what has transpired.</p>

Public Transparency Policy		
Submitter	Summary of Issue(s)	Response
	<p><u>Clause 8 - Availability of Council information and clause 10 - Accessibility of Council Information</u> The submitter has recommended Council review its information systems to provide timely quantitative measures of its activities in a form that is easily accessible and available on request to all residents.</p>	<p>The Policy provides all documents and other information held by Council will be made available to the public unless the information is confidential or its release is assessed by the Chief Executive Officer as being contrary to the public interest. A list is provided in the Policy (Appendix 1) of the categories of Council Information which will generally, subject to the Policy, be made available.</p> <p>Council allocates resources (staff and systems) to the production of information which assists in decision making by Council and to support the provision of services to the community. Council is not a research function for members of the community who have requests which would divert resources from the core activities Council staff are employed to undertake. If Council has information which is requested and can be provided without an impost upon its resources and that information is not confidential or contrary to the public interest, naturally it will be provided.</p>
<p>Boroondara Branch of the Greens.</p> <p>Submission received from Les Pradd on behalf of the Boroondara Branch of the Greens.</p>	<p><u>Clause 8 - Availability of Council Information</u> The submission recommends Council undertake community consultation and a best practice review of what constitutes understandable material in local government communications.</p>	<p>To ensure Council is delivering over 170 different services in-line with community needs and expectations, Council communicates with the community through a variety of channels to engage with their needs, concerns, ideas and aspirations.</p> <p>Council undertakes a variety of approaches to measure the effectiveness of our communication approach. This ranges from surveys through to quantitative data. Examples include:</p> <ul style="list-style-type: none"> - the annual Community Satisfaction Survey which measures community preferences for communication channels

Public Transparency Policy		
Submitter	Summary of Issue(s)	Response
		<ul style="list-style-type: none"> - the biennial Communications Channel Survey that measures attitudes and preferences of the Boroondara community regarding Council communication approach - measuring levels of engagement with the electronic version of the Boroondara Bulletin that is emailed to nearly 42,000 residents - measuring levels of engagement with social media posts sent through channels such as Facebook and Twitter. <p>Importantly, the information Council collects is used to inform improvements to the mix of communication channels and the content that is shared through those communication channels. Additionally, it enables Council to plan more effective communications, make better use of budgets, monitor progress against defined communication goals, identify improvements and learn from successes.</p>
	<p><u>Clause 16 - Monitoring, Evaluation and Review</u> The submission recommends Council undertakes a public review of the Public Transparency Policy after the first 12 months of operation.</p>	<p>There is no legislative obligation to review the Public Transparency Policy (the Policy) after a specific time interval. However, Council is committed as part of its good governance practices to ensuring a review date is established prior to policies being adopted.</p> <p>In this instance it is proposed the Policy is reviewed in 2024 after it has been in operation for four years. It is open for the new Council to determine to review the Policy earlier.</p>

Public Transparency Policy		
Submitter	Summary of Issue(s)	Response
	<p><u>Clause 10 - Accessibility of information</u> The submission recommends Council implement a ten (10) business day deadline for the dissemination of requested information.</p>	<p>Under Council's Customer Service Charter staff are required to respond to all enquiries within ten (10) business days of receipt. This standard will, like all other correspondence received, apply to requests for information which are made in regard to the Public Transparency Policy.</p> <p>As is currently Council's practice where the information requested is anticipated to take longer than 10 days to access and collate (given for example complexity of the information, current availability or other factors) the customer will receive an acknowledgement and the date the information will be provided. A full explanation about why the information will be provided outside the ten day standard will be communicated to the customer.</p>
	<p><u>Clause 7.2 - Council decision making processes</u> The submission recommends Council reinstate provision of video and audio recordings of all public meetings of councillors.</p>	<p>As indicated above, there is no prescribed requirement in the <i>Local Government Act 2020</i> (the Act) to live-stream or record Council and delegated committee meetings.</p> <p>The Public Transparency Policy (Policy) proposes Council and delegated committee meetings be lived streamed upon completion of the refurbishment of the Council Chamber to improve audio-visual capability. This is anticipated to be completed by the end of 2020.</p> <p>In relation to the recording of Council meetings, it is suggested this be considered by the newly elected Council and it be made discretionary in this version of the policy.</p>

Public Transparency Policy		
Submitter	Summary of Issue(s)	Response
		<p>It should be noted all reports to Council and delegated committee meetings and the decisions taken are and remain a matter of public record for those who wish to access them. The only exceptions are matters classified as confidential under the Act. Additionally, while Council has no obligation to allow submitters to be heard in relation to many of the items which come before it, the fact this is a standard part of Council's practice means those directly impacted by the matters on an agenda paper can be part of the proceedings and observe for themselves what has transpired.</p>
	<p>The submission recommends Council give notice of meetings prominently on the Council website, Boroondara Bulletin and in newspapers with local coverage at least seven (7) days prior to the meeting.</p>	<p>Each year (usually in November) Council resolves the dates, times and places of Council and delegated Committee meetings for the forthcoming year. The meeting schedule for the year is subsequently published in a newspaper circulating in the municipality.</p> <p>The dates of the meetings are published on the Council website, at the Camberwell Customer Service Centre and within Boroondara Bulletin which is distributed on a quarterly basis to each household in the municipality.</p> <p>The meetings are also promoted through council's social media pages including Facebook posts. These posts provide information about the agenda items and encourages the community to view the meeting via the on-line broadcast.</p>

Public Transparency Policy		
Submitter	Summary of Issue(s)	Response
		<p>In instances where Council business is of an urgent and unexpected nature Special meetings are called to consider these items. These Special meetings may be called in a timeframe where the seven days prior to the meeting has already past. In these instances public notice in a newspaper is often not always an option given media deadlines however, a public notice providing details of the date, time, how to view (or attend) the meeting and the agenda items are posted on the website as soon as possible and prior to the meeting.</p> <p>Should this be the case, Council has provided as much public notice as possible using the existing Council communication channels and writing to any person whose rights are likely to be directly affected.</p> <p>In addition if the Special meeting has been held at short notice which has meant that a public notice in a newspaper has not been able to be published, the reasons are noted in the public minutes of the meeting.</p> <p>Council officers dispute the assertion made in this submission regarding the reference to the seven day notice of meetings not being made in accordance with the legislative requirements.</p> <p>The submission cites the Victorian Ombudsman's conclusions in a 2016 report titled <i>Investigation into the Transparency of Local Government Decision Making</i>. The submission includes that in this report the Ombudsman noted that Council does not provide adequate notice of Council meetings as it was required to do so under Local Government Act. The submission asserts that Council is one of four councils which does not provide proper notice of meetings.</p>

Public Transparency Policy		
Submitter	Summary of Issue(s)	Response
		<p>There is no evidence the Ombudsman made this point in the report about Council. Officers strongly dispute this conclusion in the submission and it is disappointing to see such a misrepresentation of the facts.</p> <p>Council practices have been and continue to be fully compliant with the Local Government Act.</p> <p>It is assumed the submitters are referring to the table in the report at page 22 which is headed 'Notice of Meetings - at least seven days notice of'. The information in this table was provided following a survey completed by all councils including Boroondara Council. This survey shows council's practices 'varies' according to the type of meeting and the circumstances in which it was called.</p> <p>This is the case as described above in regard to advertising and not an indication that Council fails to provide proper and due notice of its meetings.</p>

Public Transparency Policy		
Submitter	Summary of Issue(s)	Response
Ian Hundley	Officers note the submission from Mr Hundley was received by email at 9.19pm on the 6 August 2020 after the closing time for submissions. Officers have determined it appropriate on this occasion to include the comments from Mr Hundley in this report.	
	<p><u>Clause 7.2 - Council decision making processes</u> It is understood the submitter believes Council meetings, in addition to being live streamed, should be recorded and a copy of the record be maintained on the Council website.</p>	<p>As indicated above, the Public Transparency Policy (Policy) proposes Council and delegated committee meetings be live streamed upon completion of the refurbishment of the Council Chamber to improve audio-visual capability. This is anticipated to be completed by 16 November 2020.</p> <p>In relation to the recording of Council meetings, it is suggested this be considered by the newly elected Council and it be made discretionary in this version of the policy.</p> <p>It should be noted all reports to Council and delegated committee meetings and the decisions taken are and remain a matter of public record for those who wish to access them. The only exceptions are matters classified as confidential under the Act. Additionally, while Council has no obligation to allow submitters to be heard in relation to many of the items which come before it, the fact this is a standard part of Council's practice means those directly impacted by the matters on an agenda paper can be part of the proceedings and observe for themselves what has transpired.</p>

Public Transparency Policy		
Submitter	Summary of Issue(s)	Response
	<p><u>Clause 8 - Availability of Council Information</u> The submitter considers agenda papers and minutes of Council meetings should be available on Council's website for a period of ten years.</p>	<p>Historically there has been an extremely low level of demand for access to past business papers. Council currently makes the agenda paper and minutes of meetings of Council available on Council's website for three years. A digital record of the agenda and minutes beyond the three years is available at the Ashburton Library.</p> <p>Acknowledging the Council website has past business papers from 2018 onwards Council can start to build a ten (10) year repository of business papers. To address the current limitations associated with storing past business papers for a ten year period on the website an investment in resources (financial and staffing) will be required from Council to build the system to ensure it is customer friendly.</p> <p>Past business papers can also be freely accessed by contacting the Governance Department.</p> <p>The submitter has been provided with a CD Rom which contains public agendas and minutes for the period 2011 to 2015.</p>

Public Transparency Policy		
Submitter	Summary of Issue(s)	Response
Darryl Biggar	Officers note the submission from Mr Biggar was received by email at 1.03pm on the 10 August 2020 after the closing time for submissions. Officers have determined it appropriate on this occasion to include the comments from Mr Biggar in this report.	
	<p><u>Style and expression</u> The submitter is of the view the proposed Policy consists of a formal, legalistic structure and style.</p>	<p>Officers acknowledge the Policy is written in a formal legalistic style but do not consider it is inconsistent with the principles in the Act.</p> <p>In the opinion of officers the Policy is easy to understand and when adopted by Council will be made accessible to members of the community via the Council distribution channels. The Policy is very important to Council and its community and it is important there be clarity and no ambiguity so councillors and the community know what is expected. The drafting of the document is designed to achieve this outcome.</p>
	<p><u>Confidential information</u> The submitter recommends it should be explicitly stated the use of confidential information (and as a consequence the need for confidential Council discussions) will be minimised and any such confidentiality will be time-limited.</p>	<p>Officers note the suggestions from the submitter. Officers believe the proposed Policy adequately deals with the use of confidential information.</p> <p>Officers note confidential matters are now limited to matters that are:</p> <ul style="list-style-type: none"> • confidential by virtue of the Local Government Act 2020 (the Act) or any other Act, or • public availability of the information would be contrary to the public interest.

Public Transparency Policy		
Submitter	Summary of Issue(s)	Response
		It is also noted the public transparency principles as set out in the Act will be applied to all aspects of Council's operations and decision making. Of particular note is the circumstances in which a Council or a delegated committee meeting may be closed to the public. The Act requires Council and delegated committee meetings to be open to the public unless specified circumstances apply. Matters of a legal, contractual or personnel nature, for example, do not lend themselves to time limits. There are other cases where the release of confidential information discussed at meetings of Council might cease to be sensitive and could be released. A decision is required in each case rather than applying an arbitrary timeframe.
	<u>Application of the policy</u> The submitter recommends the policy explicitly mention it applies to decisions and processes followed by Council officers under delegation.	Officers note at page 3 of the Policy under the heading <i>Scope</i> : "This Policy applies to Councillors and Officers".
	<u>Definition of "all documents"</u> The submitter recommends the meaning of "all documents" be clarified as including "all emails, notes and other permanent records".	Officers note the suggestion from the submitter and believe there is little value add to the Policy to include a limited list of documents such as suggested by the submitter.

Public Transparency Policy		
Submitter	Summary of Issue(s)	Response
	<p><u>Record of decisions</u> The submitter recommends inclusion of the following in section 10 of the Policy - Accessibility of Information - "The Council will keep a record of requests for Council Information, and the content of those requests, and whether the requests were fulfilled in who or part. This record will be made public according to the principles set out in the policy."</p>	<p>Officers note the view of the submitter.</p> <p>Council officers receive thousands of requests for information a week and it would be completely unproductive to have staff distracted with actually dealing with the matters before them by spending time filling out a register as to whether the query was answered in whole or in part.</p> <p>Where community members are dissatisfied with responses there are avenues which can be explored.</p>