

3.4 Endorsement for Public Consultation - Public Transparency Policy

Abstract

The Local Government Act 2020 (the Act) requires Council to adopt and maintain a Public Transparency Policy. Council must adopt its first public transparency policy on or before 1 September 2020.

A proposed Public Transparency Policy (see **Attachment 1**) has been developed incorporating the requirements of the Act, guidance from Local Government Victoria, collaboration with colleagues at other councils and assistance from Council's lawyers.

In accordance with the Act, the proposed Public Transparency Policy addresses each of the Public Transparency Principles and establishes:

- the types of information that will be publically available and accessible;
- the types of information that will not be publically available and accessible;
- processes by which request for Council Information will be assessed and determined;
- methods by which Council Information will be provided to persons making requests; and
- the factors that may be taken into account when assessing and determining whether the release of Council Information would be contrary to the public interest.

It is now appropriate to seek community feedback on the proposed Public Transparency Policy.

Officers' recommendation

That Council resolve to:

1. Endorse the Public Transparency Policy (as annexed to the Minutes) for the purposes of public consultation for the period 22 July 2020 to 6 August 2020.
2. Consider submissions (if any) at the Services Special Committee on 17 August 2020.

Responsible director: **David Thompson**
Governance

1. Purpose

The purpose of this report is for Council to give consideration to endorsing the proposed Public Transparency Policy (see **Attachment 1**) for community consultation.

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 (the Policy). The first Policy must be adopted on or before 1 September 2020.

The proposed Public Transparency Policy can be found at **Attachment 1**.

4. Outline of key issues/options

Local Government Victoria has produced (see **Attachment 2**) a document to assist the community and sector understand the public transparency principle.

The proposed Public Transparency Policy addresses each of the Public Transparency Principles and establishes:

- the types of information that will be publicly available and accessible as of course;
- the types of information that will not be publicly available and accessible;
- processes by which request for Council Information will be assessed and determined;
- methods by which Council Information will be provided to persons making requests; and
- the factors that may be taken into account when assessing and determining whether the release of Council Information would be contrary to the public interest.

Council Decision-Making Processes

Recognising accessibility to Council decision making is no longer simply about ensuring physical access to the council chamber, the proposed Public Transparency Policy at clause 7.2 states:

"Council and delegated committee meetings will be live streamed from 16 November 2020 onwards or until such time as Council resolves otherwise".

Officers are of the view as community becomes increasingly used to engaging with Council and receiving information through digital means, it is appropriate for Council to keep pace with these expectations, while ensuring that more traditional methods, such as visiting the council chamber is still available.

5. Consultation/communication

The proposed Public Transparency Policy (see **Attachment 1**) has been developed incorporating the requirements of the Act, guidance provided from Local Government Victoria, collaboration with colleagues at other councils and assistance from Council's lawyers.

The proposed timeline for consultation and adoption is as follows:

Special Meeting of Council - 20 July 2020

Endorsement of the proposed Public Transparency Policy for community consultation commencing on 22 July 2020 and closing at 5:15pm on 6 August 2020.

Advertisement calling for community consultation on the proposed Public Transparency Policy will occur through:

- Public notice on Council's website
- The 'Have Your Say' section on Council's website
- Public notice in The Age newspaper

Services Special Committee - 17 August 2020

Hearing of public submissions (if any)

Meeting of Council - 24 August 2020

Presentation of the Public Transparency Policy (with or without modification) for adoption by Council.

When 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 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

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

The adoption by Council of a Public Transparency policy will 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>



Table of contents

1	Purpose	3
2	Objective.....	3
3	Scope	3
4	Definitions.....	3
5	Responsibility for this Policy	4
6	Public Transparency Principles.....	4
7	Council Decision-Making Processes.....	5
8	Availability of Council Information	5
9	Publications	6
10	Accessibility of Council Information	6
11	Council Information that is Not Available	8
12	Public Awareness of Availability of Council Information.....	11
13	Human Rights Charter	11
14	Dissatisfaction with the Application of this Policy.....	11
15	Application of this Policy	12
16	Monitoring, Evaluation and Review.....	12

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	<p>Information:</p> <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:
- be inconsistent with any legal or contractual obligation;
 - cause disadvantage to any person, including Council; and
 - 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

Local Government Act 2020 – Principles Public Transparency



The Local Government Act 2020 is a principles-based Act, removing unnecessary regulatory and legislative prescription.

Public transparency

Transparency is a fundamental tenet of democratic governance. Openness, accountability and honesty are essential to build high levels of accountability and trust amongst 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 properly performed.

One of the overarching principles of the new *Local Government Act 2020* (the Act) is that “the transparency of Council decisions, actions and information is to be ensured” (s. 9(2)(i)).

Various sections of the previous Act and regulations specified transparency and consultation requirements including about the timing and location of council meeting notices, council websites, and the information to be published on them, documents a council must make available for public inspection, amongst many other things. This will no longer be the case, councils must develop their own policies, in line with these underpinning principles.

The use of prescription as the basis for a council’s disclosure and engagement with their community has significant disadvantages. It encourages a compliance approach where entities may consider that it is sufficient to tick legal boxes. Sometimes compliance-based rules can encourage an attitude of avoidance.

Under the previous Act certain matters were automatically considered confidential – this included

personnel information, contracts, and matters that might prejudice the council or any person. The new Act assumes, instead, that all matters must be public, except in very specific and limited circumstances. Detailed requirements included in the old Act are replaced as far as possible by high-level principles about transparency in decision making and community accountability.

While many of the matters that could be considered confidential under the old act will remain so under the new Act, this is now limited to matters that are either:

- confidential by virtue of the *Local Government Act 2020* or any other Act, or
- public availability of the information would be contrary to the public interest.

Councils should note that the public transparency principles, at section 58 of the Act, must be applied to all aspects of a council’s operations and decision making. Of particular note is the circumstances in which a council meeting may be closed to the public, see section 66 Meetings to be open to the public unless specified circumstances apply.

It must also be noted that simply having council information available to the public will not meet the requirements of the Act. Council information must be understandable and accessible to members of a council’s community and public awareness of the availability of this information must be facilitated.

Transparency and accountability will strengthen governance and accountability across the sector, so that the community can have confidence in the way their council works.

What it means

The Act says that a council must adopt and maintain a public transparency policy. The policy must, amongst

Local Government Act 2020 – Principles Public Transparency

other things, give effect to the public transparency principles listed at section 58 of the Act:

- 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;
- Council information must be publicly available unless—
- the information is confidential by virtue of this Act or any other Act; or
- public availability of the information would be contrary to the public interest;
- Council information must be understandable and accessible to members of the municipal community;
- public awareness of the availability of Council information must be facilitated.

Additionally, council information must be understandable and accessible; community members must understand how they can access council information.

Expectation

Councils should have regard to the principles underpinning Victoria's *Freedom of Information Act 1982*. This Act establishes a “*general right of access to information... limited only by exceptions and exemptions necessary for the protection of essential public interests...;*” and “*making available to the public information about the operation of agencies and, in particular, ensuring that rules and practices affecting member of the public in their dealings with agencies are readily available...*” (s 3, *Freedom of Information Act 1982*, Government of Victoria).

When developing or applying a public transparency policy, councils must have regard for the other principles contained within the Act. For example, a community engagement should be used in the development of a council's public transparency policy; strategic planning should be undertaken with regard to public transparency.

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Printed by <Insert Name of printer - Suburb>

ISBN XXX-X-XXXXX-XXX-X (print) [How to obtain an ISBN or an ISSN](#)

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