



14.4 PUBLIC TRANSPARENCY POLICY - ADOPTION OF DRAFT POLICY FOR CONSULTATION

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1. PURPOSE

1.1 This report presents to Council the proposed Public Transparency Policy required under section 57 of the Local Government Act 2020 and recommends commencing a community engagement process prior to the adoption of the Policy.

2. EXECUTIVE SUMMARY

2.1 The Local Government Act 2020 (Act) received Royal Assent on 24 March 2020. The Act is the result of a four-year review of the Local Government Act 1989. The Act is proclaimed in four stages.

2.2 Council is required under Section 57 of the Act to adopt a Public Transparency Policy, by 1 September 2020.

2.3 A public transparency policy adopted under the Act must —

- a) give effect to the public transparency principles;
- b) describe the ways in which Council information is to be made publicly available;
- c) specify which Council information must be publicly available, including all policies, plans and reports required under this Act or any other Act.

3. RECOMMENDATION

That Council:

- 3.1 Endorses for community consultation the draft Public Transparency Policy required under section 57 of the Local Government Act 2020 (Attachment 1) and invites written submissions and community feedback on the draft Public Transparency Policy until 31 July 2020.
- 3.2 Receives a further report at the Ordinary Council meeting to be held on 19 August 2020 recommending the adoption of the Public Transparency Policy after considering the feedback received.
- 3.3 Delegates authority to the Chief Executive Officer to make amendments to the documents to correct any minor drafting errors that do not materially alter the intent of the policy.

4. KEY POINTS/ISSUES

4.1 One of the overarching principles of the new Local Government Act 2020 is that “the transparency of Council decisions, actions and information is to be ensured”. The public transparency principles, at section 58 of the Act, must be applied to all aspects of a council’s operations and decision making.

4.2 The public transparency principles are—



- (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.
- 4.3 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 is no longer the case and councils must now develop their own policies, in line with the underpinning principles.

The Policy

- 4.4 The draft Public Transparency Policy has been developed to formalise Council's support for transparency in its decision-making processes and the public awareness of the availability of Council information.
- 4.5 The draft policy covers documentary information, process information and how information will be made available to the public and once adopted will become an integral part of council's Good Governance.
- 4.6 The draft Policy has been developed using a base template and guidance material released by State Government, and built upon by recognising and incorporating the additional transparency activities undertaken by Port Phillip, including:
- 4.6.1 Publishing a range of City of Port Phillip data sets through Open Data (Data.Vic)
 - 4.6.2 Mandatory reporting under Local Government Performance Reporting Framework (LGPRF)
 - 4.6.3 Releasing publicly, wherever possible, information that has previously been considered in confidence
 - 4.6.4 Reporting regularly on the performance of Council through the monthly CEO report, the annual report and a quarterly report of progress against Council decisions
- 4.7 Information requests
- Members of the public can make different kinds of information requests (e.g. informal requests for documents and information or formal FOI requests). Council will respond to requests for information in alignment with:
- the Act including the Public Transparency Principles, and this policy
 - Part II statement made under the *Freedom of Information Act 1982*
 - Public Interest Test



- Accessibility and cultural requirements under the *Charter of Human Rights and Responsibilities Act 2006*

4.8 The Freedom of Information Act 1982 (FOI Act)

The Public Transparency Principles provide significant parallels with Victoria's FOI Act. Councils must have regard to the principles underpinning the FOI Act, which 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).

4.9 Confidential Information

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.

4.10 Register disclosing Councillor contact with developers, donors and lobbyists

4.10.1 On 4 December 2019, Council passed a motion requesting officers to provide a report to Council with information and examples from other Councils who have established or intend to establish a register disclosing Councillor contact with developers, donors and lobbyists.

4.10.2 There is no provision in the Local Government Act with respect to the creation of a register of Councillor communications for certain groups.

4.10.3 officers prepared a report which provided information on options available in other jurisdictions and what would need to be considered if Council were interested in pursuing the matter further. The report at the time was noted by Council and an undertaking was given by officers that throughout the implementation of the new Local Government Act if there were opportunities to revisit this matter that this would occur.

4.10.4 IBAC is undertaking an investigation, Operation Sandon, into allegations of corrupt conduct involving councillors and property developers in the City of Casey. The focus of the Hearings in the investigation includes:

- the transparency and integrity of planning and property development decision making within Victoria, including but not limited to, the provision of donations and in kind assistance to candidates at State and local government elections that may give rise to actual or perceived corruption



- whether the use of professional lobbyists or planning consultants to lobby State and local government has resulted in undue influence over planning and property development decision making within Victoria
- the systems and controls in place within public bodies concerning planning, with particular focus on the existence and adequacy of systems and controls for ensuring the integrity of the planning process, including by detecting instances of public officers obtaining corrupt benefits or being unduly influenced by individuals lobbying on behalf of vested interests

4.10.5 Given the specificity of the investigation to this matter, it is appropriate that Council waits until its completion before undertaking work in this space as the IBAC findings may help inform what is considered best practice or call for Regulations to be developed by the State Government in response to findings.

5. CONSULTATION AND STAKEHOLDERS

- 5.1 The Public Transparency Policy is a statutory document which incorporates prescribed requirements of the Local Government Act 2020.
- 5.2 Officers have worked closely with Local Government Victoria, legal advisors, and sector bodies to interpret legislative requirements and develop the draft policy.
- 5.3 The draft policy has been provided to the Council's Audit Committee for review. Due to the tight deadlines for adoption, the Committee will provide this feedback during the consultation period and this will be incorporated into the final document that is presented to Council in August 2020 for adoption at that point in time.

6. LEGAL AND RISK IMPLICATIONS

- 6.1 Council is required to adopt by 1 September 2020 a Public Transparency Policy under section 57 of Act.

7. FINANCIAL IMPACT

- 7.1 Funding for the development of Policies required under the Local Government Act 2020 has been provided for in existing budgets.

8. ENVIRONMENTAL IMPACT

- 8.1 There is no direct environmental impact resulting from Council adopting a Public Transparency Policy.

9. COMMUNITY IMPACT

- 9.1 The key objectives of the Policy as they relate to the community are to:
- 9.1.1 Raise awareness of the information held by Council and the ways this information can be accessed by our community to increase community confidence and trust in the Council;
- 9.1.2 Ensure information is made available to our community to help them understand and fully participate in civic life including monitoring the progress and performance of the Council;
- 9.1.3 Acknowledge that public sector information is an important community asset that wherever possible should be available for access and use by our community.



10. ALIGNMENT TO COUNCIL PLAN AND COUNCIL POLICY

10.1 Adoption of the Public Transparency Policy aligns with Direction 6 of the Council Plan (Our Commitment to You), by providing a transparent and good governance approach to decision making and aids in achieving a financially sustainable, high performing, well governed organisation that puts the community first.

11. IMPLEMENTATION STRATEGY

11.1 Public notice of the draft policy will be given, and officers will undertake a community engagement process in accordance with the Act. Council will consider feedback received and adopt the final Policy at the 19 August 2020 Council meeting.

12. OFFICER DIRECT OR INDIRECT INTEREST

12.1 No officers involved in the preparation of this report have any direct or indirect interest in the matter.

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ATTACHMENTS 1 Final Draft_Public Transparency Policy