

# Responses to Questions on Notice

Received at the 15 October 2020  
Planning Meeting of Council

A handwritten signature in blue ink, appearing to read "Mark Arnold".

**Mark Arnold**  
General Manager

**QUESTIONS WITH NOTICE**

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## QUESTIONS WITH NOTICE

**Question with Notice No. 1**      **Confidentiality requirements – Legislative or as directed by OLG**

5      **File No:**      I2020/1645

At Council's Ordinary Meeting held on 15 October Cr Jan Barham asked the following question which was taken on notice:

*Could Council explain and provide details of legislative requirements and or any direction from the Office of Local Government in relation to confidentiality that pose limitations on public access to council agendas and other documents of council.*

**Response Legal Counsel:**

Council's Code of Meeting Practice (Code) clause 3.23, which reflects section 9(2) and (4) of the Local Government Act (Act), provides that copies of the agenda and the associated business papers, such as correspondence and reports for meetings of Council are to be published on Council's website, and must be made available to the public for inspection, by any person free of charge at the offices of Council, at the relevant meeting and at such other venues determined by Council.

Clause 3.23 does not apply to the business papers for items of business that the General Manager has identified under clause 3.21 as being likely to be considered when the meeting is closed to the public (Code clause 3.24 which reflects section 9(2A)(b) of the Act).

Although the Council decides whether the public is to be excluded from part of a meeting, the General Manager must first decide whether an item of business is likely to be discussed in a closed part of a meeting. Council can disagree that an item should be discussed in a closed part of the meeting. In this case, the item would be discussed during the open part of the meeting.

Clause 3.21 of the Code, which reflects section 9(2A)(a) of the Act, provides that where the agenda includes the receipt of information or discussion of other matters that, in the opinion of the General Manager, is likely to take place when the meeting is closed to the public, the General Manager must ensure that the agenda of the meeting:

- (a) identifies the relevant item of business and indicates that it is of such a nature (without disclosing details of the information to be considered when the meeting is closed to the public), and
- (b) states the grounds under section 10A(2) of the Act relevant to the item of business.

Details of any item of business which, in the opinion of the General Manager, is likely to be considered when the meeting is closed to the public, are included in a business paper provided to councillors for the meeting concerned but must not be included in the business papers made available to the public, and must not be disclosed by a councillor or by any other person to another person who is not authorised to have that information (Code clause 3.22).

Matters referred to in section 10A(2) of the Act are:

- (a) personnel matters concerning particular individuals (other than councillors),
- (b) the personal hardship of any resident or ratepayer,
- (c) information that would, if disclosed, confer a commercial advantage on a person

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- with whom Council is conducting (or proposes to conduct) business,
- (d) commercial information of a confidential nature that would, if disclosed:
    - (i) prejudice the commercial position of the person who supplied it, or
    - (ii) confer a commercial advantage on a competitor of Council, or
    - (iii) reveal a trade secret,
  - (e) information that would, if disclosed, prejudice the maintenance of law,
  - (f) matters affecting the security of Council, councillors, council staff or council property,
  - (g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege,
  - (h) information concerning the nature and location of a place or an item of Aboriginal significance on community land,
  - (i) alleged contraventions of Council's code of conduct.

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Question with Notice No. 2

Confidentiality Requirements – Measures Council Can Implement

File No:

I2020/1646

5

At Council's Ordinary Meeting held on 15 October 2020, Jan Barham asked the following question which was taken on notice:

*Could council detail what measures council can implement to limit the amount of information that is deemed confidential eg. Redaction of those parts that meet confidential requirements or part release.*

**Response Legal Counsel:**

The answer to Ms Barham's previous question provides background to this answer.

Meetings of Council, as a general rule, must be open to the public, but there are certain exceptions.

Council must have available for the public, both at its offices and at each meeting, copies of the agenda of the meeting and associated business papers (such as correspondence and reports), for inspection. As a general principle there exists a right of access to Council documents to any interested person, not just the people who are residents or ratepayers of the Shire.

The General Manager must note on the agenda the existence of any issue likely to be discussed when the meeting is closed to the public, without giving any details of that item.

The requirement to allow inspection of Council documents does not apply to any part of a document which contains, for example, building plans; certain commercial information; personnel matters concerning particular individuals, the personal hardship of a resident or ratepayer; trade secrets; or a matter the disclosure of which would constitute an offence or give rise to an action for breach of confidence.

The Local Government Act formerly provided in section 12 (1) a lengthy listing of the type of documents which were available free of charge for inspection at Council. However, the enactment of the Government Information (Public Access) Act (GIPA) led to the repeal of section 12. GIPA provides a process for assessing information held by all authorities of the State. It

- authorises and encourages the proactive public release of information held by Council;
- gives members of the public an enforceable right to access information held by Council, and
- provides that access to information held by Council is restricted only when there is an overriding public interest against disclosure.

Council has a number of practices in place to ensure that it is open and transparent within the scope of the Local Government Act and GIPA. For example:

- Where reasonably practicable, Council will seek to redact confidential information from documents in order to make them available to the public.
- Where attachments cannot be reasonably redacted and are made confidential, relevant content will be summarised in the body of the report

The publication of Tender Reports has recently changed such that the entire report is no longer treated as confidential, only those attachments which contain confidential information are withheld from the public agenda.