



Public Transparency Policy

Purpose

This policy supports Baw Baw Shire Council in ensuring good governance and highlights the importance of open and accountable conduct. It outlines how and when 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). A public transparency policy must be adopted or amended by a formal resolution of Council. It cannot be delegated.

This policy meets the Act's overarching governance principle of ensuring the transparency of Council decisions, actions and information outlined in section 9, and gives effect to the *Public Transparency Principles* outlined in section 58.

It must also be noted that simply having council information available to the public will not meet the requirements of the Act. Through this policy, Council seeks to make information understandable and accessible to members of the community and to raise public awareness of the availability of this information.

Objectives

The objective of this policy is to formalise Council's position on transparency in its decision-making processes and the public awareness of the availability of Council information.

As a result, this policy seeks to promote:

- a) Greater clarity in Council's decision-making processes;
- b) Increased confidence and trust in the community through greater understanding and awareness;
- c) Enhanced decision making by the community;
- d) Improved performance of Council;
- e) Enhanced access to information that is current and disseminated in a timely manner;
- f) Reassurance to the community that Council is spending public monies wisely.

In the application of this policy, Council will:

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- a) Apply a presumption of openness to information and adopt a proactive publication position within the parameters outlined in this policy;
- b) Strive, where possible, to provide the community with access to Council's publicly available information free of charge;
- c) Assist the community in accessing its publicly available information and inform the community of their right to make an application under the *Freedom of Information Act 1982* for information which is not considered publicly available information.

A transparency policy needs to cover both documentary information, process information and how information will be made available to the public. It is an integral part of council's Good Governance Framework.

Definitions

For the purposes of this policy, Council adopts the following definitions:

Community

Community is a flexible term used to define groups of connected people. It is used to describe people of a municipality generally, including individuals or groups who live, work, play, study, visit, invest in or pass through the municipality. More specifically, it can refer to everyone affiliated with the municipality, or smaller groups defined by interest, identity or location, and not necessarily homogenous in composition or views. Different types of communities often overlap and extend beyond municipal boundaries. Communities may be structured, as in clubs or associations or unstructured, such as teens. Communities are flexible and temporary and subject to individual identity and location.

Consultation

The process of seeking input on a matter.

Public Participation

Public Participation encompasses a range of public involvement, from simply informing people about what government is doing, delegating decisions to the public and community activity addressing the common good.

Stakeholder

An individual or group with a strong interest in the decisions of Council who are directly impacted by their outcomes.

Closing of Council Meetings

Council may need to close its meeting to the public, in order to consider matters which are defined as confidential under the Act.

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Transparency

The availability of all information needed in order to collaborate, cooperate and make decisions effectively. Importantly, “transparency” is also a human rights issue: the right to have the opportunity, without discrimination, to participate in public affairs (s.58 of The Act).

Public Interest Test

Council may refuse to release information if it determines that the harm likely to be created by releasing the information will exceed the public benefit in being transparent. When considering possible harm from releasing information, the Council will only concern itself with harm to the community or members of the community. Potential harm to the 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 the council from performing its functions.

Scope

This policy applies to all elected Councillors while holding the office of Councillor and to all staff while remaining employees of Baw Baw Shire. The policy is also relevant to all members of the community.

A public transparency policy does not need to list all information that might possibly be needed or requested by members of the public but does seek to make information more accessible.

Legislative context

This policy relates to the Local Government Act 2020 (the Act) and results directly from amendments incorporated when the Act received Royal Assent on 24 March 2020.

Specifically:

Section 57 Public transparency policy

1. *A Council must adopt and maintain a public transparency policy.*
2. *A public transparency policy must—*
 - a) *give effect to the public transparency principles; and*
 - b) *describe the ways in which Council information is to be made publicly available; and*
 - c) *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*
 - d) *include any other matters prescribed by the regulations.*
3. *A Council must adopt the first public transparency policy under this section on or before 1 September 2020.*

4. *For the purposes of the public transparency policy and the public transparency principles, information includes documents.*

Section 58 The public transparency principles

The following are the public transparency 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.*

The following Acts also have relevance to this policy:

- *Charter of Human Rights and Responsibilities Act 2006,*
- *Freedom of Information Act 1982,*
- *Local Government Act 1989,*
- *Local Government Act 2020,*
- *Privacy and Data Protection Act 2014, and*
- *Equal Opportunity Act 2010.*

Related policies and documents

Council's:

- Governance Rules,
- Information Privacy Policy,
- Complaints Handling Policy,
- Customer Service Charter, and
- Community Engagement Policy (once adopted).

Policy Detail

Council will be transparent with the following information types:

Decision Making at Council Meetings

- Will be undertaken in accordance with the Act and the Governance Rules;
- Will be conducted in an open and transparent forum, unless a meeting is closed to consider a confidential item in accordance with the provisions in the Act and Governance Rules;
- Will be informed through community engagement, in accordance with the Community Engagement Principles and the Community Engagement Policy; and
- Will be made fairly and on merit, 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.

Information Available Under *the Act*

Under the Act (and, in some cases, the *Local Government Act 1989*), there are specific provisions for certain information to be made publicly available, such as:

- Register of Delegation made by Council,
- Council and Delegated Committee Meeting Minutes,
- Local Laws and any documents incorporated,
- Council Plan,
- Strategic Resource Plan,
- Budget,
- Annual Report,
- Councillor Code of Conduct,
- Procurement Policy,
- Register of interests,
- Reappointment of CEO without advertisement,
- Differential Rates, and
- Summary of Campaign Donation Returns.

Information Available Under Other Acts

Under various other Acts administered by Council, the following information will be made publicly available:

- 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,

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- Register of Public Roads, and
- FOI Part II Statement.

Where possible, Council will also endeavour to make information available through Open Datasets through [Data.gov.au](https://data.gov.au).

Information Available Under the FOI Act 1982

A list of available information is provided in the 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 local Councils to publish a number of statements designed to assist members of the public in accessing the information it holds. This information includes but is not limited to:

Documents such as:

- Plans and Reports adopted by Council,
- Policies adopted by Council,
- Project and service plans adopted by Council, and
- Grant applications and tenders open for application.

Council records will, at a minimum, be made available on Council's website:

- Council meeting agendas,
- Minutes of Council meetings,
- Reporting to Council,
- Reporting from Advisory Committees to Council through reporting to Council,
- Audit and Risk Committee Performance Reporting, and
- Terms of reference or charters for Advisory Committees.

Council records will, at a minimum, be made available for inspection by request:

- Registers of gifts, benefits and hospitality offered to Councillors or Council Staff,
- Registers of travel undertaken by Councillors or Council Staff,
- Registers of Conflicts of Interest disclosed by Councillors or Council Staff,
- Submissions made by Council,
- Registers of donations and grants made by Council,
- Registers of leases entered into by Council, as lessor and lessee,
- Register of Delegations,
- Register of Authorised officers,
- Register of Election campaign donations,
- Summary of Personal Interests ('Register of interests' until 24 October 2020),

- Submissions received under section 223 of the *Local Government Act 1989* until its repeal or received through a community engagement process undertaken by Council, and
- Any other Registers or Records required by legislation or determined to be in the public interest.

Publications

Council publishes a range of newsletters, reports and handbooks for residents, businesses and visitors to council. You can download them from the website or call Council for a copy. Some of these publications are available at Council's Libraries.

Access to Information

- Information will be made available on the Council website, at Council offices, or by request;
- Members of the public can make different kinds of information requests to the Council by formal or informal means;
- Consideration will be given to accessibility and cultural requirements in accordance with the Charter of Human Rights and Responsibilities Act 2006;
- Consideration will be given to confidentiality in accordance with the Act and public interest test where appropriate;
- Council will respond to requests for information in alignment with the Act including the Public Transparency Principles, and this policy; and
- Council will respond to requests for information in accordance with the Part II statement made under the *Freedom of Information Act 1982*.

Freedom of information (FOI) applications

The *Freedom of Information Act 1982* gives the public right of access to documents that Council holds. It is recommended that the public contact Council prior to making an FOI application as the information may be able to be provided without instigating a formal FOI process.

Information not Available

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

The Act defines two general types of information as "confidential information":

- Information that involves risk of harm to the council or a person, and

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- Information linked to processes.

Further definitions for “Confidential information” as defined in section 3 of the *Local Government Act 2020* are provided below:

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. Different provisions apply where an individual request their own personal information.
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>

The 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 release is contrary

to law in breach of contractual requirements or if releasing the information is likely to cause harm to any person or is not in the public interest to do so.

Where information is not confidential, and not already available, Council will apply the principles of a public interest test with consideration also of the resources required to respond to the request.

Public Interest Test

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, an individual, or group of individuals likely to be created by releasing the information will exceed the public benefit in it being released.

When considering possible harm from releasing information, the Council will only concern itself with harm to the community or members of the community. Potential harm to the 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 the council from properly performing its functions.

Information that might be withheld because it is contrary to the public interest may include, but is not limited to:

- Internal working documents that have not been approved or submitted to Council, especially where their release may mislead or cause harm to 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;
- Directions to Council staff regarding negotiations and advice on planning matters, where release may damage the Council's capacity to negotiate the best outcome for the community;
- Directions to Council staff regarding enforcement activities, 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.

Responsibilities

All Council staff have a role to promote and facilitate access to Council information in accordance with the Public Transparency Policy.

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Party/parties	Roles and responsibilities	Timelines
Council	Champion the commitment and principles for public transparency through leadership, modelling practice and decision-making.	Ongoing
Executive Management Team	Champion behaviours that foster transparency and drive the principles through policy, process and leadership. Monitor implementation of this policy.	Ongoing
Senior Management Team	Manage areas of responsibility to ensure public transparency, good governance and community engagement is consistent with this policy.	Ongoing
All Staff	Public transparency is the responsibility of all employees as appropriate to their role and function. All staff respond to requests for information and facilitate provision of information in consultation with their manager and in alignment with the Policy.	Ongoing
Manager Governance	To monitor implementation of this policy and conduct periodic reviews to drive continuous improvement.	Ongoing

Human Rights Charter

This policy has been reviewed against and complies with section 13 of the *Charter of Human Rights and Responsibilities Act 2006*. This Policy aligns with and provides for the protection of an individual's right to not 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.

Non-Compliance with this Policy and Further Information

If a member of the community 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.

If a member of the community is still not satisfied and would like to contest the decision, this can be reported to Council's Governance team on 03 5624 2424 or at

bawbaw@bawbawshire.vic.gov.au

The *Freedom of Information Act 1982* gives you right of access to documents that Council holds, further information can be found on the Council website.

Monitoring, Evaluation and Review

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

A periodic review of this policy will be undertaken to ensure its relevance is in line with public interest. As a minimum, a review will occur in line with a new Council Term.

However, a Council can amend its policy at any time. In fact, it is important that the policy is at times reviewed during a Council Term to reflect improvements in Council practices.

Review

Approval date	19 August 2020
Approval authority	Council
Effective from	1 September 2020
Review term	Council term
Next review date	2024
Responsible position	Manager Governance
Responsible Director	Corporate and Community Services
Version	1