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## Council Policy - Tender & Contract Confidentiality

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This document sets out the general policy which the Bass Coast Shire Council (**the Council**) adopts for tenders, contracts, and like arrangements. It has been developed to balance the respective rights and obligations of all parties. It is consistent with, among other things, the Victorian Local Government "Best Practice Procurement Guidelines" and the *Freedom of Information Act 1982*.

1. This policy applies to all tenders, contracts, purchase orders, contractual arrangements and in-house agreements unless there are explicit provisions to the contrary in the conditions of a particular tender and/or contract.
2. The Council recognises that tenders may contain commercially sensitive information or information with intellectual property value. For this reason, information disclosed to Council by a prospective tenderer will be treated as received on a commercial in confidence basis and no elected member or employee of Council shall be at liberty to divulge information contained in any tender to a member of the public unless:
  - (a) permission of the tenderer is obtained; or
  - (b) required by any law or government body or official, including but not limited to as required under the *Freedom of Information Act 1982*, the Victorian Auditor-General's Office or the Victorian Ombudsman; or
  - (c) necessary or desirable for the conduct of business at a private meeting of the Council or a Committee of Council.
3. For the avoidance of any doubt, nothing in paragraph 2 shall operate to preclude Council from communicating information of a general and non-specific nature obtained during the tender process or from making public any general opinion or assessment about a specific tenderer or tenders, as the case may be, provided the Council does not disclose the identity of the tenderer or any information capable of identifying the tenderer or information which may be reasonably considered to be commercially sensitive.
4. The Council is required by statute and regulation to prepare certain reports and to keep records that enable the Council to verify the reports. The Council will retain the tender documents of all successful and unsuccessful tenders for ordinary contracts and contracts under seal, together with selected relevant information, in accordance with Council's legislative obligations.
5. All unsuccessful tenderers will be advised promptly, in writing, together with the identity of the successful tenderer, if any, and the reasons for the award and the Contract Sum, and such other information as the Council is legally obliged to disclose. Nothing in this policy shall prevent the Council, Tenderers and/or Contractors from:
  - (a) disclosing information already in the public domain;

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- (b) disclosing information where required by the *Freedom of Information Act 1982*, statute or regulation;
  - (c) disclosing information to the Council's officers, employees, agents and consultants who are engaged on the evaluation of tenders or the supervision of contracts; and/or
  - (d) disclosing information to persons who have a lawful right to the information, such as the Council's auditors and various government agencies such as the Office of Local Government and the Australian Bureau of Statistics.
6. Where the Council engages person's external to the Council as agents or consultants for the evaluation of tenders or supervision of contracts, the Council will require those persons to sign a *Confidentiality Agreement* with the Council prior to commencing engagement with the Council.

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