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# Guidelines on the closure of council and committee meetings to the public

January 2026



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# Introduction

Meetings are the key forum in which councils make strategic and policy decisions on behalf of their communities. As elected institutions, councils are ultimately accountable to their communities for their decisions. Under the *Local Government Act 1993* (the Act), there are clear requirements for meetings of a council and committees of councillors to be open to the public so that they can be attended and viewed by members of the community.

However, there will be occasions where councils and committees of councillors are required to consider information which, by its nature, is confidential and ought not to be publicly disclosed. The Act recognises that on such occasions, where certain grounds exist, the public interest in protecting confidential information will outweigh the public interest in ensuring accountability through open meetings.

These guidelines offer practical guidance on how councils can appropriately weigh these competing public interests and ensure that they comply with their obligations under the Act when closing meetings to the public. They do this by addressing commonly asked questions that have been raised with the Office of Local Government (OLG) about the closure of meetings and provide best practice examples.

These guidelines are issued under section 10B(5) of the Act. It therefore constitutes a guideline that councils are required to consider when closing meetings to the public.

The phrase, 'committees of councillors' used in these guidelines refers to committees whose members are all councillors. The Act does not require meetings of other types of committees established by councils to be held in the presence of the public, though councils may choose to do so.

# Guidelines

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## Who can attend council or committee meetings?

Any person can attend a council meeting or a meeting of a committee of which all the members are councillors (a committee of councillors)<sup>1</sup>. However, the Act, the Local Government (General) Regulation 2021 (the Regulation) and the Model Code of Meeting Practice for Local Councils in NSW (Model Meeting Code) prescribed by the Regulation permit members of the public to be expelled from meetings where they engage in disorderly conduct.

Members of the public are not entitled to attend other types of meetings (e.g. committees comprising of councillors and non-councillors or entirely of non-councillors). However, councils can make these meetings open to the public if they choose to do so.

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## What are the grounds on which a meeting can be closed to the public?

Despite the right of members of the public to attend meetings of a council or a committee of councillors, section 10A of the Act permits a council or a committee of councillors to close parts of a meeting to the public that involve the discussion or receipt of any of the following matters or information:

- personnel matters concerning particular individuals (other than councillors)
- the personal hardship of any resident or ratepayer
- information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business
- commercial information of a confidential nature that would, if disclosed:
  - prejudice the commercial position of the person who supplied it, or
  - confer a commercial advantage on a competitor of the council, or
  - reveal a trade secret
- information that would, if disclosed, prejudice the maintenance of law
- matters affecting the security of the council, councillors, council staff or council property

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<sup>1</sup> see section 10 of the Act

- advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege
- information concerning the nature and location of a place or an item of Aboriginal significance on community land
- alleged contraventions of the council's code of conduct<sup>2</sup>.

In order to close a meeting to the public, a council or committee of councillors must be satisfied that the matter or information being discussed or received falls within at least one of the above grounds.

It should be noted that the existence of any of these grounds does not place any obligation on a council or committee of councillors to close its meeting to consider a matter or information, (though in many cases, it would be appropriate for it to do so). It simply permits a council or committee of councillors to do so. As will be discussed below, in the case of most of these grounds, the council or committee of councillors will also need to demonstrate why it is in the public interest to close the meeting to discuss the matter or information.

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## When can a meeting be closed?

Section 10B(1)(b) of the Act permits a council or committee of councillors to close its meeting to the public without further discussion to consider three types of matters; personnel matters concerning particular individuals, matters involving the personal hardship of a resident or ratepayer or matters that would disclose a trade secret<sup>3</sup>.

However, in the case of the other grounds listed in section 10A(2) of the Act referred to above, the existence of these grounds on their own is not enough to allow the closure of a meeting. In such cases, the council or committee of councillors must also be satisfied that discussion of the matter in an open meeting would, **on balance, be contrary to the public interest**<sup>4</sup>.

This in effect creates a two-step process:

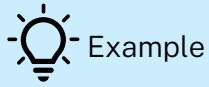
- first, the council must be satisfied that the matter falls within at least one of the grounds listed in section 10A(2)
- second, if the matter does not fall within one of the 3 grounds set out in section 10B(1)(b) referred to above, the council or committee of councillors must also be satisfied that discussion of the matter in an open meeting would, on balance, be contrary to the public interest.

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<sup>2</sup> see section 10A(2) of the Act

<sup>3</sup> see section 10B(1)(b) of the Act

<sup>4</sup> see section 10B(1)(b) of the Act



To illustrate, consider a proposal to sell council-owned land by auction. The council would not be permitted to close the meeting to consider whether to sell the land or the reasons for the sale. These are not matters that fall within the grounds listed above.

However, where the discussion concerns the valuation of the land and the reserve price, this would potentially fall within one of the grounds for closure because the disclosure of the reserve price could confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business.

The existence of this ground is not enough on its own to permit the closure of the meeting to the public. The council also needs to demonstrate why it would, on balance, be in the public interest for it to do so.

In such circumstances, it could be reasonably argued that the disclosure of the reserve price would, on balance be contrary to the public interest because it would put the council at a competitive disadvantage at the auction and in any subsequent negotiations preventing it from achieving a ‘best value for money’ outcome for the community.

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## What matters should not be considered when determining the public interest?

The Act says that when determining whether the discussion of a matter in an open meeting would be contrary to the public interest, **it is irrelevant that:**

- a person may misinterpret or misunderstand the discussion, or
- the discussion of the matter may:
  - cause embarrassment to the council or committee concerned, or to councillors or to employees of the council, or
  - cause a loss of confidence in the council or committee<sup>5</sup>.

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<sup>5</sup> see section 10B(4) of the Act

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## When can a meeting be closed to consider legal advice?

The Act says that a meeting is not to be closed for the receipt and consideration of information or advice concerning litigation or the subject of legal professional privilege unless the advice concerns legal matters that:

- are substantial issues relating to a matter in which the council or committee is involved, **and**
- are clearly identified in the advice, **and**
- are fully discussed in that advice<sup>6</sup>.

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## Can a meeting be closed to consider a code of conduct matter?

Yes. The Act specifically allows a meeting to be closed to the public to consider alleged contraventions of a council's code of conduct<sup>7</sup>. Clause 7.47 of the prescribed Procedures for the Administration of the Model Code of Conduct for Local Councils in NSW states that a council is to close its meeting to the public to consider a final investigation report where it is permitted to do so under section 10A of the Act. However, in closing a meeting to consider a conduct reviewer's report, the council is still required to apply the public interest test under section 10B(1)(b) of the Act.

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## Do members of the public have any say on the closure of meetings?

Yes. A council, or a committee of councillors, may allow members of the public to make representations to or at a meeting, before any part of the meeting is closed to the public, as to whether that part of the meeting should be closed<sup>8</sup>.

Model best practice rules for public representations on the closure of meetings of a council or a committee of councillors have been developed by OLG and are provided in Appendix A of these guidelines.

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<sup>6</sup> see section 10B(2) of the Act

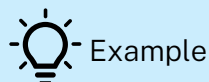
<sup>7</sup> see section 10A(2)(i) of the Act

<sup>8</sup> see section 10A(4) of the Act

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## How long can a meeting remain closed?

The Act requires councils and committees of councillors to close their meeting for only so much of the discussion as is necessary to preserve the relevant confidentiality, privilege or security being protected<sup>9</sup>.



In the example of the proposal to auction council-owned land, the relevant confidentiality in relation to the proposed sale is limited to the valuation and the reserve price information. Discussion of the reasons justifying the sale should therefore occur while the meeting is open to the public. However, when the discussion turns to the valuation and reserve price, the meeting may then be closed to the public.

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## What notice must be given of matters that are proposed to be considered in a closed meeting?

Where the general manager is of the opinion that the agenda includes the receipt of information or discussion of matters that are likely to take place when the meeting is closed to the public, the agenda for the meeting must indicate that the relevant item of business is of such a nature (but must not give details of that item)<sup>10</sup>.

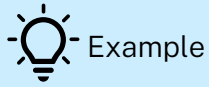
While section 9(2A) of the Act provides that the agenda must not give details of the relevant item of business, the item must still be sufficiently described in the agenda to allow the members of the public to identify the matter that is to be considered at the meeting.

It should be noted that the ultimate decision to close the meeting rests with the council. This means that the council is not under any obligation to close the meeting where the general manager identifies a matter in the agenda as being one that the council may close its meeting to discuss.

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<sup>9</sup> see section 10B(1)(a) of the Act

<sup>10</sup> see section 9(2A) of the Act



## Example

In the example of the proposed auction of council-owned land, the agenda for the meeting would identify the matter as one that is likely to be considered when the meeting is closed to the public, for example:

“Item 1 - Sale of 393 Smith Street, Jonestown by public auction.

This item involves the receipt and discussion of information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business under section 10A(2)(c) of the Act.

On balance, the public interest in preserving the confidentiality of information about the reserve price outweighs the public interest in maintaining openness and transparency in council decision-making because the disclosure of this information would put the council at a competitive disadvantage at the auction and in any subsequent negotiations with prospective purchasers, preventing it from achieving a ‘best value for money’ outcome for the community.”

A best practice approach would be for the valuation and reserve price information to be included in a confidential attachment to the report that is not made available to the public. This would enable the report, including the reasons justifying the sale to be made public prior to the meeting and at the same time preserve the confidentiality of the valuation and reserve price information. This would also permit the publication of the information about the valuation and reserve price at a later time when that information has ceased to be confidential as is now required under the Model Meeting Code.

Conversely, where a matter has not been identified in the agenda for the meeting as one that is likely to be considered when the meeting is closed to the public, the council can still close the meeting to consider the item. However, it can only do so if:

- it becomes apparent during the discussion of a particular matter that the matter is one for which any of the grounds for closure exist (see above), **and**
- the council or committee, after considering any representations made by members of the public, resolves that further discussion of the matter:
  - should not be deferred (because of the urgency of the matter), **and**
  - should take place in a part of the meeting that is closed to the public<sup>11</sup>.

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<sup>11</sup> see section 10C of the Act

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## What must be recorded in the minutes about the decision to close part of a meeting?

The Act requires that the grounds on which part of a meeting is closed to the public must be stated in the decision to close that part of the meeting and must be recorded in the minutes of the meeting. The grounds must specify the following:

- the relevant grounds under section 10A(2) of the Act on which the meeting is being closed
- the matter that is to be discussed during the closed part of the meeting
- the reasons why the part of the meeting is being closed, including an explanation of the way in which discussion of the matter in an open meeting would be, on balance, contrary to the public interest (unless the matter relates to a personnel matter concerning particular individuals, the personal hardship of a resident or ratepayer or a trade secret)<sup>12</sup>.



### Example

The decision to close the meeting to consider the auction of a parcel of council-owned land may be recorded as follows:

“RESOLVED: Councillor XXXX/YYYY

That the meeting be closed to discuss “Item 1 - Sale of 393 Smith Street, Jonestown by public auction” in accordance with section 10A(2)(c) on the grounds that it involves the receipt and discussion of information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business.

On balance, the public interest in preserving the confidentiality of information about the reserve price outweighs the public interest in maintaining openness and transparency in council decision-making because the disclosure of this information would put the Council at a competitive disadvantage at the auction and in any subsequent negotiations with a prospective purchaser, preventing it from achieving a ‘best value for money’ outcome for the community.”

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<sup>12</sup> see section 10D of the Act

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## Must a decision made during a closed part of a meeting be made public?

It is important to remember that the purpose of section 10A is to protect the confidentiality or privilege of information being considered by a council or committee of councillors. It does not allow councils and committees of councillors to make secret decisions.

This intention is reflected in clauses 14.17 and 20.19 of the Model Meeting Code. This requires that where a resolution is passed during a meeting or a part of a meeting that is closed to the public, the chairperson must make the resolution public as soon as practicable after the meeting or the relevant part of the meeting has ended. This must occur during a part of the meeting that is livestreamed where practicable.

As discussed in more detail below, resolutions adopted in closed parts of meetings must also be published in the publicly available minutes of the meeting.

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## Do resolutions made during a closed part of a meeting have to be recorded in the publicly available minutes?

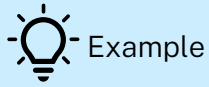
Yes. Under clauses 14.17 and 20.19 of the Model Meeting Code, resolutions passed during a closed part of a meeting must be recorded in the publicly available minutes. Resolutions passed during a closed part of a meeting are also prescribed as open access information under clause 1(2)(c) of Schedule 1 of the Government Information (Public Access) Regulation 2018 (GIPA Regulation) for the purposes of sections 6 and 18 of the *Government Information (Public Access) Act 2009* (GIPA Act).

It is also important to remember that under clause 9.10 of the Model Meeting Code, a recommendation made in a staff report is, so far as adopted by the council or committee, a resolution of the council or committee. As a result, where a council or committee resolves to adopt a recommendation contained in a staff report, that recommendation is deemed to be the resolution and must be made public as soon as practicable and recorded in the publicly available minutes of the meeting under clauses 14.17 and 20.19 of the Model Meeting Code.

This means that when framing a recommendation or motion relating to a matter being considered in a closed part of a meeting, councils need to be careful to ensure that the wording of the recommendation or motion does not disclose any confidential information.

However, the recommendation or motion should be sufficiently clearly framed to enable the public to identify the decision that has been made by the council if it is adopted.

A resolution to “adopt the recommendation contained in the staff report” for instance does not meet the requisite standards of accountability expected of council decision making.



The motion or staff recommendation on the proposed auction of council-owned land could be worded as follows:

1. That Council proceed with the sale of 393 Smith Street, Jonestown (**Note, clearly identify the parcel of land**) by way of public auction.
2. That the reserve price be set at the amount specified in the confidential attachment to the report.

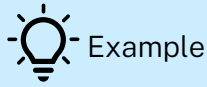
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## How can members of the public access confidential business papers?

The business papers and minutes of council meetings are deemed to be open access information under the GIPA Act and the GIPA Regulation. This means that they must be published on council websites and made publicly available for inspection by anyone free of charge. However, where a matter is considered in a closed part of a meeting, only the resolutions adopted at the meeting are open access information.

This does not necessarily mean that confidential reports and business papers cannot be otherwise accessed under the GIPA Act. Where a council receives a request for access to a confidential business paper under the GIPA Act, it must comply with the provisions of that Act. This means that it must be decided whether there is an overriding public interest against disclosure that outweighs the public interest in favour of disclosure.

Further information about councils' obligations under the GIPA Act is available on the NSW Information and Privacy Commission's website at [www.ipc.nsw.gov.au](http://www.ipc.nsw.gov.au).



If the council receives a request for access to the confidential valuation and reserve price information after the sale of the land has been completed, the reason for confidentiality (i.e. putting council at a competitive disadvantage at the auction and in any subsequent negotiations with a prospective purchaser) no longer exists. Similarly, the relevant public interest consideration against disclosure for the purposes of the GIPA Act (see part 4 of the table to section 14 of the Act) no longer exists. In such circumstances, the council may be obliged to provide access to the report.

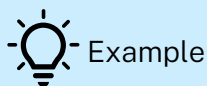
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## When must the business papers for items of business considered in closed parts of meetings be made public?

Clauses 14.19 and 20.21 of the Model Meeting Code require general managers to cause business papers for items of business considered during closed parts of council or committee meetings, to be published on the council's website as soon as practicable after the information contained in them ceases to be confidential.

To facilitate compliance with this requirement, councils should routinely review the business papers of items considered in closed meetings to determine whether they have ceased to be confidential.

Before publishing business papers for items of business considered during closed parts of council or committee meetings on the council's website, the general manager must first consult with the council or committee and any other affected persons and provide reasons for why the information has ceased to be confidential<sup>13</sup>.



In the example of the proposed auction of council-owned land, it was suggested above that the valuation and reserve price information could be included in a confidential attachment to the staff report that was not made available to the public.

The council should routinely review confidential business papers to identify whether the information contained in them continues to be confidential. If such a review conducted following the sale of the council land at auction indicated that the information about the

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<sup>13</sup> see clauses 14.20 and 20.22 of the 2025 Model Meeting Code

valuation and reserve price ceased to be confidential, the general manager would publish the confidential attachment to the staff report on council's website after consulting with the council or relevant committee and any other affected persons, (e.g. the person who provided the valuation advice and the purchaser).

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## What obligations do council officials have in relation to confidential information considered in closed parts of meetings?

Under the Model Code of Conduct for Local Councils in NSW, all council officials have an obligation to maintain the integrity and security of confidential information in their possession, including confidential business papers. All council officials must:

- protect confidential information
- only release confidential information if they have authority to do so
- only use confidential information for the purpose it is intended to be used
- not use confidential information for the purpose of securing a private benefit for themselves or for any other person
- not use confidential information with the intention to cause harm or detriment to the council or any other person or body
- not disclose any information discussed during a closed part of a council meeting.

It is also an offence under section 664(1A) of the Act to disclose information about a matter that was considered in a meeting that was closed to the public under section 10A.

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## What happens if a council official inappropriately discloses confidential information about a matter considered in a closed part of a meeting?

Where a council official fails to comply with their obligations in relation to the protection of confidential information they may face disciplinary action. This might include termination of employment for council staff or suspension or disqualification from civic office for a councillor.

A council official may also face prosecution under section 664 of the Act if they disclose information about a matter that was considered in a meeting that was closed to the public under section 10A.

The inappropriate disclosure of such information can also have broader ramifications for the trust and constructive working relationships between staff and councillors so necessary to the effective functioning of a council.

# Appendix A

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## Model best practice rules for public representations on the closure of council and committee meetings

### Introduction

Section 10A(4) of the Act allows a council or a committee of councillors to permit members of the public to make representations to a meeting before the meeting is closed to the public, on whether the meeting should be closed to the public.

OLG has developed these model best practice rules to assist councils to facilitate the making of public representations on the closure of council and committee meetings under section 10A(4). Councils can adapt these rules and include them as supplementary provisions in their adopted code of meeting practice. In doing so, councils will need to amend the clause numbers. The below rules use the same language used in the Model Meeting Code to allow them to be easily incorporated into councils' codes of meeting practice.

### Best practice rules

- 1.1 The council, or a committee of the council, may allow members of the public to make representations to or at a meeting, before any part of the meeting is closed to the public, as to whether that part of the meeting should be closed<sup>14</sup>.
- 1.2 A representation made under clause 1.1 is to be made after the motion to close the part of the meeting is moved and seconded.
- 1.3 The council or committee may resolve to close the meeting to the public in accordance with section 10A of the *Local Government Act 1993* to hear a representation from a member of the public as to whether the meeting should be closed to consider an item of business where the representation involves the disclosure of information relating to a matter referred to in that section.
- 1.4 Where the matter has been identified in the agenda of the meeting as a matter that is likely to be considered when the meeting is closed to the public, in order to make representations, members of the public must first make an application to the council in a manner determined by the council.

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<sup>14</sup> Section 10A(4) of the Act

- 1.5 An application under clause 1.4 is to be made to the general manager (or their delegate) in the approved form and must be received by [*date and time to be specified by the council*] before the meeting at which the matter is to be considered.
- 1.6 The general manager (or their delegate) may refuse an application made under clause 1.4. The general manager or their delegate must give reasons in writing for a decision to refuse an application.
- 1.7 No more than [*number to be specified by the council*] speakers are to be permitted to make representations under clause 1.1.
- 1.8 If more than the permitted number of speakers apply to make representations under clause 1.4, the general manager or their delegate may request the speakers to nominate from among themselves the persons who are to make representations to the council. If the speakers are not able to agree on whom to nominate to make representations, the general manager or their delegate is to determine who will make representations to the council or committee.
- 1.9 The general manager (or their delegate) is to determine the order of speakers. The order of speakers may be redetermined by the chairperson at the meeting.
- 1.10 Where the council or a committee of the council proposes to close a meeting or part of a meeting to the public in circumstances where the matter has not been identified in the agenda for the meeting as a matter that is likely to be considered when the meeting is closed to the public, the chairperson is to invite representations from the public under clause 1.1 after the motion to close the part of the meeting is moved and seconded. The chairperson is to permit no more than [*number to be specified by the council*] speakers to make representations in such order as determined by the chairperson.
- 1.11 Each speaker will be allowed [*number to be specified by the council*] minutes to make representations, and this time limit is to be strictly enforced by the chairperson.
- 1.12 Speakers must confine their representations to whether the meeting should be closed to the public. If a speaker digresses to irrelevant matters, the chairperson is to direct the speaker not to do so. If a speaker fails to observe a direction from the chairperson, the speaker will not be further heard.