



**ABETZ CURTIS**  
LAWYERS

DISCUSSION PAPER

# COUNCIL MEETING PROCEDURE: CLOSED MEETINGS

83 Davey Street  
Hobart Tasmania Australia 7000  
GPO Box 405  
Hobart Tasmania Australia 7001

Phone 03 6223 8955  
Facsimile 03 6234 9640  
Email [info@abetzcurtis.com.au](mailto:info@abetzcurtis.com.au)  
Web [www.abetzcurtis.com.au](http://www.abetzcurtis.com.au)



## 1. INTRODUCTION

- 1.1. The *Local Government (Meeting Procedures) Regulations 2005* (Tas) (**'Regulations'**) set out the procedures that all councils and council committees in Tasmania should adhere to when conducting meetings.
- 1.2. By default, council meetings and council committee meetings are open to the public.<sup>1</sup> This rule enforces the principle that the business of councils and council committees should be open and transparent.
- 1.3. However, the legislature recognises that both councils and council committees may be called upon, from time to time, to consider matters that ought to be discussed behind closed doors.
- 1.4. Accordingly, the Regulations grant the power to close all, or part of, a council meeting or council committee meeting to the public in certain circumstances.<sup>2</sup>

## 2. APPLICABLE LAW

- 2.1. The basic statutory preconditions to closing a meeting to the public are as follows:
  - (a) all or part of the meeting must involve the discussion of one or more of the subject matters set out in r.15(2) of the Regulations which are as follows:
    - (i) personnel matters, including complaints against an employee of the council;
    - (ii) industrial matters relating to a person;
    - (iii) contracts for the supply and purchase of goods or services;
    - (iv) the security of property of the council;
    - (v) proposals for the council to acquire land or an interest in the land or for the disposal of land;
    - (vi) information provided to the council on the condition it is kept confidential;
    - (vii) trade secrets of private bodies;
    - (viii) matters relating to actual or possible litigation taken by or involving the council or an employee of the council;
    - (ix) applications by councillors for leave of absence; or

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<sup>1</sup> *Local Government (Meeting Procedures) Regulations 2005* (Tas), r.14

<sup>2</sup> Note 1 at r.15



- (x) the personal affairs of any person.
- (b) having identified the relevant subject matter(s) in r.15(2), the council (or council committee) must resolve by **absolute majority** to close all or the relevant part of the meeting to the public;<sup>3</sup> and
- (c) the grounds upon which the meeting were closed must be clearly recorded in the minutes of the meeting.<sup>4</sup>

### 3. PROHIBITION & EXCEPTIONS

- 3.1. Notwithstanding the three basic rules set out above, the Regulations **strictly prohibit** the closing of a meeting in circumstances where the council or council committee is:
  - (a) acting as a planning authority under the *Land Use Planning and Approvals Act 1993* (Tas) ('LUPA'); or
  - (b) considering whether or not to grant a permit under LUPA; or
  - (c) considering proposals for dealing with public land under section 178 of the *Local Government Act 1993* (Tas).
- 3.2. The only exception to this prohibition is if the subject matters set out in paragraphs 1 to 3 above are being considered specifically in the context of actual or possible legal action taken by, or involving, the council, in which case a meeting can be closed in order to discuss these matters.<sup>5</sup>
- 3.3. Once all or part of a meeting is closed to the public the chairperson has the power to:
  - (a) exclude the general public from the closed meeting;
  - (b) if necessary, exclude the council's General Manager from the meeting;
  - (c) invite any person to remain at the meeting to provide advice or information to council;
  - (d) authorise the removal of any person if that person refuses to leave and, if necessary, request the assistance of police in this respect.<sup>6</sup>

### 4. ADDITIONAL CONSIDERATIONS

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<sup>3</sup> Note 1 at r.15(1)  
<sup>4</sup> Note 1 at r.15(5)  
<sup>5</sup> Note 1 at r.15(3) and r.15(4)  
<sup>6</sup> Note 1 at r.15(6) and r.15(7)





- 4.1. Once discussion of the subject matter of the closed meeting has concluded the meeting can be re-opened to the public by a simple majority resolution.<sup>7</sup>
- 4.2. All discussions, decisions, reports or documents relating to a closed meeting are required to be treated as confidential **unless** the council or council committee, after considering any relevant privacy and confidentiality issues, authorises the release of some or all of these materials to the public.<sup>8</sup>
- 4.3. Generally speaking, a member of the public cannot access closed meeting materials by way of a request for information made under the *Right to Information Act 2009* (Tas), however any such request must be carefully considered against the relevant test.<sup>9</sup>

For further information in relation to the issues discussed in this paper, please contact Roger Curtis.

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<sup>7</sup> Note 1 at r.15(8)  
<sup>8</sup> Note 1 at r.15(9)  
<sup>9</sup> *Right to Information Act 2009* (Tas), s.32