

## Code of Practice for Access to Meetings of Council and Committees and Council Documents

Strategic Reference	Objective 1; A caring, healthy and resilient community. Strategy 1.7; Achieve or implement the statutory and core responsibilities of Council.
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Next review date	Annually, and within 12 months after a periodic election
Applicable Legislation	Local Government Act 1999
Related Policies	Community Engagement Policy Privacy Policy Code of Practice Proceedings of Council & Committee Meetings Informal Gatherings Policy
Related Documents	Local Government Association of South Australia (LGA SA) Access to Council and Committee Meetings and Documents Model Code of Practice (updated March 2013) "Confidentiality Guidelines: How to Apply Section 90 of the Local Government Act 1999" LGA (SA) Ombudsman SA, "In the Public Eye; An audit of the use of meeting confidentiality provisions of the Local Government Act 1999 in South Australian councils". (Updated May 2016))

### 1. Purpose and scope

In fulfilling the role of an effective Council that is responsive to the needs of the community and which operates within the legal framework prescribed by the *Local Government Act 1999*, Coorong District Council ("Council") is committed to the principles of open, honest and accountable government with transparent and informed decision-making and encourages appropriate community participation in the affairs of Council.

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However Council also recognises that on a limited number of occasions it may be necessary, in the broader community interest, to restrict public access to discussion or documents.

The purpose of this code is to:

- Meet the provisions of section 92 of the *Local Government Act 1999* ("*the Act*") in the preparation and adoption of a Code of Practice relating to the principles, policies and procedures that a Council must apply for the operation of Parts 3 and 4 of the Act for the purposes of public access to meetings, documents and minutes of Council and Committee meetings.
- Inform and educate the community about public access to Council and Committee meetings, minutes of Council and Committee meetings and other Council documents.

This Code sets out Council's commitment to public access and accountability, and includes:

- information on the relevant provisions of the Act;
- Council's policy on public access and participation;
- the process that will be adopted where public access to a meeting or a document is restricted;
- grievance procedures to be followed if a member of the public believes that the Council has unreasonably restricted public access on a particular matter.

It also contains information relating to:

- access to the agenda for meetings;
- public access to meetings;
- the process to exclude the public from meetings;
- matters for which the Council, or a Council committee, can order that the public be excluded
- how the Council will approach the use of the confidentiality provisions in the Act;
- public access to documents, including minutes;
- review of confidentiality orders;
- accountability and reporting to the community, and the availability of the code; and
- grievances about the use of the code by Council.

## **2. Definitions**

For the purposes of this policy:

**"Council"**: includes Committees established by resolution of the Council including s41 and s42 Committees. Committees not set by Council and not performing a regulatory activity may vary these procedures in accordance with the Provisions of Part 3 of the *Local Government (Procedures at Meetings) Regulations 2000*.

**"Clear days"**: the time between the giving of the notice and the meeting is to be determined excluding the day on which the notice was given and the day of the meeting e.g. notice is given on a Thursday for a following Monday meeting, the clear days being Friday, Saturday and Sunday.

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### **3. Public Access to the Agenda for Meetings**

- 3.1 At least three (3) clear days before a Council meeting (unless it is a special meeting), the Chief Executive Officer (CEO) must give written notice of the meeting to all Members of Council or Committees setting out the date, time and place of the meeting. The notice must contain or be accompanied by the agenda for the meeting.
- 3.2 At the same time the notice and agenda will be placed on public display at each office of the Council that is open to the public for the general administration of Council business (see "11. Further Information" below) and on Council's website [www.coorong.sa.gov.au](http://www.coorong.sa.gov.au).
- 3.3 Items listed on the agenda will be described accurately and in reasonable detail.
- 3.4 The notice and agenda documents (subject to 3.7 below) will be kept on public display and continue to be published on the website until the completion of the relevant Council or Council committee meeting.
- 3.5 Copies of the agenda documents and non-confidential reports that are to be considered at the meeting will be made available to members of the public in attendance. A reasonable number of copies will also be available for public inspection as soon as practicable after they are supplied to the Members of Council.
- 3.6 Members of the public may obtain a copy of the agenda and any particular reports for a fee to cover the costs of photocopying, in accordance with a Council's schedule of fees and charges.
- 3.7 Where the CEO of the Council (after consultation with the principal member/Mayor of the Council, or in the case of a Committee - the presiding member) believes that a document or report on a particular matter should be considered in confidence with the public to be excluded, the basis under which the order could be made in accordance with section 90(3) of the Act will be specified. [see sections 83(5) (Council) and 87(10) (Committee) of the Act.]

The following is an example of a circumstance where the CEO may identify an item potentially subject to confidentiality:

*Council is to consider tenders for the provision of electrical services. The document outlining the tenders received and the agenda item are clearly marked by the CEO to indicate that they may need to be considered in confidence under clause 90 (3)(k) – tenders for the supply of goods, provision of services or the carrying out of works.*

Should Council not agree to place an order of confidentiality on an item at the meeting, a copy of the document will be made available to the public at the meeting (publicly tabled) and placed on public display the next working day.

### **4. Public Access to Meetings**

Council and Committee meetings are open to the public and attendance is encouraged - except where Council believes it is necessary in the broader community interest to exclude the public from the discussion and if necessary any decision on a particular matter.

The public will only be excluded when considered proper and necessary, e.g. the need for confidentiality outweighs the principle of open decision making.

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The following is an example:

*Council is intending to bid at an auction to acquire land and would not want others involved, such as the vendor to have prior knowledge of what Council was setting as an upper limit to bid at the auction, as to do so would prejudice the position of Council and disadvantage the community.*

Council encourages public attendance/involvement at meetings. Details of meeting dates and times are listed on all public notices boards, Council's website and circulated through the community email database.

Council has adopted an Informal Gatherings Policy which provides information on the manner in which the provisions in Section 90 of the Act relating to informal gatherings and designated informal gatherings will be managed.

## **5. Process to Exclude the Public from a Meeting**

Where the Chief Executive Officer, believes that a matter should be considered in confidence, the nature of the matter and the reasons why it should be considered in confidence will be clearly noted on the agenda, which is made available to the public.

Where possible, confidential items are listed at the end of the Council agenda to reduce inconvenience to the public but can also be brought forward by resolution of the Council. This may occur for example where the members of the public gallery have a particular interest in the outcome of a confidential item.

If, prior to the meeting, a member of the public objects to a recommendation from the CEO to consider a matter in confidence, the person may provide written reasons for the objection, which will be put to the Council meeting before it votes on whether or not to restrict public access.

Before a meeting order that the public be excluded to enable the receipt, discussion and consideration of a particular matter, the meeting will, in public, formally determine if this is necessary and appropriate, and then pass a resolution to exclude the public while dealing with that particular matter. If this occurs the public must immediately leave the room. This means that all members of the public (including staff), unless exempted by being named in the resolution as entitled to remain, are required to leave the room. For the operation of section 90(2) a member of the public does not include a member of Council.

Once Council has made the order, it is an offence for a person, who knowing that an order is in force, enters or remains in a room in which such a meeting is being held. It is lawful for an employee of Council or a member of the police force to use reasonable force to remove the person from the room if she/he fails to leave on request of the Chair or presiding member/Mayor.

Council can, by inclusion within the resolution, permit a particular person or persons to remain in the meeting. An example would be allowing a ratepayer who is suffering personal hardship to remain in the meeting when their circumstances concerning the payment of rates are being discussed.

If there is a further matter that needs to be considered in confidence it is necessary for Council to again undertake the formal determination process and to resolve to exclude the public as per above.

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The Council will appropriately record the reasons why the ground is being relied upon for holding the meeting “in confidence” without disclosing the confidential nature of the matter itself.

**6. Matters from which the Public can be Excluded**

In accordance with the requirements of section 90(3) of the Act, Council, or a Council Committee, may order that the public be excluded in the following circumstances:

- a) information, the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead);
- b) information, the disclosure of which –
  - i. would reasonably be expected to confer a commercial advantage on a person with whom the Council is conducting, or proposing to conduct, business, or to prejudice the commercial position of the Council; and
  - ii. would, on balance, be contrary to the public interest;
- c) information, the disclosure of which would reveal a trade secret;
- d) commercial information of a confidential nature (not being a trade secret) the disclosure of which –
  - i. could reasonably be expected to prejudice the commercial position of the person who supplied the information, or to confer a commercial advantage on a third party; and
  - ii. would, on balance, be contrary to the public interest;
- e) matters affecting the security of the Council, members or employees of the Council, or Council property; or the safety of any person;
- f) information the disclosure of which could reasonably be expected to prejudice the maintenance of law, including by affecting (or potentially affecting) the prevention, detection or investigation of a criminal offence, or the right to a fair trial;
- g) matters that must be considered in confidence in order to ensure that the Council does not breach any law, order or direction of a court or tribunal constituted by law, any duty of confidence, or other legal obligation or duty;
- h) legal advice;
- i) information relating to actual litigation, or litigation that the Council or Council committee believes on reasonable grounds will take place, involving the Council or an employee of the Council;
- j) information, the disclosure of which –
  - i. would divulge information provided on a confidential basis by, or to a Minister of the Crown, or another public authority or official (not being an employee of the Council, or a person engaged by the Council); and
  - ii. would, on balance, be contrary to the public interest;
- k) tenders for the supply of goods, the provision of services or the carrying out of works;
- l) information relating to a proposed amendment to a Development Plan under the *Development Act 1993* before a Plan Amendment Report relating to the amendment is released for public consultation under that Act; or
- m) information relating to a proposed amendment to a Development Plan under the *Development Act 1993* before a Development Plan Amendment proposal relating to the amendment is released for public consultation under that Act;

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- n) information relevant to the review of a determination of a Council under the *Freedom of Information Act 1991*.

The Act provides for a definition of “personal affairs”, being a person’s financial affairs, criminal records, marital or other personal relationships, personal qualities, attributes or health status, or that person’s employment records, employment performance or suitability for a particular position, or other personnel matters relating to the person, but does not include the personal affairs of a body corporate.

When required to apply a public interest test, Council will have regard to the information provided by the South Australian Ombudsman<sup>1</sup> and the Local Government Association (LGA)(SA)<sup>2</sup>.

Council cannot make an order that the public be excluded from a meeting only on the basis that discussion of a matter in public may:

- cause embarrassment to Council or to members or employees of Council: or
- cause a loss of confidence in Council.

If a decision to exclude the public is taken, Council is required to make a note in the minutes of the making of the order and sufficient detail of the grounds on which it was made.

## **7. Use of the Confidentiality Provisions**

Any consideration of the use of the confidentiality provisions to exclude the public from the discussion of a particular matter at a meeting will require the identification of one or more of the grounds listed within section 90(3) of the Act, and the factual reasons for the relevance and application of the ground(s) in the circumstances. These are listed in paragraph six (6) above.

The policy approach of Coorong District Council is that:

1. The principle of open and accountable government is strongly supported;
2. Information of the grounds on which an order to exclude the public is made will be conveyed to the public at the time of them being required to leave the meeting – the public will not be excluded until after a confidentiality motion has been debated and passed and sufficient reasons for the need to exclude the public given;
3. Once discussion of the matter is concluded, the meeting will then consider if it is necessary to make an order that a document associated with this agenda item (including minutes) remain confidential. In determining this, the meeting will have regard to the provisions of section 91 and in particular section 91(8) of the Act, which details when a Council must not order that a document remain confidential;
4. If the meeting determines that it is proper and necessary to keep a document confidential, then a resolution for an order to this effect is required to be resolved by the meeting in accordance with section 91(7) of the Act;

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<sup>1</sup> Ombudsman SA, *In the Public Eye*; An audit of the use of meeting confidentiality provisions of the Local Government Act 1999 in South Australian councils. November 2012

<sup>2</sup> Confidentiality Guidelines: How to Apply Section 90 of the Local Government Act 1999, LGA(SA)

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5. The Council will not consider a number of agenda items “in confidence” together, e.g. en bloc. It will determine each item separately and consider the exemptions relevant to each item;
6. Once discussion of the matter is concluded and the public have returned, the decision of the meeting in relation to this matter will be made publicly known unless the Council has resolved to order that some information remain confidential. Details relating to any order to keep information or a document confidential in accordance with section 91(7) are also to be made known. When making an order the meeting must specify the duration of the order or the circumstances in which the order will cease to apply, or a period after which the order must be reviewed. If the section 91(7) order is to apply for a period exceeding 12 months, then this order must be reviewed every 12 months from the date it was made. This along with the making of the order pursuant to section 90(2) and the grounds pursuant to section 90(3) on which it was made are also to be recorded in the minutes.
7. In all cases the objective is that the information be made publicly available at the earliest possible opportunity and that the community is informed of any Council order and the associated implications; and
8. Where a person provides information to the Council and requests that it be kept confidential, Council is not able to even consider this request unless the matter is one that falls within section 90(3). If this is the case, Council will then be in a position to consider the request on its merits.

**8. Public Access to Minutes**

Minutes of a meeting of Council will be publicly available within five (5) days after the meeting including on Council’s website.

**9. Public Access to Documents**

Various documents are to be available for inspection and purchase (for a fee) by the public. Council may also make a document available in electronic form and place it on the Internet for public access.

Council will only make an order that a document associated with a discussion from which the public are excluded is to remain confidential if it is considered proper and necessary in the broader community interest. Council can only resolve to keep minutes and/or documents confidential under section 91(7) if they were considered in confidence pursuant under sections 90(2) and 90 (3) .

Once a matter has been dealt with, Council may order that a document relating to the matter considered in confidence is to be kept confidential. However, there are some exceptions - in accordance with section 91(8) Council must not make an order to prevent:

- the disclosure of the remuneration or conditions of service of an employee after they have been set or determined; or
- the disclosure of the identity of a successful tenderer or any reasons as to why that tenderer has been selected; or
- the disclosure of the amount(s) payable by Council under a contract for the supply of goods or the provision of services (including the carrying out of works) to, or for the benefit of, the Council after the contract has been entered into by all parties to the contract; or

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- the disclosure of the identity of land that has been acquired or disposed of by Council, or of any reasons as to why acquisition or disposal has occurred.

Where keeping a document confidential is considered proper and necessary, a resolution to this effect is required which shall include:

- the grounds for confidentiality; and
- the duration of the order or circumstances in which the order will cease to apply, or a period after which the order must be reviewed – if the order has a duration of more than twelve (12) months, the order must be reviewed at least once in every year;
- (if applicable) whether the power to revoke the order will be delegated to an employee of the Council. [s.91(9)]

The following is an example:

*Council decided to bid \$100,000 at auction for a parcel of land. An order that the discussion be confidential could be made in accordance with section 90(2). Council resolved that the document containing information on the value of the land remain confidential in accordance with section 91(7). Council could delegate to the CEO the authority to make this information public following the completion of the acquisition in accordance with section 91(9)(c).*

The minutes shall record the relevant grounds and duration of the order and any delegation to revoke the order in a manner which conforms with LGA(SA) advice<sup>3</sup>.

Requests to access Council and committee documents can be made under the *Freedom of Information Act 1991*. Inquiries in relation to the process for seeking access to documents held by Council should be directed to Council's nominated Freedom of Information Officer, who is the Chief Executive Officer.

## **9. Review of Confidentiality Orders**

Confidentiality orders made under section 91(7) of the Act will specify the duration of the order or the circumstances in which the order will cease to apply, or a period after which the order must be reviewed. In any event, any order that operates for a period exceeding twelve (12) months will be reviewed at least once in every year.

An order will lapse if the time or event specified has been reached or carried out. There is no need for Council to resolve for the confidential order to be lifted. Once the order has lapsed, the minutes and/or documents automatically become public. At this point in time Council will make this information publicly available including on the Council's website.

A review of the reports or documents that were considered under confidentiality provisions will be conducted every six (6) months to ensure that items are released in accordance with the resolution of Council, when the provision no longer applies.

Orders that exceed twelve (12) months will be reviewed annually and Council must assess whether the grounds for non-disclosure are still relevant and, if so, provide the relevant grounds and reasons for the minutes and/or documents remaining confidential. The conduct of the annual review will be delegated to the Chief Executive Officer, and may be sub-delegated to an employee of the Council if appropriate. If there are any items that require a fresh confidentiality order because the original order is about to expire, then

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<sup>3</sup> Confidentiality Guidelines: How to Apply Section 90 of the Local Government Act 1999, LGA(SA)

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the reviewer will prepare a report to Council making recommendations with respect to each item to be retained in confidence. Each item must then be addressed separately and assessed against section 90(3) and section 91(7) of the Act. While Council may delegate the power to undertake an annual review, the Council cannot delegate the power to apply sections 90(3) and 91(7) of the Act.

A Council may resolve to exclude the public from a meeting to discuss and undertake consideration of the recommendations arising from the annual review in confidence, subject to the application of the relevant ground under section 90(3) of the Act. Section 90(3) of the Act will be applied separately to each item and not en bloc.

If there is no longer any need for the confidentiality order, Council may delegate to an employee of the Council the power to revoke an order made in accordance with section 91(7) of the Act. A Council may also include in the resolution whether any delegation is given to an employee to revoke the order and if relevant, any conditions associated with the delegation.

### **10. Accountability and Reporting to the Community**

A report on the use of sections 90(2) and 91(7) by Council will be included in the Annual Report of Council as required by Schedule 4 of the Act. This supports Council's commitment to the principle of accountability to the community. The report will include the following information, separately identified for both Council and Committees:

- Number of occasions each of the provisions of section 90(2) & 90(3) were utilised;
- Number of occasions each of the provisions of section 90(2) & 90(3) and section 91(7) were utilised, expressed as a percentage of total agenda items considered;
- An indication of any particular issues that contributed to the use of confidentiality provisions on more than one occasion, e.g. a proposal to acquire a parcel of land was considered on three (3) separate occasions;
- Number of occasions that information originally declared confidential has subsequently been made publicly available; and
- Number of occasions that information declared confidential has still not subsequently been made publicly available and the reason for this in each case.

### **11. Further information and Review**

Any future amendment or alteration (other than minor) to this code of practice will be subject to public consultation in accordance with Council's Community Engagement Policy.

The Council will review this code on an annual basis to ensure that the principle of open government is being applied in a proper manner (including within 12 months after a periodic election in accordance with section 92 of the *Local Government Act 1999*).

The next scheduled review is due to occur in December 2019.

This code of practice will be available for inspection at the Council offices listed below during ordinary business hours and available to be downloaded, free of charge, from Council's website: [www.coorong.sa.gov.au](http://www.coorong.sa.gov.au).

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**Coorong Civic Centre**

95-101 Railway Terrace  
Tailem Bend  
Phone: 1300 785 277  
Fax: 8572 3822

**Meningie Information Hub**

49 Princes Highway  
Meningie  
Phone: 1300 785 277

**Tintinara Customer  
Service Centre**

37 Becker Terrace  
Tintinara  
Phone: 1300 785 277

Copies will be provided to interested parties upon request. Email [council@coorong.sa.gov.au](mailto:council@coorong.sa.gov.au).

Any grievances in relation to this code of practice or its application should be forwarded in writing addressed to:

The Chief Executive Officer  
Coorong District Council  
PO Box 399  
TAILEM BEND SA 5260.