



Code of Practice for Public Access to Meetings and Meeting Documents

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Code of Practice for Public Access to Meetings and Meeting Documents

This policy is set by Council for use by the community and council administration

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1. Purpose

The Code of Practice for Public Access to Meetings and Meeting Documents (the Code) provides a consistent framework for public access to Council meetings and meeting documents and outlines the policies and procedures in place to restrict public access, when appropriate, in accordance with the relevant sections the *Local Government Act 1999* (the Act).

The Code demonstrates Council's commitment to the principle of open transparent and informed decision making and encourages community participation and access to meetings and documents wherever possible.

2. Scope

This Code applies to all Council Members, Independent Members, employees and the general public.

This Code outlines:

- Public Access to Meeting Agendas
- Public Access to Meetings
- Process to Exclude the Public from a Meeting
- Matters from which the Public can be Excluded
- Public Access to Minutes
- Use of the Confidentiality Provisions
- Public Access to Meeting Documents
- Review of Confidentiality Orders
- Accountability and Reporting to the Community

3. Legislation and References

- *Local Government Act 1999*
- *Local Government (General) Regulations 2013*
- *Freedom of Information Act 1991*
- Informal Gathering Policy
- Code of Practice for Council and Committee Meetings

4. Definitions

Chief Executive Officer (CEO) means the Chief Executive Officer of Council and includes a deputy or other person acting in the office of Chief Executive Officer.

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Clear days in the calculation for giving notice before a meeting: the day on which the notice is given and the day on which the meeting occurs will not be taken into account; and Saturdays, Sundays and public holidays will be taken into account. If the notice is given after 5pm on a day, the notice will be taken as given the next day.

Council Committee means a committee established by Council pursuant to Section 41 of the *Local Government Act 1999*.

Council Member as stated in the *Local Government Act 1999*, member of a council means the principal member or a councillor of the Council. Elected Member is commonly utilised to refer to Council Member.

Employee a person employed by the Organisation on an ongoing or fixed term full-time or part-time basis, or employed on a casual basis.

Independent Member is a member of a Section 41 Committee or Panel who are not elected but have been appointed by the Council as members of that Committee or Panel.

5. Policy

5.1 Public Access to Meeting Agendas

- 5.1.1 At least three clear days before a Council or Council Committee meeting (unless it is a Special Meeting) the Chief Executive Officer (CEO) must give written notice of the meeting to all Council/Council Committee members setting out the date, time and place of the meeting. The notice must contain or be accompanied by the agenda for the meeting.
- 5.1.2 The notice of a meeting and agenda will be available at the Playford Civic Centre, 10 Playford Boulevard, Elizabeth, as Council's principal office and on Council's website:
(www.playford.sa.gov.au/council/council-and-committees).
- 5.1.3 The notice and agenda 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.
- 5.1.4 Items listed on the agenda will be described accurately and in reasonable detail.
- 5.1.5 Copies of agenda documents and non-confidential reports that are to be considered at a meeting will be made available to members of the public in attendance.

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5.1.6 Members of the public may obtain a hard copy of a meeting notice and or agenda for a fee, in accordance with Council's Schedule of Fees and Charges.

5.1.7 Where the CEO believes that a document or report on a particular matter should be considered in confidence, with the public excluded, the basis under which the confidential order could be made, will be specified, in accordance with Section 90(3) of the Act.

5.2 Public Access to Meetings

5.2.1 Council and Council Committee meetings are open to the public and attendance is encouraged (through public notification of meetings), except where the Council or Council Committee believes it is necessary in the broader community interest to exclude the public from the discussion (and, if necessary, the decision) of a particular matter.

5.2.2 In accordance with Section 90(8) of the Act, it is not unlawful for Members of Council, Council Committee Members and Council employees to participate in Informal Gatherings or discussions provided that a matter which would ordinarily form part of the agenda for a formal meeting is not dealt with in such a way as to obtain, or effectively obtain, a decision outside of a formally constituted meeting of Council or Council Committee.

The Council must hold Informal Gatherings in a place open to the public unless it is an Informal Gathering declared to be held in confidence. An Informal Gathering may be held in confidence if it is a planning session of a general or strategic nature; or is a briefing relating to information or a matter of a confidential nature within the ambit of Section 90(3) of the Act.

5.2.3 The following are examples of Informal Gatherings or discussions that may be held in accordance with Section 90(8):

- *planning sessions associated with the development of policies or strategies;*
- *briefing or training sessions;*
- *workshops;*
- *social gatherings to encourage informal communication between members or between members and staff.*

5.3 Process to Exclude the Public from a Meeting

- 5.3.1 Prior to a Council or Council Committee ordering that the public be excluded to enable the receipt, discussion and consideration of a particular matter; the meeting must, in public, formally determine if this is necessary and appropriate, and then pass a resolution to exclude the public. If this occurs then members of the public must leave the room for that matter. This means that all members of the public (including Council employees), 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) of the Act a member of the public does not include a Member of Council or Committee.
- 5.3.2 Once Council or a Council Committee has made an order to exclude the public, 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. If a person fails to leave a room on request, it is lawful for an employee or a member of the police force to use reasonable force to remove them from the room.
- 5.3.3 Once discussion on a particular matter for which the public has been excluded is concluded, the public are then permitted to re-enter the meeting. If there is a further matter to be considered in confidence it is necessary to again undertake the formal determination process and to resolve to exclude the public.
- 5.3.4 Council or a Council Committee, can by inclusion within the resolution permit a particular person or persons to remain in the meeting.

5.4 Matters from which the Public can be Excluded

In accordance with 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) *could 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;*

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- (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;*

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

5.4.1 In considering whether an order should be made under Section 90(2) of the Act, it is irrelevant that discussion of a matter in public may:

(a) cause embarrassment to the Council or Council Committee concerned, or to Council Members or employees of the Council; or

(b) cause a loss of confidence in the Council or Council Committee; or

(c) involve discussion of a matter that is controversial within the Council area; or

(d) make the Council susceptible to adverse criticism.

5.5 Public Access to Minutes

5.5.1 Minutes of a meeting of Council or a Council Committee will be publicly available at the Playford Civic Centre, 10 Playford Boulevard, Elizabeth, and on Council's website, within five days after the meeting.

5.6 Use of the Confidentiality Provisions

5.6.1 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 (refer section 5.4).

5.6.2 The approach of Council is as follows:

(1) The principle of open and accountable government is strongly supported.

(2) The grounds on which an order to exclude the public is made will be conveyed to the public at the time of them being ordered to leave the meeting – the public will not be excluded until after a confidentiality motion giving sufficient reasons for the need to exclude the public has been debated and passed.

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- (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 the agenda item (including minutes) remains confidential. In determining this, the meeting will have regard to the provisions of Section 91 of the Act and in particular Section 91(8) of the Act which details when Council must not order that a document remains 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.
- (5) Council will not consider a number of agenda items “in confidence” together (en bloc). Each item will be determined separately, with consideration given to the exemptions relevant to each item.
- (6) Once discussion of the matter considered in confidence is concluded and the public have been invited to return to the meeting, the decision of the meeting in relation to this matter will be made publicly known unless Council has resolved to order that information remain confidential.

Details relating to any order to keep information or a document confidential in accordance with Section 91(7) of the Act 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 at least once in every year. This along with the making of the order pursuant to Section 90(2) of the Act and the grounds, pursuant to Section 90(3) of the Act, 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.
- (8) Where a person provides information to Council and requests that it be kept confidential, Council is not able to consider this request unless the matter is one that falls within Section 90(3) of the Act. If this is the case, Council will then be in a position to consider the request on its merits.

5.7 Public Access to Meeting Documents

- 5.7.1 Meeting documents are available for inspection or a person is entitled to purchase a copy of any of the documents available for inspection for a fee, at the Playford Civic Centre, 10 Playford Boulevard, Elizabeth. Council will also make meeting documents available on the [Council website](#) for public access.
- 5.7.2 Council or a Council Committee will only 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 and falls within the provisions of Section 91(7).
- 5.7.3 Council or a Council Committee can only resolve to keep minutes and/or documents confidential under Section 91(7) of the Act if they were considered in confidence pursuant to Sections 90(2) and 90(3) of the Act.
- 5.7.4 In accordance with Section 91(8) of the Act, Council or a Council Committee must not make an order to prevent:
- (a) The disclosure of the remuneration or conditions of service of an employee of Council after the remuneration or conditions have been set or determined; or*
 - (b) The disclosure of the identity of a successful tenderer for the supply or goods or the provision of services (including the carrying out of works), or of any reasons adopted by Council as to why a successful tenderer has been selected; or*
 - (ba) The disclosure of the amount or amounts 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, Council after the contract has been entered into by all parties to the contract; or*
 - (c) The disclosure of the identity of land that has been acquired or disposed of by Council, or of any reasons adopted by Council as to why land has been acquired or disposed of by Council.*
- 5.7.5 Where keeping a document confidential is considered proper and necessary, a resolution is required in accordance with Section 91(9) which shall include:
- (1) The grounds for confidentiality; and

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(2) 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 order has a duration of more than 12 months, the order must be reviewed at least once in every year.

(3) Whether the power to revoke the order will be delegated to an employee of Council.

5.7.6 Requests to access Council and Council 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 accredited Freedom of Information Officer.

5.8 Review of Confidentiality Orders

5.8.1 A confidentiality order made under Section 91(7) of the Act, must specify the duration of the order, the circumstances in which the order will cease to apply, or a period after which the order must be reviewed. This information is entered into the "Confidential Items Register". Any order that operates for a period exceeding 12 months must be reviewed at least once in every year.

5.8.2 An order will lapse if the time or event specified has been reached or completed. Once the order has lapsed, the meeting documents automatically become public. Council are not required to revoke the retention order.

5.8.3 A review of the reports or documents that were considered under the provision of Sections 90(3) and 91(7) of the Act must be reviewed at least once in every year to ensure that items are released in accordance with the resolution of Council, when the confidential provision no longer applies.

5.8.4 Orders are 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 is delegated to the CEO. The CEO has delegated authority to assess, and if appropriate, determine if there are any items that require a new confidentiality order because the original order is about to expire. A report will be prepared for Council consideration, including recommendations, with respect to each item to be retained in confidence. Each item must be addressed separately and assessed against Section 90(3) and Section 91(7) of the Act. While a 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.

5.8.5 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.

5.8.6 Council or a Council Committee may also include in the resolution whether a delegation is given to an employee to revoke the order and if relevant, any conditions associated with the delegation.

5.9 Accountability and Reporting to the Community

5.9.1 The use of Sections 90(2) and 91(7) of the Act will be provided in Council's Annual Report. Information to be included (separately identified for Council and Council Committees):

- Number of occasions each of the provisions of Sections 90(2) and 90(3) and Section 91(7) were utilised;
- Number of occasions information originally declared confidential has subsequently been made publicly available; and
- Number of occasions that information declared confidential has not been made publicly available and the reason for this in each case.

6. Responsibilities

The Governance Team are responsible for –

- (a) preparing for Council the review of this Policy within 12 months of the conclusion of each general election;
- (b) making copies of the proposed code, alterations or substitute code (as the case may be) available for inspection or purchase at the Council's principal office; and
- (c) following the relevant steps to consult the public on the Code as set out in the public consultation policy.

7. Relevance to Strategic Plan

1: Smart Service Delivery Program

Outcome 1.2 Improved Service Delivery

8. Accessibility

The public may inspect a copy of the Code, without charge, at the Playford Civic Centre, 10 Playford Boulevard, Elizabeth during office hours, and may obtain a copy

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for a fee. This Code is also available on the Council website <https://www.playford.sa.gov.au/council/council-documents/policies-and-guidelines>

9. Feedback

We invite your feedback on this policy which can be directed to Manager Governance at playford@playford.sa.gov.au.

10. Approval and Change History

Version	Approval Date	Approval By	Change
1.0	28/06/2011	Council	<ul style="list-style-type: none"> • New Document
2.0	31/01/2012	Council	<ul style="list-style-type: none"> • Scheduled Review
3.0	25/08/2015	Council	<ul style="list-style-type: none"> • Code of Practice transferred into Corporate Template • Policy Statement Updated • Legislation Section Updated • Sections Re-numbered • Confidential Provision Information updated • Examples of Confidential Steps updated • Removed section 2.3 – “Consultation” which has a requirement to consult with the public prior to adoption of the Code of Practice for Public access to Meetings and Associated Documents
4.0	TBA	Council	<ul style="list-style-type: none"> •

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