

CODE OF PRACTICE - ACCESS TO COUNCIL AND COMMITTEE MEETINGS AND DOCUMENTS

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Responsible Division	Office of the Chief Executive
Related Documents	<i>Internal Review of a Council Decision Policy and Procedure</i> <i>LGA Confidentiality Guidelines</i>
Applicable Legislation	<i>Local Government Act 1999 (SA),s.83 – 91</i> <i>Local Government (Procedures at Meetings) Regulations 2000</i> <i>Electronic Participation in Council Meetings Notice (No 1) 2020</i>

On 15 March 2020, the Chief Executive of the Department for Health and Wellbeing in the State of South Australia, pursuant to section 87 of the *South Australian Public Health Act 2011*, declared that an emergency which threatens to cause the death of, or injury or other damage to the health of any person is occurring or about to occur in relation to the transmission of COVID-19, and declared the emergency to be a public health emergency.

On 22 March 2020, the State Co-ordinator for the State of South Australia declared, pursuant to section 23 of the *Emergency Management Act 2004*, that a Major Emergency is occurring in respect of the outbreak of the Human Disease named COVID-19 within South Australia.

On 30 March 2020 the Minister for Transport, Infrastructure and Local Government issued a notice pursuant to section 302B of the *Local Government Act 1999* (**Notice No 1**) varying or suspending the operation of the specified provisions of the *Local Government Act 1999* as set out in Schedule 1 to Notice No 1. Notice No 1 commenced operation on 31 March 2020.

Notice No 1:

- (a) *provides that a Council is not required to adopt any provision in a code of practice that would prevent or inhibit members from participating in Council meetings or Council committee meetings by electronic means;*
- (b) *provides that Council members may meet by electronic means to alter the code of practice of the Council, or substitute a new code of practice of the Council, even if the existing code of practice prevents or inhibits the Council members from meeting by electronic means;*
- (c) *suspends the requirement in section 92(5) that before a Council adopts, alters or substitutes a code of practice it make copies of the proposed code, alterations or substitute code (as the case may be) available for inspection and purchase at the principal office of the Council and on a website determined by the Council and that the Council follow the steps set out in its public consultation policy.*

Statement of Principle

The Alexandrina Council supports that access to a meeting of Council or a Council Committee should contribute to open, transparent and informed decision-making and encourage appropriate community participation in the affairs of Council, and that relevant documentation relating to these meetings should be available to the public.

Introduction

This Code of Practice sets out the commitment of the Alexandrina Council to provide public access to Council and Council Committee meetings and documents, and outlines the guidelines contained within the *Local Government Act 1999*, to restrict public access. This Code 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.

This Code sets out the policy of Council for access to meetings and documents and includes 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
- grievances about the use of the Code by Council.

Public Access to Meetings

Subject to matters discussed below regarding Notice 1, Council and Council Committee meetings are open to the public and attendance is encouraged, except where the Council (or the Council Committee) believes it is necessary in the broader community interest to exclude (Appendix 1) the public from the discussion (and, if necessary, decision) of a particular matter.

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

Council encourages public attendance at meetings of the Council and Committees through public notification of meetings by listing the meeting on Council's website and placing notices on the customer service electronic noticeboards in Council offices.

Notice No 1 provides that a Council meeting will be taken to be conducted in a place open to the public even if 1 or more Council members participate in the meeting by electronic means provided that -

- (a) the chief executive officer (or a person nominated in writing by the chief executive officer) makes available to the public a live stream of the meeting on a website determined by the chief executive officer and ensures that members of the public can hear the discussion between all Council members present at the meeting via the live stream; or
- (b) if the chief executive officer (or a person nominated in writing by the chief executive officer) has taken reasonable steps to make available a live stream of the meeting but is unable to make available a live stream of the meeting, the chief executive officer (or a person nominated in writing by the chief executive officer) makes available to the public a recording of the meeting as soon as practicable after the meeting on a website determined by the chief executive officer and ensures that members of the public can hear the discussion between all Council members present at the meeting via the recording.

If the chief executive officer (or a person nominated in writing by the chief executive officer) has taken reasonable steps to make available to the public a live stream of the meeting or, (if unable to make available a live stream of the meeting) a recording of the meeting but is unable to comply the chief executive officer (or a person nominated in writing by the chief executive officer) must publish on a website determined by the chief executive officer the steps taken to comply and the requirement will be suspended.

In accordance with s.90 of the Act, it is not unlawful for Members of Council, Committee members and staff to participate in **informal gatherings** or discussion 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 Committee. The Council is not bound to hold an informal gathering open to the public in accordance with s.90(1) of the Act as openness to the public only applies to Council and Council Committee meetings. This means that s.90(2) to exclude the public has no role to play.

The following are examples of informal gatherings or discussions that may be held in accordance with s.90(8):

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

Matters from which the Public can be Excluded

In accordance with the requirements of s.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;*
- [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 relating 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.

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

- cause embarrassment to the Council or Committee concerned, or to members or employees of the Council
- cause a loss of confidence in the Council or Committee [s.90(4)].

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

Process to Exclude the Public from a Meeting

Before a meeting orders 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 while dealing with that particular matter. If this occurs then the public must 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.

Notice No 1 provides that the Council or council committee must disconnect any live stream or recording of a meeting for the period that the meeting is closed to the public pursuant to an order made under section 90(2).

Once Council, or a Council Committee 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 to use reasonable force to remove the person from the room if he or she fails to leave on request.

Further, Notice 1 provides that it is also an offence for person who, knowing that an order is in force under section 90(2), to connect¹ to a meeting of the Council or Council committee by electronic means, or fail to disconnect² from a meeting of the Council or Council committee.

Once discussion on that particular matter is concluded, the public are then permitted to re-enter or reconnect to the meeting. If there is a further matter that needs to be considered in confidence it is necessary to again undertake the formal determination process and to resolve to exclude the public as above.

Please note that the Council, or the Council committee, 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 is being discussed.

Notice No 1 provides that a Council meeting will be taken to be conducted in a place open to the public even if 1 or more Council members participate in the meeting by electronic means provided that -

- (a) the chief executive officer (or a person nominated in writing by the chief executive officer) makes available to the public a live stream of the meeting on a website determined by the chief executive officer and ensures that members of the public can hear the discussion between all Council members present at the meeting via the live stream; or
- (b) if the chief executive officer (or a person nominated in writing by the chief executive officer) has taken reasonable steps to make available a live stream of the meeting but is unable to make available a live stream of the meeting, the chief executive officer (or a person nominated in writing by the chief executive officer) makes available to the public a recording of the meeting as soon as practicable after the meeting on a website determined by the chief executive officer and ensures that members of the public can hear the discussion between all Council members present at the meeting via the recording.

If the chief executive officer (or a person nominated in writing by the chief executive officer) has taken reasonable steps to make available to the public a live stream of the meeting or, (if unable to make available a live stream of the meeting) a recording of the meeting but is unable to comply the chief executive officer (or a person nominated in writing by the chief executive officer) must publish on a website determined by the chief executive officer the steps taken to comply and the requirement will be suspended.

It is the policy of Council that for the convenience of the public present at a meeting, where it is resolved to consider a matter in confidence, that this matter, unless there are pressing reasons as to why it should be debated at that point of the meeting, will be deferred until all other business has been dealt with.

¹ *connect* means able to hear and/or see the meeting, including via a live stream or recording of the meeting

² *disconnect* means remove the connection so as to be unable to hear and see the meeting

This is the preferred option of Council rather than asking the public to leave the room, to wait around for however long it takes until the matter is concluded and then invite them back into the meeting room, possibly with the same process being repeated for a subsequent matter.

The practice of the Alexandrina Council is to deal with the agenda items in the order listed in the agenda. Items to be considered in confidence are listed last on the agenda, for discussion after all other items are discussed and dealt with.

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 the *Local Government Act 1999*. These are listed in the previous section of this code. They are referred to as s.90(3).

The policy approach of the Alexandrina Council is that:

- The principle of open and accountable government is strongly supported.
- 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 ordered 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.
- 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 s.91 and in particular s.91(8) which details when a Council must not order that a document remain confidential.
- 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 s.91(7) of the Act.
- The Council will not consider a number of agenda items “in confidence” together ie en bloc. It will determine each item separately and consider the exemptions relevant to each item.
- 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 s.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 s.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 s.90(2) and the grounds pursuant to s.90(3) on which it was made are also to be recorded in the minutes.
- 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.
- 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 s.90(3). If this is the case, Council will then be in a position to consider the request on its merits.

- The use of all confidentiality provisions will be reported to the community and included in Council's Annual Report.

Review of Confidentiality Orders

A confidentiality order made under s.91(7) of the Act 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. In any event, any order that operates for a period exceeding 12 months must 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 the Council to resolve for the confidential order to be lifted. Once the order has lapsed, the minutes and/or documents automatically become public.

A review of the reports or documents that were considered under the provision of s.90(3) and 91(7) of the Act will be conducted every 4 months to ensure that items are released in accordance with the resolution of Council, when the confidential provision no longer applies.

Orders that exceed 12 months must be reviewed annually and the 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 can be delegated to the Chief Executive Officer and 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 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 s.90(3) and s.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 s.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 s.90(3) of the Act. S.90(3) of the Act must be applied separately to each item and not en bloc.

If there is no longer any need for the confidentiality order then the Council or Council Committee may delegate to an employee of the Council the power to revoke an order made in accordance with s.91(7) of the Act. The Council or Council Committee 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.

Public Access to the Agenda for Meetings

Public access to Council agendas is encouraged. This provides one of the main opportunities for the community to gain information about the business of Council and Committees. Agendas and associated documents for the meetings are publicly available subject to any indication from the Chief Executive Officer (CEO) under s.83(5) of the Act or to an order of confidentiality under s.90(3) of the Act.

The following procedures apply to encourage public access:

- At least three clear days³ before the Council or Council Committee meeting (unless it is a special meeting) the CEO must give written notice of the meeting to all 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.
- The notice of the meeting and agenda will be placed on public display at each office of the Council at 11 Cadell Street, Goolwa and 1 Colman Terrace, Strathalbyn, and on Council's website www.alexandrina.sa.gov.au.
- Items listed on the agenda will be described accurately and in reasonable detail.
- 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.
- 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.

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.

Where the CEO of the Council (after consultation with the principal member 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 s.90(3) of the Act will be specified [see s.83(5) (Council) and 87(10) (Committee) of the Act.]

Public Access to Minutes

Minutes of a meeting of Council or a Council Committee will be publicly available, including on the Council's website www.alexandrina.sa.gov.au, within five (5) days after the meeting.

Public Access to Documents

Various documents can 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.

The Council or the 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.

The Council or the Council Committee can only resolve to keep minutes and/or documents confidential under s.91(7) if they were considered in confidence pursuant to s.90(2) and 90(3). In accordance with s.91(8) the Council or the Council Committee must not make an order to prevent:

- the disclosure of the remuneration or conditions of service of an employee of the Council after the remuneration or conditions have been set or determined
- the disclosure of the identity of a successful tenderer for the supply of goods or the provision of services (including the carrying out of works), or of any reasons adopted by the Council as to why a successful tenderer has been selected

³ 'Clear days' means that the time between the giving of the notice and the day of the meeting, but excluding both 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 are Friday, Saturday and Sunday.

- the disclosure of the amount or amounts payable by the 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
- the disclosure of the identity of land that has been acquired or disposed of by the Council, or of any reasons adopted by the Council as to why land has been acquired or disposed of by the Council.
- Where keeping a document confidential is considered proper and necessary, a resolution to this effect is required which shall include the grounds for confidentiality (see Appendix 1)
- 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
- (if applicable) whether the power to revoke the order will be delegated to an employee of the Council [s.91(9)].

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 on 8555 7000.

Accountability and Reporting to the Community

A report on the use of s.90(2) and 91(7) by the Council and Council Committees must be included in the annual report of a Council as required by *Schedule 4* of the Act. This supports commitment to the principle of accountability to the community. The reporting should include the following information, separately identified for both Council and Council committees:

- Number of occasions each of the provisions of s.90(3) were utilised
- Number of occasions each of the provisions of s.90(2), 90(3) and 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 eg 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
- Number of occasions that information declared confidential has not been made publicly available and the reason for this in each case.

Council will make this information available for inspection by the public at each of Council's offices annually and a summary will be included in the Annual Report. This information will also be included in any review of the code.

Grievance

Council is required to establish procedures for the review of decisions of:

- Council, and its committees
- employees of the Council
- other persons acting on behalf of the Council.

Should a person be aggrieved about public access to either a meeting or a document then they can lodge an application for consideration under the review of decisions procedure established by Council.

The procedures adopted by Council are available for viewing at the Council offices during office hours, and may be provided for a fee fixed by Council. The *'Internal Review of a Council Decision'* policy and procedure are also available on Council's website www.alexandrina.sa.gov.au.

In the first instance, an application for a review of decision should be expressed in writing, addressed to:

Chief Executive Officer
Alexandrina Council
PO Box 21
GOOLWA SA 5214

A person may also lodge a complaint with the Ombudsman, who may carry out an investigation if it appears (to the Ombudsman) that Council (or Committee) may have unreasonably:

- excluded members of the public from a meeting
- prevented access to documents.

If an investigation is conducted, the Ombudsman must supply the Minister and Council with a copy of the written report that is prepared. After considering the report of the Ombudsman if the Minister believes Council has unreasonably excluded members of the public from a meeting or prevented access to a document, they may give directions to Council about the future exercise of its powers concerning the exclusion of the public from meetings or the making of orders to withhold a document (or part thereof) or to release information that should, in the opinion of the Minister, be available to the public. Before taking such action the Minister must give Council a reasonable opportunity to make submissions to the Minister in relation to the matter.

Code of Practice

The Council is not required to adopt any provision in a code of practice that would prevent or inhibit members from participating in Council meetings or Council committee meetings by electronic means.

Council members may meet by electronic means to alter the code of practice of the Council, or substitute a new code of practice of the Council, even if the existing code of practice prevents or inhibits the Council members from meeting by electronic means.

The requirement in section 92(5) that before a Council adopts, alters or substitutes a code of practice it make copies of the proposed code, alterations or substitute code (as the case may be) available for inspection and purchase at the principal office of the Council and on a website determined by the Council and that the Council follow the steps set out in its public consultation policy is suspended while these provisions are in effect.

Availability of the Code

The public may inspect a copy of this Code, without charge, at the offices of Council during office hours, and may obtain a copy for a fee fixed by Council. The Code is also available on Council's website www.alexandrina.sa.gov.au

Local Government Act 1999 Provisions

Chapter 6 of the *Local Government Act* sets out arrangements for meetings of council and committees. It requires that all council and council committee meetings are to be held in public except where special circumstances exist as prescribed in the Act and a council or committee orders that the public be excluded.

There are very strict circumstances in which a discussion or document considered in a council or council committee meeting can be kept confidential. These provisions are included in the following sections:

- 83 (5) Council & 87 (10) Committee - the Chief Executive Officer (CEO) may, after consultation with the principal member of council, or in the case of a committee the presiding member, indicate on a document or report (or on a separate note) provided to members of council or committee, as the case may be, that the matter may, if the council or committee so determines, be considered in confidence. The CEO is required to specify at the same time the basis on which such an order can be made.
- 87(15) & 88(7) – the provisions of these sections may be modified if the council committee is not performing a regulatory function. *Regulations 23 & 24 of the Local Government (Procedures at Meetings) Regulations 2000* enable variation to the notice of meetings for members and public notice of meetings.
- 90 (2) & (3) - circumstances where council may order that the public can be excluded from attendance at a meeting, or part of it, to enable a matter/s to be considered in confidence.
- 90 (8) – informal gatherings and discussions are not unlawful under certain circumstances.
- 91 (7) - circumstances when a document considered in confidence can be ordered to remain confidential.
- 91 (8) - circumstances where a Council must not order that a document remain confidential.
- 91 (9) – the Council or committee 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 will be reviewed. The power to revoke an order can also be delegated to an employee of council.
- 92 – requires the Council to prepare and adopt a code of practice relating to access to meetings and documents. Prior to adoption, alteration or substitution the proposed code (or changes) must be available for inspection and purchase. Council is also required to follow the relevant steps set out in its public consultation policy. Council must, at least once in every financial year, review the code.
- 94 – provides that the Ombudsman may, on receipt of a complaint, investigate the use of these provisions.
- 270 – Council to establish procedures for the review of decisions.