

 Adelaide Plains Council	Code of Practice – Access to Council Meetings and Documents	
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	Document No: D22/35169 Strategic Outcome: Proactive Leadership	

1. Objective

Section 92 of the *Local Government Act 1999* (the Act) requires Council to prepare and adopt a code of practice relating to the principles, policies, procedures and practices that Council will apply for the purposes of the operation of Part 3 – *Public access to council and committee meetings* and Part 4 – *Minutes of council and committee meetings and release of documents*.

2. Scope

The *Code of Practice – Access to Council Meetings and Documents* (the Code) applies to meetings of Council and Council Committees.

The Code sets out Council's position for access to meetings and documents and includes information relating to:-

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

3. Definitions

Clear Days – The time between giving notice of a meeting, 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 being Friday, Saturday and Sunday.

Council Committee – as defined by section 41 of the Act.

Electronic means – includes a telephone, computer or other electronic device used for communication.

Live Stream – the transmission of audio and/or video from a meeting at the time that the meeting is occurring.

4. Policy Statement

Council is committed to the principle of transparent government, whilst recognising it may be necessary in the broader community interest to restrict public access to discussion and documentation in accordance with the Act.

Council encourages community access to its agendas, meetings, minutes and other documents.

5. Public Access to Agendas for Meetings

- 5.1 At least three (3) clear days before a Council or Committee meeting (with the exception of special meetings) the Chief Executive Officer (CEO) must give written notice of the meeting to all Council or 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.
- 5.2 The notice of meeting will be placed on public display at the Mallala Principal Office and Two Wells Service Centre, and the notice and agenda will be published on Council's website www.apc.sa.gov.au.
- 5.3 The notice will be kept on public display and continue to be published on the website until the completion of the relevant meeting. The agenda will be published on the Council's website.
- 5.4 Reasonable numbers of copies of non-confidential agenda documents and reports that are to be considered at the meeting must be made available:
 - 5.4.1 In the case of a document or report supplied to members before the meeting – on a website determined by the CEO as soon as practicable after being supplied to members of the Council
 - 5.4.2 In the case of a document or report supplied to members of the Council at the meeting – at the meeting, as soon as practicable after they are supplied to the members of Council. These documents will also be

subsequently uploaded onto the Council's website.

- 5.5 Members of the public may obtain a copy of the agenda and any particular non-confidential reports for a fee to cover the costs of photocopying, in accordance with Council's Schedule of Fees and Charges.
- 5.6 Agenda papers provided to members of Council, or members of a Committee, may include an indication from the CEO that the Council or Committee may determine to consider an item in confidence, with the public to be excluded from the meeting during discussion of that item. Where such an indication is made, the CEO must specify the basis under which the confidentiality order could be made in accordance with the Section 90(3) of the Act.
- 5.7 Where a Committee is not performing a regulatory activity these procedures may be varied, e.g. they may be given in a form decided by the Committee, and need not be given for each meeting separately. Public notice may be given at a place determined by the CEO taking into account the nature and purpose of the Committee.

6. Public Access to Meetings

- 6.1 Council meetings and Council Committee meetings are open to the public and attendance is encouraged, except where the Council or Council Committee believes it necessary in the broader community interest to exclude the public from the discussion (and, where relevant, decision) of a particular matter.
- 6.2 The public will only be excluded when the need for confidentiality outweighs the principles of open and transparent decision making, and where the circumstances come within the provisions of Section 90 of the Act.
- 6.3 In addition to physical public access, the CEO (or delegate) will take reasonable steps to make available to the public:
 - 6.3.1 a live stream of Council meetings on a website determined by the CEO and
 - 6.3.2 a recording of the meeting as soon as practicable after the meeting on a website determined by the CEO.
- 6.4 If the CEO (or delegate) has taken reasonable steps but is unable to make available a live stream of the meeting, or a recording of the meeting, as soon as practicable after the meeting (on a website determined by the CEO), the CEO (or delegate) will publish a notice on Council's website that the live stream and/or recording of the meeting was attempted and unable to be achieved.

7. Process to Exclude the Public from a Meeting

- 7.1 The usual practice of Adelaide Plains Council is to deal with the agenda items in the order listed in the agenda and to list all items indicate for consideration in confidence within the last section of the Council or Council Committee agenda, to allow all other items of business to be transacted with members of the public

present at the meeting and not required to leave the room until the 'Confidential Items' section of the agenda is reached.

- 7.2 Despite the above, there may be circumstances where, during the course of a meeting, it becomes apparent that a matter should be considered in confidence. In those cases, and subject to an appropriate resolution of the council being carried, members of the public will be asked to leave the meeting while the matter is discussed.

7.3 Before the Council or a Council Committee orders that the public be excluded, 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 a particular matter. If Council or a Council Committee orders that the public be excluded, the grounds for this are to be communicated to the public, in the meeting at the time of them being requested to leave, and by recording in the minutes accordingly. The relevant resolution must specify:-

- (a) the grounds on which the order was made;
- (b) the basis on which the information or matter to which the order relates falls within the ambit of each ground on which the order was made; and
- (c) if relevant, the reasons that receipt, consideration or discussion of the information or matter in a meeting open to the public would be contrary to the public interest.

- 7.4 If an order to exclude the public is made, the public, including staff, must leave the room unless exempted by being named in the resolution as entitled to remain. For the operation of Section 90(2), a member of the public does not include a member of the Council or Council Committee. It is an offence for a person, knowing that an order is in force, to enter or remain 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 a person from the room if he or she fails to leave on request, however, if any form of force is required it is recommended that Council waits until the Police attend to remove the person.

The CEO (or delegate) will 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) of the Act.

- 7.5 Once discussion of the relevant agenda item is concluded, the Council or Council Committee will then consider if it is necessary to make an order that a report, attachment and the minutes associated with the agenda item are to remain confidential. In determining this, the Council or Council Committee shall have regard to the provisions of Sections 90 and 91 of the Act.
- 7.6 Once discussion on the confidential matter is concluded, the public will be permitted to re-enter the meeting. Once members of the public have returned, the decision of the meeting in relation to the confidential matter should be made

publicly known unless there has been a formal resolution as outlined at clause 7.5 above, that a report, attachment and/or the minutes of the meeting are to remain confidential. An order of this nature must be recorded in the minutes accordingly and must specify:-

- (a) the duration of the order or the circumstances in which the order will cease to apply; or
- (b) a period after which the order must be reviewed. If the order is to apply for a period exceeding 12 months, the order must be reviewed every 12 months from the date it was made and consideration given to delegating to the CEO the authority to review the order.

7.7 In the case of an order of specified duration:-

- (a) the duration of the order cannot be extended after the order has ceased to apply; and
- (b) in any event, the power to do so cannot be delegated.

7.8 No formal resolution is required to 'come out of confidence' or go back into public session.

8. Matters from which the Public can be Excluded (Section 90(3) of the Act)

8.1 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 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;*
- (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*
- (o) *information relating to a proposed award recipient before the presentation of an award.*

8.2 In considering whether an order should be made to exclude the public under section 90(2), it is irrelevant that discussion of a matter in public may cause embarrassment to the Council or the Council Committee concerned, or to members or employees of the Council, or cause a loss of confidence in the Council or Council Committee.

8.3 In accordance with Section 91(8) of the Act a Council or 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; or
- 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; or

- the disclosure of the amount or amounts payable by the 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
- 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.

9. Public Access to Minutes

Minutes of a meeting of Council or a Council Committee will be available on Council's website, within five (5) days after the meeting.

10. Use of the Confidentiality Provisions

- 10.1 Any consideration of the use of the confidentiality provisions to exclude the public from the discussion of a particular agenda item at a meeting will require the identification of one (1) or more of the grounds listed within Section 90(3) of the Act (and outlined at clause 8.1 above) and the factual reasons for the application of the ground(s).
- 10.2 Information on 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.
- 10.3 The meeting will not consider a number of agenda items in confidence together. The meeting will determine each item separately and consider the exemptions relevant to each item. Thus the public can be present for the debate on whether any subsequent item should be considered in confidence.
- 10.4 Council Members, former Council Members, Employees and former Employees are prohibited from disclosing information or a document over which there is a Council or Committee confidentiality order under Section 90 of the Act. Such a breach may result in pecuniary or imprisonment penalties.
- 10.5 In all instances, the objective will be to make information and documents publicly available at the earliest possible opportunity once the confidentiality order ceases to exist.
- 10.6 The use of confidentiality provisions will be recorded in the Confidential Items

Register and maintained by the CEO.

11. Review of Confidentiality Orders

- 11.1 A confidentiality order made under Section 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.
- 11.2 Any order that operates for a period exceeding twelve (12) months will be reviewed at least once every year to ascertain 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.
- 11.3 An order will lapse if the time or event specified has been reached or carried out. In this instance, there is no need for Council or the Council Committee to resolve for the confidential order to be lifted. Once the order has lapsed, the minutes and/or documents automatically become public. The CEO will make this information publicly available and include it on the Council's website within a reasonable timeframe, and not more than 90 days after an order has lapsed.
- 11.4 Where an original confidentiality order is about to expire, the CEO will prepare a report to Council making recommendations with respect to each item to be retained in confidence. Each item will be addressed separately and assessed against Section 90(3) and Section 91(7) of the Act. 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.
- 11.5 Council may delegate the power to undertake an annual review to the CEO, but Council cannot delegate the power to apply Sections 90(3) and 91(7) of the Act.
- 11.6 If there is no longer any need for the confidentiality order then the Council or a Council Committee may delegate to the CEO the power to revoke an order made in accordance with Section 91(7) of the Act. Council or a Council Committee may also include in the resolution whether any delegation is given to the CEO to revoke the order and if relevant, any conditions associated with the delegation.

12. Public Access to Documents

- 12.1 The Act requires Council to make available a large number of documents. Many of these are set out within Schedule 5, with other requirements contained in other sections of the Act.
- 12.2 Schedule 5 documents must be published on Council's website. Members of the public may purchase copies of publicly available documents in accordance with Council's Schedule of Fees and Charges.
- 12.3 Requests to access Council and Council Committee documents can be made under the *Freedom of Information Act 1991*. Enquiries in relation to this process

should be directed to Council's Accredited Freedom of Information Officer at info@apc.sa.gov.au.

13. Accountability and Reporting

- 13.1 Information regarding use of the confidentiality provisions by Council and Council Committees must be included in Council's Annual Report.
- 13.2 The Annual Report will include the following information, separately identified for both Council and its Committees:
- (a) Number of occasions each of the provisions of Sections 90(2) and 90(3) were utilised;
 - (b) Number of occasions each of the provisions of Sections 90(2) and 90(3) and Section 91(7) were utilised, expressed as a percentage of total agenda items considered;
 - (c) 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;
 - (d) Number of occasions that information originally declared confidential has subsequently been made publicly available; and
 - (e) Number of occasions that information declared confidential has not been made publicly available and the reason for this in each case.

14. Information or Briefing Sessions

- 14.1 Council or the CEO may facilitate an 'information or briefing session' where more than one member of the Council or Council Committee is invited.
- 14.2 A matter must not be dealt with at an information or briefing session in such a way so as to obtain, or effectively obtain, a decision outside of a formally constituted meeting of Council or Council Committee.
- 14.3 An information or briefing session on a matter that will be included on a council agenda must be open to the public. However the Council or the CEO may order that the information or briefing session be closed to the public if the matter listed for discussion falls within the confidentiality provisions listed in section 90(3) of the Act.
- 14.4 Whether or not an information or briefing session has been open to the public, the following information must be published as soon as practicable after the holding of the session:
- The place, date and time of the session
 - The matter discussed at the session and
 - Whether or not the session was open to the public.

15 Attendance at Information or Briefing Sessions Electronically

15.1 Members of the Council or a Council Committee may participate in an information or briefing session by electronic means (an electronic information or briefing session).

15.2 A member of the Council or Council Committee participating in electronic information or briefing session is taken to be present at the information or briefing session provided that the member:

- (a) can hear all other members present at the information or briefing session; and
- (b) can be heard by all other members present at the information or briefing session.

15.3 Where:

(a) a Council or Committee member is to participate in an information or briefing session by electronic means; and

(b) the electronic means has the functionality to allow the member to participate in electronic information or briefing session by being heard but not seen or by being both seen and heard; and

(c) the electronic means of the Council has the functionality to allow the council member to be heard but not seen or to be both seen and heard, the member must participate by being both seen and heard.15.4 Council will make available to the public a live stream of any electronic information or briefing session which must be conducted in a place open to the public so that members of the public can hear the discussions between all persons participating in the information or briefing session. The live stream will be published on a website determined by the Chief Executive Officer, provided that this requirement will not apply to any part of the electronic information or briefing session that has been closed to the public.

16. Complaints

16.1 Council has established procedures for the review of decisions under section 27 of the Act for:

- Council and its Committees
- Employees of the Council and
- Other persons acting on behalf of the Council.

16.2 Should a person be aggrieved about public access to either a meeting or a document, they are encouraged to firstly raise their question or complaint in writing to the Chief Executive Officer, who will provide a full explanation of the

application of confidentiality provisions. It is anticipated that most, if not all, questions or complaints will be resolved through this manner.

16.3 Should this not resolve the matter, the aggrieved person may lodge an application for review of that decision under Council's *Internal Review of Council Decisions Policy*. This policy is available on Council's website at www.apc.sa.gov.au.

16.3 Additionally, any aggrieved person may also lodge a complaint with the Office of Public Integrity or the Ombudsman, who may carry out an investigation.

17. Related Documents

Annual Report

Code of Practice – Meeting Procedures

Complaints Handling Policy

Internal Review of Council Decisions Policy

Schedule of Fees and Charges

18. Records Management

All documents relating to this Code will be registered in Council's Record Management System and remain confidential where identified.

19. Document Review

This Code of Practice must be reviewed within twelve (12) months of the conclusion of a periodic election. Council may, at any time and in accordance with section 92 of the Act, alter the Code of Practice.

20. References

Freedom of Information Act 1991

Local Government Act 1999

Local Government (Procedures at Meetings) Regulations 2013

21. Further Information

Members of the public may inspect this Code free of charge on Council's website at

www.apc.sa.gov.au

On payment of a fee, a copy of this Code may be obtained.

Any queries in relation to this Code must be in writing and directed to the General Manager – Governance and Executive Office.