

# NARACOORTE LUCINDALE COUNCIL

## CODE OF PRACTICE

19

## ACCESS TO COUNCIL AND COMMITTEE MEETINGS AND ASSOCIATED DOCUMENTS (section 92 Code of Practice)

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<b>RESPONSIBLE OFFICER:</b>	Chief Executive Officer
<b>LEGISLATION AND REFERENCES:</b>	<i>Local Government Act 1999, Chapter 6 – Meetings, Parts 3, 4 and 5</i>
<b>COUNCIL STRATEGIC PLAN:</b>	<b><u>Theme 5 – Progressive Leadership</u></b> A well led and managed district supported by an ethical approach to managing infrastructure through the delivery of projects and services to the community <b><u>Outcome</u></b> Effective community communication and engagement Organisational excellence

### INTRODUCTION

This Code sets out Council's commitment to provide public access to Council and Council committee meetings and documents ~~and provides guidance on Council's use of informal gatherings.~~

References to a committee refers to committees established by Council under section 41 of the Local Government Act 1999.

References to Council's website refer to [www.naracoortelucindale.sa.gov.au](http://www.naracoortelucindale.sa.gov.au)

This Code of Practice and Policy complies with:

- ~~section 90 of the Local Government Act which states that Council may only hold an informal gathering or discussion if the council has adopted a policy on the holding of informal gatherings or discussions and~~
- section 92 of the Local Government Act, which states that Council must prepare and adopt a code of practice to govern public access to meetings, documents and minutes of council and committee meetings.

### PUBLIC ACCESS TO THE AGENDA FOR COUNCIL AND COMMITTEE MEETINGS

1. At least three clear days before the Council or Committee meeting (unless it is a special meeting) the Chief Executive Officer must give written notice of the meeting to all members setting out the date, time and place of the meeting. The notice must contain or be accompanied by the agenda for the meeting.

*'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, eg notice is given on a Thursday for a following Monday meeting, the clear days are Friday, Saturday and Sunday.*

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2. The notice and agenda will be placed on public display at each Council office open to the public and on Council's website.
3. Items listed on the agenda will be described accurately and in reasonable detail.
4. The notice and agenda will be kept on public display and continue to be published on Council's website until the completion of the relevant meeting.
5. If requested, 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 attending the meeting.
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 "Fees and Charges Guide".
7. Where the Chief Executive Officer (after consultation with the Mayor, 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 section 83(5) (Council) and section 87(10) (Committee) of the Act.)

All documents relating to items being recommended to Council or a Committee for consideration in confidence will be circulated to Elected Members and Committee members separately from other agenda documents.

### PUBLIC ACCESS TO COUNCIL AND COMMITTEE MEETINGS

1. Council and Committee meetings are open to the public and attendance is encouraged, except where the Council (or the Committee) believes it is necessary in the broader community interest to exclude the public from the discussion (and, if necessary, decision) of a particular matter.
2. The public will only be excluded when considered proper and necessary i.e. the need for confidentiality outweighs the principle of open decision-making.
3. Council encourages public attendance at meetings through public notification of meetings. Meetings are generally advertised in the local newspaper each month and listed on Council's website. All meetings are held at the Naracoorte Council Chamber, DeGaris Place, Naracoorte unless otherwise specified. The date and time of meetings are accurate at the time of advertising, however on occasions meetings may change.

### PROCESS TO EXCLUDE THE PUBLIC FROM A MEETING

In limited circumstances Council or a Committee may order that the public be excluded from a meeting where the Council or Committee considers it necessary and appropriate to close the meeting to the public in order to receive, discuss or consider in confidence any information or matter that is of a kind listed in section 90(3) of the Act. Section 90(2) of the Act provides Councils and Committees with

discretion to exclude the public from a meeting to discuss information and matters of a kind listed in section 90(3) in confidence.

The steps to be followed are:

1. Before a meeting orders 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 the Council or the Committee deals with that particular matter.

If this occurs, then the public must leave the meeting 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 or a member of a Committee.

2. Once Council or a 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 a person from the room if he or she fails to leave on request.

3. Once discussion on that particular matter is concluded, the public will be permitted to re-enter the meeting.
4. 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.
5. Council or the 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.

#### **MATTERS FROM WHICH THE PUBLIC CAN BE EXCLUDED FROM A MEETING**

In accordance with the requirements of section 90(3) of the Act, Council, or a Committee, may only 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.*

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 section 90(2), it is irrelevant that discussion of a matter in public may (section 90(4)):

- cause embarrassment to the Council or Committee concerned, or to members or employees of the Council; or
- cause a loss of confidence in the Council or Committee; or
- involve discussion of a matter that is controversial within the council area; or
- make the council susceptible to adverse criticism.

If a decision to exclude the public is taken, the Council or the Committee is required to make a note in the minutes of the making of the order and specify:

- the grounds on which the order was made; and
- 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
- 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.

### USE OF THE CONFIDENTIALITY PROVISIONS

Any consideration of the use of the confidentiality provisions to exclude the public from the meeting for a particular matter 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 “MATTERS FROM WHICH THE PUBLIC CAN BE EXCLUDED FROM A MEETING” above.

The policy approach of 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 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.
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 the minutes) remain confidential. In determining this, the meeting will have regard to the provisions of section 91 and in particular section 91(8) which details when a Council must not order that a document remain confidential.

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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. The Council or Committee will not consider a number of agenda items “in confidence” together i.e. 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 or Committee 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 or Committee order and the associated implications.
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

### **PUBLIC ACCESS TO MINUTES**

Minutes of a meeting of Council or a Committee will be publicly available, including on Council’s website, within 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 many Council documents are available on Council’s website.

The Council or the 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 Committee can only resolve to keep minutes and/or documents confidential under section 91(7) if they were considered in confidence pursuant to sections 90(2) and 90(3).

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In accordance with section 91(8) the Council or the 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 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
- 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 is required which includes (section 91(9)):

- the grounds for confidentiality; and
- 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.

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 accredited Freedom of Information Officer

Information on accessing Council documents via a Freedom of Information request are available on Council's website.

### REVIEW OF CONFIDENTIALITY ORDERS

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.

An order will lapse if the time or event specified has been reached or carried out.

In the case of an order with a specified duration the duration of the order cannot be extended after the order has ceased to apply and the extension of the duration of the order cannot be delegated by the relevant council or council committee.

Once the order expires or ceases to apply in relation to a document or part of a document, within a reasonable time, the council must make the document or part of the document (as the case requires) available for inspection at its principal office and on its website.

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A review of the reports or documents that were considered under the provision of sections 90(3) and 91(7) of the Act will be conducted at least once during each quarter of the year to ensure that items are released in accordance with the resolution of Council or the Committee, when the confidential provision no longer applies.

A report will be provided to the Council meeting following the release of reports and documents listing the matters that the released reports and documents relate to.

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 office 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 sections 90(3) and 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.

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 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 may delegate to an employee of the Council the power to revoke an order made in accordance with section 91(7) of the Act. The 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.

### **ACCOUNTABILITY AND REPORTING TO THE COMMUNITY**

A report on the use of sections 90(2) and 91(7) by the Council and Committees must be included in the annual report of a Council as required by Schedule 4 of the Act. The reporting should include the following information, separately identified for both Council and Committees:

1. Number of occasions each of the provisions of sections 90(2) and 90(3) were utilised
2. Number of occasions each of the provisions of sections 90(2), 90(3) and 91(7) were utilised, expressed as a percentage of total agenda items considered
3. 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 3 separate occasions
4. Number of occasions that information originally declared confidential has subsequently been made publicly available and

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5. Number of occasions that information declared confidential has not been made publicly available and the reason for this in each case.

A Confidential Items Register is maintained that includes the item title, nature of confidentiality, motion regarding the release of document, date released, last review date and next review date. A copy of the Confidential Items Register is available on Council's website.

The public may also inspect the Confidential Items Register, without charge, at the principal office of the Council during office hours, and may obtain a copy for a fee fixed by Council.

### PUBLIC CONSULTATION

Before Council adopts, alters or substitutes this code of practice under section 92 of the Act it must:

- a) make 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 make a copy available on its website and
- b) follow the relevant steps set out in its public consultation policy.

### LEGISLATION AND OTHER RELEVANT DOCUMENTS

- Code of Practice Council and Committee Meeting Procedures
- Informal Gathering Policy
- Public Consultation and Community Engagement Policy
- **Customer Service and Complaint Handling Policy**
- ~~Complaint Handling Policy~~
- ~~Complaint Handling and Review of Decision Procedure~~
- Grievance / Review of Decision Policy
- Local Government Act 1999

### POLICY ENQUIRIES

All queries about this policy should be directed to the Chief Executive Officer ~~or relevant Director or Manager~~.

### REVIEW & EVALUATION

Council 'must, within 12 months after the conclusion of each periodic election, review the operation of its code of practice'. Council also may at any time alter its code of practice, or substitute a new code of practice.

### AVAILABILITY

The public may inspect a copy of this policy, without charge, at the Council's Naracoorte and Lucindale

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offices during office hours, and may obtain a copy for a fee fixed by Council.

The Policy is also available on Council's website [www.naracoortelucindale.sa.gov.au](http://www.naracoortelucindale.sa.gov.au)

### ADOPTION AND AMENDMENT HISTORY

<i>Date</i>	<i>Authorised by</i>	<i>Minute Reference</i>
2023		Next review
23 April 2019	Council	Resolution ..../19
November 2016	Council	Resolution 116/17
22 March 2016	Council	Resolution 252/16
28 April 2015	Council	Resolution 281/15
24 November 2009	Council	RE-WRITTEN - Resolution 220/10
28 July 2009	Council	REVIEWED & RE-FORMATTED - Resolution 34/10
25 September 2007	Council	REVIEWED - Resolution 86/08
25 July 2006	Council	REVIEWED - Resolution 17/07
26 July 2005	Council	REVIEWED - Resolution 11/06
27 July 2004	Council	REVIEWED - Resolution 19/05
22 October 2002	Council	REVIEWED - Resolution
24 October 2000	Council	ADOPTED - Resolution