



Code Number:	1.2
Code Name:	Code of Practice for Access to Council & Committee Meetings and Council Documents
Classification:	Public – Council Code of Practice
Adopted:	26 July 2016
Frequency of Review:	Biennial and following each Local Government Council Election
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Responsible Officer(s):	Governance Officer Chief Executive Officer
Policy and Code of Practice Manual File Ref:	CC10/2601
Council File Reference:	CR16/19253
Legislation Authority:	Local Government Act 1999 (the Act), S92 Local Government (Procedures at Meetings) Regulations 2013 (the Regulations)
Related Policies and Codes:	Code of Practice for Council and Committee Meeting Procedures Internal Review of a Council Decision Policy Informal Gatherings Policy
Related Procedures:	N/A

1. INTRODUCTION

- 1.1 The Town of Gawler (the 'Council') supports the principle that the procedures to be observed at 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 the Council.
- 1.2 This Code sets out the policy of Council for access to meetings and documents and includes information relating to:
- 1.2.1 access to the agenda for meetings;
 - 1.2.2 public access to meetings;
 - 1.2.3 the process to exclude the public from meetings;

- 1.2.4 matters for which the Council, or a Council Committee, can order that the public be excluded;
- 1.2.5 how the Council will approach the use of the confidentiality provisions in the Local Government Act 1999 (the Act);
- 1.2.6 public access to documents, including minutes;
- 1.2.7 review of confidentiality orders;
- 1.2.8 accountability and reporting to the community, and the availability of the code; and
- 1.2.9 grievances about the use of the code by Council.

2. PUBLIC ACCESS TO THE AGENDA AND MINUTES FOR MEETINGS

- 2.1 At least three (3) clear days¹ before the 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/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.
- 2.2 The notice of meeting and agenda will be placed on public display at the principal office of the Council at 89 Murray Street, Gawler and on Council's website www.gawler.sa.gov.au.
- 2.3 Items listed on the agenda will be described accurately and in reasonable detail.
- 2.4 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.
- 2.5 Copies of the agenda documents and non-confidential reports that are to be considered at the meeting will be made available to members of the public in attendance. A copy will also be available for public inspection as soon as practicable after copies are supplied to the Members of Council at the principal office of the Council at 89 Murray Street, Gawler
- 2.6 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 Council's schedule of fees and charges.

¹ '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, if the notice was provided after 5pm, the following day as well) and the day of the meeting, eg notice is given on a Thursday at Midday for a following Monday meeting, the clear days are Friday, Saturday and Sunday.

- 2.7 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 section 90(3) of the Act will be specified (see sections 83(5) (Council) and 87(10) (Committee) of the Act).
- 2.8 Minutes of a meeting of Council or a Council Committee will be publicly available within 5 days after the meeting.

3. PUBLIC ACCESS TO MEETINGS

- 3.1 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 the public from the discussion (and, if necessary, decision) of a particular matter.
- 3.2 The public will only be excluded when considered proper and necessary i.e. the need for confidentiality outweighs the principle of open decision-making.
- 3.3 Council encourages public attendance at meetings of the Council and Committees through public notification of meetings by Public Notice on Council's notice board indicating the date and time of the next meeting and the Council Diary published on the Council Website www.gawler.sa.gov.au.
- 3.4 The Council's Code of Practice for Council and Committee Meeting Procedures also contains provisions relevant to public participation in Council and Committee meetings.
- 3.5 Section 90(8) of the Act allows informal gatherings to be held provided that the discussion does not lead to a decision, or effectively obtain a decision, on a matter that would ordinarily be dealt with at a Council meeting. Council's Informal Gatherings Policy reflects the intention of the legislation for informal gatherings to be used for briefing, planning and educational sessions and is aimed at avoiding any perception that informal gatherings will be used to build consensus for Council agenda items

4. MATTERS FROM WHICH THE PUBLIC CAN BE EXCLUDED FROM MEETINGS

- 4.1 In accordance with the requirements of section 90(3) of the Act, Council, or a Council Committee, may order that the public be excluded in the following circumstances:
- (a) *information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead);*
 - (b) *information the disclosure of which—*
 - (i) *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 relevant to the review of a determination of a Council under the Freedom of Information Act 1991.*

- 4.2 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. Information regarding personal affairs will only be considered in the absence of the public if the disclosure of the information would be unreasonable.
- 4.3 Certain grounds of confidence specifically require the Council to be satisfied that the disclosure of the relevant information would, on balance, be contrary to the public interest.
- 4.4 In considering whether an order should be made under section 90(2), it is irrelevant that discussion of a matter in public may (as per s.90(4):
- 4.4.1 cause embarrassment to the Council or Committee concerned, or to members or employees of the Council;
 - 4.4.2 cause a loss of confidence in the Council or Committee;
 - 4.4.3 involve discussion of a matter that is controversial within the council area; or
 - 4.4.4 make the council susceptible to adverse criticism.

5. USE OF THE CONFIDENTIALITY PROVISIONS AND PUBLIC EXCLUSION FROM MEETINGS

- 5.1 The principle of open and accountable government is strongly supported.
- 5.2 The practice of the Town of Gawler is to deal with agenda items in the order listed in the agenda and for the convenience of the public present at a meeting, where it is resolved to consider a matter in confidence, this matter may be deferred until all other business has been dealt with rather than ask the public to leave the room and wait for however long it takes until the matter is concluded and then allow the public to return to the meeting room with the possibility of the same process being repeated for a subsequent matter.
- 5.3 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.
- 5.4 Any consideration of the use of the confidentiality provisions to exclude the public from the discussion of a particular matter at a meeting will require the identification of one or more of the grounds listed within section 90(3) of the Act and the factual reasons for the relevance and application of the ground(s) in the circumstances. These are listed in paragraph 4.1 of this Code.

- 5.5 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. 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 (example if the circumstances concerning the payment of their rates are being discussed). If an order is made to exclude the public, the Council or the Council Committee is required to make a note in the minutes specifying:
- 5.5.1 the grounds on which the order was made;
 - 5.5.2 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
 - 5.5.3 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.
- 5.6 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.
- 5.7 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) 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 section 91(7) of the Act. In determining the need to keep a document associated with the agenda items confidential, the meeting will have regard to the provisions of section 91 and in particular in accordance with section 91(8) the Council or the Council Committee must not make an order to prevent:
- 5.7.1 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
 - 5.7.2 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
 - 5.7.3 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

- 5.7.4 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.
- 5.8 Where keeping a document confidential is considered proper and necessary, a resolution to this effect is required which shall include:
- 5.8.1 the grounds for confidentiality; and
- 5.8.2 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;
- 5.8.3 (if applicable) whether the power to revoke the order will be delegated to an employee of the Council. [s.91(9)]
- 5.9 Once discussion on that particular matter is concluded, the public are then permitted to re-enter the meeting. The decision of the meeting in relation to this matter will be made publicly known unless the Council has resolved to order that some information remain confidential. Details relating to any order to keep information or a document confidential in accordance with section 91(7) are also to be made known.
- 5.10 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. The Council 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.
- 5.11 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.
- 5.12 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.

6. REVIEW OF CONFIDENTIALITY ORDERS

- 6.1 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. In any event, any order that operates for a period exceeding 12 months must be reviewed at least once in every year.
- 6.2 If an order has a specified duration or circumstances in which the order will cease to apply, the 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. Council cannot extend an order if the specified duration has passed.

- 6.3 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 every 6 months. Orders that operate for more than 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.
- 6.4 The conduct of such reviews 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 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.
- 6.5 A Council may resolve to exclude the public from a meeting to discuss and undertake consideration of the recommendations arising from the review in confidence, subject to the application of the relevant ground under section 90(3) of the Act.
- 6.6 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 section 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.

7. ACCOUNTABILITY AND REPORTING TO THE COMMUNITY

- 7.1 A report on the use of sections 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:
- 7.1.1 Number of occasions each of the provisions of sections 90(2) and 90(3) were utilised;
- 7.1.2 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;
- 7.1.3 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;
- 7.1.4 Number of occasions that information originally declared confidential has subsequently been made publicly available; and
- 7.1.5 Number of occasions that information declared confidential has not been made publicly available and the reason for this in each case.

8. PREPARATION OF CONFIDENTIAL REPORTS FOR MEETINGS

- 8.1 In accordance with Sections 83(5) and 84(6) of the Act – the Chief Executive Officer considers that an item may be considered in confidence by the Council on the grounds set out in the report recommendations and therefore will remain confidential until the Council resolves how the item is to be classified.
- 8.2 A template confidential report is used by report writers when generating a confidential report for approval by the CEO.

9. PUBLIC ACCESS TO DOCUMENTS

- 9.1 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 its website for public access.
- 9.2 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.
- 9.3 The Council or the Council 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).
- 9.4 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.
- 9.5 A register outlining the matters currently subject to document confidentiality orders is made available on the Council's website, and can be viewed at the principal office of the Council.

10. GRIEVANCE

- 10.1 Council has established procedures for the review of decisions under section 270 of the Act for:
 - 10.1.1 Council, and its Committees;
 - 10.1.2 employees of the Council; and
 - 10.1.3 other persons acting on behalf of the Council.
- 10.2 Should a person be aggrieved about public access to either a meeting or a document then they can lodge an application for review of that decision under the procedures established by Council. The Policy and Procedures are available on Council's website www.qawler.sa.gov.au.

11. REVIEW AND EVALUATION

The effectiveness of this Code will be reviewed on a biennial basis.

The Chief Executive Officer will report to Council on the outcome of the evaluation and if relevant make recommendations for amendments, alteration or substitution of a new Code.

The Code will not be altered or substituted so as to affect a process already commenced.

The Code will be reviewed after each general election of Council.

12. FURTHER INFORMATION

Further information about this Code can be obtained by:-

Telephone: 8522 9211
Fax: 8522 9212
Email: council@gawler.sa.gov.au
Appointment: Town Hall, 89 – 91 Murray Street, Gawler
Letter: PO Box 130, Gawler SA 5118

13. AVAILABILITY OF CODE

The Code is available for inspection during ordinary business hours at the Council principal office, Gawler Town Hall or Library Council Offices, 89 – 91 Murray Street, Gawler or is available on the Council website at www.gawler.sa.gov.au.

A copy of this Code will be provided to interested parties upon request, for a fee as contained in the Register of Fees and Charges.