

THE BAROSSA COUNCIL

CODE OF PRACTICE FOR ACCESS TO COUNCIL AND COMMITTEE MEETINGS AND ASSOCIATED DOCUMENTS



Corporate Plan Link:	6.2 Ensure that Council's policy and process frameworks are based on principles of sound governance and meet legislative requirements.		
Policy Owner:	Chief Executive Officer	Previous Approval Date(s):	20/08/2013 21/07/2015 10/06/2015 20/08/2019
Document Control Officer:	Governance Advisor	Current Approval Date:	21/04/2020
HPE Content Manager Ref:	13/34031*	Next Review Date:	Within 12 months of periodic election

1. Purpose

- 1.1 The Barossa Council ("Council") supports the principle that the processes 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 Council.
- 1.2 This Code is prepared pursuant to Section 92 of the *Local Government Act 1999* which requires Council to prepare a Code of Practice relating to the principles, policies and processes for public access to Council and Committee meetings, and associated documents and minutes.

2. Scope

- 2.1. This Code sets out Council's position 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 Council Committee, can order 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;
 - complaints about the use of the Code by Council; and
 - the availability of the Code.
- 2.2 This Code does not bind Council's subsidiary as it is bound by its own Charter.
- 2.3 On 15 March 2020, the Chief Executive of the South Australian Department for Health and Wellbeing, pursuant to section 87 of the *South Australian Public Health Act 2011*, declared

	Approval date: 21/04/2020	Review date: Within 12 months of periodic election	Approved by: Council Council Minute Book Ref: 2018-22/102	Ref: 13/34031*	Page 1 of 12
Uncontrolled once removed from webpage or Council's Record Management System. Before using printed copy please verify that it is the current version. © The Barossa Council 2020					

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 South Australian State Co-ordinator declared, pursuant to section 23 of the *Emergency Management Act 2004*, that a Major Emergency is occurring in respect of the outbreak of COVID-19 within South Australia.

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

- provides that a Council is not required to adopt any provision in a code of practice that would prevent or inhibit Elected Members from participating in Council meetings or Council Committee meetings by electronic means;
- provides that Elected 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 Elected Members from meeting by electronic means;
- 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, alternations 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.

2.4 For the period that Notice No 1 has effect (as provided for in Notice No 1), this Code is altered in line with Notice No 1 as set out in this Code where indicated, and apply to all meetings of Council, and Council Committees where applicable. The alterations have effect notwithstanding any other provision in this Code to the contrary.

3. Definitions	
Agenda	The Agenda is a list of items of business to be considered at a meeting, it does not include, or require the inclusion of reports and attachments, only that they be described with reasonable particularity and accuracy. However, copies of any documents or reports that are to be considered at the meeting (so far as reasonably practicable) shall be provided to the members of the Council or Council Committee meeting.
The Act	Local Government Act 1999.
CEO	Chief Executive Officer
Clear days	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 Friday for a following Tuesday meeting, the clear days are Saturday, Sunday and Monday.
Connect or Connected to	Able to hear and/or see the meeting, including via a Live Stream or recording of the meeting.
Council Committee	As defined by Section 41 of the Act.
Council's Principal Office	Located at 43 – 51 Tanunda Road Nuriootpa.
Council Branches / Libraries	Located at: 29 Barossa Valley Way Lyndoch; 130-132 Melrose Street Mt Pleasant; 79-81 Murray Street Tanunda; Town Hall Annex, Sturt Street Angaston.
Council Website	www.barossa.sa.gov.au

Disconnect or Disconnecting	<ul style="list-style-type: none"> ending a telephone connection such that the discussion and voting at the meeting cannot be heard; ending a video conferencing connection such that the discussion and voting at the meeting cannot be seen or heard; logging out of a virtual meeting room or space such that the discussion and voting at the meeting cannot be seen or heard; signing out of a virtual meeting room or space such that the discussion and voting at the meeting cannot be seen or heard; or disconnecting any other electronic means such that the discussion and voting at the meeting cannot be seen or heard.
Informal gatherings	Including but not limited to and in accordance with Section 90(8) of the Act: <ul style="list-style-type: none"> - planning sessions associated with the development of policies and strategies; - briefing or training sessions; - workshops; or - social gatherings to encourage informal communication between Elected Members or between Elected Members and staff. Refer to Council's Informal Gatherings Policy.
LGA Handbook	Local Government Association of South Australia – 'Meeting Procedures – Handbook for Council Members'.
Live Stream	The transmission of audio and/or video from a meeting at the time that the meeting is occurring.
Meeting – Council	Any meeting as defined in Sections 81 and 82 of the Act.
Meeting – Committee	Any meeting as defined in Section 87 of the Act but excluding the Barossa Assessment Panel established under the <i>Planning Development and Infrastructure Act 2016</i> .
Notice No 1	The Notice Pursuant to Section 302(B) of the Local Government Act 1999 – Public Health Emergency – Electronic Participation in Council Meetings (No 1) issued by the Minister for Transport, Infrastructure and Local Government and gazetted on Tuesday 31 March 2020.
Personal Affairs	Including but not limited to 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.
Regulatory activity	An activity which involves the making or enforcement of by-laws, orders, standards or other controls under the Act or another act.
The Regulations	Local Government (Procedures at Meetings) Regulations 2013.

4. Policy Statement

4.1 Public Access to the Agenda

4.1.1 This clause 4.1 applies to meetings of Council and those Council Committees which serve a Regulatory function and any other Committee to which Council has determined it should apply (Appendix One lists those Council Committees to which this clause will apply).

4.1.2 The community can gain information about the decision making governance of Council through the business matters listed on an agenda for Council and Council Committee meetings and the reports related to those matters, with the exception of any matters listed on an agenda by the CEO or authorised delegate seeking consideration in confidence.

4.1.3 At least three (3) clear days 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 or

	Approval date: 21/04/2020	Review date: Within 12 months of periodic election	Approved by: Council Council Minute Book Ref: 2018-22/102	Ref: 13/34031*	Page 3 of 12
Uncontrolled once removed from webpage or Council's Record Management System. Before using printed copy please verify that it is the current version. © The Barossa Council 2020					

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.

- 4.1.4 Subject to clause 4.1.8, the notice of the meeting and agenda will be placed on public display at the Principal Office of the Council and on Council's website. Copies and internet access will also be available in the Council Principal Office at Nuriootpa. Access to the meeting agenda will be provided at Council Branches through electronic means, however the notice provided at the Council Principal Office is that which is deemed to satisfy the Act.
- 4.1.5 Items listed on the agenda will be described accurately and in reasonable detail, except for those items listed which are recommended to be considered in confidence, and subject to clause 4.1.8 will be kept on public display and continued to be published on Council's website until the completion of the relevant Council or Council Committee meeting.
- 4.1.6 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 *Fees and Charges Register*. Alternatively, they may download these documents privately without charge, from Council's website at www.barossa.sa.gov.au.
- 4.1.7 Where the CEO or an authorised delegate 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 the confidentiality provisions in Section 90(3) of the Act will be specified.
- 4.1.8 For the period of the operation of Notice No 1, the requirement that the Chief Executive Officer give notice to the public of the times and places of Council and Committee meetings by placing the notice of meeting and agenda on public display at each office of the Council that is open to the public for the general administration of Council business within its area is **suspended**.
- 4.1.9 For the period of the operation of Notice No 1:
- (a) the requirement that the Chief Executive Officer must ensure that a reasonable number of copies of any document or report supplied to Elected Members for consideration at a Council or Committee meeting are available for inspection by members of the public at the principal office of Council or at the meeting is **suspended**.
 - (b) the Chief Executive Officer (or a person nominated in writing by the Chief Executive Officer) will ensure that any document or report supplied to Elected Members for consideration at a Council or Committee meeting is available for inspection by members of the public—
 - (i) in the case of a document or report supplied to Elected Members before the meeting – on Council's website as soon as practicable after the time when the document or report is supplied to Elected Members; or
 - (ii) in the case of a document or report supplied to Elected Members at the meeting – on Council's website as soon as practicable after the time when the document or report is supplied to Elected Members.

4.2 Public Access to Meetings

- 4.2.1 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, the decision) of a particular matter.

	Approval date: 21/04/2020	Review date: Within 12 months of periodic election	Approved by: Council Council Minute Book Ref: 2018-22/102	Ref: 13/34031*	Page 4 of 12
Uncontrolled once removed from webpage or Council's Record Management System. Before using printed copy please verify that it is the current version. © The Barossa Council 2020					

- 4.2.2 The public will only be excluded when the need for confidentiality pursuant to Section 90(2) of the Act outweighs the principle of open decision-making.
- 4.2.3 Council meeting dates and times, and the schedule or frequency of Council Committee meetings are available on Council's website.
- 4.2.4 For the period of operation of Notice No 1, a Council meeting will be taken to be conducted in a place open to the public even if one (1) or more Elected 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 Council's website and ensures that members of the public can hear the discussion between all Elected Members present at the meeting; 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 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 Council's website and ensures that members of the public can hear the discussion between all Elected 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 Council's website, the steps taken to comply.

- 4.2.5 Pursuant to section 90(7a) of the Act, a Council Committee meeting will be taken to be conducted in a place open to the public for the purposes of section 90 even if 1 (one) or more Committee members participate in the meeting by telephone or other electronic means in accordance with any procedures prescribed by the Regulations or determined by Council under section 89 (provided that members of the public can hear the discussion between all Committee members).
- 4.2.6 Elected Members, a Committee and staff members may 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. Council's Informal Gatherings Policy governs Elected Member and Staff behaviour and process in these situations.

4.3 Process to Exclude the Public from a Meeting

- 4.3.1 For the convenience of the public present at a Council or Council Committee meeting, where it is resolved to consider a matter in confidence, this matter may be deferred until all other business has been considered. This avoids asking the public to leave the room and having them wait until the matter is concluded and then allowing them to return with the possibility of the same process being repeated for a subsequent matter.
- 4.3.2 Before the Mayor, or the Chairperson as the case may be, of 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

	Approval date: 21/04/2020	Review date: Within 12 months of periodic election	Approved by: Council Council Minute Book Ref: 2018-22/102	Ref: 13/34031*	Page 5 of 12
Uncontrolled once removed from webpage or Council's Record Management System. Before using printed copy please verify that it is the current version. © The Barossa Council 2020					

(including staff), unless exempted by being named in the resolution as entitled to remain, are required to leave the room. In this clause, a member of the public does not include an Elected Member.

4.3.3 For the period of operation of Notice No 1, 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) of the Act.

4.3.4 Once Council or a Council Committee has made the order, it is an offence for a person, who knows 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 the 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 Police attend to remove the person.

Further, for the period of operation of Notice No 1, it is also an offence for a person, knowing that an order under section 90(2) of the Act is in force, to Connect to a meeting of the Council or Council Committee by electronic means, or fail to Disconnect from a meeting of the Council or Council Committee.

4.3.4 Once the discussion surrounding the matter has concluded, the public are permitted to re-enter or re-Connect 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.

4.4 Matters from which the Public can be Excluded [Section 90(3) of the Act]

4.4.1 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) (as defined in clause 3 above);
- (b) information the disclosure of which—
 - (i) could reasonably be expected to confer a commercial advantage on a person with whom Council is conducting, or proposing to conduct, business, or to prejudice the commercial position of 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 Council, Elected Members or employees of 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 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 Council or a Council Committee believes on reasonable grounds will take place, involving Council or an employee of 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 Council, or a person engaged by 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 Council under the *Freedom of Information Act 1991*.

4.4.2 When considering whether a confidential order should be made, it is irrelevant that discussion of a matter in public may:

- (a) cause embarrassment to the Council or Committee concerned, or to Elected Members or Employees of the Council; or
- (b) cause a loss of confidence in the Council or Committee; or
- (c) involve discussion of a matter that is controversial within the Council area; or
- (d) make the Council susceptible to adverse criticism.

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

- (a) the grounds on which the order was made; and
- (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.

4.5 Public Access to Minutes

	Approval date: 21/04/2020	Review date: Within 12 months of periodic election	Approved by: Council Council Minute Book Ref: 2018-22/102	Ref: 13/34031*	Page 7 of 12
Uncontrolled once removed from webpage or Council's Record Management System. Before using printed copy please verify that it is the current version. © The Barossa Council 2020					

- 4.5.1 Minutes of a meeting of Council or a Council Committee will be available at Council's Principal Office and on its website within five (5) days after the meeting.
- 4.5.2 For the period of the operation of Notice No 1, a copy of the minutes of a Council or Committee meeting must be placed on public display on Council's website within five (5) days after the meeting and kept on display for a period of one (1) month. Further, the requirement for the minutes to be available at Council's Principal Office is **suspended**.

4.6 Use of the Confidentiality Provisions

- 4.6.1 Any consideration of the use of the confidentiality provisions to exclude the public from the discussion of an agenda item at a meeting will require the identification of all relevant grounds listed within Section 90(3) of the Act (sub-clause 4.4.1 of this Code) and the factual reasons for the application of the ground(s) weighted against the principles of open decision making.
- 4.6.2 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.
- 4.6.3 The meeting will not consider a number of agenda items *in confidence* together. It 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*.
- 4.6.4 Once the confidential discussion of the matter is concluded, the meeting will then consider if it is necessary to make an order that a document, report, attachment, minute or other associated information in connection with the agenda item shall remain confidential. In determining this, the meeting will have regard to the provisions of Section 91 and in particular Section 91 (8) of the Act which details when a Council must not order that a document remain confidential [see sub-clause 4.7.3 below].
- 4.6.5 If the meeting determines that it is proper and necessary to keep a document, report, attachment, minute or other associated information, 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.
- 4.6.7 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 twelve (12) months, then this order must be reviewed every twelve (12) months from the date it was made and consideration given to delegating to the CEO or another relevant delegate the authority to review the order. This along with the making of the order pursuant to Section 90(2) and the grounds pursuant to Section 90(3) of the Act on which it was made are also to be recorded in the minutes.
- 4.6.8 In the case of an order of specified duration, the duration of the order cannot be extended after the order has ceased to apply and the power to do so cannot be delegated.
- 4.6.9 No formal resolution is required to come *out of confidence* and go back into public session.
- 4.6.10 Elected Members, former Members, Council Employees and former Council Employees are all prohibited from disclosing information or a document over which there is a Council or Committee confidentiality order under Section 90 of the Act. To breach such an order can result in pecuniary or imprisonment penalties.

	Approval date: 21/04/2020	Review date: Within 12 months of periodic election	Approved by: Council Council Minute Book Ref: 2018-22/102	Ref: 13/34031*	Page 8 of 12
Uncontrolled once removed from webpage or Council's Record Management System. Before using printed copy please verify that it is the current version. © The Barossa Council 2020					

- 4.6.11 In all cases the objective is that the information be made publicly available at the earliest possible opportunity once the confidential order ceases to exist and that the community is informed of any Council order and the associated implications.
- 4.6.12 Where a person provides information to the Council or Committee and requests that it be kept confidential, the Council or Committee is not able to even consider this request unless the matter is one that falls within sub-clause 4.4.1 above.
- 4.6.13 The use of all confidentiality provisions will be recorded in the Confidential Items Register and maintained by the CEO.

4.7 Public Access to Documents

- 4.7.1 Various documents required to be made publicly accessible pursuant to the Act can be viewed electronically at Council's Principal Office and, where available, Council branches, during ordinary business hours, and copies can be obtained at those venues upon payment of a fixed fee in accordance with Council's *Fees and Charges Register*. Many of these documents are also available for inspection on Council's website, and may be provided electronically upon request.
- 4.7.2 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 necessary in the broader community interest outlined in sub-clause 4.4 above.
- 4.7.3 Council or the Council Committee must not make an order to prevent:
- (a) the disclosure of the remuneration or conditions of service of a Council employee after the remuneration or conditions have been set or determined; or
 - (b) 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 Council as to why a successful tenderer has been selected; or
 - (c) the disclosure of the amount or amounts payable by Council under a contract for the supply of goods or the provision of services (including the carrying out of works) to, or for the benefit of, Council after the contract has been entered into by all parties to the contract; or
 - (d) the disclosure of the identity of land that has been acquired or disposed of by Council, or of any reasons adopted by Council as to why land has been acquired or disposed of by Council.
- 4.7.4 Requests to access Council and Council Committee documents can be made under the *Freedom of Information Act 1991*. Enquiries in relation to the process for seeking access to documents held by Council should be directed to Council's Accredited Freedom of Information Officer.

4.8 Review of Confidentiality Orders

- 4.8.1 A confidentiality order made under Section 91(7) of the Act should 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.
- 4.8.2 Any order that operates for a period exceeding twelve (12) months must be reviewed at least once in 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.

	Approval date: 21/04/2020	Review date: Within 12 months of periodic election	Approved by: Council Council Minute Book Ref: 2018-22/102	Ref: 13/34031*	Page 9 of 12
Uncontrolled once removed from webpage or Council's Record Management System. Before using printed copy please verify that it is the current version. © The Barossa Council 2020					

- 4.8.3 If there are any items that require a revised or extended confidentiality order because the original order is about to expire or circumstances have changed, then the reviewing officer (usually the CEO or Director) will prepare a report to Council prior to the expiry date or event trigger about to be reached, 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.
- 4.8.4 Council may delegate the power to undertake an annual review to the CEO or other officer (for matters where the CEO has a conflict of interest), but it cannot delegate the power to apply those matters in which the public can be excluded (Section 90(3) and 91(7) of the Act).
- 4.8.5 An order will lapse if the time or event specified has been reached or carried out. In that case, Council does not need to resolve for the confidential order to be lifted. Once the order has lapsed, the minutes and/or documents automatically become public. Council will make such information publicly available on its website within a reasonable timeframe after it is available for inspection at the Principal Office of Council, and not being more than ninety (90) days after an order has lapsed.
- 4.8.6 Council may resolve to exclude the public from a meeting to discuss and undertake consideration of each of the recommendations arising from the review in confidence, subject to the application of the relevant ground under Section 90(3) of the Act, if those recommendations consider or refer to information or documents that are confidential, pursuant to a confidentiality order. This section must be applied separately to each item and not altogether.
- 4.8.7 If there is no longer any need for the confidentiality order then Council may delegate to the CEO or another officer (for matters where the CEO has a conflict of interest) the power to revoke an order made in accordance with Section 91(7) of the Act. Council or the Council Committee may also include in the resolution whether any delegation is given to the CEO or another officer to revoke the order and if relevant, any conditions associated with the delegation.

4.9. Accountability and Reporting to the Community

- 4.9.1 A report on the use of the confidentiality provisions in Sections 90(2) and 91(7) of the Act by Council and Council Committees will be included in Council's Annual Report as required by Schedule 4 of the Act.
- 4.9.2 The report will include the following information, separately identified for both Council and Committees:
- (a) Number of occasions each of the confidentiality provisions of Sections 90(2) and 90(3) were used;
 - (b) Number of occasions each of the confidentiality provisions of Sections 90(2) and 90(3) and Section 91(7) were used, 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;
 - (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.

4.10 Complaints

- 4.10.1 Should a person be aggrieved about public access to either a meeting or associated document then they should first raise their question or complaint in writing to the Chief Executive Officer - PO Box 867, Nuriootpa SA 5355 - who (in conjunction with the relevant officer who was responsible for the confidential report to Council) will provide an explanation of the application of the confidentiality provisions.
- 4.10.2 Should this not resolve the matter then the aggrieved person may lodge an application for review of that decision under the *Internal Review of Council Decisions Policy* (see also *Internal Review of Council Decisions Process*). This Policy is available on Council's website or from the Principal Office.
- 4.10.3 Additionally, any aggrieved person may also lodge a complaint with the Office of Public Integrity or the Ombudsman or any other relevant oversight body, who may carry out an investigation if it appears that Council or a Council Committee may have acted unreasonably to exclude members of the public from a meeting or prevented access to associated documents.

5. Supporting Process

Confidential Items Register
Register of Released Confidential Items

6. Related Policies and Codes

Internal Review of Council Decisions Policy and Process
Public Consultation Policy
Fees and Charges Register
Informal Gatherings Policy

7. Legislation and References

Freedom of Information Act 1991
Electronic Participation in Council Meetings (No 1) 2020 published in the South Australian Government Gazette on Tuesday, 31 April 2020
Local Government Act 1999
Local Government (Meeting Procedures) Regulations 2013
Local Government (Accountability and Governance) Amendment Act 2015
Local Government Association's Model Code of Practice for Access to Council and Committee Meeting Documents
Local Government Association's Confidentiality Guidelines
Meeting Procedures – Handbook for Council Members

8. Review

This Code shall be reviewed by Council, in consultation with the relevant stakeholders, within 12 months after the conclusion of each periodic election, and as required by legislation or Council need, to ensure that the principle of open government is being applied in a proper manner.

Prior to any alteration or substitution of this Code, Council must make copies available for inspection or purchase at its Principal Office and on its website and follow the relevant process set out in its *Public Consultation Policy* which is also available on Council's website or from the Principal Office. However, noting that for the period of the operation of Notice No 1, the requirement for Council to

	Approval date: 21/04/2020	Review date: Within 12 months of periodic election	Approved by: Council Council Minute Book Ref: 2018-22/102	Ref: 13/34031*	Page 11 of 12
Uncontrolled once removed from webpage or Council's Record Management System. Before using printed copy please verify that it is the current version. © The Barossa Council 2020					

consult with the public prior to adopting, altering or substituting the Code pursuant to section 92(5) of the Act is **suspended**. Further, Notice No 1 allows Elected Members to meet by electronic means in a place taken to be open to the public pursuant to section 90(1a) of the Act, to alter the Code or substitute a new Code, even if the existing Code prevents or inhibits public access to the meeting by electronic means.

9. Further Information

This Policy is available on Council's website at www.barossa.sa.gov.au. It can also be viewed electronically at Council's principal office at 43-51 Tanunda Road, Nuriootpa and all Council branches, during ordinary business hours. A copy of this Policy can be obtained at those venues upon payment of a fixed fee.

Any complaint in relation to this Policy or its application should be forwarded in writing addressed to the Chief Executive Officer, PO Box 867, Nuriootpa SA 5355 or barossa@barossa.sa.gov.au.

10. Policy Version History

Version No:	Approval Date:	Description of Change:
1.0	20/08/2013	New Policy
1.1	21/07/2015	Terminology changes to reflect 2012 WHS act and Regulations.
1.2	13/06/2016	Changes from the Local Government (Accountability and Governance) Amendment Act 2015 to: Clause 3 definition: Informal Gatherings, clause 4.2.4 Public Access to Meetings; Matters from which Public can be excluded: clause 4.4.2 (c) and (d); clause 4.4.3 (a) (b) and (c); Use of Confidentiality Provisions: clause 4.6.8; 4.6.10; Review of Confidentiality Orders: clause 4.8.4 and 4.8.5.
1.3	20/08/2019	Policy reviewed and adopted, in accordance with section 92(2) of the <i>Local Government Act 1999</i> – ie. within 12 months of the conclusion of the periodic election.
1.4	21/04/2020	Policy amended in line with the Notice Pursuant to Section 302(B) of the <i>Local Government Act 1999</i> – Public Health Emergency – Electronic Participation in Council Meetings (No 1) gazetted on Tuesday 31 March 2020.

Appendix One	Regulatory Committees of Council
---------------------	---

The following Committees provide a regulatory function of Council or it is appropriate in all the circumstances that they be bound and so are therefore bound under clause 4.1 of this Code:

- Audit Committee
- Strategic Planning and Development Policy Committee