

THE BAROSSA COUNCIL CODE OF PRACTICE FOR PUBLIC ACCESS TO MEETINGS AND MEETING DOCUMENTS



1. Purpose

- 1.1 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:
- Public Access to Meeting Agendas
 - Public Access to Meetings
 - Process to Exclude the Public from a Meeting
 - Matters from which the Public can be Excluded
 - Public Access to Minutes
 - Use of the Confidentiality Provisions
 - Public Access to Meeting Documents
 - Review of Confidentiality Orders
 - Accountability and Reporting to the Community
- 2.2 This Code does not apply to Council's subsidiary as they are managed in accordance of the rules of their Charter.

3. Policy Statement

3.1 Public Access to the Agenda

- 3.1.1 At least three (3) clear days before a Council or Council Committee meeting (unless it is a special meeting) the Chief Executive Officer (CEO) shall 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.
- 3.1.2 Notice of the meeting and the agenda will be placed on public display at the Principal Office of Council and on Council's website.
- 3.1.3 Items listed on the agenda will be described accurately and in reasonable detail.



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- 3.1.4 Members of the public may obtain a printed copy of the agenda, excluding any items where clause 3.1.5 applies, as per Council's Fees and Charges Register.
- 3.1.5 Where the CEO 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.

3.2 Public Access to Meetings

- 3.2.1 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.
- 3.2.2 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.
- 3.2.3 Council meeting dates and times, and the schedule or frequency of Council Committee meetings are available on Council's website.
- 3.2.4 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 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.
- 3.2.5 Elected Members, Committee Members and Employees may participate in a Elected Member Workshop 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.

3.3 Process to Exclude the Public from a Meeting

- 3.3.1 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.
- 3.3.2 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 (including

Employees), unless exempted by being named in the resolution as entitled to remain, are required to leave the room.

- 3.3.3 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 meeting. 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.
- 3.3.4 Once the consideration of 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.

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

- 3.4.1 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*.
- (o) information relating to a proposed award recipient before the presentation of the award.

3.4.2 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.

3.4.3 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.

3.5 Public Access to Minutes

3.5.1 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.

3.6 Use of the Confidentiality Provisions

- 3.6.1 Once consideration of a confidential matter is concluded, the meeting will then resolve to make an order that a document, report, attachment/s, minutes 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 .
- 3.6.2 When making an order, the meeting will consider if a specific duration of the order or the circumstances in which the order will cease to apply. 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 delegate the authority to review the order.
- 3.6.3 In the case of an order of specified duration, the duration of the order can only be extended by a resolution of the Council or Committee, as the case applies, prior to the specified duration being reached. The power to extend an order cannot be delegated.
- 3.6.4 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.
- 3.6.5 No formal resolution is required to come out of confidence and go back into public session.
- 3.6.6 Elected Members, former Members, Council Employees and former Council 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. To breach such an order can result in pecuniary and or imprisonment penalties.
- 3.6.7 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.

- 3.6.8 The use of all confidentiality provisions will be recorded in the Confidential Items Register and maintained by the CEO.

3.7 Public Access to Documents

- 3.7.1 Members of the public may obtain printed copies of Council documents upon the payment of a fee as per Council's Fees and Charges Register..

3.8 Review of Confidentiality Orders

- 3.8.1 A confidentiality order made under Section 91(7) of the Act still in operation exceeding twelve (12) months will be reviewed by Council or by an approved delegate.
- 3.8.2 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.
- 3.8.3 An order will lapse if the specified duration 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.

3.9. Accountability and Reporting to the Community

- 3.9.1 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.
- 3.9.2 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.

3.10 Complaints

- 3.10.1 A complaint regarding public access to either a meeting or associated documents under this Policy shall be raised in the first instance in writing to the Chief Executive Officer - PO Box 867, Nuriootpa SA 5355 - who will provide an

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explanation of the application of there levant laws and Policy including any relevant confidentiality provisions.

- 3.10.2 If the matter is not resolved the complaint can proceed to lodge an application for review of that decision under the Internal Review of Council Decisions Policy. This Policy is available on Council's website or from the Principal Office.

4. Supporting Processes and Documents

Confidential Items Register

5. Related Policies

Internal Review of Council Decisions Policy and Process

Public Consultation Policy

Fees and Charges Register

6. Legislation and References

Local Government Act 1999

Local Government (Meeting Procedures) Regulations 2013

7. Review

This Code shall be reviewed by Council, within 12 months after the conclusion of each periodic election, and as required by legislation to undertake public consultation. .

8. Further Information

8.1. 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.

8.2. Complaints regarding this Policy or its application can be made to the Customer Service team on 8563 8444 or barossa@barossa.sa.gov.au at first instance, who will refer you to the most appropriate officer according to Council's *Customer Service Policy* (see clause 0 above for availability).

9. Document Control

Corporate Plan Link:		How we work			
Document Owner:	Chief Executive Officer			Document Control Officer:	Executive Business Partner
Consultation Rating:	[N/a]	Audience:	External	Next Review Date:	20 June 2027
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Version No.	Date			Description of Change	
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Version No:	Approval Date:	Description of Change:
1	20/08/2013	New Policy
2	21/07/2015	Terminology changes to reflect 2012 WHS act and Regulations.
3	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 ©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.
4	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.
5	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.
6	20/06/2023	Duplications removed Removal of Emergency Notice No.1 Incorporation of Local Government Reform Amendments Local Government Reform changes Removal of reference to the repealed Public Health Emergency – Electronic Participation in Council Meetings (No 1). Various changes for clarity and consistency Update of the Code of Practice to the new Policy template Policy name simplification

10. 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 via electronic means
Council Committee	As defined by Section 41 of the Act.
Council's Principal Office	Located at 43 – 51 Tanunda Road Nuriootpa.
Council Website	www.barossa.sa.gov.au
Elected Member Workshop	Council's name for an Information or Briefing Session under section 90A of the <i>Local Government Act 1999</i> .
Regulatory activity	An activity which involves the making or enforcement of by-laws, orders, standards or other controls under the Act or another act.