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|  City of Mount Gambier | COUNCIL POLICY C410 | Version No: | 12 |
| | CODE OF PRACTICE FOR ACCESS TO MEETINGS & DOCUMENTS / MEETING PROCEDURES | Issued: | 19 July 2022 |
| | | Next Review: | December 2022 |

1. Introduction

The model code is to assist Councils to:

- Meet the provisions of section 92 of the *Local Government Act 1999* ("*the Act*") in the preparation and adoption of a Code of Practice relating to the principles, policies and procedures that a Council must apply for the operation of Parts 3 and 4 of the Act for the purposes of public access to meetings, documents and minutes of Council and Committee meetings.
- Inform and educate the community about public access to Council and Committee meetings, minutes of Council and Committee meetings and other Council documents.
- Ensure that statutory requirements for openness and transparency are observed while providing an opportunity for informal gatherings and discussions among Council Members.
- To provide policy provisions for ancillary matters associated with the conduct of meetings.

2. Confidentiality Guidelines


This model code should be developed and read in conjunction with the LGA's Confidentiality Guidelines which are designed to assist with the application of the provisions in the Act to restrict public access to meetings and or documents. The Confidentiality Guidelines are available on the LGA website at: www.lga.sa.gov.au under the Codes and Guidelines heading.

3. Public Access to the Agenda for Meetings

Public access to Council agendas is encouraged. This provides one of the main opportunities for the community to gain information about the business of Council and Committees. Agendas and associated documents for the meetings are publicly available subject to any indication from the Chief Executive Officer under section 83(5) of the Act or to an order of confidentiality under section 90(3) of the Act.

The following procedures apply to encourage public access to meetings:

- 3.1 At least three 'clear days'¹ before a 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.
- 3.2 The notice and agenda are to be placed on public display at each office of the Council that is open to the public for the general administration of Council business within its area² and on Council's website.
- 3.3 The notice and agenda must be kept on public display and continue to be published on the website until the completion of the relevant meeting.
- 3.4 Items listed on the agenda are to be described accurately and in reasonable detail.

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- 3.5 Copies of the agenda documents and non-confidential reports that are to be considered at the meeting must be made available to members of the public at the meeting. A reasonable number of copies are to be available for public inspection as soon as practicable after they are supplied to the members of Council.
- 3.6 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 schedule of fees and charges.
- 3.7 Distribution of agenda papers to members of Council, or members of a Committee, may include advice from the CEO of the Council (after consultation with the Principal Member of the Council, or in the case of a Committee - the presiding member) that a document or report on a particular matter be considered in confidence with the public to be excluded. Where this occurs, the CEO must specify the basis under which the order could be made in accordance with section 90(3) of the Act. [see sections 83(5) (Council) and 87(10) (Committee) of the Act]

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 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.

² Sections 84(1a) and 88(1a) Local Government Act 1999.

4. Public Access to Meetings

Council and Council Committee meetings are open to the public and attendance is encouraged, except where a 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.

The public will only be excluded when considered proper and necessary i.e. the need for confidentiality outweighs the principle of open decision making.

Council must encourage public attendance at meetings of the Council and Committees through public notification of meetings.


In accordance with section 90A of the Act, a Council, or the Chief Executive Officer of a Council, may hold or arrange for the holding of a session (not being a formal meeting of a council or council committee required to be held under this Chapter) to which more than 1 member of the Council or a Council Committee is invited to attend or be involved in for the purposes of providing information or a briefing to attendees (an **information or briefing session** – refer Part 11).

5. Public Access to Minutes

Minutes of a meeting of Council or a Council Committee must be publicly available, including on the internet, within 5 days after the meeting.

6. 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 place it on the Internet for public access.

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A Council or Council committee should only order that a document associated with a discussion from which the public are excluded will remain confidential if it is considered proper and necessary in the broader community interest.

A Council or 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).

In accordance with section 91(8) a Council or Council committee must not make an order to prevent:

- the disclosure of the remuneration or conditions of service of an employee of the Council after the remuneration or conditions have been set or determined; or
- the disclosure of the identity of a successful tenderer for the supply of goods or the provision of services (including the carrying out of works), or of any reasons adopted by the Council as to why a successful tenderer has been selected; or
- the disclosure of the amount or amounts payable by the under a contract for the supply of goods or the provision of services (including the carrying out of works) to, or for the benefit of, the Council after the contract has been entered into by all parties to the contract; or
- the disclosure of the identity of land that has been acquired or disposed of by the Council, or of any reasons adopted by the Council as to why land has been acquired or disposed of by the Council.

7. 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. In any event, any order that operates for a period exceeding 12 months must be reviewed at least once in every year.


An order will lapse if the time or event specified has been reached or carried out. There is no need for a Council to resolve for the confidential order to be lifted. Once the order has lapsed, the minutes and/or documents automatically become public. At this point in time it is important that the Council make this information publicly available and also include it on the Council's website. It is recommended that the Code include a provision as to when the confidentiality orders will be reviewed.

The Model Confidential Items Register contained in the Meeting Confidentiality Guidelines will also provide assistance with the review of confidentiality orders.

Orders that exceed 12 months must be reviewed annually and a 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 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.

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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 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. A 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.

8. Accountability and Reporting to the Community

A report on the use of sections 90(2) and 91(7) by a Council and Council Committee 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 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) and 90(3) and section 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
5. Number of occasions that information declared confidential has not been made publicly available and the reason for this in each case.

This information should also be considered in any review of the Code.


9. Availability of the Code

The public may inspect a copy of the Code, without charge, at the offices of a Council during office hours, and may obtain a copy for a fee fixed by Council. The Code should also be available on the Internet. The availability of the Code can also be promoted to the local community through the Council's newspaper.

10. Review of the Code

In accordance with section 92(2) of the Act each Council is required to review the Code within 12 months after the conclusion of each periodic election. However, it is recommended that Council undertake a review on an annual basis to ensure that the principle of open government is being applied in a proper manner. The Code of Practice should include when the next scheduled review is due to occur. Each Council has the ability to review the Code at any time if considered desirable.

The Code of Practice should include the date when Council adopted the Code.

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11. Information and Briefing Sessions

Information and briefing sessions provide a valuable opportunity to enhance Council decision-making processes by providing opportunities for Council members to become better informed on issues and seek further clarification. Information and briefing sessions, however, must not be used, or be seen to be used, as a replacement for full debate and decision-making at Council meetings or Council committee meetings. Open and transparent Council meetings and Council committee meetings underpin representative democracy and ensure public confidence in Council's decision-making processes.

The policy aims to ensure that the statutory requirements for openness and transparency in Council decision-making are observed; while providing an opportunity for confidential discussions among Council members where this is warranted by the nature of the session or subject matter to be discussed.

Scope

These provisions apply to information and briefing sessions of the Council or a Council Committee held or arranged by Council, or the Chief Executive Officer (not being a formal meeting of a Council or Council Committee) to which more than 1 member of the Council or a Council Committee is invited to attend or be involved in for the purposes of providing information or a briefing session to attendees.

A matter must not be dealt with at a Council information or briefing session in such a way as to obtain, or effectively obtain, a decision on the matter outside a formal meeting of the Council or a Council Committee.

An information or briefing session that is not held or arranged by the Council or Chief Executive Officer, or to which only a single member is invited or involved, or which does not involve discussion of a matter that is, or is intended to be, part of the agenda for a formal meeting of the Council or Council committee, is not an information or briefing session.

Information and briefing sessions to be open to the public, except in special circumstances

A Council information or briefing session must be conducted in a place open to the public during any period in which a matter that is, or is intended to be, on the agenda for a formal meeting of the Council or a Council Committee is discussed at the session.


However, the Council or Chief Executive Officer may order that an information or briefing session be closed to the public to the extent (and only to the extent) that the Council or Chief Executive Officer (as the case requires) considers it to be necessary and appropriate for a matter of a kind referred to in subsection (3) to be discussed in a session closed to the public in order to receive, discuss or consider in confidence any information or matter listed in section 90(3) (after taking into account any relevant consideration under that subsection).

Procedures applying to information and briefing sessions

Both the Chief Executive Officer and the Council are responsible for ensuring information and briefing sessions are conducted in accordance with the Local Government Act.

Information and briefing sessions are not subject to the procedural meeting requirements of the Local Government Act and *Local Government (Proceedings at Meetings) Regulations 2013*.

Information and briefing sessions will be chaired by the Chief Executive Officer or another senior Council officer. The Chair is responsible for ensuring that the purpose, intent and outcomes of the information or briefing session are consistent with section 90 of the Local Government Act.

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Formal minutes will not be recorded of an information or briefing session. Notes of an information or briefing session may be tabled at the Council meeting following the information or briefing session and prescribed information will be published as required by the Local Government Act.

If an information or briefing session has been ordered to be a 'confidential information or briefing session', then the information or briefing session may be attended by Council Members, the Chief Executive Officer and any other person invited to attend by the Council or the Chief Executive Officer.

If a confidential information or briefing session has been made in respect of only some of the matters to be discussed at an information or briefing session, then these confidential matters will be scheduled to be discussed at the end of the agenda for the information or briefing session. The information or briefing session will be open to the public until immediately prior to the discussion on confidential matters commencing.

Publication of information relating to information and briefing sessions

A Council or the Chief Executive Officer of a Council must comply with any requirements of the regulations relating to the following:

- (a) the publication of prescribed information as soon as practicable after resolving or determining to hold an information or briefing session;
- (b) the publication of prescribed information as soon as practicable after the holding of an information or briefing session

For all information and briefing sessions, the following information will be published on the Council's website:


- (i) the place, date and time at which the information or briefing session will be held;
- (ii) the matter that is to be discussed at the information or briefing session;
- (iii) whether or not the information or briefing session is to be held at a place open to the public.
- (iv) any prescribed information required to be published under the Local Government Act or Regulations.

Where a confidential order applies to an information or briefing session, the reason for the information or briefing session being held entirely or partially in confidence must be published on the Council's website.

Attendance by telephone and other electronic means

Any Member(s) may participate in an information or briefing session despite not being physically present, subject to each of the following conditions, as applicable to the circumstances:

- *a written request to participate in the session by telephone or other electronic means being made to the Chief Executive Officer not less than 12 hours prior to the scheduled commencement time to enable any necessary technologies to be made available and compliant with any relevant provisions of the Local Government Act and Regulations.*
- *all Members and the public being able to hear the discussion between all Members including the Member(s) participating by telephone or other electronic means.*
- *the Member(s) may be disconnected where the Chief Executive Officer determines that the technology being used is causing unreasonable disruption or inconvenience to the session, or that a confidentiality under a s90(3) order may be or become compromised.*
- *should the telephone or other electronic connection fail or be disconnected, any attempt(s) to re-connect being at the discretion of the Chief Executive Officer.*

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12. Other Meeting Practices & Procedures

12.1. FILMING AND AUDIO RECORDING DEVICES

Council maintain its current minute taking practice that involves the agenda item and recommendation/resolution being projected on screen at the Council and Standing Committee meetings with the minutes being typed at the meeting.

Any person may record audio of Council, committee and sub-committee meetings provided that such recording does not interfere with the orderly conduct of such a meeting.

Audio devices used for such purposes are to be held by the operator of such a device and are not to be placed on the meeting table being used by the members of that Council, committee or sub-committee meeting unless otherwise resolved by the members at that particular meeting.

The Presiding Member may at any time during the course of any meeting direct the audio recording of such meeting to cease, should the Presiding Members be of the view that the audio recording of the meeting is interfering with the orderly conduct of the meeting.

Audio recording of items considered 'In-Confidence' under the provisions of the Local Government Act 1999 is prohibited.

Any person wishing to take photographs or video recordings of any Council, committee or sub-committee meeting must request the permission of the Presiding Member.

Such request must be made in writing and be received by the Presiding Member at least 48 hours in advance of the meeting. In considering such a request the Presiding Member shall not unreasonably refuse permission however they may place restrictions and conditions on such recording and photography as they see fit so as to ensure such recording does not interfere with the orderly conduct of the meeting.


Where such permission has been granted, should at any time during the course of the meeting the Presiding Member be of the view that the video recording or photography of the meeting is interfering with the orderly conduct of the meeting, the Presiding Member may direct the video recording or photography of the meeting to cease.

Video recording and photography of items considered 'In-confidence' under the provisions of the Local Government Act 1999 is prohibited.

12.2. PRESENTATION OF COMMITTEE RECOMMENDATIONS TO COUNCIL

It is the policy of this Council that the Presiding Member of any Council Committee will present the Committee Minutes and Recommendations to Council.

Should a Presiding Member of any Committee not be able to attend a Council Meeting then they may nominate in advance, any other Member of such Committee to present the Committee Minutes and Recommendations to Council.

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Should a Presiding Member of any Committee not be in attendance at a Committee Meeting, but is in attendance at the Council meeting at which the Committee Minutes and Recommendations are to be presented, then the Presiding Member of the Committee shall present the Committee Minutes, but may elect to refer any item of business to the Member that presided over the Committee Meeting, or to another Member who attended the Committee meeting, for presentation of the item to Council.

12.3. VOTING 'EN-BLOC'

Council does not support the use of 'en-bloc' voting during Council and Committee meetings to adopt a number of items, motions or recommendations by one resolution without debate.

En-bloc decision-making is not lawful in relation to items for decision and not considered good practice for other agenda items, and is in conflict with the guiding principles of the Local Government (Procedures at Meetings) Regulations 2013.

12.4. APPOINTMENT AND ROLE OF DEPUTY MAYOR

This policy provision shall only apply where the Council resolves to appoint a Deputy Mayor in accordance with Section 51(3) of the Local Government Act 1999.

Section 51(4) provides that a Deputy Mayor will be chosen by the members of a Council from amongst their own number and will hold office for a term determined by the Council that must not exceed 4 years. At the expiration of the term a Deputy Mayor is eligible for a further term.

Where Council has resolved to have a Deputy Mayor the Mayor shall immediately call for nominations and acceptances from Members present at the Council Meeting.


If only one nomination is received then that Member is to be declared Deputy Mayor.

Where more than one nomination is received a secret ballot shall be conducted forthwith without debate. Resolutions will be passed to endorse the voting process and appoint the Chief Executive Officer (or any other Senior Officer present at the meeting) as Returning Officer to declare the result and draw lots (if/as necessary).

The following shall apply to the determination of Deputy Mayor:

- Any Member present at the meeting may be nominated.
- The Mayor does not vote on the question of the appointment of Deputy Mayor.
- A Member not in his or her seat at the meeting does not vote.
- The candidate with the highest number of votes (or where two or more candidates receive the equal highest number of votes the first name drawn in the lot) shall be declared the Deputy Mayor.
- A division cannot be called for when a vote on the question of appointing a Deputy Mayor is taken.
- The Mayor may (but is not required to) accept a motion to endorse the appointment of the Deputy Mayor however any failure or variation of the motion shall be of no effect on the result of the secret ballot.

In the absence of the Mayor, the Deputy Mayor shall act in the office of the Mayor.

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In the Council Chamber, the Deputy Mayor shall assume no precedence, except in the absence of the Mayor, when the Deputy Mayor shall act in the office of Mayor. Outside the Council Chamber, the Deputy Mayor shall be given precedence, immediately following the Mayor.

12.5. APPOINTMENT TO COMMITTEES AND OTHER BODIES AND ORGANISATIONS

This policy provision applies when Council has been requested or is required to nominate or appoint a Member or any other person to fill a vacant position on any Committee or as delegate/representative on an outside body or organisation.

Where these policy provisions are inconsistent with any legislative or statutory provisions or the Terms of Reference or other governing instrument of any Committee or other body or organisation, then those other provisions shall apply and override this policy (with the exception that Council may, subject to any statutory prohibitions, override the Terms of Reference of its own Committees)


The Chief Executive Officer shall notify Members of the request and/or requirements associated with the vacancy, including details of the Committee/Body/Organisation Terms of Reference and other relevant information, and will seek a written nomination of any Elected Member, Council Officer or other person with appropriate qualifications and/or experience.

Where Council is required under a legislative or some other requirement under Terms of Reference to seek community or independent nominees to Committee positions, then a public notice shall be published in a newspaper circulating in the area seeking interested persons to nominate within 21 days (or such other period as may be required). Such nominees may also be sought through a targeted process to identify suitable nominees.

The Chief Executive Officer shall present details of all nominees for vacant positions to the next available Council meeting together with a recommendation and draft resolutions that Council may endorse a secret ballot voting process and appoint the Chief Executive Officer (or any other Senior Officer present at the meeting) as Returning Officer to declare the result and draw lots (if/as necessary).

The following shall apply to the appointment of Committee Members and delegates/representatives on other bodies and organisations:

- A nominee need not be present at the meeting, but must provide a written acceptance to the Chief Executive Officer prior to consideration.
- Candidate nominees should display the qualities sought to fill the vacant position including relevant skills, experience and interests.
- Prior to commencing the secret ballot process, by passing a resolution, Council:
 - i. may determine not to nominate or appoint any person to fill a vacancy.
 - ii. should determine the term to apply to the nomination/appointment, that may survive the next general/periodic election.
- The Mayor may vote on the question of position appointments to Committee's and other bodies and organisation's.
- A Member not in his or her seat at the meeting does not vote.
- The candidate with the highest number of votes (or where two or more candidates receive the equal highest number of votes the first name drawn in the lot) shall be declared as being nominated/appointed to the vacant position.
- A division cannot be called for when a vote on the question of appointing a person to fill a vacant position is taken.

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- The Mayor may (but is not required to) accept a motion to endorse the filling of the vacant position however any failure or variation of the motion shall be of no effect on the result of the secret ballot.
- Council may determine to appoint proxies/deputies to certain positions to ensure representation in the absence of selected members/delegates/representatives.

Limestone Coast Local Government Association Positions

The Mayor shall be the preferred candidate for any Board Member positions (and the Deputy Mayor the preferred candidate for any proxy/deputy position) on a s42 subsidiary (ie Limestone Coast Local Government Association).

Nominations shall only be sought for the position of Board Member and/or proxy/deputy where the Mayor or Deputy Mayor are unable to fill the positions, or to act when both the Mayor and Deputy Mayor may be unavailable, in which case the nomination/appointment procedure shall be as described in this Policy.

Payment of Allowances/Sitting Fees

Council should have a consistent and reasonable approach to payment of allowances/sitting fees to Members and other community and independent persons appointed to positions on Committees which should be prescribed in the Terms of Reference.

Appointment of Independent Members of a Council committee will be for a term determined by the Council, and may survive the next general/periodic election unless Council specifically resolves otherwise at the time of the appointment (noting that Council may have the right to terminate any appointment at any time, or that the term of appointment may be determined by some other statutory means).

Roles of Nominees/Appointees

Upon nomination/appointment to a position, Council's duly declared nominee/appointee shall be authorised to fill that position, including the exercise of any voting rights.

Where more than one person has been nominated/appointed to fill a position or as deputy/proxy, precedence shall apply based upon the persons position (ie Mayor, Deputy Mayor, Member, CEO etc).


Attendance by Non-Appointed Persons

Subject to any valid provision to the contrary, any non-appointed Elected Member or Council Officer may attend meetings of any Committee or other body or organisation to whom Council has nominated/appointed a Member or delegate/representative, but may not speak or be heard or vote at the meeting unless invited by the meeting organiser and in accordance with a direction of the Council or the Chief Executive Officer.

Independence of Bodies/Organisations

Other bodies and organisations to which Council nominates/appoints Elected Members, Council Officers or other suitably persons as delegates/representatives do not operate under the provisions of the Local Government Act 1999 or other legislation that prescribe meeting procedures and Member obligations.

Any person appointed to a position on a body or organisation (whether a Council Member, Council Officer or some other person) is bound by the governing arrangements applicable to that other body or organisation. In that capacity that person does not represent the interests of Council, but will be required to act in the interests of that body or organisation, which at times may be inconsistent with the interests or a formal position of the Council.

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Council may influence but is not to instruct any Elected Member, Council Officer or other person whom it has nominated/appointed as a delegate/representative on another body or organisation as to the manner in which they act in fulfilling their non-Council duties. It is for the delegate/representative to determine how they fulfil their duties on a body or organisation and deal with any conflict that may arise between their competing interests/roles.

13. AVAILABILITY OF POLICY

This Policy will be available for inspection at Council's principal office during ordinary business hours and on the Council's website www.mountgambier.sa.gov.au.

Copies of this Policy may also be obtained by interested members of the community upon payment of a fee in accordance with Council's Schedule of Fees and Charges.

14. REVIEW & EVALUATION

The Council is required to review this code within 12 months after the conclusion of each periodic election. However, it may be reviewed at any other time as required by any legislative changes which may occur.

In accordance with Section 92(5) of the Local Government Act 1999, Council must follow the relevant steps set out in its public consultation policy before adopting, altering or substituting a code of practice relating to the principles, policies, procedures and practices that the Council will apply for public access to council and committee meetings and the release of Council and Committee meeting minutes and documents.

15. GRIEVANCE

Council has established procedures for the review of decisions under Section 270 of the Act for:

- Council, and its Committees;
- employees of Council and
- other persons acting on behalf of Council.


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 Internal Review of Council Decisions Procedure established by Council.

The procedures adopted by Council are available from the Chief Executive Officer, telephone 8721 2555 or from Council web-site www.mountgambier.sa.gov.au.

16. FURTHER INFORMATION

Further information about this Policy may be expressed in writing, addressed to:


Chief Executive Officer
City of Mount Gambier
PO Box 56
MOUNT GAMBIER SA 5290

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| File Reference: | AF18/51 |
| Applicable Legislation: | Local Government Act 1999 Local Government (Procedures at Meetings) Regulations 2013 Local Government (General) Regulations 2013 Freedom of Information Act 1991 |
| Strategic Reference: | |
| Related Policies: | P195 Community Consultation and Engagement Policy R180 Records Management Policy C290 Internal Review of Council's Decisions |
| Related Procedures: | |
| Related Documents: | Confidentiality Guidelines: How to Apply Section 90 (2016) Council Meeting Procedures Handbook (2016) Minute Takers Handbook for Local Government (2014) Freedom of information - Information Statement Confidential Items Register |

DOCUMENT DETAILS

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| Responsibility: | MANAGER EXECUTIVE ADMINISTRATION |
| Version: | 12.0 |
| Last revised date: | 19 July 2022 |
| Effective date: | 19 July 2022 |
| Minute reference: | Council Meeting 19 July 2022 - Item 21.7 - Resolution 2022/92 |
| Next review date: | December 2022 |
| <u>Document History</u> | |
| First Adopted By Council: | November 2014 Superseded Policies - C300, C310, C275, C315, S110, S130, M190, C280 & C285, 17 th March, 2015 |
| Reviewed/Amended: | 15 th December, 2015, 15 th March 2016, 21 st November 2016, 22 nd November 2018, 15 th October 2019, 19 July 2022. <i>(31st March 2020, 16th June 2020, 17th November 2021, 14 December 2021, 21 June 2022 - COVID 19)</i> |

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Model Code of Practice for Access to Council Meetings and Documents

1. ADOPTION

This Code was adopted by the Council on 19 July 2022

2. STATEMENT OF PRINCIPLE

In fulfilling the role of an effective Council that is responsive to the needs of the community and which operates within the legal framework prescribed by the Local Government Act 1999, the City of Mount Gambier *is* fully committed to the principle of open and accountable government. However, Council also recognises that on a limited number of occasions it may be necessary, in the broader community interest, to restrict public access to discussion/decision and/or documents.

3. INTRODUCTION

This Code sets out the commitment of City of Mount Gambier to provide public access to Council and Council committee meetings and documents and outlines the policies and procedures contained within the *Local Government Act 1999*, to restrict public access. The Code includes:

- information on the relevant provisions of the Act;
- Council's policy on public access and participation;
- the process that will be adopted where public access to a meeting or a document is restricted;
- grievance procedures to be followed if a member of the public believes that the Council has unreasonably restricted public access on a particular matter.


This Code sets out the policy of Council 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 a Council committee, can order that 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, and the availability of the code; and
- grievances about the use of the code by Council.

4. PUBLIC ACCESS TO THE AGENDA FOR MEETINGS

- 4.1 At least three clear days³ 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 place⁴ of the meeting. The notice must contain or be accompanied by the agenda for the meeting.

³ '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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- 4.2 Notice of meeting and agenda will be placed 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 at 10 Watson Terrace, Mount Gambier and on Council's website www.mountgambier.sa.gov.au.
- 4.3 Items listed on the agenda will be described accurately and in reasonable detail.
- 4.4 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.
- 4.5 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 reasonable number of copies will also be available for public inspection as soon as practicable after they are supplied to the Members of Council.
- 4.6 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 schedule of fees and charges.
- 4.7 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.]

5. PUBLIC ACCESS TO MEETINGS


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.

The public will only be excluded when considered proper and necessary i.e. the need for confidentiality outweighs the principle of open decision-making.

Council encourages public attendance at meetings of the Council and Committees through public notification of meetings by *[list promotional activities eg. a sign and/or notice in a local paper indicating the date and time of the next meeting]*.

A Council information or briefing session must be conducted in a place open to the public during any period in which a matter that is, or is intended to be, on the agenda for a formal meeting of the Council or a Council Committee is discussed at the session.

However, the Council or Chief Executive Officer may order that an information or briefing session be closed to the public to the extent (and only to the extent) that the Council or Chief Executive Officer (as the case requires) considers it to be necessary and appropriate for a matter of a kind referred to in subsection (3) to be discussed in a session closed to the public in order to receive, discuss or consider in confidence any information or matter listed in section 90(3) (after taking into account any relevant consideration under that subsection).

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6. PROCESS TO EXCLUDE THE PUBLIC FROM A MEETING OR INFORMATION OR BRIEFING SESSION

The practice of the City of Mount Gambier is as follows:

- for the convenience of the public present at a meeting, where it is ordered 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.

Before a meeting or session 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 order 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.

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.


Once discussion on that particular matter is concluded, the public are then permitted to re-enter 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.

Please note that 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 when their circumstances concerning the payment of rates is being discussed.

7. MATTERS FROM WHICH THE PUBLIC CAN BE EXCLUDED


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—*

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

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.

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In considering whether an order should be made under section 90(2), it is irrelevant that discussion of a matter in public may:

- 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.
- involve discussion of a matter that is controversial within the council area; or
- make the council susceptible to adverse criticism. [s.90(4)]

If a decision to exclude the public is taken, the Council or the Council committee is required to make a note in the minutes of the making of the order and the grounds on which it was made. Sufficient detail of the grounds on which the order was made will be included in the minutes. For for an information or briefing session, to publish the prescribed information.

8. PUBLIC ACCESS TO MINUTES

Minutes of a meeting of Council or a Council committee will be publicly available, including on the internet, within 5 days after the meeting.


9. USE OF THE CONFIDENTIALITY PROVISIONS

Any consideration of the use of the confidentiality provisions to exclude the public from the discussion of a particular matter at a meeting or session 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 7 of this Code.

The following principles/processes are intended as a guide from which individual Councils can select those which they consider to be relevant:

The policy approach of the City of Mount Gambier is that:

- The principle of open and accountable government is strongly supported;
- 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;
- 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 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;
- 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;
- 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.

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- 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 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.
- 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; and
- 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.

10. 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 place it on the Internet for public access.

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.

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).

In accordance with section 91(8) the Council or the Council committee must not make an order to prevent:

- the disclosure of the remuneration or conditions of service of an employee of the Council after the remuneration or conditions have been set or determined; or
- the disclosure of the identity of a successful tenderer for the supply of goods or the provision of services (including the carrying out of works), or of any reasons adopted by the Council as to why a successful tenderer has been selected; or
- the disclosure of the amount or amounts payable by the 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.

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Where keeping a document confidential is considered proper and necessary, a resolution to this effect is required which shall include:

- 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. [s.91(9)]

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 who is *[include their name and phone number]*.

11. 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. In any event, any order that operates for a period exceeding 12 months must be reviewed at least once in every year.

An 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.

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 3 months to ensure that items are released in accordance with the resolution of Council, when the confidential provision no longer applies.


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 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.

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 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.

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12. ACCOUNTABILITY AND REPORTING TO THE COMMUNITY

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:

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) and 90(3) and section 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
5. Number of occasions that information declared confidential has not been made publicly available and the reason for this in each case.

13. AVAILABILITY OF THE CODE

The public may inspect a copy of the Code, without charge, at the offices of Council during office hours, and may obtain a copy for a fee fixed by Council. The Code is also available on the Council website www.mountgambier.sa.gov.au.

14. REVIEW OF THE CODE

The Council is required to review this code within 12 months after the conclusion of each periodic election.

15. GRIEVANCE

Council has established procedures for the review of decisions under section 270 of the Act for:

- Council, and its committees;
- employees of the Council; and
- other persons acting on behalf of the Council.

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.