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## 1. Development of the Code of Practice for Access to Council and Committee Meetings and Associated Documents

Pursuant to section 92 of the *Local Government Act 1999 (the Act)*, each Council must prepare and adopt a Code of Practice for Access to Meetings and Documents (**the Code**). The Code applies to meetings and documents for both Council and Council committees.

In preparing a Code of Practice for adoption, and prior to alteration or substitution of a Code, a Council must make copies available for inspection or purchase at the principal office and follow the relevant process set out in its public consultation policy.

The Code of Practice should be a user-friendly document that can be easily understood by people not familiar with Council meeting procedures.

## 2. Statement of Principle

The District Council of Grant (**the Council**) supports the principle that the procedures to be observed at a meeting of Council or a Council committee should contribute to open, transparent and informed decision-making, and encourage appropriate community participation in the affairs of the Council.

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 or documents.


## 3. Introduction

This Code sets out the commitment of the Council to provide public access to Council and Council Committee meetings and documents and outlines the policies and procedures contained within the Act, to restrict public access. The Code includes:

- information on the relevant provisions in 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 the Council for access to meetings and documents and includes information relating to:

- a statement of Council principle,
- access to the agenda for meetings,
- public access to meetings,
- the process to exclude the public from meetings,
- matters for which 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,

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- 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. The Code

### 4.1. Public Access to the Agenda for Meetings

- 4.1.1. Pursuant to section 83 or the Act, at least three ‘clear’ days<sup>1</sup> before the Council or Council committee meeting (unless it is a special meeting) the Chief Executive Officer (**CEO**) must give written notice of the meeting to all Council/Committee members setting out the date, time and place of the meeting. The notice must contain or be accompanied by the agenda for the meeting.
- 4.1.2. As per the *Local Government (Procedures at Meetings) Regulations 2013*:
- In the calculation of clear days in relation to the giving of notice before a meeting—*
- (2) *the day on which the notice is given, and the day on which the meeting occurs, will not be taken into account; and*
- (b) *Saturdays, Sundays and public holidays will be taken into account.*
- (3) *For the purposes of the calculation of clear days under subregulation (2), if a notice is given after 5 p.m. on a day, the notice will be taken to have been given on the next day.*
- 4.1.3. The notice of the meeting and agenda will be placed on public display at the principal office of the Council at:
- 324 Commercial Street West  
Mount Gambier
- and on Council's website, [www.dcgrant.sa.gov.au](http://www.dcgrant.sa.gov.au).
- 4.1.4. Items listed on the agenda will be described accurately and in reasonable detail.
- 4.1.5. The notice and agenda will be kept on public display and continue to be published on the website until the completion of the relevant calendar year in which the Council or Council committee meeting was held.
- 4.1.6. Copies of the agenda documents and non-confidential reports that are to be considered at the meeting will be available to download from Council's website by members of the public and the media.

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<sup>1</sup> ‘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, e.g. notice is given on a Thursday for a following Monday meeting, the clear days are Friday, Saturday and Sunday.

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4.1.7. 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.

4.1.8. 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.]

*Note: Where a Committee is not performing a regulatory activity these procedures may be varied in accordance with Part 3 of the Local Government (Procedures at Meetings) Regulations 2000, e.g.: the notice of meeting may be given in a form decided by the Committee, and need not be given for each meeting separately. Public notice may be given at a place determined by the Chief Executive Officer taking into account the nature and purpose of the Committee.*

#### **4.2. Public Access to Meetings**

Council and Council Committee meetings are open to the public and attendance is encouraged, except where 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. Details of meeting dates and times are listed on the public notice board at the offices of the Council and are also displayed on Council's website [www.dcgrant.sa.gov.au](http://www.dcgrant.sa.gov.au).

#### **4.3. Process to Exclude the Public**

For the convenience of the public present at a meeting, where it is resolved to consider a matter in confidence, this matter, unless there are pressing reasons as to why it should be debated at that point of the meeting, will be deferred until all other business has been dealt with. This is the preferred option of Council rather than asking the public to leave the room until the matter is concluded and then invite them back into the meeting room, possibly with the same process being repeated for a subsequent matter.

Before a meeting orders that the public be excluded to enable the receipt, discussion and consideration of a particular matter, the meeting must, in public, formally determine if this is necessary and appropriate, and then pass a resolution to exclude the public while dealing with that particular matter. If this occurs then the public must leave the room. This means that all members of the public (including staff), unless exempted by being named in the resolution as entitled to remain, are required to leave the room. For the operation of section 90(2) a member of the public does not include a member of Council.

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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 force to use reasonable force to remove the person from the room if that person 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 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.

#### **4.4. 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 –
  - (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;


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- (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;
- (m) information relating to a proposal to prepare or amend a designated instrument under Part 5 Division 2 of the *Planning, Development and Infrastructure Act 2016* before the draft instrument or amendment is released for public consultation under that Act;
- (n) information relevant to the review of a determination of a Council under the *Freedom of Information Act 1991* (**the FOI Act**);
- (o) information relating to a proposed award recipient before the presentation of the award.

The FOI 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.

The FOI Act does not provide for a definition of “public interest”, however, the following steps are recommended:

- identify and disregard irrelevant factors;
- identify relevant public interest factors ‘for’ disclosure
- identify relevant public interest factors ‘against’ disclosure;
- compare the importance of the factors for and against disclosure taking into account the harm that could reasonably be expected to flow from disclosure;
- make a decision about whether closure of a meeting or release of documents would be contrary to the public interest;

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- Allow access to the information unless disclosing the information would be harmful to the public interest.<sup>2</sup>

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 the Council Committee concerned, or to Members or employees of the Council; or
- cause a loss of confidence in the Council or the Council Committee (S90(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.

#### **4.5. Public Access to Minutes**

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

#### **4.6. 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 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 6 of this Code.

The policy approach of the Council is that:

- (1) The principle of open and accountable government is strongly supported;
- (2) Information of the grounds on which an order to exclude the public is made will be conveyed to the public at the time of them being ordered to leave the meeting – the public will not be excluded until after a confidentiality motion has been debated and passed and sufficient reasons for the need to exclude the public given;
- (3) Once discussion of the matter is concluded, the meeting will then consider if it is necessary to make an order that a document associated with this agenda item (including 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;
- (4) If the meeting determines that it is proper and necessary to keep a document confidential, then a resolution for an order to this effect is required to be resolved by the meeting in accordance with section 91(7) of the Act;

<sup>2</sup> Suggested steps in balancing the public interest factors - OmbudsmanSA publication In The Public Eye (An audit of the use of meeting confidentiality provisions of the Local Government Act 1999 in South Australian councils, November 2012)



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- (5) 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;
- (6) Once discussion of the matter is concluded and the public have returned, the decision of the meeting in relation to this matter will be made publicly known unless 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;
- (7) In all cases the objective is that the information be made publicly available at the earliest possible opportunity and that the community is informed of any Council order and the associated implications; and
- (8) Where a person provides information to Council and requests that it be kept confidential, the Council is not able to 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.


#### **4.7. Public Access to Documents**

Various documents are to be made 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. Refer to Council’s website [www.dccgrant.sa.gov.au](http://www.dccgrant.sa.gov.au).

The Council or Council committee will only make an order that a document associated with a discussion from which the public is 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 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

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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 Council, or of any reasons adopted by the Council as to why land has been acquired or disposed of by the Council.

Where keeping a document confidential is considered proper and necessary, a resolution 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 FOI Act. Inquiries in relation to the process for seeking access to documents held by Council should be directed to Council's accredited Freedom of Information Officers, telephone 8721 0444.

#### **4.8. Information and briefing sessions**

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

- (i) the place, date and time at which the information and briefing sessions or discussion was held;
- (ii) the matter/s that were discussed at the information and briefing session or discussion;
- (iii) whether or not the information and briefing session or discussion was held at a place open to the public.

Where an information and briefing session is declared to be held in confidence, the reason for the information and briefing session or discussion being held entirely or partially in confidence will be published on the Council's website including:


- The grounds on which the order was made;
- The basis on which the information falls within the ambit of each ground on which the order was made; and
- If relevant, the reasons that receipt, consideration or discussion of the information in public would be contrary to the public interest

Absent a specific decision of the Council or Chief Executive Officer to the contrary, documents presented to information or briefing sessions are not publicly available and documents presented to information or briefing sessions that are closed to the public are confidential.

#### **4.9. 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,



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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.

A Register of Confidential Items will be maintained by the Governance Officer of the Council. 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.

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 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.


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.

## 5. 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:

- Number of occasions each of the provisions of sections 90(2) and 90(3) were utilised;
- 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;

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

## 6. Availability of the Code

The Code of Practice is available for inspection without charge at the following locations during ordinary business hours:

- Principal Office, 324 Commercial Street West, Mount Gambier, 5290.
- Branch Office, Community Complex, 5 Charles Street, Port MacDonnell, 5291.
- Council Web site: [www.dcgrant.sa.gov.au](http://www.dcgrant.sa.gov.au).

A copy of the Code may be purchased from the Council Offices upon payment of a fee in accordance with Council's Schedule of Fees and Charges, or available free of charge from the Council website.

## 7. 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. A copy of the procedures adopted by Council is available from the principal office of Council and Council's website [www.dcgrant.sa.gov.au](http://www.dcgrant.sa.gov.au).

In the first instance, an application for a review of decision should be expressed in writing, addressed to:

Chief Executive Officer  
District Council of Grant  
PO Box 724  
MOUNT GAMBIER SA 5290  
Email: [info@dcgrant.sa.gov.au](mailto:info@dcgrant.sa.gov.au)

## 8. Council Contact Person

The Council Officer who can assist in providing or obtaining further information on this Code is the Governance Officer, who can be contacted on telephone 8721 0444.

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## 9. Review

Council is required to review this Code within 12 months after the conclusion of each periodic election to ensure that the principle of open government is being applied in a proper manner. However, Council has the ability to review this Code at any time if considered desirable. This Policy shall be reviewed by the District Council of Grant at a minimum, once within every four (4) year Council term, within 12 months after the conclusion of each periodic election (or on significant change to legislation or other matters which could affect this policy).

Action	Date	Minute Reference
Adopted	21 July 1997	97196.1
Reviewed	17 August 1998	98288.8
Reviewed	16 August 1999	99252.5
Amended	23 November 2000	00359.1
Reviewed	15 October 2001	01297.4
Reviewed	8 October 2002	02293.13
Reviewed	3 April 2006	06104.4
Reviewed	5 November 2007	07320.3
Amended	20 June 2011	11164.2
Amended	3 June 2013	13066.1.1
Reviewed	19 October 2015	15132.3.1
Amended	21 October 2019	19144.4.4
Amended	6 April 2020	20042.1.1
Minor formatting amendments	4 May 2020	Governance Officer
Amended	18 October 2021	21166.3
Amended	6 June 2022	22149.2
Amended	17 April 2023	23074