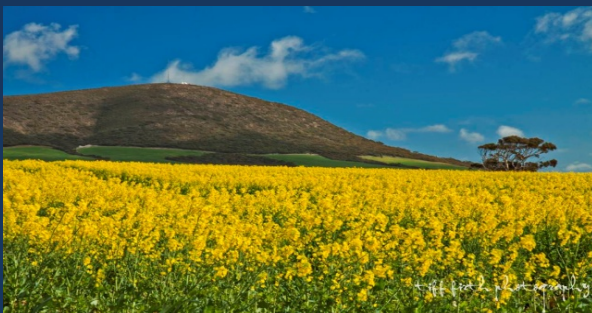


DISTRICT COUNCIL OF LOWER EYRE PENINSULA

Code of Practice –Access to Meetings & Associated Documents



“Working with our Rural & Coastal Communities”



GOV-COD-03 - CODE OF PRACTICE – ACCESS TO MEETINGS & ASSOCIATED DOCUMENTS

Version No:	2.3
Issued:	March 2019
Next Review:	March 2023

Responsibility:	Governance
Minutes reference:	C201 (1)
Applicable Legislation:	<i>Local Government Act 1999, S90 – S92</i>
Related Documents:	FIN-SCH-01 – Fees & Charges GOV-POL-11 – Internal Review of Council Decisions
Review Frequency:	Following Council Election

1. INTRODUCTION

This Code sets out the commitment of the District Council of Lower Eyre Peninsula 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.

2. OBJECTIVE

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 District Council of Lower Eyre Peninsula is 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 and this policy addresses the manner in which those restrictions will be applied.

3. PUBLIC ACCESS TO THE AGENDA FOR MEETINGS

- 3.1 At least three clear days¹ before the Council or Council committee meeting (unless it is a special meeting) the Chief Executive Officer (CEO) must give written notice of the meeting to all Council/Committee members setting out the date, time and place of the meeting. The notice must contain or be accompanied by the agenda for the meeting.
- 3.2 The notice of meeting and agenda will be placed on public display at each office of Council:
- Principal Office – Cummins - 32 Railway Terrace, Cummins
 - Branch Office – Port Lincoln – 38 Washington Street, Port Lincoln
- and on Council’s website: www.lowereyrepeninsula.sa.gov.au
- 3.3 Items listed on the agenda will be described accurately and in reasonable detail.
- 3.4 The notice and agenda will be kept on public display and continue to be published on the website until the completion of the relevant Council or Council committee meeting.

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.



GOV-COD-03 - CODE OF PRACTICE – ACCESS TO MEETINGS & ASSOCIATED DOCUMENTS

Version No:	2.3
Issued:	March 2019
Next Review:	March 2023

3. PUBLIC ACCESS TO THE AGENDA FOR MEETINGS cont'd:

- 3.5 Copies of the agenda documents and non-confidential reports that are to be considered at the meeting will be made available to members of the public in attendance. A reasonable number of copies will also 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 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.]

4. 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, provided that they are not subject to a confidentiality order.

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.

In accordance with section 90 of the Act, it is not unlawful for Members of Council, Committee members and staff to participate in **informal gatherings** or discussion provided that a matter which would ordinarily form part of the agenda for a formal meeting is not dealt with in such a way as to obtain, or effectively obtain, a decision outside of a formally constituted meeting of Council or Committee. (Refer to Council Policy GOV-POL-13 – Informal Gatherings for more information).

	GOV-COD-03 - CODE OF PRACTICE – ACCESS TO MEETINGS & ASSOCIATED DOCUMENTS	Version No:	2.3
		Issued:	March 2019
		Next Review:	March 2023

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.

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.

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*. Enquiries in relation to the process for seeking access to documents held by Council should be directed to Council's accredited Freedom of Information Officer – Manager Corporate Services ; Phone (08) 8676 0400.

R19/4865 - Policy - GOV-COD-03 - Code of Practice - Access to Meetings.DOCX	<i>Electronic version on the Intranet is the controlled version. Printed copies are considered uncontrolled. Before using a printed copy, verify that it is the current version.</i>	Page 4 of 10 This copy printed on: 22/07/2019
---	--	---



GOV-COD-03 - CODE OF PRACTICE – ACCESS TO MEETINGS & ASSOCIATED DOCUMENTS

Version No:	2.3
Issued:	March 2019
Next Review:	March 2023

7. 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 (also listed in Clause 8 below) and the factual reasons for the relevance and application of the ground(s) in the circumstances.

8. 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;*
- (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;*



GOV-COD-03 - CODE OF PRACTICE – ACCESS TO MEETINGS & ASSOCIATED DOCUMENTS

Version No:	2.3
Issued:	March 2019
Next Review:	March 2023

8. MATTERS FROM WHICH THE PUBLIC CAN BE EXCLUDED cont'd:

- (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.*

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.

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. [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.

9. EXAMPLE CONFIDENTIALITY PROVISIONS

The District Council of Lower Eyre Peninsula will record in the minutes of any Council and Council committee meetings the making of an order in accordance with sections 90(2) and (3) and section 91(7).



GOV-COD-03 - CODE OF PRACTICE – ACCESS TO MEETINGS & ASSOCIATED DOCUMENTS

Version No:	2.3
Issued:	March 2019
Next Review:	March 2023

10. PROCESS TO EXCLUDE THE PUBLIC FROM A MEETING

The general practice of the District Council of Lower Eyre Peninsula is to deal with the agenda items in the order listed in the agenda.

1. CEO to identify any items and documents that may be treated confidentially and discuss with Mayor / Committee chairperson as the agenda is prepared.
2. Agenda to identify any items and documents that may be treated confidentially.
3. Council or the Committee to move relevant Section 90 (3) order with appropriate inserts (see Appendix A – Model Confidentiality Codes & Guidelines).
4. The public to be excluded from the meeting with an explanation by the Mayor / Chairperson of the grounds for exclusion.
5. The matter to be dealt with. **Note that the opportunity can not be used to discuss or deal with any other matter.**
6. Council or the Committee to move Section 91 (7) order (if required) with appropriate details explaining the reason for keeping the items in confidence.
7. The public to be re-admitted to the meeting.
8. The Mayor / Chairperson to provide an explanation of the grounds for retaining identified documents in confidence (if utilised) with an explanation recorded in the minutes outlining the reasoning.

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 six 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.



GOV-COD-03 - CODE OF PRACTICE – ACCESS TO MEETINGS & ASSOCIATED DOCUMENTS

Version No:	2.3
Issued:	March 2019
Next Review:	March 2023

11. REVIEW OF CONFIDENTIALITY ORDERS cont'd:

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.

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.

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 Internet at www.lowereyrepeninsula.sa.gov.au

14. 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 GOV-POL-11 – Review of Council Decisions, established by Council. This policy is available from Council's website www.lowereyrepeninsula.sa.gov.au or alternatively by contacting the Council office on the details provided in Clause 15 of this code.



**GOV-COD-03 - CODE OF PRACTICE –
ACCESS TO MEETINGS &
ASSOCIATED DOCUMENTS**

Version No:	2.3
Issued:	March 2019
Next Review:	March 2023

15. COUNCIL CONTACT PERSON

Sacheen Hopewell
 Manager Corporate Services
 Phone: (08) 8676 0400
 Fax: (08) 8676 2375
 Email: mail@dclep.sa.gov.au
 Post: PO Box 41, Cummins, SA, 5631

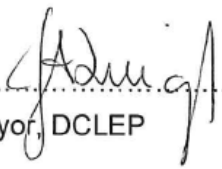
16. APPENDIX

Appendix A – The public interest test

SIGNED: 

CEO

Date: 19 / 07 / 2019



Mayor, DCLEP

Date: 19 / 07 / 2019

DOCUMENT HISTORY		
Version:	Issue Date:	Description of Change:
2.1	20/03/2015	Adopted by Council
2.2	15/03/2019	Significant wording review to remove repetitive items and excessive appendices that were primarily staff reference & sent for public consultation.
2.3	19/07/2019	Adopted following public consultation

	APPENDIX A – THE PUBLIC INTEREST TEST	Version No:	2.2
		Issued:	March 2019
		Next Review:	March 2023

1. The Public Interest Test

In some sections under section 90(3) of the Act a public interest balancing test must be satisfied for the ground of exclusion to apply. The “public interest balancing test” applies to sections:

- 90(3)(b)(ii) – ‘commercial advantage’;
- 90(3)(d)(ii) – ‘commercial information’; and
- 90(3)(j)(ii) – ‘information provided on a confidential basis’.

This test requires that public interest reasons for closing a meeting to the public must outweigh the general requirements for meetings to be held in public.

The Act does not provide a legislative definition to guide decision makers in considering confidentiality orders. Specifically, the test requires that to make a valid order a council or committee must demonstrate that disclosure of information would, on balance, be contrary to the public interest.

Where the reasons for and against closing a meeting to the public, in the public interest are equally weighted, the scales should be tipped in favour of public disclosure.

In the Ombudsman Report – “In the Public Eye”, the public interest reasons for a meeting to remain open to the public include (but are not limited to):

- ensuring accountability;
- maintaining transparency of public expenditure;
- facilitating public participation;
- assisting public awareness; and
- allowing for the scrutiny of information.

In contrast, the public interest reasons for a meeting to be closed to the public include (but are not limited to):

- the disclosure of certain information would prevent the efficient and effective governance of the Council or Committee;
- the disclosure of the private information of an individual would be unfair or harmful (i.e. by exposing untried allegations of misconduct);
- unreasonably exposing the sensitive or secret interests of a third party;
- prejudice to the fair treatment of a public report by early disclosure; and
- detriment to the public (i.e. disclosing information which would inhibit the flow of information to law enforcement agencies).