



Light  
Regional  
Council

## Code of Practice for Access to Council Meetings, Council Committees and Council Documents

<b>Reference Number:</b>	Section 6 No. 03
<b>Responsible Department:</b>	Governance
<b>Related Policy/Procedure:</b>	6.13 Internal Review of Council Decisions Procedure 6.09 Public Consultation Policy 6.08 Code of Practice for Meeting Procedures
<b>Date of Adoption:</b>	17 June 2003
<b>Current Review Date:</b>	23 November 2023
<b>Resolution Number:</b>	OCM-2023/226
<b>Version Number:</b>	Amendment No. 7
<b>Applicable Legislation:</b>	<i>Local Government Act, 1999</i> <i>State Records Act, 1997</i> <i>Freedom of Information Act, 1991</i> <i>Planning, Development and Infrastructure Act 2016</i>
<b>Next Review Date:</b>	June 2026
<b>Review Frequency:</b>	Within 12 months of a Council election or when legislation requires

### 1. Statement of Principle

In accordance with Section 92 of the *Local Government Act* (the Act), the Light Regional Council (Council) recognises the procedures to be observed at a meeting of Council or a Council Committee and is committed to open, transparent and informed decision-making encouraging appropriate community participation in the affairs of Council.

Council also recognises that on occasion it may be necessary in the broader community interest to restrict public access to discussion or documents (Pursuant to Section 90(2) of the *Local Government Act 1999* (the Act)).

### 2. Purpose.

This purpose of the Code of Practice for Access to Council Meetings, Council Committees and Council Documents (the Code) is to ensure that there are clear guidelines for the community in relations to:

- The principles underlying this Code of Practice;
- Public access to Agendas, Minutes and associated documents;
- Public Access to meetings;
- Matters for which the public may be excluded from meetings
- Use of confidentiality provisions;
- Accountability and reporting to the community including the availability of this Code and grievances relating to the use of this Code by Council.

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### **3.    Definitions**

**Clear days** – means the time between the giving of the notice and the day of the meeting. The day on which the notice is given and the day on which the meeting occurs will not be taken into account. Saturdays, Sundays and public holidays will be taken into account. If the notice is given after 5pm, the notice will be taken as given on the next day, e.g. Notice is given on a Thursday for a following Monday meeting, the clear days are Friday, Saturday and Sunday.

#### 4. Public Access to the Agenda for meetings

- 4.1 At least three clear days before a Council or 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. Items listed on the agenda will be described accurately and in reasonable detail.
- 4.2 The notice of the meeting will be placed on public display at the principal office of Council and published on the Council's website, at the same time as they are forwarded to members.
- 4.3 The notice will be kept on public display and continue to be published on the website until the completion of the relevant Council or Committee meeting.
- 4.4 Reasonable numbers of copies of non-confidential agenda documents and 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.
- 4.5 Members of the public may obtain a copy of the agenda and any particular reports for a fee to cover the costs of photocopying in accordance with Council's schedule of fees and charges.
- 4.6 Agenda papers provided to members of Council, or members of a Committee, may include an indication from the CEO that the Council or Committee may determine to consider an item in confidence, with the public to be excluded from the meeting during discussion of that item. Where such an indication is made, the CEO must specify the basis under which the confidentiality order could be made in accordance with section 90(3) 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.

#### 5 Public access to Meetings

- 5.1 Council and Committee meetings are open to the public and attendance is encouraged. Council facilitates public attendance at meetings of the Council and Committees through public notification or meetings by public notice at its Principal Office and on Councils website. 5.2 Council's Code of Practice for Meeting Procedures also contains provisions relevant to public participation in Council and Committee meetings.
- 5.3 Although public attendance at meetings is encouraged, there may be circumstances where the Council or Committee believes it is necessary in the broader community interest to exclude the public from a particular matter. The public will only be excluded when considered proper and necessary

## **6      Information and Briefing Sessions**

- 6.1 Council of the CEO are permitted to facilitate an 'information or briefing session' where more than one member of the Council or Committee is invited.
- 6.2 A matter must not be dealt with at an information or briefing session in such a way so as to obtain, or effectively obtain, a decision outside of a formally constituted meeting of a Council or a Committee.
- 6.3 An information or briefing session on a matter that will be included on a council agenda must be open to the public. However, that Council or CEO may order that the information or briefing session be closed to the public if the matter listed for discussion falls within the confidentiality provisions listed in section 90(3) of the Act.
- 6.4 Whether or not an information or briefing session has been open to the public, the following information must be published as soon as practicable after the holding of the session:
- the place, date and time of the session;
  - the matter discussed at the session; and
  - whether or not the session was open to the public.

## **7      Process to exclude the Public**

- 7.1 Before a meeting orders that the public be excluded to enable consideration of a particular matter in confidence, the Council or Committee 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 (including staff, but not including a member of the Council or Committee), unless exempt by being named in the resolution as entitled to remain.
- 7.2 Once Council or a 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 she/he fails to leave on request.
- 7.3 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.

**8 Matters from which the public can be excluded**

8.1 In accordance with the requirements of section 90(3) of the Act, Council, or a Committee, may order that the public be excluded in order to receive, discuss or consider any of the following information or matters in confidence:

- (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;*
- (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 supply of goods, the provision of services or the carrying out of works;*
- (m) *information relating to a proposed amendment to a Development Plan under the Development Act 1993 before a Development Plan Amendment proposal relating to the amendment is released for public consultation under the Act; or*

- (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.*

8.2 The Act provides for a definition of 'personal affairs', which includes a persons:

- financial affairs
- criminal records
- marital or other personal relationships
- personal qualities, attributes or health status
- 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.

**NOTE:** This is an inclusive (not exhaustive) list of personal affairs, matters and other matters may also constitute a person's personal affairs.

8.3 With respect to matters on a council agenda, where a person provides information to the Council and requests that it be kept confidential, Council is not able to consider this request unless the matter is one that falls within section 90(3) of the Act. If this is the case, Council can consider the request on its merits.

8.4 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 Council or the Committee concerned, or to members or employees of Council; or
- cause a loss of confidence in Council or the Committee;
- involve discussion of a matter that is controversial within the Council area; or
- make the council susceptible to adverse criticism.

8.5 If a resolution to exclude the public is carried, Council or the Committee is required to make a note in the minutes of the making of the order and specify;

- the grounds on which it was made;
- The basis on which the information or matter falls within the ambit of each confidentiality ground.

## **9. Public access to minutes**

9.1 Minutes of a meeting of Council or a Committee (with the exception of Confidential Minutes of any such meeting) will be publicly available on Council's website, , within five days after the meeting.

9.2 Printed copies of minutes may be purchased on request from the Principal Officer upon payment of a fee contained in the Register of Fees and Charges.

## **9 Use of the Confidentiality Provisions**

9.1 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 7 *Matters from which the public can be excluded* of this Code.

9.2 The policy approach of Light Regional Council is that:

- The principle of open and accountable government is strongly supported;
- Confidentiality provisions will only be utilised after careful consideration and when considered proper and necessary;
- 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;
- 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 e.g. the price to which Council is prepared to bid for land yet to be auctioned. 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 will 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;
- The use of all confidentiality provisions will be reported to the community annually in Council's Annual Report; and
- Where a person provides information to Council and requests that it be kept confidential, the 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**

10.1 The Act requires Councils to make available a large number of documents. Many of these are set out in Schedule 5, with further requirements contained in other sections of the Act.

10.2 Schedule 5 documents must be published on a website determined by the CEO. Council must also upon request, provide a person with a printed copy of any document referred to in Schedule 5. Provision of printed copies of a document may require payment of a fee set by Council (see Council's fees and charges register for any relevant fee).

10.3

10.4 The Council or the Council Committee will 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. 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).

10.5 In accordance with section 91(8) the Council or the 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(s) 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 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)]

"The following is an example:

*Council decided to bid \$100,000 at auction for a parcel of land.*



*An order that the discussion can be confidential could be made in accordance with section 90(2).*

*Council resolved that the document containing information on the value of the land remain confidential in accordance with section 91(7).*

*Council could delegate to the CEO the authority to make this information public following the completion of the acquisition in accordance with section 91(9)(c)."*

The minutes shall record the relevant grounds and duration of the order and any delegation to revoke the order, should this be applicable.

- 10.6 Requests to access Council and Committee documents can be made under the Freedom of Information Act 1991. Any inquiries in relation to the process for seeking access to documents held by Council should be directed to Council's nominated Freedom of Information Officers who are the Chief Executive Officer and the General Manager Governance and can be contacted by telephoning 8525 3200.

## **11 Review of Confidentiality Orders**

- 11.1 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.
- 11.2 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.
- 11.3 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 on a quarterly basis to ensure that items are released in accordance with the resolution of Council, when the confidential provision no longer applies.
- 11.4 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 quarterly 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 a quarterly review, the Council cannot delegate the power to apply sections 90(3) and 91(7) of the Act.
- 11.5 A Council may resolve to exclude the public from a meeting to discuss and undertake consideration of the recommendations arising from the 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.
- 11.6 If there is no longer any need for the confidentiality order, then the Council or 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 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**

12.1 A report on the use of sections 90(2) and 91(7) by the Council and Committees must be included in the annual report of a Council as required by Schedule 4 *Material to be included in the annual report of a council* of the Act. The reporting should include the following information, separately identified for both Council and 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;
- 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.

Council will make this information available for inspection by the public at each of Council's offices annually (93 Main Street, Kapunda and 12 Hanson Street, Freeling).

## **13      Availability of Code**

13.1 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. A copy of the Code is also available to be downloaded, free of charge, from Council's website [www.light.sa.gov.au](http://www.light.sa.gov.au).

## **14      Grievance Procedures**

14.1 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.

14.2 Should a person be aggrieved about public access to either a meeting or a document then they can lodge an application for consideration under the Internal Review of Council Decisions Procedure adopted by Council. A copy of the procedures is available from the General Manager Governance who can be contacted by telephoning 8525 3200.

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

The Chief Executive Officer

Light Regional Council

P O Box 72

KAPUNDA SA 5373

**History Of Policy Amendments**

Original Policy created by Council on 17 June 2003, Minute Reference 16.2.2.1, Minute Book Page 2003/225

1. Policy amended by Council on Tuesday, 18 April 2006, Minute Reference 9.2.1, Page 2006/78.
2. Policy amended by Council on Tuesday, 20 January 2009, Minute Reference 10.2.1, Page 2009/2.
3. Policy amended by Council on Tuesday 15 September 2009, Minute Reference 10.2.1, Page 2009/216.
4. Policy amended after a period of public consultation during December 2011 and adopted by Council on Tuesday 24 January 2012, Minute Reference 10.2.2 Page 2012/06
5. Policy amended by Council on 22 September 2015, Minute Reference GAP9.2.1/2015, Page 2015/294
6. Policy amended by Council on 16 April 2020, Minute Reference 5.1.1, Page 2020/56
7. Policy adopted by Council on 28 November 2023, resolution number OCM-2023/226