1. Statement of Principle

Light Regional Council (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 Council.

However, Council also recognises that on occasion it may be necessary in the broader community interest to restrict public access to discussion or documents.

2. Purpose.

The Code of Practice for Access to Council Meetings, Council Committees and Council Documents (the Code) is intended to provide clear guidance as to the application of the provisions in Sections 90 and 91 of the Local Government Act 1999 (the Act) regarding restrictions to public access to meetings or documents. It also includes information on:

- the relevant provisions in the Act,
- adopted policy on the use of these provisions,
- the process that is utilised to restrict public access when this is considered necessary,
- the Council contact officer should additional information be required, and
- a process for dealing with any grievances.

It sets out the policy of Council for access to meetings and documents including:

- access to the agenda for meetings,
- public access to meetings,
- process to exclude the public,
- matters for which Council, or a committee, can order that the public be excluded,
- how Council will approach the use of the confidential provisions,
- public access to documents,
- accountability and reporting to the community, and the code’s availability, and
- grievances about the use of the code by Council.
3. Scope

This Code applies to persons excluded from access to Council meetings, Council Committee meetings when held in confidence and/or Council documents containing confidential information.

This policy does not apply to a Member of Council or Member of a Committee or persons named by resolution of the Council or Committee.

4. Policy Aim

The aim of this code is to:

4.1 clearly outline to the community for what purpose and on what basis Council may apply the provisions of the Act to restrict public access to meetings or documents;

4.2 provide information on Council’s code of practice to the community;

4.3 summarise the legal position relating to public access to Council and committee meetings and documents; and

4.4 inform and educate the community about public access to Council and Committee meetings, minutes of Council and Committee meetings and other Council documents.

NB – These guidelines relate to the provisions of the Act, (Refer Appendix 1)

5. Public Consultation

Council is required prior to adopting a code of practice, and prior to alteration or substitution of a code, to make copies available for inspection or purchase at the principal office. In involving the community Council must follow the relevant process set out within Council’s Public Consultation Policy. A copy of that policy can be viewed or obtained at any of the council offices during normal business hours.

6. Policy Details

6.1 Access to the Agenda for Meetings

At least three (3) clear days before a Council and 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 and the notice must contain or be accompanied by the agenda for the meeting. The notice and agenda are also to be placed on public display at the principal office of Council at the same time as they are forwarded to Council members. Items listed on the agenda are to be described with reasonable particularity and accuracy.

The practice of Council is to place a list of the items of business plus any documents and reports relating to these matters (with the exception of any matters that might be indicated as subject potentially to the making of an order of confidentiality) on public display three (3) days prior to the meeting. Further copies are made available to the public at the meeting of the Council / Committee.

These provisions apply to Council meetings, committees that have as part of their responsibility some regulatory activities and those other committees to which Council has determined these procedures will apply.

Where a committee is not performing a regulatory activity these procedures may be varied, eg. notice 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 CEO taking into account the nature and purpose of the committee.

Three (3) ‘clear days’ means the time between the giving of the notice and when the meeting is to be held, excluding the day on which the notice was given and the day of the meeting. For example, where notice is given on a Thursday for a following Monday meeting, the clear days will be Friday, Saturday and Sunday.
Distribution of agenda papers to members of Council, or members of a committee, may include advice from the CEO of Council that a document or report on a particular matter may be considered in confidence with the public to be excluded. Where this occurs, the CEO must specify the basis under which such an order could be made in accordance with section 90(3) of the Act.

The following is an example (this could be included in the copy that is placed on public display):

“The Council Tender Committee is to consider tenders for the provision of electrical services. The document outlining the tenders received and the agenda item are clearly marked by the CEO to indicate that they may need to be considered in confidence under clause 90(3)(k) – tenders for the supply of goods, provision of services or the carrying out of works.”

Should the Council not confirm, and thereby not place an order of confidentiality on an item that the CEO has indicated may be considered as such, then a copy of the document will be available to the public at the meeting (publicly tabled) and placed on public display the next working day.

6.2 Public access to Meetings

Council (and committee) meetings are open to the public and attendance is encouraged – except where Council (or the committee) believes it is necessary in the broader community interest to exclude the public from the discussion 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.

The following is an example (this could be included in the copy placed on public display):

“Council is intending to bid at an auction to acquire land and would not want others involved, such as the vendor to have prior knowledge of what Council was setting as an upper limit to bid at the auction, as to do so would prejudice the position of Council and disadvantage the community.”

Council encourages public attendance/involved at meetings. Details of meeting dates and times are listed on Council’s Website (www.light.sa.gov.au) pursuant to section 94A of the Act, and on the public notice board at the front of the principal office in 93 Main Street, Kapunda.

It is not unlawful for members of Council, a committee 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 a formally constituted meeting of Council or committee.

The following are examples (listed in the Act):

- planning sessions associated with the development of policies and strategies;
- briefing or training sessions (e.g. Training session on treatment of GST);
- workshops;
- social gatherings to encourage informal communication between members or between members and staff.

6.3 Process to exclude the Public

Before a meeting orders that the public be excluded, the meeting, in public, formally determines if this is necessary and appropriate. A resolution to exclude the public while dealing with that particular matter must be passed. If this occurs then the public must 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 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.

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 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.”

6.4 Matters for which Council, or a Committee, can Order that the Public be excluded

Council, or a committee, may order that the public be excluded from attendance at a meeting in the following circumstances in accordance with Section 90 (3) of the Act:

"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.”

Council, or a committee, cannot make an order that the public be excluded from a meeting only on the basis 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.

If a decision to exclude the public is taken, Council or the committee is required to make a note in the minutes of the making of the order and the grounds on which it was made. Minutes of a meeting of Council must be publicly available within five days after the meeting.

6.5 Approach to the 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 the Act. These are listed in the previous section of this code. They are referred to as section 90(3).

The policy approach of Light Regional Council is that:

6.5.1 The principle of open and accountable government is strongly supported;

6.5.2 Confidentiality provisions will only be utilised after careful consideration and when considered proper and necessary;

6.5.3 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;

6.5.4 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 remain confidential. In determining this, the meeting shall 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;

6.5.5 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 carried by the meeting;

6.5.6 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 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. This along with the making of the order and the grounds on which it was made are also to be recorded in the minutes;

6.5.7 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

6.5.8 The use of all confidentiality provisions will be reported to the community annually in Council’s Annual Report.

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 relative merits.
6.6 Public Access to Documents

Various documents are to be available for inspection and purchase (for a fee) by the public. Where appropriate Council also makes a document available in electronic form and places it on the Internet for access.

Council (the 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. Council / the committee can only make such orders in relation to documents that have been considered in confidence under section 91(7) if they were considered in confidence pursuant to sections 90(2) and 90(3).

Once a matter has been dealt with, Council (the committee) may order that a document relating to the matter considered in confidence is to be kept confidential. There are some exceptions. Council (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 circumstances in which the order will cease to apply or when the order must be reviewed.

The resolution will also indicate whether any delegation is given to any employee to revoke the order and if relevant, any conditions associated with this delegation.

“The following is an example (this could be included in the copy placed on public display):

**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.

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, Business & Governance can be contacted by telephoning 8525 3200.

6.7 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.

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.

Council undertakes the review of confidentiality orders on a quarterly basis whereby 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 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 a quarterly review, the Council cannot delegate the power to apply sections 90(3) and 91(7) of the Act.

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.

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.

Council undertakes the review of confidentiality orders on a quarterly basis whereby 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 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 a quarterly review, the Council cannot delegate the power to apply sections 90(3) and 91(7) of the Act.

6.8 Accountability and Reporting to the Community

It is a statutory requirement that Council report on the use of all of the confidentiality provisions on an annual basis (refer to Schedule 4, clause 1(ga) of the Act). The reporting will include the following information, separately identified for both council and committees:

6.8.1 Number of occasions each of the provisions of section 90(3) were utilised;

6.8.2 Number of occasions each of the provisions of section 90(3) and section 91(7) were utilised, expressed as a percentage of total agenda items considered;

6.8.3 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 x was considered on 3 separate occasions;

6.8.4 Number of occasions that information originally declared confidential has subsequently been made publicly available; and

6.8.5 Number of occasions that information declared confidential has still not subsequently 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).

6.9 Availability of 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. A copy of the code may also be downloaded free of charge from Council’s website “www.light.sa.gov.au”.

6.10 Revoking or Amending Previous Resolutions
Subject to some circumstances, Council and Council committees can pass resolutions that amend or revoke resolutions previously adopted. Whilst this is not a regular practice it can happen where for example new information is presented.

7. **Grievance Procedures**

Council is required to establish procedures for the review of decisions of:

- 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 consideration under the Internal Review of Council Decisions Procedure adopted by Council. A copy of the procedures is available from the General Manager, Business & 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

A person may also lodge a complaint with the South Australian State Ombudsman, who may carry out an investigation if it appears (to the Ombudsman) that Council (or Committee) may have unreasonably excluded members of the public from a meeting, or prevented access to documents.

8. **Information**

Council's Customer Service Officers can assist in providing or obtaining information in regard to this policy and can be contacted on telephone 8525 3200.

9. **Review and Evaluation**

Council will review this code in accordance with the provisions of the Act, however may undertake an earlier review if required.

**History Of Policy Amendments**

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

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