

Code of Practice – Access to Council and Committee Meetings and Documents



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Responsible Manager	Manager Governance & Policy
Other key internal stakeholders	NA
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Legal requirement	A Council must, within 12 months after each periodic election, review this Code Before Council adopts, alters or substitutes this Code, it must follow the relevant steps in its Community Engagement (Public Consultation) Policy
Due date next review	2023

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PURPOSE

The purpose of this Code is to clearly outline to the community how they may access Council meetings, agendas and reports. In addition it outlines how Council may apply the provisions of the *Local Government Act 1999* to restrict public access to Council and Committee meetings or documents.

CODE

This Code should be read in conjunction with Council's Code of Practice for Council and Committee Meeting Procedures.

Electronic Participation in Council Meetings: Public Health Emergency (Notice No 1)

On 15 March 2020, the Chief Executive of the Department for Health and Wellbeing in the State of South Australia, pursuant to section 87 of the *South Australian Public Health Act 2011*, declared that an emergency which threatens to cause the death of, or injury or other damage to the health of any person is occurring or about to occur in relation to the transmission of COVID-19, and declared the emergency to be a public health emergency.

On 22 March 2020, the State Co-ordinator for the State of South Australia declared, pursuant to section 23 of the *Emergency Management Act 2004*, that a Major Emergency is occurring in respect of the outbreak of the Human Disease named COVID-19 within South Australia.

On 30 March 2020 the Minister for Transport, Infrastructure and Local Government issued a notice pursuant to section 302B of the *Local Government Act 1999* (Notice No 1) (**Notice No 1**) varying or suspending the operation of the specified provisions of the *Local Government Act 1999* as set out in Schedule 1 to Notice No 1 which commenced operation on 31 March 2020.

For the period Notice No 1 has effect (as provided for in Notice No 1), this Code of Practice is altered as set out below and those alterations have effect notwithstanding any other provision in this Code of Practice to the contrary.

Notice No 1:

- (a) provides that a Council is not required to adopt any provision in a code of practice that would prevent or inhibit members from participating in Council meetings or Council committee meetings by electronic means;
- (b) provides that Council members may meet by electronic means to alter the code of practice of the Council, or substitute a new code of practice of the Council, even if the existing code of practice prevents or inhibits the Council members from meeting by electronic means;
- (c) the requirement in section 92(5) that before a Council adopts, alters or substitutes a code of practice it make copies of the proposed code, alterations or substitute code (as the case may be) available for inspection and purchase at the principal office of the Council and on a website determined by the Council and that the Council follow the steps set out in its public consultation policy is suspended while these provisions are in effect.

For the avoidance of doubt, save for the alterations to the Code of Practice as set out below this Code of Practice otherwise applies to all meetings of the Council. To the extent that any other provision in this Code of Practice could be read as being inconsistent or incompatible with the ability of the Council to hold electronic meetings, the provision is suspended while these provisions are in effect.

Statement of Principle

The City of Tea Tree Gully supports the principle that the procedures to be observed at a meeting of Council or a Committee should contribute to open, transparent and informed decision-making and encourage appropriate community participation in the affairs of Council. Council 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.

Access to Council and Committee Meeting Documents

Notice and Agenda

Public access to Council and Committee Agendas provides one of the main opportunities for the community to gain information about the business of Council and Committees. The following procedures apply to encourage public access to the Notice and Agenda:

- a. At least three Clear Days before a Council or Committee meeting (unless it is a special meeting) the CEO must give written Notice of the meeting to all Council and Committee Members
- b. Subject to e., it will be placed on public display at the principal office of Council and on Council's website three Clear Days prior to the meeting
- c. Subject to e., it will be kept on display until the completion of the meeting and continue to be published on the website
- d. Subject to e., copies will be available at the meeting.
- e. For the period of the operation of Notice No 1 the requirement that the CEO give notice to the public of the times and places of council meetings by placing the notice of meeting and agenda on public display at each office of the Council that is open to the public for the general administration of Council business within its area is **suspended**.

The Agenda may include a recommendation from the CEO that a document or report on a particular matter should be considered in confidence with the public to be excluded, in accordance with section 90 of the Act. Where this occurs, the CEO must specify the basis under section 90(3) where such an order could be made.

For the period of the operation of Notice No 1:

- a. the requirement that the CEO must ensure that a reasonable number of copies of any document or report supplied to members of the Council for consideration at a meeting of the Council are available for inspection by members of the public at the principal office of the Council or at the meeting is **suspended**.
- b. the CEO (or a person nominated in writing by the chief executive officer) will ensure that any document or report supplied to members of the Council for consideration at a meeting of the Council is available for inspection by members of the public -
 - (i) in the case of a document or report supplied to members of the Council before the meeting - on a website determined by the CEO as soon as practicable after the time when the document or report is supplied to members of the Council; or

- (ii) in the case of a document or report supplied to members of the Council at the meeting - on a website determined by the CEO as soon as practicable after the time when the document or report is supplied to members of the Council.

Minutes

Minutes of a Council or Committee meeting must be publicly available on Council's website within five days after the meeting. This excludes any resolutions where a confidential retention order has been made. These minutes must be available for a minimum period of one (1) month.

Public Access to Meeting Documents

Various non-confidential documents from Council or Committee meetings are to be available for inspection and purchase (for a fee) by the public, subject to it being printed during business hours in accordance with Council's Fees and Charges Register. Council may also make a document available in electronic form and place it on its website for access.

Documents will not be made available for public inspection while a confidential order under section 91(7) remains in place.

Requests to access documents can be made under the *Freedom of Information Act 1991*. Further information is available on Council's public website.

Access to Council and Committee Meetings

Subject to the matters discussed below regarding Notice 1, Council and Committee meetings are open to the public and attendance is encouraged, except where Council or a Committee believes it is lawful and necessary to exclude the public from the meeting i.e. the need for confidentiality outweighs the general principle of open decision making.

The public may consider participation through the public forums or deputations in accordance with Council's Guidelines.

Notice No 1

Notice No 1 provides that a Council meeting will be taken to be conducted in a place open to the public even if 1 or more Council members participate in the meeting by electronic means provided that -

- (a) the CEO (or a person nominated in writing by the CEO) makes available to the public a live stream of the meeting on a website determined by the CEO and ensures that members of the public can hear the discussion between all Council members present at the meeting via the live stream; or
- (b) if the CEO (or a person nominated in writing by the CEO) has taken reasonable steps to make available a live stream of the meeting but is unable to make available a live stream of the meeting, the CEO (or a person nominated in writing by the CEO) makes available to the public a recording of the meeting as soon as practicable after the meeting on a website determined by the CEO and ensures that members of the public can hear the discussion between all Council members present at the meeting via the recording.

If the CEO (or a person nominated in writing by the CEO) has taken reasonable steps to make available to the public a live stream of the meeting or, (if unable to make available a live stream of the meeting) a recording of the meeting but is unable to comply the CEO (or a person nominated in writing by the CEO) must publish on a website determined by the CEO the steps taken to comply.

Excluding the Public from a Meeting

Council or a Committee may order that the public be excluded in specific circumstances. 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. In considering making an order, under the Act, it is not relevant that any discussion in public may cause embarrassment or a loss of confidence in the Council, a Committee or employee.

Where a person provides information to Council and requests that it be kept confidential the Council is not able to comply with this request unless the matter is one that falls within the ambit of section 90(3) of the Act. If this is the case, Council will then be in a position to consider the request on its merits.

Meeting

Council will only discuss matters in confidence when it is considered necessary to do so.

Before a Council or Committee meeting orders that the public be excluded, the meeting must resolve that way. If this occurs then the Presiding Member will convey this to the public (and the grounds on which this will occur) and the public must leave the room. The Council or Committee can by inclusion within the resolution permit a particular person or persons to remain in the meeting.

Notice No 1 provides that the Council or council committee must disconnect any live stream or recording of a meeting for the period that the meeting is closed to the public pursuant to an order made under section 90(2).

When an order has been made it is an offence for a person to remain in the room. It is lawful for a member of SAPOL to use reasonable force to remove the person from the room if they fail to leave upon request of the Presiding Member.

Further, Notice 1 provides that it is also an offence for person who, knowing that an order is in force under section 90(2), to connect to a meeting of the Council or Council committee by electronic means, or fail to disconnect from a meeting of the Council or Council committee.

Once the confidential matter has concluded, the public are then permitted to re-enter or re-connect to the meeting. The decision of the meeting in relation to this matter will be made publicly known unless Council has resolved to retain some or all of the documentation in confidence.

It is necessary for the meeting to undertake the formal determination process for each matter to be considered in confidence and to resolve to exclude the public.

The Council or Committee, where practical, will consider matters to be dealt with in confidence after all other items have been considered.

Notice No 1 provides that a Council meeting will be taken to be conducted in a place open to the public even if 1 or more Council members participate in the meeting by electronic means provided that -

- (a) the CEO (or a person nominated in writing by the CEO) makes available to the public a live stream of the meeting on a website determined by the CEO and ensures that members of the public can hear the discussion between all Council members present at the meeting via the live stream; or
- (b) if the CEO (or a person nominated in writing by the CEO) has taken reasonable steps to make available a live stream of the meeting but is unable to make available a live stream of the meeting, the CEO (or a person nominated in writing by the CEO) makes available to the public a recording of the meeting as soon as practicable after the meeting on a website determined by the CEO and ensures that members of the public can hear the discussion between all Council members present at the meeting via the recording.

If the CEO (or a person nominated in writing by the CEO) has taken reasonable steps to make available to the public a live stream of the meeting or, (if unable to make available a live stream of the meeting) a recording of the meeting but is unable to comply the CEO (or a person nominated in writing by the CEO) must publish on a website determined by the chief executive officer the steps taken to comply and the requirement will be suspended.

Minutes

If a decision to exclude the public is taken, Council or a Committee is required to record in the Minutes the making of the order and the grounds on which the resolution was made in the Minutes.

Confidential Retention Order of Documents

Meeting

Council or a Committee will only make an order that a document associated with a discussion from which the public are excluded will remain confidential if it is considered proper and necessary. A resolution to this effect will be carried by the meeting, immediately after considering the confidential item which will 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 (if the order has a duration of more than 12 months, the order must be reviewed at least once in every calendar year), in accordance with section 91 of the Act. When retaining documents as confidential, the retention period will be kept as short as is necessary.

Each item must be addressed separately and assessed against section 90(3) and section 91(7) of the Act. The Council or Committee can delegate the power to revoke an order made under section 91(7) of the Act and this can be included in the retention order, including any conditions associated with this delegation.

Should Council resolve not to place an order of confidentiality on an item, then a copy of the document will be placed on Council's website the next working day.

Minutes

Council or a Committee is required to record in the Minutes details relating to any order to keep an associated document confidential in accordance with section 91(7) of the Act. The Minutes will include the relevant grounds, duration of the order and any delegation to revoke the order, should this be applicable.

Review of Retention Orders

The CEO will maintain a register of the confidential retention orders. This register will be published on Council's website.

A review of retention orders and confidential documents will be conducted twice a year to ensure that items are released to the public in accordance with the resolutions of Council.

Where an extension of a confidential retention order is required, a report will be submitted to Council or Committee making recommendations with respect to each item to be retained in confidence.

Releasing of Confidential Documents

In all cases, the objective is that the information is to be made publicly available at the earliest opportunity. The CEO will maintain a register of released confidential retention documents. Released documents are available on Council's website.

Audio or Visual Recordings

Visual or Audio recordings are not to be taken outside of that prescribed in the Code of Practice for Council and Committee Meeting Procedures, which will also determine access to this information..

Reporting

Council will include in its Annual Report, a listing of the use of sections 90(2) and 91(7) of the Act by Council and Council committees as required by schedule 4 of the Act, and the *Local Government (General) Regulations 2013*. The reporting will include the following information, separately identified for both Council and Council Committees:

- In the case of a report on the use of section 90(2) of the Act, the following information is required:
 - The date, subject and total number of orders made under that subsection in the financial year
 - In relation to each paragraph ((a) to (n)) of section 90(3) of the Act, the number of times in the financial year that an order was made under section 90(2) on the basis that the information or matter fell within the ambit of the paragraph
- In the case of a report on the use of section 91(7) of the Act, the following information is required:
 - The date, subject and total number of orders made under that subsection in the financial year
 - The number of orders made under that subsection that expired, ceased to apply or were revoked during the financial year
 - The number of orders made under that subsection that remained operative at the end of the financial year (but not including orders made before the commencement of this paragraph)
- The percentage of section 90(2) confidential meeting orders is calculated against the total number of Agenda items considered by Council and Committees.

Informal Gatherings

Access to Informal Gatherings (as defined by the Act) and associated documents are established in Council's Informal Gatherings Policy.

Grievance Procedure

Should a person be aggrieved about public access to either a meeting or a document then a request, in writing, can be lodged for consideration under Council's Internal Review of Council Decisions Policy

A member of the public is also entitled to lodge a complaint with the South Australian Ombudsman if he or she has been aggrieved by a decision of Council to exclude the public from a meeting or has otherwise been prevented access to Council documents.

Legislative Framework and other References

The following legislation applies to this Code:

[Freedom of Information Act 1991](#)

Schedule 1, Section 9(1) & (2) of this Act specifies certain documents that are exempt and not exempt from disclosure to the public.

[Local Government Act 1999](#)

Section 90 of the Act provides a general duty for Council and Committee meetings to be conducted in a place open to the public.

Section 91 of the Act provides for confidential documents and the release of and minutes relating to.

Section 92 of the Act requires a council to prepare and adopt a code of practice relating to the principles, policies and procedures that council will apply for the purposes of the operation of Parts 3 & 4 of the Act.

[Local Government \(General\) Regulations 2013](#)

Regulation 35 outlines the requirement for reporting in the Annual Report for Confidential Documents.

Other references:

Council's documents including:

- Code of Practice for Meeting Procedures
- Community Engagement (Public Consultation) Policy
- Fees and Charges Register
- Informal Gatherings Policy
- Internal Review of Council Decisions Policy
- Petitions Management Policy
- Public Forum and Deputation Guidelines.

This Code is based on a model code developed by the Local Government Association.

Organisational Plan

Our Strategic Plan is supported by an Organisation Plan which focuses on five key themes of organisational excellence. One of these themes is Governance, which deals with how Council defines roles, powers and responsibilities within the organisation with the aim of modelling best practice in local government.

DEFINITIONS

For the purposes of this Code the following definitions apply:

Act

Local Government Act 1999

Agenda

As defined in the Act means a list of items of business to be considered at a meeting.

Disconnect

Means remove the connection so as to be unable to hear and see the meeting

CEO

Refers to the Chief Executive Officer (including their delegate) of the City of Tea Tree Gully

Clear Days

Means the number of calendar days between the giving of the Notice and the meeting. This is determined by excluding the day on which the Notice is given and the day of the meeting e.g. if Notice is given on a Friday for a following Tuesday meeting, then the Clear Days are the intervening Saturday, Sunday and Monday.

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Committee

Refers to key (section 41) Council Committees established under the Local Government Act 1999.

Connect

Means able to hear and/or see the meeting, including via a live stream or recording of the meeting

Live Stream

Means the transmission of audio and/or video from a meeting at the time that the meeting is occurring;

Minutes

A written record of the proceedings at every meeting of the Council or a Council committee.

Notice of a Meeting (Notice)

Pursuant to the Act in the case of an ordinary meeting or Council committee meeting, the CEO must give each member of the Council notice of the meeting at least three Clear Days before the date of the meeting. In the case of a special meeting or a special Council committee meeting, the CEO must give each member of Council notice of the meeting at least four hours before the commencement of the meeting. A Notice of a Meeting of the Council must be in writing, set out the date, time and place of the meeting, be signed by the CEO and contain or be accompanied by the Agenda for the meeting. For Council committee meetings, the Notice is not required to be signed by the CEO.

Personal Affairs

As defined in section 90(9) of the Act, 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.

Presiding Member

Under the Local Government (Procedure of Meetings) Regulations 2013, this means the person who is the Presiding Member of a council or council committee (as the case may be) and includes any person who is presiding at a particular meeting.

SAPOL

South Australia Police.

CODE IMPLEMENTATION

This Code will be implemented by the Chief Executive Officer or relevant portfolio director and managed in accordance with Council's scheme of delegations.

ACCESSIBILITY

This Code and Council's Fees and Charges register are available on Council's website:

www.cttg.sa.gov.au

Hard copies can be provided in accordance with Council's Fees and Charges Register at Council's Civic Centre at 571 Montague Road, Modbury SA 5092.