



Code of Practice

Public access to Council and Committee meetings and associated documents

Classification	Codes
Strategic reference	Goal 4: Governance and Organisational Culture
Relevant legislation	<i>Local Government Act 1999</i> <i>Local Government (Procedures at Meetings) Regulations 2013</i> <i>Freedom of Information Act 1991</i>
Relevant documents	Nil
Responsible officer	Chief Executive Officer
Version	2.0
Date adopted	15 November 2023
Date of effect	20 November 2023
Next review date	Within 12 months after the 2026 periodic election

1. STATEMENT

The Southern Mallee District Council (the “Council”) supports open and transparent decision making and engaging with the community. This Code sets out the Council’s commitment to provide public access to meetings and associated documents of Council and Council Committees.

Council recognises that on some occasions it is necessary in the broader community interest to limit access to meetings and associated documents and this Code also outlines the circumstances and procedures for restricting public access as provided for in the *Local Government Act 1999* (the “Act”).

This Code has been developed to meet the requirements of section 92 of the Act.

2. DEFINITIONS

Clear Days means the time between the giving of the notice and the day of the meeting but excluding both the day on which the notice was given and the day of the meeting, e.g. notice is given on a Thursday for a following Monday meeting, the clear days are Friday, Saturday and Sunday.

The Act refers to the *Local Government Act 1999*.

Personal affairs is defined by the Act and includes a person’s financial affairs, criminal records, marital or other personal relationship, personal qualities, attributes or health status, employment records, employment performance or suitability for a particular position, or other personnel matters relating to the person. It does not include the personal affairs of a body corporate.

3. PRINCIPLES

3.1 Scope

Public access to Council and Council Committee meetings and associated documents is key to community understanding the business and operation of Council.

This Code sets out the policy and procedures of Council for access to meetings and documents. It includes information relating to:

- public access to the agenda, documents and minutes of meetings;
- public access to meetings
- the process to exclude the public from meetings;
- matters for which the Council, or a Council Committee, can order that the public be excluded;
- how the Council will apply the confidentiality provisions in the Act;
- the process to review confidentiality orders;
- accountability and reporting to the community, and the availability of the Code; and
- grievances about the use of the Code by Council.

3.2 Public access to meetings

3.2.1 Ordinary meetings of Council or Council Committees

Council and Council Committee meetings are open to the public and attendance is encouraged. Details of Council and Council Committee meetings are displayed on Council's website and at the Council's offices in Pinnaroo and Lameroo.

Ordinary meetings of Council are held in the Pinnaroo Council Chamber, Day Street, Pinnaroo and the Lameroo Council Chamber, Railway Terrace North, Lameroo on the third Wednesday of every month, commencing at 6.30pm.

At least three (3) 'clear days' before an ordinary Council or Council Committee meeting the Chief Executive Officer (CEO) will give written notice of the meeting to all Council Members setting out the date, time and place of the meeting. The notice will be accompanied by the agenda for the meeting.

The notice of meeting will be placed on public display at the following locations:

- Lameroo Office - Railway North Terrace, Lameroo
- Pinnaroo Office - Day Street, Pinnaroo
- Council's website www.southernmallee.sa.gov.au until the completion of the relevant meeting

Meetings will commence as soon after the time specified in the notice of meeting as a quorum is present.

3.2.2 Special meetings of Council or Council Committees

Special Council or Council Committee meetings may be held at any time, however, at least four hours' notice is required for a Special meeting of Council and Council Committees. The notice of the meeting and agenda will be available as soon as practicable after the time that notice of the meeting is given to Council members.

3.2.3 Information or briefing sessions

Section 90A of the Act enables the Council or the Chief Executive Officer to convene information or briefing sessions to discuss particular matters of interest. This replaces the previous 'informal gatherings' procedure.

To constitute an information or briefing session under s90A, more than one member of the Council or a Council Committee must be invited to attend for the purposes of providing information or a briefing to attendees.

It is important to note that information/briefing sessions are not formal meetings of Council or a Council Committee – they are used to help Council Members become better informed about issues.

Council and Council Committee decisions cannot be made at these sessions; decisions can only be made at a formal meeting of the Council or Council Committee.

An information or briefing session must be open to the public, however section 90A(4) permits the Council or Chief Executive Officer to close a session to the public if it is agreed that a matter needs to be considered in confidence. The permissible reasons for excluding the public are outlined in 3.4.2 below.

If the public is excluded from an information or briefing session, a record must be made of the grounds on which the order was made and why the information being considered supports excluding the public (see section 90A(5)).

As soon as practicable after holding an information or briefing session, details of the session must be published on a website determined by the Chief Executive Officer that outline place, date and time of the session, the matter discussed and whether the session was closed to the public (see section 90A(7)).

3.3 Public access to documents

3.3.1 Public access to the Notice of Meeting and agenda

The non-confidential Council or Council Committee notice of meeting and agenda is available to view by the public three (3) clear days before a meeting is scheduled at:

- Lameroo Office - Railway North Terrace, Lameroo
- Pinnaroo Office - Day Street, Pinnaroo
- Council's website www.southernmallee.sa.gov.au

Members of the public may obtain a copy of the agenda for a fee to cover the costs of photocopying, in accordance with Council's schedule of fees and charges.

One copy of the agenda will be made available to view by the general public in attendance at a meeting.

3.3.2 Public access to minutes

During Council meetings the minutes are displayed on an overhead screen to enhance understanding, to provide clarity for the Council Members and the public, and to confirm the decisions made. Confidential items may not be displayed on a screen.

The non-confidential minutes of a Council or Council Committee meeting will be publicly available, including on the Council's website, within five (5) clear days after the meeting.

Members of the public may obtain a copy of the non-confidential minutes for a fee in accordance with Council's schedule of fees and charges.

3.3.3 Public access to other documents

Council makes various documents available for public inspection and purchase at its offices. Council also makes many of these documents freely available on Council's website.

The *Freedom of Information Act 1991 (FOI Act)* also makes provision for members of the public to access the documents of government. There are some exemptions under the FOI Act and other legislation (e.g. Copyright Act) where documents may not be released.

Inquiries in relation to the process for seeking access to documents held by Council should be directed to Council's Accredited Freedom of Information Officer on (08) 8577 8002.

3.4 Excluding public access to meetings or documents

3.4.1 Principles for the use of confidentiality provisions

Council strongly supports the principle of open and accountable government.

The public will only be excluded from meetings when considered proper and necessary (i.e. the need for confidentiality outweighs the principle of open decision-making).

In all cases the objective is for information to be made publicly available at the earliest opportunity and that the community is informed of any Council or Council Committee order and the associated implications.

3.4.2 Powers to exclude the public from meetings

Section 90 of the Act gives Council and Council Committees the power to exclude the public from a meeting. Section 90(3) describes the circumstances when the public can be excluded, namely discussion of a matter involves:

- (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 the supply of goods, the provision of services or the carrying out of works;*
- (l) *intentionally left blank - not listed in the Act*
- (m) *information relating to a proposed amendment to a proposal to prepare or amend a designated instrument under Part 5 Division 2 of the Planning, Development and Infrastructure Act 2016 before the draft instrument or amendment is released for public consultation under that Act;*
- (n) *information relevant to the review of a determination of a council under the Freedom of Information Act 1991*
- (o) *information relating to a proposed award recipient before the presentation of the award.*

Any consideration of the use of the confidentiality provisions to exclude the public from discussion of a particular matter requires the identification of one or more of the above grounds and the factual reasons for the relevance and application of the ground(s) in the circumstances.

In considering whether to exclude the public, s90(4) of the Act states that the following are NOT grounds for excluding the public:

Where discussion of a matter in public may—

- (a) cause embarrassment to the council or council committee concerned, or to members or employees of the council; or
- (b) cause a loss of confidence in the council or council committee; or
- (c) involve discussion of a matter that is controversial within the council area; or
- (d) make the council susceptible to adverse criticism.

When a decision to exclude the public is carried, the Council or the Council Committee will record the order in the minutes and the grounds on which it was made.

Once Council or a Council Committee has made an order to exclude the public, it is an offence for a person who, knowing that an order is in force, enters or remains in the room in which the meeting is being held. Section 90(5) of the Act makes it legal for an employee of Council or a member of the police to use reasonable force to remove the person from the room if he or she fails to leave on request.

If any form of physical force is required to remove a person, the police will be called.

3.4.3 Powers to make orders of confidentiality over documents

When an order to exclude the public has been made and following confidential discussion, section 91(7) of the Act then allows Council or a Council Committee to make a further order that documents (e.g. reports, attachments, minutes, or others) are kept confidential.

The Council or 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 necessary in the broader community interest.

When an order by resolution to keep documents confidential is made, the minutes will record:

- the grounds on which it was made;
- the duration of the order or the circumstances in which the order will cease to apply; and
- the period after which the order must be reviewed (see Appendices 1 and 2).

In all cases, the objective is that information will be made available to the public at the earliest opportunity.

Section 91(9) of the Act permits the Council or Council Committee to delegate the power to revoke an order made under section 91(7) to an employee of the Council.

Section 91(8) of the Act states that an order cannot be made 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.

3.4.4 Public Requests for Information to be Confidential

Council is only permitted to exclude the public and retain information under a confidentiality order when it meets the criteria specified by the Act (sections 3.4.2 and 3.4.3)

3.4.5 Process to exclude the public

If the CEO believes that a matter should be considered in confidence, it will be clearly noted on the agenda (generally in the *Confidential Items* section).

The public (non-confidential) version of the agenda will only contain the report title and the reason(s) why it should be considered in confidence.

Before a meeting orders the public to be excluded, the Council or Council Committee must, in public, formally determine it is necessary and appropriate to consider an item confidentially. A resolution to exclude the public will need to be carried and the public must then immediately leave the meeting room and move to a location where the meeting cannot be viewed or heard.

The Council or Council Committee can exempt Council staff or any other person or persons from leaving the meeting. Exempted Council staff names are to be listed by name in the resolution. The Council or Council Committee can also permit any other person or persons to remain in the meeting and these exempted person/s are to be listed in the resolution.

Once discussion of the matter has concluded, the meeting will then consider if it is necessary to make an order for a document (or parts of a document) remain confidential (e.g. a report, attachment or minutes). In determining this, the meeting shall have regard to the provisions of section 91 of the Act (3.4.3 above).

Council will consider each confidential item separately (i.e. they will not be considered en bloc). Therefore, if there is a further matter/s that the Council or Council Committee considers need/s to be dealt with in confidence, it is necessary to again undertake the formal determination process and to resolve to exclude the public, as described above for each item.

Once discussion on the matter is concluded, the public are then permitted to re-enter the meeting.

Decisions made will be available in the public minutes unless Council has ordered that they remain confidential, in which case they will not be publicly available until the order expires or ceases to apply.

3.5 Review and release of Confidentiality Orders

A review of the reports, attachments, minutes or any other documents that are the subject of a confidentiality order must be conducted annually to ensure that items are released to the public in accordance with the resolutions of Council.

An order will lapse if the time or event specified in the order has been reached or carried out or if a delegated employee revokes the order.

Once an order expires or ceases to apply, the minutes and/or documents automatically become public. Released documents are available on Council's website at www.southernmallee.sa.gov.au.

3.6 Accountability and reporting to the community

Information on the use of confidentiality provisions will be included in the Annual Report, which is available for inspection by the public at Council offices. This includes:

- Number of occasions each of the provisions for excluding the public were utilised;
- Subject of the confidential item;
- Number of occasions that information originally declared confidential has subsequently been made publicly available; and
- Any other information that the Act or Regulations require to be reported.

4. REVIEW

This Code of Practice will be reviewed within 12 months after the conclusion of each periodic election or more frequently if legislation or Council requires.

As required by Section 92(5) of the *Local Government Act 1999*, any future amendment or alteration to the Code, or a substitution of a new Code, will be subject to the specifications of Council's *Public Consultation Policy*

5. AVAILABILITY

This Policy is available without charge on the Southern Mallee District Council website: www.southernmallee.sa.gov.au.

A copy of the Policy may also be purchased from the Council Office at Lameroo or Pinnaroo, upon payment of a prescribed fee in accordance with Council's Schedule of Fees and Charges.

6. ADOPTION & AMENDMENT HISTORY

The table below sets out the adoption, review and amendment history of the Code.

Version No:	Issue Date:	Authorised by:	Description of Change:	Minutes Reference:
1.0	15 April 2020	Council	Adopted	Ordinary Council -15 April 2020
2.0	20 November 2023	Council	Amended due to end of Emergency Declaration and to include changes in the LG Act	Ordinary Council -15 November 2023