

# Code of Practice - Access to Council Meetings and Documents



## 1. RATIONALE

Council must prepare and adopt a Code of Practice, in accordance with Part 5 of the Local Government Act 1999 (the Act), that relates to the principles, policies, procedures and practices that the Council will apply for the purpose of the operation of Part 3 and Part 4 of the Act.

## 2. POLICY STATEMENT

2.1 The City of Marion is committed to the principles of honest, open and accountable government and encourages community participation in the business of Council.

2.2 In fulfilling the role of an effective Council that is responsive to the needs of the community and which operates within the legal framework (prescribed by the Act), the City of Marion supports the principle that procedures to be observed at a Council or Committee meeting should contribute to transparent and informed decision making and encourage appropriate community participation in the business of Council. However, the City of Marion also 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.

## 3. OBJECTIVES

This Code of Practice sets out the policy framework for access to meetings and documents and provides guidance as to the application of provisions in the Act to restrict public access to meetings and/or documents.

3.1 The Code of Practice aims to;

3.1.1 Provide the community with information on access to Council and Council Committee meetings and the documents of those meetings;

3.1.2 Summarise the legal position relating to public access to the Council and Council Committee meetings, agendas, documents and minutes of meetings; and

3.1.3 Outline to the community for what purpose and on what basis the Council may apply the provisions of the Act to restrict public access to Council and Council Committee meetings or documents and minutes.

## 4. POLICY SCOPE AND IMPLEMENTATION

4.1 This Code of Practice applies to Council and Council Committees and the associated agenda, minutes and attachments that relate to those meetings;

4.2 The Code of Practice does not apply to the Development Assessment Panel (DAP) as the requirements of the DAP are defined within the Development Assessment Act 1993;

4.3 Section 132 of the Act states that Council must make certain documents available for public inspection. The Code of Practice does not apply to those documents;

4.4 Where the Freedom of Information Act 1991 (FOI Act) provides for access to Council's administrative documents which are not normally available to the public, then those documents are not included in the scope of this Code.

## 5. Access to the Agenda for Meetings

- 5.1 In accordance with the Act, the Chief Executive Officer (CEO) must give written notice of an ordinary meeting to all the Council or Committee Members, setting out the date, time and place of the meeting at least three clear days before the meeting.
- 5.2 The notice contains or is accompanied by the agenda for the meeting and 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 potentially subject to the making of an order of confidentiality).
- 5.3 The notice and agenda are also placed on public display at the principal office of the Council, and available via Council's website: [www.marion.sa.gov.au](http://www.marion.sa.gov.au), at the same time as they are forwarded to the Council members. Further copies are made available to the public at the meeting of the Council or Council Committee.
- Note: - these provisions apply to the Council and Council Committee meetings that have as part of their responsibility some regulatory activities and those other committees to which the 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 Council Committee [Part 3 of the Local Government (Procedures at Meetings) Regulations 2000].
- 5.4 Distribution of agenda papers to members of the Council, or members of a Council Committee, may contain items of business (including reports or documents) that include a recommendation from the CEO that a document or report on a particular matter may be considered in confidence to the exclusion of the public. Where this occurs, the CEO will identify the legislative ground(s) upon which the Council or Council Committee members can determine whether a confidentiality order is to be made.
- 5.5 If, upon consideration of the grounds under Section 90(3), the Council or Council Committee members do not make an order of confidentiality for an item that the CEO has recommended to be considered in confidence, then a copy of the document will be made available to the public.

## 6. Public Access to Meetings

- 6.1 Council (and Council Committee) meetings are open to the public and attendance is encouraged and welcomed. Meeting schedules are made available for public viewing on the website.
- 6.2 There are times where Council (or Council Committee) considers it necessary to exclude the public from the discussion of a particular matter. In these circumstances, Council (or Council Committee) will do so in accordance with Section 90(3) of the Act which outlines the circumstances when a meeting can be closed to consider a matter in confidence.
- 6.3 The public will only be excluded when the need for confidentiality outweighs the principle of open decision making, and that will be determined on a case by case basis, upon satisfying one or more of the grounds under Section 90(3) of the Act.
- 6.4 In accordance with section 90 of the Act, it is not unlawful for Members of Council, Council Committee members and staff to participate in informal gatherings or discussion provided that a matter which would ordinarily form part of the agenda for a formal meeting is not dealt with in such a way as to obtain, or effectively obtain, a decision outside of a formally constituted meeting of Council or Council Committee. Such meetings may for example be in the form of:
- planning sessions associated with the development of policies and strategies;
  - briefing or training sessions;

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- workshops;
- social gatherings to encourage informal communication between members or between members and staff.

6.5 Informal gatherings will be in compliance with Council's 'Informal Gatherings Policy'

## 7. Matters Considered in Confidence

- 7.1 Before a meeting order that the public be excluded to enable the receipt, discussion and/or consideration of a particular matter, the meeting must, in public, formally determine that this is necessary and appropriate to do so, and then pass a resolution to exclude the public while dealing with that particular matter. If this occurs, everyone, except those persons permitted to stay by express inclusion in the resolution of Council (or Council Committee), must leave the room. Once Council, or Council Committee, has made the order it is an offence for a person, knowing that an order is in force, to enter or remain in a room in which such a meeting is being held.
- 7.2 Once discussion on a particular matter, including the making of a resolution made under Section 91(7) (if required) has concluded, the order to exclude the public lapses and the public are then permitted to re-enter the meeting. If there is a second or subsequent matter on the agenda to be considered in confidence it will be necessary for the Council or Council Committee to again undertake the formal determination process, and where satisfied resolve to exclude the public in the manner described above.
- 7.3 Council, or the Council 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.
- 7.4 When determining the order of matters on the agenda, Council or the Council Committee, will take into consideration the convenience of the public and the complexity of the matter to determine appropriate order.
- 7.5 In accordance with Section 90(3) of the Act, Council, or a Council Committee may order that the public be excluded in the following circumstances:
- 7.5.1 information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead);
  - 7.5.2 information the disclosure of which –
    - i. could reasonably be expected to confer a commercial advantage on a person with whom 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;
  - 7.5.3 information the disclosure of which would reveal a trade secret;
  - 7.5.4 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

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- ii. would, on balance, be contrary to the public interest;
- 7.5.5 matters affecting the security of Council, members or employees of Council, or Council property, or the safety of any person;
- 7.5.6 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;
- 7.5.7 matters that must be considered in confidence in order to ensure that 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;
- 7.5.8 legal advice;
- 7.5.9 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;
- 7.5.10 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 Council); and
  - ii. would, on balance, be contrary to the public interest;
- 7.5.11 tenders for the supply of goods, the provision of services or the carrying out of works;
- 7.5.12 information relating to a proposed amendment to a Development Plan under the Development Act 1993 before a Plan Amendment Report relating to the amendment is released for public consultation under that Act;
- 7.5.13 Information relevant to the review of a determination of Council under the Freedom of Information Act 1991.
- 7.6 Where Council, or a Council Committee, is considering making an order that the public be excluded on one or more of the grounds above it is not a relevant consideration that discussion of the matter in public may:
- i. cause embarrassment to the Council or the Council Committee concerned, or to members or employees of the Council: or
  - ii. cause a loss of confidence in the Council or the Council Committee.
- 7.7 If a decision to exclude the public is taken, Council or the Council Committee will include details in the resolution of the making of the order and the grounds on which it was made and application of those grounds to the present matter without disclosing the issues giving rise to the confidentiality. Minutes of a meeting of Council or a Council Committee are publicly available within five days after the meeting.

## 8. Process to Exclude the Public and Consider a Matter in Confidence

- 8.1 Confidentiality provisions will only be utilised after careful consideration and when considered proper and necessary;
- 8.2 The grounds on which an order to exclude the public is made will be conveyed to the public at the time of the order being made and will be included in the minutes of the meeting which are available to the public within 5 days of the meeting;
- 8.3 Once discussion of the matter is concluded, the meeting will then consider if it is necessary to make an order that any report or other document or the minutes associated with the confidential agenda item remains confidential. In determining this, the meeting shall have regard to the provisions of Section 91 and in particular Section 91(8) which details when Council or a Council Committee must not order that a document in whole or in part remain confidential;
- 8.4 If a meeting determines that it is proper and necessary to keep a report or documentation confidential, then it must evidence this by resolution. Where Council or a Council Committee resolves to retain information as confidential Council or the Council Committee 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 will be reviewed. In each case the review period must not be for a period longer than 12 months, in accordance with the Act.
- 8.5 Once discussion of the matter is concluded (and the public have returned to the meeting room), the decision of the meeting in relation to the matter will be made publicly known unless the Council has resolved to order that some information and all relevant decisions remain confidential, (eg the price to which the Council is prepared to bid for land yet to be auctioned).
- 8.6 Details relating to any order to keep information and/or discussion on the item confidential in accordance with Section 91(7) of the Local Government Act are also to be made known. When making a confidentiality order the meeting 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, that period being no longer than 12 months. This along with the making of the order and the grounds on which it was made, is also recorded in the minutes.
- 8.7 In all cases the objective is that the information be made publicly available at the earliest possible opportunity.
- 8.8 Where a person provides information to Council or a Council Committee for consideration and requests that it be kept confidential Council is not able to consider this request unless the matter falls within one of the grounds under Section 90(3) of the Act. If this is the case, Council will then be in a position to consider the request on its relative merits.

## 9. Review of Confidential Orders

A confidentiality order made under section 91(7) of the Act must specify the duration of the order or the circumstances in which the order will cease to apply, or a period after which the order must be reviewed. In any event, any order that operates for a period exceeding 12 months must be reviewed at least once in every year.

An order will lapse if the time or event specified has been reached or carried out. There is no need for the Council to resolve for the confidential order to be lifted. Once the order has lapsed, the minutes and/or documents automatically become public.

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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 annual review can be delegated to the Chief Executive office and sub-delegated to an employee of the Council if appropriate. If there are any items that require a fresh confidentiality order because the original order is about to expire, then the reviewer will prepare a report to Council making recommendations with respect to each item to be retained in confidence. Each item must then be addressed separately and assessed against section 90(3) and section 91(7) of the Act. While a Council may delegate the power to undertake an annual review, the Council cannot delegate the power to apply sections 90(3) and 91(7) of the Act.

A Council may resolve to exclude the public from a meeting to discuss and undertake consideration of the recommendations arising from the annual review in confidence, subject to the application of the relevant ground under section 90(3) of the Act. Section 90(3) of the Act must be applied separately to each item and not en bloc.

If there is no longer any need for the confidentiality order then the Council or Council Committee may delegate to an employee of the Council the power to revoke an order made in accordance with section 91(7) of the Act. The Council or Council Committee may also include in the resolution whether any delegation is given to an employee to revoke the order and if relevant, any conditions associated with the delegation.

## 10. Public Access to Documents

Various documents can be available for inspection and purchase (for a fee) by the public. Council may also make a document available in electronic form and place it on the Internet for public access.

The Council or the Council Committee will only order that a document associated with a discussion from which the public are excluded is to remain confidential if it is considered proper and necessary in the broader community interest.

The Council or the Council Committee can only resolve to keep minutes and/or documents confidential under section 91(7) if they were considered in confidence pursuant to sections 90(2) and 90(3).

Where keeping a document confidential is considered proper and necessary, a resolution to this effect is required which shall include:

- the grounds for confidentiality; and
- the duration of the order or the circumstances in which the order will cease to apply, or a period after which the order must be reviewed – if the order has a duration of more than 12 months, the order must be reviewed at least once in every year;
- (if applicable) whether the power to revoke the order will be delegated to an employee of the Council. [s.91(9)]

Requests to access Council and Council Committee documents can be made under the *Freedom of Information Act 1991*. 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.

## 11. Accountability and Reporting to the Community

11.1 To support Council's commitment to the principle of accountability to the community, Council will report, on an annual basis, in relation to its use of the confidentiality provisions. Council will report on the following information in its Annual Report:-

- i. the number of occasions Council or a Council Committee resolved to exclude the public; and
- ii. the relevant provisions within section 90 (3) of the Act that were utilised to exclude the public.

## 12. Review of Council Decisions

12.1 The Act provides that Council is required to establish procedures for the review of a decision in relation to the operation of:

- 12.1.1 Council or a Council Committee
- 12.1.2 An employee of the Council
- 12.1.3 Other persons acting on behalf of the Council.

12.2 Where a person is aggrieved about a decision under Section 90 of the Act to restrict public access to either a meeting or a document, they may apply for consideration under the Review of Decisions procedure that has been established in accordance with section 270 of the Act.

## 13. Availability of the Code

13.1 The public may inspect a copy of this Code, without charge, at the Council offices during office hours.

13.2 A copy of the Code will be made available on the Council Website ([www.marion.sa.gov.au](http://www.marion.sa.gov.au)).

13.3 Further enquiries about the Code should be directed to the Manager Corporate Governance or by telephoning Council on 8375 6600.

## 14. Review Process

14.1 The Act requires that the code be reviewed within 12 months of a periodic election (i.e. every 4 years). Council has the right to review this code at any time.

14.2 Before a Council adopts, alters or substitutes the Code it must;

- 14.2.1 Make copies of the proposed code, alterations or substitute code (as the case may be) available for inspection or purchase from the Council's principle office.
- 14.2.2 Follow the relevant steps set out in its public consultation policy.

## 15. DEFINITIONS

**Agenda** – A list of items of business to be considered at a meeting.

**Clear Days** - The time between the giving of the notice and the meeting is determined excluding the day on which the notice is given and the day of the meeting eg; notice is given on a Thursday for a following Monday meeting, the clear days being Friday, Saturday and Sunday.

**Council Committee** - A committee of Council established under section 41 of the Local Government Act 1999 or any other Committee established under the Act, including any subcommittee.

**Deputation** – a person or group of persons who wishes to appear personally before the Council or Council Committee in order to address the Council or Committee on a particular matter.

**Minutes** – a record of the items discussed and the resolutions made of a meeting of Council or Council Committee.

**Personal Affairs** - being a person's financial affairs, criminal records, marital or other personal relationships, personal qualities, attributes or health status, or that person's employment records, employment performance or suitability for a particular position or other personnel matters relating to the person but does not include the personal affairs of a body corporate.

**The Act** – *Local Government Act 1999*

## 16. REVIEW AND EVALUATION

Review due July 2023.



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## Public Health Emergency: Amendments to Allow Electronic Participation in Council Meetings

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**) 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. Notice No 1 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.

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.

## Alterations to Code of Practice

### Definitions

**connect** means able to hear and/or see the meeting, including via a live stream or recording of the meeting;

**disconnect** means remove the connection so as to be unable to hear and see the meeting;

**live stream** means the transmission of audio and/or video from a meeting at the time that the meeting is occurring;

### Public Notice of Council Meetings

The notice of meeting and agenda is not required to be placed on public display at each office of the Council.

A person is entitled, on payment of a fee fixed by the Council, to obtain a copy of a notice and agenda published on a website determined by the Chief Executive Officer and the notice and agenda will continue to be published on the website until the completion of the relevant meeting.

Copies of any document or report supplied to members of the Council for consideration at a meeting of the Council are not required to be made available for inspection by members of the public at the principal office of the Council or at the meeting.

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The Chief Executive Officer (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:

- in the case of a document or report supplied to members of the Council before the meeting - on a website determined by the Chief Executive Officer as soon as practicable after the time when the document or report is supplied to members of the Council; or
- in the case of a document or report supplied to members of the Council at the meeting - on a website determined by the Chief Executive Officer as soon as practicable after the time when the document or report is supplied to members of the Council.

## Meetings to be Held in Public Except in Special Circumstances

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 Chief Executive Officer (or a person nominated in writing by the Chief Executive Officer) makes available to the public a live stream of the meeting on a website determined by the Chief Executive Officer 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 Chief Executive Officer (or a person nominated in writing by the Chief Executive Officer) 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 Chief Executive Officer (or a person nominated in writing by the Chief Executive Officer) makes available to the public a recording of the meeting as soon as practicable after the meeting on a website determined by the Chief Executive Officer and ensures that members of the public can hear the discussion between all Council members present at the meeting via the recording.

If the Chief Executive Officer (or a person nominated in writing by the Chief Executive Officer) has taken reasonable steps but is unable to make available a live stream of the meeting, or make available a recording of the meeting as soon as practicable after the meeting (on a website determined by the Chief Executive Officer), the Chief Executive Officer (or a person nominated in writing by the Chief Executive Officer) must publish on a website determined by the Chief Executive Officer the steps taken to comply and the requirement regarding live streaming and recording is suspended.

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) of the Act.

It is 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.

## Minutes and Release of Documents

A copy of the minutes of a meeting of the council must be placed on public display on a website determined by the Chief Executive Officer within five days after the meeting and kept on display for a period of one month.

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## Code of Practice

The 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.

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.

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.

## Website for Publishing

The website determined by the Chief Executive Officer will include, but may not be limited to, the City of Marion website ([www.marion.sa.gov.au](http://www.marion.sa.gov.au)).

## Suspension of Other Inconsistent Provisions

To the extent that any other provision of 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.

## Expiry of Public Health Emergency Amendments

In accordance with Section 302B(2)(d)(ii), the amendments have effect until 28 days after the cessation of all relevant declarations relating to the emergency to which the notice relates.