

	<h1>District Council of Cleve</h1>	Version No:	7.0
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Code Name: **9.9 - ACCESS TO COUNCIL AND COMMITTEE MEETINGS AND DOCUMENTS**

**CODE OF PRACTICE**

**1. INTRODUCTION**

This code is to assist Council to:

Meet the provisions of section 92 of the *Local Government Act 1999* ("the Act") in the preparation and adoption of a Code of Practice relating to the principles, policies and procedures that a Council must apply for the operation of Parts 3 and 4 of the Act for the purposes of public access to meetings, documents and minutes of Council and Committee meetings, and

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

**2. PUBLIC ACCESS TO THE AGENDA FOR MEETINGS**

Public access to Council agendas is encouraged. This provides one of the main opportunities for the community to gain information about the business of Council and Committees. Agendas and associated documents for the meetings are publicly available subject to any indication from the Chief Executive Officer under section 83(5) of the Act or to an order of confidentiality under section 90(3) of the Act.

The following procedures apply to encourage public access:

1. At least five 'clear days'<sup>1</sup> before a Council or Council Committee meeting (unless it is a special meeting) the Chief Executive Officer will give written notice of the meeting to all Council/Committee Members setting out the date, time and place of the meeting. The notice must contain or be accompanied by the agenda for the meeting.
2. The notice and agenda are to be placed 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<sup>2</sup> and on Council's website.

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<sup>1</sup> 'clear days' means that 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, eg notice is given on a Thursday for a following Monday meeting, the clear days are Friday, Saturday and Sunday.

<sup>2</sup> Sections 84(1a) and 88(1a) *Local Government Act 1999*.

3. The notice and agenda must be kept on public display and continue to be published on the website until the completion of the relevant meeting.
4. Items listed on the agenda are to be described accurately and in reasonable detail.
5. Copies of the agenda documents and non-confidential reports that are to be considered at the meeting must be made available to members of the public at the meeting. A reasonable number of copies are to be available for public inspection as soon as practicable after they are supplied to the members of Council.
6. Members of the public may obtain a copy of the agenda and any particular reports for a fee to cover the costs of photocopying, in accordance with a Council's schedule of fees and charges.
7. Distribution of agenda papers to members of Council, or members of a Committee, may include advice from the Chief Executive Officer of the Council (after consultation with the Principal Member of the Council, or in the case of a Committee - the presiding member) that a document or report on a particular matter be considered in confidence with the public to be excluded. Where this occurs, the Chief Executive Officer must specify the basis under which the order could be made in accordance with section 90(3) of the Act. [see sections 83(5) (Council) and 87(10) (Committee) of the Act].

### **3. PUBLIC ACCESS TO MEETINGS**

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

Council encourages public attendance at meetings of the Council and Committees through public notification of meetings on the Council's website ([www.cleve.sa.gov.au](http://www.cleve.sa.gov.au)) indicating the date and time of the next meeting.

In accordance with *section 90* of the Act, it is not unlawful for Members of 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 Committee. The Council is not bound to hold an informal gathering open to the public in accordance with *section 90(1)* of the Act as openness to the public only applies to Council and Council Committee meetings. This means that *section 90(2)* to exclude the public has no role to play.

It is recommended that public notice of an informal gathering, such as a workshop, be given and that the notice clearly indicate whether or not the informal gathering will be open to the public.

The following are examples of informal gatherings or discussions that may be held in accordance with section 90(8):

- planning sessions associated with the development of policies and strategies;
- briefing or training sessions;
- workshops; or
- social gatherings to encourage informal communication between members or between members and staff.

#### **4. PROCESS TO EXCLUDE THE PUBLIC FROM A MEETING**

The practice of the District Council of Cleve is to deal with agenda items in the order listed in the agenda. Council may however for the convenience of the public present at a meeting, where it is resolved to consider a matter in confidence, defer the matter until all other business has been dealt with rather than ask the public to leave the room and wait for however long it takes until the matter is concluded and then allow the public to return to the meeting room with the possibility of the same process being repeated for a subsequent matter.

Before a meeting orders that the public be excluded to enable the receipt, discussion and consideration of a particular matter, the meeting must, in public, formally determine if this is necessary and appropriate, and then pass a resolution to exclude the public while dealing with that particular matter. If this occurs, then the public must leave the room. This means that all members of the public (including staff), unless exempted by being named in the resolution as entitled to remain, are required to 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 a Council 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 he or she 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 the 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.

#### **5. MATTERS FROM WHICH THE PUBLIC CAN BE EXCLUDED**

In accordance with the requirements of *section 90(3) of the Act*, Council, or a Council Committee, may order that the public be excluded in the following circumstances:

- (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—*
  - 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*
  - 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) *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; or*
- (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 that Act;*
- (n) *information relevant to the review of a determination of a Council under the Freedom of Information Act 1991.*

The Act provides for a definition of “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.

In considering whether an order should be made under *section 90(2)*, it is irrelevant that discussion of a matter in public may:

- cause embarrassment to the Council or Committee concerned, or to members or employees of the Council; or
- cause a loss of confidence in the Council or Committee under *section 90(4)*.

If a decision to exclude the public is taken, the Council or the Council committee is required to make a note in the minutes of the making of the order and the grounds on which it was made. Sufficient detail of the grounds on which the order was made will be included in the minutes.

## **6. PUBLIC ACCESS TO MINUTES**

Minutes of a meeting of Council or a Council committee will be publicly available, including on the internet, within 5 days after the meeting.

## **7. 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 *section 90(3)* of the Act and the factual reasons for the relevance and application of the ground(s) in the circumstances. These are listed in paragraph 8 of this Code.

The policy approach of the District Council of Cleve is that:

1. The principle of open and accountable government is strongly supported;
2. Information of the grounds on which an order to exclude the public is made will be conveyed to the public at the time of them being ordered to leave the meeting – the public will not be excluded until after a confidentiality motion has been debated and passed and sufficient reasons for the need to exclude the public given;
3. Once discussion of the matter is concluded, the meeting will then consider if it is necessary to make an order that a document associated with this agenda item (including minutes) remain confidential. In determining this, the meeting will have regard to the provisions of *section 91* and in particular *section 91(8)* which details when a Council must not order that a document remain confidential;
4. If the meeting determines that it is proper and necessary to keep a document confidential, then a resolution for an order to this effect is required to be resolved by the meeting in accordance with *section 91(7)* of the Act;
5. The Council will not consider a number of agenda items “in confidence” together i.e. en bloc. It will determine each item separately and consider the exemptions relevant to each item.
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 the Council has resolved to order that some information remain

confidential. 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 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. If the *section 91(7)* order is to apply for a period exceeding 12 months, then this order must be reviewed every 12 months from the date it was made. This along with the making of the order pursuant to *section 90(2)* and the grounds pursuant to *section 90(3)* on which it was made are also to be recorded in the minutes.

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

## 8. **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)*.

In accordance with *section 91(8)* the Council or the Council 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 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.

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 under *Section 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 Freedom of Information Officer, the Manager of Corporate Services.

## 9. 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. 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.

A review of the reports or documents that were considered under the provision of *sections 90(3)* and *91(7)* of the Act will be conducted as required to ensure that items are released in accordance with the resolution of Council, when the confidential provision no longer applies.

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 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 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. ACCOUNTABILITY AND REPORTING TO THE COMMUNITY**

A report on the use of *sections 90(2) and 91(7)* by the Council and Council committees must be included in the annual report of a Council as required by *Schedule 4 of the Act*. This supports commitment to the principle of accountability to the community. The reporting should include the following information, separately identified for both Council and Council committees:

1. Number of occasions each of the provisions of *sections 90(2) and 90(3)* were utilised;
2. Number of occasions each of the provisions of *sections 90(2) and 90(3) and section 91(7)* were utilised, expressed as a percentage of total agenda items considered;
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 was considered on 3 separate occasions;
4. Number of occasions that information originally declared confidential has subsequently been made publicly available; and
5. Number of occasions that information declared confidential has not been made publicly available and the reason for this in each case.

**11. LEGISLATION**

Local Government Act 1999 (SA)  
Freedom of Information Act 1991  
Development Act 1993

**12. AVAILABILITY OF THE POLICY**

This Policy (Code) will be available for inspection at the Council's offices during ordinary business hours and via the Council's website <http://www.cleve.sa.gov.au>. Electronic versions are the controlled version. Printed copies are considered uncontrolled. Before using a printed copy, verify that it is the current version.

**13. ADOPTION OF POLICY**

This Policy was adopted by the Council at its Ordinary Council meeting on 13<sup>th</sup> April 2021.



Peter Arnold

Chief Executive Officer



14. DOCUMENT REVIEW

This document will be reviewed by the District Council of Cleve following Council elections every (4) four years.

15. REVIEW HISTORY

Version	Issue Date	Author	Reason for Change
7.0	13/04/2021	Jodie B	Minor updates following Council election 2018 Formatting Added legislation, availability of policy, adoption of policy, document review and review history sections.