



Code of Practice – ACCESS TO COUNCIL & COMMITTEE MEETINGS AND DOCUMENTS

POLICY STATEMENT

The District Council of Karoonda East Murray supports the principle that the procedure to be observed at a meeting of Council or a Council Committee should contribute to open, transparent and informed decision-making and encourage appropriate community participation in the affairs of Council.

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

OBJECTIVES

This Code sets out the commitment of the District Council of Karoonda East Murray to provide public access to Council and Council committee meetings and documents and outlines the policies and procedures contained within the *Local Government Act 1999*, to restrict public access.

The Code includes:

- Information on the relevant provision of the Act;
- Council's policy on public access and participation;
- The process that will be adopted where public access to a meeting or a document is restricted;
- Grievance procedures to be followed if a member of the public believes that the Council has unreasonably restricted public access on a particular matter.

This Code sets out the policy of Council for access to meeting and documents and includes information relating to:

- Access to the agenda for 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 approach the use of the confidentiality provisions in the Act;
- Public access to documents, including minutes;
- Review of confidentiality orders;
- Accountability and reporting to the community, and the availability of the code;
- Grievances about the use of the Code by Council.

SCOPE

This Code of Practice applies to all formal meetings of Council and associated documents. It also applies to its S41 Committees.

PRINCIPLES

The District Council of Karoonda East Murray supports open, transparent and informed decision making and will actively encourage appropriate community participation in the affairs of the Council through ensuring it:

- Acts in the best interest of the community, with honest, integrity and transparency;
- Encourages appropriate community participation in the affairs of the council;



Code of Practice – ACCESS TO COUNCIL & COMMITTEE MEETINGS AND DOCUMENTS

- Reflects levels of formality appropriate to the nature and scope of responsibilities exercised at the meeting
- Acts in a way to give the community and decision makers confidence in the deliberations undertaken at the meeting.
- Represents the interests of the Karoonda East Murray community through responsible, open and accessible government.

DEFINITIONS

Definitions are also contained within Legislation and Council's Strategic Framework

'Associated documents' refers to agendas, reports, attachments and minutes of meetings of Council.

'Meeting of Council' refers to sub-committee, committee and council meetings held in accordance with Chapter 6 (Meetings) of the Local Government Act 1999.

'Clear Days' means the days between the:

- Posting of the notice and the day of a meeting but excluding both the day on which the notice was given and the day of the meeting, eg notice on a Thursday for a following Tuesday meeting, the clear days are Friday, Saturday, Sunday and Monday.
- The notice must contain or be accompanied by the agenda for the meeting

MEETING TIMES – COUNCIL AND COMMITTEE MEETINGS

To ensure members of the Community are aware of when Council meetings will be held, dates will be set twelve months in advance, except in the year following a new Council is elected. During the 2018 – 2022 Council term it is proposed that meetings be held on the second Tuesday of the month.

Council meeting will commence at 7:30pm and be held in the Council Chambers, 11 Railway Terrace, Karoonda. At times, Council may decide to hold its meeting in another location and the meeting location will be posted to Council's website. Alternatively, under the notice published by the Minister for Local Government on Tuesday 31 March 2020, the meeting may be conducted via electronic means.

At least three clear days before the Council or Council Committee meetings or informal gathering (unless it is a special meeting) the Chief Executive Officer (CEO) must give written notice of the meeting to all Council/Committee members setting out the date, time and place of the meeting (or whether the meeting is being held by electronic means).

The notice of the meeting and agenda (including reports and attachments) will be available at the Council offices and on the Council's website www.dckem.sa.gov.au. Items listed on the agenda will be described accurately and in reasonable detail.

Where the CEO of the Council (after consultation with the principal member of the Council, or in the case of a committee – the presiding member) believes that a document or report on a particular matter should be considered in confidence with the public to be excluded, the basis under which the order could be made in accordance with Section 90(3) of the Act will be specified.

Distribution of agenda papers to members of Council may include advice from the CEO of Council (after consultation with the principal member of Council) that a document or report on a particular matter may be



Code of Practice – ACCESS TO COUNCIL & COMMITTEE MEETINGS AND DOCUMENTS

considered in confidence with the public to be excluded. Where this occurs, the CEO must specify the basis under which such an order should be made.

NOTE: Where a Committee is not performing a regulatory activity these procedures may be varied in accordance with Part 3 of the Local Government (Procedures at Meetings) Regulations 2000, eg the notice of meetings may be given in a form decided by the Committee, and need not be given for each meeting separately. Public notice may be given at a place determined by the CEO taking into account the nature and purpose of the Committee. Committees of Council are permitted by Council to conduct meetings via electronic means, under procedures established by Council.

PUBLIC ACCESS – MEETINGS

Council encourages public attendance at meetings of the Council and Committees through public notification of meetings by way of public notice including the use of Council's website.

Council and Committee meetings are open to the public and attendance is encouraged, except where 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.

Where Council holds meetings via electronic means, a livestream link will be made available where possible, and if not, the meeting will be recorded and only made available upon request post meeting.

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

In accordance with Section 90 of the Act, it is not unlawful for members of Council, a Committee and staff to participate in **informal gatherings** or discussion provided that a matter which would ordinarily form part of the agenda for a formal meeting is not dealt with in such a way as to obtain, or effectively obtain, a decision outside 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 Section 90(2) to exclude the public has no role to play.

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.

A member of the public is not permitted to speak at a Council or Committee meeting unless specifically invited to do so by the Presiding Member. Council reserves the right to ask any member of the public to leave a meeting if they are causing a disturbance and/or enters the meeting room when in a confidential session.

To ensure the privacy of those attending Council does not allow the use of recording devices and/or cameras at its meetings, other than when a meeting is conducted via electronic means, unless approved by a decision of the Council.



Code of Practice – ACCESS TO COUNCIL & COMMITTEE MEETINGS AND DOCUMENTS

ELECTED MEMBERS ABSENCE

While it is recognised that Elected members are committed to attending scheduled Council meetings, there are times when they are not able to attend (either in person or electronically). Elected members will advise the Executive Assistant to the CEO and Mayor of their inability to attend the meeting as soon as known and an apology will be recorded at the meetings.

Elected Members who are unable to attend meetings for a three-month period will apply to Council for consideration of a leave of absence in accordance with legislation. Any Elected Member who is absent for 3 or more consecutive 'ordinary' meetings of Council, without the prior leave of Council will trigger the opportunity for Council to resolve to create a casual vacancy.

AGENDAS AND MINUTES FOR COUNCIL MEETINGS

To ensure the Community are informed of what is being discussed at Council and Committee meetings, the following will apply.

- The Chief Executive Officer, using an electronic signature, will provide formal notice of meetings to Elected Members via the Council Agenda.
- Meeting agendas, including reports and attachments will be available at least three (3) clear days before the Council or Council Committee meeting and posted to Council's website. It will also be made available in hard copy in the Council Offices. Elected Members and Staff will receive their agenda documents via their Council provided electronic device.
- Members of the public may access the agenda, without charge, on the Council website, or alternatively obtain a copy of the agenda and any other particular reports for a fee to cover the costs of photocopying, in accordance with Council's schedule of fees and charges.
- Items listed on the agenda will be described accurately and in reasonable detail to ensure the public is aware of reports before the Council for consideration.
- The Presiding Member, with the leave of the meeting, may change the order of the agenda to suit the needs of the public, employees, individual members or any person making a deputation or presentation.
- Confidential items will be described accurately on the public agenda with the exclusion of the report detail and any associated attachments.
- Minutes of a meeting of Council or a Council Committee will be publicly available, including on the council website within 5 days after the meeting. A hard copy will also be made available at the Council offices.
- Attendance of meetings held either in person, by electronic means, or a combination of both, will be reflected in the minutes as physical (in person), by audio-visual or audio link.

ORDER OF COUNCIL MEETINGS

Ordinary Council meetings will follow the following order of business.

- **Civic Prayer**
All mighty god we call upon you to grant your blessings upon this Council. Direct and guide its deliberations to the advancement of your glory and for the true wellbeing of the people of our area.
AMEN.



Code of Practice – ACCESS TO COUNCIL & COMMITTEE MEETINGS AND DOCUMENTS

- **Apologies**

Will include Members on leave of absence and apologies as registered with the Executive Assistant.

- **Conflict of Interest declarations**

Elected Members and Staff will identify their conflict of interests in relation to reports before the Council in accordance with

- Sections 73-74 – Material conflicts of Interest
- Section 75 – Actual and perceived conflicts of interest.

A member of a council who has an interest in a matter before the Council must disclose the interest to the Council by

- Describing the nature of the interest, and
- The manner in which the member dealt with the actual or perceived conflict of interest, and
- If the Member voted on the matter and how they voted, and
- The manner in which the majority at the meeting voted
- This information will be recorded within the minutes of the meeting.

- **Confirmation of Minutes of previous meeting**

- **Business Adjourned**

- **Questions –**

On Notice: Provided in writing (email is acceptable) to the Executive Officer prior to close of agenda in accordance with Regulation 9 of the Local Government (Procedures at Meetings) Regulations 2013.

Without Notice: In accordance with Regulation 9 of the Local Government (Procedures at Meetings) Regulations 2013, may be raised from the floor of the meeting and will only be recorded in the minutes with the approval of the meeting.

- **Petitions, Deputations and Presentations**

In accordance with Regulation 11 of the Local Government (Procedures at Meetings) Regulations 2013, if a decision is required is required, a report will be presented to the next meeting of Council to allow Council to make a determination. Deputations will be allocated up to 10 minutes to present their case to Council followed by questions from Elected Members.

- **Motions –**

On Notice: Provided in writing (email is acceptable) to the Executive Officer by an Elected member prior to the close of agenda in accordance with Regulation 12 of the Local Government (Procedures at Meetings) Regulations 2013.

Without Notice: In accordance with Regulation 12 of the Local Government (Procedures at meetings) Regulations 2013, an Elected Member may bring forward any business by way of a motion without notice, however the Presiding Member may refuse to accept a motion if the subject matter, in his or her opinion, beyond the power of the Council or council committee (as the case may be).

- **Reports**

- Mayoral
- Elected Members
- Executive



Code of Practice – ACCESS TO COUNCIL & COMMITTEE MEETINGS AND DOCUMENTS

- **Items from Committee & Subsidiaries**

- **Section 41 Committees:** Minutes of Section 41 Committees held for previous month with recommendations for Council to consider.
- **Reports from Council Subsidiaries:** Minutes of Council Subsidiaries held for previous month with recommendations for Council to consider.

- **Items for Noting**

Report update on Annual Business Plan and Capital Projects. It may also include reports to update Elected Members on information which requires no decisions to be made.

- **Items for Discussion**

Reports on items that require a formal decision to be made by Elected Members.

- **Confidential Reports**

In accordance with Section 83(5) of the Local Government Act 1999 the Chief Executive officer may indicate on a document or report provided to Members of the Council under subsection (4) (or on a separate notice) any information or matter contained in or arising from a documentation or report that may, if the Council so determines, at the same time specifies the basis on which an order could be made under that Part.

ORDER OF SPECIAL MEETINGS

Under the Local Government Act 1999, a Special Council meeting can be called by either the Principal Member or at least three Elected Members to discuss a specific issue. The Chief Executive Officer will arrange an agenda to be prepared following the following order:

- **Civic Prayer**

All mighty god we call upon you to grant your blessings upon this Council. Direct and guide its deliberations to the advancement of your glory and for the true wellbeing of the people of our area. AMEN.

- **Apologies**

Will included Members on leave of absence and apologies as registered with the Executive Assistant.

- **Conflict of Interest declarations**

Elected Members and Staff will identify their conflict of interests in relation to reports before the Council in accordance with

- Sections 73-74 – Material conflicts of Interest
- Section 75 – Actual and perceived conflicts of interest.

A member of a council who has an interest in a matter before the Council must disclose the interest to the Council by

- Describing the nature of the interest, and
- The manner in which the member dealt with the actual or perceived conflict of interest, and
- If the Member voted on the matter and how they voted, and
- The manner in which the majority at the meeting voted
- This information will be recorded within the minutes of the meeting.

- **Report on Subject of Special Meeting**

Report on subject the Special Meeting has been called for.



Code of Practice – ACCESS TO COUNCIL & COMMITTEE MEETINGS AND DOCUMENTS

INFORMAL GATHERINGS

Information relevant to the holding of informal meeting and gatherings is contained within the Informal Gatherings Policy – 52 (GOV120)

CONFIDENTIAL REPORTS

At times Council may need to consider items in confidence. The chief Executive Officer has delegated authority to place an item on the agenda for discussion in confidence for Elected Members to determine whether the item should be considered in confidence. Where possible confidential items will be listed for discussion after public reports and be dealt with towards the end of the meeting.

In considering whether an item should be considered in confidence, the Chief Executive Officer will make an assessment based on the public interest test, unreasonable disclosure consideration and applicable legislative requirements. All assessments must withstand objective scrutiny as the exclusion of the public goes to a fundamental principle of transparency and accountability.

Items held in confidence for longer than twelve (12) months will be reviewed annually under delegated authority of the Council to the Chief Executive Officer, with an information report being submitted to Council for noting following the review. Council may also consider releasing media releases prior to an item being fully released to the public to explain the reason behind a decision.

Items where confidentiality orders are about to expire may be referred by to Council by the Chief Executive Officer to allow Council to consider making a new confidentiality order.

Public Interest Test / Unreasonable disclosure consideration

Items considered to be held in confidence will be assessed against the public interest test / unreasonable disclosure consideration and each item will be considered on its merit.

As a general principle the public interest test / unreasonable disclosure consideration will include an assessment at follows:

- Be of concern or benefit to the public, not merely an individual interest
- Seriously impact on an individual's personal affairs (financial affairs; criminal records; marital or other personal relationships; employment records; personal qualities or attributes)
- Interferes with commercial in confidence activities
- Disclosure of certain information that would prevent the efficient and effective governance of the Council or Committee
- Prejudice the fair treatment of a public report by early disclosure
- Detriment to the public (ie disclosing information would inhibit the flow of information to law enforcement agencies)
- Information is being tested for accuracy

Council accepts that it is irrelevant in consideration of the level of disclosure that discussion of a matter in public may:



Code of Practice – ACCESS TO COUNCIL & COMMITTEE MEETINGS AND DOCUMENTS

- Cause embarrassment to a Council or Committee concerned, or to members or employees of a Council; or
- Cause a loss of confidence in a Council or Committee (s.90(4))
- Involved discussion of a matter that is controversial within the Council area; or
- Make the council susceptible to adverse criticism

Information in relation to confidential clauses is provided in appendix.

Elected Members and Council staff understand that breaches of confidentiality orders may result in severe penalties and may include a possible prison term.

Confidential Item Register

A confidential item register will be maintained and posted to Council's website containing the report number, report title, meeting date, confidentiality reason and trigger to release the report. Released documents will be placed on Council's website and available for inspection within the office of the Council.

Information held in confidence may be accessible under the Freedom of Information Act and contact should be made with one of Council's Accredited Freedom of Information Officer to discuss this further. A listing of confidential provisions is attached as appendix 1.

CONFLICT OF INTEREST DISCLOSURES

An opportunity will be made for Elected Members and Staff Members to publicly disclose an interest they may have in a matter before Council, as required by Legislation. An information paper has been prepared by the Local Government Association and is available on their website. A register of Conflict of Interest Disclosures made by Elected Members will be made available on Council's website.

ELECTED MEMBERS REPORTS

Elected Members are encouraged to provide a report on attendance at meetings and function on behalf of Council where they have filled an official council delegate/representative role or a role on behalf of the Mayor.

PETITIONS (explained)

Council will consider an item of correspondence to be a petition if it contains the following information:

1. The petition should be legibly written, typed or printed and include at the top of each page the word "Petition" and "text identifying the request of the petition", and
2. All signatures on the petition must contain original signatures, not photocopies or faxed copies and include the name, address and contact details of the individual, and
3. Should be addressed to the Council and delivered to the Office of the Council (11 Railway Terrace, Karoonda and/or council@dckem.sa.gov.au)

When a petition is received, complying with the above, it will be presented to the next Council meeting.

This practice will not apply in relation to Petitions received relating to a development application as they will be considered in accordance with the Development Act.



Code of Practice – ACCESS TO COUNCIL & COMMITTEE MEETINGS AND DOCUMENTS

DEPUTATIONS (explained)

From time to time requests are received from individuals or groups to address Council on specific items. The Principle Member will consider a written request and may grant approval for a deputation to occur. Deputations may either be in person, or where meetings are held via electronic means, may be via video link.

In the interest of fairness and expediency, each deputation will be allocated ten (10) minutes, excluding questions from Elected Members. If a decision is required from a deputation, Council will seek a report from Council Staff which will be presented to Council at the next appropriate meeting.

ADJOURNED BUSINESS

In accordance with regulation 19(4) the Regulation in relation to Adjourned Business is to be varied to allow any adjourned business item to be listed at an appropriate place on the next available agenda by the Chief Executive Officer.

ACCOUNTABILITY AND REPORTING TO THE COMMUNITY

A report on the use of Sections 90(2) and 91(7) by the Council and the 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 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 section 90(3) and 91(7) were utilised.
3. An indication of any particular issues that contributed to the use of confidentiality provisions on more than one occasion e.g. a proposal to acquire a parcel of land x was considered on 3 separate occasions;
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 still not been made publicly available and the reason for this in each case.

AVAILABILITY OF THE CODE

The public may inspect a copy of the Code, without charge, at the offices of Council during office hours, and may obtain a copy for a fee fixed by Council. The Code is also available on the internet www.dckem.sa.gov.au

REVIEW OF THE CODE

The Council will review this code on annual basis to ensure that the principle of open government is being applied in a proper manner.

The next scheduled review date is to occur in April 2021.

GRIEVANCE

Council has established procedures for the review of decisions under Section 270 of the Act for:



Code of Practice – ACCESS TO COUNCIL & COMMITTEE MEETINGS AND DOCUMENTS

- Council, and its Committees;
- Employees of the Council and
- Other persons acting on behalf of the Council.

Should a person be aggrieved about public access to either a meeting or a document then they can lodge an application for review of that decision under the procedures established by Council.

A copy of the Internal Review of Council Decisions Policy is available from Council, telephone 8578 1004 or can be accessed via Council's website www.dckem.sa.gov.au.

COUNCIL CONTACT PERSON

Council's nominated contact person is Matthew Morgan, Chief Executive Officer, telephone 8578 1004, email ceo@dckem.sa.gov.au.

LGA Key Dates: Sec 92(2)

Review should be within 12mth of Periodic Elections



Code of Practice – ACCESS TO COUNCIL & COMMITTEE MEETINGS AND DOCUMENTS

DOCUMENT CONTROL

| COUNCIL POLICY | |
|--|--|
| Reference Number | GOV108 |
| Version | V4.0 |
| Responsible Officer | Council |
| Related Policies Management Guidelines Frameworks | Code of Conduct – Elected members (32) Local Government (Procedures at Meetings) Regulations 2013 Local Government Act 1999 Risk Management Framework |
| Date Adopted | 14 December 2004 (min ref #4237) |
| Review Date | April 2020 (Once in every financial year – as per Reg) |

| Author (to whom changes are to be recommended) | | | |
|--|------------------|----------------------|---|
| Position | Incumbent | | |
| Chief Executive Officer | Matthew Morgan | | |
| Contributors | | | |
| Position | Incumbent | | |
| Reviewed by | | | |
| Position | Incumbent | Review Date | |
| Executive Support Officer | Emily Arbon | April 2020 | |
| Approved by | | | |
| Position | Incumbent | Approval Date | |
| Council | Council | 1 April 2020 | |
| History | | | |
| Date | Author | Revision | Nature of Change |
| 14.12.2004 | CEO | | Adoption of Policy |
| 10.03.2012 | CEO | #4485 | Update of Policy |
| 12.11.2019 | CEO | | Review and Update of Policy to include more information regarding order of Council Meetings, Special Meetings and explanations. |
| 01.04.2020 | CEO | | Minor amendments to include provisions for meetings via electronic means. |
| Publication | | | |
| This policy is available for inspection at Council's office at 11 Railway Terrace, Karoonda or via the Council website, www.dckem.sa.gov.au . | | | |



Code of Practice – ACCESS TO COUNCIL & COMMITTEE MEETINGS AND DOCUMENTS

APPENDIX 1

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-*
 - (1) *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*
 - (2) *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) *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*



Code of Practice – ACCESS TO COUNCIL & COMMITTEE MEETINGS AND DOCUMENTS

- 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.*

This 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 (Section 90(4)):

- 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.

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.

USE OF THE CONFIDENTIALITY PROVISIONS

Any consideration of the use of the confidentiality provisions the public from the discussion of a particular matter at the 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 relevant and application of the ground(s) in the circumstances. These are listed in paragraph 7 of the Code.

The policy approach of the District Council of Karoonda East Murray 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.



Code of Practice – ACCESS TO COUNCIL & COMMITTEE MEETINGS AND DOCUMENTS

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.

EXAMPLE CONFIDENTIALLY PROVISIONS

The District Council of Karoonda East Murray will record in the minutes of any Council and Committee meeting the making of an order in accordance with Section 90(2) and (3) and Section 91(7) as follows:

Section 90(3)(a) Order

Pursuant to Section 90(3)(a)

Pursuant to Section 90(2) of the *Local Government Act 1999* the Council orders that all members of the public, except **[insert names and job title for staff members present and/or names of any other person i.e. consultant/external advisor]** be excluded from attendance at the meeting for Agenda Item [...] **[Brief Description of Agenda Item]**.

The Council is satisfied that, pursuant to Section 90(3)(a) of the Act, the information to be received, discussed or considered in relation to the Agenda Item is information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead), being **[insert name of person]** because **[insert reasons]**.

Section 91(7) Order

Pursuant to Section 91(7)

That having considered Agenda Item [...] **[Brief Description of Agenda Item]** in confidence under Section 90(2) and (3)(a) of the *Government Act 1999*, the Council, pursuant to Section 91(7) of that Act orders that the **[identify the documents and/or minutes relevant to Agenda Item X]** be retained in confidence **[for a period of (insert period of time i.e. 6 months, 18 months) or until (trigger can be an event i.e. the contract has been signed, a public announcement has been made)]** and that this order be reviewed every 12 months [if the confidentiality period is longer than 12 months in duration].

Please note that for the purposes of information examples of model confidentiality orders have been included in this policy as follows -:



Code of Practice – ACCESS TO COUNCIL & COMMITTEE MEETINGS AND DOCUMENTS

EXAMPLE

Performance Matters of the Chief Executive Officer

Section 90(3)(a) Order

Pursuant to Section 90(3)(a)

Pursuant to Section 90(2) of the *Local Government Act 1999* the Council orders that all members of the public, except **Joe Bloggs, Human Resource Consultant** be excluded from attendance at the meeting for Agenda Item **3 (Performance Matters of the Chief Executive Officer)**.

The Council is satisfied that, pursuant to Section 90(3)(a) of the Act, the information to be received, discussed or considered in relation to the Agenda Item is information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of the Chief Executive Officer, in that details of his performance review will be discussed.

The Council is satisfied that the principle that the meeting be conducted in a place open to the public has been outweighed in the circumstances because the disclosure of details of the Chief Executive Officer's performance may prematurely be disclosed before the details of the review have been discussed with the Chief Executive Officer.

Section 91(7) Order

Pursuant to Section 91(7)

That having considered Agenda Item **3 (Performance Matters of the Chief Executive Officer)** in confidence under Section 90(2) and (3)(a) of the *Local Government Act 1999*, the Council, pursuant to Section 91(7)(b) of that Act orders that the **documents and all minutes** be retained in confidence for a period of **6** or until the Performance Review process has been completed.

Section 90(3)(b) Order

Pursuant to Section 90(3)(b)

Pursuant to Section 90(2) of the *Local Government Act 1999* the Council orders that all members of the public, except **[insert names and job title for staff members present and/or names of any other person i.e. consultant/external advisor]** be excluded from attendance at the meeting for Agenda Item [...] **[Brief Description of Agenda Item]**.

The Council is satisfied that, pursuant to Section 90(3)(b) of the Act, the information to be received, discussed or considered in relation to the Agenda Item is information the disclosure of which would reasonably be expected to confer a commercial advantage on a person with whom the Council is:

- **Conducting business; or**
- **Proposing to conduct business; or**
- **Would prejudice the commercial position of the Council**

[Select applicable (more than one ground may be applicable)*]

[Insert explanation]

In addition, the disclosure of this information would, on balance, be contrary to the public interest. The public interest in public access to the meeting has been balance against the public interest in the continued non-



Code of Practice – ACCESS TO COUNCIL & COMMITTEE MEETINGS AND DOCUMENTS

disclosure of the information. The benefit to the public at large resulting from withholding the information outweighs the benefit to it of disclosure of the information.

The Council is satisfied that the principle that the meeting be conducted in a place open to the public has been outweighed in the circumstances because **[insert reasons]**.

Section 91(7) Order

Pursuant to Section 91(7)

That having considered Agenda Item [...] **[Brief Description of Agenda Item]** in confidence under Section 90(2) and (3)(b) of the *Government Act 1999*, the Council, pursuant to Section 91(7) of that Act orders that the **[identify the documents and/or minutes relevant to Agenda Item X]** be retained in confidence **[for a period of (insert period of time i.e. 6 months, 18 months) or until (trigger can be an event i.e. the contract has been signed, a public announcement has been made)]** and that this order be reviewed every 12 months [if the confidentiality period is longer than 12 months in duration].

EXAMPLE

Consideration of the terms for a waste resources contract.

Section 90(3)(b) Order

Pursuant to Section 90(3)(b)

Pursuant to Section 90(2) of the *Local Government Act 1999* the Council orders that all members of the public, except **Joe Bloggs, CEO of the ABC Council and Ivan Citizen, lawyer, XYZ Lawyers**, be excluded from attendance at the meeting for Agenda Item **10.1 (Terms of Waste Resources Contract)**

The Council is satisfied that, pursuant to Section 90(3)(b) of the Act, the information to be received, discussed or considered in relation to the Agenda Item is information the disclosure of which would reasonably be expected to confer a commercial advantage on a person with whom the Council is:

- Proposing to conduct business; or
- The information would prejudice the commercial position of the Council;

In that the Council is currently engaged in post tender negotiation with a preferred tenderer to finalise the terms and conditions of the engagement for this service – the information to be considered in relation to this Agenda item include detailed costs for in-house provision of waste resources services and other specific financial information, the disclosure of which would prejudice the Council's commercial position during the current ongoing negotiations.

In addition, the disclosure of this information would, on balance, be contrary to the public interest. The public interest in public access to the meeting has been balanced against the public interest in the continued non-disclosure of the information. The benefit to the public at large resulting from withholding the information outweighs the benefit to it of disclosure of the information. The Council is satisfied that the principle that the meeting be conducted in a place open to the public has been outweighed in the circumstances because the disclosure of Council's commercial position may severely prejudice Council's ability to be able to negotiate a cost-effective proposal for the benefit of the Council and the community in this matter in relation to other contract negotiations.

Section 91(7) Order

Pursuant to Section 91(7)



Code of Practice – ACCESS TO COUNCIL & COMMITTEE MEETINGS AND DOCUMENTS

That having considered Agenda Item **(Terms of Waste Resources Contract)** in confidence under Section 90(2) and (3)(b) of the *Government Act 1999*, the Council, pursuant to Section 91(7) of that Act orders that the **Tender documents and related Council reports** and all minutes be retained in confidence for a period of **2 years, or until the contract has been finalised and that this order be reviewed every 12 months.**

Pursuant to section 91(8)(b) of the Act, details of the identity of the successful tenderer must be released once Council has made a selection. Pursuant to Section 91(8)(ba) of the Act, details of the amount(s) payable by the Council under a contract for the provision of green waste services must be released once this contract has been entered into by all concerned parties.

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 Section 90(3) and 91(7) of the Act will be conducted every 6 months 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 Section 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.