	<p style="text-align: center;">GOVERNANCE POLICY</p> <p style="text-align: center;">CODE OF PRACTICE – ACCESS TO COUNCIL MEETINGS AND DOCUMENTS</p>	Policy Number Version Number Issued Last Review Next Review GDS	G1.8 4 July 2012 October 2023 November 2027 9.63.1.1
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CODE OF PRACTICE – ACCESS TO COUNCIL MEETINGS AND DOCUMENTS

POLICY

1. Statement of Principle

The Flinders Ranges Council (the Council) supports the principle that the procedures 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.

2. Introduction

This Code sets out the commitment of the Council 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* (the Act) to restrict public access to meetings or documents. The Code also includes:

- information on the relevant provisions in the Act;
- Council's policy on public access and participation;
- the process that will be adopted where public access to a meeting or 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.

It sets out the policy of Council for access to meetings and documents and includes information in relation to:

- access to the agenda for meetings;
- public access to meetings;
- the process to exclude the public from meetings;
- matters for which 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; and
- grievances about the use of the Code by Council.

3. Public Access to the Agenda for Meetings

- 3.1 At least 3 (three) clear days* before the Council or Council Committee meeting (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 and the notice must contain or be accompanied by the agenda for the meeting.
- 3.2 The notice and agenda will be placed on public display at the principal office of Council and on Council's website.
- 3.3 Items listed on the agenda will be described accurately and in reasonable detail.
- 3.4 3 (three) copies of the agenda documents and non-confidential reports that are to be considered at the meeting will be made available to members of the public in attendance at the meeting. These copies of the agenda and associated reports remain the property of Council. Copies will also be available for public inspection at the principal office of Council and on Council's website, as soon as practicable after they are supplied to the members of Council.



GOVERNANCE POLICY

CODE OF PRACTICE – ACCESS TO COUNCIL MEETINGS AND DOCUMENTS

Policy Number	G1.8
Version Number	4
Issued	July 2012
Last Review	October 2023
Next Review	November 2027
GDS	9.63.1.1

- 3.5 A copy of the agenda documents and non-confidential reports will be provided to the media on request.
- 3.5 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 Council's schedule of fees and charges.
- 3.6 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(2) and (3) of the Act will be specified [see Sections 83(5) (Council) and 87(10) (Committee) of the Act.]

** '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. e.g. Notice is given on a Thursday for a following Monday meeting, the clear days being Friday, Saturday and Sunday.*

4. Public Access to Meetings

Council and Council 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 the 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.

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 a formally constituted meeting of Council or Committee.

5. Process to Exclude the Public


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 being entitled to remain, are required to leave the room. For the operation of Section 90(2) public does not include a member of Council.

Once Council, or 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 force to use reasonable force to remove the person from the room if s/he 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 same formal determination process and to resolve to exclude the public as above.

Please note that Council, or the 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 circumstance concerning the payment of rates is being discussed.

It is the practice of Council that for the convenience of the public present at a meeting, where it is resolved to consider a matter in confidence, that the matter will be deferred until all other business has been dealt with rather than asking the public to leave the room, to 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.

	<p style="text-align: center;">GOVERNANCE POLICY</p> <p style="text-align: center;">CODE OF PRACTICE – ACCESS TO COUNCIL MEETINGS AND DOCUMENTS</p>	Policy Number Version Number Issued Last Review Next Review GDS	G1.8 4 July 2012 October 2023 November 2027 9.63.1.1
--	---	--	---

6. Matters from which the Public can be excluded

Section 90 of the Act, Council, or a Council Committee, may order that the public be excluded in the following circumstances:

'Part 3—Public access to council and committee meetings

90—Meetings to be held in public except in special circumstances

- (1) *Subject to this section, a meeting of a council or council committee must be conducted in a place open to the public.*
- (2) *A council or council committee may order that the public be excluded from attendance at a meeting to the extent (and only to the extent) that the council or council committee considers it to be necessary and appropriate to act in a meeting closed to the public in order to receive, discuss or consider in confidence any information or matter listed in subsection (3) (after taking into account any relevant consideration under that subsection).*
- (3) *The following information and matters are listed for the purposes of subsection (2):*
 - (a) *information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead);*
 - (b) *information the disclosure of which—*
 - (i) *could reasonably be expected to confer a commercial advantage on a person with whom the council is conducting, or proposing to conduct, business, or to prejudice the commercial position of the council; and*
 - (ii) *would, on balance, be contrary to the public interest;*
 - (c) *information the disclosure of which would reveal a trade secret;*
 - (d) *commercial information of a confidential nature (not being a trade secret) the disclosure of which—*
 - (i) *could reasonably be expected to prejudice the commercial position of the person who supplied the information, or to confer a commercial advantage on a third party; and*
 - (ii) *would, on balance, be contrary to the public interest;*
 - (e) *matters affecting the security of the council, members or employees of the council, or council property, or the safety of any person;*
 - (f) *information the disclosure of which could reasonably be expected to prejudice the maintenance of law, including by affecting (or potentially affecting) the prevention, detection or investigation of a criminal offence, or the right to a fair trial;*
 - (g) *matters that must be considered in confidence in order to ensure that the council does not breach any law, order or direction of a court or tribunal constituted by law, any duty of confidence, or other legal obligation or duty;*
 - (h) *legal advice;*
 - (i) *information relating to actual litigation, or litigation that the council or council committee believes on reasonable grounds will take place, involving the council or an employee of the council;*
 - (j) *information the disclosure of which—*
 - (i) *would divulge information provided on a confidential basis by or to a Minister of the Crown, or another public authority or official (not being an employee of the council, or a person engaged by the council); and*
 - (ii) *would, on balance, be contrary to the public interest;*
 - (k) *tenders for the supply of goods, the provision of services or the carrying out of works;*



GOVERNANCE POLICY
CODE OF PRACTICE – ACCESS TO COUNCIL
MEETINGS AND DOCUMENTS

Policy Number	G1.8
Version Number	4
Issued	July 2012
Last Review	October 2023
Next Review	November 2027
GDS	9.63.1.1

- (m) *information relating to a proposal or amend a designated instrument under Part 5 Division 2 of the Planning, Development and Infrastructure Act 2016 before the draft instrument of amendment is released for public consultation under the Act;*
- (n) *information relevant to the review of a determination of a council under the Freedom of Information Act 1991;*
- (o) *information relating to a proposed award recipient before the presentation of the awards*

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) of the Act, 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; or
- involve discussion of a matter that is controversial within the council area; or
- make the council susceptible to adverse criticism.

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.

7. Public Access to Minutes

Minutes of Council or a Council Committee will be publicly available, including on the internet, within five (5) days after the meeting. Members of the public may obtain a copy of the Minutes for a fee to cover the costs of photocopying, in accordance with Council's schedule of fees and charges.

8. 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 6 of this Code.

The policy approach of The Flinders Ranges Council is that:

- 8.1 The principle of open and accountable government is strongly supported;
- 8.2 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;
- 8.3 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;
- 8.4 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;
- 8.5 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;
- 8.6 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



GOVERNANCE POLICY

CODE OF PRACTICE – ACCESS TO COUNCIL MEETINGS AND DOCUMENTS

Policy Number	G1.8
Version Number	4
Issued	July 2012
Last Review	October 2023
Next Review	November 2027
GDS	9.63.1.1

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 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;

- 8.7 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
- 8.8 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.

9. Public Access to Documents

Various documents are 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.

Council or the Council Committee will only make an 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.

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 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; and (if applicable)
- whether the power to revoke the order will be delegated to an employee of the Council.

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 - telephone 8620 0500.

10. Example of Confidentiality Provisions

The Council will record in the minutes of any Council and Council Committee meeting of an order in accordance with Section 90(2) and (3) and Section 91(7).

	<p style="text-align: center;">GOVERNANCE POLICY</p> <p style="text-align: center;">CODE OF PRACTICE – ACCESS TO COUNCIL MEETINGS AND DOCUMENTS</p>	Policy Number Version Number Issued Last Review Next Review GDS	G1.8 4 July 2012 October 2023 November 2027 9.63.1.1
--	---	--	---

11. 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. At this point in time it is important that the Council make this information publicly available and also include it on the Council's website.

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 (six) 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 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.


12. 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 Committees:

- number of occasions each of the provisions of Sections 90(2) and 90(3) were utilised;
- 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;
- 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 (three) separate occasions;
- number of occasions that information originally declared confidential has subsequently been made publicly available; and
- number of occasions that information declared confidential has not been made publicly available and the reason for this in each case.

13. 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 free of charge. The availability of this code will be promoted to the local community from time to time through the Council newsletter.

	GOVERNANCE POLICY CODE OF PRACTICE – ACCESS TO COUNCIL MEETINGS AND DOCUMENTS	Policy Number Version Number Issued Last Review Next Review GDS	G1.8 4 July 2012 October 2023 November 2027 9.63.1.1
--	--	--	---

14. Grievance

Council is required to establish procedures for the review of decisions under Section 270 of the Act for:

- 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 procedures is available from the Council offices.

15. Council Contact Person

The person who can assist in providing or obtaining further information is Council's Chief Executive Officer - telephone 08 8620 0500.

RESPONSIBILITIES

The Chief Executive Officer is accountable for ensuring the proper operation of this Policy.

LEGISLATION

[Local Government Act 1999](#)

[Local Government \(Proceedings of Meetings\) Regulations 2000](#)

REVIEW

To be reviewed within 12 months after a General Election, in line with legislation and any legislative changes or by resolution of Council.

Adopted by Council 14 August 2012
Resolution 164/2012

Review Date	Version Number	Change	Resolution
13 August 2013	1	Nil	180/2013
15 September 2015	2	Section 6 Text deleted and replaced with relevant section of Local Government Act 1999 and identifiable as legislation (Reviewed by Policy Review Reference Committee and recommended for public consultation – Minutes endorsed by Council)	215/2015
17 November 2015	2	Nil - Adopted	278/2015
13 February 2018	2	Reviewed by PRRC 30Jan18 – No changes	020/2018
15 June 2021	3	Minor formatting changes only.	132/2021
17 October 2023	4	Review and update of legislative changes	283/2023