



Code of Practice for Access to Council Meetings and Documents

On 30 March 2020 the Minister for Transport, Infrastructure and Local Government issued a notice pursuant to section 302B of the Local Government Act 1999 (Notice No 1) (**Notice No 1**) varying or suspending the operation of the specified provisions of the Local Government Act 1999 as set out in Schedule 1 to Notice No 1. Notice No 1 commenced operation on 31 March 2020.

Notice No 1:

- (a) provides that a Council is not required to adopt any provision in a code of practice that would prevent or inhibit members from participating in Council meetings or Council committee meetings by electronic means;
- (b) provides that Council members may meet by electronic means to alter the code of practice of the Council, or substitute a new code of practice of the Council, even if the existing code of practice prevents or inhibits the Council members from meeting by electronic means;
- (c) suspends the requirement in section 92(5) that before a Council adopts, alters or substitutes a code of practice it make copies of the proposed code, alterations or substitute code (as the case may be) available for inspection and purchase at the principal office of the Council and on a website determined by the Council and that the Council follow the steps set out in its public consultation policy.

1. ADOPTION

This Code was adopted by the Council on 29 April 2020.

2. STATEMENT OF PRINCIPLE

In fulfilling the role of an effective Council that is responsive to the needs of the community and which operates within the legal framework prescribed by the *Local Government Act 1999* the Municipal Council of Roxby Downs is fully committed to the principle of open and accountable government. 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/decision and/or documents.

3. INTRODUCTION

This Code sets out the commitment of the Municipal Council of Roxby Downs 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* ("Act"), to restrict public access.

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The Code includes:

- information on the relevant provisions 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 meetings 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; and
- grievances about the use of the code by Council.

4. PUBLIC ACCESS TO THE AGENDA FOR MEETINGS

- 4.1 At least three clear days¹ before the Council or Council committee meeting (unless it is a special meeting) the Chief Executive must give written notice of the meeting to the Administrator/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.
- 4.2 Subject to clause 4.8 the notice of meeting and agenda will 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 at 6 Richardson Place, Roxby Downs and on Council's website www.roxbydowns.com.au.
- 4.3 Items listed on the agenda will be described accurately and in reasonable detail.
- 4.4 Subject to clause 4.8 the notice and agenda will be kept on public display and continue to be published on the website until the completion of the relevant Council or Council committee meeting.
- 4.5 Subject to clause 4.9 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.
- 4.6 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.
- 4.7 Where the Chief Executive (after consultation with the Administrator 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.

¹ '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 are Friday, Saturday and Sunday.

* Notice No.1 provides that *place* includes an electronic location (such as a virtual meeting room)

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- 4.8 For the period of the operation of Notice No 1 the requirement that the Chief Executive give notice to the public of the times and places of council meetings by placing the notice of meeting and agenda 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 is **suspended**.
- 4.9 For the period of the operation of Notice No 1:
- 4.9.1 the requirement that the Chief Executive must ensure that a reasonable number of copies of any document or report supplied to members of the Council for consideration at a meeting of the Council are available for inspection by members of the public at the principal office of the Council or at the meeting is **suspended**.
- 4.9.2 the Chief Executive (or a person nominated in writing by the Chief Executive) will ensure that any document or report supplied to members of the Council for consideration at a meeting of the Council is available for inspection by members of the public -
- 4.9.2.1 in the case of a document or report supplied to the Council before the meeting - on a website determined by the Chief Executive as soon as practicable after the time when the document or report is supplied to the Council; or
- 4.9.2.2 in the case of a document or report supplied to the Council at the meeting - on a website determined by the Chief Executive as soon as practicable after the time when the document or report is supplied to members of the Council.

5. 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 Council committee through public notification of meetings by a notice on the website indicating the date and time of the next meeting.

During the period of COVID-19 restrictions on the number of people who may attend the meeting will apply in accordance with directions on public gatherings and non-essential travel. The Council's Administrator may conduct the Council Meeting entirely by teleconference.

Notice No 1 provides that a Council meeting will be taken to be conducted in a place open to the public even if the meeting is conducted by electronic means provided that -

- (a) the Chief Executive (or a person nominated in writing by the Chief Executive) makes available to the public a live stream² of the meeting on a website determined by the Chief Executive and ensures that members of the public can hear the discussion via the live stream; or
- (b) if the Chief Executive (or a person nominated in writing by the Chief Executive) has taken reasonable steps to make available a live stream of the meeting but is unable to make available a live stream of the meeting, the Chief Executive (or a person nominated in writing by the Chief Executive) makes available to the public a recording of the meeting as soon as practicable after the meeting on a website determined by the Chief Executive and

² **live stream** means the transmission of audio and/or video from a meeting at the time that the meeting is occurring;

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ensures that members of the public can hear the discussion at the meeting via the recording.

If the Chief Executive (or a person nominated in writing by the Chief Executive) has taken reasonable steps to make available to the public a live stream of the meeting or (if unable to make available a live stream of the meeting) a recording of the meeting but is unable to comply the Chief Executive (or a person nominated in writing by the Chief Executive) must publish on a website determined by the Chief Executive the steps taken to comply.

6. PROCESS TO EXCLUDE THE PUBLIC FROM A MEETING

The practice of the Municipal Council of Roxby Downs is for the convenience of the public present at a meeting, where it is resolved to consider a matter in confidence, this matter may be deferred until all other business has been dealt with.

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.

Notice No 1 provides that the Council or Council committee must disconnect any live stream or recording of a meeting for the period that the meeting is closed to the public pursuant to an order made under section 90(2).

Once Council or 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.

Further, Notice 1 provides that it is also an offence for person who, knowing that an order is in force under section 90(2), to connect³ to a meeting of the Council or Council committee by electronic means, or fail to disconnect⁴ from a meeting of the Council.

Once discussion on that particular matter is concluded, the public are then permitted to re-enter or reconnect to 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.

Council or a 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.

Notice No 1 provides that a Council meeting will be taken to be conducted in a place open to the public by electronic means provided that -

- (a) the Chief Executive (or a person nominated in writing by the Chief Executive) makes available to the public a live stream of the meeting on a website determined by the Chief Executive and ensures that members of the public can hear the discussion at the meeting via the live stream; or
- (b) if the Chief Executive (or a person nominated in writing by the Chief Executive) has taken reasonable steps to make available a live stream of the meeting but is unable to make available a live stream of the meeting, the Chief Executive (or a person nominated in writing by the Chief Executive) makes available to the public a recording of the meeting as soon as practicable after the meeting on a website determined by the Chief Executive and

³ **connect** means able to hear and/or see the meeting, including via a live stream or recording of the meeting

⁴ **disconnect** means remove the connection so as to be unable to hear and see the meeting

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ensures that members of the public can hear the discussion at the meeting via the recording.

If the Chief Executive (or a person nominated in writing by the Chief Executive) has taken reasonable steps to make available to the public a live stream of the meeting or, (if unable to make available a live stream of the meeting) a recording of the meeting but is unable to comply the Chief Executive (or a person nominated in writing by the Chief Executive) must publish on a website determined by the Chief Executive the steps taken to comply and the requirement will be suspended.

7. MATTERS FROM WHICH THE PUBLIC CAN BE EXCLUDED

In accordance with the requirements of section 90(3) of the Act, Council, or a 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—*
 - (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*
- (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.*

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“Personal affairs” are defined in the Act as 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 employees of the Council; or
- cause a loss of confidence in the Council or Committee [s.90(4)]

If a decision to exclude the public is taken, the Council or a 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

8. 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.

Notice No 1 provides that a copy of the minutes of a meeting of the Council must be placed on public display on a website determined by the Chief Executive within five days after the meeting and kept on display for a period of one month.

9. 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 7 of this Code.

The policy approach of the Municipal Council of Roxby Down 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. 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

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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.

10. PUBLIC ACCESS TO DOCUMENTS

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

Council or a 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.

Council or a 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 a 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. [s.91(9)]

Requests to access Council and Council committee documents can be made under the *Freedom of Information Act 1991*. Inquiries in relation to the process for seeking access to documents held by Council should be directed to Council's accredited Freedom of Information Officer who is the Group Manager Governance and Community 86710010.

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11. EXAMPLE CONFIDENTIALITY PROVISIONS

The Municipal Council of Roxby Downs will record in the minutes of any Council or Committee meetings the making of an order in accordance with sections 90(2) and (3) and section 91(7) as follows:

11.1 Section 90(3)(a) Order

Pursuant to s.90(3)(a)

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

The Council is satisfied that, pursuant to section 90(3) 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].

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]

11.2 Section 91(7) Order

Pursuant to s.91(7)

That having considered Agenda Item [...] [insert brief description of agenda item] in confidence under section 90(2) and (3)(a) of the Local 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].

12. 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 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 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.

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

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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.

13. 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.

14. 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 at www.roxbydowns.sa.gov.au

15. REVIEW OF THE CODE

All variations issued under the *Electronic Participation in Council Meetings Notice (No 1) 2020* are temporary and will cease to apply 28 days after all relevant State major emergency declarations end. The Code will then be reviewed on an annual basis to ensure that the principle of open government is being applied in a proper manner.

16. GRIEVANCE

Council has established 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.

17. COUNCIL CONTACT PERSON

Group Manager Governance and Community 8671 0010 or email Roxby@roxbycouncil.comm.au