



Code of Practice for Access to Council Meetings and Documents

Responsible Officer	Chief Executive Officer
Relevant Delegations	Director Corporate Services
Legislation and References	Local Government Act 1999 Local Government (Procedures at Meetings) Regulations 2013

1. Statement of Principle

The Clare & Gilbert Valleys 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 the Council.

2. Introduction

This Code sets out the commitment of Clare & Gilbert Valleys 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*, to restrict public access. 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.

3. Public Access to the Agenda for Meetings

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- 3.1 At least 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. The notice must contain or be accompanied by the agenda for the meeting.
- 3.2 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:
Clare Office, 4 Gleeson Street, Clare
Saddleworth Library & Community Centre, Belvidere Road, Saddleworth
And will be published on Council's website
www.claregilbertvalleys.sa.gov.au
- 3.3 Items listed on the agenda will be described accurately and in reasonable detail.
- 3.4 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.
- 3.5 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.
- 3.6 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 Council's schedule of fees and charges.
- 3.7 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 Local Government Act 1999.

4. 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.

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Council encourages public attendance at meetings of the Council and Committees through public notification of meetings on Council's website www.claregilbertvalleys.sa.gov.au, posts on social media, notices in the local paper (if required) and a sign at the Clare Office.

5. Timing of, and Access to, Information and Briefing Sessions

Council or the CEO are permitted to facilitate an 'information or briefing session' where more than one member of the Council or Council Committee is invited.

A matter must not be dealt with at an information or briefing session in such a way so as to obtain, or effectively obtain, a decision outside of a formally constituted meeting of Council or Committee.

An information or briefing session on a matter that will be included on a council agenda must be open to the public. However, the Council or the CEO may order that the information or briefing session be closed to the public if the matter listed for discussion falls within the confidentiality provisions listed in section 90(3) of the Local Government Act.

Whether or not an information or briefing session has been open to the public, the following information must be published as soon as practicable after the holding of the session¹:

- the place, date and time of the session;
- the matter discussed at the session; and
- whether or not the session was open to the public.

6. Process to Exclude the Public from a Meeting

The practice of the Clare & Gilbert Valleys Council is to deal with the agenda items in the order listed in the agenda and that all confidential items on the agenda be listed as the last item on the agenda, for the convenience of the public present.

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 meeting. 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

¹ Regulation 8AB—Information or briefing sessions, *Local Government (General) Regulations 2013*

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leave the meeting. For the operation of section 90(2) a member of the public does not include a Member of Council.

Once Council, or a Council Committee has made the order, it is an offence for a person, who, knowing that an order is in force, enters or remains in a room in which such a meeting is being held. It is lawful for a member of the police to use reasonable force to remove the person from the room if he or she fails to leave on request.

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

Please note that the Council, or the Council Committee, can by inclusion within the resolution permit a particular person or persons to remain in the meeting. An example would be allowing a ratepayer who is suffering personal hardship to remain in the meeting when their circumstances concerning the payment of rates is being discussed.

6. Matters From Which the Public Can be Excluded

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

- (a) *information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead);*
- (b) *information the disclosure of which—*
 - (i) *could reasonably be expected to confer a commercial advantage on a person with whom the Council is conducting, or proposing to conduct, business, or to prejudice the commercial position of the Council; and*
 - (ii) *would, on balance, be contrary to the public interest;*
- (c) *information the disclosure of which would reveal a trade secret;*
- (d) *commercial information of a confidential nature (not being a trade secret) the disclosure of which—*
 - (i) *could reasonably be expected to prejudice the commercial position of the person who supplied the information, or to confer a commercial advantage on a third party; and*
 - (ii) *would, on balance, be contrary to the public interest;*

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- (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 proposal to prepare or amend a designated instrument under Part 5 Division 2 of the Planning, Development and Infrastructure Act 2016 before the draft instrument or 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.
- (o) information relating to a proposed award recipient before the presentation of the award.

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

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

- cause embarrassment to the Council or Committee concerned, or to members or employees of the Council; or
- cause a loss of confidence in the Council or Committee.
- 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 a meeting of Council or a Council committee will be publicly available, including on the Council's website, within five days after the meeting.

Printed copies of minutes can be provided on request on payment of a fee as set in Council's Fees and Charge.

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 7 of this Code.

The policy approach of the *Clare & Gilbert Valleys Council* 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;

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3. Once discussion of the matter is concluded, the meeting will then consider if it is necessary to make an order that a document associated with this agenda item (including minutes) remain confidential. In determining this, the meeting will have regard to the provisions of section 91 and in particular section 91 (8) which details when a Council must not order that a document remain confidential;
4. If the meeting determines that it is proper and necessary to keep a document confidential, then a resolution for an order to this effect is required to be resolved by the meeting in accordance with section 91 (7) of the Act;
5. The Council will not consider a number of agenda items "in confidence" together i.e. en bloc. It will determine each item separately and consider the exemptions relevant to each item.
6. Once discussion of the matter is concluded and the public have returned, the decision of the meeting in relation to this matter will be made publicly known unless the Council has resolved to order that some information remain confidential. Details relating to any order to keep information or a document confidential in accordance with section 91 (7) are also to be made known. When making an order the meeting must specify the duration of the order or the circumstances in which the order will cease to apply, or a period after which the order must be reviewed. If the section 91 (7) order is to apply for a period exceeding 12 months, then this order must be reviewed every 12 months from the date it was made. This along with the making of the order pursuant to section 90(2) and the grounds pursuant to section 90(3) on which it was made are also to be recorded in the minutes.
7. In all cases the objective is that the information be made publicly available at the earliest possible opportunity and that the community is informed of any Council order and the associated implications; and
8. Where a person provides information to the Council and requests that it be kept confidential, Council is not able to even consider this request unless the matter is one that falls within section 90(3). If this is the case, Council will then be in a position to consider the request on its merits.

9. Public Access to Documents

The Local Government Act requires Council's to make available a large number of documents. Many of these are set out in Schedule 5, with other requirements in other section of the Local Government Act.

All Schedule 5 documents must be published on Council's website.

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

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

In accordance with section 91(8) the Council or the Council Committee must not make an order to prevent:

- the disclosure of the remuneration or conditions of service of an employee of the Council after the remuneration or conditions have been set or determined; or
- the disclosure of the identity of a successful tenderer for the supply of goods or the provision of services (including the carrying out of works), or of any reasons adopted by the Council as to why a successful tenderer has been selected; or
- the disclosure of the amount or amounts payable by the Council under a contract for the supply of goods or the provision of services (including the carrying out of works) to, or for the benefit of, the Council after the contract has been entered into by all parties to the contract; or
- the disclosure of the identity of land that has been acquired or disposed of by the Council, or of any reasons adopted by the Council as to why land has been acquired or disposed of by the Council.

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

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

10. Example of Confidentiality Provisions

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The Clare & Gilbert Valleys Council will record in the minutes of any Council and Council Committee meetings the making of an order in accordance with sections 90(2) and (3) and section 91(7) as follows:

Section 90 (2) of the Local Government Act

1. Business considered under Section 90 (3)(b) of the Local Government Act

Pursuant to Section 90(2) of the Local Government Act 1999 the Council orders that all members of the public be excluded from attendance at the meeting for Agenda item detail.

Council is satisfied that, pursuant to Section 90(3)(b) of the Act, the information to be received, discussed or considered in relation to this Agenda Item could reasonably be expected to prejudice the commercial position of Council; and is contrary to the public interest.

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 to prevent the disclosure of information that would prejudice the commercial position of Council; and is contrary to the public interest.

Section 91 (7) of the Local Government Act,

That having considered Agenda Item detail in confidence under Section 90(2) and 90 (3) (b) of the Local Government Act 1999, the Council pursuant to Section 91(7) (b) of that Act orders that the reports, minutes and discussions relevant to this Agenda Item be retained in confidence until the...

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, the Council will make this information available by publishing it on Council's website.

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 12 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

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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.

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 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:

- 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 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. Grievances

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. The Procedures are available from www.claregilbertvalleys.sa.gov.au

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14 Council Contact Person

Chief Executive Officer - 88426400

15. Review & Availability

This Code will be reviewed within 12 months after the conclusion of each periodic election

The public may request a copy of the Code for a fee fixed by Council.

The Code is also available on Council's website www.claregilbertvalleys.sa.gov.au

16. References

Local Government Act 1999

Local Government (Procedures at Meetings) Regulations 2013

Electronic Information or Briefing Session Procedure

Internal Review of Council Decisions Policy

17. Document History

Approved by	Issue Date	Minute Reference – Details of Review
CGVC	18/11/13	MB 53/13 Adopted by Council
CGVC	16/11/15	Reviewed by Council
CGVC	20/08/18	Reviewed by Council
CGVC	10/12/18	Reviewed by Council
CGVC	20/4/20	Reviewed by Council including Electronic Provisions
CGVC	20/06/2022	Reviewed by Council removed Electronic Provisions, added LGA Reform changes
CGVC	14/12/2022	Reviewed by Council

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