1. STATEMENT

This Code sets out the commitment of Wattle Range Council to provide public access to Council and Council Committee meetings and associated documents and outlines the policies, procedures and practices contained within the Local Government Act 1999 (the Act), to restrict public access.

Wattle Range Council supports the principle that the procedures to be observed at a meeting of Council or a Council Committee (formed under the Local Government Act) should contribute to open, transparent and informed decision-making and encourage appropriate community participation in the affairs of the Council.

This Code has been developed to meet the requirements of section 92 of the Act.

IMPORTANT NOTE REGARDING THE OPERATION OF THIS CODE:

On 15 March 2020, the Chief Executive of the Department for Health and Wellbeing in the State of South Australia, pursuant to section 87 of the South Australian Public Health Act 2011, declared that an emergency which threatens to cause the death of, or injury or other damage to the health of any person is occurring or about to occur in relation to the transmission of COVID-19, and declared the emergency to be a public health emergency.

On 22 March 2020, the State Co-ordinator for the State of South Australia declared, pursuant to section 23 of the Emergency Management Act 2004, that a Major Emergency is occurring in respect of the outbreak of the Human Disease named COVID-19 within South Australia.

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) 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.

For the period Notice No 1 has effect (as provided for in Notice No 1), this Code of Practice is altered as set out below and those alterations have effect notwithstanding any other provision in this Code of Practice to the contrary.

For the avoidance of doubt, save for the alterations to the Code of Practice as set out below (and highlighted in blue) this Code of Practice otherwise applies to all meetings of the Council.

2. DEFINITIONS

Audio Recording means any recording made by any electronic device capable of recording sound. This includes but is not limited to recordings made by mobile phone, video camera, cassette recorder, or DAT recorder, and stored on compact disk (CD), Digital Audio Tape (DAT), or in any other format (such as WAV, MP3, etc.).

Clear Days means 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.
connect means able to hear and/or see the meeting, including via a live stream or recording of the meeting;

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

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

the Act refers to the Local Government Act 1999

personal affairs is defined by the Act and includes a person’s financial affairs, criminal records, marital or other personal relationship, personal qualities, attributes or health status, employment records, employment performance or suitability for a particular position, or other personnel matters relating to the person. It does not include the personal affairs of a body corporate.

3. ALTERATIONS to CODE OF PRACTICE

Public Notice of Council Meetings

The notice of meeting and agenda is not required to be placed on public display at each office of the Council.

A person is entitled, on payment of a fee fixed by the Council, to obtain a copy of a notice and agenda published on a website determined by the Chief Executive Officer and the notice and agenda will continue to be published on the website until the completion of the relevant meeting.

Copies of any document or report supplied to members of the Council for consideration at a meeting of the Council are not required to be made available for inspection by members of the public at the principal office of the Council or at the meeting.

The chief executive officer (or a person nominated in writing by the chief executive officer) 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:

- in the case of a document or report supplied to members of the Council before the meeting - on a website determined by the chief executive officer as soon as practicable after the time when the document or report is supplied to members of the Council; or

- in the case of a document or report supplied to members of the Council at the meeting - on a website determined by the chief executive officer as soon as practicable after the time when the document or report is supplied to members of the Council.

Meetings to be Held in Public Except in Special Circumstances

A Council meeting will be taken to be conducted in a place open to the public even if 1 or more Council members participate in the meeting by electronic means provided that:

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

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

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

the Act refers to the Local Government Act 1999

personal affairs is defined by the Act and includes a person’s financial affairs, criminal records, marital or other personal relationship, personal qualities, attributes or health status, employment records, employment performance or suitability for a particular position, or other personnel matters relating to the person. It does not include the personal affairs of a body corporate.
(a) the chief executive officer (or a person nominated in writing by the chief executive officer) makes available to the public a live stream of the meeting on a website determined by the chief executive officer and ensures that members of the public can hear the discussion between all council members present at the meeting via the live stream; or

(b) if the chief executive officer (or a person nominated in writing by the chief executive officer) 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 officer (or a person nominated in writing by the chief executive officer) 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 officer and ensures that members of the public can hear the discussion between all Council members present at the meeting via the recording.

If the chief executive officer (or a person nominated in writing by the chief executive officer) has taken reasonable steps but is unable to make available a live stream of the meeting, or make available a recording of the meeting as soon as practicable after the meeting (on a website determined by the chief executive officer), the chief executive officer (or a person nominated in writing by the chief executive officer) must publish on a website determined by the chief executive officer the steps taken to comply and the requirement regarding live streaming and recording is suspended.

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) of the Act.

It is an offence for a person who, knowing that an order is in force under section 90(2), to connect to a meeting of the Council or Council committee by electronic means, or fail to disconnect from a meeting of the Council or Council committee.

**Minutes and Release of Documents**

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 officer within five days after the meeting and kept on display for a period of one month.

**Code of Practice**

The 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.

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.

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 is suspended while these provisions are in effect.

**Suspension of Other Inconsistent Provisions**

To the extent that any other provision of this Code of Practice could be read as being inconsistent or incompatible with the ability of the Council to hold electronic meetings, the provision is suspended while these provisions are in effect.

### 4. PRINCIPLES

#### 4.1 Scope

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

- Public access to the agenda, document and minutes for 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;
- example of confidentiality Provisions;
- accountability and reporting to the community, and the availability of the code; and
- grievances about the use of the code by Council.

#### 4.2 Public access to meetings

##### 4.2.1 Ordinary meetings of Council or Council Committees

Council and Council Committee meetings are open to the public and attendance is encouraged. Details of Council meetings are displayed on Council’s Website and in Council Offices.

Ordinary meetings of Council are held in the Council Chamber, Civic Centre, George St, Millicent on the third Tuesday of January and second Tuesday of every other Month, commencing at 5pm.

At least three (3) ‘clear days’ before an ordinary Council meeting the Chief Executive Officer (CEO) will give written notice of the meeting to all Council Members setting out the date, time and place of the meeting. The notice will be accompanied by the agenda for the meeting.

The notice of meeting will be placed on public display at the following locations:

- Millicent Office – ‘Civic Centre’ George Street, Millicent
- Beachport Office – Millicent-Beachport Road, Beachport
- Penola Office – 27 Arthur Street, Penola

until the completion of the relevant meeting.
Meetings will commence as soon after the time specified in the notice of meeting as a quorum is present.

4.2.2 Special meetings of Council or Council Committees

Special Council or Council Committee meetings may be held at any time, however, at least four hours’ notice is required for a Special meeting of Council and Council Committees performing a regulatory function. The notice of the meeting and agenda will be available as soon as practicable after the time that notice of the meeting is given to Council members.

4.2.3 Informal gatherings or discussion

Council members and staff may participate in informal gatherings and public access to these is detailed in Council’s Informal Gathering Policy.

4.2.4 Recording Council or Committee Meetings

Wattle Range Council prohibits any person from photographing, filming, televising or recording by audio or visual devices (including mobile phones) any Committee or Council Meeting without written approval from the Mayor or Chief Executive Officer (CEO). Approval is at the discretion of the Mayor or CEO. An approval granted may be either a standing on-going approval or on a specific occasion. An approval may be withdrawn either generally or on any specific occasion.

This applies to Council Members, Council Committee Members, Council staff, the general public and media representatives.

4.3 Public access to documents

4.3.1 Public access to the Notice of Meeting and agenda

The non-confidential Council or Council Committee notice of meeting and agenda is available to view by the public 3 clear days before a meeting is scheduled at:

- Millicent Office – ‘Civic Centre’ George Street, Millicent
- Beachport Office – Millicent-Beachport Road, Beachport
- Penola Office – 27 Arthur Street, Penola
- Council’s website www.wattlerange.sa.gov.au

Members of the public may obtain a copy of the agenda for a fee to cover the costs of photocopying, in accordance with Council's schedule of fees and charges.

One copy of the agenda will be made available to view by the general public in attendance at a meeting.

Items listed on the agenda will be described accurately and in reasonable detail.

4.3.2 Public access to minutes

During Council meetings the minutes are displayed on an overhead screen to enhance community understanding of meeting processes and to confirm the decisions made.

The non-confidential minutes of a Council or Council Committee meeting will be publicly available, including on the Council’s website within 5 clear days after the meeting.
A copy of the non-confidential minutes will be displayed at the Millicent Office – ‘Civic Centre’ George Street, Millicent for a period of at least one month.

Members of the public may obtain a copy of the non-confidential minutes for a fee in accordance with Council's schedule of fees and charges.

4.3.3 Public access to other documents
Council makes various documents available for public inspection and purchase at its offices. Council also makes many of these documents freely available on Council's website.

The Freedom of Information Act 1991 also makes provision for members of the public to access the documents of government. There are some exemptions under that Act and other pieces of legislation (e.g. Copyright Act) where some documents may not be released. 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 on (08) 8733 0900

4.4 Excluding public access to meetings or documents

4.4.1 Principles for the use of confidentiality provisions
The principle of open and accountable government is strongly supported.

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 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.

4.4.2 Powers to exclude the public from meetings
Section 90 of the Act gives Council and Council Committees the power to exclude the public from a meeting, only when discussion of a matter involves:

(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;

(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.

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 above grounds and the factual reasons for the relevance and application of the ground(s) in the circumstances.

In considering whether to exclude the public, it is irrelevant that discussion of a matter in public may—

   (a) cause embarrassment to the council or council committee concerned, or to members or employees of the council; or

   (b) cause a loss of confidence in the council or council committee; or

   (c) involve discussion of a matter that is controversial within the council area; or

   (d) make the council susceptible to adverse criticism.

When a decision to exclude the public is carried, the Council or the Council Committee will make a note in the minutes of the making of the order and the grounds on which it was made.
Once Council, or a Council Committee has made an order to exclude the public, 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.

4.4.3 Powers to make orders of confidentiality over documents
When an order to exclude the public has been made and following confidential discussion,
section 91(7) of the Act then allows Council or a Council Committee to make a further
order that documents (e.g. reports, attachments, minutes, or others) are kept confidential.

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.

When Council makes an order (by resolution) to keep documents confidential the minutes
will record:

- the grounds on which it was made;
- the duration of the order or the circumstances in which the order will cease to apply; and
- the period after which the order must be reviewed.

Council also has the power to determine that an employee of Council may revoke the
order. [s.91(9)]

An order cannot be made to prevent: [refer s91(8) LG Act]

- 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.

4.4.4 Public Requests for Information to be Confidential
Council is only permitted to exclude the public and retain information under a
confidentiality order when it meets the criteria specified by the Act (summarised in sections
3.4.2 & 3.4.3 above).
4.4.5 Process to exclude the public
Council officers prepare reports as per the flow diagram in Appendix 3.

If the CEO believes that a matter should be considered in confidence, it will be clearly noted on the agenda (generally in the *Items to be Considered in Confidence* section).

The public (non-confidential) version of the agenda will only contain the report title and the reason(s) why it should be considered in confidence.

Council must, in public, formally determine if it is necessary and appropriate to consider an item confidentially. A resolution to exclude the public will need to be carried. If this occurs, the public must immediately leave the meeting room and move to a location that the meeting cannot be viewed or overheard. Any staff exempted and listed by name in the resolution are entitled to remain in the meeting room with the Council Members. At the discretion of Council, any other person or persons exempted and listed may remain in the meeting room (e.g. a ratepayer who is suffering personal hardship their circumstances concerning the payment of rates is being discussed).

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 item remain confidential (e.g. report, attachment or minutes). In determining this, the meeting shall have regard to the provisions of section 91 of the Act.

Council will consider each confidential item separately (they will not be considered en bloc). Hence, 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.

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

Decisions made will be available in the public minutes unless Council has ordered that they remain confidential, in which case they will not be publicly available.

4.5 Review & Release of Confidentiality Orders
A review of the reports, attachments, minutes or any other documents that are the subject of a confidentiality order are conducted annually to ensure that items are released to the public in accordance with the resolutions of Council. Released documents are available on Council’s website at [www.wattlerange.sa.gov.au](http://www.wattlerange.sa.gov.au).

4.6 Accountability and Reporting to the Community
Information on the use of confidentiality provisions will be included in the Annual Report, which is available for inspection by the public at Council offices. This includes:

- Number of occasions each of the provisions for excluding the public were utilised;
- Subject of the confidential item;
- Number of occasions that information originally declared confidential has subsequently been made publicly available; and
- Any other information that the Act or Regulations require to be reported.
5. REVIEW

This Code of Practice will be reviewed within 12 months after the conclusion of each periodic election or before if required.

In addition, Section 92(5) of the Local Government Act 1999 requires any future amendment or alteration to the Code, or a substitution of a new Code, will be subject to the specifications of Council’s Community Engagement Policy

6. AVAILABILITY

This Policy is available for inspection without charge at the following location during ordinary business hours:

- Principal Office, “Civic Centre”, George Street, Millicent

A copy of the Policy may be purchased from the Principal Council Office upon payment of a prescribed fee in accordance with Council’s Schedule of Fees and Charges.

7. REFERENCES & FURTHER READING

<table>
<thead>
<tr>
<th>Relevant Legislation:</th>
<th>This Policy should be read in conjunction with:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Local Government Act 1999</td>
<td>Appendix 1 – Matters for which Council, or a Committee, can order that the public be excluded.</td>
</tr>
<tr>
<td>Local Government (Procedures at Meetings) Regulations 2013</td>
<td>Appendix 2 – Template for Making Section 90(2) and 91(7) Orders Under the Local Government Act 1999</td>
</tr>
<tr>
<td></td>
<td>Policy 1.5 – Community Engagement</td>
</tr>
<tr>
<td></td>
<td>Code of Practice 104 - Discretionary Procedures – Procedures at Meetings</td>
</tr>
<tr>
<td></td>
<td>Policy 1.47 – Informal Gatherings</td>
</tr>
<tr>
<td></td>
<td>Policy 28 – Customer Experience &amp; associated procedures</td>
</tr>
<tr>
<td></td>
<td>Procedure 106 – Deputations to Council</td>
</tr>
<tr>
<td></td>
<td>Procedure 369 – Petitions to Council</td>
</tr>
</tbody>
</table>

8. ADOPTION & AMENDMENT HISTORY

The table below sets out the adoption, review and amendment history of the policy.

<table>
<thead>
<tr>
<th>Version No:</th>
<th>Issue Date:</th>
<th>Authorised by:</th>
<th>Description of Change:</th>
<th>Minutes Reference:</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>12/12/2006</td>
<td>Council</td>
<td>Adopted</td>
<td>Folio 3789; Item 18.1.1</td>
</tr>
<tr>
<td>2</td>
<td>14/12/2010</td>
<td>Council</td>
<td>Reviewed</td>
<td>Folio 4496; Item 16.1.7</td>
</tr>
<tr>
<td>3</td>
<td>08/05/2012</td>
<td>Council</td>
<td>Amended</td>
<td>Folio 4574; Item 11.1.2</td>
</tr>
<tr>
<td>4</td>
<td>11/12/2012</td>
<td>Council</td>
<td>Reviewed</td>
<td>Folio 4847; Item 11.1.9</td>
</tr>
<tr>
<td>5</td>
<td>08/04/2014</td>
<td>Council</td>
<td>Amended</td>
<td>Folio 5284; Item 12.2.9</td>
</tr>
<tr>
<td>6</td>
<td>08/11/2016</td>
<td>Council</td>
<td>Amended</td>
<td>Folio 6936; Item 13.2.3</td>
</tr>
<tr>
<td>7</td>
<td>21/01/2020</td>
<td>Council</td>
<td>Amended</td>
<td>Folio 8922; Item 15.2.6</td>
</tr>
<tr>
<td>8</td>
<td>14/04/2020</td>
<td>Council</td>
<td>Amended – LG Act changes due to COVID-19</td>
<td>Folio 8948; Item 4.1.2</td>
</tr>
</tbody>
</table>
APPENDIX 1 - CONFIDENTIAL ITEM RECOMMENDATIONS

TEMPLATE FOR MAKING AN ORDER TO EXCLUDE THE PUBLIC (SECTION 90(2) ORDERS)

It is irrelevant to exclude the public from the Meeting just because the issue:

• May cause embarrassment to the Council or to members or employees of the Council; or
• May cause a loss of confidence in the Council; or
• May involve discussion of a matter that is controversial within the Council area; or
• May make the Council susceptible to adverse criticism.

Appendix 2 contains the list of reasons that can be used to go into confidence (under section 90(3)(a) to (n) of the Act) and will need to be referenced to complete this recommendation.

REASON = Insert the relevant letter from the “REASON” column in Appendix 2, e.g. (a)

GROUNDS = Insert the information from the “GROUND” column in Appendix 2 (both the white and green box). Ensure you complete the information in the green box as required.

Recommendation 1

That Council:

• Pursuant to Sections 90(2) and 90(3)[REASON] of the Local Government Act 1999, the Council orders that the public be excluded from attendance at that part of this meeting relating to Item XX.X, excepting the following persons:
  o [First Name] [Last Name] – Chief Executive Officer
  o [First Name] [Last Name] – Director Corporate Services
  o [First Name] [Last Name] – Director Development Services
  o [First Name] [Last Name] – Director Engineering Services
  o [First Name] [Last Name] – Executive Assistant / Minute Taker

   to enable the Council to consider Item XX.X in confidence on the basis the Council considers it necessary and appropriate to act in a meeting closed to the public (excepting those persons listed above) in order to receive, discuss or consider in confidence the following information or matter relating to Item XX.X:

   [GROUNDS]

2. Accordingly, on this basis, the principle that meetings of the Council should be conducted in a place open to the public has been outweighed by the need to keep the information or matter confidential.

Recommendation 2

That Council:

1. Receive and note the report.
2. XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

**TEMPLATE FOR MAKING ORDERS TO RETAIN DOCUMENTS IN CONFIDENCE (SECTION 91(7) ORDERS)**

**E.G. RETAIN REPORTS, ATTACHMENTS, MINUTES OR OTHER DOCUMENT IN CONFIDENCE**

This recommendation retains specified documents in confidence for a specified period of time. If you do not order that information is retained in confidence, it becomes public information. The reason for retaining in confidence must meet the criteria of Section 90 of the *Local Government Act 1999*.

Note: The Council cannot make a resolution to keep documents confidential if the purpose of the resolution is 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.

Please select one option only, not both. If using Option B, select

Appendix 2 contains the list of reasons that can be used to go into confidence (under section 90(3)(a) to (n) of the Act) and will need to be referenced to complete this recommendation.

**REASON** = Insert the relevant letter from the "REASON" column in Appendix 2, e.g. (a)

**GROUNDS** = Insert the information from the "GROUNDS" column in Appendix 2 (both the white and green box) Ensure you complete the information in the green box as required.

**Recommendation 3**

**OPTION A:** If no documents are required to be kept in confidence, use this recommendation.

That having considered Item X.XX in confidence under section 90(2) and (3) (**REASON**) of the *Local Government Act 1999*, the Council, pursuant to section 91(7) of the Act orders the **Report**, **Attachment(s)** and **Minutes** related to this item be released to the public.

**OPTION B:** If any documents need to be kept in confidence, use this recommendation.

That Council:

1. Pursuant to Section 91(7) of the *Local Government Act 1999*, the Council orders that the following document(s) (or part) shall be kept confidential, being document(s) (or part) relating to a matter dealt with by the Council on a confidential basis under Sections 90(2) and 90(3) (**REASON**) of the Act:

   - The **Report** of Item X.X of DATE OF MEETING
   - The **Attachment(s)** of Item X.X of DATE OF MEETING
   - The **Minutes** of Item X.X of DATE OF MEETING

   on the grounds that the document(s) (or part) is:

   **NOTE:** Only list the documents you are seeking to keep confidential. E.g. If wanting to retain the report, you would remove the line for attachments and minutes and leave:

   - The **Report** of ...
[GROUNDS]

This order shall operate until INSERT a DATE or an EVENT or “FURTHER ORDER OF THE COUNCIL” and will be reviewed at least annually in accordance with the Act.

2. Pursuant to Section 91(9)(c) of the Act, the Council delegates to the Chief Executive Officer the power to revoke this order and must advise the Council of the revocation of this order as soon as possible after such revocation has occurred.
APPENDIX 2: REASONS TO EXCLUDE THE PUBLIC AND RETAIN DOCUMENTS IN CONFIDENCE

Source: section 90(3) of the Local Government Act 1999

For use in Confidential Item Recommendation 1 and Recommendation 3 in Appendix 1.

<table>
<thead>
<tr>
<th>REASON</th>
<th>GROUNDS</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a)</td>
<td>information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead);</td>
</tr>
</tbody>
</table>

Specifically, the present matter relates to information pertaining to the personal affairs of [a person] or, if appropriate, [name of person].

The disclosure of this information would be unreasonable because [INSERT] (e.g. the information is sensitive/confidential to [person] and is not a matter of public knowledge)

<table>
<thead>
<tr>
<th>(b)</th>
<th>information the disclosure of which:</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i)</td>
<td>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</td>
</tr>
<tr>
<td>(ii)</td>
<td>would, on balance, be contrary to the public interest;</td>
</tr>
</tbody>
</table>
Specifically, the present matter relates to [TYPE OF INFORMATION] (e.g. detailed costings and financial statements relating to the proposed renovation of the XX Plaza).

The disclosure of this information could reasonably be expected to be commercially advantageous to [PARTY] because [REASONS] (e.g. that party is currently in commercial negotiations with the Council related to this matter, and that party could adjust their bargaining position based on the positions of the Council disclosed in the information)

[AND/OR]

The disclosure of this information could reasonably be expected to prejudice the commercial position of the Council because [REASONS] (e.g. the Council is currently inviting tenders in relation to this matter, and the disclosure of this information would likely influence any proposals submitted, to the commercial detriment of the Council)

The Council has considered the public interest in relation to whether to make this order. The prevailing public interest in these circumstances is [INSERT] (e.g. the Council’s ability to obtain best value for money). The Council considers that, on balance, disclosure would be contrary to the public interest. [SUMMARISE REASONS OF COUNCIL] (e.g. To discuss the matter publicly would seriously compromise the Council’s ability to achieve optimum value for money for its residents, as the Council’s business stance in relation to the matter would inappropriately become known to other involved parties.)

(c) information the disclosure of which would reveal a trade secret;

Specifically, the present matter relates to [DESCRIBE INFORMATION] (Note: do not include the nature of the 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;
Specifically, the present matter relates to [TYPE OF INFORMATION] (e.g. a report from XX Consultants relating to a proposed development)
The disclosure of this information could reasonably be expected to prejudice the commercial position of the person who supplied the information [or, if appropriate, NAME OF PARTY] because [REASONS] (e.g. the information details confidential financial and business forecasts about that party which could reasonably be expected to prejudice the party’s ability to conduct business with other parties)

[AND/OR]

The disclosure of this information could reasonably be expected to confer a commercial advantage on a third party because [REASONS] (e.g. the information contains financial estimates of the party supplying the information regarding future work to be undertaken for third parties, and disclosure of those estimated costs would likely then be taken into account by those third parties in their dealings with the party supplying the information)

The Council has considered the public interest in relation to whether to make this order. The prevailing public interest in these circumstances is [INSERT] (e.g. the Council’s ability to conduct its present business with XX Consultants, for the benefit of residents). The Council considers that, on balance, disclosure would be contrary to the public interest. [SUMMARISE REASONS OF COUNCIL] (e.g. the potential commercial detriment that the disclosure of this information could cause to XX Consultants may diminish the ability of XX Consultants to conduct its present business with the Council and is contrary to the Council’s adherence to fair commercial conduct.)

(e) matters affecting the security of the council, members or employees of the council, or council property, or the safety of any person;

Specifically, the present matter relates to [DESCRIBE INFORMATION]

(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;

Specifically, the present matter relates to [DESCRIBE INFORMATION]

(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;

Specifically, the present matter relates to [DESCRIBE INFORMATION]

(h) legal advice;

Specifically, the present matter relates to [DESCRIBE INFORMATION] (e.g. legal advice provided by XX Lawyers) (Note: do not include the content or nature of the 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;

Specifically, the present matter relates to [DESCRIBE INFORMATION]
(Note: do not include the nature of any legally sensitive information)

(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;

Specifically, the present matter relates to [TYPE OF INFORMATION AND MINISTER/PUBLIC AUTHORITY WHICH COMMUNICATED IT] (e.g. correspondence between the Council and the Department of Planning, Transport and Infrastructure regarding a proposed highway)

This information was communicated to the Council on a confidential basis.

The Council has considered the public interest in relation to whether to make this order. The prevailing public interest in these circumstances is [INSERT] (e.g. the delivery by the State Government, in partnership with the Council, of a major public works project). The Council considers that, on balance, disclosure would be contrary to the public interest. [SUMMARISE REASONS OF COUNCIL] (e.g. Full particulars of the project will be made available in due course if the project proceeds beyond its present, early stage. However, the release of this information at this early stage may compromise the delivery of a proposed significant roadwork project, which is intended to benefit the residents of the Council and the public in general.)

(k) tenders for the supply of goods, the provision of services or the carrying out of works;

Specifically, the present matter relates to [DESCRIBE INFORMATION]

(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;

Specifically, the present matter relates to [DESCRIBE INFORMATION]

(n) information relevant to the review of a determination of a council under the Freedom of Information Act 1991.

Specifically, the present matter relates to [DESCRIBE INFORMATION]
APPENDIX 3: Council Officer Reporting of Confidential Items