

12.6. REVIEW OF CODE OF PRACTICE – ACCESS TO MEETINGS & DOCUMENTS

REPORT INFORMATION								
Report Title	Review of Code of Practice – Access to Meetings & Documents							
Records Reference	9.24.1.2 REP23154							
Organisational Unit	Corporate & Community							
Responsible Officer	Manager Governance & Risk - Lynne Jolley							
Report Attachment/s	Yes Attachment 4 N2311223 Draft Code of Practice – Access to Meetings & Documents 18.63.1 – Tracked Changes Version N2311223 Draft Code of Practice – Access to Meetings & Documents 18.63.1 – Clean Version							
REPORT PURPOSE								
The purpose of this report is for Council to review the Draft Code of Practice – Access to Meetings & Documents 18.63.1 and endorse the draft for the purpose of Public Consultation.								
REPORT DECISION MAKING CONSIDERATIONS								
Council Role	Regulate - Specific role in response to legislation and compliance - direct, specific or general in nature (such as duty of care)							
Strategic Alignment	SDP GOAL: Goal 3: Governance and Leadership SDP ACTION: Not Applicable							
Annual Business Plan 2023/24	ABP INITIATIVE: Not Applicable ABP PROJECT: Not Applicable							
Legislation	Local Government Act 1999							
Policy	Code of Practice - Access to Meetings & Documents 18.63.1							
Budget Implications	Not Applicable <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 50%;">DESCRIPTION</th> <th style="width: 25%;">BUDGET AMOUNT \$</th> <th style="width: 25%;">YTD \$</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table> Budget assessment comments:		DESCRIPTION	BUDGET AMOUNT \$	YTD \$			
DESCRIPTION	BUDGET AMOUNT \$	YTD \$						
Risk Implications	Not Applicable							
Resource Implications	Not Applicable							
Public Consultation	Not Applicable							
IAP2 Commitment	CONSULT - We will keep you informed, listen to and acknowledge concerns and aspirations, and provide feedback on how public feedback input has influenced the decision.							
OFFICER’S RECOMMENDATION								
That Council endorse the Draft 18.63.1 Code of Practice – Access to Meetings & Documents as presented in the attachments to this report, for the purpose of public consultation, and that the consultation period will be open from Thursday 19 October 2023 to Friday 10 November 2023.								

12.6 REVIEW OF CODE OF PRACTICE – ACCESS TO MEETINGS & DOCUMENTS**REPORT DETAIL**

Pursuant to Section 92 of the Local Government Act 1999 (the Act) a council must prepare and adopt a code of practice relating to the principles, policies, procedures and practices that the council will apply for the purposes of the operation of Parts 3 and 4 of the Act. Parts 3 and 4 *the Act* relate to public access to council and committee meetings, minutes of council and committee meetings and release of documents.

A council must, within 12 months after the conclusion of each periodic election, review the operation of its code of practice under this section, a code of practice must include any mandatory provision prescribed by the regulations and before a council adopts, alters or substitutes a code of practice under this section it must undertake public consultation on the proposed code, alterations or substitute code (as the case may be).

The Local Government Association of SA (LGA) originally developed a Model Code of Practice for Access to Meeting & Documents in 2009 as a guide for Councils to ensure that they met the mandatory provision prescribed by regulation. In May 2022 the LGA updated the Model Code following the commencement of various provisions in the Statutes Amendment (Local Government Review) Act 2021, incorporating advice from Norman Waterhouse Lawyers, to assist councils with implementation of legislative changes.

Council's current Code of Practice – Access to Meetings & Documents has been updated in line with the updated LGA Model Code of Practice and the Draft 18.63.1 Code of Practice – Access to Meetings & Documents, was provided to the Council Members for review as part of a workshop held on Tuesday 26 September 2023.

The Draft 18.63.1 Code of Practice – Access to Meetings & Documents has been provided as an attachment to this report and is required to be endorsed for public consultation before being further considered by Council for adoption. It is proposed that the consultation period for the Draft 18.63.1 Code of Practice – Access to Meetings & Documents will be open from Thursday 19 October 2023 and close on Friday 10 November 2023 inclusive.



ATTACHMENT 4

REPORT 12.6

N2311223

**DRAFT CODE OF PRACTICE – ACCESS
TO MEETINGS & DOCUMENTS
18.63.1 – TRACKED CHANGES**

N2311223

**DRAFT CODE OF PRACTICE – ACCESS
TO MEETINGS & DOCUMENTS
18.63.1 – CLEAN COPY**



Policy Name	Code of Practice – Access to Meetings & Documents
Policy No.	18.63.1
Version:	2 1
Strategic Reference:	3.2 A strategically driven, community aware and accountable Council Goal 3 - Governance and Leadership
Responsible Department:	Corporate, Community & Governance Services Corporate & Community
Policy Adopted:	06 April 2020
Last revised date:	06 April 2020 7 September 2015
Minute reference:	SPCO-20/001
Next review date:	This Code shall be reviewed by the City of Port Lincoln within 12 months after the conclusion of each periodic election, or on significant change to legislation or aspects included within this Code.
Applicable Legislation:	<i>Local Government Act 1999</i> <i>Local Government (Procedures at Meetings) Regulations 2013</i> <i>Freedom of Information Act 1991</i>
Related Policies:	9.63.2 Internal Review of Councils' Decision Review 13.63.1 Privacy & Copyright 18.63.2 Code of Practice – Council and Committee Meetings
Related Documents:	

1. 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 Act)*, the City of Port Lincoln 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.

2. INTRODUCTION

~~This Code sets out the commitment of the City of Port Lincoln to provide public access to Council and Council committee meetings and documents and outlines the policies and procedures contained within the Act, to restrict public access when required. 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.~~

Section 92 of the Act requires Council to prepare and adopt a Code of Practice for Access to Meetings and Documents (the Code of Practice). Public access to Council and Committee meetings and documents is one of the primary means by which the community can gain access to information about the business of Council and Council committees. This Code of Practice 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 of Practice; and
- grievances about the use of the Code of Practice by Council.

3. PUBLIC ACCESS TO THE AGENDA FOR MEETINGS

At least three clear days¹ before the Council or Council Committee meeting (unless it is a special meeting) the Chief Executive Officer (CEO) ~~will~~ 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. Items listed on the agenda will be described accurately and in reasonable detail.

~~The reports and other documents attached to the agenda do not need to be displayed with the notice and are not required to be made available for purchase by the public. Instead, under section 84(5), the CEO must ensure that a document or report supplied to the members of the Council or a Council Committee before the meeting, is made available on a website determined by the CEO as soon as practicable after it has been supplied to the member, or, in the case of a document or report supplied to the members of the Council or a Council Committee at the meeting, on a website determined by the CEO as soon as practicable after the time when that document or report was supplied to members of the Council. However, this obligation does not apply to documents that are to be considered in confidence under Part 3 of Chapter 6 of the Local Government Act.~~

~~Where the CEO of the Council (after consultation with the Mayor of the Council, or in the case of a Committee – the presiding member) believes that a document or report relating to a matter to be considered by the Council or a Committee should be considered in confidence² with the public to be excluded, the basis under which the order could be made in accordance with section 90(2) and (3) of the Act will be specified. [see sections 83(5) (Council) and 87(10) (Committee) of the Act.]~~

¹ In the calculation of ‘clear days’ in relation to the giving of notice before a meeting, the day on which the notice is given and the day of the meeting are not taken into account. Saturdays, Sundays and public holidays are taken into account. In addition, if notice is given after 5:00pm on a day, the notice will be taken to have been given on the next day. For example, for notice given on a Thursday at 2:00pm for a following Monday meeting, the clear days are Friday, Saturday and Sunday.

² Confidential Items refer to 18.63.2 Code of Practice Council & Committee Meetings

The notice of the meeting will be placed on public display at the principal office Council and published on the website and will be kept on public display and the website until the completion of the relevant Council or Council committee meeting. ~~and The agenda documents and reports will be placed published on Council website as soon as practicable after being supplied to members of the Council and will continue to be available to the public on via the Council's website (www.portlincoln.sa.gov.au).~~

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.

Agenda documents provided to members of Council, or members of a Committee, may include an indication from the CEO that the Council or Committee may determine to consider an item in confidence, with the public to be excluded from the meeting during discussion of that item. Where such an indication is made, the CEO must specify the basis under which the confidentiality order could be made in accordance with section 90(3) of the Act³

4. PUBLIC ACCESS TO MEETINGS

Council encourages public attendance at meetings of the Council and Committees through public notification of meetings by the promotion of meeting dates on a sign located adjacent the Civic Centre, notification in the reception area and on Council's website.

Council and Council Committee meetings are open to the public and attendance is encouraged, ~~except noting there may be circumstances~~ 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 and this will occur in strict compliance with the requirements of section 90 of the Act.

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~~Where the participation of member at a meeting of the Council or a Council Committee is to be facilitated by electronic means, or the meeting is to be held at an electronic location, the CEO (or nominee) will ensure a live stream of the Council or Committee meeting is made available to the public via a website determined by the CEO, so that all members of the public are able to hear the discussion between all members present. Where reasonable steps have been taken to achieve these objectives but the live stream is not available, the CEO will make publicly available a recording of the meeting so that all members of the public can hear the discussion had between all members present. If the CEO (or nominee) has taken reasonable steps to livestream and/or record a Council or Committee meeting but is unable to do so, the CEO (or nominee) will publish on the Council website, the steps that were taken in trying to achieve the livestream and/or recording.~~

5. INFORMATION AND BRIEFING SESSIONS

Councils 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.

³ See sections 83(5) (Council) and 87(10) (Committee) of the *Local Government Act 1999*.

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 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 session⁴:

- 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.

~~In accordance with section 90 of the Act, it is not unlawful for members of Council, a Committee and staff to participate in informal gatherings or discussion, referred to as a Workshop or Briefing, provided that a matter which would ordinarily form part of the agenda for a formal meeting is not dealt with in such a way as to obtain, or effectively obtain, a decision outside of a formally constituted meeting of the Council or a Committee. The Council is not bound to hold an informal gathering open to the public in accordance with section 90A(4) of the Act as openness to the public only applies to Council and Council Committee meetings. This means that section 90A(2) to exclude the public has no role to play. The Council may, until further notice, determine that an informal gathering will occur by way of electronic means as this term is used in the Minister's Notice pursuant to section 302B of the Act [*Public Health Emergency: Electronic Participation in Council Meetings (NO1)*] and consistent with the requirements of its Informal Gatherings Policy.~~

~~The following are examples of informal gatherings, Workshops or Briefings that may be held in accordance with Section 90(8):~~

- ~~planning sessions associated with the development of policies and strategies;~~
- ~~briefing or training sessions;~~
- ~~workshops; or~~
- ~~social gatherings to encourage informal communication between members or between members and staff.~~

5.6. PROCESS TO EXCLUDE THE PUBLIC FROM A MEETING

~~Refer to 18.63.2 Code of Practice Council and Committee Meetings, Confidential Items and the Local Government Act 1999, section 90.~~

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 rather than ask the public to leave the room and wait for ~~an unpredictable period~~ however long it takes until the matter is concluded and then allow the public to return to the meeting room with the possibility of the same process being repeated for a subsequent matter.

Despite the above, there may be circumstances where, during the course of a meeting, it becomes apparent that a matter should be considered in confidence. In those cases, members of the public will be asked to leave the meeting whilst the matter is discussed (subject to an appropriate resolution of the council being carried to close the meeting).

⁴ Regulation 8AB—Information or briefing sessions, Local Government (General) Regulations 2013

Before a meeting orders that the public be excluded to enable consideration of a particular matter in confidence, the Council or Council Committee 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, but not including a member of the Council or Council Committee), unless exempted by being named in the resolution as entitled to remain, are required to leave the room.

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, to enter or remain in the meeting room. It is lawful for an employee of the 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.

At the conclusion of each matter that is considered confidential, members of the public are then permitted to re-enter the meeting. If there is a further matter that needs to be considered in confidence it is necessary to again undertake the formal determination process and resolve to exclude the public as above.

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.

~~In circumstances where a meeting of the Council or a Council Committee is held at an electronic location, the Council will disconnect the electronic means when it is dealing with business in confidence under section 90 of the Act meaning that a member of the public will be unable see, or to hear any part of the meeting during the period for which members have resolved to exclude the public.~~

There is no legal requirement to resolve to “come out of confidence” or to go back into “public session”.

6.7. USE OF THE CONFIDENTIALITY PROVISIONS

~~Any consideration of the use of the confidentiality provisions Council or a Council Committee may to exclude the public from a meeting to the extent (and only to the extent) that the council or council committee considers it to be necessary and appropriate, in order to receive, discuss or consider information or matters in confidence after taking into account any relevant consideration under 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.~~

With respect to matters on a Council agenda, where a person provides information to the Council and requests that it be kept confidential, Council cannot 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.

~~Council practice:~~

~~The policy approach of the City of Port Lincoln is that:~~

~~The principle of open and accountable government is strongly supported;~~

~~Information of the grounds on which an order to exclude the public is made will be conveyed to the public at the time of any persons present 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. Where a meeting of the Council or a Council Committee is held at an electronic location, a member of the public will be unable see, or to hear, those items for which members have resolved to exclude the public;~~

In considering whether an order should be made under section 90(2), it is irrelevant that discussion of a matter in public may⁵:

- cause embarrassment to the Council or Committee concerned, or to members or employees of the Council;
- cause a loss of confidence in the Council or Committee;
- involve discussion of a matter that is controversial within the council area; or
- make the council susceptible to adverse criticism.

If a decision to exclude the public is taken, the Council or the Council Committee is required to make a note in the minutes of the making of the order and specify:

- the grounds on which it was made;
- The basis on which the information or matter falls within the ambit of each confidentiality ground; and
- (if relevant,) why receipt, consideration or discussion of the information or matter in public would be contrary to the public interest.

Once discussion of the matter is concluded, the meeting ~~will~~ must then consider if it is necessary to make an order ~~that a document associated with this agenda item~~ identifying the document(s) (or parts of the document(s)) associated with that item (including minutes) that are to 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;~~

~~If t~~The meeting ~~must~~ must determine that it is whether it is proper and necessary to keep a document(s) (or part of document(s)) confidential, ~~by passing then~~ a resolution for an order to this effect is required in accordance with section 91(7) of *the Act*;

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 at a Council or Committee Meeting pursuant to sections 90(2) and 90(3)

The Council will not consider more than one agenda item “in confidence” together i.e. en bloc. It will determine each item separately and consider the ~~basis of grounds~~ exemptions relevant to each item;

Once discussion of the matter is concluded and ~~any members of~~ the public have returned ~~(or the live streaming or recording is recommenced),~~ the decision ~~of the meeting~~ in relation to the matter will be ~~made publicly known~~ communicated unless the Council has resolved to order that ~~some or all of~~ the resolution ~~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.

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

⁵ Section 90(4), Local Government Act 1999

- 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 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; and
- (if applicable) whether the power to revoke the order will be delegated to an employee of the Council.⁶

~~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 will also be recorded in the minutes;~~

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~~

~~Where a person provides information to the Council and requests it be kept confidential, Council cannot 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.~~

~~Council practice:~~

~~There is no legal requirement to resolve to “come out of confidence” or to go back into “public session”. Members of the public may and should be invited to re-enter the meeting (including by way of being reconnected if the meeting is being livestreamed and the recorder being turned on if it is being recorded) when consideration of the relevant Agenda Item has concluded. The public is also entitled to be present for the debate (or to see or hear the debate in the event of an electronic meeting) on whether any subsequent item should be considered in confidence.~~

7.8. 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.

⁶ Section 91(9) of the *Local Government Act 1999*.

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 confidentiality order to be lifted. Once the order expires or ceases to apply, the minutes and/or documents automatically become public. At this point in time, the Council will make this information publicly available by publishing it on the Council's website

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 CEO 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 be addressed separately and assessed against section 90(3) and section 91(7) of *the Act*. While a Council may delegate the power to undertake an annual review, the Council cannot delegate the power to apply sections 90(3) and 91(7) of *the Act*.

A Council may resolve to exclude the public from a meeting ~~(or to turn off a live stream and/or audio recording)~~ to discuss and undertake consideration of the recommendations arising from the annual review in confidence, subject to the application of the relevant ground under section 90(3) of *the Act*. Section 90(3) of *the Act* must be applied separately to each item within the scope of the review and not 'en bloc'.

9. ACCOUNTABILITY AND REPORTING TO THE COMMUNITY

Consistent with the principle of accountability 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*. The report should include the following information, separately identified for both Council and Council committees:

- Total number of orders made under sections 90(2) and 90(3) and 91(7) in the relevant financial year;
- The date and subject of each order made under sections 90(2) and 90(3) and 91(7) in the relevant financial year;
- In relation to each ground specified in section 90(3), the number of times in the relevant financial year that an order was made under section 90(2) and 90(3) for each ground;
- The number of orders made under section 91(7) that expired, ceased to apply or were revoked during the relevant financial year and the date and subject of each such order; and
- The number of orders made under section 91(7) since 15 November 2010 that remained operative at the end of the relevant financial year.

8.10. PUBLIC ACCESS TO MINUTES

Minutes of a meeting of Council or a Council Committee ~~will~~ must be made publicly available on the Council website www.portlincoln.sa.gov.au -within 5 days after the meeting.

Printed copies of minutes can be provided to a person on request for a fee to cover the costs of photocopying, in accordance with Council's schedule of fees and charges.

9.11. PUBLIC ACCESS TO DOCUMENTS

The Act requires Councils to make available a large number of documents. Many of these are set out in Schedule 5 of the Act, with other requirements contained in other sections of the Act. Schedule 5 documents must be published on Council's website. Council must also, upon request, provide a person with a printed copy of any document referred to in Schedule 5. Provision of printed copies of a document may require payment of a fee set by Council (see Council's fees and charges register for any relevant fee)

~~Various documents, in addition to Council Agendas and Minutes, may be available for inspection and purchase (for a fee) by the public. Council may also make a document available in electronic form on its website for public access.~~ Requests to access Council and Council Committee documents that are not otherwise publicly available, 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 via plcc@plcc.sa.gov.au or 08 86212300. Some documents ~~are~~ may only be accessible under the provisions of the *Freedom of Information Act, 1991* or may be subject to the requirements of Council Policy 13.63.1 Privacy ~~& Copyright~~.

~~The Council or the Council Committee will only order that a document associated with a discussion from which the public has been 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 provided and/or considered in confidence pursuant to sections 90(2) and 90(3).~~

10.12. GRIEVANCE

Council ~~has established a~~ Policy 9.63.2 Internal review of Council's Decision, Review⁷ established under section 270 of the Act, provides the process for the review of decisions ~~of: under the Local Government Act 1999, section 270 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.

⁷ Council policies are available on Council's website www.portlincoln.sa.gov.au or from Council's Administration Office or by phoning 8621 2300.



Policy Name	Code of Practice – Access to Meetings & Documents
Policy No.	18.63.1
Version:	2
Strategic Reference:	Goal 3 - Governance and Leadership
Responsible Department:	Corporate & Community
Policy Adopted:	
Last revised date:	06 April 2020
Minute reference:	
Next review date:	This Code shall be reviewed by the City of Port Lincoln within 12 months after the conclusion of each periodic election, or on significant change to legislation or aspects included within this Code.
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Related Documents:	

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2. INTRODUCTION

Section 92 of *the Act* requires Council to prepare and adopt a Code of Practice for Access to Meetings and Documents (the Code of Practice). Public access to Council and Committee meetings and documents is one of the primary means by which the community can gain access to information about the business of Council and Council committees. This Code of Practice 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 of Practice; and
- grievances about the use of the Code of Practice by Council.

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4. PUBLIC ACCESS TO MEETINGS

Council encourages public attendance at meetings of the Council and Committees through public notification of meetings by the promotion of meeting dates on a sign located adjacent the Civic Centre, notification in the reception area and on Council's website.

Council and Council Committee meetings are open to the public and attendance is encouraged, noting there may be circumstances 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 and this will occur in strict compliance with the requirements of section 90 of the Act.

5. INFORMATION AND BRIEFING SESSIONS

Councils 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.

¹ In the calculation of 'clear days' in relation to the giving of notice before a meeting, the day on which the notice is given and the day of the meeting are not taken into account. Saturdays, Sundays and public holidays are taken into account. In addition, if notice is given after 5:00pm on a day, the notice will be taken to have been given on the next day. For example, for notice given on a Thursday at 2:00pm for a following Monday meeting, the clear days are Friday, Saturday and Sunday.

³ See sections 83(5) (Council) and 87(10) (Committee) of the *Local Government Act 1999*.

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 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 session⁴:

- 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

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 rather than ask the public to leave the room and wait for however long it takes until the matter is concluded and then allow the public to return to the meeting room with the possibility of the same process being repeated for a subsequent matter.

Despite the above, there may be circumstances where, during the course of a meeting, it becomes apparent that a matter should be considered in confidence. In those cases, members of the public will be asked to leave the meeting whilst the matter is discussed (subject to an appropriate resolution of the council being carried to close the meeting).

Before a meeting orders that the public be excluded to enable consideration of a particular matter in confidence, the Council or Council Committee 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, but not including a member of the Council or Council Committee), unless exempted by being named in the resolution as entitled to remain, are required to leave the room.

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, to enter or remain in the meeting room. It is lawful for an employee of the 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.

At the conclusion of each matter that is considered confidential, members of the public are then permitted to re-enter the meeting. If there is a further matter that needs to be considered in confidence it is necessary to again undertake the formal determination process and resolve to exclude the public as above.

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.

There is no legal requirement to resolve to “come out of confidence” or to go back into “public session”.

⁴ Regulation 8AB—Information or briefing sessions, *Local Government (General) Regulations 2013*

7. USE OF THE CONFIDENTIALITY PROVISIONS

Council or a Council Committee may exclude the public from a meeting to the extent (and only to the extent) that the council or council committee considers it to be necessary and appropriate, in order to receive, discuss or consider information or matters in confidence after taking into account any relevant consideration under Section 90(3) of *the Act*.

With respect to matters on a Council agenda, where a person provides information to the Council and requests that it be kept confidential, Council cannot 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.

In considering whether an order should be made under section 90(2), it is irrelevant that discussion of a matter in public may⁵:

- cause embarrassment to the Council or Committee concerned, or to members or employees of the Council;
- cause a loss of confidence in the Council or Committee;
- involve discussion of a matter that is controversial within the council area; or
- make the council susceptible to adverse criticism.

If a decision to exclude the public is taken, the Council or the Council Committee is required to make a note in the minutes of the making of the order and specify:

- the grounds on which it was made;
- The basis on which the information or matter falls within the ambit of each confidentiality ground; and
- (if relevant,) why receipt, consideration or discussion of the information or matter in public would be contrary to the public interest.

Once discussion of the matter is concluded, the meeting must then consider if it is necessary to make an order identifying the document(s) (or parts of the document(s)) associated with that item (including minutes) that are to remain confidential.

If the meeting determines that it is necessary to keep a document(s) (or part of document(s)) confidential, then a resolution for an order to this effect is required in accordance with section 91(7) of *the Act*;

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 at a Council or Committee Meeting pursuant to sections 90(2) and 90(3)

The Council will not consider more than one agenda item “in confidence” together i.e. en bloc. It will determine each item separately and consider the exemptions relevant to each item;

Once discussion of the matter is concluded and the public have returned, the decision in relation to the matter will be communicated unless the Council has resolved to order that the resolution 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.

⁵ Section 90(4), *Local Government Act 1999*

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 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; and
- (if applicable) whether the power to revoke the order will be delegated to an employee of the Council.⁶

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.

8. 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 confidentiality order to be lifted. Once the order expires or ceases to apply, the minutes and/or documents automatically become public. At this point in time, the Council will make this information publicly available by publishing it on the Council's website

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 CEO 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 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*.

⁶ Section 91(9) of the *Local Government Act 1999*.

A Council may resolve to exclude the public from a meeting to discuss and undertake consideration of the recommendations arising from the annual review in confidence, subject to the application of the relevant ground under section 90(3) of *the Act*. Section 90(3) of *the Act* must be applied separately to each item within the scope of the review and not 'en bloc'.

9. ACCOUNTABILITY AND REPORTING TO THE COMMUNITY

Consistent with the principle of accountability 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*. The report should include the following information, separately identified for both Council and Council committees:

- Total number of orders made under sections 90(2) and 90(3) and 91(7) in the relevant financial year;
- The date and subject of each order made under sections 90(2) and 90(3) and 91(7) in the relevant financial year;
- In relation to each ground specified in section 90(3), the number of times in the relevant financial year that an order was made under section 90(2) and 90(3) for each ground;
- The number of orders made under section 91(7) that expired, ceased to apply or were revoked during the relevant financial year and the date and subject of each such order; and
- The number of orders made under section 91(7) since 15 November 2010 that remained operative at the end of the relevant financial year.

10. PUBLIC ACCESS TO MINUTES

Minutes of a meeting of Council or a Council Committee must be made publicly available on the Council website www.portlincoln.sa.gov.au within 5 days after the meeting.

Printed copies of minutes can be provided to a person on request for a fee to cover the costs of photocopying, in accordance with Council's schedule of fees and charges.

11. PUBLIC ACCESS TO DOCUMENTS

The Act requires Councils to make available a large number of documents. Many of these are set out in Schedule 5 of *the Act*, with other requirements contained in other sections of *the Act*. Schedule 5 documents must be published on Council's website. Council must also, upon request, provide a person with a printed copy of any document referred to in Schedule 5. Provision of printed copies of a document may require payment of a fee set by Council (see Council's fees and charges register for any relevant fee)

Requests to access Council and Council Committee documents that are not otherwise publicly available, 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 via plcc@plcc.sa.gov.au or 08 86212300. Some documents may only be accessible under the provisions of the *Freedom of Information Act 1991* or may be subject to the requirements of Council Policy 13.63.1 Privacy .

12. GRIEVANCE

Council Policy 9.63.2 Internal review of Council Decision,⁷ established under section 270 of *the Act*, provides the process for the review of decisions of:

- 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.

⁷ Council policies are available on Council's website www.portlincoln.sa.gov.au or from Council's Administration Office or by phoning 8621 2300.