

12. COUNCIL REPORTS FOR DECISION**12.1. CODE OF PRACTICE – ACCESS TO MEETINGS & DOCUMENTS**

REPORT INFORMATION	
Report Title	Code of Practice – Access to Meeting & Documents
Document ID	6649
Organisational Unit	Corporate & Community
Responsible Officer	Manager Governance & Communications – Lynne Jolley
Report Attachment/s	Yes Attachment 4 6586 Draft Code of Practice – Access to Meetings and Documents 18.63.1
REPORT PURPOSE	
The purpose of this report is for Council to consider any submissions received during the consultation period for Council’s Draft Code of Practice – Access to Meetings and Documents before finalising and adopting Council’s Code of Practice – Access to Meetings and Documents.	
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
Risk Implications	Not Applicable
Resource Implications	Not Applicable
Public Consultation	Yes - Mandatory
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:

1. Receive and note the summary of the consultation process undertaken for the Draft Code of Practice Access to Meetings and Documents and acknowledge that no submissions were received.
2. Council revoke the current Code of Practice – Access to Meetings and Documents 18.63.1
3. Adopt the Draft Code of Practice – Access to Meetings and Documents 18.63.1 as presented in the attachments to this report as a policy of Council.

12.1 CODE OF PRACTICE – ACCESS TO MEETINGS & DOCUMENTS

REPORT DETAIL

A report (REP23154) presented to Council at its Ordinary meeting held Monday 16 October 2023 provided information relating to Council's obligations pursuant to Section 92 of the *Local Government Act 1999* (the Act) for the purposes of Part 3 (Public access to council and committee meetings) and Part 4 (Minutes of council and committee meetings and release of documents) of the Act.

A council must, within 12 months after the conclusion of each periodic election, review the operation of its code of practice under section 92 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 Draft Code of Practice that was presented to Council included amendments in line with the Local Government Association of SA's (LGA) May 2022 Model Code of Practice, which incorporated various provisions in the Statutes Amendment (Local Government Review) Act 2021 and advice from Norman Waterhouse Lawyers.

Council considered the Draft 18.63.1 Code of Practice – Access to Meetings & Documents included as an attachment to REP23154 and endorsed the Draft Code of Practice Code of Practice – Access to Meetings & Documents for the purposes of public consultation.

Consultation on the Draft Code of Practice Code of Practice – Access to Meetings & Documents commenced on Thursday 19 October 2023 and closed at 5:00pm Friday 10 November 2023. The community were given the opportunity to review the Draft 18.63.1 Code of Practice - Access to Meetings & Documents and were invited to submit written submissions through Council's online Engagement Hub, via post or emailed to yoursay@plcc.sa.gov.au. The opportunity to have a say on the Code of practice was promoted through Council's Facebook page each week of the consultation period, the Mylocal App as a spotlight item, the October Corporate E-newsletter, a public notice in the Port Lincoln Times and via Council's Engagement Hub. No submissions were received during the consultation period.

It is recommended that as the Draft Code of Practice Code of Practice – Access to Meetings & Documents has been reviewed, is amended in line with the LGA's 2022 Model Code of Practice, and no submissions were received during the consultation period, Council adopt the Draft Code of Practice Code of Practice – Access to Meetings & Documents 18.63.1, as presented in the attachment to this report, as a policy of Council.



ATTACHMENT 4 6586

**REPORT 12.1 DRAFT CODE OF PRACTICE – ACCESS TO
MEETINGS AND DOCUMENTS 18.63.1**



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.
Applicable Legislation:	Local Government Act 1999 Local Government (Procedures at Meetings) Regulations 2013 Freedom of Information Act 1991
Related Policies:	9.63.2 Internal Review of Council Decision 13.63.1 Privacy 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

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.

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) 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 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. The agenda documents and reports will be 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 via 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 Act*²

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.

² 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 session³:

- 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”.

³ 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 may⁴:

- 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;

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

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.

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.⁵

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

⁵ Section 91(9) of the *Local Government Act 1999*.

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 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 8621 2300. 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, ⁶ 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.

⁶ Council policies are available on Council's website www.portlincoln.sa.gov.au or from Council's Administration Office or by phoning 8621 2300.