



## Code of Practice for Access to Council and Committee Meetings and Documents

<b>Classification:</b>	Council Policy
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<b>Responsible Officer:</b>	Director Corporate Services
<b>Applicable Legislation:</b>	Local Government Act 1999 s92 Local Government (Procedures at Meetings Regulations) 2013
<b>Related Policies/Procedures:</b>	Fees and Charges Schedule Internal Review of Council Decisions Policy

### 1. PURPOSE:

- 1.1 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, Kingston District Council is fully committed to the principle of open and accountable government. 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/decisions and/or documents.

### 2. LEGISLATIVE CONTEXT:

- 2.1 This Code is prepared pursuant to Section 92 of the Local Government Act 1999, which requires Council to prepare and adopt a Code of Practice relating to the principles, policies and processes for public access to meetings, documents and Minutes of Council and Committee meetings.

**3. SCOPE:**

3.1 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 Council, or a Council Committee, can order that the public be excluded;
- how Council will approach the use of the confidentiality provisions in the Local Government 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.

**4. DEFINITIONS:**

<i>The Act</i>	Local Government Act 1999
<i>CEO</i>	Chief Executive Officer
<i>Clear Days</i>	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, eg notice is given on a Thursday for a following Monday meeting, the clear days being Friday, Saturday and Sunday.
<i>Council Committee</i>	As defined by Section 41 of the Act

**5. PUBLIC ACCESS TO THE AGENDA FOR MEETINGS:**

- 5.1 At least three 'clear days' before the Council or Council Committee meeting (unless it is a special meeting) the Chief Executive Officer (CEO) must give written notice of the meeting to all Council/Committee members setting out the date, time and place of the meeting. The notice must contain or be accompanied by the agenda for the meeting. Items listed on the agenda will be described accurately and in reasonable detail.
- 5.2 The notice of meeting will be placed on public display at the principal office of Council, 29 Holland Street, Kingston SE and on Council's website [www.kingstondc.sa.gov.au](http://www.kingstondc.sa.gov.au).
- 5.3 The notice will be kept on public display and continue to be published on Council's website until the completion of the relevant Council or Council Committee meeting. The agenda will be published on Council's website.

- 5.4. Reasonable numbers of copies of non-confidential agenda documents and reports that are to be considered at the meeting must be made available:
  - In the case of a document or report supplied to members before the meeting:
    - on a website determined by the CEO, as soon as practicable after being supplied to members of Council.
  - In the case of a document or report supplied to members of Council at the meeting:
    - at the meeting, as soon as practicable after they are supplied to the members of Council. These documents will also be subsequently uploaded onto Council's website.
- 5.5. Members of the public may obtain a copy of the agenda and any particular reports on payment of a fee (if any) fixed by Council.
- 5.6. Agenda papers provided to members of Council, or members of a Committee, may include an indication from the CEO that 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 Local Government Act .

## **6. PUBLIC ACCESS TO MEETINGS:**

- 6.1. The principle of open and accountable government is strongly supported. Council facilitates public attendance at meetings of Council and Committees through public notification of meetings by publication of a notice on Council website and display of notification at the principal office of Council.
- 6.2. Council and Council Committee meetings are open to the public and attendance is encouraged, noting there may be circumstances where Council (or 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.
- 6.3. The public will only be excluded when considered proper and necessary i.e. the need for confidentiality outweighs the principle of open decision-making.
- 6.4. For meetings of Council Committees, if required, members can participate in the meeting by electronic means provided that members of the public present in the meeting room can hear the discussion between all Committee members present at the meeting, whether in person or by electronic means.

## **7. INFORMATION AND BRIEFING SESSIONS:**

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

- 7.2. 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.
- 7.3. An information or briefing session on a matter that will be included on a council agenda must be open to the public. However, Council or the CEO may order that the information or briefing session be closed to the public if the matter listed for discussion falls within the confidentiality provisions listed in Section 90(3) of the Local Government Act.
- 7.4. 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 session :
  - 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.
- 7.5. For Information and/or Briefing Sessions, if required, members can participate in the session by electronic means provided that members of the public present in the meeting room can hear the discussion between all Committee members present at the session, whether in person or by electronic means.

## **8. PROCESS TO EXCLUDE THE PUBLIC FROM A MEETING:**

- 8.1 The usual practice of Council is to list all items indicated for consideration in confidence within the last section of Council or Council Committee agenda, to allow all other items of business to be transacted with members of the public present at the meeting and not required to leave the room until the 'Confidential' section of the agenda is reached.
- 8.2 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 Council being carried to close the meeting).
- 8.3 Before the Mayor, or the Chairperson in the case of a Council Committee, 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 Council or Council Committee), unless exempted by being named in the resolution as entitled to remain, are required to leave the room.
- 8.4 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 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, however it is recommended that Council waits until Police attend to remove the person.

- 8.5 Once discussion on that particular matter is concluded, the public are 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 to resolve to exclude the public as above.
- 8.6 Council, or a Council Committee, can permit a particular person or persons to remain in the meeting by including reference to them within the resolution. 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.

## **9. USE OF THE CONFIDENTIALITY PROVISIONS:**

- 9.1 In accordance with the requirements of Section 90(3) of the Local Government Act, Council, or a Council Committee, may order that the public be excluded in order to receive, discuss or consider any of the following information or matters in confidence:
- 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 Council is conducting, or proposing to conduct, business, or to prejudice the commercial position of 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 of a third party; and*
    - ii *would, on balance, be contrary to the public interest;*
  - e. *matters affecting the security of Council, members or employees of 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 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 Council or Council Committee believes on reasonable grounds will take place, involving Council or an employee of 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 Council, or a person engaged by 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 proposal to prepare or amend a designated instrument under Part 5 Division 2 of the Planning, Development and Infrastructure Act 2016 before the draft instrument or amendment is released for public consultation under that Act;*
- n. information relevant to the review of a determination of a Council under the Freedom of Information Act 1991.*
- o. information relating to a proposed award recipient before the presentation of the award.*

9.2 The Local Government Act provides a definition of “personal affairs” which includes a person’s:

- financial affairs
- criminal records
- marital or other personal relationships
- personal qualities, attributes or health status
- employment records, employment performance or suitability for a particular position, or other personnel matters relating to the person, but it does not include the personal affairs of a body corporate.

9.3. With respect to matters on a Council agenda, where a person provides information to Council and requests that it be kept confidential, Council is not able to even consider this request unless the matter is one that falls within Section 90(3). If this is the case, Council will then be in a position to consider the request on its merits.

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

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

- 9.5 If a decision to exclude the public is taken, Council or 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
  - (if relevant) why receipt, consideration or discussion of the information or matter in public would be contrary to public interest.
- 9.6 Details on how to structure resolutions for confidentiality orders under Sections 90(3) and 91(7), including example resolutions, can be found in the Local Government Association of South Australia's [Confidentiality Guidelines: How to apply Section 90 of the Local Government Act](#).
- 9.7 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.
- 9.8 If the meeting determines that it is necessary to keep a document(s) (or parts of document(s)) confidential, then a resolution for an order to this effect is required in accordance with Section 91(7) of the Local Government Act.
- 9.9 Council or 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).
- 9.10 Council will not consider a number of agenda items "in confidence" together i.e. en bloc. It will determine each item separately and consider the exemptions relevant to each item.
- 9.11 Once discussion of the matter is concluded and the public have returned, the decision in relation to the matter will be communicated unless 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) will also be made known.
- 9.12 In accordance with Section 91(8) Council or Council Committee must **not** make an order to prevent:
- the disclosure of the remuneration or conditions of service of an employee of 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 Council as to why a successful tenderer has been selected; or
  - the disclosure of the amount or amounts payable by 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, 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 Council, or of any reasons adopted by Council as to why land has been acquired or disposed of by Council.
- 9.13 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 Council.
- 9.14 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.
- 9.15 All confidentiality orders made must be recorded within Council's Confidential Register, which is published on Council's website.

## **10. REVIEW OF CONFIDENTIALITY ORDERS:**

- 10.1 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.
- 10.2 An order will lapse if the time or event specified has been reached or carried out. There is no need for 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, Council will make this information publicly available by publishing it on Council's website, identified as a "released confidential item". The expiration of the order must also be noted within Council's Confidential Register.
- 10.3 Orders that exceed 12 months must be reviewed annually and 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 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 Local Government Act. While a Council may delegate the power to undertake an annual review, Council cannot delegate the power to apply Sections 90(3) and 91(7) of the Local Government Act.



- 10.4 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 event 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.
- 10.5 Council or a Council Committee may delegate to an employee of Council the power to revoke an order made in accordance with Section 91(7) of the Act. Such delegation may be subject to conditions.

## **11. ACCOUNTABILITY AND REPORTING TO THE COMMUNITY:**

- 11.1 Consistent with the principle of accountability to the community, a report on the use of Sections 90(2) and 91(7) by Council and Council Committees must be included in the Annual Report of a Council as required by Schedule 4 of the Local Government 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.
  - The number of occasions each of the provisions of Sections 90(2) and 90(3) and Section 91(7) were utilised, respectively expressed as a percentage of total agenda items considered.

## **12. PUBLIC ACCESS TO DOCUMENTS:**

- 12.1 The Local Government Act requires Councils to make available a large number of documents. Many of these are set out in Schedule 5, with other requirements contained in other sections of the Local Government Act.
- 12.2 Schedule 5 documents must be published on a website determined by the CEO. Councils 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 (if any) set by Council (see Council's Schedule of Fees and Charges for any relevant fee).
- 12.3 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, the Director Corporate Services.

**13. PUBLIC ACCESS TO MINUTES:**

- 13.1 Minutes of a meeting of Council or a Council Committee must be made available, on Council's website: [www.kingstondc.sa.gov.au](http://www.kingstondc.sa.gov.au)
- 13.2 Provision of printed copies of Minutes may require payment of a fee (if any) set by Council (see Council's Schedule of Fees and Charges for any relevant fee).

**14. GRIEVANCES:**

- 14.1 Council has established procedures for the review of decisions under Section 270 of the Local Government Act for:
- Council, and its Committees;
  - employees of Council; and
  - other persons acting on behalf of Council.
- 14.2 Should a person be aggrieved about public access to either a meeting or a document they can lodge an application for review of that decision under the procedures established by Council.

**15. REVIEW OF THE CODE:**

Council will review this Code of Practice within 12 months of the conclusion of each periodic election to ensure that the principle of open government is being applied in a proper manner.

**16. AVAILABILITY OF THE CODE:**

This Code will be available for inspection on Council's website: [www.kingstondc.sa.gov.au](http://www.kingstondc.sa.gov.au). Copies will also be provided to interested members of the community upon request, and upon such payment of the fee set by Council.