



NAME OF POLICY: Code of Practice – Access to Meetings & Documents

POLICY MANUAL: Codes

1. Introduction

Section 92 of the *Local Government Act 1999* (the Act), requires a Council to prepare and adopt a Code of Practice relating to the principles, policies, procedures and practices which will apply to ensure access to Council meetings and documents, as required by Sections 90 and 91 respectively.

In fulfilling the role of an effective council that is responsive to the needs of its community and which operates within the legal framework prescribed by the Act, the City of Norwood Payneham & St Peters (the Council) is fully committed to the principle of open and accountable government. The Council does however also recognise that on some occasions it may be necessary in the broader community interest to restrict public access to discussions or documents. This Code of Practice sets out the policy framework for public access to meetings and documents and provides clear guidance regarding the application of provisions in the Act to restrict public access to meetings and/or documents.

2. Commitment

The Council endorses and fully supports the principle that the procedures to be observed at a meeting of the Council or a Council Committee, should contribute to open, transparent and informed decision-making and encourage appropriate Community participation in the affairs of the Council.

3. Objectives

The objectives of this Code are to:

- a provide to the community information on the Council's Code for access to Council meetings, Council Committees and Council documents; and
- b summarise the legal position relating to public access to the Council and Committee meetings and documents.
- c clearly outline to the community for what purpose and on what basis the Council may apply the provisions of the *Local Government Act 1999*, to restrict public access to meetings and/or documents.

4. Access to the Agenda for Meetings

Pursuant to Section 83 of the *Local Government Act 1999*, the Chief Executive Officer must give written notice of the meeting to all Elected Members of the Council or all Members of a Committee, setting out the date, time and place of the meeting at least three (3) clear days* before a Council and a Council Committee meeting (unless it is a Special Meeting). The notice contains or is accompanied by the agenda for the meeting and a list of the items of business, together with any documents and reports relating to these matters (with the exception of any matters that might be indicated as subject potentially to the making of an order of confidentiality).

[* - 'clear days' means that the time between the giving of the notice and the meeting is to be determined excluding the day on which the notice was given and the day of the meeting For example; notice is given on a Thursday for a following Monday meeting, the clear days being Friday, Saturday and Sunday.]

The notice and agenda will also be placed on public display at the Principal Office of the Council, the Council's Libraries at Norwood, Payneham & St Peters, and available via the Council's website: (www.npsp.sa.gov.au), at the same time as they are forwarded to the Members of the Council or Council Committees.

A full copy of the Agenda is made available at the meeting.

It should be noted that these provisions apply to Council and Committee meetings which have as part of their responsibility, some regulatory activities and those other Committees to which the Council has determined these procedures will apply.

Where a Committee is not performing a regulatory activity, these procedures may be varied, (eg; notice may be given in a form decided by the Committee), and need not be given for each meeting separately. Public notice may be given at a place determined by the Chief Executive Officer taking into account the nature and purpose of the Committee.

Distribution of agenda papers to Members of the Council, or Members of a Committee, may include advice and recommendations from the Chief Executive Officer that a document or report on a particular matter may be considered in confidence and the public be excluded from that particular part of the meeting when that particular matter is considered. Where this occurs, the Chief Executive Officer must specify the basis under which such an order could be made.

Should the Council **not** confirm and thereby **not** place an order of confidentiality on an item that the Chief Executive Officer has indicated may be considered as such, then a copy of the document will be **made immediately** available to the public at the meeting (publicly tabled) and placed on public display the next working day.

5. Public Access to Meetings

Council (and Committee) meetings are open to the public and attendance is encouraged and welcomed.

There are, however, times where the Council (or the Committee), believes it is necessary in the broader community interest to exclude the public from the discussion of a particular matter in accordance with Section 90(3) of the Act.

The public will only be excluded when the need for confidentiality outweighs the principle of open decision making.

As the Council encourages public attendance at meetings, details of meeting dates and times can be obtained by contacting the Council offices or via the Council's website at: www.npsp.sa.gov.au. The meeting details are also contained within Council's newsletter "Look East".

6. Informal Gatherings

Section 90 (8) of the Act provides for Members of the Council and staff, to participate in informal gatherings or discussions, 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 a formally constituted meeting of the Council or committee.

Informal Gatherings may for example be in the form of:

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

The co-ordination of these sessions is managed by the Chief Executives' Office to ensure they are conducted in accordance with legislative requirements and at the same time, provide the desired outcomes/benefits for Elected Members and staff.

These sessions benefit Elected Members of the Council, as they provide a forum for discussing issues and options in an informal environment which enables Elected Members to question, clarify and develop greater understanding of issues under consideration, which supports and contributes to informed decision making in the appropriate forum (ie Council or Committee meetings).

No decisions are made at informal gatherings.

The Council has adopted an Informal Gatherings Policy which aims to ensure that the statutory requirements for openness and transparency in Council decision-making are observed; while providing an opportunity for confidential discussions, as appropriate, between Elected Members, where warranted by the nature of the subject matter, to be discussed.

7. Matters Considered in Confidence

Before a meeting orders that the public be excluded to enable the receipt, discussion and consideration of a particular matter, the meeting must, in public, formally determine that this is necessary and appropriate and then pass a resolution to exclude the public while dealing with that particular matter. If this occurs, **everyone, except those persons permitted to stay by express inclusion in the resolution of the Council**, must leave the room. Once the Council, or Committee, has made the order it is an offence for a person, knowing that an order is in force, to enter or remain in a room in which such a meeting is being held. An employee of the Council or a Member of the South Australia Police (SAPOL), is entitled to use reasonable force to remove the person from the room if he/she fails to leave on request.

Once discussion on that particular matter is concluded and a decision made under Section 91 of the Act, the public are then permitted to re-enter the meeting. **If there is a further matter to be considered in confidence it is necessary to again undertake the formal determination process and to resolve to exclude the public as per above.**

The Council, or the Committee, can, by inclusion within the resolution, permit a particular person or persons to remain in the meeting.

For the convenience of the public, where it is resolved to consider a matter in confidence, the matter, unless there are pressing reasons as to why it should be debated at that point of the meeting, will be considered once all other business has been dealt with.

In accordance with Section 90(3) of the *Local Government Act 1999*, the Council, or a committee may order that the public be excluded in the following circumstances:

(a) information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs* of any person (living or dead);

[- 'personal affairs' The Act provides for a definition of 'personal affairs' as being a person's financial affairs, criminal records, marital or other personal relationships, personal qualities, attributes or health status, or that person's employment records, employment performance or suitability for a particular position or other personnel matters relating to the person.]*

(b) information the disclosure of which -

- (i) could reasonably be expected to confer a commercial advantage on a person with whom the council is conducting, or proposing to conduct, business, or to prejudice the commercial position of the council; and
- (ii) would, on balance, be contrary to the public interest;

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

(d) commercial information of a confidential nature (not being a trade secret) the disclosure of which -

- (i) could reasonably be expected to prejudice the commercial position of the person who supplied the information, or to confer a commercial advantage on a third party; and
- (ii) would, on balance, be contrary to the public interest;

- (e) matters affecting the security of the council, members or employees of the council, or council property, or the safety of any person;
- (f) information the disclosure of which could reasonably be expected to prejudice the maintenance of law, including by affecting (or potentially affecting) the prevention, detection or investigation of a criminal offence, or the right to a fair trial;
- (g) matters that must be considered in confidence in order to ensure that the council does not breach any law, order or direction of a court or tribunal constituted by law, any duty of confidence, or other legal obligation or duty;
- (h) legal advice;
- (i) information relating to actual litigation, or litigation that the council or council committee believes on reasonable grounds will take place, involving the council or an employee of the council;
- (j) information the disclosure of which -
 - (i) would divulge information provided on a confidential basis by or to a Minister of the Crown, or another public authority or official (not being an employee of the council, or a person engaged by the council); and
 - (ii) would, on balance, be contrary to the public interest;
- (k) tenders for the supply of goods, the provision of services or the carrying out of works;
- (m) information relating to a proposed amendment to a Development Plan under the *Development Act 1993* before a Plan Amendment Report relating to the amendment is released for public consultation under that Act;
- (n) information relevant to the review of a determination of a council under the *Freedom of Information Act 1991*.

Where the Council, or a Committee, is considering making an order that the public be excluded, it is irrelevant that discussion of a matter in public may:

- cause embarrassment to the Council or the Committee concerned, or to Elected Members or employees of the Council: or
- cause a loss of confidence in the Council or the Committee.

If a decision to exclude the public is taken, the Council or the Committee will include details in the resolution of the making of the order and the grounds on which it was made. Minutes of a meeting of the Council are publicly available within five days after the meeting.

8. City Of Norwood Payneham & St Peters use of the Confidentiality Provisions of the Act

- the Council endorses and strongly supports the principle of open, accessible and accountable government;
- confidentiality provisions will only be utilised after careful consideration and when considered proper and necessary;
- the grounds on which an order to exclude the public is made, will be conveyed to the public at the time of the order being made and will be included in the minutes which are available to the public within five (5) days of the meeting;
- once discussion of the matter has concluded, the meeting will then consider if it is necessary to make an order that a document associated with the agenda item remains confidential. In determining this, the meeting shall 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 a meeting determines that it is proper and necessary to keep a document confidential, then it will do so by resolution for an order to this effect;

- once discussion of the matter is concluded (and the public have returned to the meeting), the decision of the meeting in relation to this matter will be made publicly known unless the Council has resolved to order that some information remain confidential, (eg the price to which the Council is prepared to bid for land yet to be auctioned);
- details relating to any order to keep information or a document confidential in accordance with Section 91(7) of the *Local Government Act 1999* are also to be made known. When making an order the meeting must specify the duration of the order or the circumstances in which the order will cease to apply, or a period after which the order must be reviewed; and
- in all cases, the objective is that the information be made publicly available at the earliest possible opportunity.

Where a person provides information to the Council and requests that it be kept confidential, the Council is not able to even consider this request unless the matter is one which falls within the ambit of Section 90(3) of the Act. If this is the case, the Council will then be in a position to consider the request on its merits.

9. Public Access to Documents

Various documents are available for inspection and purchase (for a fee) by the public. The Council may also make a document available in electronic form and place it on the Internet for access.

The Council and/or a Committee, will only make an order that a document associated with a discussion from which the public are excluded, will remain confidential if it is considered proper and necessary in the broader community interest. The Council and/or Committee can only make such orders in relation to documents that are considered in confidence under Section 90(3) of the Act.

Once a matter has been dealt with, the Council and/or Committee may order that a document relating to the matter considered in confidence is to remain confidential. There are some exceptions. The Council or a Committee can not make an order to prevent:

- the disclosure of the remuneration or conditions of service of an employee, after the remuneration or conditions of serve have been set or determined; or
- the disclosure of the identification of a successful tenderer or any reasons as to why a particular tenderer has been selected; or
- the disclosure of the identity of land which has been acquired or has been disposed of by the Council, or of any reasons why acquisition or disposal of the land has occurred.

Where keeping a document confidential is considered proper and necessary, a resolution to this effect is required which shall include the grounds for confidentiality and the duration of the order or circumstances in which the order will cease to apply or when the order must be reviewed.

The resolution will also indicate whether any delegation is given to an employee to revoke the order and if relevant, any conditions associated with this delegation. The minutes shall record the relevant grounds and duration of the order and any delegation to revoke the order, should this be applicable.

Requests to access Council and Committee documents, can be made under the Freedom of Information Act 1991. Any inquiries in relation to the process for seeking access to documents held by Council should be directed to the Council's nominated Freedom of Information Officers by telephoning 8366 4555 or via email: townhall@npsp.sa.gov.au

10. Review of Confidentiality Orders

A confidentiality order made under section 91(7) of the Act must specify the duration of the order or the circumstances in which the order will cease to apply, or a period after which the order must be reviewed. In any event, any order that operates for a period exceeding 12 months must be reviewed at least once in every year.

An order will lapse if the time or event specified has been reached or carried out. There is no need for the Council to resolve for the confidential order to be lifted. Once the order has lapsed, the minutes and/or documents automatically become public.

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 Chief Executive office and sub-delegated to an employee of the Council.

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 the Council making recommendations with respect to each item to be retained in confidence.

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

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 and not en bloc.

If there is no longer any need for the confidentiality order then the Council or Council Committee may delegate to an employee of the Council the power to revoke an order made in accordance with section 91(7) of the Act. The Council or Council committee may also include in the resolution whether any delegation is given to an employee to revoke the order and if relevant, any conditions associated with the delegation.

11. Reporting

A report on the use of Sections 90(2) and 91(7) by the Council and Council Committees must be included in the Council's Annual Report as required by Schedule 4 of the Act. The information included within the Council's Annual Report will include the following information:

1. the number of occasions each of the provisions of sections 90(2) and 90(3) were utilised;
2. an indication of any particular issues that contributed to the use of confidentiality provisions on more than one occasion e.g. a proposal to acquire a parcel of land was considered on 3 separate occasions;
3. the number of occasions that information originally declared confidential has subsequently been made publicly available; and
4. the number of occasions that information declared confidential has not been made publicly available and the reason for this in each case.

12. Review of Council Decisions

The Council has established procedures for the review of decisions of the Council and Council Committees or any person acting on behalf of the Council or a Council Committee.

A member of the public may apply for consideration under the Review of Decisions Policy and Procedure established by the Council and in some circumstances, the Council can amend or revoke resolutions previously adopted. A copy of these procedures is available from the Norwood Town Hall, telephone 8366 4555, or via the Council's website at: www.npsp.sa.gov.au.

13. Availability of the Code

The public may inspect a copy of this Code, without charge, at the Norwood Town Hall, during normal office hours.

A copy of this Code is also available via the Council's website: www.npsp.sa.gov.au

14. Community Involvement in the Development of the Code

The Council is required, prior to adopting a code of practice and prior to alteration or substitution of a code, to make copies available for inspection or purchase at the principal office. The Council must follow the relevant process set out within the Council's Community Consultation Policy.

REVIEW PROCESS

The Council will review this Code of Practice within twelve (12) months of the next Local Government General Election which is scheduled to occur in 2022. The Council does however have the ability to review this Code of Practice at any time if considered desirable and necessary.

INFORMATION

The contact officer for further information at the City of Norwood Payneham & St Peters is the Council's General Manager, Governance & Community Affairs, telephone 8366 4549.

ADOPTION OF THE CODE

This Code was initially adopted by the Council on 21 July 2001.
The Council reviewed this Code of Practice on 3 June 2019.

TO BE REVIEWED

June 2023