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PortAugusta

CITY COUNCIL

9 August 2023

PUBLIC CONSULTATION

Council at its meeting held on 8 August 2023, endorsed a revised Statutory Code of Practice – Access to Council and Committee Meetings and Documents and is seeking comments from the public on the document.

Section 92 of the Local Government Act 1999 provides that Council must develop and adopt of Code of Practice in relation to Access to Council and Committee Meetings and Documents, and that 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.

Changes made to the code include the removal of all references to the Covid-19 Emergency Declaration Notice declared on 30 March 2020 by the Minister for Transport, Infrastructure and Local Government that varied or suspended the operation of the specified provisions of the Local Government Act 1999 (Notice 1).

Other changes made are to reflect Council's updated strategic directions and minor grammatic corrections.

For easy identification proposed deletions have been highlighted using ~~struckthrough text~~ and additions have been underlined.

Council is seeking written comments on the reviewed document by 4pm Wednesday 13 September 2023. Responses should be addressed to Director City Services, Port Augusta City Council, PO Box 1704, Port Augusta, 5700 or emailed to admin@portaugusta.sa.gov.au

Feedback from the community will be provided to Council for consideration and will be included as part of a public agenda

John Banks
CHIEF EXECUTIVE OFFICER

1.1.06 Code of Practice _ for Access to Council Meetings and Documents	
Statutory Policy	
TRIM Reference	AR20/15826 [v1] [v2]
First Issued	04 October 2000
Last Reviewed	14 April 2020 8 August 2023
Next Review	November 202 3 7

1. POLICY STATEMENT

The Port Augusta City Council supports the principle that meeting procedures should contribute to open, transparent and informed decision-making and encourage appropriate community participation in the affairs of the Council.

2. PURPOSE

2.1 Purpose

2.1.1 This Code of Practice sets out the commitment of Council to provide public access to Council and Council Committee meetings and documents and outlines the policies and procedures contained within the *Local Government Act 1999*, to restrict public access to meetings and documents. This Code includes:

- a) information on the relevant provisions of the Act
- b) Council's policy on public access and participation
- c) the process adopted to restrict public access to a meeting or a document
- d) grievance procedures to be followed if a member of the public believes that the Council has unreasonably restricted public access on a particular matter.

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

- a) access to the agenda for meetings
- b) public access to meetings
- c) the process to exclude the public from meetings
- d) matters which an order to exclude the public can be made
- e) how Council approaches the use of the confidentiality provisions in the Act
- f) public access to documents, including minutes
- g) review of confidentiality orders
- h) accountability and reporting to the community, and availability of the code
- i) grievances about the use of the Code by Council.

~~2.1.3 On 30 March 2020 the Minister for Transport, Infrastructure and Local Government issued a notice pursuant to section 302B of the Local Government Act 1999 (Notice No 1) (Notice No 1) varying or suspending the operation of the specified provisions of the Local Government Act 1999. Notice No 1:~~

- ~~(a) provides that a Council is not required to adopt any provision in a code of practice that would prevent or inhibit members from participating in Council meetings or Council committee meetings by electronic means;~~
- ~~(b) provides that Council members may meet by electronic means to alter the code of practice of the Council, or substitute a new code of practice of the Council;~~
- ~~(c) suspends the requirement in section 92(5) that before a Council adopts, alters or substitutes a code of practice it make copies available at the principal office and on~~

~~the website and that the Council follow the steps set out in its public consultation policy.~~

2.2 Scope

2.2.1 This Code of Practice applies to all Council meetings, Information Briefing Sessions and ~~informal gatherings~~ and Council Committee meetings.

2.2.2 This Code of Practice may be varied for a Council Committee that does not perform regulatory activities, and any variation will be specified in the Committees Terms of Reference.

~~2.2.3 References to Notice No 1 will remain valid as long as Ministers notice remains in operation under s302B(2)(3)(4) of the Act.~~

2.3 Strategic Reference

~~6 — We Achieve~~

~~6.3 We aim to provide good governance practices and compliance with all legislative requirements in delivery of services.~~

5 Governance and Financial Sustainability

5.5 We meet or exceed legislative and accreditation requirements for all relevant programs.

3. PRINCIPLES

3.1 Public Access to the Agenda for Meetings

3.1.1 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.

3.1.2 ~~Subject to clause 3.1.8~~ The notice of the meeting and agenda will be placed on public display at the Port Augusta City Council Civic Centre and on Council's Website. The notice and agenda will be kept on public display and continue to be published on the website until the completion of the relevant meeting.

3.1.3 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

3.1.4 ~~Subject to clause 3.1.9~~ Copies of the agenda documents and non-confidential reports that are to be considered at the meeting are to be supplied to Elected Members and will be made available to members of the public in attendance.

3.1.5 Copies of all agenda documents including confidential reports that are to be considered at the meeting will be made available to Elected Members electronically, and in hard copy where requested.

3.1.6 Members of the public may obtain a copy of the agenda and any reports for a fee to cover printing costs, in accordance with Council's Fees and Charges Register.

3.1.7 Where the CEO of the Council (after consultation with the Mayor, or Committee presiding member) believes that a document or report on a particular matter should be considered in confidence, the basis under which the order could be made in accordance with section 90(3) of the Act will be specified. Despite the CEO recommendation, it is a decision of the Council or Council Committee as to whether an item is considered in confidence at the meeting.

~~3.1.8 For the period of the operation of Notice No 1 the requirement that the CEO give notice to the public of the times and places of council meetings by placing the notice of meeting and agenda on public display at each office of the Council that is open to the public for the general administration of Council business within its area is suspended.~~

~~3.1.9 For the period of the operation of Notice No 1:~~

~~3.1.9.1 the requirement that the CEO must ensure that a reasonable number of copies of any document or report supplied to members of the Council for consideration at a meeting of the Council are available for inspection by members of the public at the principal office of the Council or at the meeting is suspended.~~

~~3 the CEO will ensure that any document or report supplied to members of the Council for consideration at a meeting of the Council is available for inspection by members of the public on a website determined by the CEO as soon as practicable after the time when the document or report is supplied to members of the Council.~~

3.2 Public Access to Meetings and Informal Gatherings

3.2.1 The *Local Government Act 1999* provides that Council and Committee Meetings must be open to the public, except where 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.

3.2.2 The public will only be excluded when considered proper and necessary, where there is a need for confidentiality which outweighs the principle of open decision-making.

3.2.3 Council encourages public attendance at meetings of the Council and Committees through public notification of meetings by placing a copy of the agenda on Council's Website, Social Media and in the Civic Centre.

~~3.2.4 Notice No 1 provides that a Council meeting will be taken to be conducted in a place open to the public even if 1 or more Council members participate in the meeting by electronic means provided that-~~

~~(a) the CEO makes available to the public a live stream of the meeting on a website determined by the CEO and ensures that members of the public can hear the discussion between all Council members present at the meeting via the live stream; or~~

~~(b) if the CEO has taken reasonable steps to make available a live stream of the meeting but is unable to make available a live stream of the meeting, the CEO makes available to the public a recording of the meeting as soon as practicable after the meeting on a website determined by the CEO and ensures that members of the public can hear the discussion between all Council members present at the meeting via the recording.~~

~~c) If the CEO has taken reasonable steps to make available to the public a live stream of the meeting or a recording of the meeting, but is unable to comply, the CEO must publish on a website determined by the CEO the steps taken to comply and the requirement will be suspended.~~

3.2.5 In accordance with Section 90 of the Act, Elected Members, Committee members and staff may participate in ~~informal gatherings~~ briefing sessions, 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 a decision outside

of a formally constituted Meeting. Council is not bound to hold an ~~informal gathering-briefing session~~ open to the public.

- 3.2.6 ~~Informal gatherings-Briefing sessions~~ or discussion may include workshops, briefing or training sessions, planning sessions associated with the development of policies or strategies, or social gatherings to encourage informal communication between Elected Members or between Elected Members and staff.

3.3 Process to Exclude the Public from a Meeting

- 3.3.1 The practice of the Port Augusta City Council is to deal with the agenda items in the order listed in the Agenda, and for the convenience of the public present at the meeting, confidential reports are considered at the end of the agenda.

- 3.3.2 The process to exclude the public from a particular matter requires the meeting to formally determine if this is necessary and appropriate in public, and then pass a resolution to exclude the public while dealing with that particular matter.

- 3.3.3 This means that all members of the public (including staff) are required to leave the room, unless exempted by being named in the resolution as entitled to remain. Council staff and any other person permitted to remain at the meeting, must be named in the Resolution which excludes the public generally.

~~3.3.4 Notice No 1 provides that the Council or council committee must disconnect any live stream or recording of a meeting for the period that the meeting is closed to the public pursuant to an order made under section 90(2).~~

- 3.3.5 Once a Confidential Order has been made, it is an offence for a person (who knows the Order is in force) to enter or remain in the room in which such a Meeting is being held. If any person fails to leave on request, and force is required to remove the person from the room, SA Police will be requested to attend to remove the person.

~~3.3.6 Further, Notice 1 provides that it is also an offence for person who, knowing that an order is in force under section 90(2), to connect to a meeting of the Council or Council committee by electronic means, or fail to disconnect from a meeting of the Council or Council committee.~~

- 3.3.7 Once discussion on that particular matter is concluded, the public are permitted to re-enter ~~or reconnect to~~ the meeting. If there is a further matter that needs to be considered in confidence it is necessary to undertake another formal determination process and to resolve to exclude the public.

3.4 Circumstances where the Public can be excluded from a Meeting

- 3.4.1 In accordance with section 90(3) of the *Local Government Act 1999*, Council or a Council Committee may order that the public be excluded from attendance at any part of a Meeting as is necessary to receive, discuss or consider in confidence, any information or matter under the following provisions:

- a) *information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead)*
- b) *information the disclosure of which*
 - i) *could reasonably be expected to confer a commercial advantage on a person with whom the council is conducting, or proposed 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, Elected 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, and in duty of confidence, or other legal obligation or duty*
- h) *legal advice*
- i) *information relating to actual 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 carry out of works*
- m) *information relating to a proposed amendment to a development plan under the Development Act 1993 before a Development Plan Amendment proposal relating to the amendment is released for public consultation under that Act*
- n) *information relevant to the review of a determination of a Council under the Freedom of Information Act 1991.*

3.4.2 In considering whether an order should be made under section 90(2), in accordance with section 90(4) an Order cannot be made only on the basis that discussion of a matter in public may cause embarrassment to the Council or Committee concerned or to Elected Members or employees of the Council, or cause a loss of confidence in the Council or Committee.

3.4.3 If an order to exclude the public is made, the Council or Council Committee is required to make a note in the minutes of the making of the Order and the grounds on which it was made. Sufficient detail of the grounds on which the Order was made will be included in the Minutes.

3.5 Use of Confidentiality Provisions

3.5.1 The consideration of use of confidentiality provisions to exclude the public from the discussion of a particular matter at a meeting will require the identification of one or more of the 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.

- 3.5.2 Council will not consider multiple agenda items 'in confidence' together. It will determine each item and consider exemptions relevant to each item separately.
- 3.5.3 Information of the grounds on which an order is to be made will be communicated to the public at the time of the public being requested to leave, and 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 provided.
- 3.5.4 Once discussion of the matter is concluded, the meeting will then consider if it is necessary to make an order that a document associated with this agenda item (including minutes) remain confidential. If the meeting determines that it is proper and necessary to keep a document confidential, a resolution for an order to this effect is required in accordance with Section 91(7) of the Act.
- 3.5.5 In accordance with Section 91(8) the Council must not make an order to keep a document confidential:
- a) 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
 - b) to prevent the disclosure of the identity of a successful tenderer, or any reasons as to why a successful tenderer has been selected
 - c) to prevent the disclosure of amount(s) payable by the Council under a contract for the provision of goods, services or works after the contract has been entered into by all parties to the contract
 - d) to prevent 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.
- 3.5.6 When making an order to retain information in confidence 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 order is to apply for a period exceeding 12 months, the order must be reviewed every 12 months from the date it was made. The duration of the order and the grounds pursuant to Section 90(3) on which it was made must be recorded in the Minutes.
- 3.5.7 Once discussion of the matter is concluded and the public have returned, the decision in relation to the matter will be made publicly known, unless the Council has resolved to order that information remain confidential. Details relating to an order to retain information in confidence must also be made known.
- 3.5.8 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.
- 3.5.9 Where information is provided to Council by a third party and they request that it is kept confidential, Council may only consider such a request on its merits, if the matter is one that falls within Section 90(3).

3.6 Public Access to Minutes

Minutes of a meeting of Council or a Council Committee will be publicly available within 5 days after the meeting, including on Council's website.

3.7 Public Access to Documents

- 3.7.1 Many Council documents are available for inspection and purchase by the public, and may be available in electronic form on the website for public access.
- 3.7.2 Council Committee Minutes have no legal status, as they are recommendations to Council, and it is only after a Council Meeting that the Minutes have legal status. The exception to this where Council delegates its decision-making powers to a Council Committee.
- 3.7.3 Agendas, Reports and Minutes may be obtained at the Civic Centre or on Council's website. Copies may be purchased in accordance with Council's Fees and Charges Register.
- 3.7.4 Requests to access Council and Council Committee documents can also be made under the *Freedom of Information Act 1991*. Enquiries in relation to the process for access to documents under Freedom of Information provisions should be directed to Council's accredited Freedom of Information Officers on 8641 9100.

3.8 Review of Confidentiality Orders

- 3.8.1 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.
- 3.8.2 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, as once the order has lapsed, the information automatically become public.
- 3.8.3 A review of the information retained in confidence will be conducted every 3 months to ensure that items are released in accordance with the resolution of Council, following the lapse of the confidential provisions. All information will be published on Council's website following release from confidential provisions.
- 3.8.4 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 information to remain confidential. The conduct of the annual review is delegated to the Chief Executive Officer and may be sub-delegated. For items that require a new confidentiality order because the original order is about to expire, the reviewer will prepare a report to 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 and Council cannot delegate the power.
- 3.8.5 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.
- 3.8.6 If there is no longer a need for a confidentiality order, Council or Council Committee may delegate the power to revoke an order made in accordance with Section 91(7) of the Act. The confidentiality resolution may include whether any delegation is given to revoke the order and, any conditions associated with the delegation.

3.9 Accountability and Reporting to the Community

- 3.9.1 A report on the use of Sections 90(2) and 91(7) must be included in the Annual Report of Council as required by Schedule 4 of the Act. The reporting will include the following information, separately identified for both Council and Council Committees:

- a) Number of occasions each provision of Sections 90(2) and 90(3) to exclude the public were utilised
- b) Number of occasions each provisions of Sections 90(2) and 90(3) and Section 91(7) were utilised, expressed as a percentage of total agenda items considered
- c) 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)
- d) Number of occasions that information originally declared confidential has subsequently been made publicly available
- e) Number of occasions that information declared confidential has been retained in confidence and the reason for this in each case.

3.10 Grievance

3.10.1 Section 270 of the *Local Government Act 1999* provides that the Council is required to establish procedures for the review of decisions in relation to the operation of Council and its Committees.

3.10.2 If a person is aggrieved about public access to either a meeting or a document, they can lodge an application for review of that decision under Council's Internal Review of Council Decisions Policy ~~1.1.05~~, which can be found on Council's website.

3.11 Code of Practice Availability

~~The public may inspect a copy of this Code at the Civic Centre or on Council's website. Alternatively, the public may obtain a copy for a fee fixed by the Council's Fees and Charges Register. Further enquiries in relation to the Code should be directed to the Chief Executive Officer, on 8641 9100.~~

Council Policies are placed on Council's Website for easy access by the community. Hard copies may be purchased for a fee as determined by Council, refer to the Fees and Charges Register.

4. RESPONSIBILITY & REVIEW

4.1 Responsible Officer

Director City Services

4.2 Availability

This policy will be available on Council's website.

4.3 Review

This Code will be reviewed within 12 months of a periodic Council Election, or as required on an as needs basis.

5. REFERENCES

5.1 Legislation

Local Government Act 1999

5.2 Other References

Internal Review of Council Decision Policy ~~1.1.05~~
Fees and Charges Register