



## ***Code of Practice: Access to Council and Committee Meetings and Documents***

<b>Policy Classification</b>	Council Policy
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<b>Related Policies or Documents:</b>	Code of Practice: Procedures at Meetings Internal Review of Council Decisions Policy General Complaints Policy
<b>Associated Forms:</b>	NA
<b>Responsible Manager:</b>	Chief Executive Officer
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## Table of Contents

1. Preamble .....	3
2. Purpose .....	3
3. Scope .....	3
4. Definitions .....	4
5. Code Statement .....	5

## **Code of Practice – Access to Council and Committee Meetings and Documents**

### **1. Preamble**

- 1.1. In accordance with the Local Government Act 1999 ("the Act"), Section 92, a council must prepare and adopt a code of practice relating to the principles, policies, procedures and practices that the council will apply in relation to public access to council and committee meetings and minutes of council and committee meetings and release of documents.

### **2. Purpose**

- 2.1. 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 1999, Kangaroo Island Council ("Council") is fully committed to the principle of open, honest and accountable government with transparent and informed decision-making and encourages appropriate community participation in the affairs of Council.
- 2.2. Council also recognises that on a limited number of occasions, and in meeting its statutory obligations, it may be necessary, in the broader community interest, to restrict public access to discussion/decision and/or documents.
- 2.3. The purpose of this code is to:
- Meet the provisions of section 92 of the *Local Government Act 1999*
  - Inform and educate the community about public access to Council and Committee meetings, minutes of Council and Committee meetings and other Council documents.

### **3. Scope**

- 3.1. This code sets out Council's commitment to public access and accountability, and includes:
- information on the relevant provisions of the Act;
  - Council's policy on public access and participation;
  - the process that will be followed where public access to a meeting or a document is restricted;
  - grievance procedures to be followed if a member of the public believes that the Council has unreasonably restricted public access on a particular matter.
  - 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 agendas and minutes;
- review of confidentiality orders;
- accountability and reporting to the community, and the availability of the code; and

#### **4. Definitions**

- 4.1. **CEO** means the Chief Executive Officer of the Kangaroo Island Council.
- 4.2. **Council** means the Elected Body.
- 4.3. **Kangaroo Island Council (KIC)** means the administration.
- 4.4. **Committees** means Committees established by resolution of the Council including s41 and s42 Committees.
- 4.5. **Connect** means able to hear and/or see the meeting, including via live stream or recording of the meeting
- 4.6. **Clear days** means 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 e.g. notice is given on a Friday for a following Tuesday meeting, the clear days being Saturday, Sunday and Monday
- 4.7. **Disconnect** means includes
- a) ending a telephone connection such that the discussion and voting at the meeting cannot be heard;
  - b) ending a video conferencing connection such that the discussion and voting at the meeting cannot be seen or heard;
  - c) logging out of a virtual meeting room or space such that the discussion and voting at the meeting cannot be seen or heard;
  - d) signing out of a virtual meeting room or space such that the discussion and voting at the meeting cannot be seen or heard; or
  - e) disconnecting any other electronic means such that the discussion and voting at the meeting cannot be seen or heard
- 4.8. **live stream** means the transmission of audio and/or video from a meeting at the time that the meeting is occurring;
- 4.9. **Personal affairs** includes
- a) that person's
    - i. financial affairs;
    - ii. criminal records;
    - iii. marital or other personal relationships;

- iv. personal qualities, attributes or health status
- b) that person's employment records, employment performance or suitability for a particular position, or other personnel matters relating to the person

but does not include the personal affairs of a body corporate

## **5. Public Access to the Agenda for Meetings**

- 5.1. At least three (3) clear days<sup>1</sup> before the Council or Committee meeting (unless it is a special meeting) the CEO will give written notice of the meeting to all Council or Committee members, setting out the date, time and place of the meeting. The notice will contain or be accompanied by the agenda for the meeting.
- 5.2. The notice will be placed on public display at the principal office of the Council and the notice and agenda will be placed on Council's website [www.kangarooisland.sa.gov.au](http://www.kangarooisland.sa.gov.au) until the completion of the relevant Council or Council committee meeting.
- 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.
- 5.4. Copies of agenda documents and non-confidential reports supplied to Members of the Council before or at the meeting will be available for members of the public on Council's website as soon as practicable after they are supplied to members of the Council
- 5.5. 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.
- 5.6. Where the CEO (after consultation with the Mayor, or in the case of a Committee - the Presiding Member) believes that a document or report should be considered in confidence with the public to be excluded, the basis under which the order could be made in accordance with section 90(3) of the Act will be specified.

## **6. Public Access to Meetings**

- 6.1. Council and Committee meetings are open to the public and attendance is encouraged - except where Council or the Committee believe it is necessary in the broader public interest and in accordance with the Act, to exclude the public from the discussion and determination of the matter.
- 6.2. The public will only be excluded when considered proper and necessary, that is, the need for confidentiality outweighs the principle of open decision making. This will always occur in strict compliance with the requirements of section 90 of the Act.
- 6.3. Council encourages public attendance at meetings of the Council and its Committees through public notification

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<sup>1</sup> 'clear days' means that the time between the giving of the notice (before 5pm) 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 are Friday, Saturday and Sunday.

## **7. Process to exclude the public from a Meeting**

- 7.1. Where the CEO believes that a matter should be considered in confidence, the nature of the matter and the reasons why it should be considered in confidence will be clearly noted on the agenda which is made available to the public.
- 7.2. Where possible, confidential items are listed at the end of the Council agenda to reduce inconvenience to the public but, can also be brought forward by the Council.
- 7.3. Before a meeting orders that the public be excluded to enable the receipt, discussion and consideration of a particular matter, the meeting will, 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 the public must immediately leave the room. This means all members of the public (including staff), unless exempted by being named in the resolution as entitled to remain, are required to leave the room. For the operation of section 90(2) a member of the public does not include a member of Council.
- 7.4. 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, enters or remains in a room in which such a meeting is being held. It is lawful for an a member of SAPOL to use reasonable force to remove the person from the room if he/she fails to leave on request of the Mayor or Presiding Member. Staff safety is paramount, therefore should any form of force be required SAPOL will be contacted.
- 7.5. Once discussion on that particular matter is concluded, the public are then 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 again undertake the formal determination process and to resolve to exclude the public as above.

## **8. Matters for which the public can be excluded**

- 8.1. In accordance with the requirements of section 90(3) of the Act, Council, or a Council 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);
  - 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;
  - l) Purposely left blank.
  - m) information relating 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
- 8.2. In considering whether an order should be made under section 90(2), it is irrelevant that discussion of a matter in public may:
- a) cause embarrassment to Council or to members or employees of Council: or
  - b) cause a loss of confidence in Council

- c) involve discussion of a matter that is controversial within the council area; or
- d) make the council susceptible to adverse criticism

8.3. If a decision to exclude the public is taken, 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.

## **9. Use of Confidentiality Provisions**

9.1. Any consideration of the use of the 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. These are listed in paragraph eight (8) above.

The policy approach of the Council is that:

- a) the principle of open and accountable government is strongly supported;
- b) information of the grounds on which an order to exclude the public is made will be conveyed to the public at the time of any persons present being ordered to leave the meeting – the public will not be excluded until after a confidentiality motion has been debated and passed and sufficient reasons for the need to exclude the public given.
- c) 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. In determining this, the meeting will have regard to the provisions of section 91 and in particular section 91(8) (Item 8.2 above) which details when a Council or a Committee must not order that a document remain confidential;
- d) if the meeting determines that it is proper and necessary to keep a document confidential, then a resolution for an order to this effect is required to be resolved in accordance with section 91(7) of the Act;
- e) Council will not consider more than one agenda item in confidence at a time (i.e. 'en bloc'). It will determine each item separately and consider the basis of grounds relevant to each item;
- f) once discussion of the matter is concluded and the public have the decision of the meeting in relation to the matter will be made publicly known unless the Council or Committee has resolved to order that some or all of the information 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. When making an order the meeting must specify the duration of the order or the circumstances in which the order will cease to apply, or a period after which the order must be reviewed. If the section 91(7) order is to apply for a period exceeding 12 months, then this order must be reviewed every 12 months from the date it was made. This along with the making of the order pursuant to section 90(2)

and the grounds pursuant to section 90(3) on which it was made will also be recorded in the minutes;

- g) in all cases the objective is that the information be made publicly available at the earliest possible opportunity and that the community is informed of any Council order and the associated implications; and
- h) where a person provides information to the Council and requests it be kept confidential, Council cannot consider this request unless the matter is one that falls within section 90(3) of the Act. If this is the case, Council will then be in a position to consider the request on its merits.

## **10. Public Access to Documents**

- 10.1. Members of the public may obtain a copy of the agenda, minutes and any particular reports (not deemed confidential) for a fee to cover the costs of photocopying in accordance with Council's schedule of fees and charges.
- 10.2. Council will also make relevant documents available on its website for members of the public.
- 10.3. Council or a Council committee will only order that a document associated with a discussion from which the public are excluded is to remain confidential if it is considered proper and necessary in the broader community interest.
- 10.4. Once a matter has been dealt with, Council may order that a document relating to the matter considered in confidence is to be kept confidential. However, there are some exceptions - in accordance with section 91(8)
- 10.5. Council must not make an order to prevent:
  - a) the disclosure of the remuneration or conditions of service of an employee after they have been set or determined; or
  - b) the disclosure of the identity of a successful tenderer or any reasons as to why that tenderer has been selected; or
  - c) the disclosure of the amount(s) 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, the Council after the contract has been entered into by all parties to the contract; or
  - d) the disclosure of the identity of land that has been acquired or disposed of by Council, or of any reasons as to why acquisition or disposal has occurred.
- 10.6. Where keeping a document confidential is considered proper and necessary, a resolution to this effect is required which shall include:
  - a) the grounds for confidentiality; and
  - b) the duration of the order or 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 twelve (12) months, the order must be reviewed at least once in every year;

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

## **11. Public Access to Minutes**

- 11.1. Minutes of a meeting of Council or a Committee will be made publicly available by the CEO on the Council website within five (5) days after the meeting.

## **12. Review of Confidentiality Orders**

- 12.1. Confidentiality orders made under section 91(7) of the Act will 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.
- 12.2. In any event, any order that operates for a period exceeding twelve (12) months will be reviewed at least once in every year and Council will 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.
- 12.3. 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 confidential order to be lifted. Once the order has lapsed, the minutes and/or documents automatically become public. Council will make this information publicly available including on the Council's website.
- 12.4. While the 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.
- 12.5. The conduct of the annual review is delegated to the CEO who may sub-delegate 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
- 12.6. 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.

## **13. Elected Member Access to Documents**

- 13.1. An Elected Member may access any relevant document held by the Kangaroo Island Council in conjunction with the performance or discharge of their functions and duties as an Elected Member without any charge and within a reasonable timeframe.
  - a) A request for access to a document held by the Kangaroo Island Council is to be directed, in the first instance to the CEO or a Director via phone, in person or email. The request should identify the document(s) sought with sufficient details for the document(s) to be identified and retrieved, as well as, state the reason(s) for the request.
  - b) The documents requested should relate to matters under consideration by Council.

- 13.2. Elected Members will not be granted access to documents regarding the personal affairs of Kangaroo Island Council employees, other than the Employee Register of Interests and any publically available information.
- 13.3. Elected Members must not seek document(s) for personal reasons or release or divulge documents to any third parties. To do so may constitute a breach of the Behavioural Management Policy for Elected Members.
- 13.4. The form of access to the documents(s) will be negotiated with the Elected Member with regard to administrative efficiency. Forms of access include hard and soft copies or links to websites.
- 13.5. If there is a degree of sensitivity surrounding the access to a particular document, the CEO may make the document available to the Elected Member for viewing only at the CIVIC centre at a mutual convenient time

#### **14. Information / Briefing Sessions**

- 14.1. A council, or the Chief Executive Officer of a council, may hold or arrange for the holding of a session (not being a formal meeting of a council or council committee required to be held under this Chapter) to which more than 1 member of the council or a council committee is invited to attend or be involved in for the purposes of providing information or a briefing to attendees (an information or briefing session).
- 14.2. A matter must not be dealt with at a council information or briefing session in such a way as to obtain, or effectively obtain, a decision on the matter outside a formal meeting of the council or a council committee.
- 14.3. A council information or briefing session must be conducted in a place open to the public during any period in which a matter that is, or is intended to be, on the agenda for a formal meeting of the council or a council committee is discussed at the session.
- 14.4. However, the council or Chief Executive Officer may order that an information or briefing session be closed to the public to the extent (and only to the extent) that the council or Chief Executive Officer (as the case requires) considers it to be necessary and appropriate for a matter of a kind referred to in subsection (3) to be discussed in a session closed to the public in order to receive, discuss or consider in confidence any information or matter listed in section 90(3) (after taking into account any relevant consideration under that subsection).
- 14.5. If an order is made under subsection (4), the council or Chief Executive Officer (as the case requires) must, as soon as reasonably practicable after the making of the order, make a record of—
  - (a) the grounds on which the order was made; and
  - (b) the basis on which the information or matter to which the order relates falls within the ambit of each ground on which the order was made; and
  - (c) if relevant, the reasons that receipt, consideration or discussion of the information or matter publicly at the information or briefing session would be contrary to the public interest.
- 14.6. If an information or briefing session is organised or held by a council or Chief Executive Officer of a council, the following provisions apply:

- (a) sections 90(5), (6) and (7a) apply to the information or briefing session as if it were a meeting of the council or council committee;
- (b) a prescribed matter cannot be dealt with at an information or briefing session;
- (c) a reference to a meeting or meetings in sections 94 and 95 includes a reference to an information or briefing session or sessions.

14.7. A council or the Chief Executive Officer of a council must comply with any requirements of the regulations relating to the following:

- (a) the publication of prescribed information as soon as practicable after resolving or determining to hold an information or briefing session;
- (b) the publication of prescribed information as soon as practicable after the holding of an information or briefing session.

14.8. Kangaroo Island Council Administration will continue to publish the notices with the required information for information briefing sessions on Council's website and in the council window prior to the meeting. Should additional items be discussed at these sessions which were not identified on the notice, the notice will be updated following the session and updated on the website.

14.9. Should a briefing session be held without prior publication, a notice will be issued and published following the information briefing session in line with the new requirements under section 90A (7)(b) of the Local Government Act 1999.

## **15. Accountability and Reporting to the Public**

15.1. Supporting Council's commitment to the principle of accountability to the community a report on the use of sections 90(2) and 91(7) by Council will be included in the Annual Report of Council as required by Schedule 4 of the Act.

## **16. Public access to documents**

16.1. 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.

16.2. Schedule 5 documents must be published on a website determined by the CEO. Council will also upon request, provide a person with a printed copy of any document referred to in Schedule 5. Provision on printed copies of a document may require payment of a fee set by Council.

16.3. Requests to access Council and Council Committee documents that are not otherwise publically available, can be made under the *Freedom of Information Act 1991*. Inquires in relation to the process for seeking access to documents held by Council should be directed to Council's accredited Freedom of Information Officer.

## **17. Grievance**

The Council has established a policy for the review of decisions made by:

- the Council and its Committees;
- employees; and
- other persons acting on behalf of the Council.

If a person is aggrieved about a decision to restrict access to meetings and/or documents, an application may be lodged in writing for consideration under the Council's *Policy - Internal Review of Council Decisions* (Section 270).

If a person is aggrieved by a matter contained in this Code, a complaint may be lodged in writing under the *General Complaints Policy*.

Requests to access Council and Council Committee documents may be made under the *Freedom of Information Act 1991*

## 18. Availability of this Code

18.1. A copy of this Code is available on Council's website - [www.kangarooisland.sa.gov.au](http://www.kangarooisland.sa.gov.au)

18.2. Members of the public may obtain a copy of this Code for a fee to cover the costs of photocopying in accordance with a Council's schedule of fees and charges.

18.3. Further enquiries in relation to this Code should be directed to the Council, or via telephone 8553 4500 or by email to [kicouncil@kicouncil.sa.gov.au](mailto:kicouncil@kicouncil.sa.gov.au)



SIGNED: Chief Executive Officer

Date: 13 April

<b>History:</b>		
Date Reviewed:	Version:	Reason for Amendment:
20 September 2010	Version 1	Adopted
August 2012	Version 2	Amendments to LGA Meeting Procedures Handbook.
12 February, 2014	Version 3	Amendments arising from the <i>ICAC Act 2012</i>  Local Government (Procedures at Meetings) Regulations 2013
10 November 2015	Version 4	Mandatory review post Local Government Election and new logo update.
11 July 2017	Version 5	Periodic Review.
12 September 2017	Version 6	Amendment in support of the <i>Local Government (General) Regulations 2016 - Regulation 8AB</i> and the <i>Summary Offences Act 1953 – Section 18A</i> . C292:2017
12 November 2019	Version 7	Periodic Review.
2 April 2020	Version 8	Mandatory review post Local Government Election and inclusion of new Public Health Emergency : Electronic Participation in Council Meetings.
14 December 2021	Version 9	Full review, including new template, changes to Information Briefing Sessions.
12 July 2022	Version 10	Removal of reference to Notice 5 Electronic Participation in Council Meetings. Inclusion of clause of public access to documents.
11 April 2023	Version 11	Mandatory review following a periodic election