



POLICY DOCUMENT

18.63.1

Policy Name	Code of Practice – Access to Meetings & Documents
Policy No	18.63.1
Reviewed By	Rob Donaldson CEO
CEO Authorisation	Rob Donaldson CEO
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1. STATEMENT OF PRINCIPLE

In fulfilling the role of an effective Council that is responsive to the needs of the community and which operates within the legal framework prescribed by the Local Government Act 1999 (the Act), the City of Port Lincoln is fully committed to the principle of open and accountable government. However, Council also recognises that on a limited number of occasions it may be necessary, in the broader community interest, to restrict public access to discussion/decision and/or documents.

2. INTRODUCTION

This Code sets out the commitment of the City of Port Lincoln to provide public access to Council and Council committee meetings and documents, and outlines the policies and procedures contained within *the Act*, to restrict public access when required. The Code includes:

- information on the relevant provisions of the Act;
- Council's policy on public access and participation;
- the process that will be adopted 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.

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

- access to the agenda for meetings;
- public access to meetings;
- the process to exclude the public from meetings;
- matters for which the Council, or a Council committee, can order that the public be excluded;
- how the Council will approach the use of the confidentiality provisions in the Act;

- public access to documents, including minutes;
- review of confidentiality orders;
- accountability and reporting to the community, and the availability of the code; and
- grievances about the use of the code by Council.

3. PUBLIC ACCESS TO THE AGENDA FOR MEETINGS

At least three clear days¹ before the Council or Council Committee meeting (unless it is a special meeting) the Chief Executive Officer (CEO) must give written notice of the meeting to all Council/Committee members setting out the date, time and place of the meeting. The notice must contain or be accompanied by the agenda for the meeting.

The reports and other documents attached to the agenda do not need to be displayed with the notice and are not required to be made available for purchase by the public. Instead, under section 84(5), the CEO must ensure that a reasonable number of copies of any document or report supplied to Members of Council for consideration at the meeting are available for inspection by the public either at the meeting itself, or if the Members have received the reports prior to the meeting, as soon as practicable after Members have received the report. However, this obligation does not apply to documents that are to be considered in confidence under Part 3 of the Local Government Act.

Where the CEO of the Council (after consultation with the principal member of the Council, or in the case of a Committee - the presiding member) believes that a document or report relating to a matter to be considered by the Council or a Committee should be considered in confidence² 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. [see Sections 83(5) (Council) and 87(10) (Committee) of the Act.]

The notice and agenda will be placed on public display at the principal office of the Council and on Council's website. Copies and/or internet access will also be available at the same time in the Council offices and in the Council library.

Copies of the agenda documents and non-confidential reports that are to be considered at the meeting will be made available to members of the public in attendance. A reasonable number of copies will also be available for public inspection as soon as practicable after they are supplied to the members of Council.

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.

4. PUBLIC ACCESS TO MEETINGS

Council and Council Committee meetings are open to the public and attendance is encouraged, except where the Council (or the Council Committee) believes it is necessary in the broader community interest to exclude the public from the discussion (and, if necessary, decision) of a particular matter.

The public will only be excluded when considered proper and necessary i.e. the need for confidentiality outweighs the principle of open decision-making.

¹ '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.

² Confidential Items refer to 18.63.2 Code of Practice Council & Committee Meetings

Council encourages public attendance at meetings of the Council and Committees through public notification of meetings by the promotion of meeting dates on a sign located adjacent the Civic Centre, notification in the reception area and on Council's website.

In accordance with Section 90 of the Act, it is not unlawful for members of Council, a Committee and staff to participate in informal gatherings or discussion, referred to as a Workshop or Briefing, 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 of a formally constituted meeting of Council or Committee. The Council is not bound to hold an informal gathering open to the public in accordance with Section 90(1) of the Act as openness to the public only applies to Council and Council Committee meetings. This means that Section 90(2) to exclude the public has no role to play.

The following are examples of informal gatherings, Workshops or Briefings that may be held in accordance with Section 90(8):

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

5. PROCESS TO EXCLUDE THE PUBLIC FROM A MEETING

Refer to 18.63.2 Code of Practice Council and Committee Meetings, Confidential Items and the Local Government Act 1999, Section 90.

For the convenience of the public present at a meeting, where it is resolved to consider a matter in confidence, this matter may be deferred until all other business has been dealt with rather than ask the public to leave the room and wait for an unpredictable period until the matter is concluded and then allow the public to return to the meeting room with the possibility of the same process being repeated for a subsequent matter.

At the conclusion of each matter that is considered confidential, members of the public are then permitted to re-enter the meeting. If there is a further matter that needs to be considered in confidence it is necessary to again undertake the formal determination process and resolve to exclude the public as above.

Council, or the Council Committee, can by inclusion within the resolution permit a particular person or persons to remain in the meeting. An example would be allowing a ratepayer who is suffering personal hardship to remain in the meeting when their circumstances concerning the payment of rates is being discussed.

5.1. *USE OF THE CONFIDENTIALITY PROVISIONS*

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.

Council practice:

The policy approach of the City of Port Lincoln is that:

1. The principle of open and accountable government is strongly supported;
2. 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;
3. 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) which details when a Council must not order that a document remain confidential;
4. The meeting must determine whether it is proper and necessary to keep a document confidential, by passing a resolution for an order to this effect in accordance with Section 91(7) of the Act;
5. The 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 basis of grounds relevant to each item;
6. Once discussion of the matter is concluded and any members of the public have returned, the decision of the meeting in relation to the matter will be made publicly known unless the Council 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) 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. 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;
7. 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
8. Where a person provides information to the Council and requests it be kept confidential, Council can not 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.

Council practice:

There is no legal requirement to resolve to “come out of confidence” or to go back into “public session”. Members of the public may and should be invited to re-enter the meeting when consideration of the relevant Agenda Item has concluded. The public is also entitled to be present for the debate on whether any subsequent item should be considered in confidence.

5.1.1. 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.

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.

6. PUBLIC ACCESS TO MINUTES

Minutes of a meeting of Council or a Council Committee will be publicly available in a hardcopy format at the Civic Centre and on the Council website www.portlincoln.sa.gov.au within 5 days after the meeting.

Council practice:

Council and Committee minutes will be marked with the following notation.

“These minutes are unconfirmed until accepted by resolution of the Council at the next Ordinary Council Meeting”.

7. PUBLIC ACCESS TO DOCUMENTS

Various documents, in addition to Council Agendas and Minutes, may be available for inspection and purchase (for a fee) by the public. Council may also make a document available in electronic form on its website for public access. Some documents are only accessible under the provisions of the Freedom of Information Act, 1991 or subject to the requirements of Council Policy 13.63.1 Privacy & Copyright

The Council or the Council Committee will only order that a document associated with a discussion from which the public has been excluded is to remain confidential if it is considered proper and necessary in the broader community interest.

The Council or the Council Committee can only resolve to keep minutes and/or documents confidential under Section 91(7) if they were provided and/or considered in confidence pursuant to sections 90(2) and 90(3).

8. GRIEVANCE

Council has established a Policy 9.63.2 Council’s Decision Review ³ for the review of decisions under the Local Government Act 1999, Section 270 for:

- Council, and its Committees;
- employees of the Council and

³ Council policies are available on Council’s website www.portlincoln.sa.gov.au or from Council’s Administration Office or by phoning 8621 2300.

- other persons acting on behalf of the Council.

Should a person be aggrieved about public access to either a meeting or a document then they can lodge an application for review of that decision.

9. REVIEW

This policy shall be reviewed by the City of Port Lincoln within 12 months after the conclusion of each periodic election, or on significant change to legislation or aspects included within this policy.

9.1. *Public Consultation*

Consultation will be undertaken on the review of this policy, pursuant to the Local Government Act 1999, Section 92 (5) and Policy 2.63.1 Community Engagement.

10. REFERENCES

Local Government Act, 1999

Local Government (Procedures at Meetings) Regulations 2000

Freedom of Information Act, 1991

Policy 13.63.1 Privacy & Copyright

Policy 18.63.2 Code of Practice Council and Committee Meetings

Policy 9.63.2 Council's Decision Review