
P O L I C Y D O C U M E N T

Policy Name	CODE OF PRACTICE - ACCESS TO MEETINGS AND DOCUMENTS		
Policy No	C19		
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POLICY INTENT

Section 92 (1 – 7) of the Local Government Act requires council to adopt a code of practice relating to the principles, policies, procedures and practices that the council will apply for the purposes of operating Parts 3 and 4 of the Act.

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

OBJECTIVES

The objectives of this code are to:

1. clearly outline to the community for what purpose and on what basis Council may apply the provisions of the Local Government Act 1999 to restrict public access to meetings or documents;
2. provide information on Council's code of practice to the community; and
3. summarise the legal position relating to public access to Council and committee meetings and documents.

NB – These guidelines relate to the provisions of the ***Local Government Act, 1999***.
Refer Appendix 1.

INTRODUCTION

The code is intended to provide clear guidance as to the application of the provisions in the Local Government Act 1999 to restrict public access to meetings or documents. It also includes information on:

- the relevant provisions in the Act,
- adopted policy on the ***use*** of these provisions,
- the ***process*** that is utilised to restrict public access when this is considered necessary,
- the Council contact officer should additional information be required, and
- refers to a process for dealing with any grievances.

It sets out the policy of Council for access to meetings and documents. It includes:

- a statement of Council principle,
- access to the agenda for meetings,
- public access to meetings,
- process to exclude the public,
- matters for which Council, or a committee, can order that the public be excluded,
- how Council will approach the use of the confidential provisions,
- public access to documents,
- accountability and reporting to the community,
- the codes availability, and
- grievances about the use of the code by Council.

COMMUNITY INVOLVEMENT IN THE DEVELOPMENT OF THE CODE

Council is required prior to adopting a code of practice, - access to meetings and documents; and prior to alteration or substitution of a code, to make copies available for inspection or purchase at the principal office. In involving the community Council must follow the relevant process set out within **Council's Public Consultation Policy (P8)**. A copy of that policy can be viewed or obtained at the principle office of Council at 1 Bay Road, Victor Harbor, during normal business hours.

ACCESS TO THE AGENDA FOR MEETINGS

At least three (3) clear days before a Council and council committee meeting, (unless it is a special meeting) the City Manager (CEO) must give written notice of the meeting to all Council/ Committee Members setting out the date, time and place of the meeting and the notice must contain or be accompanied by the agenda for the meeting. The notice and agenda are also to be placed on public display at the principal office of Council at the same time as they are forwarded to Council members. Items listed on the agenda are to be described with reasonable particularity and accuracy. The practice of Council is to place on public display a minimum of three (3) clear days prior to the meeting a list of the items of business plus 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). Further copies are made available to the public at the meeting of the council/committee.

[‘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 eg. notice is given on a Thursday for a following Monday meeting, the clear days being Friday, Saturday and Sunday.]

Note: - these provisions apply to Council meetings, committees that have as part of their responsibility some regulatory activities and those other committees to which 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 City Manager taking into account the nature and purpose of the committee. **Appendix 2** lists the Council committees and their agenda access arrangements.

Distribution of agenda papers to members of Council, or members of a committee, may include advice from the City Manager of Council (after consultation with the principal member of Council, or in the case of a committee, the presiding member) that a document or report on a particular matter may be considered in confidence with the public to be excluded. Where this occurs, the City Manager must specify the basis under which such an order could be made.

The following is an example of how an item for consideration in confidence may appear in the public copy of the agenda:

Pursuant to Section 83 (5) of the Local Government Act 1999, it is recommended that the following item be considered in confidence under Part 3, Section 90 (2) of the Act.

Confidential

1. *Weedspraying Contract*

(Section 90 (2) (3k) – this matter involves receipt of tenders)

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

PUBLIC ACCESS TO MEETINGS

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

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

The following are examples:

Council is intending to bid at an auction to acquire land and would not want others involved, such as the vendor to have prior knowledge of what Council was setting as an upper limit to bid at the auction, as to do so would prejudice the position of Council and disadvantage the community.

Council is considering tenders for the supply of goods and services and does not wish the tenderers or others with a potential interest to know the prices tendered, just in case further information is required or a re-call of tenders is necessary.

The performance review of a staff member, which is very much an internal organisational matter, is brought before Council for consideration.

Council is involved in a legal dispute with another party and disclosure of information may prejudice the maintenance of Law.

Council encourages public attendance/involvement at meetings. Details of meeting dates and times are advertised from time to time in the local press and displayed on the public notice board in the reception area of the Council Office at 1 Bay Road, Victor Harbor.

Section 90(8) of the Local Government Act enables members of Council, a committee and staff to participate in **informal gatherings** or discussion 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 Council or committee.

The following are examples (listed in the Act):

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

PROCESS TO EXCLUDE THE PUBLIC

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 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. Once Council, or the 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 employee of Council or a member of the police force 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, the public are then permitted to re-enter the meeting.

Please note that Council, or the 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.

It is the policy of Council that for the convenience of the public present at a meeting, where it is resolved to consider a matter in confidence, that this matter, unless there are pressing reasons as to why it should be debated at that point of the meeting, will be deferred until all other business has been dealt with. This is the preferred option of Council rather than asking the public to leave the room, to wait around for however long it takes until the matter is concluded and then invite them back into the meeting room, possibly with the same process being repeated for a subsequent matter.

MATTERS FOR WHICH COUNCIL, OR A COMMITTEE, CAN ORDER THAT THE PUBLIC BE EXCLUDED (Local Government Act - Section.90 (1) (2)&(3))

- (1) *Subject to this section, a meeting of a council or council committee must be conducted in a place open to the public.*
- (2) *A Council, or a committee may order that the public be excluded from attendance at a meeting to the extent (and only to the extent) that the council or council committee considers it to be necessary and appropriate to act in a meeting closed to the public in order to receive, discuss or consider in confidence any information or matter listed in subsection (3) (after taking into account any relevant consideration under that subsection.*

- (3) *The following information and matters are listed for the purposes of subsection (2);*
- (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;*
 - (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.

4. In considering whether an order should be made under subsection (2), it is irrelevant that discussion of a matter in public may :

(a) cause embarrassment to Council or the committee concerned, or to members or employees of Council: or

(b) cause a loss of confidence in Council or Council committee.

If a decision to exclude the public is taken, Council or the committee is required to make a note in the minutes of the making of the order and the grounds on which it was made. Minutes of a meeting of Council must be publicly available within five days after the meeting.

APPROACH TO THE 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 the *Local Government Act 1999*. These are listed in the previous section of this code. They are referred to as *section 90(3)*.

The policy approach of the City of Victor Harbor is that:

1. The principle of open and accountable government is strongly supported;
2. Confidentiality provisions will only be utilised after careful consideration and when considered proper and necessary;
3. Information of the grounds on which an order to exclude the public is made will be conveyed to the public at the time of them being ordered to leave the meeting;
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 remain 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;
5. 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 carried by the meeting;
6. Once discussion of the matter is concluded and the public have returned, the decision of the meeting in relation to this matter will be made publicly known unless Council has resolved to order that some information remain confidential, eg the price to which 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)* 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. This along with the making of the order and the grounds on which it was made are also to 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. The use of all confidentiality provisions will be reported to the community in Council's Annual Report. (*Local Government Act Schedule 4 - Refer Accountability and Reporting to the Community- refer page 8 of this policy*)

Where a person provides information to Council and requests that it be kept confidential the 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 relative merits.

PUBLIC ACCESS TO DOCUMENTS

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

Council/ the 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. Council/the committee can only make such orders in relation to documents that are considered in confidence under *section 90 (3)*.

Once a matter has been dealt with, Council/ the committee may order that a document relating to the matter considered in confidence is to be kept *confidential (Local Government Act section 91 (8))*. There are some exceptions. Council/a committee must not make an order to prevent:

- (a) 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; or
- (b) to prevent 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 the council as to why a successful tenderer has been selected; or
- (ba) to prevent the disclosure of the amount or amounts payable by the 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
- (c) 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.

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 following is an example :

Council decided to bid \$100,000 at auction for a parcel of land. An order that the discussion be confidential could be made in accordance with section 90(2). Council resolved that the document containing information on the value of the land remain confidential in accordance with section 91(7). Council could delegate to the City Manager the authority to make this information public following the completion of the acquisition in accordance with section 91(9)(c).

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 Council's nominated Freedom of Information Officer who is Jane Bohnsack, telephone 8551 0500 or fax 8551 0501.

ACCOUNTABILITY AND REPORTING TO THE COMMUNITY

It is a requirement under the *Local Government Act Schedule 4 – Material to be included in the annual report of a council*:

1. The following material must be included in the annual report of a council:
 - (ga) a report on the use of sections 90(2) and 91(7) by the council and its council committees containing the information required by the regulations.

Council will make this information available for inspection by the public at the Council Offices, 1 Bay Road, Victor Harbor. This information will also be included in any review of the code.

GRIEVANCE

The City of Victor Harbor has adopted an Internal Review of Council Decisions Procedure pursuant to *Section 270 of the Local Government Act 1999*.

Section 270 - Council to establish grievance procedures.

- (1) A council must establish procedures for the review of decisions of -
 - (a) the Council;
 - (b) employees of the Council(c) 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 consideration under the review of decisions procedure. A copy of the procedure is available for inspection or purchase at the Council Offices, 1 Bay Road, Victor Harbor. Further information can be obtained from the Director of Corporate & Community Services, Jane Bohnsack, telephone 8551 0500 or fax 8551 0501.

In the first instance, an application for a review of decision should be expressed in writing, addressed to the contact officer:

Jane Bohnsack
Director of Corporate & Community Services
City of Victor Harbor
PO Box 11
Victor Harbor SA 5211

Failing satisfaction through the Council review process, a person may also lodge a complaint with the Ombudsman, who may carry out an investigation if it appears (to the Ombudsman) that Council (or committee) may have unreasonably:

- excluded members of the public from a meeting; or
- prevented access to documents.

If an investigation is conducted, the Ombudsman must supply the Minister and Council with a copy of the written report that is prepared. After considering the report of the Ombudsman if the Minister believes Council has unreasonably excluded members of the public from a meeting or prevented

access to a document, he/she may give directions to Council about the future exercise of its powers concerning the exclusion of the public from meetings or the making of orders to withhold a document (or part thereof) or to release information that should, in the opinion of the Minister, be available to the public. Before taking such action the Minister must give Council a reasonable opportunity to make submissions to the Minister in relation to the matter.

REVOKING OR AMENDING PREVIOUS RESOLUTIONS

Subject to some circumstances, Council and Council committees can pass resolutions that amend or revoke resolutions previously adopted. Whilst this is not a regular practice it can happen where for example new information is presented.

AVAILABILITY OF CODE

The public may inspect a copy of the code, without charge, at the Council Offices, 1 Bay Road, Victor Harbor during normal office hours, and may obtain a copy for a fee as fixed by Council from time to time.

REVIEW

Council will review this code on an annual basis to ensure that the principle of open government is being applied in a proper manner.

INFORMATION

The Council contact for further information on this code is the Director Corporate & Community Services, Jane Bohnsack, telephone 8551 0500 or fax 8551 0501.

ADOPTION OF THE CODE

Council adopted this code on 8th October 2001.

Reviewed 27th May 2002.

Reviewed 28th July 2003.

Reviewed 15th June 2004.

Reviewed 14th November 2005.

Reviewed 12th December 2005.

Reviewed 26th November 2007.

Reference documents:

1999 Local Government Act

Freedom of Information Act

Ombudsman Act 1972

Internal Review of Council Decision Procedures (I4)

Public Consultation Policy (P8)

Appendix 1

LOCAL GOVERNMENT ACT 1999 PROVISIONS

Chapter 6 of the Local Government Act sets out arrangements for meetings of council and committees. It requires that all council and council committee meetings are to be held in public except where special circumstances exist as prescribed in the Act and a council or committee orders that the public be excluded.

There are very strict circumstances in which a discussion or document considered in a council or council committee meeting can be kept confidential. These provisions are included in the following sections:

Section 83 - Notice of ordinary or special meetings

83 (5) – The Chief Executive Officer may indicate on a document or report provided to members of the council under subsection (4) (or on a separate notice) any information or matter contained in or arising from a document or report that may, if the council so determines, be considered in confidence under Part 3, provided that the Chief Executive Officer at the same time specifies the basis on which an order could be made under that Part.

Section 87 – Calling and timing of committee meetings

87 (10) - The Chief Executive Officer may indicate on a document or report provided to members of the committee under subsection (9) (or on a separate notice) any information or matter contained in or arising from a document or report that may, if the committee so determines, be considered in confidence under Part 3, provided that the Chief Executive Officer at the same time specifies the basis on which an order could be made under that Part.

87(15) The regulations may modify the application of this section for council committees that are not performing regulatory activities of councils.

Section 88 – Public notice of committee meetings

88(7) – The regulations may modify the application of this section for council committees that are not performing regulatory activities of councils. Regulations 23 & 24 of the Local Government (Procedures at Meetings) Regulations 2000 enable variation to the notice of meetings for members and public notice of meetings.

Part 3 – Public access to council and committee meetings

Section 90 – Meetings to be held in public except in special circumstances

- (1) Subject to this section, a meeting of a council or council committee must be conducted in a place open to the public.*
- (2) A council or council committee may order that the public be excluded from attendance at a meeting to the extent (and only to the extent) that the council or council committee considers it to be necessary and appropriate to act in a meeting closed to the public in order to receive, discuss or consider in confidence any information or matter listed in subsection (3) (after taking into account any relevant consideration under that subsection).*
- (3) The following information and matters are listed for the purposes of subsection (2):*
 - (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 litigations 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*
- (4) *In considering whether an order should be made under subsection (2), it is irrelevant that the discussion of a matter in public may -*

- (a) *cause embarrassment of the council or council committee concerned, or to members or employees of the council, or*
- (b) *cause a loss of confidence in the council or council committee*
- (5) *A person, who knowing that an order is in force under subsection (2), enters or remains in a room in which a meeting of the council or council committee is being held is guilty of an offence and liable to a penalty not exceeding \$500 and if such a person fails to leave the room on request it is lawful for an employee of the council or member of the police force to use reasonable force to remove him or her from the room.*
- (6) *Subsection (5) does not apply to -*
 - (a) *a member of the council or the council committee; or*
 - (b) *any other person permitted to be in the room by the council or the council committee.*
- (7) *If an order is made under subsection (2), a note must be made in the minutes of the making of the order and of the grounds on which it was made.*
- (8) *The duty to hold a meeting of a council or council committee at a place open to the public does not in itself make unlawful informal gatherings or discussion involving-*
 - (a) *members of the council or council committee; or*
 - (b) *members of the council or council committee and staff,*

provided that a matter which would ordinarily form part of the agenda for a formal meeting of a council or council committee is not dealt with in such a way as to obtain, or effectively obtain, a decision on the matter outside a formally constituted meeting of the council or council committee.

Examples

The following are examples of informal gatherings or discussions that might be held under subsection (8);

- (a) *planning sessions associated with the development of policies or strategies*
 - (b) *briefing or training sessions;*
 - (c) *workshops;*
 - (d) *social gatherings to encourage informal communication between members or between members and staff.*
- (9) *In this section -*
- personal affairs** of a person includes-
- (a) *that person's –*
 - a. *financial affairs;*
 - b. *criminal records;*

- c. *marital or other personal relationships'*
 - d. *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.*

Part 4 – Minutes of council and committee meetings and release of documents

Section 91 – Minutes and release of documents

- (1) *The chief executive officer must ensure that minutes are kept of the proceedings at every meeting of the council or a council committee.*
- (2) *If the chief executive officer is excluded from a meeting pursuant to Part 3, the person presiding at the meeting must ensure that minutes are kept.*
- (3) *Each member of the council must, within five days after a meeting of the council or a council committee, be supplied with a copy of all minutes of the proceedings of the meeting kept under this section.*
- (4) *A copy of the minutes of a meeting of the council must be placed on public display in the principal office of the council within five days after the meeting and kept on display for a period of one month.*
- (5) *A person is entitled to inspect, without payment of a fee, at the principal office of the council-*
 - (a) *minutes kept under this section; and*
 - (b) *reports to the council or a council committee received at a meeting of the council or committee; and*
 - (c) *recommendations presented to the council in writing and adopted by resolution of the council; and*
 - (d) *budgetary or other financial statements adopted by council.*
- (6) *A person is entitled, on payment of a fee fixed by the council, to a copy of any documents available for inspection under subsection (5).*
- (7) *However, subsections (4), (5) and (6) do not apply to a document or part of a document if -*
 - (a) *the document or part relates to a matter dealt with by the council or council committee on a confidential basis under Part 3; and*
 - (b) *the council or council committee orders that the document or part be kept confidential.*
- (8) *A council must not make an order under subsection (7)-*
 - (a) *to prevent the disclosure of the remuneration or conditions of service of an employee of the council after remuneration or conditions have been set or determined; or*

- (b) *to prevent 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 reason adopted by the council as to why a successful tenderer has been selected; or*
 - (ba) *to prevent the disclosure of the amount or amounts payable by the council under a contract for the supply of goods or the provision of services (including the carrying out of the works) to, or for the benefit of, the council after the contract has been entered into by all parties to the contract; or*
 - (c) *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.*
- (9) *If an order is made under subsection (7) -*
- (a) *the council or council committee 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 any event, any order that operates for a period exceeding 12 months must be reviewed at least once in every year; and*
 - (b) *the council or council committee must ensure that a note is made in the minutes recording the making of the order, the grounds on which it was made, and the decision of the council or council committee under paragraph (a); and*
 - (c) *the council or council committee may delegate to an employee of the council the power to revoke the order.*
- (10) *No action for defamation lies against the council in respect of-*
- (a) *the accurate publication under this section of any information, statement or document (in whatever form); or*
 - (b) *the accurate publication under this section of a transcript, recording or other record of a meeting of a council or a council committee.*
- (11) *A document purporting to be minutes of proceedings at a meeting or a council, or a council committee, or to be a copy of or an extract from such minutes, and to be signed by the chief executive officer, will be accepted as proof, in the absence of proof to the contrary, of the matters contained in the document.*

Part 5 – Code of Practice

Section 92 – Access to meetings and documents code of practice.

- (1) *A council must prepare and adopt a code of practice relating to the principles, policies, procedures and practices that the council will apply for the purposes of the operation of Parts 3 and 4.*
- (2) *A council must, within 12 months after the conclusion of each periodic election, review the operation of its code of practice under this section.*
- (3) *A council may at any time alter its code of practice, or substitute a new code of practice.*
- (4) *A code of practice must include any mandatory provision prescribed by the regulations.*

- (5) *Before a council adopts, alters or substitutes a code of practice under this section it must-*
 - (a) *make copies of the proposed code, alterations or substitute code (as the case may be) available for inspection or purchase at the council's principal office; and*
 - (b) *follow the relevant steps set out in its public consultation policy*
- (6) *A person is entitled to inspect (without charge) the code of practice of a council at the principal office of the council during ordinary office hours.*
- (7) *A person is entitled, on payment of a fee fixed by the council, to a copy of the code of practice.*

Part 7 – Related Matters

Section 94 – Investigation by Ombudsman

- (1) *The Ombudsman may, on receipt of a complaint, carry out an investigation under this section if it appears to the Ombudsman that a council may have unreasonably excluded members of the public from its meetings under Part 3 or unreasonably prevented access to documents under Part 4.*
- (2) *The Ombudsman may, in carrying out an investigation under this section, exercise the powers of the Ombudsman under the Ombudsman Act 1972 as if carrying out an investigation under that Act.*
- (3) *At the conclusion of an investigation under this section, the Ombudsman must prepare a written report on the matter.*
- (4) *The Ombudsman must supply the Minister and the council with a copy of the report, and may also publish the report, a part of the report, or a summary of the report, in such manner as the Ombudsman thinks fit.*
- (5) *If the Minister, after taking into account the report of the ombudsman under this section, believes that the council has unreasonably excluded members of the public from its meetings under Part 3 or unreasonably prevented access to documents under Part 4, the Minister may give directions to the council with respect to the future exercise of its powers under either or both of those sections, or to release information that should, in the opinion of the Minister, be available to the public.*
- (6) *The Minister must, before taking action under subsection (5), give the council a reasonable opportunity to make submissions to the Minister in relation to the matter.*
- (7) *A council must comply with a direction under subsection (5).*
- (7a) *The Minister may also publish the report, a part of the report, or a summary of the report, in such manner as the Minister thinks fit.*
- (8) *This section does not limit other powers of investigation under other provisions of this or another Act.*

Part 2 – Internal review of council actions

Section 270 – Council to establish grievance procedures

- (1) *A council must establish procedures for the review of decisions of -*

- (a) *the council;*
 - (b) *employees of the council;*
 - (c) *other persons acting on behalf of the council.*
- (2) *The procedures must address the following matters (and may address other matters):*
- (a) *the manner in which an application for review may be made;*
 - (b) *the assignment of a suitable person to reconsider a decision under review;*
 - (c) *the matters that must be referred to the council itself for consideration or further consideration*
 - (ca) *in the case of applications that relate to the impact that any declaration of rates or service charges may have had on ratepayers – the provision to be made to ensure that these applications can be dealt with promptly and, if appropriate, addressed through the provision of relieve or concessions under this Act;*
 - (d) *the notification of the progress and outcome of an application for review;*
 - (e) *the time frames within which notifications will be made and procedures on a review will be completed.*
- (3) *A council is not entitled to charge a fee on an application for review.*
- (4) *A council, or a person assigned to consider the application, may refuse to consider an application for review if -*
- (a) *the application is made by an employee of the council and relates to an issue concerning his or her employment; or*
 - (b) *it appears that the application is frivolous or vexatious; or*
 - (c) *the applicant does not have a sufficient interest in the matter*
- (5) *A council must ensure that copies of a document concerning the procedures that apply under this section are available for inspection (without charge) and purchase (on payment of a fee fixed by the council) by the public at the principal office of the council.*
- (6) *A council may amend the procedures established by council under this section from time to time.*
- (7) *Nothing in this section prevents a person from making a complaint to the Ombudsman at any time under the Ombudsman Act 1972.*
- (8) *A council must, on an annual basis, initiate and consider a report that relates to -*
- (a) *the number of applications for review made under this section; and*
 - (b) *the kinds of matters to which the applications relate; and*
 - (c) *the outcome of applications under this section; and*
 - (d) *such other matters as may be prescribed by the regulations.*
- (9) *The right of a council to recover rates is not suspended by an application for the provision of some form of relief or concession with respect to the payment of those rates (but a council may then, if appropriate in view of the outcome of the application, refund the whole or a part of any amount that has been paid).*

NB - A copy of the relevant sections of Act can be viewed at the principal office of the City of Victor Harbor, 1 Bay Road, Victor Harbor or a copy provided for a fee as determined by Council from time to time.

Appendix 2

Committees to which Access to Meeting Agenda Provisions of the Code apply

Tourism Victor Harbor Committee
Recreation Centre Management Committee
Community Library Advisory Committee
Heritage Advisory Committee
Victor Harbor Recreation and Sport Advisory Committee
Disability Access Steering Committee
Victor Harbor Economic Development Committee
Development Assessment Panel
Southern Communities Transport Scheme Advisory Committee
Fleurieu Regional Community Services Advisory Committee

Committees to which Access to Meeting Agenda Provisions may vary from the Code

Audit Committee
Old School Building Community Centre Management Group
Victor Harbor Boating Facilities Working Party
Victor Harbor Regional Swimming Pool Working Party
City of Victor Harbor Policy Working Party

Appendix 3

Model resolutions for items of confidentiality

Resolving to consider an item in confidence

Moved _____ Seconded _____ that pursuant to Section 90 (2) & (3) (a, b, c, d, e, f, g, h, i, j, k, l, m or n) of the Local Government Act 1999, the public be excluded from the meeting with the exception of staff required to service the meeting, to enable item _____ to be considered in confidence as it relates to (*reason for confidentiality*).

Resolving to retain an item in confidence

Moved _____ Seconded _____ that pursuant to Section 91 (7)(b) & (9)(a) of the Local Government Act 1999, the resolutions and report related to this matter remain in confidence (*reason for and duration of confidentiality*).

Resolving to release an item from confidence

Moved _____ Seconded _____ that item _____ related to _____ be released from confidence.

or:

Moved _____ Seconded _____ that the resolution/s related to item _____ regarding _____ be released from confidence.

or:

Moved _____ Seconded _____ that the item/matter be released from confidence.

Date : _____

CITY MANAGER : _____