



CODE OF PRACTICE FOR ACCESS TO MEETINGS AND DOCUMENTS



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1. Statement of Principle

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 the Council.

2. Introduction

This Code sets out the commitment of the City of Victor Harbor to provide public access to Council and Council Committee meetings and documents including Information or Briefing Sessions. The *Local Government Act 1999* (the Act) outlines the requirements to restrict public access.

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 the member of a public believes that Council has unreasonably restricted public access on a particular matter.


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

- Access to 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. Legislation and Compliance

Council is required to meet the provisions of Section 92 of the Act in the preparation and adoption of a Code of Practice relating to the principles, policies and procedures that a Council must apply for the operation of Parts 3 and 4 of the Act for the purpose of public access to meetings, documents and minutes of Council and Committee meetings.

In preparing a Code of Practice for adoption, and prior to alteration or substitution of a Code, a Council must make copies available for inspection or purchase at the Council office and follow the relevant process set out in its public consultation policy.



Section 92 states that a Council must, within 12 months after a periodic election, review the operation of its Code of Practice however a Council may at any time alter its Code of Practice, or substitute it.

This Code does not apply to the Council Assessment Panel or any Council Subsidiaries.

4. Definitions

Act means the Local Government Act 1999.

Agenda means a list of items of business to be considered at a meeting.

CEO means the Chief Executive Officer.

Chairperson means a person who presides over a meeting, committee or advisory/working group

Clear days means that the time between giving of the notice and the day of the meeting, but excluding both the day on which the notice was given and the day of the meeting ie notice is given on a Thursday for a following Monday meeting, the clear days are Friday, Saturday and Sunday.

Committee means a committee of Council established under section 41 of the *Local Government Act 1999* or any other Committee established under the Act, including any subcommittee, advisory and working groups.

Information or Briefing Sessions means that the Council (by resolution) or the Chief Executive Officer (by determination) has invited more than one member of Council or a Council Committee to attend or be involved for the purpose of providing Information or a briefing on a matter in accordance with Section 90A of the Act.

Minutes means a record of the items discussed and the resolutions made of a meeting of Council or a Committee.

Notice of Meeting sets out the day, time and venue for a Council or Council Committee meeting.


Presiding Member means the person who is presiding at a particular meeting.

5. Public Access to the Agenda for meetings

At least three 'clear days' before an Ordinary Council or Council Committee meeting (unless it is a Special Meeting) the Chief Executive Officer 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 a meeting. It is the policy of the Council to provide Members with a copy of the Agenda (where possible) five clear days' prior to the Ordinary Council meeting.

The notice of meeting and agenda will be placed on public display at the Council office and on Council's website www.victor.sa.gov.au .

Items listed on the agenda will be described accurately and in reasonable detail.



The notice and agenda will be kept on public display and continue to be published on the website until the completion of the relevant Council or Council Committee meeting.

At least one copy of the Council 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 at the meeting.

Members of the public may obtain a copy of the agenda and any public report for a fee to cover the cost of photocopying, in accordance with Council's fees and charges register.

6. Public Access to Meetings

6.1 Council and Committee Meetings

Council and Council Committee Meetings are open to the public and attendance is encouraged, 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.

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

Council's Code of Practice for Meeting Procedures provides further guidance on how members of the public can participate in Council and Committee meetings.

Council live streams its Council meetings and recordings are available on the Council website.

6.2 Information or Briefing Session

In accordance with Section 90A of the Act, provides the Council or the Chief Executive Officer may arrange to hold an Information or Briefing Session. Information or Briefing Sessions will be held at a place open to the public for any matter that is or is intended to be, on the agenda for a form Council or Committee meeting, unless the Council (by resolution) or Chief Executive Officer (by determination) has declared on a case by case basis that it is necessary and appropriate for the Information or Briefing Session to be considered in confidence in accordance with Section 90(3) of the Act.

The Chief Executive Officer or delegate will ensure the publishing of information and recording keeping complies with the Act and relevant Regulations in accordance with the Act.

Attendance at Information or Briefing Sessions Electronically

Section 90(7a) of the Act provides provisions for Members of the Council or a Council Committee may participate in an Information or Briefing session by electronic means.

A member of the Council or Council Committee participating in electronic information or briefing session is taken to be present at the information or briefing session provided that the member can:

- hear all other members present at the information or briefing session; and

- can be heard by all other members present at the information or briefing session.

Form of Participation by Electronic Means

Where:

- A Council or Committee Member is to participate in an Information or briefing session by electronic means; and
- The electronic means has the functionality to allow the member to participate in electronic information or briefing session by being heard but not seen or by being both seen and heard; and
- The electronic means of the Council has the functionality to allow the Council Member to be heard but not seen or to be both seen and heard, the member must participate by being both seen and heard.

7. Process to exclude the public from a meeting

The practice of the City of Victor Harbor is to deal with confidential items toward the end of the Council or Committee agenda for the convenience of the public present at the meeting. This may mean deferring a matter until all other business has been dealt with rather than ask the public to leave the room and wait for the matter to be concluded before returning to the meeting room with the possibility of the same process being repeated for a subsequent matter.

Before the Council or Committee 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 to deal with that particular matter. If this occurs, then the public must leave the room. This means that 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) of the Act a member of the public does not include a Member of Council.

Once, Council, or a Council Committee has made the order under Section 90(3) of the Act, it is an offence for a person, who knowing that an order is in force, enters or remains in the room in which such a meeting is being held. It is lawful for an employee of Council or a member of the police to use reasonable force to remove the person from the room if he or she fails to leave on request. It is recommended that if any form of force is required that it be left to the police to deal with.


Once discussion on a particular matter is concluded, 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 to resolve to exclude the public as above.

Note: The Council or a 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.

8. Matters from which the public can be excluded

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;
- (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.



The Act provides for a definition of ‘personal affairs’, being a person’s financial affairs, criminal records, marital or other personal relationships, personal qualities, attributes or health status, or that person’s employment records, employment performance or suitability for a particular position, or other personnel matters relating to the person, but does not include the personal affairs of a body corporate.

Note: the above list is not exhaustive and can, where relevant, be added to by the Council.

9. Matters from which the public cannot be excluded

In considering whether a confidential order should be made under Section 90(2), it is irrelevant that discussion of a matter in public may:

- cause embarrassment to a Council or Committee concerned, or to members or employees of the Council; or
- cause a loss of confidence in the Council or Committee; or
- involve discussion of a matter that is controversial within the council area; or
- make the council susceptible to adverse criticism.

10. Process to exclude the public from a meeting.

If a decision to exclude the public is taken, the Council or the Council Committee is required to make a note in the minutes of the making of the order and specifying:

- the grounds on which it was made and
- 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
- if relevant, the reasons that receipt, consideration or discussion of the information or matter in a meeting open to the public would be contrary to the public interest.

Note: Sections 90(3)(b),(d) and (j) require the Council to meet two separate criteria before the public can be excluded eg the facts to satisfy the particular grounds and whether or not disclosure would be contrary to public interest.


11. Public Access to Minutes

In accordance with Section 91(4) of the Act, a copy of the Minutes of a meeting of Council or a Council Committee and meeting notes for Advisory and Working Groups will be published on council’s website within five days after the meeting. Noting this excludes any resolutions where a confidential order has been made.

12. Use of the Confidentiality Provisions

Any consideration of the use of the confidentiality provisions to exclude the public from discussion of a particular matter at a meeting will require the identification of one or more of the grounds listed above within Section 90(3) of the Act and the factual reasons for the relevance and application of the ground(s) in the circumstances.

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

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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 them 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. 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 by the meeting in accordance with Section 91(9) of the Act;
 5. The Council will not consider a number of agenda items ‘in confidence’ together eg en-bloc. It will determine each item separately and consider the exemptions relevant to each item.
 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 the Council has resolved to order that some 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.

This along with the making of the order pursuant to Section 90(2) and the grounds on which it was made and the decision of the Council or Committee must be recorded in the minutes. *It is recommended that if an order is to extend beyond 12 months that an Event is stipulated rather than a date.*

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 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.

Note: there is no legal requirement to resolve to ‘come out of confidence’ or to go back into ‘public session’. The public should be invited to re-enter the meeting when consideration of the relevant agenda item has concluded. The public are also entitled to be present for the debate on whether any subsequent item should be considered in confidence.

13. Public Access to Documents

Council is committed to openness and transparency and makes various documents available for inspection on its website and Schedule 5 of the Act prescribes the documents that Council must make available to the public on its website are available upon request provide a copy for purchase (for a fee) by the public.

The Council or the 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.

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

If an order under Section 91(7) of the Act expires or ceases to apply in relation to a document or part of a document, the Council must ensure that the document (or part thereof) is published on Council's website.


In accordance with Section 91(8) the Council or the Council Committee must not make an order 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; or
- 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
- 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
- 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.

Requests to access Council and Council Committee documents can be made under the *Freedom of Information Act 1991*. Enquiries in relation to the process for seeking access to documents held by Council can be found in Council's Freedom of Information Statement or by contacting Council's accredited Freedom of Information Officer's on 8551 0500 or by email on localgov@victor.sa.gov.au.

14. 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. The CEO will maintain a register of confidential orders which is published on the Council's website. It is the practice of the Council to review all confidential orders twice a year, with the aim to make the information available to the public at the earliest opportunity.



Where keeping a document confidential is considered proper and necessary, a resolution to this effect is required which must include:

- The grounds for confidentiality; and
- The basis on which the matter relates (within the ambit of each ground on which the order was made);
- The relevant reasons that receipt, consideration or discussion of the information or matter in a meeting open to the public would be contrary to the public interest.
- 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 has a duration of more than 12 months, the order must be reviewed at least once in every year;

An order will lapse if the time or event specified has been reached or carried out. There is no need for the Council to resolve for the confidential order to be lifted. Once the order has lapsed, the minutes and/or documents automatically become public and the duration of the order cannot be extended after the order has ceased to apply.

In addition, an order extending the duration of such an order cannot be delegated by a Council or Council Committee.

A review of the reports or documents that were considered under the provision of Sections 90(3) and 91(7) of the Act will be conducted periodically to ensure that items are released in accordance with the resolution of Council, when the confidential provision no longer applies.

Orders that exceed 12 months must be reviewed annually and the Council must assess whether the grounds for non-disclosure are still relevant and, if so, provide the relevant grounds and reasons for the minutes and/or documents remaining confidential. The conduct of the annual review is delegated to the Chief Executive Officer and sub-delegated 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. Each item must then be addressed separately and assessed against Section 90(3) and Section 91(7) of the Act. While a Council may delegate the power to undertake an annual review, the Council cannot delegate the power to apply Sections 90(3) and 91(7) of the Act.

Council may resolve to exclude the public from a meeting to discuss and undertake consideration of the recommendations arising from the annual review in confidence, subject to the application of the relevant ground under Section 90(3) of the Act. Section 90(3) of the Act must be applied separately to each item and not en-bloc.

If there is no longer any need for the confidentiality order, then the Council or Council Committee may delegate to an employee of the Council the power to revoke an order made in accordance with Section 91(7) of the Act. The Council or Council Committee may also

include in the resolution whether any delegation is given to an employee to revoke the order and if relevant, any conditions associated with the delegation.

15. Accountability and Reporting to the Community

A report on the use of Sections 90(2) and 91(7) by the Council and Council Committees must be included in the annual report of a Council as required by Schedule 4 of the Act. This supports Council's commitment to the principle of accountability to the community. The reporting includes the following information, separately identified for both Council and Council Committees:

1. Number of occasions each of the provisions of Sections 90(2) and 90(3) were utilised;
2. Number of occasions each of the provisions of Sections 90(2) and 90(3) and Section 91(7) where utilised, expressed as a percentage of total agenda items considered.
3. the date and subject of each order
4. Number of occasions that information originally declared confidential has subsequently been made publicly available; and
5. Number of occasions that information declared confidential has not been made publicly available and the reason for this in each case.

16. Grievance

Council has established procedures for the review of decision under Section 270 of the Act for:

- Council, and its Committees;
- Employees of the Council; and
- 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 under Council's Complaints Policy or the 'Review of a Council Decisions' Procedure. The procedures are available on Council's Website www.victor.sa.gov.au

Enquires can also be made to:

Chief Executive Officer
City of Victor Harbor
PO Box 11
VICTOR HARBOR SA 5211

Ph: 8551 0500

17. Availability of the Code

This Code of Practice is available on Council's website at www.victor.sa.gov.au It may also be inspected or purchased at the Principal Office of the Council at 1 Bay Road, Victor Harbor.

18. Review

The Council is required, by the Act, to review this Code within 12 months of a periodic election. Council has the ability to review this Code of Practice for Access to Meetings and Documents at any time.

19. Document History

Version	Issue Date	Resolution No	Description
1.0	8 October 2001		Adopted by Council
2.0	May 2002		
3.0	28 July 2003	OC 03/0377	Annual Review – Adopted by Council
4.0	15 June 2004	OC 04/0379	Annual Review - Adopted by Council
5.0	14 November 2005	OC 05/0640	Annual review - Adopted by Council
6.0	12 December 2005	OC 05/0669	Adopted by Council
7.0	26 November 2007	OC 07/0728	Adopted by Council
8.0	24 October 2011	OC 11/0518	Adopted by Council
8.1	26 October 2015	OC5212015	Public Consultation
8.2	14 December 2015	OC6112015	Adopted by Council
9.0	26 April 2016		Two additional legislative clauses for reasons not to go into confidence and links to other Council practices
10.1	29 April 2019	OC3252019	Public Consultation
10.2	24 June 2019	OC4732019	Adopted by Council
10.3	7 April 2020	SC92020	Reviewed for the purposes of Electronic Participation in Council Meetings Notice (No 1) 2020
10.4	22 November 2021	OC5492021	Reviewed for the purposes of the Review Act and Public Health Emergency: Electronic Participation in Council Meetings Notice (No. 5)
10.5	22 June 2022	OC1282022	Major Emergency Declaration ceased at 11:59pm on 21 June 2022 – removed Notice references
10.6	26 June 2023	OC1822023	Annual Review

20. Document Control

Policy Category	Statutory
Department/Officer	Governance
Applicable Legislation	Local Government Act 1999 Freedom of Information Act 1995 Ombudsman Act 1972 Independent Commissioner Against Corruption Act 2012
Related Policies	Code of Practice for Meeting Procedures Information Statement
Date Adopted:	8 October 2001
Next Review	April 2024
Review Frequency	Within 12 months of a periodic election



Appendix 1

Refer to Item 8 – Matters from which the public can be excluded

The following information and matters are listed for the purposes of Section 90(3) of the Act:

- Section 90(3) (a) – Personal affairs
- Section 90(3)(b) – Commercial advantage
- Section 90(3)(c) - Trade secrets
- Section 90(3)(d) – Commercial information of a confidential nature
- Section 90(3)(e) – Matters affecting security and safety
- Section 90(3)(f) – Prejudice the maintenance of law
- Section 90(3)(g) – To ensure council does not breach any law
- Section 90(3)(h) – Legal advice
- Section 90(3)(i) – Information relating to litigation
- Section 90(3)(j) – Information provided on a confidential basis by or to a public authority or official
- Section 90(3)(k) – Tenders
- Section 90(3)(m) – Information relating to a proposed to a proposal to prepare or amend a Designated Instrument under Part 5 of the *Planning, Development and Infrastructure Act 2016*
- Section 90(3)(n) – Freedom of Information
- Section 90 (3)(o) – Award Recipient