

# Code of Practice for Access to Meetings and Documents

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<b>Responsible Officer (s):</b>	Governance
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<b>Legislation:</b>	<i>Local Government Act 1999</i> Section 92
<b>Related Documents:</b>	Code of Practice – Meeting Procedures Informal Gatherings Policy Petition Policy Councillor Information & Workshop Session Guidelines

## 1 Statement of Principle

- 1.1 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* (the Act), City of Prospect is fully committed to the principle of open and accountable government.
- 1.2 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/decisions and/or documents.

## 2 Purpose

- 2.1 Chapter 6 - Part 5 of the Act, states that Council must prepare and adopt a Code of Practice relating to the principles, policies, procedures and practices that the Council will apply for the purpose of the operation of Parts 3 and 4.
- 2.2 This Code of Practice sets out the policy framework for access to meetings and documents and provides guidance as to the application of provisions in the Act to restrict public access to meetings and/or documents.
- 2.3 The Code of Practice aims to:
  - 2.3.1 Provide the community with information on access to Council and Council Committee meetings and the documents of those meetings;
  - 2.3.2 Summarise the legal position relating to public access to the Council and Council Committee meetings, agenda's, documents and minutes of meetings; and

- 2.3.3 Outline to the community for what purpose and on what basis the Council may apply the provisions of the Act to restrict public access to Council and Council Committee meetings or documents and minutes.

### 3 Definitions

- 3.1 **Agenda** refers to a list of items of business to be considered at a meeting.
- 3.2 **Clear days** is the time between the giving of the notice and the meeting, and is determined by excluding the day on which the notice is 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.
- 3.3 **Council Committee** is 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.
- 3.4 **Minutes** as a record of the items discussed and the resolutions made of a meeting of Council/Committee.
- 3.5 **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.
- 3.6 **Special Meetings** are those convened in addition to monthly ordinary meetings of council. Under Section 83(2) of the *Local Government Act 1999*, special meetings require at least four (4) hours' notice.

### 4 Scope

- 4.1 This Code of Practice applies to Council and Council Committees and the associated agenda, minutes and attachments that relate to those meetings;
- 4.2 The Code of Practice does not apply to the Council Assessment Panel (CAP) as the requirements of the CAP are defined within the *Planning, Development and Infrastructure Act 2016*;
- 4.3 Section 132 of the Act states that Council must make certain documents available for public inspection. The Code of Practice does not apply to those documents;
- 4.4 Where the *Freedom of Information Act 1991* (FOI Act) provides for access to Council's administrative documents which are not normally available to the public, then those documents are not included in the scope of this Code.

### 5 Public Access to the Agenda for Meetings

- 5.1 At least three (3) clear days before the Council or Council Committee meeting (unless it is a special meeting) the Chief Executive Officer (CEO) must give written

notice of the meeting to all Council/Council Committee Members setting out the date, time and place of the meeting.

- 5.2 The notice contains or is accompanied by the agenda for the meeting and a list of business, plus any documents and reports relating to these matters (with the exception of any matters that might be potentially subject to the making of an order of confidentiality).
- 5.3 The notice of meeting and agenda will be placed on public display at the principal office of the Council, and available via Council's website: [www.prospect.sa.gov.au](http://www.prospect.sa.gov.au), at the same time as they are forwarded to the Council Members. Further copies are made available to the public at the meeting of the Council/Committee.
- 5.4 The above provisions apply to the Council and Committee meetings 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 Council Committee is not performing a regulatory activity these procedures may be varied, e.g. 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 CEO taking into account the nature and purpose of the Committee.
- 5.5 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. Thereafter the agenda will be published on the Council website for up to three (3) months, and searchable for up to three (3) years.
- 5.6 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.
- 5.7 Distribution of agenda papers to members of the Council, or members of a Council Committee, may contain items of business (including reports or documents) that include a recommendation from the CEO that a document or report on a particular matter may be considered in confidence to the exclusion of the public. Where this occurs, the CEO will identify the legislative ground(s) upon which the Council or committee members can determine whether a confidentiality order is to be made.
- 5.8 If, upon consideration of the grounds under Section 90(3) the Council or Council Committee members do not make an order of confidentiality for an item that the CEO has recommended to be considered in confidence, then a copy of the document will be made available to the public.

## **6 Public Access to Designated Informal Gatherings**

- 6.1 Not less than three (3) clear days prior to a designated informal gathering the CEO will make every reasonable effort that the following information will be published on the Council's website:
  - the place, date and time at which the designated informal gathering or discussion will be held;

- the matter/s and a brief outline, that are to be discussed at the designated informal gathering or discussion;
  - whether or not the designated informal gathering or discussion is to be held at a place open to the public.
- 6.2 The notice of meeting and agenda will be published on public display at the principal office of the Council and available via Council's website: [www.prospect.sa.gov.au](http://www.prospect.sa.gov.au) (see clause 13 regarding Access to Documents).
- 6.3 Where a confidential informal discussion declaration applies to a designated informal gathering or discussion (see clause 10), the reason for the designated informal gathering or discussion being held entirely or partially in confidence must be published on the Council's website.

## **7 Public Access to Meetings**

- 7.1 Council and Council Committee meetings are open to the public and attendance is encouraged and welcome. Meeting schedules are made available for public viewing on Council's website.
- 7.2 There are times where Council or Committee considers it necessary to exclude the public from the discussion of a particular matter. In these circumstances, Council or Committee will do so in accordance with Section 90(3) of the Act which outlines the circumstances when a meeting can be closed to consider a matter in confidence.
- 7.3 In accordance with section 90 of the Act, it is not unlawful for Members of Council, Committee members 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 of a formally constituted meeting of Council or Committee. Such meetings may for example be in the form of:
- 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.
- 7.4 Informal gatherings will be in compliance with Council's 'Informal Gatherings Policy'.

## **8 Process to Exclude the Public from a Meeting**

- 8.1 Prior to a Council or Council Committee ordering 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.

- 8.2 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/Committee.
- 8.3 Once Council, or a Council Committee has made an 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 or she fails to leave on request.
- 8.4 Once discussion on that 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.
- 8.5 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 whilst their circumstances concerning the payment of rates are being discussed.
- 8.6 Council's practice is that, for the convenience of the public present at the meeting, where it is resolved to consider a matter in confidence, that the matter, unless there are pressing reasons as to why it should be debated at an earlier stage of the meeting, will be considered after all other business has been dealt with.

This is the preferred option of Council rather than asking the public to leave the room and wait for however long it takes until the matter is concluded and then invite them back to the meeting room with the possibility of the same process being repeated for a subsequent matter.

## 9 Matters from which the Public can be excluded

- 9.1 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) *information relating to a proposed amendment to a Development Plan under the Development Act 1993 before a Development Plan Amendment proposal relating to the amendment is released for public consultation under that Act;*
- m) *information relevant to the review of a determination of a council under the Freedom of Information Act 1991.*

9.2 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.

9.3 In considering whether an order should be made under section 90(2) of the Act, it is irrelevant that discussion of a matter in public may;

9.3.1 Cause embarrassment to Council or a Council Committee, or to members or employees of Council

9.3.2 Cause a loss of confidence in Council or a Council Committee.

- 9.4 If a decision to exclude the public is taken, Council or a 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.

## 10 Use of the Confidentiality Provisions

- 10.1 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 9.1 of this Code.
- 10.2 Council's policy approach for Council and Committee Meetings is as follows:
- 10.2.1 The principle of open and accountable government is strongly supported;
  - 10.2.2 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;
  - 10.2.3 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 the agenda item (including minutes) remains confidential. In determining this, the meeting will have regard to the provisions of section 91 of the Act and in particular section 91(8) of the Act which details when Council must not order that a document remains confidential;
  - 10.2.4 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(7) of the Act. When making an order the meeting must specify 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;
  - 10.2.5 Once discussion of the matter is concluded and the public have been invited to return to the meeting, 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. Details relating to any order to keep information or a document confidential in accordance with section 91(7) of the Act are also to be made known.
  - 10.2.6 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
  - 10.2.7 Where a person provides information to Council and requests that it be kept confidential, Council is not able to consider this request unless the matter is one that falls within section 90(3) of the Act. If this is the case, Council or Committee will then be in a position to consider the request on its merits.

- 10.3 There is no legal requirement to resolve to “come out of confidence” or to go back into “public session”. The public may and 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.
- 10.4 The Council or Committee will not consider a number of agenda items “in confidence” together (i.e. en bloc). It will determine each item separately and consider the exemptions relevant to each item.

## 11 Review of Confidentiality Orders

- 11.1 A confidentiality order made under section 91(7) of the Act, must specify the duration of the order or the circumstances in which the order will cease to apply, or a period after which the order must be reviewed.

- 11.2 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.

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.

- 11.3 The conduct of the annual review is delegated to the Chief Executive Office. The Chief Executive Officer has delegated authority to assess, and if appropriate, release items over 10 years old.

- 11.4 If there are any items that require a fresh confidentiality order because the original order is about to expire, the reviewer will prepare a report to Council making recommendations with respect to each item to be retained in confidence.

- 11.5 Each item must then be addressed separately and assessed against section 90(3) and section 91(7) of the Act.

- 11.6 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.

- 11.7 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 grounds under section 90(3) of the Act. Section 90(3) of the Act must be applied separately to each item and not en-bloc.

- 11.8 If there is no longer any need for the confidentiality order, Council or a Council Committee may delegate to an employee of 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.

## 12 Public Access to Minutes

- 12.1 Minutes of a meeting of Council or a Council Committee will be publicly available, within 5 days after the meeting, at the office of Council open for general administration of Council business, and on Council's website [www.prospect.sa.gov.au](http://www.prospect.sa.gov.au).
- 12.2 Formal minutes are not recorded at designated informal gatherings. Notes are generally taken at these gatherings, and will be published as part of the following meeting agenda on Council's website.

## 13 Public Access to Documents

- 13.1 Various documents can 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 public access.
- 13.2 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 (as per the processes described above).
- 13.3 Council or a Council Committee can only resolve to keep minutes and/or documents confidential under section 91(7) of the Act if they were considered in confidence pursuant to sections 90(2) and 90(3).
- 13.4 In accordance with section 91(8) of the Act, Council or a Council Committee must not make an order to prevent:
  - 13.4.1 The disclosure of the remuneration or conditions of service of an employee of Council after the remuneration or conditions have been set or determined; or
  - 13.4.2 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 Council as to why a successful tenderer has been selected; or
  - 13.4.3 The disclosure of the amount or amounts 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, Council after the contract has been entered into by all parties to the contract; or
  - 13.4.4 The disclosure of the identity of land that has been acquired or disposed of by Council, or of any reasons adopted by Council as to why land has been acquired or disposed of by Council.
- 13.5 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 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.
  - c) Whether the power to revoke the order will be delegated to an employee of Council (S91(9)) (if applicable).
- 13.6 Requests to access Council and Council Committee documents can be made under the *Freedom of Information Act 1991*.
- 1. Freedom of Information applications should be submitted using the correct application form and be as specific as possible to enable the correct documents to be identified.
  - 2. Application forms are available from the Council Principal Office, and on Council's website: [www.prospect.sa.gov.au](http://www.prospect.sa.gov.au); or on the State Records website: [www.archives.sa.gov.au](http://www.archives.sa.gov.au), under Freedom of Information, Forms for FOI Process. The application form contains details of the fees payable and fee waivers available.
  - 3. Freedom of Information requests should be addressed to:  
Freedom of Information Officer  
City of Prospect  
PO Box 171  
PROSPECT SA 5082

## 14 Accountability and Reporting to the Community

- 14.1 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 Council as required by Schedule 4 of the Act. This supports commitment to the principle of accountability to the community. The reporting should include the following information, separately identified for both Council and Council Committees:
- a) Number of occasions each of the provisions of sections 90(2) and 90(3) were utilised;
  - b) Number of occasions each of the provisions of sections 90(2) and 90(3) and section 91(7) were utilised, expressed as a percentage of total agenda items;
  - c) An indication of any particular issues that contributed to the use of confidentiality provisions on more than one occasion (eg a proposal to acquire a parcel of land was considered on 3 separate occasions);
  - d) Number of occasions information originally declared confidential has subsequently been made publicly available; and
  - e) Number of occasions that information declared confidential has not been made publicly available and the reason for this in each case.

## 15 Grievance

- 15.1 Council has established procedures for the review of decisions under section 270 of the Act for:
- 15.1.1 Council, and its committees;
  - 15.1.2 Employees of Council; and
  - 15.1.3 Other persons acting on behalf of Council.
- 15.2 Should a person be aggrieved about public access to either a meeting or a document they can lodge an application for review of that decision under the procedures established by Council. The Procedures are available in Council's Internal Review of Council's Decisions Policy which is available on Council's website [www.prospect.sa.gov.au](http://www.prospect.sa.gov.au) or can be viewed at Council office 128 Prospect Road, Prospect.

## 16 Review of the Code

Council is required to review this Code within 12 months after the conclusion of each periodic election, or more frequently if required by legislation.

## 17 Availability of the Code

The Policy is available to the public:

[www.prospect.sa.gov.au](http://www.prospect.sa.gov.au)

Customer Services, 128 Prospect Road, Prospect SA 5082

## 18 Further Information

For further information about this policy please contact:

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128 Prospect Road  
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