



COUNCIL POLICY

Access to Council and Committee Meetings and Documents Code of Practice

Policy Number:	PO015		
Strategic Plan Objective:	Meet all legislative and compliance responsibilities		
Policy Owner:	CEO	File Number:	9.63.1
Responsible Officer:	Governance Officer	Minute Reference:	061/2015 (08/04/2015)
Date Adopted:	08/04/2015	Next Review Date:	April 2019

1. POLICY OBJECTIVES

Yorke Peninsula Council is fully committed to the principles of open, accountable, transparent and informed decision-making and encourages appropriate community participation in its affairs.

2. SCOPE

This policy applies to Council and all Council committee meetings and documents

3. DEFINITIONS

Council	Council and all Council committees
Council meetings	Council and all Council committee meetings
Council meetings minutes	Council and all Council committees meeting minutes
Employee(s)	All personnel undertaking tasks/duties for and/or on behalf of the Yorke Peninsula Council, including persons employed directly by the Council in a full time, part-time or casual basis under an employment contract, volunteers, contractors, agency personnel and work experience placements.
Personal affairs	Includes but is not limited to 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.

4. POLICY STATEMENT

This policy sets out the way in which meetings and documents can be accessed and includes information about:

- The relevant provisions of the Local Government Act 1999 ("the Act");
- Public access and participation;

- The process for restricting public access to a meeting or a document;
- Access to meeting agendas;
- Access to meetings;
- The process for excluding the public from meetings;
- When the public can be excluded;
- How the Council uses the confidentiality provisions in the Act;
- Access to documents;
- Review of confidentiality orders;
- Accountability and reporting;
- Availability of the code.

4.1 Public Access to the Agenda for Meetings

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

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

A reasonable number of copies will be available for public inspection as soon as practicable after they are supplied to the Members of Council.

The meeting notice and agenda will be on public display at each Council office and on [Council's website](#) until the completion of the relevant Council meeting.

Copies of agenda documents and non-confidential reports will be made available to members of the public in attendance at meetings.

Members of the public may also obtain hardcopies of agendas and relevant documents/reports for a fee, in accordance with a Council's Fees and Charges Register.

Where the CEO, after consultation with the principal member of the Council, or in the case of a Committee - the presiding member, believes that a document or report should be considered in confidence and the public excluded, the basis under which the order could be made, in accordance with section 90(3) of the Act, will be specified.

Where a person provides information to the Council and requests that it be kept confidential, Council cannot consider the request unless the matter is one that falls within section 90(3) of the Act. If this is the case, Council will then consider the request on its merits.

4.2 Public Access to Meetings

Council meetings are open to the public and attendance is encouraged, except where the Council believes it is necessary in the broader community interest to exclude the public from the discussion and, if necessary, the decision.

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

Members of Council and employees may lawfully participate in informal gatherings/discussions including:

- Planning sessions around developing policies and strategies;
- Briefing sessions
- Training sessions

- Workshops

provided that no decisions are made or effectively made on a matter that would ordinarily form part of a formally constituted Council meeting agenda.

The Council is not required to hold an informal gathering open to the public. Notice of informal gatherings will be provided to the public in advance, annually.

4.3 Confidentiality Provisions and Matters Where the Public can be Excluded

In summary, Section 90(3) of the Act provides that Council, can exclude the public in the following circumstances:

- Matters involving the unreasonable disclosure of information concerning the personal affairs of any person (living or dead);
- Matters that could reasonably be expected to give a commercial advantage to a person with whom the Council is conducting, or proposing to conduct, business, with;
- Matters that could prejudice the commercial position of the Council;
- Information that could reasonably be expected to prejudice the commercial position of the person who supplied the information or provide a third party with a commercial advantage; and would, on balance, be contrary to the public interest;
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- Matters where a trade secret would be revealed;
- Matters affecting the security of the Council, members or employees of the Council, or Council property, or the safety of any person;
- Where the disclosure of information could reasonably be expected to prejudice the maintenance of law (including by affecting/potentially affecting the prevention, detection or investigation of a criminal offence, or the right to a fair trial);
- Matters that must be considered in confidence 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;
- Where Legal advice is being considered;
- Information relating to actual litigation, or litigation that the Council believes on reasonable grounds will take place, involving the Council or an employee of the Council;
- Where 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) will be disclosed;
- Tenders for the supply of goods or services;
- 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;
- 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;

- Information relevant to the review of a determination of a Council under the Freedom of Information Act 1991.

In accordance with section 91(8) an order cannot be made under subsection 7 to exclude the public on the following grounds to prevent:

- disclosure of remuneration or conditions of service of an employee of the Council after the remuneration or conditions have been set or determined;
- disclosure of the identity of a successful tenderer for the supply of goods or services, or any of the reasons as to why a successful tenderer has been selected;
- disclosure of the amount(s) payable by the Council under a contract for the supply of goods or services after the contract has been entered into;
- disclosure of the identity of land that has been acquired or disposed of by the Council, or any reasons as to why land has been acquired or disposed.

Embarrassment to the Council or to members or employees of the Council; or a loss of confidence in the Council is not a valid reason to exclude the public from a meeting.

Any consideration of the use of the confidentiality provisions to exclude the public from the discussion of 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.

Before a meeting orders that the public be excluded, pursuant to section 90(2), to enable the receipt, discussion and consideration of a matter, the meeting will, in public, formally determine if this is necessary and appropriate, and then pass a resolution to exclude the public while dealing with that matter.

If this occurs then the public must leave the room. This means that all members of the public (including employees), unless named in the resolution as entitled to remain, are required to leave the room.

Once Council has made the order, it is an offence for a person, who knowing that an order is in force, to enter or remain in the room where the meeting is being held.

Council can request a person(s) or persons to remain in the meeting such as a ratepayer who is suffering personal hardship when circumstances about paying their rates are being discussed.

When making an order the meeting must specify the duration of the order or the circumstances in which the order will cease to apply, or a period after which the order must be reviewed. If an order is to apply for over 12 months, then the order must be reviewed every 12 months from the date it was made.

Once the discussion has 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 consideration of the provisions of section 91 of the Act which details when a Council must not order that a document remain confidential. Details relating to any order to keep information or a document confidential must also to be made known to the public.

Where keeping a document confidential is considered proper and necessary, a resolution is required which includes:

- the grounds for confidentiality;
- 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;
- Whether the power to revoke the order will be delegated to an employee of the Council under section 91(9) (if applicable).

Council meetings minutes will record the making of an order in accordance with sections 90(2) and (3) and section 91(7).

Once discussion has concluded, the public are then permitted to re-enter the meeting.

A decision of the meeting will be made publicly known unless the Council has resolved to order that some information remain confidential.

The Council will not consider a number of agenda items “in confidence” together all at once. Each item and the relevant exemptions will be considered and determined separately.

4.5 Public Access to Documents

Minutes and non-confidential reports of a meeting of Council will be publicly available within 5 days after the meeting.

Various documents, including this policy, are available for inspection and purchase (for a fee) by the public and also in electronic form on the Internet for public access.

Requests to access other Council documents can be made under the Freedom of Information (FOI) Act 1991. Inquiries in relation to the process for accessing documents under the FOI Act can be directed to Council’s accredited Freedom of Information Officer, Jackie Reddaway on 8832 0000.

4.6 Review of Confidentiality Orders

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 each month 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 will be considered annually by the CEO to assess whether the grounds for non-disclosure, in the CEO’s view are still relevant.

If CEO is of the view that there are items that require a fresh confidentiality order because the original order is about to expire and the grounds for non-disclosure are still relevant, then the CEO 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 by the Council and assessed against section 90(3) and section 91(7) of the Act. The Council cannot delegate the power to apply sections 90(3) and 91(7) of the Act.

A Council may resolve to exclude the public from a meeting to discuss and undertake consideration of the recommendations arising from the annual review in confidence, subject to the application of the relevant ground under section 90(3) of the Act. Section 90(3) of the Act must be applied separately to each item.

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If there is no longer any need for the confidentiality order then the Council will revoke the order made in accordance with section 91(7) of the Act.

If it is determined that a fresh confidentiality is required, Council must again provide the grounds and reasons for the minutes and/or documents remaining confidential.

An order will lapse if the time or event specified has been reached or carried out. The Council does not need to resolve that the confidential order to be lifted. Once the order has lapsed, the minutes and/or documents automatically become public.

4.7 Accountability and Reporting

A report on the use of sections 90(2) and 91(7) by the Council must be included in the annual report of a Council as required by Schedule 4 of the Act. The reporting should include the following information, separately identified for both Council and Committees of Council:

- Number of occasions each of the provisions of sections 90(2) and 90(3) were utilised;
- 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 considered;
- An indication of any particular issues that contributed to the use of confidentiality provisions on more than one occasion;
- Number of occasions that information originally declared confidential has subsequently been made publicly available;
- Number of occasions that information declared confidential has not been made publicly available and the reason for this in each case.

5. COMPLAINTS

Complaints about this policy can be made in writing to the Council's Governance Officer. Complaints will be managed in accordance with Council's Complaints Policy.

Council has also established procedures for the review of decisions under section 270 of the Act for:

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

Complaints about public access to either a meeting or a document decision can also be lodged with the CEO for review under Council's Internal Review of a Council Decision Policy.

6. REVIEW

The Council must review this code of practice within 12 months after the conclusion of a periodic election, and as necessary in consideration of any changes to legislation and relevant standards, codes and guidelines to ensure that the principle of open government is being applied in a proper manner.

7. TRAINING

Council is committed to supporting Elected Members and employees in complying with this policy.

This policy will be provided to Elected Members and employees during induction. Training needs will be reviewed annually, during individual performance reviews and as necessary in consideration of any changes to legislation and relevant standards, codes and guidelines.

Elected Members and employees will actively participate in training.

8. RELATED COUNCIL POLICIES AND DOCUMENTS

PO037 Internal Review of a Council Decision Policy
PO147 Complaints Policy
PO057 Public Consultation Policy
R011 Fees and Charges Register

9. REFERENCES AND LEGISLATION

Local Government Act 1999
Development Act 1993
Ombudsman's "In the Public Eye" audit report
LGA Access to Council and Committee Meetings and Documents Model Code of Practice

10. COUNCIL DELEGATION

Delegate:	Chief Executive Officer
Sub delegation	Nil

11. VERSION HISTORY

Archived Policy Name	Policy Number	Date Adopted	Last Reviewed
Code Of Practice For Access To Council Meetings, Council Committees And Council Documents	PO015	07/04/2003	08/06/2010
Access to Council and Committee Meetings and Documents Code of Practice	PO015	12/02/2014	March 2015