

	<h2>Access to Council and Committee Meetings and Information Code of Practice</h2>	Version No:	11.0
		Issued:	October 2000
		Last Review:	14 April 2020
		Next Review:	February 2021

File reference	9.63
Responsibility:	Governance
Policy Level	Mandatory – Section 92 Local Government Act 1999
Minutes reference:	21 April 2020 2.0 (b)
Next review date:	Council will endeavour to review this policy every year, including within 12 months following Council election
Applicable Legislation:	<i>Local Government Act 1999 (as amended)</i> <i>Local Government (Procedures at Meetings) Regulations 2013</i> <i>Development Act 1993 (in transition to the Planning Development & Infrastructure Act 2016)</i> <i>Freedom of Information Act 1991</i>
Related Policies:	Wudinna District Council Complaints Policy and Procedure

INDEX

Clause	Title	Page
1	Statement of Principle	2
2	Public Access to the Agenda for Meetings	2
3	Public Access to Meeting	2
4	Process to Exclude the Public from a Meeting	3
5	Matters from which Council, or a Committee can order that the public be excluded	3
6	Public Access to Minutes	4
7	Use of Confidential Provisions	5
8	Public Access to Documents	5
9	Confidential Provisions	6
10	Review of Confidentiality Orders	6
11	Accountability and Reporting to the Community	7
12	Availability of the Code	7
13	Grievance	7
14	Council Contact Person	7

On 30 March 2020 the Minister for Transport and Local Government issued a notice pursuant to section 302B of the Local Government Act 1999 (Notice No 1) varying or suspending the operation of the specified provisions of the Local Government Act 1999 as set out in Schedule 1 Notice No 1 commenced operation on 31 March 2020

Notice No 1

- (a) Provides that a Council is not required to adopt any provision in a code of practice that prevent or inhibit members from participating in Council meetings or Council committee meetings by electronic means;
- (b) Provides that Council members may meet by electronic means to alter the code of practice of the Council, or substitute a new code of practice of the Council, even if the existing code of practice prevents or inhibits the Council members from meeting by electronic means;
- (c) Suspends the requirement in section 92(5) that before a Council adopts, alters or substitutes a code of practice it makes copies of the proposed code, alterations or substitute code (as the case may be) available for inspection and purchase at the principal office of the Council and on a website determined by the Council and that the Council follow the steps out in its public consultation policy.

	<h2>Access to Council and Committee Meetings and Information Code of Practice</h2>	Version No:	11.0
		Issued:	October 2000
		Last Review:	14 April 2020
		Next Review:	February 2021

1. STATEMENT OF PRINCIPLE

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

2. PUBLIC ACCESS TO THE AGENDA FOR MEETINGS

Public access to Council agendas is encouraged. This provides one of the main opportunities for the community to gain information about the business of Council and Committees. Agendas and associated documents for the meetings are publicly available subject to any indication from the Chief Executive Officer under section 83(5) of the Local Government Act 1999 or to an order of confidentiality under section 90 (3) of the Local Government Act 1999.

The following procedures apply to encourage public access:

- 2.1 At least three 'clear days' before a Council or Council Committee meeting (unless it is a special meeting) the Chief Executive Officer (CEO) must give written notice of the meeting to all Council/Committee Members setting out the date, time and place of the meeting. The notice must contain or be accompanied by the agenda for the meeting;
- 2.2 The notice and agenda are to be placed on public display at the office of the Council that is open to the public for the general administration of Council business within its area and on the Council's website;
- 2.3 The notice and agenda must be kept on public display and continue to be published on the website until the completion of the relevant meeting;
- 2.4 Items on the agenda are to be described accurately and in reasonable detail;
- 2.5 Copies of the agenda items and non-confidential reports that are to be considered at the meeting must be made available to members of the public at the meeting. A reasonable number of copies are to be available for public inspection as soon as practicable after they are supplied to the members of Council;
- 2.6 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 the Council's schedule of fees and charges;
- 2.7 Distribution of agenda papers to members of Council, or members of a Committee, may include advice from the CEO of the 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 be considered in confidence with the public to be excluded. Where this occurs, the CEO must specify the basis under which the order could be made in accordance with section 90(3) of the Local Government Act 1999 (also see section 83(5) - Council and 87(10) - Committee of the Local Government Act 1999)

NOTE: Where a Committee is not performing a regulatory activity, these procedures may be varied in accordance with Part 3 of the Local Government (Procedures at Meetings) Regulations 2013, e.g. the notice of meeting 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.

3. PUBLIC ACCESS TO MEETINGS

Council and Council Committee meetings are open to the public and attendance is encouraged, except where the Council (or the Council Committee) believes it is necessary in the broader community interest to exclude the public from the discussion (and, if necessary, decision) of a particular matter. The public will only be excluded when considered proper and necessary i.e. the need for confidentiality outweighs the principle of open decision making.

Council encourages public attendance at meetings of the Council and Committees through public notification of meetings by publication in The Granite newsletter.

	<h2>Access to Council and Committee Meetings and Information Code of Practice</h2>	Version No:	11.0
		Issued:	October 2000
		Last Review:	14 April 2020
		Next Review:	February 2021

In accordance with Section 90 Local Government Act 1999, it is not unlawful for 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 of a formally constituted meeting of Council or Committee.

The Council is not bound to hold an informal gathering open to the public in accordance with Section 90(1) Local Government Act 1999 as openness to the public only applies to Council and Council Committee meetings. This means that Section 90(2) Local Government Act 1999 to exclude the public has no role to play.

Public notice of an informal gathering, such as a workshop, shall be given and that the notice clearly indicates whether or not the informal gathering will be open to the public.

The following are examples of informal gatherings or discussions that may be held in accordance with Section 90(8) Local Government Act 1999:

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

4. PROCESS TO EXCLUDE THE PUBLIC FROM A MEETING

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. 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) Local Government Act 1999 a member of the public does not include a member of Council.

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

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

5. MATTERS FROM WHICH COUNCIL, OR A COMMITTEE CAN ORDER THAT THE PUBLIC BE EXCLUDED

In accordance with the requirements of Section 90(3) Local Government Act 1999, 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;

	<h2 style="margin: 0;">Access to Council and Committee Meetings and Information Code of Practice</h2>	Version No:	11.0
		Issued:	October 2000
		Last Review:	14 April 2020
		Next Review:	February 2021

- (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 Plan Amendment Report relating to the amendment is released for public consultation under that Act; or
- (m) 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;
- (n) information relevant to the review of a determination of a council under the Freedom of Information Act 1991.

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.

This is an inclusive (not exhaustive) list of personal affairs matters and so can always, relevantly, be added to by the Council.

In considering whether an order should be made under Section 90(2) Local Government Act 1999, it is irrelevant that discussion of a matter in public may:

- cause embarrassment to the Council or Committee concerned, or to members or employees of the Council; or
- cause a loss of confidence in the Council or Committee. [s.90(4) Local Government Act 1999]

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 the grounds on which it was made. Sufficient detail of the grounds on which the order was made will be included in the minutes.

6. PUBLIC ACCESS TO MINUTES

Minutes of a meeting of Council or a Council Committee will be publicly available, including on the internet within five (5) days after the meeting.

	<h2>Access to Council and Committee Meetings and Information Code of Practice</h2>	Version No:	11.0
		Issued:	October 2000
		Last Review:	14 April 2020
		Next Review:	February 2021

7. USE OF THE CONFIDENTIALITY PROVISIONS

Any consideration of the use of the confidentiality provisions to exclude the public from the discussion of a particular matter at a meeting will require the identification of one or more of the grounds listed within Section 90(3) Local Government Act 1999 and the factual reasons for the relevance and application of the ground(s) in the circumstances. These are listed in clause 5 of this Code.

The policy approach of the Wudinna District Council is that:

1. The principle of open and accountable government is strongly supported;
2. Information of the grounds on which an order to exclude the public is made will be conveyed to the public at the time of 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 Local Government Act 1999 and in particular Section 91(8) Local Government Act 1999 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(7) Local Government Act 1999;
5. The Council will not consider a number of agenda items “in confidence” together i.e. en bloc. It will determine each item separately and consider the 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) Local Government Act 1999 are also to be made known. When making an order the meeting must specify the duration of the order or the circumstances in which the order will cease to apply, or a period after which the order must be reviewed. If the Section 91(7) Local Government Act 1999 order is to apply for a period exceeding 12 months, then this order must be reviewed every 12 months from the date it was made. This along with the making of the order pursuant to Section 90(2) Local Government Act 1999 and the grounds pursuant to Section 90(3) Local Government Act 1999 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. Where a person provides information to the Council and requests that it be kept confidential, Council is not able to even consider this request unless the matter is one that falls within Section 90(3) Local Government Act 1999. If this is the case, Council will then be in a position to consider the request on its merits.

Note: 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.

8. PUBLIC ACCESS TO DOCUMENTS

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 website for public access.

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.

	<h2>Access to Council and Committee Meetings and Information Code of Practice</h2>	Version No:	11.0
		Issued:	October 2000
		Last Review:	14 April 2020
		Next Review:	February 2021

The Council or the Council Committee can only resolve to keep minutes and/or documents confidential under Section 91(7) Local Government Act 1999 if they were considered in confidence pursuant to Sections 90(2) and 90(3) Local Government Act 1999.

In accordance with Section 91(8) Local Government Act 1999 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.

Where keeping a document confidential is considered proper and necessary, a resolution to this effect is required which shall include (Section 91(9) Local Government Act 1999):

- the grounds for confidentiality; and
- 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;
- (if applicable) whether the power to revoke the order will be delegated to an employee of the Council.

Requests to access Council and Council Committee documents can be made under the Freedom of Information Act 1991. Inquiries in relation to the process for seeking access to documents held by Council should be directed to Council's accredited Freedom of Information Officer who is the Chief Executive Officer, phone 08 8680 2002.

9. CONFIDENTIALITY PROVISIONS

The Wudinna District Council will record in the minutes of any Council and Committee meeting the making of an order in accordance with Section 90(2) and (3) and Section 91(7) Local Government Act 1999 as follows:

10. REVIEW OF CONFIDENTIALITY ORDERS

A confidentiality order made under Section 91(7) Local Government Act 1999 must specify the duration of the order or the circumstances in which the order will cease to apply, or a period after which the order must be reviewed. In any event, any order that operates for a period exceeding 12 months must be reviewed at least once in every year.

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.

A review of the reports or documents that were considered under the provision of Section 90(3) and 91(7) Local Government Act 1999 will be conducted every six months to ensure that items are released in accordance with the resolution of Council, when the confidential provision no longer applies.

	<h2>Access to Council and Committee Meetings and Information Code of Practice</h2>	Version No:	11.0
		Issued:	October 2000
		Last Review:	14 April 2020
		Next Review:	February 2021

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 can be delegated to the Chief Executive office 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) Local Government Act 1999.

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) Local Government Act 1999.

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) Local Government Act 1999. Section 90(3) Local Government Act 1999 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) Local Government Act 1999. 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.

11. ACCOUNTABILITY AND REPORTING TO THE COMMUNITY

A report on the use of Sections 90(2) and 91(7) Local Government Act 1999 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 commitment to the principle of accountability to the community. The reporting should include 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) Local Government Act 1999 were utilised;
2. Number of occasions each of the provisions of Sections 90(2) and 90(3) and Section 91(7) Local Government Act 1999 were utilised, expressed as a percentage of total agenda items considered;
3. An indication of any particular issues that contributed to the use of confidentiality provisions on more than one occasion e.g. a proposal to acquire a parcel of land was considered on three separate occasions;
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.

12. AVAILABILITY OF CODE

This Code of Practice will be available for inspection at Council's principal office during ordinary business hours and on the Council's website www.wudinna.sa.gov.au. Copies will also be provided to interested members of the community upon request, and upon payment of a fee in accordance with Council's Schedule of Fees and Charges.

13. GRIEVANCE

Council has established procedures for the review of decisions under Section 270 Local Government Act 1999 for:

- Council, and its Committees
- employees of the Council
- other persons acting on behalf of the Council.

Should a person be aggrieved about public access to either a meeting or a document then they can lodge an application for review of that decision under the procedures established by Council. The Procedures are available from the Council office or website via the Grievance Management Policy.

14. COUNCIL CONTACT PERSON

The nominated contact officer for the Wudinna District Council is the Chief Executive Officer (phone 08 8680 2002) or email admin@wudinna.sa.gov.au.