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**NAME OF POLICY:** Code of Practice – Access to Meetings & Documents

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**POLICY MANUAL:** Governance

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## 1. Introduction

- 1.1. Section 92 of the *Local Government Act 1999* (the Act), requires the Council to prepare and adopt a Code of Practice for Access to Meetings and Documents (the Code).
- 1.2. In fulfilling the role of an effective Council that is responsive to the needs of its community and which operates within the legal framework prescribed by the Act, the Council is committed to the principle of open and accountable government.
- 1.3. The Council endorses and fully supports Council and Committee Meeting procedures which contribute to open, transparent and informed decision-making and encourages appropriate community participation in the affairs of the Council. The Council does however also recognise that on some occasions it may be necessary in the broader community interest and in accordance with legislative provisions, to restrict public access to meeting discussions and/or documents.
- 1.4. Public access to the Council and Committee Meetings and related documents is one of the primary means by which our community can gain access to information about the business of the Council. This Code provides information to the community on:
  - 1.4.1. accessing Council and Committee Meeting Agendas and Minutes;
  - 1.4.2. the purpose and on what basis the Council may apply the legislative provisions to restrict public access to meetings and meeting documents;
  - 1.4.3. the process for reviewing confidentiality orders, releasing information from confidence and reporting on confidential matters.

## 2. Definitions

The definitions of key terms used in the Code are set out below:

**Clear Days** - The calculation of clear days excludes the day on which the notice is given and the day of the meeting, but includes Saturday, Sunday and Public Holidays. Three (3) clear days' notice is given on the Thursday (by 5:00pm) for a meeting on the following Monday.<sup>1</sup>

**Committee** - Means a Committee of the Council established under Section 41 of the Act, including any Sub-Committee. This includes Council's Audit and Risk Committee.<sup>2</sup>

**Information or Briefing Session** - A session where more than one Member of the Council or a Committee is invited to attend for the purposes of providing information or a briefing on a matter.<sup>3</sup>

**Members** - Refers to both Council and Committee Members except where used in a different context (e.g. members of the public).

**Notice of Meeting** - The document required which provides the date, time and place of the respective meeting and accompanies the Meeting Agenda.

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<sup>1</sup> *Local Government (Procedures at Meetings) Regulations 2013*, Regulation 3(2)

<sup>2</sup> Council's website has further information on [Council's committees](#).

<sup>3</sup> *Local Government Act 1999*, Section 90A

**Principal Office** – Pursuant to Section 45 of the Act, the Council must nominate a place as its Principal office for the purposes of the Act. The Council's Principal Office is the Norwood Town Hall located at 175 The Parade, Norwood.

### 3. Access to the Agenda for Meetings

- 3.1. At least three (3) clear days before the Meeting (unless it is a Special Meeting) the Chief Executive Officer must give written notice of the Council or Committee Meeting to the respective Members, setting out the date, time and place of the meeting. The Notice is accompanied by the Agenda for the meeting which provides a list of items to be considered at the meeting (described accurately and in reasonable detail), together with any documents and reports relating to these matters.<sup>4</sup>
- 3.2. For Special Meetings, the Chief Executive Officer will provide notice of the meeting at least four (4) hours before the commencement of the meeting.<sup>5</sup>
- 3.3. Agenda papers that are provided to Members may include an indication from the Chief Executive Officer that the meeting may need to determine to consider an item in confidence, with the public to be excluded from the meeting during discussion on that item. Where such an indication is made, the Chief Executive Officer must specify the basis under which the confidentiality order could be made in accordance with Section 90(3) of the Act.
- 3.4. The Notice, Agenda and supporting documentation, excluding any matters that the Chief Executive Officer has indicated may need to be considered in confidence, will be made available for public inspection via the Council's website ([www.npsp.sa.gov.au](http://www.npsp.sa.gov.au)), at the same time as they are forwarded to the Members.<sup>6</sup>
- 3.5. The Notice of Meeting will be placed on public display at the Principal Office of the Council and kept on public display until the completion of the relevant meeting.<sup>7</sup>
- 3.6. A copy of the Agenda list and any non-confidential reports, may be obtained from Council's Principal Office on payment of a fee (if any) fixed by the Council. Council encourages viewing the agenda online to minimise the environmental impact of printing.
- 3.7. Should there be a document or report that is supplied to Members at the meeting itself, these will be uploaded to the Council's website as soon as possible and copies of such documents will be available in the meeting.<sup>8</sup>
- 3.8. Should the Council or Committee **not** resolve to exclude the public from the meeting for the consideration of an item where the Chief Executive Officer had indicated the meeting may need to determine to consider an item in confidence, a copy of the document will be made available to the public via the website the next working day after the meeting.

### 4. Public Access to Meetings

- 4.1. Council and Committee meetings are open to the public and attendance is encouraged and welcomed.
- 4.2. There are, however, times where the Council or a Committee, believes it is necessary in the broader community interest to exclude the public from the discussion of a particular matter in accordance with Section 90(3) of the Act.
- 4.3. The public will only be excluded when the need for confidentiality outweighs the principle of open decision making.
- 4.4. As the Council encourages public attendance at meetings, details of meeting dates and times can be obtained from Council's website at [www.npsp.sa.gov.au](http://www.npsp.sa.gov.au) or by contacting the Council offices on 8366 4555 or [townhall@npsp.sa.gov.au](mailto:townhall@npsp.sa.gov.au).

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<sup>4</sup> Local Government Act 1999, Section 83(1), (3) and (4)

<sup>5</sup> Local Government Act 1999, Sections 83(1a), (2) and 132(1)(a)

<sup>6</sup> Local Government Act 1999, Section 84(2) and (5)(a)

<sup>7</sup> Local Government Act 1999, Sections 84(3), 132(1)(a)

<sup>8</sup> Local Government Act 1999, Section 84(5)(b)

## 5. Information or Briefing sessions

- 5.1. An Information or Briefing Session may be held pursuant to Section 90A of the Act. These sessions provide a valuable opportunity to enhance Council decision-making processes by providing opportunities for Members to become better informed and to seek clarification of issues.
- 5.2. Information and Briefing Sessions are used solely for the purpose of information sharing and not for the purpose of obtaining, or effectively obtaining, a decision on a matter outside a formally constituted meeting of the Council or committee.
- 5.3. These sessions provide a forum for discussing issues and options in an informal environment, which enables Members to question, clarify and develop greater understanding of the issues that are under consideration, which supports and contributes to informed decision making in the appropriate forum (i.e. a Council or Committee Meeting).
- 5.4. The co-ordination of these sessions is managed by the General Manager, Governance & Civic Affairs, to ensure they are conducted in accordance with legislative requirements and the purpose for which they have been arranged.
- 5.5. While Members may be provided with background information ahead of an Information or Briefing Session, no agendas or documents are published on the website or made publicly available in relation to an Information or Briefing Session.
- 5.6. An Information or Briefing Session on a matter that will be included on a Council or Committee Meeting Agenda must be open to the public. However, the Chief Executive Officer or the Council may order that the session is closed to the public, if the matter listed for discussion falls within the confidentiality provisions of Section 90(3) of the Act.
- 5.7. Whether or not an Information or Briefing session has been open to the public, the following information must be published as soon as practicable after the holding of the session:
  - 5.7.1. the place, date and time of the session;
  - 5.7.2. the matter discussed at the session; and
  - 5.7.3. whether or not the session was open to the public.<sup>9</sup>
- 5.8. Where appropriate, the above information will be included in a forward schedule of Information Sessions on Council's website ([www.npsp.sa.gov.au](http://www.npsp.sa.gov.au)).
- 5.9. If an order is made to close the Information or Briefing session to the public, a record must be made of the following and this record will be added to the general information above:
  - 5.9.1. the grounds on which it was made;
  - 5.9.2. the basis on which the information or matter falls within the grounds provided above;
  - 5.9.3. (where relevant), why receipt, consideration or discussion of the information matter in public would be contrary to the public interest.<sup>10</sup>

## 6. Approach to the use of Confidentiality Provisions

- 6.1. The Council strongly supports the principle of open, accessible and accountable government. Confidentiality provisions will only be utilised after careful consideration and when considered proper and necessary.
- 6.2. The circumstances in which the Council or a Committee may order the public to be excluded from a meeting are detailed in Section 90(3) of the Act and included at Appendix 1. When using these provisions, the factual reasons and how the relevant grounds from Section 90(3) apply will be summarised succinctly in plain English. This information will be provided with the item indicated to be considered in confidence.

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<sup>9</sup> Local Government (General) Regulations, Regulation 8AB

<sup>10</sup> Local Government Act 1999, Section 90A(5)

- 6.3. Where a person provides information to the Council or Committee and requests that it be kept confidential, the Council or Committee is not able to consider this request unless the matter is one which falls within the ambit of Section 90(3) of the Act. If this is the case, the Council or Committee will be able to consider the request on its merits.
- 6.4. In the respective meeting, the decision to exclude the public for each agenda item listed for consideration in confidence, will be determined separately and consider the grounds and basis relevant to each item. The meeting will not consider items together 'en bloc'. The decision on whether to order the exclusion of the public must be made in public.
- 6.5. For the convenience of the public, items that are indicated to be heard in confidence are usually placed towards the end of the agenda so they can be considered once all other business has been dealt with.
- 6.6. There may be circumstances where, during the meeting, it becomes apparent that a matter should be considered in confidence. In those cases, members of the public will be asked to leave the meeting whilst the matter is discussed (subject to an appropriate resolution of the meeting to order the exclusion of the public at that time).
- 6.7. Where the Council or Committee, is considering making an order that the public be excluded, it is irrelevant that discussion of a matter in public may:
  - 6.7.1. cause embarrassment to the Council or Committee concerned, or to members or employees of the Council; or
  - 6.7.2. cause a loss of confidence in the Council or Committee; or
  - 6.7.3. involve discussion of a matter that is controversial within the Council area; or
  - 6.7.4. make the Council susceptible to adverse criticism.<sup>11</sup>
- 6.8. If a decision to exclude the public is taken, a note in the minutes of the making of the order is required which specifies:
  - 6.8.1. the grounds on which it was made;
  - 6.8.2. the basis on which the information or matter falls within the grounds provided above;
  - 6.8.3. (where relevant), why receipt, consideration or discussion of the information matter in public would be contrary to the public interest.<sup>12</sup>
- 6.9. Once the meeting has determined to exclude the public, the public must then leave the room. This means that all members of the public (including employees) unless exempted by being named in the resolution as entitled to remain while the item is considered, are required to leave the room. The Members of the Council or the Committee are not required to be explicitly named in the resolution.
- 6.10. Once the Council or Committee has made the order, it is an offence for a person, knowing that an order is in force, to enter or remain in a room in which such a meeting is being held. A Council employee or SAPOL may use reasonable force to remove the person from the room.<sup>13</sup>
- 6.11. Once the meeting has discussed/resolved the confidential item, the meeting will then consider if it is necessary to make an order to keep all or part of the documents related to the relevant agenda item (including the resolution) confidential pursuant to Section 91(7) of the Act.
- 6.12. The meeting can only resolve to keep Minutes and/or documents confidential under section 91(7) if they were considered in confidence at the meeting pursuant to Section 90(2) and 90(3) of the Act.

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<sup>11</sup> *Local Government Act 1999*, Section 90(4)

<sup>12</sup> *Local Government Act 1999*, Section 90(7)

<sup>13</sup> *Local Government Act 1999*, Section 90(5)

- 6.13. When making an order pursuant to Section 91(7) of the Act, the Council is mindful of the provisions in Section 91(8) which prescribe certain information which cannot be kept confidential. This includes:
- 6.13.1. employee remuneration or conditions of service;
  - 6.13.2. successful tenderers;
  - 6.13.3. contract amounts payable by the Council once a contract has been entered into by all parties to the contract; or
  - 6.13.4. land that has been acquired or disposed of by the Council.
- 6.14. The resolution ordering that a document(s) will be kept confidential will include:
- 6.14.1. the grounds for confidentiality (as per Section 90(3) of the Act);
  - 6.14.2. 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, noting any order that operates for a period exceeding 12 months must be reviewed at least once in every year.
  - 6.14.3. where applicable whether the power to revoke the order will be delegated to an employee of the Council.<sup>14</sup>
- 6.15. The Council is committed to ensuring information considered in confidence will be made publicly available as soon as possible.
- 6.16. Once the order under Section 91(7) of the Act has been made, the public are permitted to re-enter the meeting. If the meeting did not resolve to make such an order, then the decision and information in relation to the matter will be made publicly known via the minutes of the meeting which will be available via Council's website within five (5) days of the meeting.<sup>15</sup>

## **7. Review of confidentiality orders**

- 7.1. To assist with reviewing and reporting on the confidentiality orders that are made by the Council, a register of the confidential orders will be maintained by the Council. It is the practice of the Council to review all confidentiality orders twice a year, with the aim to make the information available to the public at the earliest opportunity.
- 7.2. The Register of Confidential Items contains the following information:
- 7.2.1. title of the item;
  - 7.2.2. date of the meeting;
  - 7.2.3. the legislative provision to which it applies;
  - 7.2.4. date of order expiry; and
  - 7.2.5. items which the order applies to.
- 7.3. 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. In any event, any order that operates for a period exceeding 12 months must be reviewed at least once in every year.
- 7.4. 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.
- 7.5. In reviewing orders, an assessment on whether the grounds for non-disclosure are still relevant will be made. The conduct of the annual review is delegated to the Chief Executive Officer and sub-delegated to an employee of the Council. The outcome of a review cannot be the making of a new order (including on different grounds to the original order). Possible review outcomes of a delegate review may be:

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<sup>14</sup> *Local Government Act 1999*, Section 91(9)

<sup>15</sup> *Local Government Act 1999*, Section 91(3), Section 132(1) and Schedule 5

- 7.5.1. do nothing;
  - 7.5.2. revoke the confidentiality order in its entirety (assuming this power has been delegated); or
  - 7.5.3. partially revoke the confidentiality order (assuming the power to revoke an order has been delegated).
- 7.6. Prior to an original order lapsing, if circumstances require the duration of the order to be extended so that the documents will be maintained as confidential, the reviewer will prepare a report to the Council making recommendations with respect to each item to be retained in confidence. The decision on whether to extend the duration of an order can only be made by the Council or Committee which made the order.
- 7.7. The 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 within the scope of the review and will not be considered en bloc.

## **8. Public access to documents**

- 8.1. Minutes of Council and Committee Meetings are provided to Members within five (5) days after the meeting. Copies of the Minutes, excluding confidential information, are made available to the public via the Council's website.
- 8.2. The Council is required to make a wide range of other documents publicly available. Most of these documents are set out in Schedule 5 of the Act.
- 8.3. These documents are published on the Council's website ([www.npsp.sa.gov.au](http://www.npsp.sa.gov.au)). On request at the Council's Principal Office, a printed copy of a document can be provided. This may require the payment of a fee (if any) set by Council (information on the Council's fees and charges can be accessed [here](#)).
- 8.4. Requests to access documents that are not otherwise publicly available, can be made under the *Freedom of Information Act 1991*. Inquiries in relation to the process for seeking access to documents held by the Council should be directed to the Freedom of Information Officer via 8366 4555 or via [townhall@npsp.sa.gov.au](mailto:townhall@npsp.sa.gov.au).

## **9. Reporting**

- 9.1. A report on the use of Sections 90(2) and 91(7) of the Act by the Council and Committees must be included in the Council's Annual Report as required by Schedule 4 of the Act and Regulation 35 of the *Local Government (General) Regulations 2013*. The report will include the following information:
  - 9.1.1. the total number of orders made under Section 90(2) and 91(7) of the Act;
  - 9.1.2. the date and subject of each of those orders made;
  - 9.1.3. in relation to the report on Section 90(2) orders, the number of each times each grounds as per Section 90(3) was utilised;
  - 9.1.4. in relation Section 91(7) orders – the number of orders made that expired, ceased to apply or were revoked in the financial year, as well as the number that remained operative at the end of the year (not including orders made before 15 November 2010).

## **10. Review of Council Decisions**

- 10.1. Should a person be aggrieved about public access to either a Council or Committee meeting, or document(s), they can lodge an application for consideration under Council's Review of Decisions Policy and Procedure which can be accessed via the Council's website ([www.npsp.sa.gov.au](http://www.npsp.sa.gov.au)) or from the Norwood Town Hall via [townhall@npsp.sa.gov.au](mailto:townhall@npsp.sa.gov.au) or during normal office hours.

## **11. Availability of the Code**

11.1. The public may inspect a copy of this Code via the Council's website ([www.npsp.sa.gov.au](http://www.npsp.sa.gov.au)). On request at the Council's Principal Office, a printed copy of the Code can be provided. This may require the payment of a fee (if any) set by Council (information on the Council's fees and charges can be accessed [here](#)).

11.2. Queries with the Code may be directed to [Governance@npsp.sa.gov.au](mailto:Governance@npsp.sa.gov.au) or via 8366 4593.

## **12. Review of the Code**

12.1. The Council must review the operation of this Code within twelve (12) months of the next Local Government General Election. This review is delegated to the Chief Executive Officer and subdelegated to an employee.

12.2. The Council may at any time alter the Code or adopt a new Code.

12.3. Before the Council adopts, alters or substitutes this Code, the Council must undertake public consultation on the proposed Code, alterations or substitute Code as the case may be. The Council must follow the relevant process set out within the Council's Community Consultation Policy.<sup>16</sup>

## **13. Adoption of the Code**

The Council reviewed and amended this Code of Practice on 2 September 2024.

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<sup>16</sup> *Local Government Act 1999*, Section 92(5)

## **Appendix A – Matters for which Council or a Committee Meeting can order that the public be excluded**

In accordance with Section 90(3) of the *Local Government Act 1999* (the Act), Council or a committee may order that the public be excluded from attendance at a meeting in order to receive, discuss or consider in confidence any information or matter as follows:

- (a) information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead);

*Note: The Act provides a definition of “personal affairs” which includes a person’s:*

- *financial affairs;*
- *criminal records;*
- *marital or other personal relationships;*
- *personal qualities, attributes or health status;*
- *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.*

- (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.