



## Code of Practice for Access to Council and Committee Meetings, and Council Documents

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<b>Applicable Legislation:</b>	Local Government Act 1999, section 91 & 92
<b>Relevant Policies:</b>	Procedure for Internal Review of Council Decisions Fees and Charges Policy
<b>Related Procedures:</b>	Local Government Association – Confidentiality Guidelines
<b>Related Documents</b>	Confidential Register
<b>Delegations:</b>	Chief Executive Officer

## KINGSTON DISTRICT COUNCIL

### CODE OF PRACTICE FOR ACCESS TO COUNCIL AND COMMITTEE MEETINGS AND COUNCIL DOCUMENTS

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#### 1. PURPOSE

The Kingston District Council supports the principle that the processes to be observed at a meeting of Council or a Council Committee should contribute to open, transparent and informed decision making and encourage appropriate community participation in the affairs of the Council.

This Code is prepared pursuant to Section 92 of the Local Government Act 1999 which requires Council to prepare a Code of Practice relating to the principles, policies and processes for public access to meetings of Council and associated documents.

#### 2. SCOPE

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

- access to the agenda for meetings,
- public access to meetings,
- the process to exclude the public from meetings,
- matters for which Council, or a Council Committee, can order that the public be excluded,
- how Council will approach the use of the confidential provisions in the Act,
- public access to documents, including minutes;
- review of confidentiality orders;
- accountability and reporting to the community, and the codes availability, and
- grievances about the use of the code by Council.

#### 3. DEFINITIONS

<i>Clear Days</i>	The time between the giving of the notice and the day of the meeting, but excluding both the day on which the notice was given and the day of the meeting, eg notice is given on a Thursday for a following Monday meeting, the clear days being Friday, Saturday and Sunday.
<i>Personal Affairs</i>	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. PUBLIC ACCESS TO THE AGENDA FOR MEETINGS**

- 4.1 At least three '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/ 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.
- 4.2 The notice of meeting and agenda will be placed on public display at the principal office of Council, 29 Holland Street, Kingston SE and on Council's website [www.kingstondc.sa.gov.au](http://www.kingstondc.sa.gov.au).
- 4.3 Items listed on the agenda will be described accurately and in reasonable detail, except for those items listed which are to be considered in confidence, and will be kept on public display and continue to be published on Council's website until the completion of the relevant Council or Council Committee meeting.
- 4.4 Copies of the agenda documents and non-confidential reports that are to be considered at the meeting will be made available to members of the public in attendance. A reasonable number of copies will also be available for public inspection as soon as practicable after they are supplied to the Members of the Council.
- 4.5 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 Fees and Charges Policy.
- 4.6 Where the CEO believes that a document or report on a particular matter should be considered in confidence with the public to be excluded, the basis under which the order could be made in accordance with the confidentiality provisions in section 90(3) of the Act will be specified.

#### **5. PUBLIC ACCESS TO MEETINGS**

- 5.1 Council and Council committee meetings are open to the public and attendance is encouraged, except where Council (or the Council committee) believes it is necessary in the broader community interest to exclude the public from the discussion (and, if necessary, decision) of a particular matter.
- 5.2 The public will only be excluded when considered proper and necessary ie. the need for confidentiality outweighs the principle of open decision making.
- 5.3 Council encourages public attendance at meetings of the Council and Committees through public notifications of meetings by notice in the Coastal Leader and on the Council's website.

- 5.4 Elected Members, Committee members and staff may 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 a formally constituted meeting of Council or Committee. Council is not bound to hold an informal gathering open to the public in accordance with section 90(1) of the Act as openness to the public only applies to Council and Council Committee meetings.
- 5.5 The following are examples of acceptable informal meetings or discussions that may be held in accordance with section 90(8):
- 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.

## **6. PROCESS TO EXCLUDE THE PUBLIC**

- 6.1 It is the practice of the Kingston District Council to deal with the agenda items in the order listed in the agenda, unless it is resolved by the Council to defer the confidential item until all other business has been dealt with.
- 6.2 Before the Mayor, or the Chairperson in the case of a Council Committee, 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) a member of the public does not include an Elected Member.
- 6.3 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, however it is recommended that Council waits until Police attend to remove the person.
- 6.4 Once discussion on that particular matter is concluded, the public are 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.
- 6.5 Council, or a Council committee, can by inclusion within the resolution, permit a particular person or persons to remain in the meeting.

## 7. MATTERS FROM WHICH THE PUBLIC CAN BE EXCLUDED

- 7.1 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 of 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 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.*

7.2 When considering whether a confidential order should be made, it is irrelevant that discussion of a matter in public may:

- cause embarrassment to Council or the Committee concerned, or to members or employees of the Council; or
- cause a loss of confidence in Council or Committee.

7.3 If a decision to exclude the public is taken, Council or the Council Committee is required to make a note in sufficient detail in the minutes of the making of the order and the grounds on which it was made.

## **8. PUBLIC ACCESS TO MINUTES**

8.1 Minutes of a meeting of Council or a Council Committee will be publicly available at the Council office and on Council's website within five days after the meeting.

## **9. USE OF THE CONFIDENTIALITY PROVISIONS**

9.1 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 (Clause 7 of this Code) and the factual reasons for the relevance and application of the ground(s) in the circumstances.

9.2 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;
- 9.3 The Council will not consider a number of agenda items “in confidence” together... It will determine each item separately and consider the exemptions relevant to each item. The public can be present for the debate on whether any subsequent items should be considered in confidence.
  - 9.4 Once the confidential discussion of the matter is concluded, the meeting will then consider if it is necessary to make an order that a document, report, attachment, minute or other associated information with this agenda item remain confidential. In determining this, the meeting will have regard to the provisions of section 91 and in particular section 91 (8) which details when a council must not order that a document remain confidential (see Clause 10.3).
  - 9.5 If the meeting determines that it is proper and necessary to keep a document, report, attachment, minute or other associated information 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;
  - 9.6 Once the resolution has been made and the public have returned, 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) are also to be made known.
  - 9.7 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) 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 and consideration given to delegation to the Chief Executive Officer the authority to review the order. This along with the making of the order pursuant to section 90(2) and the grounds pursuant to section 90(3) on which it was made are also to be recorded in the minutes.
  - 9.8 No formal resolution is required to come out of confidence and go back into public session.
  - 9.9 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.
  - 9.10 Where a person provides information to Council or a Council Committee 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). If this is the case, Council will then be in a position to consider the request on its merits.
  - 9.11 The use of all confidentiality provisions will be recorded in Council's Confidential Register.

## 10. PUBLIC ACCESS TO DOCUMENTS

- 10.1 Various documents are available for inspection and purchase (for a fee) by the public at the Council office. Council will also make these documents available for inspection on Council's website.
- 10.2 The Council or the Council Committee will only order that a document associated with a discussion from which the public are excluded will remain confidential if it is considered necessary in the broader community interest.
- 10.3 Council or a Council Committee must not make an order to prevent:
  - 10.3.1 the disclosure of the remuneration or conditions of service of an employee after they have been set or determined; or
  - 10.3.2 the disclosure of the identification 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
  - 10.3.3 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
  - 10.3.4 the disclosure of the identity of land that has been acquired or disposed of by Council, or of any reasons adopted by the Council as to why land has been acquisition or disposed of by Council.
- 10.4 Where keeping a document confidential is considered proper and necessary, a resolution to this effect is required which shall include:
  - 10.4.1 the grounds for confidentiality; and
  - 10.4.2 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 – if the order has a duration of more than 12 months, the order must be reviewed at least once in every year;
  - 10.4.3 whether the power to revoke the order will be delegated to an employee of the Council.

- 10.5 Requests to access Council and Council Committee documents can be made under the Freedom of Information Act 1991. Enquiries in relation to the process for seeking access to documents held by Council should be directed to Council's accredited Freedom of Information Officer who is, Heather Schinckel, Manager Corporate and Community Services, telephone 8767 2033.

## **11. REVIEW OF CONFIDENTIALITY ORDERS**

- 11.1.1 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.
- 11.1.2 Any order that operates for a period exceeding 12 months must be reviewed at least once in every year to ascertain 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.
- 11.1.3 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 prior to the expiry date 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 91(7) of the Act.
- 11.1.4 Council may delegate the power to undertake an annual review to the Chief Executive Officer, but it cannot delegate the power to apply Sections 90(3) and 91(7) of the Act.
- 11.1.5 An order will lapse if the time or event specified has been reached or carried out. In that case, Council does not need to resolve for the confidential order to be lifted. Once the order has lapsed, the minutes and/or documents automatically become public. Council will make such information publicly available on its website within a reasonable timeframe not being more than 90 days after an order has lapsed.
- 11.1.6 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 event under section 90(3) of the Act. This section of the Act must be applied separately to each item and not en bloc.
- 11.1.7 If there is no longer any need for the confidentiality order then the Council may delegate to the Chief Executive Officer 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. ACCOUNTABILITY AND REPORTING TO THE COMMUNITY**

- 12.1 A report on the use of confidentiality provisions in Sections 90(2) and 91(7) by the Council and Council Committees must be included in the annual report of a Council as required by Schedule 4 of the Act.
- 12.2 The report will include the following information, separately identified for both Council and Council Committees:
- 12.2.1 Number of occasions each of the provisions of sections 90(2) and 90(3) were utilised;
  - 12.2.2 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;
  - 12.2.3 An indication of any particular issues that contributed to the use of confidentiality provisions on more than one occasion;
  - 12.2.4 Number of occasions that information originally declared confidential has subsequently been made publicly available; and
  - 12.2.5 Number of occasions that information declared confidential has not been made publicly available and the reason for this in each case.

## **13. COMPLAINTS**

- 13.1 Should a person be aggrieved about public access to either a meeting or associated document, they should firstly raise their question or complaint in writing to the Chief Executive Officer, who will provide a full explanation of the application to the confidentiality provisions. It is anticipated that most, if not all, questions will be resolved through this manner.
- 13.2 However, should this not resolve the matter, the aggrieved person may lodge an application for review of that decision under the Internal Review of Council Decisions Policy. This Policy is available on Council's website or from the Council Office.
- 13.3 Additionally, any aggrieved person may also lodge a complaint with the Officer of Public Integrity or the Ombudsman, who may carry out an investigation if it appears to the Ombudsman that Council or a Council Committee may have acted unreasonably to exclude members of the public from a meeting or prevented access to associated documents.

## **14. AVAILABILITY OF CODE**

The public may inspect a copy of the Code, without charge, at the offices of Council during office hours, and may obtain a copy for a fee fixed by Council. The Code is also available on the internet at [www.kingstondc.sa.gov.au](http://www.kingstondc.sa.gov.au).

## 15. REVIEW OF THE CODE

Council will review this code within 12 months of the conclusion of each periodic election to ensure that the principle of open government is being applied in a proper manner. Council has the ability to review this code at any time if considered desirable.

## 17. COUNCIL CONTACT PERSON

The Chief Executive Officer  
 Kingston District Council  
 PO Box 321  
 KINGSTON SE SA 5275  
 Phone: 87672033  
 Email: [ceo@kingstondc.sa.gov.au](mailto:ceo@kingstondc.sa.gov.au)

## 17 ADOPTION OF THE CODE

Document History	Issue Date	Resolution Number	Comment
	19 November 2004	2711	Code adopted by Council.
	16 December 2005	3385	Code reviewed by Council.
	20 July 2007	4308	Code reviewed by Council and agreed to proceed to public consultation.
	21 September 2007	4436	Code adopted by Council
	27 May 2011	7280	Code reviewed by Council and agreed to proceed to public consultation.
	29 July 2011	7389	Code adopted by Council.
	24 May 2013	8436	Code reviewed by Council and agreed to proceed to public consultation.
	19 July 2013	8520	Code adopted by Council.
	21 August 2015	9344	Code reviewed by Council and agreed to proceed to public consultation.
	23 October 2015	9373	Code adopted by Council