



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:	Chief Executive Officer	Record Number:	16/13889[v6]
Responsible Officer:	Governance Officer	Minute Reference:	123/2019 (12/06/2019)
Date Adopted:	12/06/2019	Next Review Date:	June 2022

1. POLICY OBJECTIVES

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

Accordingly this policy has been developed to:

- ensure appropriate public access to Council meetings and documents;
- inform the community about public access to Council meetings and documents.

2. SCOPE

This policy applies to:

- a) Council;
- b) All committees of Council;
- c) All Council meetings and documents;
- d) All committees of Council meetings and documents.

3. DEFINITIONS

Clear Days	The time between the giving of the notice of a meeting and the day of the meeting, but excluding both the day on which the notice was given and the day of the meeting, e.g. notice is given on a Thursday for a following Monday meeting, the clear days are Friday, Saturday and Sunday.
Council	Council and all committees of the Council.
Council meeting	Meetings of the Council and committees of the Council.
Council minutes	Minutes of meetings held by the Council and committees of the Council.
Employee(s)	All personnel undertaking tasks/duties for and/or on behalf of the 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.

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Personal affairs	Includes 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.
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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;
- Complaint procedures;
- 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) must give written notice of the meeting to all Elected 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.

Notice of the meeting and an agenda will be placed on public display at each office of the Council that is open to the public for the general administration of Council business. Copies will also be available on [Council's website](#) until the completion of the relevant Council meeting. A reasonable number of copies will be available for public inspection as soon as practicable after they are supplied to Elected Members.

A reasonable number of copies of 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 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 Mayor 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. Council cannot consider a matter in confidence, unless the matter is one that falls within section 90(3) of the Act.

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.

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

- Planning sessions;
- Development of policies and strategies;
- Briefing or training sessions;
- Workshops;
- Social gatherings to encourage informal communication between Elected Members and staff;

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.

Council's Informal Gatherings Policy PO017, provides further information about the requirements for informal gatherings.

4.3 Confidentiality and Matters Where the Public can be Excluded

In accordance with section 90(2) of the Act Council may order that the public be excluded from attendance at a meeting, to the extent that the Council considers it to be necessary and appropriate in order to receive, discuss or consider in confidence a particular matter.

Before a meeting orders that the public be excluded, the meeting must, in public, formally determine if this is necessary and appropriate and if so, then pass a resolution to exclude the public while dealing with that matter.

This means that all members of the public (including staff) are required to leave the room, unless exempted by being named in the resolution as entitled to remain. 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 Council can, by inclusion within the resolution, permit a particular person or persons to remain in the meeting (i.e. a ratepayer who is suffering personal hardship whilst the circumstances concerning the payment of rates is being discussed). For the operation of section 90(2) a member of the public does not include an Elected Member.

Once the order has been made, 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 upon request.

Once discussion on that particular matter is concluded, the public are then permitted to re-enter the meeting. The decision of the meeting will be made publicly known unless the Council has resolved to order that information relating to the matter remain confidential.

In accordance with the requirements of section 90(3) of the Act, Council may only order that the public be excluded in the following circumstances:

- (a) *information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead);*
- (b) *information the disclosure of which—*
 - (i) *could reasonably be expected to confer a commercial advantage on a person with whom the Council is conducting, or proposing to conduct, business, or to prejudice the commercial position of the Council; and*
 - (ii) *would, on balance, be contrary to the public interest;*
- (c) *information the disclosure of which would reveal a trade secret;*
- (d) *commercial information of a confidential nature (not being a trade secret) the disclosure of which—*
 - (i) *could reasonably be expected to prejudice the commercial position of the person who supplied the information, or to confer a commercial advantage on a third party; and*
 - (ii) *would, on balance, be contrary to the public interest;*
- (e) *matters affecting the security of the Council, members or employees of the Council, or Council property, or the safety of any person;*
- (f) *information the disclosure of which could reasonably be expected to prejudice the maintenance of law, including by affecting (or potentially affecting) the prevention, detection or investigation of a criminal offence, or the right to a fair trial;*
- (g) *matters that must be considered in confidence in order to ensure that the Council does not breach any law, order or direction of a court or tribunal constituted by law, any duty of confidence, or other legal obligation or duty;*
- (h) *legal advice;*
- (i) *information relating to actual litigation, or litigation that the Council or Council committee believes on reasonable grounds will take place, involving the Council or an employee of the Council;*
- (j) *information the disclosure of which—*
 - (i) *would divulge information provided on a confidential basis by or to a Minister of the Crown, or another public authority or official (not being an employee of the Council, or a person engaged by the Council); and*
 - (ii) *would, on balance, be contrary to the public interest;*
- (k) *tenders for the supply of goods, the provision of services or the carrying out of works;*
- (l) *information relating to a proposed amendment to a Development Plan under the Development Act 1993 before a 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.*

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) and the factual reasons for the relevance and application of the ground(s) in the circumstances.

In considering whether an order should be made, it is irrelevant that discussion of a matter in public may:

- Cause embarrassment to the Council, Elected Members or employees of the Council;
- Cause a loss of confidence in the Council.

Further, in accordance with section 91(8), the Council 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;
- 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;
- The disclosure of the amount(s) 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;
- 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.

If a decision to exclude the public is taken, the Council is required to record the making of the order in the minutes and provide sufficient detail of the grounds on which the order was made.

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 and, in particular, section 91(8) which details when a Council must not order that a document remain confidential.

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 by the meeting, in accordance with section 91(7) of the Act, which will also be made known to the public.

If an order to keep a document confidential is made, 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 twelve months, then the order must be reviewed every twelve months from the date it was made.

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

The Council cannot delegate the power to apply sections 90(3) and 91(7) of the Act.

4.4 Public Access to Documents

Minutes and non-confidential Council meeting documents will be available within five days (which is different to “Clear Days” and includes weekends and public holidays) after the meeting. Various other documents, including this policy, are available for inspection at Council offices during office hours, can be purchased (for a fee) or provided in various electronic formats, including via [Council's website](#).

Alternatively, requests to access other Council documents can be made under the Freedom of Information (FOI) Act 1991 and inquiries relating to this process can be directed to Council’s accredited Freedom of Information Officer on 8832 0000.

4.5 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 twelve 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 the CEO is of the view that there are items that require a fresh confidentiality order (because the original order is about to expire) and that the grounds for non-disclosure are still relevant, then the CEO will prepare a report to Council making recommendations with respect to each item that is recommended be retained in confidence.

Council must assess each item separately against sections 90(3) and 91(7) of the Act to determine if the grounds for non-disclosure are still relevant.

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.

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 and the Council will not need to resolve that the confidential order is lifted. Once the order has lapsed, the minutes and/or documents automatically become public.

4.6 Accountability and Reporting

A report on the use of sections 90(2) and 91(7) by the Council must be included in the Council’s annual report, as required by Schedule 4 of the Act. The reporting should include the following information (separately identified for the 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 e.g. a proposal to acquire a parcel of land was considered on three separate occasions;
- 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 or access to either a meeting or a document can be made in writing to the Council's Governance Officer. Complaints will be managed in accordance with Council's Complaints Policy PO147.

6. REVIEW

The Council must review this code of practice within twelve months after the conclusion of a periodic election and as deemed necessary in consideration of any changes to legislation, relevant standards, codes and guidelines, audit findings and/or any corrective actions/controls arising from risk assessment.

7. TRAINING

Council is committed to supporting Elected Members, members of committees of Council and employees in complying with this policy.

Training needs will be regularly reviewed, during induction, individual performance reviews and as necessary in consideration of any changes to legislation and relevant standards, codes and guidelines.

Elected Members, members of committees of Council and employees will actively participate in training.

8. RELATED COUNCIL POLICIES AND DOCUMENTS

PO014 Employee Code of Conduct Policy
PO017 Informal Gatherings Policy
PO037 Internal Review of a Council Decision Policy
PO057 Community Engagement Policy
PO147 Complaints Policy
R011 Fees and Charges Register

9. REFERENCES AND LEGISLATION

Development Act 1993
Freedom of Information Act 1991
Independent Commissioner Against Corruption Act 2012
Local Government Act 1999
Planning, Development and Infrastructure Act 2016
Code of Conduct for Council Members
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:	CEO
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
Access to Council and Committee Meetings and Documents Code of Practice	PO015	08/04/2015	May 2019