



Code of Practice – Access to Meetings and Documents

Adopted by Council 24 October 2023
Review by November 2027

1. PREAMBLE

The City of Holdfast Bay supports the principle that the procedures 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 Council.

However, Council also recognises that on occasions, it may be necessary in the broader community interest, to restrict public access to discussion and/or documents.

Background

- i. The *Local Government Act 1999* (the **Act**) sets out arrangements for meetings and requires that all Council and Council Committee meetings are held in public except where special circumstances exist.
- ii. Section 90 of the Act outlines the circumstances in which a document or discussion considered in a Council or Committee meeting can be kept confidential.

2. PURPOSE

The Code of Practice - Access to Meetings and Documents sets out the commitment of the City of Holdfast Bay to provide public access to Council and Committee meetings and documents. It also outlines the policies and procedures contained within the Act, to restrict public access.

3. SCOPE

This Code of Practice applies to all ordinary and special meetings of Council and Council Committees at the City of Holdfast Bay and the associated agenda, reports, minutes and attachments that relate to those meetings.

The objectives of the **Code** are to ensure that there are clear guidelines for the public in relation to:

- Public access to Council and Committee meetings and the documents of those meetings
- Matters from which Council or a Council Committee can order that the public be excluded
- How Council will approach the use of confidentiality provisions of the Act
- Review of confidentiality orders
- Accountability and report to the community, and the availability of the Code
- Grievance procedures to be followed if a member of the public believes that the Council has unreasonably restricted public access on a particular matter

The Code of Practice does not apply to the City of Holdfast Bay's Council Assessment Panel (CAP) as the requirements of CAP are defined within the *Planning, Development and Infrastructure Act 2016*.

4. DEFINITIONS

For the purposes of this Code the following definitions apply:

Term	Definition
Act	<i>Local Government Act 1999</i>
Code	this Code of Practice – Access to Meetings and Documents
Clear Days	In the calculation for giving notice before a meeting: the day on which the notice is given and the day on which the meeting occurs will not be taken into account. Saturdays, Sundays and public holidays will be taken into account. If notice is given after 5pm, the notice will be taken as given on the next day.
Minutes	A formal record of the items discussed, business transacted and the resolutions made of a meeting of Council or Council Committee.
Deputation	A person or group of persons who wish to appear personally before the Council or Council Committee in order to address the Council or Committee on a particular matter.
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 personal matters relating to the person, but does not include the personal affairs of a body corporate.
Council Committee	a Committee of Council established under section 41 of the <i>Local Government Act 1999</i> or any other Committee established under the Act, including any subcommittee.

5. PUBLIC ACCESS TO DOCUMENTS

5.1 Public access to the agenda for meetings

- 5.1.1 At least three (3) 'clear days' before the Council or Council Committee meeting (unless a Special Meeting has been called) the Chief Executive Officer will give written notice of the meeting to all Council/Committee members setting out the date, time and place of the meeting. The notice will be accompanied by the agenda for the meeting.
- 5.1.2 The notice and agenda are to be placed on public display at the principal office at Brighton Civic Centre, 24 Jetty Road, Brighton and on Council's website www.holdfast.sa.gov.au.
- 5.1.3 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.
- 5.1.4 Items listed on the agenda are to be described accurately and in reasonable detail.
- 5.1.5 Agenda papers provided to members of Council, or members of a Council Committee, may include an indication from the Chief Executive Officer

that information or matters contained in or arising from the document or report may, if the Council or Council Committee so determines, be considered in confidence with the public to be excluded. Where this occurs, the Chief Executive Officer must specify the basis under which the order could be made in accordance with section 83(5) (Council) and 87(10) (Committee) of the Act .

- 5.1.6 The Council or Council Committee may then determine to consider the matter in confidence, provided that it specifies the basis on which the confidential order could be made.
- 5.1.7 Copies of the agenda documents and non-confidential reports will be available for public inspection at the Brighton Civic Centre.
- 5.1.8 Otherwise, members of the public may obtain a copy of the agenda and non-confidential reports for a fee to cover the costs of photocopying, in accordance with Council's schedule of fees and charges.

5.2 Public access to meetings

- 5.2.1 Council and Council Committee meetings are open to the public and attendance by the public is encouraged except where the Council (or Council Committee) considers it lawful and necessary to exclude the public from the consideration of a particular matter.
- 5.2.2 In some instances, the Council (or the Council Committee) may form the view that 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 it is considered proper and necessary i.e., an applicable ground under section 90(3) can be relied upon and the need for confidentiality outweighs the principle of open decision making or the disclosure of such information is, on balance, contrary to the public interest.
- 5.2.3 Meeting schedules are made available for public viewing on the website.
- 5.2.4 The public may consider participation through deputations in accordance with Council's Code of Practice - Meeting Procedures.

6. **INFORMATION AND BRIEFING SESSIONS**

Council Members and staff may participate in information or briefing sessions provided that a matter 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 Council Committee.

The following are examples of informal information or briefing session that may be held:

- Planning sessions associated with the development of policies and strategies
- Training sessions
- Workshops; and
- Social gatherings to encourage informal communication between Elected Members and staff

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 holding the session:

- The place, date and time of the session
- The matter discussed at the session; and
- Whether or not the session was open to the public

Information or briefing sessions are conducted in accordance with section 90A(1) of the Act.

7. PROCESS TO EXCLUDE THE PUBLIC FROM A MEETING

- 7.1 Before the 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 it is necessary and appropriate and then, if it is, pass a resolution to exclude the public while dealing with that particular matter. If this occurs the public must leave the room. For the operation of section 90(2) a member of the public does not include an employee of Council.
- 7.2 Once Council or Council 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. It is lawful for an employee of the Council or a member of the police to use reasonable force to remove the person from the room if that person fails to leave on request.
- 7.3 In accordance with the requirements of section 90(3) of the Act, Council or a Council Committee may order the public be excluded from the meeting to allow confidential discussion of matters where there are grounds under the following provisions:
- 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. *would 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 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 the 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.*

7.4 In considering whether an order should be made under section 90(2), it is irrelevant that discussion of a matter in public may cause embarrassment or a loss of confidence in the Council, a Committee, Members or an employee.

7.5 Where a person provides information to the Council or a Council Committee for consideration and requests that it be kept confidential, Council is not able to consider this request unless the matter falls within one of the grounds under section 90(3) of the Act. If this is the case, Council will then be in a position to consider the request on its merits.

- 7.6 For the convenience of the public present at a meeting, where it is resolved to consider a matter in confidence, the matter may be deferred until all other business has been dealt with.
- 7.7 In all cases the objective is that information be made publicly available at the earliest opportunity.

8. USE OF CONFIDENTIALITY PROVISIONS

- 8.1 Any consideration of the use of the confidentiality provision 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 in section 90(3) of the Act.
- 8.2 Information regarding 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 the confidentiality motion has been carried and sufficient reasons for the need to exclude the public given.
- 8.3 When discussion of the matter is concluded, and while the meeting is still in a confidential session, the meeting will consider if it is necessary to make an order that a document associated with that agenda item (including minutes) is to remain confidential. In determining this, the meeting will have regards to the provisions of section 91.
- 8.4 The Council will determine the matter of confidentiality on each item separately, determining the relevant grounds for confidentiality for each item.
- 8.5 When an order of confidentiality is made, the Council or Council Committee is required to make a note in the minutes of the making of the order, the grounds on which it was made, the duration of the order or the circumstances in which the order will cease to apply or a period after which the order will be reviewed. In each case the review period must not be for a period longer than 12 months, in accordance with the Act.

9. PUBLIC ACCESS TO MINUTES AND OTHER DOCUMENTS

- 9.1 The Act requires councils to make available a number of documents. Many of these are set out in Schedule 5 of the Act and are available for inspection and purchase (for a fee) by the public at the Brighton Civic Centre. Council may also make available a document in electronic form and place it on the website for public access.
- 9.2 Minutes of a meeting of Council or Council Committee must be made available in accordance with section 132(1) and Schedule 5 of the Act.
- 9.3 Minutes of a meeting of Council or Council Committee, apart from confidential matters, will be publicly available, including Council's website within five (5) days after the meeting.

- 9.4 Council or Council Committees can only resolve to keep minutes and/or other meeting documents confidential under section 91(7) if they were considered or dealt with in confidence at a Council or Council Committee meeting pursuant to sections 90(2) and 90(3).
- 9.5 Under section 91 of the Act there are provisions for access to Council documents. 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.
- 9.6 The Council's minutes, reports, recommendations and financial statements are available for inspection without payment. If a member of the public seeks access to a document which is subject to a current confidentiality order of the Council in accordance with section 91(7) of the Act will need to make an application under the *Freedom of Information Act 1991*.

10. REVIEW OF CONFIDENTIALITY ORDERS

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. 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 Council to resolve for the confidentiality order to be lifted in those circumstances. Once an order has lapsed, the minutes and/or documents automatically become public.

Orders that exceed 12 months must be reviewed annually. The conduct of the annual review can be delegated to the Chief Executive Officer and sub-delegated to an employee of the council, if appropriate. The Council (or the authorised delegate) must assess whether the determined grounds for making the confidentiality order still apply (in whole or part) and, if so, provide the relevant grounds and reasons for the minutes and/or documents remaining confidential.

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 be addressed separately and assessed against section 90(3) and section 91(7) of the Act.

If there is no longer a need for the confidentiality order, then the Council or Council Committee may revoke an order made in accordance with section 91(7) of the Act. If an employee has delegated power to make the decision to revoke, it will not need to go to Council for decision. At the time of making the order under section 91(7) the Council or Council Committee can resolve whether any delegation is given to an employee to revoke the order and if relevant, any conditions associated with the delegation.

Released documents are available on Council's website at www.holdfast.sa.gov.au.

11. ACCOUNTABILITY AND REPORTING TO THE COMMUNITY

A report on the use of sections 90(2) and 91(7) by the Council and Council Committees must be included in the annual report of Council as required by Schedule 4 of the Act. This supports a commitment to the principle of accountability to the community.

The reporting should include the following information in the annual report:

- Number of occasions that each of the provisions for excluding the public were utilized
- Subject of the confidential item
- 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

12. REVIEW OF THE CODE OF PRACTICE

In accordance with section 92(2) of the Act Council is required to review the Code of Practice within 12 months of a periodic election (i.e., every four (4) years). Council can review the Code at any time if considered desirable.

Before the Council adopts, alters or substitutes this Code of Practice, it must follow the relevant steps set out in its public consultation policy.

13. GRIEVANCE

Council has established procedures under section 270 of the Act for the review of decision by:

- Council and Council Committees
- An employee of the Council
- Other persons acting on behalf of the Council.

People who have a complaint about public access to either a formal Council or Council Committee meeting, or Council agendas, and their attached documents or minutes, can lodge an application for review of the decision under the procedures established by Council. The procedures are available on Council's website www.holdfast.sa.gov.au.

14. AVAILABILITY OF THE CODE OF PRACTICE

This Code is available for inspection during normal business hours from our principal office:

Civic Centre
24 Jetty Road
Brighton SA 5045

It is also available for viewing, downloading and printing free of charge from Council's website www.holdfast.sa.gov.au.

15. REFERENCES

Legislation

- *Freedom of Information Act 1991*
- *Local Government Act 1999*

Policies and Procedures

- Code of Practice – Meeting Procedures
- Internal Review of Council Decisions (s270) Policy
- Community Consultation and Engagement Policy
- Fees and Charges Register

This Code is based on a model code developed by the Local Government Association.