

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.

1.1 Background

1.1.1 The *Local Government Act 1999* sets out arrangements for meetings and requires that all Council and Council Committee meetings are held in public except where special circumstances exist.

1.1.2 Section 90 of the *Local Government Act 1999* outlines the circumstances in which a document or discussion considered in a Council or Committee meeting can be kept confidential

1.2 Purpose

1.2.1 The Code of Practice for Access to Meetings and Documents sets out the commitment of City of Holdfast Bay to provide public access to Council and Council committee meetings and documents and outlines the policies and procedures contained within the *Local Government Act 1999*, to restrict public access.

1.3 Scope

1.3.1 The Code includes information about the relevant provisions of the Act and Council's policy and procedures for:

- Access to the agenda for meetings
- Public access to meetings
- The process to exclude the public from meetings
- Matters for which the Council or a Council Committee can order that the public be excluded
- How the Council will approach the use of confidentiality provisions of the Act
- Public access to documents including minutes
- Review of confidentiality orders
- Accountability and reporting 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.

1.4 Definitions

Code means the Code of Practice for Access to Meetings and Documents

Act means the *Local Government Act 1999*

2 Policy Statement

2.1 Public Access to the Agenda for Meetings

- 2.1.1 At least three clear days before the Council or Council committee meeting (unless a Special Meeting has been called) 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.
- 2.1.2 The notice of meeting and agenda will be placed on public display at the principal office of the Council (Brighton Civic Centre, 24 Jetty Road Brighton) and on Council's website www.holdfast.sa.gov.au . Copies will also be available at the Council Libraries.
- 2.1.3 Copies of the agenda documents and non-confidential reports will be available for public inspection at the Civic Centre and Council Libraries as soon as practicable after they are supplied to the Members of the Council.
- 2.1.4 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 the Council's schedule of fees and charges.
- 2.1.5 Items listed on the agenda will be described accurately and in reasonable detail.
- 2.1.6 Copies of the Agenda documents and non-confidential reports that are to be considered at a meeting will be made available to members of the public in the gallery.
- 2.1.7 All information will be collected in a fair and lawful manner and as required/permitted by Local Government legislation and other legislation relevant to Local Government services. Council is committed to ensuring that persons are aware of the purpose of collection of the information and aware that the collection is authorised or required by law.
- 2.1.8 Where the CEO of the Council believes that a document or report on a particular matter should be considered in confidence with the public excluded, the basis of which the order could be made in accordance with section 90(3) of the Act will be specified. [Refer Sections 83(5) and 87(10) of the Act]

2.2 Public Access to Meetings

- 2.2.1 Council and Council committee meetings are open to the public and attendance is encouraged, except where Council (or Council committee) has grounds (Section 90 of the Act) to exclude the public from the discussion (and, if necessary, decision) of a particular matter (see 2.4).

- 2.2.2 The public will only be excluded when there are grounds in the Act for properly doing so.
- 2.2.3 Members of Council, 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 of a formally constituted meeting of Council or Committee. Informal gatherings are not open to the public in accordance with section 90(1) of the Act as openness to the public only applies to 'ordinary' or 'special' Council or Committee meetings in accordance with parts 1 and 2 of Chapter 6 of the Act.
- 2.2.4 The following are examples of informal gatherings 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

2.3 *Process to exclude the public from a meeting*

- 2.3.1 The practice of the City of Holdfast Bay is as follows:
- 2.3.1.1 To deal with the agenda items in the order listed in the agenda, or
- 2.3.1.2 For the convenience of the public present at a meeting, where it is resolved to consider a matter in confidence, this matter may be adjourned until all other business has been dealt with to allow the public to leave the meeting once all public business has been concluded.
- 2.3.2 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 the public must leave the room. For the operation of 90(2) a member of the public does not include an employee of the council.
- 2.3.3 Once Council or Council committee has made the order, it is an offence for a person, who knowing that an order is in force, enters or remains 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 they fail to leave on request.
- 2.3.4 Once discussion on that particular matter is concluded, the public are then permitted to re-enter the meeting, see 2.3.1.12.

2.3.5 Council or Council committee can by inclusion within the resolution permit a particular person or persons to remain in a meeting.

2.4 Matters from which the public can be excluded

2.4.1 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) *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 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.*
- 2.4.2 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 matters.
- 2.4.3 In considering whether an order should be made under section 90(2), *it is irrelevant that discussion of a matter in public may—*
- (a) *cause embarrassment to the council or council committee concerned, or to members or employees of the council; or*
 - (b) *cause a loss of confidence in the council or council committee.*
- 2.4.4 If a decision to exclude the public is taken, the Council or 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.
- 2.4.5 Where a person provides information to the Council and requests that it be kept confidential, Council is not able to 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.

2.5 Public access to minutes

- 2.5.1 Minutes of a meeting of Council or Council committee, apart from confidential material, will be publicly available, including the internet, within five days after the meeting.

2.6 Use of confidentiality provisions

- 2.6.1 Any consideration of the use of 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 and the factual reasons for the relevance and application of the ground(s) in the circumstances. The grounds are listed in paragraph 2.4.1 of this code.

2.6.2 The policy approach of the City of Holdfast Bay is:

2.6.2.1 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 confidentiality motion has been carried and sufficient reasons for the need to exclude the public given.

2.6.2.2 Once discussion of the matter is concluded, and while the meeting is still in confidential session, the meeting will consider if it is necessary to make an order that a document associated with that 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.

2.6.2.3 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 in accordance with section 91(7) of the Act.

2.6.2.4 The Council will determine the matter of confidentiality on each item separately, determining the relevant grounds for confidentiality for each item.

2.6.2.5 Where keeping a document confidential is considered proper and necessary, a resolution to this effect is required which shall include:

- the grounds for confidentiality
- the duration of the order or the circumstances in which the order will cease to apply
- if the duration of the order is for more than 12 months, the order must be reviewed at least once in every year
- whether the power to revoke the order will be delegated to an employee of the Council s.91(9).

2.6.2.6 in accordance with section 98(8) the Council or 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
- to prevent 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

- to prevent 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
- to prevent 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.
- detail the nature of the document to be kept confidential – i.e. minutes, report ,attachment etc.

2.6.3 In all cases the objective is that the information be made publicly available at the earliest possible opportunity.

2.7 Public access to documents

2.7.1 In accordance with section 132 and schedule 5 of the Act, various documents 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 internet for public access

2.7.2 The Council or 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 and meets the test(s) for one of the grounds in the Local Government Act.

2.7.3 The Council or Council committee can only resolve to retain minutes and/or documents confidential under section 91(7) if they were considered in confidence pursuant to sections 90(2) and 90(3).

2.7.4 Inquiries in relation to the process for seeking access to documents held by Council and which are not publicly available, should be directed to Council's accredited Freedom of Information Officer.

2.8 Review of confidentiality orders

2.8.1 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.

2.8.2 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 an order has lapsed, the minutes and/or documents automatically become public.

2.8.3 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.

- 2.8.4 if there is no longer a 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) 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.

2.9 Accountability and reporting to the community

- 2.9.1 A report on the use of the 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. This supports commitment to the principle of accountability to the community.

- 2.9.2 Local Government (General) Regulation 22A specifies that the following information be included in the annual report:

- (a) *in the case of a report on the use of section 90(2) of the Act, the following information is required:*
- (i) *the total number of orders made under that subsection in the financial year;*
 - (ii) *in relation to each paragraph ((a) to (n)) of section 90(3) of the Act—the number of times in the financial year that an order made under section 90(2) was made on the basis that the information or matter fell within the ambit of the paragraph; and*
- (b) *in the case of a report on the use of section 91(7) of the Act, the following information is required:*
- (i) *the total number of orders made under that subsection in the financial year;*
 - (ii) *the number of orders made under that subsection that expired, ceased to apply or were revoked during the financial year;*
 - (iii) *the number of orders made under that subsection that remained operative at the end of the financial year (but not including orders made before the commencement of this paragraph).*

2.10 Availability of the code

- 2.10.1 The public may inspect a copy of the Code, without charge, at the Civic Centre during office hours, and may obtain a copy for a fee fixed by Council. The Code is also available on the internet www.holdfast.sa.gov.au

2.11 Review of the Code

2.11.1 The Council is required to review this code within 12 months after the conclusion of each periodic election.

2.12 Grievance

2.12.1 Council has established procedures under Section 270 of the Act for the review of decisions by

- Council and its committees
- Employees of the council
- Other persons acting on behalf of the Council

2.12.2 People who have a complaint about public access to either a formal Council or Committee meeting, or the 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 from the Brighton Civic Centre or from Council's website www.holdfast.sa.gov.au

3 References

3.1 Legislation

- Local Government Act 1999
- Local Government (General) Regulations 1999
- Freedom of Information Act 1991