

Code of Practice – Access to Meetings and Documents

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Relevant Legislation:	<i>Freedom of Information Act 1991</i> <i>Local Government Act 1999</i> <i>Local Government (General) Regulations 2013</i>
Related Policies:	Code of Practice – Procedures at Meetings Community Engagement (Public Consultation) Policy Dealing with Disruptive Behaviours Policy Internal Review of Council Decisions (Section 270) Procedures

1. Introduction

- 1.1 The City of Burnside is committed to the principle of open and accountable government and encourages appropriate community participation in the business of Council.
- 1.2 Council also recognises however, that on a limited number of occasions it may be necessary, in the broader community interest, to restrict public access to discussion/decision and/or documents.
- 1.3 This Code includes information on the relevant provisions of the *Local Government Act 1999* (the Act), Council’s policy on public access and participation, the process that will be adopted where public access to a meeting or a document is restricted and grievance procedures to be followed if a member of the public believes that the Council has unreasonably restricted public access on a particular matter.

2. Strategic Plan Desired Outcomes

Principles: 4. Governing with Integrity

Themes: Spans all Strategic Plan Themes

Goals: Spans all Strategic Plan Goals

Priorities: Spans all Strategic Plan Priorities

3. Our Approach

- 3.1 City of Burnside is committed to the principle of providing openness, transparency and accountability in relation to all ordinary and special meetings of Council and also its Committees.
- 3.2 This Code sets out the policy of Council for access to meetings and documents and includes information relating to:
 - 3.2.1 access to the agenda and minutes for meetings;
 - 3.2.2 public access to documents and meetings;
 - 3.2.3 the process to exclude the public from meetings;
 - 3.2.4 matters for which the Council, or a Committee, can order that the public be excluded;
 - 3.2.5 how the Council will approach the use of the confidentiality provisions in the Act;
 - 3.2.6 review of confidentiality orders;
 - 3.2.7 accountability and reporting to the community;
 - 3.2.8 the availability of the Code; and
 - 3.2.9 grievances about the use of the Code by Council.
- 3.3 This Code does not apply to the Council Assessment Panel or any Council Subsidiaries.

4. Legislative Requirements and Corporate Policy Context

- 4.1 Chapter 6 of the *Local Government Act 1999* (the Act) sets out arrangements for Council, Council Committee meetings and Information or briefing sessions. It specifies that meetings are to be held in public except where special circumstances exist as prescribed in the Act and a Council or Committee orders that the public is excluded.
- 4.2 Section 92 of the Act requires Council to prepare and adopt a Code of Practice relating to access to meetings and documents (the Code).

5. Interpretation

For the purpose of this Code:

Act means the *Local Government Act 1999*

Agenda means a list of items of business to be considered at a meeting.

CEO means the Chief Executive Officer

Code means this Code of Practice - Access to Meetings and Documents

Clear Days means the time between the giving of the notice and the meeting is determined by excluding the day that the notice was given and the day of the meeting (e.g. notice is given on a Friday for a following Tuesday meeting – the clear days being Saturday, Sunday and Monday).

Committee means a committee of Council established under section 41 of the Local Government Act 1999 or any other Committee established under the Act, including any subcommittee.

Information or briefing session means sessions (not being a formal Council or Committee meetings) where the Chief Executive Officer has invited more than one member of Council or a Council Committee to attend or be involved for the purpose of providing information or a briefing on a matter, in accordance with section 90A of the Act.

Minutes means a record of the items discussed and the resolutions made of a meeting of Council or a Committee.

Notice of Meeting means the document which accompanies the agenda which outlines the date, time and place of the meeting and is signed by the CEO.

Order means a decision of the Council made relating to excluding the public and retention of information under section 90(3) and 91 of the Act which details confidentiality provisions.

Presiding Member means the person who is presiding at a particular meeting.

6. Access to the agenda for meetings

- 6.1 *Section 84* of the Act sets out the public notice requirements, prescribing that notice is given at least three (3) clear days before a Council or Committee meeting (unless it is a special meeting). The notice must set out the date, time and place of the meeting and be accompanied by the agenda for the meeting.
- 6.2 The Agenda and supporting documentation for ordinary Council meetings will be provided to Members electronically before 5 pm on the Thursday prior to a Council Meeting. Delivery of the requested printed copies of the agenda and supporting documents will be undertaken on the Friday morning.
- 6.3 The Agenda and material for Committee meetings and Special meetings are provided within the statutory timeframes and will be published on Council's website.
- 6.4 A copy of the Notice of Meeting, Agenda and supporting documentation (excluding confidential items) for ordinary Council and Committee meetings will be made available for public inspection through Council's website at the same time as when notice is provided to Members. The items listed on the agenda will be described accurately and in reasonable detail.

- 6.5 The public may request a copy of any non-confidential documentation available for public inspection and copies will be provided to the public for a fee in accordance with Council's schedule of fees and charges.
- 6.6 Where the CEO determines that a document or report on a particular matter should be considered in confidence to the exclusion of the public, the basis under which the order could be made in accordance with section 90(3) of the Act will be specified.
- 6.7 Where possible, confidential matters will be deferred until the end of the meeting to provide uninterrupted public access, including those members of the public 'present' by way of live stream and/or audio recording, to the majority of the meeting.
- 6.8 The Notice of Meeting and the Agenda will be kept on the Council's website until the completion of the relevant Council or Committee meeting and will continue to be published on the website for a minimum of five (5) years.

7. Public Access to Meetings

Council and Committee Meetings

- 7.1 Council and Committee meetings are open to the public and public attendance is encouraged. However, from time to time, where the Council or Committee determines it is necessary to do so, for reasons authorised under the Act, the public may be excluded from the relevant discussion and/or decision at a meeting.
- 7.2 Council's Code of Practice – Meeting Procedures provides further guidance on how members of the public can participate in Council and Committee meetings.

Information or briefing sessions

- 7.3 Information or briefing sessions will be held at a place open to the public for any matter that is, or is intended to be, on the agenda for a formal Council or Committee meeting, unless the Chief Executive Officer has declared (on a case-by-case basis) this it is necessary and appropriate for the briefing or discussion to be considered in confidence in accordance with section 90(3) of the Act.
- 7.4 The Chief Executive Officer will ensure that legislative record keeping and publication of Information or briefing sessions complies with the requirements of the Act.
- 7.5 Approval for holding an Information or briefing session and whether it is open to the public is delegated to the Chief Executive Officer.
- 7.6 Attendance at Information or Briefing Sessions Electronically
 - 7.6.1 Members of the Council or a Council Committee may participate in an information or briefing session by electronic means (an electronic information or briefing session) if facilities are available.
 - 7.6.2 A member of the Council or Council Committee participating in

electronic information or briefing session is taken to be present at the information or briefing session provided that the member:

- (a) can hear all other members present at the information or briefing session; and
- (b) can be heard by all other members present at the information or briefing session.

7.7 Form of Participation by Electronic Means

7.7.1 Where:

- (a) a Council or Committee member is to participate in an information or briefing session by electronic means; and
- (b) the electronic means has the functionality to allow the member to participate in electronic information or briefing session by being heard but not seen or by being both seen and heard; and
- (c) the electronic means of the Council has the functionality to allow the council member to be heard but not seen or to be both seen and heard, the member must participate by being both seen and heard.

7.8 Public Access to Electronic Information or Briefing Session

7.8.1 Council will make available to the public a live stream of any electronic information or briefing session which must be conducted in a place open to the public so that members of the public can hear the discussions between all persons participating in the information or briefing session.

7.8.2 The live stream will be published on a website determined by the chief executive officer, provided that this requirement will not apply to any part of the electronic information or briefing session that has been closed to the public

8. Matters from which the public can be excluded

8.1 The circumstances in which Council or a Committee may order the public to be excluded are detailed in section 90(3) of the Act are included at Appendix 1.

8.2 If a decision to exclude the public is taken, the Council or the 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 and only the orders will be published in the publicly available minutes.

8.3 The Council or Committee must disconnect any live stream and/or recording of a meeting for the period that the meeting is closed to the public pursuant to an order made under section 90(2).

9. Matters from which the public cannot be excluded

- 9.1 In considering whether a confidential order should be made under section 90(2) of the Act, it is irrelevant that discussion of a matter in public may:
- 9.1.1 cause embarrassment to Council or a Committee or employees concerned;
 - 9.1.2 cause a loss of confidence in Council or a Committee;
 - 9.1.3 involve discussion of a matter that is controversial within the Council area;
 - 9.1.4 make the Council susceptible to adverse criticism.

10. Process to exclude the public from a meeting

- 10.1 The Act favours open and accountable local government. The bias is therefore always against excluding the public, but the legislation recognises that the exclusion of the public is appropriate in certain circumstances which are outlined in section 90(3) of the Act (Appendix 1).
- 10.2 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, determine if this is necessary and appropriate, and then pass a resolution to exclude the public while dealing with that particular matter.
- 10.3 Once the Council or Committee has determined to exclude the public, the public must then leave the room, or disconnect from any electronic meeting. This means that all members of the public (including employees), unless exempted by being named in the resolution as entitled to remain, are required to leave the room, or disconnect to a live stream and/or audio recording, and neither listen to nor record the confidential proceedings that follow. For the operation of section 90(2) of the Act a member of the public does not include a member of Council or Committee whether or not their inclusion is identified in the wording of the resolution.
- 10.4 If any person who, knowing that an order is in force, enters or remains in a room in which such a meeting is being held, or fails to disconnect from a meeting, commits an offence. Further, if the person fails to leave on request, or disconnect from the meeting, an employee of Council or a member of the police may use reasonable force to remove the person from the room.
- 10.5 Once debate on the matter is concluded, the meeting will then consider if it is necessary to make an order that some or all documents associated with the matter remains confidential. In determining this, the meeting will have regard to the provisions of the Act and this Code. If an order is made, the meeting will also determine for what period, or for what circumstances the document or portion of the document will remain restricted from public access.
- 10.6 Once discussion on that particular matter is concluded, the public is then permitted to re-enter the meeting.
- 10.7 If there is a further matter that needs to be considered in confidence it is necessary for the Council or Committee to again undertake the formal

determination process and to resolve to exclude the public.

11. Approach to the use of Confidentiality Provisions

- 11.1 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 in section 90(3) of the Act (Appendix 1) and the factual reasons for the relevance and application of the ground(s) in the circumstances.
- 11.2 When a decision to exclude the public is taken, the reason and legislative grounds for this will be communicated by the Presiding Member of the meeting at the time of the public being requested to leave and in the meeting minutes.
- 11.3 Each Agenda item listed for consideration as an “in confidence” matter is determined separately.
- 11.4 Information of a confidential nature will be placed in attachments to reports, where possible, so that the report itself can be made available to the public.
- 11.5 Recommendations and resolutions will be framed, where possible, so that public access to the minutes of these meetings does not need to be restricted.
- 11.6 Public access will be restricted for the minimum time necessary to allow the matter to be resolved.
- 11.7 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 accordance with section 91(7) of the Act.
- 11.8 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. This along with the making of the order pursuant to section 90(2) of the Act and specifying the grounds pursuant to section 90(3) of the Act on which it was made, are also to be recorded in the minutes.
- 11.9 In determining this, the Council or Committee will consider the provisions of section 91 and in particular section 91(8) of the Act which details when the Council or a Committee must not order that a document remain confidential, namely, if it:
 - 11.9.1 prevents 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
 - 11.9.2 prevents 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 disclosure of any reasons adopted by the Council as to why a successful tenderer has been selected; or

- 11.9.3 prevents 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
- 11.9.4 prevents the disclosure of the identity of land that has been acquired or disposed of by the Council, or disclosure of any reasons adopted by the Council as to why land has been acquired or disposed of by the Council.
- 11.10 The Council or Committee may, in accordance with section 91(9) of the Act, delegate to an employee of the Council the authority to revoke a confidential order.
- 11.11 Once discussion of the confidential matter is concluded the public may re-enter the meeting.
- 11.12 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.
- 11.13 Should Council or Committee not resolve to place an order of confidentiality on an item, then a copy of the document will be placed on Council's website within seven (7) days of the meeting.

12. Person Requesting a Matter to be Kept Confidential

- 12.1 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 the request unless the matter is one that falls within Section 90(3) of the Act.
- 12.2 If the matter does fall within Section 90(3) of the Act, the Council or Committee will consider the request on its merits.

13. Public Access to minutes

- 13.1 *Section 91* of the Act sets out that 'Each member of the council must, within five days after a meeting of the council or a council committee, be supplied with a copy of all minutes of the proceedings of the meeting kept under this section'.
- 13.2 A copy of the Minutes of a meeting of the Council or a Committee will be provided and published on the Council's website within two (2) days after the meeting. This excludes any resolutions where a confidential order has been made.
- 13.3 Members of the public may request a copy of any documents available for public inspection for a fee as fixed by the Council.

14. Public Access to Documents

- 14.1 Council is committed to openness and transparency and makes various documents available to the public for inspection on its website and schedule 5 of the Act prescribes the documents that the Council must make

available to the public on its website and upon request provide a copy for purchase (for a fee).

- 14.2 The Council or Committees will only order that a document associated with a discussion from which the public is excluded is to remain confidential if it is considered proper and necessary in the broader community interest.
- 14.3 The Council or Committees can only resolve to keep minutes and/or documents confidential under section 91(7) of the Act if they were considered in confidence pursuant to sections 90(2) and 90(3) of the Act.
- 14.4 If an order under section 91(7) of the Act expires or ceases to apply in relation to a document or part of a document, the council must ensure that the document (or part thereof) is published on the council's website.
- 14.5 Requests to access Council and Committee documents can also be made under the *Freedom of Information Act 1991*. Information in relation to the process under this Act for seeking access to documents held by Council can be found on Council's [website](#).

15. Reviewing and Revoking Confidential Orders

- 15.1 The CEO will maintain a register of the confidential orders which is published on the Council's [website](#). It is the practice of the Council to review all confidential orders twice a year, with the aim to make the information available to the public at the earliest opportunity.
- 15.2 Depending on the nature of the material, the confidentiality order may be revoked at the time of review, providing access to the public, or another review period may be set by resolution of the Council.
- 15.3 If the confidential order has not been remade or lifted and the time or event specified has been reached or carried out, the minutes and/or documents automatically become public.
- 15.4 The Council and Committee items declared confidential will be recorded in a Register of Confidential items listing the following information:
 - 15.4.1 title of item;
 - 15.4.2 date of the meeting
 - 15.4.3 the legislative provision to which it applies;
 - 15.4.4 date of order expiry; and
 - 15.4.5 items which the order applies to.

16. Accountability and Reporting to the Community

- 16.1 Council will include in its annual report, a listing of the use of sections 90(2) and 91(7) of the Act by Council and Committees as required by Schedule 4 of the Act including:
 - 16.1.1 total number of orders made under sections 90(2), 90(3) and 91(7) in the financial year

- 16.1.2 the date and subject of each order made under sections 90(2), 90(3) and 91(7) ;
 - 16.1.2 number of occasions each of the provisions of sections 90(2) and 90(3) and section 91(7) were utilised expressed as a per cent of total agenda items considered;
 - 16.1.3 the date and subject of each order;
 - 16.1.4 number of orders made under section 91(7) that expired, ceased to apply or were revoked during the financial year and the date and subject of each order; and
 - 16.1.5 number of orders made under section 91(7) since 15 November 2010 that remained operative at the end of the financial year.
- 16.2 An annual summary report of the use of confidential provisions is to be provided to Council. In addition, Council requests a status report on the release of confidential items annually.
- 16.3 An annual summary of the attendance of the Mayor and Council Members at meetings of Council and Council Committee meetings will be included in the annual report of the Council.

17. Grievances

- 17.1 Should a person be aggrieved about public access to either a Council or Committee meeting, or a document, they can lodge an application for consideration under Council's Internal Review of Council Decisions (Section 270) Procedures.
- 17.3 A person may also make a complaint to the Ombudsman at any time under the *Ombudsmans Act 1972*.

18. Review

- 18.1 The Council is required, by the Act, to review this Code within 12 months of a periodic election. Council has the ability to review this Code at any time.

19. Availability

- 19.1 The Code is available to be downloaded, free of charge, from Council's website www.burnside.sa.gov.au.
- 19.2 Copies can be purchased upon payment of a fee as fixed by the Council.

Appendix 1 – Matters for which Council or a Committee Meeting can Order that the Public to be excluded

In accordance with section 90(3) of the *Local Government Act 1999*, 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);
- (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*.
- (o) information relating to a proposed award recipient before the presentation of the award.