

Code of Practice for Access to Meetings and Documents

Policy Reference Number	5977633
Responsible Department	Corporate Services
Related Policies	Internal Review of Council Decisions
Related Procedures	Nil
Date of Initial Adoption	09 November 2004
Last Reviewed by Council	16 May 2023

1. Purpose

Campbelltown City Council is committed to open, honest and accountable government and encourages community participation in the business of Council.

However Council also recognises that in some special circumstances it may be necessary to restrict public access to Council or Committee meetings and documents.

This Code is intended to provide clear guidance as to why and how the Campbelltown City Council may use the provisions in the Local Government Act 1999 to restrict public access.

The Code includes:

- information on the relevant provisions in the Act;
- Council's Policy on the use of these provisions;
- the process and practices that will be adopted where public access is restricted;
- grievance procedures if a member of the public believes that the Council has unreasonably restricted public access on a particular matter.

2. Power to Make the Policy

Chapter 6 of the Act (Local Government Act 1999) sets out arrangements for Council and Council Committee meetings, and Informal Briefings. 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 be excluded.

Section 92 of the Act requires the Council to prepare and adopt a Code of Practice relating to access to meetings and documents.

3. Strategic Plan Link

This Policy has the following link to Council's Strategic Plan 2024:

- Leading Our People (Goal 5)

4. Principles

All Ordinary and Special meetings of Council and its Committees will be conducted in public and the public will have access to all documents considered at these meetings except in special circumstances according to Section 90(2) & (3) of the Act where the Council or Committee meeting is clearly satisfied that the need for confidentiality outweighs the principle of open decision making.

If an order to exclude the public is made, in accordance with Section 90(7) of the Act a note will be made in the minutes of the making of the order and of the grounds on which it was made.

Council will make all Council and Committee meeting agendas and minutes available to the public at the earliest possible opportunity.

5. Definitions

Committee means a formally constituted Section 41 Committee under the Local Government Act 1999.

Informal Gatherings means sessions (not being a formal Council or Committee meeting) 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 Local Government Act 1999.

6. Policy

6.1 Public Access to Agendas and Reports

Section 84 of the Act prescribes that at least three (3) clear days before a Council or Committee meeting (unless it is a Special Meeting), a copy of the Notice and Agenda for a meeting will be available for inspection at the Council's principal office during ordinary business hours. Notification will be provided for Special Meetings as soon as practicable after the time that notice of the meeting has been given to the Elected Members by the Chief Executive Officer. All agendas will list the items of business for discussion at the meetings.

A copy of the associated reports to be considered at the meeting will be available for public inspection at the same time and place as the Agenda.

Members of the public may request a copy of any documents available for public inspection for a fee as fixed by the Council at its discretion.

Notices, Agendas and associated reports will also be published on Council's website www.campbelltown.sa.gov.au.

If the Chief Executive Officer believes that a matter should be considered in confidence, the nature of the matter and the reason why it should be considered in confidence will be clearly noted on the Agenda. Where possible, confidential matters will be deferred until the end of the meeting to provide uninterrupted public access to the majority of the meeting. The reason for public exclusion within a meeting must be in accordance with Section 90 (3) of the Act (see Appendix 1).

Information of a confidential nature will be placed in attachments to reports wherever possible so that the report itself can be made available to the public.

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6.2 Public Access to Meetings

Public access to Council and Committee meetings is guaranteed and encouraged, except where indicated on the Agenda that a matter may need to be discussed in confidence.

Council's Code of Practice for Meeting Procedures provides further guidance on how members of the public can participate in Council and Committee meetings.

6.3 Informal Gatherings

Informal gatherings 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) that it is necessary and appropriate for the briefing or discussion to be considered in confidence in accordance with Section 90(3) of the Local Government Act 1999.

The Chief Executive Officer will ensure that legislative record keeping and publication of Informal Gathering sessions complies with Local Government Act requirements.

Approval for holding an informal gathering or discussion and whether it is open to the public is delegated to the Chief Executive Officer.

6.4 Process to Exclude the Public

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 then the public must leave the room. 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. For the operation of section 90(2) a member of the public does not include a member of Council (or Committee if it is a Committee meeting).

It should be noted that Council, or the Committee, can by inclusion within the resolution permit a particular person or persons to remain in the meeting. An example would be allowing a ratepayer who is suffering personal hardship to remain in the meeting when their circumstances concerning the payment of rates is being discussed.

Once Council, or a 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. In the event that a person does not comply with requests to leave the room and needs to be removed from the meeting location, the police will be called.

The process that Council or a Committee will use to exclude the public from a meeting is:

- 1) In determining whether the matter is to be discussed in confidence the meeting will satisfy itself that the matter falls within Section 90 (3) of the Act and that any written objections have been adequately considered. Where Council is considering the use of Section 90(a), (b), (d) or (j) as a reason to exclude the public, it will turn its attention to the 'double test' parameters within each subsection of the Act prior to making a ruling on exclusion of the public to consider a matter.

- 2) The meeting will also have regard to the provisions of Section 90 (4) of the Act which stipulates that in considering whether a confidentiality order should be made, it is irrelevant that discussion of a matter in public may cause embarrassment to the Council or Committee concerned or to Members or employees of the Council, or cause a loss of confidence in the Council or Committee.
- 3) The debate on whether or not the public should be excluded will be held in public.
- 4) The public will only be excluded after a motion to that effect is carried.
- 5) If a resolution to exclude the public is made, it must state the names of person(s) that are able to remain in the room, as well as the grounds for excluding the public, and this will be communicated to the public present at the meeting and be recorded in the Minutes.
- 6) If this occurs then the public must leave the room in which the meeting is being held.
- 7) Once the Council or Committee has made an order for the public to be excluded it is an offence for a person who, knowing that the order is in force, enters or remains in a room in which the meeting is being held.
- 8) In order to minimise inconvenience to the public, where it is resolved to consider a matter in confidence, this matter may be deferred until all the other business of the meeting has been dealt with.
- 9) Once debate on the confidential 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 remain confidential.
- 10) The meeting will have regard to the provisions of Section 91 and in particular Section 91(8) of the Act which states that a document cannot remain confidential if it:
 - 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;
 - 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
 - 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
 - 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) If an order is made that a document or part of a document be kept confidential the meeting will then determine, in accordance with Section 91 (9) of the Act, the duration of the order or the circumstances in which the

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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), and this will be noted in the Minutes.

- 12) 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.
- 13) Once discussion of the confidential matter is concluded the public may re-enter the meeting.

6.5 Public Access to Minutes

In accordance with Section 91 (4) of the Act a copy of the Minutes of a meeting of the Council or a Committee may be purchased at Council's principal office during ordinary business hours from five (5) days after the meeting.

Minutes will also be published on Council's website
www.campbelltown.sa.gov.au.

6.6 Sunset Provisions

Where an order that a document or part of a document be kept confidential is in operation for a period exceeding twelve (12) months a review of the order will be conducted at least once a year.

6.7 Person Requesting a Matter to be Kept Confidential

Where a person provides information to the Council and requests that it be kept confidential, the Council is not able to consider the request unless the matter is one that falls within Section 90 (3) of the Act.

If the matter does fall within Section 90 (3) of the Act, Council will consider the request on its relative merits.

6.8 Public Access to Documents

Council is committed to openness and transparency and makes various documents available to the public for inspection at the Council Office and on its website as well as available for purchase (for a fee).

The Council or the 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 in the broader community interest.

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

Requests to access Council and Committee documents can be made under the *Freedom of Information Act 1991*. Inquiries in relation to the process for seeking access to documents held by Council should be directed to Council's accredited Freedom of Information Officer.

6.9 Grievances

Should a person be aggrieved about public access to either a meeting or a document they can lodge an application for consideration under Council's *Internal Review of Council Decisions* Policy and procedure.

A copy of this Policy and procedure is available at Council's website www.campbelltown.sa.gov.au. Copies may be purchased upon payment of a fee as fixed by the Council at its discretion.

In the first instance an application for review of a decision should be in writing and addressed to:

Chief Executive Officer
Campbelltown City Council
PO Box 1
CAMPBELLTOWN SA 5074

In accordance with Section 94 of the Act, a person may also lodge a complaint with the Ombudsman who may carry out an investigation if it appears (to the Ombudsman) that the Council or Committee may have unreasonably:

- excluded members of the public from a meeting; or
- prevented public access to documents.

7. Review & Evaluation

Within six months of each new Council term Council will review this policy. Following this initial review this policy will be reviewed annually by staff with minor administrative adjustments being approved by the Chief Executive Officer.

8. Availability of the Policy

Copies of this Policy will be available at Council's principal office during ordinary business hours and at Council's website www.campbelltown.sa.gov.au.

APPENDIX 1

MATTERS FOR WHICH COUNCIL OR A COMMITTEE CAN ORDER THAT THE PUBLIC 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 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.

The Act provides a definition of “personal affairs” as 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.

Council or a Committee **cannot** make an order that the public be excluded from a meeting only on the basis that discussion of a matter in public may:

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