



District Council of Cooper Pedy

STATUTORY CODE OF PRACTICE

ACCESS TO COUNCIL MEETINGS, COUNCIL COMMITTEES & COUNCIL DOCUMENTS

In accordance with Section 92 of the Local Government Act 1999

Adopted: 21st February 2012

1. Statement of Principle

The District Council of Coober Pedy (the Council) 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 a limited number of occasions it may be necessary in the broader community interest to restrict public access to discussion or documents.

2. Objectives

The objectives of this code are to:

- clearly outline to the community for what purpose and on what basis Council may apply the provisions of the Local Government Act 1999 to restrict public access to meetings or documents;
- provide information on Council's code of practice to the community; and
- summarise the legal position relating to public access to Council and committee meetings and documents.

3. Introduction

The code is intended to provide clear guidance as to the application of the provisions in the Local Government Act 1999 to restrict public access to meetings or documents. It also includes information on:

- the relevant provisions in the Act,
- adopted policy on the *use* of these provisions,
- the *process* that is utilised to restrict public access when this is considered necessary,
- the Council contact officer should additional information be required, and
- refers to a process for dealing with any grievances.

It sets out the policy of Council for access to meetings and documents. It includes:

- a statement of Council principle,
- access to the agenda for meetings,
- public access to meetings,
- process to exclude the public,
- matters for which Council, or a committee, can order that the public be excluded,
- how Council will approach the use of the confidential provisions,
- public access to documents,
- accountability and reporting to the community, and the codes availability, and
- grievances about the use of the code by Council.

4. Community Involvement in the Development of this Code

Council is required prior to adopting a code of practice, and prior to alteration or substitution of a code, to make copies available for inspection or purchase at the principal office. In involving the community Council must follow the relevant process set out within Council's community consultation policy.

A copy of that policy can be viewed or obtained at any of the council offices during normal business hours.

5. Council and Council Committee Meeting timeframes

The Council has determined the following timeframes for its range of meetings after taking into account a requirement that it must meet at least once during the month, but not on a Sunday or a public holiday.

5.1 Council Meetings

Ordinary Council Meetings are held on the third (3rd) Tuesday of each month. The Ordinary Meetings are held in the Council Chambers, Hutchison Street, Coober Pedy, SA 5723, and commence at 7.00 pm.

There are provisions in the Local Government Act 1999 whereby Special Council Meetings can be held at any time.

5.2 Council Committees

At the time of adoption of this Code, the following committees are in place and meet on a date and time as and when required when matters arise for determination:

1. Visitor Information Centre Management Committee
2. Audit Committee
3. Development Assessment Sub-Committee

5.3 Community Committees & Advisory Committees

At the time of adoption of this Code, the following advisory committee is in place and meets on a date and time as and when required:

1. Dugout Construction Advisory Committee

6. Access to the Agenda for Meetings

6.1 In the case of an Ordinary Council or Council Committee Meeting, the Chief Executive Officer must give each Member a notice of the meeting at least three clear days before the date of the meeting.

6.2 In the case of a Special Meeting of Council, the Chief Executive Officer must give each member of the Council notice of the meeting at least four hours before the commencement of the meeting.

6.3 “Clear days” means that the time between the giving of the notice and the meeting is to be determined excluding the day on which the notice is given and the day of the meeting eg notice is given on a Thursday for a following Monday meeting, the clear days being Friday, Saturday and Sunday.

6.4 The notice of the meeting sets out the date, time and place of the meeting and the notice must contain or be accompanied by the Agenda for the meeting.

6.5 The notice of meeting and the Agenda are also to be placed on public display at the principle office of the Council and on Council’s website at www.cooberpedy.sa.gov.au at the same time as they are forwarded to Council members.

- 6.6 Items listed on the Agenda are to be described with reasonable particularity and accuracy. Copies of any documents and reports that are to be considered at the Meeting are to be supplied to members.
- 6.7 The practice of Council is to place on public display 3 days prior to the meeting a list of the items of business plus any documents and reports relating to those matters (with the exception of any matters that might be indicated as subject to the making of an order of confidentiality).
- 6.8 Distribution of the Agenda papers to Members of Council, or members of a committee, may include advice from the Chief Executive Officer of the Council (after consultation with the principal member of Council, or in the case of a committee, the presiding member) that a document or report on a particular matter be considered in confidence with the public to be excluded. Where this occurs, the Chief Executive Officer must specify the basis under which such an order could be made. However it is the decision of the Council or Council Committee as to whether an item should be dealt with in confidence.

7. Public Access to Meetings

- 7.1 Pursuant to the Local Government Act 1999, a meeting of Council or Council committee must be conducted in a place open to the public
- 7.2 Council encourages public attendance at meetings of the Council and Committees through public notification of meetings by notice in a local paper indicating the date and time of the next meeting.
- 7.3 A Council or Council committee may order that the public be excluded from attendance at so much of a meeting as is necessary to receive, discuss or consider in confidence any information or matter. The public will only be excluded when considered proper and necessary ie. the need for confidentiality outweighs the principle of open decision making.
- 7.4 It is not unlawful for members of Council, a committee and staff to participate in informal gatherings or discussion provided that a matter which would ordinarily form part of an Agenda for a formal meeting is not dealt with in such a way as to obtain, or effectively obtain, a decision outside a formally constituted meeting of Council or committee. The following are examples:
- 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

8. Process to Exclude the Public

- 8.1 The practice of this Council will be as follows:
- to deal with Agenda items in the order that they appear on the Agenda; or

- for the convenience of the public present at a meeting, where it is resolved to consider a matter in confidence, that this matter, unless there are pressing reasons as to why it should be debated at that point of the meeting, will be deferred until all other business has been dealt with.

This is the preferred option of Council rather than asking the public to leave the room and then return, a process which otherwise could be repeated when dealing with other matters in confidence.

- 8.2 Before a meeting orders that the public be excluded to enable 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.
- 8.3 If Council determines that a particular matter be dealt with in confidence then the public must leave the room. Once Council, or 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 force to use reasonable force to remove the person from the room if s/he fails to leave on request.
- 8.4 Once discussion on that particular matter is concluded, the public are then permitted to re-enter the meeting. If there is a further matter that needs to be considered in confidence it is necessary to again undertake the formal determination process and to resolve to exclude the public as above.
- 8.5 Where a matter is to be considered in confidence, Council staff are included as being public persons, however, if Council staff or any other particular persons are to remain in the meeting, the Council or committee, can by inclusion within the resolution, permit that public person or persons to remain in the meeting, and record the name/s of those persons in the resolution which excludes the public generally. (An example would be allowing a ratepayer who is suffering hardship to remain in the meeting when their circumstances concerning the payment of rates is being discussed).

9. Circumstances under which a Council, or a Committee, can order that the Public be excluded from a Meeting

- 9.1 In accordance with the requirements of section 90(3) of the Act, Council, or a Council Committee, may 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.

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.

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 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. [s.90(4)]

If a decision to exclude the public is taken, the Council or the 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.

10. Approach to the use of Confidentiality Provisions

10.1 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 as listed in section 90(3) of the Local Government Act 1999, and the factual reasons for the relevance and application of the ground(s) in the circumstances.

10.2 The policy approach of the District Council of Coober Pedy is that:

- a) the principle of open and accountable government is strongly supported;
- b) confidentiality provisions will only be utilised after careful consideration and when considered proper and necessary;
- c) information of 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 a confidentiality motion has been debated and passed and sufficient reasons for the need to exclude the public given;
- d) 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 remain confidential. In determining this, the meeting shall 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;
- e) 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 to be resolved by the meeting in accordance with section 91(7) of the Act;

The Council will not consider a number of agenda items "in confidence" together i.e. en bloc. It will determine each item separately and consider the exemptions relevant to each item.

- f) once discussion of the matter is concluded and the public have returned, the decision of the meeting in relation to this matter will be made publicly known unless Council has resolved to order that some

information remain confidential, eg the price to which Council is prepared to bid for land yet to be auctioned. Details relating to any order to keep information or a document confidential in accordance with section 91 (7) are also to be made known. 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. This along with the making of the order and the grounds on which it was made are also to be recorded in the minutes;

- g) 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; and

- 10.3 Where a person provides information to Council and requests that it be kept confidential the Council is not able to even 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 relative merits.

11. Public Access to Documents

- 11.1 Various documents can be made available for inspection and purchase (for a fee) by the public. Council may also make a document available in electronic form and place it on the Internet for public access.
- 11.2 The Council or Council 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).
- 11.3 Once a matter has been dealt with, the Council or Council committee may order that a document relating to the matter considered in confidence is to be kept confidential.

In accordance with section 91(8) the Council or the 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 they have been set or determined; or
- 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
- 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
- the disclosure of the identity of land that has been acquired or disposed of by Council, or of any reasons adopted by the Council as to why land has been acquired or disposed of by the Council

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

- the grounds for confidentiality; and

- the duration of the order or circumstances in which the order will cease to apply, or a period after which the order must be reviewed – if the order has a duration of more than 12 months, the order must be reviewed at least once in every year;
- 11.5 The resolution will also indicate whether any delegation is given to an employee to revoke the order and if relevant, any conditions associated with this delegation.
- 11.6 The minutes shall record the relevant grounds and duration of the order and any delegation to revoke the order, should this be applicable.
- 11.7 Requests to access Council and committee documents can also be made under the Freedom of Information Act 1991 at a fee to be determined by Council. Any inquiries in relation to the process for seeking access to documents held by Council should be directed to the Chief Executive Officer.
- 11.8 Minutes of a meeting of Council or a Council committee will be publicly available, including on the internet, within 5 days after the meeting.

12. 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. In any event, 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 the Council to resolve for the confidential order to be lifted. Once the order has lapsed, the minutes and/or documents automatically become public.

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 every 6 months to ensure that items are released in accordance with the resolution of Council, when the confidential provision no longer applies.

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. The conduct of the annual review can be delegated to the Chief Executive office and sub-delegated to an employee of the Council if appropriate. 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 then be addressed separately and assessed against section 90(3) and section 91(7) of the Act. While a Council may delegate the power to undertake an annual review, the Council cannot delegate the power to apply sections 90(3) and 91(7) of the Act.

A 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 and not en bloc.

If there is no longer any 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.

13. 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 a Council as required by Schedule 4 of the Act. This supports commitment to the principle of accountability to the community. The reporting should include the following information, separately identified for both Council and Council committees:

1. Number of occasions each of the provisions of sections 90(2) and 90(3) were utilised;
2. 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'
3. 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 3 separate occasions;
4. Number of occasions that information originally declared confidential has subsequently been made publicly available; and
5. Number of occasions that information declared confidential has not been made publicly available and the reason for this in each case.

14. Review

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

15. Grievance

15.1 Pursuant to section 270 of the Local Government Act 1999, Council is required to establish procedures for the review of decisions of:

- Council, and its committees;
- employees of the Council; and
- other persons acting on behalf of Council

15.2 Should a person be aggrieved about public access to either a meeting or a document then they can lodge an application for consideration for a review of the decision under the "Statutory Procedure – Review of Council Decisions", established by Council. Any request for a review of a decision should be expressed in writing, addressed to the Chief Executive Officer, District Council of Coober Pedy.

15.3 A person may also lodge a complaint with the Ombudsman, who may carry out an investigation if it appears (to the Ombudsman) that Council (or committee) may have unreasonably:

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

16. Availability of Code

The public may inspect a copy of the code, without charge, at the offices of Council during office hours, and may obtain a copy for a fee fixed by Council. Further enquiries regarding the code should be directed to the Chief Executive Officer, or

telephone 86 725 298. The Code is also available on the Internet at www.cooberpedy.sa.gov.au

17. Adoption of the Code

The Code of Practice – Access to Council Meetings, Council Committees and Council Documents was adopted by the Council at its meeting on 21st February 2012.