



TATIARA DISTRICT COUNCIL

CODE OF PRACTICE

**ACCESS TO COUNCIL AND
COMMITTEE MEETINGS AND
DOCUMENTS**

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Statement of Principle

- (1) The Tatiara District 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.
- (2) 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.

Objectives

- (1) The objectives of this code are to:
 - (a) 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;
 - (b) Provide information on Council's code of practice to the community; and
 - (c) Summarise the legal position relating to public access to Council and committee meetings and documents.
- (2) These guidelines relate to the provisions of the Local Government Act, 1999. (See Appendix 1).

Introduction

- (1) 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:
 - (a) The relevant provisions in the Act,
 - (b) Adopted policy on the **use** of these provisions,
 - (c) The **process** that is utilised to restrict public access when this is considered necessary,
 - (d) The Council contact officer should additional information be required, and
 - (e) Refers to a process for dealing with any grievances.
- (2) It sets out the policy of Council for access to meetings and documents. It includes information relating to:
 - (a) Access to the agenda for meetings,
 - (b) Public access to meetings,
 - (c) Process to exclude the public,
 - (d) Matters for which Council, or a committee, can order that the public be excluded,
 - (e) How Council will approach the use of the confidential provisions in the act,
 - (f) Public access to documents including minutes,
 - (g) Review of confidentiality orders
 - (h) Accountability and reporting to the community, and the codes availability, and
 - (i) Grievances about the use of the code by Council.

Public Access to the Agenda for Meetings

- (1) At least three clear days before a Council and council committee meeting (unless it is a special meeting) 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 and the notice must contain or be accompanied by the agenda for the meeting.

- (2) The notice and agenda will be placed on public display at the principal office of Council (Bordertown) and on Council's website www.tatiara.sa.gov.au. Copies of the Council agenda will also be available at the Keith office in Hender Street and at the Bordertown and Keith Libraries
- (3) Items listed on the agenda are to be described with reasonable particularity and accuracy. 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 these matters (with the exception of any matters that might be indicated as subject potentially to the making of an order of confidentiality). Further copies are made available to the public at the meeting of the council/committee.
- (4) These provisions apply to Council meetings, committees that have as part of their responsibility some regulatory activities and those other committees to which Council has determined these procedures will apply. Where a committee is not performing a regulatory activity these procedures may be varied, eg. notice may be given in a form decided by the committee, and need not be given for each meeting separately. Public notice may be given at a place determined by the CEO taking into account the nature and purpose of the committee.
- (5) '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 was 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) Distribution of agenda papers to members of Council, or members of a committee, may include advice from the CEO of 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 may 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.
- (7) The following is an example (this could be included in the copy that is placed on public display):
 - (a) The Council Engineering Committee is to consider tenders for the provision of electrical services. The document outlining the tenders received and the agenda item are clearly marked by the CEO to indicate that they may need to be considered in confidence under clause 90 (3)(k) – tenders for the supply of goods, provision of services or the carrying out of works.
- (8) Should the council not confirm, and thereby not place an order of confidentiality on an item that the CEO has indicated may be considered as such, then a copy of the document will be available to the public at the meeting (publicly tabled) and placed on public display the next working day.

Public Access to Meetings

- (1) Council and Council committee meetings are open to the public and attendance is encouraged - except where Council (or the committee) believes it is necessary in the broader community interest to exclude the public from the discussion of a particular matter.
- (2) The public will only be excluded when considered proper and necessary ie. the need for confidentiality outweighs the principle of open decision making. The following is an example:
 - (a) Council is intending to bid at an auction to acquire land and would not want others involved, such as the vendor to have prior knowledge of what Council

was setting as an upper limit to bid at the auction, as to do so would prejudice the position of Council and disadvantage the community.

- (3) Council encourages public attendance at meetings by public notice of meetings. Details of meeting dates and times are listed in the Council news section of the Border Chronicle and on Council's web site. www.tatiara.sa.gov.au
- (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 the 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 (listed in the Act):
 - (a) Planning sessions associated with the development of policies and strategies;
 - (b) Briefing or training sessions;
 - (c) Workshops;
 - (d) Social gatherings to encourage informal communication between members or between members and staff.

Process to Exclude the Public from a Meeting

- (1) 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 staff), 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.
- (2) 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.
- (3) 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
- (3) Please note 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.
- (4) It is the policy of Council that 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, to wait around for however long it takes until the matter is concluded and then invite them back into the meeting room, possibly with the same process being repeated for a subsequent matter.

Matters from which the Public can be Excluded

- (1) In accordance with the requirements of section 90(3) of the Act, Council, or a 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;
 - (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) 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.

- (3) 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:
 - (a) Cause embarrassment to Council or the committee concerned, or to members or employees of the Council: or
 - (b) Cause a loss of confidence in the Council or the council committee.
- (4) If a decision to exclude the public is taken, 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.

Approach to the Use of the Confidentiality Provisions

- (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 listed within the Local Government Act 1999. These are listed in the previous section of this code. They are referred to as section 90(3).
- (2) The policy approach of the Tatiara District Council 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;
 - (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 carried by the meeting;
 - (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
 - (h) The use of all confidentiality provisions will be reported in Council's Annual Report.
- (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.

Public Access to Minutes

- (1) Minutes of a meeting of Council or a Council committee will be publicly available, including on Council's website www.tatiara.sa.gov.au, within 5 days after the meeting

Public Access to Documents

- (1) Various documents are to be 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 access.
- (2) Council/ the committee will only make an order that a document associated with a discussion from which the public are excluded will remain confidential if it is considered proper and necessary in the broader community interest. Council/the committee can only make such orders in relation to documents that are considered in confidence under section 90 (3).
- (3) Once a matter has been dealt with, Council/ the committee may order that a document relating to the matter considered in confidence is to be kept confidential. There are some exceptions. Council/a committee must not make an order to prevent:
 - (a) The disclosure of the remuneration or conditions of service of an employee after they have been set or determined; or
 - (b) The disclosure of the identification of a successful tenderer or any reasons as to why that tenderer has been selected; or
 - (c) The disclosure of the identity of land that has been acquired or disposed of by Council, or of any reasons as to why acquisition or disposal has occurred.
- (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 when the order must be reviewed.
- (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.
- (6) The following is an example (this could be included in the copy placed on public display):
 - (a) Council decided to bid \$100,000 at auction for a parcel of land. An order that the discussion be confidential could be made in accordance with section 90(2). Council resolved that the document containing information on the value of the land remain confidential in accordance with section 91(7). Council could delegate to the CEO the authority to make this information public following the completion of the acquisition in accordance with section 91(9)(c).
- (7) The minutes shall record the relevant grounds and duration of the order and any delegation to revoke the order, should this be applicable.
- (8) Requests to access Council and committee documents can be made under the Freedom of Information Act 1991. Any inquiries in relation to the process for seeking access to documents held by Council should be directed to Council's nominated Freedom of Information Officer who is Robert Harkness, telephone (08) 8752 1044.

Example of Confidentiality Provisions

The Tatiara District Council will record in the minutes of any Council and Council committee meetings the making of an order in accordance with sections 90(2) and (3) and section 91(7) as follows:

(1) Section 90(3)(a) Order

Pursuant to s.90(3)(a)

Pursuant to section 90(2) of the *Local Government Act 1999* the Council orders that all members of the public^{NB}, except **[insert names and job title for staff members present and/or names of any other person i.e. consultant/external advisor]** be excluded from attendance at the meeting for Agenda Item [...] **[Brief Description of Agenda Item]**.

The Council is satisfied that, pursuant to section 90(3)(a) of the Act, the information to be received, discussed or considered in relation to the Agenda Item is information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead), being **[insert name of person]** because **[insert reasons]**.

The Council is satisfied that the principle that the meeting be conducted in a place open to the public has been outweighed in the circumstances because **[insert reasons]**.

(2) Section 91(7) Order

Pursuant to s.91(7)

That having considered Agenda Item [...] **[Brief Description of Agenda Item]** in confidence under section 90(2) and (3)(a) of the *Local Government Act 1999*, the Council, pursuant to section 91(7) of that Act orders that the **[identify the documents and/or minutes relevant to Agenda Item X]** be retained in confidence **[for a period of (insert period of time i.e. 6 months, 18 months) or until (trigger can be an event i.e. the contract has been signed, a public announcement has been made)]** and that this order be reviewed every 12 months [if the confidentiality period is longer than 12 months in duration].

Review of Confidentiality Orders

- (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, 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.
- (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 the order has lapsed, the minutes and/or documents automatically become public.
- (3) 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 July to ensure that items are released in accordance with the resolution of Council, when the confidential provision no longer applies
- (4) 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 Officer 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.

- (5) 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.
- (6) 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

Accountability and Reporting to the Community

- (1) 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:
 - (a) Number of occasions each of the provisions of section 90(3) were utilised;
 - (b) Number of occasions each of the provisions of section 90(3) and section 91(7) were utilised, expressed as a percentage of total agenda items considered;
 - (c) 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 x was considered on 3 separate occasions;
 - (d) Number of occasions that information originally declared confidential has subsequently been made publicly available; and
 - (e) Number of occasions that information declared confidential has still not subsequently been made publicly available and the reason for this in each case.
- (2) Council will make this information available for inspection by the public at each of Council's offices annually and a summary will be included in the Annual Report. This information will also be included in any review of the code.

Availability of Code

- (1) 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. The Code is also available on the Internet at www.tatiara.sa.gov.au.

Review of the Code

- (1) Council will review this code within 12 months of the conclusion of a periodic election. The next scheduled review is due to occur by October 2019. However, Council has the ability to review this code at any time if considered desirable.

Grievance

- (1) Council is required to establish procedures for the review of decisions of:
 - (a) Council, and its committees;
 - (b) Employees of the Council and

- (c) Other persons acting on behalf of the Council.
- (2) Should a person be aggrieved about public access to either a meeting or a document then they can lodge an application for consideration under the review of decisions procedure established by Council. A copy of the procedures adopted by Council is available from the Manager Corporate & Community Services, telephone (08) 8752 1044 and on Council's website www.tatiara.sa.gov.au.
- (3) In the first instance, an application for a review of decision should be expressed in writing, addressed to:
- The Chief Executive Officer
Tatiara District Council
PO Box 346
Bordertown SA 5268
- (4) 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:
- (a) Excluded members of the public from a meeting; or
 - (b) Prevented access to documents.

Revoking or Amending Previous Resolutions

- (1) Subject to some circumstances, Council and Council committees can pass resolutions that amend or revoke resolutions previously adopted. Whilst this is not a regular practice it can happen where for example new information is presented.

Information

- (1) The Manager Corporate & Community Services can assist in providing or obtaining information and can be contacted on (08) 8752 1044.

Adoption of the Code

- (1) Council adopted the original version of this code on 12th December 2000.

Record of Amendments

DATE	REVISION NO	REASON FOR AMENDMENT
24 th November 2000	Rev: 00	Draft Copy
12 th December 2000	Rev: 01	Adopted by Council Res No 154
14 th August 2001	Rev: 02	Annual Review
9 th September 2003	Draft Public Cons	Review after Council Election
9 th September 2003	OK for public cons	Removed the word involvement pg 6
12 th December 2006	Rev: 04	Reviewed after November 06 Council Election
8 th September 2009	Rev: 05	Code reviewed and adopted
18 th January 2011	Rev: 06	Reviewed after November 2010 Council Election. Minor changes in line with LGA's revised model code.
20 th January 2015	Rev: 07	Reviewed after November 2014 Council Election

Appendix 1

1. Local Government Act 1999 Provisions

- (1) Chapter 6 of the Local Government Act sets out arrangements for meetings of council and committees. It requires that all council and council committee 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.
- (2) There are very strict circumstances in which a discussion or document considered in a council or council committee meeting can be kept confidential. These provisions are included in the following sections:
 - (a) 83 (5) Council & 87 (10) Committee
 - (b) the Chief Executive Officer (CEO) may, after consultation with the principal member of council, or in the case of a committee the presiding member, indicate on a document or report (or on a separate note) provided to members of council or committee, as the case may be, that the matter may, if the council or committee so determines, be considered in confidence. The CEO is required to specify at the same time the basis on which such an order can be made.
 - (c) 87(15) & 88(7) – the provisions of these sections may be modified if the council committee is not performing a regulatory function. Regulations 23 & 24 of the Local Government (Procedures at Meetings) Regulations 2000 enable variation to the notice of meetings for members and public notice of meetings.
 - (d) 90 (2) & (3) - circumstances where council may order that the public can be excluded from attendance at a meeting, or part of it, to enable a matter/s to be considered in confidence.
 - (e) 90 (8) – informal gatherings and discussions are not unlawful under certain circumstances.
 - (f) 91 (7) - circumstances when a document considered in confidence can be ordered to remain confidential.
 - (g) 91 (8) - circumstances where a council must not order that a document remain confidential.
 - (h) 91 (9) – the council or committee 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 will be reviewed. The power to revoke an order can also be delegated to an employee of council.
 - (i) 92 – requires the council to prepare and adopt a code of practice relating to access to meetings and documents. Prior to adoption, alteration or substitution of the proposed code (or changes) must be available for inspection and purchase. Council is also required to follow the relevant steps set out in its Public Consultation Policy. Council must, within 12 months of each periodic election, review the operation of the code.
 - (j) 94 – provides that the Ombudsman may, on receipt of a complaint, investigate the use of these provisions.

- (k) 270 – Council to establish procedures for the review of decisions.
- (3) A copy of the relevant sections of Act can be viewed at the Bordertown Council Office, 43 Woolshed Street, Bordertown or a copy provided in line with Council's Fees & Charges Policy.