



TATIARA DISTRICT COUNCIL

ACCESS TO COUNCIL AND COMMITTEE MEETINGS AND DOCUMENTS CODE OF PRACTICE

Version:	12
Last revised date:	11 January 2022
Minutes reference:	Agenda Item 18.1 # 2022/485
Next review date:	Council will endeavour to review this policy every 4 years
Applicable Legislation:	<i>Local Government Act 1999</i> <i>Local Government (Procedures at Meetings) Regulations 2013</i> <i>Statutes Amendment (Local Government Review) Act (Commencement) Proclamation 2021 (SA)</i>
Related Policies:	<i>Meeting Procedure Code of Practice</i>
Related Procedures:	Not applicable
Other relevant documentation:	Not applicable

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/decision and/or documents.

Introduction

- (1) The Code sets out Tatiara District Council's commitment to provide public access to Council and Council committee meeting and documents and outlines the policies and procedures contained within the *Local Government Act 1999* to restrict public access to meetings or documents. The Code includes:
 - (a) Information on the relevant provisions in the Act;
 - (b) Council's policy on public access and participation;
 - (c) The process that will be used where public access to a meeting or document is restricted;
 - (d) 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) 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) The 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 Code's 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. The notice must contain or be accompanied by the agenda for the meeting.
- (2) The notice of meeting 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 accurately and in reasonable detail.
- (4) The notice and agenda will be kept on public display and continue to be published on the website until the completion of the relevant Council or Council committee meeting.
- (5) 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, e.g. 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.
- (6) Copies of the agenda documents and non-confidential reports that are to be considered at the meeting will be made available to members of the public in attendance. A reasonable number of copies will also be available for public inspection as soon as practicable after they are supplied to the Members of Council.
- (7) Members of the public may obtain a copy of the agenda and any particular reports for a fee to cover the costs of photocopying, in accordance with a Council's schedule of fees and charges.
- (8) Where the CEO of the Council (after consultation with the principal member of the Council, or in the case of a Committee - the presiding member) believes that a document or report on a particular matter should be considered in confidence with the public to be excluded, the basis under which the order could be made in accordance with section 90(3) of the Act will be specified.

Public Access to Meetings

- (1) Council and Council committee meetings are open to the public and attendance is encouraged, except where Council (or the Council committee) believes it is necessary in the broader community interest to exclude the public from the discussion (and, if necessary, decision) of a particular matter.
- (2) The public will only be excluded when considered proper and necessary i.e. the need for confidentiality outweighs the principle of open decision making.
- (3) Council encourages public attendance at meetings of the Council and Committees through promotion of meeting dates and times in the Border Chronicle, on Council's web site www.tatiara.sa.gov.au, and on its Facebook page.
- (4) Council information or briefing sessions under section 90A of the Act are open to the public where a matter is discussed that is, or is intended to be, on the agenda for a formal meeting of the Council or Council committee, except where it is necessary in the broader community interest to exclude the public from the discussion of a particular matter.

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, knowing that an order is in force, to enter or remain 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 he or she fails to leave on request.
- (3) Once discussion on that particular matter is concluded, the public are 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
- (4) Please note that Council, or the Council 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.

- (5) It is the practice 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, may be deferred until all other business has been dealt with rather than ask the public to leave the room and wait until the matter is concluded and then invite them back to the meeting room, possibly with the same process being repeated for a subsequent matter.
- (6) The Council or the Chief Executive Officer may order that an information or briefing session be closed to the public to the extent that it is necessary and appropriate in order to receive, discuss or consider in confidence any particular information or matter listed in section 90(3).

Matters from which the Public can be Excluded

- (1) In accordance with the requirements of section 90(3) of the Act, Council, or a Council committee, or the Chief Executive Officer in the case of section 90A(4) of the Act, 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.*
 - (o) *Information relating to a proposed award recipient before the presentation of an award.*
- (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) In considering whether an order should be made under section 90(2), or section 90A(4), it is irrelevant 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 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.

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 section 90(3) of the Act and the factual reasons for the relevance and application of the ground(s) in the circumstances. These are listed in the previous section of this Code (*Matters from which the Public can be Excluded*).
- (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 – 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 (including minutes) 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 in accordance with section 91(7) of the Act;
 - (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. 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. 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) and the grounds pursuant to section 90(3) 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) 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 merits.

Information or Briefing Sessions

- (1) Attendance at Information or Briefing Sessions Electronically:
Members of the Council or a Council Committee may participate in an information briefing session by electronic means (an electronic information or briefing session).
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 sessions 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.
- (2) Form of Participation by Electronic Means 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.
- (3) **Public Access to Electronic Information or Briefing Session:**
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.
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.

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 public access.
- (2) Council or the Council committee 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.
- (3) Council or the 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).
- (4) In accordance with section 91(8), the Council or the Council committee must not make an order to prevent:
 - (a) 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
 - (b) 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 any reasons adopted by the Council as to why a successful tenderer has been selected; or
 - (c) 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

- (d) 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.
- (4) Where keeping a document confidential is considered proper and necessary, a resolution to this effect is required, which shall include
 - (a) The grounds for confidentiality; and
 - (b) 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 order has a duration of more than 12 months, the order must be reviewed at least once in every year;
 - (c) (If applicable) whether the power to revoke the order will be delegated to an employee of the Council.
- (5) Requests to access Council and Council 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, Anne Champness, CEO, 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:

Section 90(3)(a) Order

The Council is satisfied that, pursuant to Section 90(2) & (3) of the *Local Government Act 1999*, the information to be received, discussed or considered in relation to this agenda item is:

[insert reasons]

- (1) Pursuant to Section 90(2) & (3) of the *Local Government Act 1999*, Council orders, that the public be excluded from attendance at so much of the meeting as is necessary to receive, discuss and consider in confidence, information contained within the confidential report Item **[xxxxxxx Title of Report]**, attachments and any associated documentation submitted by the Chief Executive Officer, specifically on the basis of the provisions (*reasons*).
- (2) At the completion of the confidential session the meeting be re-opened to the public.

Section 91(7) Order:

- (1) In accordance with Sections 91(7) and 91(9) of the *Local Government Act 1999* the Council orders that the report (Title), the minutes arising from the report, attachments and any associated documentation, having been considered by the Council in confidence under Section 90(2) & (3) (k) be kept confidential and not

available for public inspection until (insert date), on the basis that the information received, discussed and considered in relation to this agenda item is:

[insert reasons]

- (2) Further that Council delegates the power of review, but not the extension, of the confidential order to the Chief Executive Officer on a monthly basis in accordance with the provisions of Section 91(9)(c) of the *Local Government Act 1999*.

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.

- (7) Information/briefing session: If an order is made under section 90A(4) the Chief Executive Officer will make a record of the grounds and basis on which the order was made, and if relevant the reason considering the matter publicly would be contrary to the public interest.

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 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 not been made publicly available and the reason for this in each case.

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 is required to review this code within 12 months of the conclusion of a periodic election. However, Council may review this code at any time if it so chooses.

Grievance

- (1) Council has established procedures for the review of decisions under section 270 of the Act for:
 - (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, they can lodge an application for review of that decision under the procedures established by Council. A copy of the procedures adopted by Council is available from the Director Corporate & Community Services, telephone (08) 8752 1044 and on Council's website www.tatiara.sa.gov.au.

Information

- (1) The Director 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 12 December 2000.

Record of Amendments

DATE	REVISION NO	REASON FOR AMENDMENT
24 November 2000	Rev: 00	Draft Copy
12 December 2000	Rev: 01	Adopted by Council Res No 154
14 August 2001	Rev: 02	Annual Review
9 September 2003	Draft Public Cons	Review after Council Election
9 September 2003	OK for public cons	Removed the word involvement pg 6
12 December 2006	Rev: 04	Reviewed after November 06 Council Election
8 September 2009	Rev: 05	Code reviewed and adopted
18 January 2011	Rev: 06	Reviewed after November 2010 Council Election. Minor changes in line with LGA's revised model code.
20 January 2015	Rev: 07	Reviewed after November 2014 Council Election
1 October 2019	Draft Public Cons	Review after 2018 Council Election
10 December 2019	Rev: 08	Adopted Council Meeting, Res: 2019/408
7 April 2020	Rev: 09	Variation to allow electronic participation during public emergency – COVID-19
12 October 2021	Rev: 10	Review after Local Government Reform September 2021.
11 January 2022	Rev: 11	Electronic participation during public emergency and Local Government Reform changes (information/briefing sessions)
12 July 2022	Rev: 12	Cessation of public emergency declaration – removal of electronic participation