|  |  |  |
| --- | --- | --- |
|  |  | **Gawler River Floodplain Management Authority** |
| **Adelaide Hills Council**  **Adelaide Plains Council**  **The Barossa Council**  **Town of Gawler**  **Light Regional Council**  **City of Playford** | |  | Address: 266 Seacombe Road Seacliff Park, South Australia 5049  Telephone: 0407717368  Email: [david.hitchcock@bigpond.com](mailto:david.hitchcock@bigpond.com)  Website: www.gawler.sa.gov.au/grfma |

**POLICY DOCUMENT**

**Access to Meetings & Documents**

|  |  |
| --- | --- |
| Strategic Reference | Policy Documents |
| File reference | GRFMA, Admin, Policy |
| Responsibility | Executive Officer |
| Revision Number | 2 |
| Effective date | 14/12/17 |
| Last revised date | Adopted GRB 13/0002 of 15th February 2013  Revised GRB 16/0004 of 14th April 2016 |
| Minutes reference | GRB 17/095 |
| Next review date | December 2018 |
| Applicable Legislation | Local Government Act 1999 s50 |
| Related Policies | Public Consultation Policy |
| Related Procedures |  |

The following Policy has been prepared in accordance Clause 8.2.9 and 8.2.10 of the Charter of the Gawler River Floodplain Management Authority. The purpose of the Policy is to provide prudent management guidelines for the day-to-day management of the affairs of the GRFMA.

1.00 DEFINITIONS:

The following definitions shall apply:

“Clear days” means the time between the giving of the notice and the meeting is to be determined excluding both the day on which the notice was given and the day of the meeting.

“Executive Officer” shall mean the Executive Officer of the Gawler River Floodplain Management Authority.

“GRFMA” shall mean the Gawler River Floodplain Management Authority.

**2.00 STATEMENT OF PRINCIPLE**

In fulfilling the role of an effective Local Government Regional Subsidiary that is responsive to its Constituent Councils and the needs of their communities and which operates within the legal framework prescribed by the Local Government Act, 1999, the GRFMA is fully committed to the principle of open and accountable government.

However, the GRFMA 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.

4.00 ACCESS TO THE AGENDA FOR MEETINGS

At least three ‘clear days’ before a GRFMA Board Meeting (unless it is a special meeting) the Executive Officer must give written notice of the meeting to all Board Members and Constituent Councils setting out the date, time and place of the meeting and the notice must contain or be accompanied by the agenda for the meeting.

The notice and agenda are also to be placed on public display at each of the principal offices of the Constituent Councils at the same time as they are forwarded to Board Members. Items listed on the agenda are described accurately and in reasonable detail.

Distribution of agenda papers to Board Members may include advice from the Executive Officer (after consultation with the Chairman) that a document or report on a particular matter **may** be considered in confidence with the public to be excluded. Where this occurs, the Executive Officer must specify the basis under which the order could be made. (Ref: Sections 87 (10) Local Government Act 1999.)

In these cases the document will be clearly marked “Confidential” in bold across the first page of the document

It is GRFMA’s stated intention that matters that may be considered to fall within the “confidential” category will be kept to an absolute minimum in line with the principal of open and transparent governance

**5.00 PUBLIC ACCESS TO MEETINGS**

GRFMA Board Meetings are open to the public and attendance is encouraged except where the Board believes it is necessary in the broader community interest to exclude the public from the discussion of a particular matter.

The public will only be excluded when considered proper and necessary i.e. the need for confidentiality outweighs the principle of open decision-making.

It is lawful for Board Members and Board 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 of a formally constituted meeting of the GRFMA.

For any informal gathering, the GRFMA has an internal practice of providing information to the Board or a Committee membership or to constituent council staff, nominated as appropriate, to the gathering. Consistent with this policy principles, the majority of these Informal Gatherings will be open and accessible to the public. Only when a matter fulfils the exclusion of public criteria will an Informal Gathering be a ‘Closed Informal Gathering’ and not accessible to the public.

The following are examples where informal discussions may be considered appropriate and are examples listed in the Act:

* planning sessions associated with the development of policies and strategies;
* briefing or training sessions;
* workshops;
* social gatherings to encourage informal communication between Board Members or between Board Members and staff.

**6.00 PROCESS TO EXCLUDE THE PUBLIC**

Before the 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. Once the Board 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 GRFMA or a member of the police to use reasonable force to remove the person from the room if s/he fails to leave on request.

Once discussion on that particular matter is concluded, the public are then permitted to re-enter the meeting.

It should be noted that the Board can by inclusion within the resolution permit a particular person or persons to remain in the meeting. An example would be allowing a property owner who is suffering personal hardship to remain in the meeting when their circumstances concerning their property are being discussed.

The practice of the Board of the GRFMA when dealing with items considered being confidential is as follows:

* to deal with the agenda items in the order listed in the agenda, or
* for the convenience of the public present at a meeting, where it is resolved to consider a matter in confidence, this matter may be deferred until all other business has been dealt with rather than ask the public to leave the room and wait for however long it takes until the matter is concluded and then allow the public to return to the meeting room with the possibility of the same process being repeated for a subsequent matter.

**7.00 MATTERS FOR WHICH THE BOARD, OR A COMMITTEE, CAN ORDER THAT THE PUBLIC BE EXCLUDED. (Sect.90(3))**

The Board may order that the public be excluded in the following circumstances:

1. 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 GRFMA is conducting, or proposing to conduct, business, or to prejudice the commercial position of the GRFMA; 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

1. 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 Plan Amendment Report 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 Board 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 the Board or to Members of the Board or employees of the GRFMA or
* cause a loss of confidence in the Board of the GRFMA.

If a decision to exclude the public is taken, the Board is required to make a note in the minutes of the making of the order and the grounds on which it was made. Minutes of a meeting of the Board must be publicly available within five days after the meeting.

8.00 APPROACH TO THE USE OF THE CONFIDENTIALITY PROVISIONS

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 Policy.

The policy approach of the Board is:

1. The principle of open and accountable government is strongly supported;
2. Confidentiality provisions will only be utilised after careful consideration and when considered proper and necessary;
3. 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;
4. 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 Board must not order that a document remain confidential;
5. 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;
6. 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 the Board 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 will 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;

7. 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 order by the Board and the associated implications; and

Where a person provides information to the Board and requests that it be kept confidential, the Board is not able to even consider this request unless the matter is one that falls within section 90 (3). If this is the case, the Board will then be in a position to consider the request on its relative merits.

**9.00 PUBLIC ACCESS TO DOCUMENTS**

Various documents are to be available for inspection and purchase (for a fee) by the public. Where appropriate the Board also makes various documents available in electronic form that are available on a website at [www.gawler.sa.gov.au](http://www.gawler.sa.gov.au) to promote open and accountable decision-making processes.

The Board will only 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. The Board can only make such orders in relation to documents that have been considered in confidence under section 90 (3).

Once a matter has been dealt with, the Board may order that a document relating to the matter considered in confidence is to be kept confidential. There are some exceptions. The Board must not make an order to prevent:

* the disclosure of the remuneration or conditions of service of an employee after they have been set or determined; or
* the disclosure of the identification of a successful tenderer or any reasons as to why that tenderer has been selected; or
* the disclosure of the identity of land that has been acquired or disposed of by the Board, or of any reasons as to why acquisition or disposal has occurred.

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.

The Board 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 this delegation.

The minutes shall record the relevant grounds and duration of the order and any delegation to revoke the order, should this be applicable [section 91(9)].

Requests to access Board documents can be made under the Freedom of Information Act 1991.

The Board nominated Freedom of Information contact officer is the Executive Officer Mr. David Hitchcock who can be contacted by phone 0407717368 or e-mail [davidehitchcock@bigpond.com](mailto:davidehitchcock@bigpond.com)

# 10.00 ACCOUNTABILITY AND REPORTING TO THE COMMUNITY

While it is not a statutory requirement, the GRFMA will report in its Annual Report on the use of all of the confidentiality provisions exercised by the Board for the year.

The report will include the following information for meetings of the Board:

1. Number of occasions each of the provisions of section 90(3) were utilised;
2. 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
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 x 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 still not subsequently been made publicly available and the reason for this in each case.

# 11.00 AVAILABILITY OF POLICY

The public may inspect a copy of the Policy without charge, at offices of the Constituent Councils during office hours, and may obtain a copy for a fee fixed by each Council.

# 12.00 REVIEW

The GRFMA is required to review this Policy on an annual basis to ensure that the principle of open government is being applied in a proper manner.

The next review will be conducted at the next available Board Meeting following the conclusion of 12 calendar months from its formal adopted by the GRFMA.

However, the Board has the right to review this code at any time, if considered desirable.

## 13.00 GRIEVANCE

The GRFMA has established procedures for the Internal Review of Decisions of:

* The GRFMA Board;
* employees of GRFMA, and
* other persons acting on behalf of the GRFMA.

Should a person be aggrieved about public access to either a meeting or a document then they can make an application for consideration under the procedure established by the GRFMA.

Information on the GRFMA Internal Review of Decisions procedure is available from the Executive Officer, Mr. David Hitchcock, who can be contacted by phone 0407717368 or e-mail davidehitchcock@bigpond.com

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

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

If an investigation is conducted, the Ombudsman must supply the Minister and GRFMA with a copy of the written report that is prepared. After considering the report of the Ombudsman if the Minister believes that the GRFMA has unreasonably excluded members of the public from a meeting or prevented access to a document, s/he may give directions to the GRFMA about the future exercise of its powers concerning the exclusion of the public from meetings or the making of orders to withhold a document (or part thereof) or to release information that should, in the opinion of the Minister, be available to the public.

Before taking such action the Minister must give the GRFMA a reasonable opportunity to make submissions to the Minister in relation to the matter.

# 14.00 REVOKING OR AMENDING PREVIOUS RESOLUTIONS

Subject to some circumstances, the GRFMA Board can pass resolutions that amend or revoke resolutions previously adopted. Whilst this is not a regular practice, it can happen, for example, where new information is presented.

# 15.00 INFORMATION

Further information on aspects of this Policy are available from the Executive Officer Mr. David Hitchcock who can be contacted by phone 0407717368 or e-mail [davidehitchcock@bigpond.com](mailto:davidehitchcock@bigpond.com)