

CODE OF PRACTICE FOR ACCESS TO COUNCIL & COMMITTEE MEETINGS & DOCUMENTS POLICY

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Strategy 1.1.7 Ensure compliance of relevant Council policies and procedures with legislative requirements.

References and related Policies, Procedures and Forms:

Local Government Act 1999

Local Government (Elections) Act 1999

DCSB-G-09.01 Code of Conduct for Elected Members

DCSB-HR-12.02 Code of Conduct for Council Employees

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1. Statement of Principle

- 1.1 In fulfilling the role of an effective Council that is responsive to the needs of the community and which operates within the legal framework prescribed by the *Local Government Act 1999*, the District Council of Streaky Bay (Council) is fully committed to the principle of open and accountable government.
- 1.2 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.

2. Objectives

The objectives of this code are to:

1. Clearly outline to the community for what purpose and on what basis Council may apply the provisions of the South Australian Local Government Act 1999 to restrict public access to meetings or documents;
2. Provide information on Council's code of practice to the community; and
3. Summarise the legal position relating to public access to Council and committee meetings and documents.

NB – These guidelines relate to the provisions of the South Australian *Local Government Act, 1999*.

3. Introduction

- 3.1 The Code sets out the commitment of the District Council of Streaky Bay to public access to Council and Council committee meetings or documents and outlines the policies and procedures contained within the *Local Government Act 1999* to restrict public access.
- 3.2 The Code includes:
 - information on the relevant provisions in the Act;
 - Council's policy on public access and participation;
 - the process that will be adopted where public access to a meeting or document is restricted when this is considered necessary;
 - grievance procedures to be followed if a member of the public believes that Council has unreasonably restricted public access in a particular matter.
- 3.3 The Code sets out the policy of Council for access to meetings and documents and includes information relating to:
 - access to the agenda for meetings,
 - public access to meetings,
 - process to exclude the public from meetings,
 - matters for which Council, or a Council committee, can order that the public be excluded,
 - how Council will approach the use of the confidential provisions in the Act,

- public access to documents, including minutes,
- review of confidentiality orders
- 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 the 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 public consultation policy. A copy of that policy can be viewed or obtained at any of the council offices during normal business hours.

5. Access to the Agenda for Meetings

- 5.1 At least three clear days¹ before an ordinary² Council or a 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. The practice of Council is to provide this notice 5 days prior to the ordinary meeting.
- 5.2 Subject to clause 5.8 the notice and agenda are also to be placed on public display at the principal office of Council at the same time as they are forwarded to Council members. The agenda is also loaded on Council's website: www.streakybay.sa.gov.au.
- 5.3 Items listed on the agenda are to be described with reasonable particularity and accuracy.
- 5.4 Subject to clause 5.8 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.
- 5.5 Subject to clause 5.8 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.
- 5.6 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.
- 5.7 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

¹ clear days' means that the time between the giving of the notice and the day of the meeting, but excluding both 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 are Friday, Saturday and Sunday.

² special meetings under s83(2) of the *Local Government Act 1999* require at least four hours notice.

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. [see sections 83(5) (Council) and 87(10) (Committee) of the Act.]

- 5.8 For the period of a declared pandemic / public health emergency, the requirement that the CEO give notice to the public of the times and places of Council meeting by placing the notice of meeting and agenda on public display at each office of the Council that is open to the public for the general administration of Council business within its area is **suspended**.
- 5.9 For the period of a declared pandemic / public health emergency, the CEO (or person nominated in writing by the CEO) will ensure that any document or report supplied to members of the Council for consideration at a meeting of the Council is available for inspection by members of the public:
- 5.9.1 in the case of a document or report supplied to members of the Council before the meeting – on a website determined by the CEO as soon as practicable after the time when the document or report is supplied to members of the Council; or
- 5.9.2 in the case of a document or report supplied to members of the Council at the meeting – on a website determined by the CEO as soon as practicable after the time when the document or report is supplied to members of the Council.

6. Public Access to Meetings

- 6.1 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.
- 6.2 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:

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.

- 6.3 Council encourages public attendance at meetings. Council meets on the 3rd Thursday of each month commencing at 9.30am or as otherwise advised through advertisements on Council's website, social media or other public notices.
- 6.4 For the period of a declared pandemic / public health emergency, a Council meeting will be taken to be conducted in a place open to the public, even if one or more Council members participate in the meeting by electronic means provided that:

- a) the CEO (or a person nominated in writing by the CEO) makes available to the public a live stream of the meeting on a website to be determined by the CEO and ensures that members of the public can hear the discussion between all Council members present at the meeting via the live stream; or
 - b) if the CEO (or a person nominated in writing by the CEO) has taken reasonable steps to make available a live stream of the meeting but is unable to make available a live stream of the meeting, the CEO (or a person nominated by the CEO) makes available to the public a recording of the meeting as soon as practicable after the meeting on a website determined by the CEO and ensures that member of the public can hear the discussion between all Council members present at the meeting via the recording.
- 6.5 If the CEO (or a person nominated in writing by the CEO) has taken reasonable steps to make available to the public a live stream of the meeting or, (if unable to make available a live stream of the meeting) a recording of the meeting but is unable to comply the CEO (or a person nominated in writing by the CEO) must publish on a website determined by the CEO the steps taken to comply and the requirement will be suspended.
- 6.6 In accordance with section 90 of the Act, 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 Council committee.
- 6.7 The Council is not bound to hold an informal gathering open to the public in accordance with section 90(1) of the Act as openness to the public only applies to Council and Council Committee meetings. This means that section 90(2) to exclude the public has no role to play.
- 6.8 The following are examples of informal gatherings or discussions that may be held in accordance with section 90(8):
- planning sessions associated with the development of policies and strategies;
 - briefing or training sessions;
 - workshops; or
 - social gatherings to encourage informal communication between members or between members and staff.

7. Process to Exclude the Public

- 7.1 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.

- 7.2 Council or the Council Committee must disconnect any live stream or recording of a meeting for the period that the meeting is closed to the public pursuant to an order made under section 90(2).
- 7.3 Once Council or a Council 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 to use reasonable force to remove the person from the room if he or she fails to leave on request.
- 7.4 It is an offence for a person who, knowing that an order is in force under section 90(2), connects to a meeting of the Council or Council Committee by electronic means, or fails to disconnect from a meeting of the Council or Council Committee.
- 7.4 Once discussion on that particular matter is concluded, the public are then permitted to re-enter or reconnect to 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.
- 7.5 Please note that the 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.
- 7.6 For the period of a declared pandemic / public health emergency, a Council meeting will be taken to conducted in a place open to the public even if one or more Council members participate in the meeting by electronic means provided that:
- a) the CEO (or person nominated in writing by the CEO) makes available to the public a live stream of the meeting on a website determined by the CEO and ensures that members of the public can hear the discussion between all Council members present at the meeting via the live stream; or
 - b) the CEO (or a person nominated in writing by the CEO) has taken reasonable steps to make available a live stream of the meeting but is unable to make available a live stream of the meeting, the CEO (or a person nominated b the CEO) makes available to the public a recording of the meeting as soon as practicable after the meeting on a website determined by the CEO and ensures that members of the public can hear the discussion between all Council members present at the meeting via the recording.
- 7.7 If the CEO (or person nominated in writing by the CEO) has taken reasonable steps to make available to the public a live stream of the meeting or, (if unable to make available a live stream of the meeting) a recording of the meeting but is unable to comply the CEO (or person nominated in writing by the CEO) must public on a website determined by the CEO the steps taken to comply and the requirement will be suspended.
- 7.8 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.

8. Matters for which the Public Can be Excluded

8.1 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;*
- (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.*

8.2 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.

8.3 In some sections under section 90(3) of the Act a public interest balancing test must be satisfied for the ground of exclusion to apply. The “*public interest balancing test*” applies to sections:

- 90(3)(b)(ii) – ‘commercial advantage’;
- 90(3)(d)(ii) – ‘commercial information’; and
- 90(3)(j)(ii) – ‘information provided on a confidential basis’.

This test requires that public interest reasons for closing a meeting to the public must outweigh the general requirements for meetings to be held in public. This requirement to satisfy a public interest test is mirrored in certain provisions of the *Freedom of Information Act 1999* (SA) (“the FOI Act”).

8.4 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 Council or the committee concerned, or to members or employees of Council; or
- cause a loss of confidence in Council or the committee.

8.5 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. Minutes of a meeting of Council must be publicly available within five days after the meeting.

9. Public Access to Minutes

Minutes of a meeting of Council or a Council committee will be publicly available, including on the internet, within 5 days after the meeting and kept on display for a period of one month.

10. Use of the 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 listed within the South Australian Local Government Act 1999. These are listed in the paragraph 8 of the code.
- 10.2 The policy approach of The District Council of Streaky Bay is that:
- The principle of open and accountable government is strongly supported;
 - 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;
 - 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;
 - 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.
 - 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 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;

- 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
 - 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.
- 10.3 There is no legal requirement to resolve to “come out of confidence” or to go back into “public session”. The public will be invited to re-enter the meeting when consideration of the relevant Agenda Item has concluded.

11. Public Access to Documents

- 11.1 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.
- 11.2 The Council or Council 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.
- 11.3 The 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).
- 11.4 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 the remuneration or conditions 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 the Council, or of any reasons adopted by the Council as to why land has been acquired or disposed of by the Council.
- 11.5 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 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;

- whether the power to revoke the order will be delegated to an employee of the Council. [s.91(9)]

11.6 Requests to access Council and committee documents can be made under the *Freedom of Information Act 1991*. Inquiries in relation to the process for seeking access to documents held by Council should be directed to Council's designated Freedom of Information Officer, telephone 8626 1001.

12. Example of a Confidentiality Order

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

Example: If Council were considering the terms for a waste resources contract.

A Section 90(3)(b) order would be made before Council went into confidence such as:

Pursuant to section 90(2) of the Local Government Act 1999 the Council orders that all members of the public, except Joe Bloggs, CEO of ABC Council and Ivana Citizen, lawyer, XYZ Lawyers, be excluded from attendance at the meeting for Agenda Item 10.1 (Terms of Waste Resources Contract).

The Council is satisfied that, pursuant to section 90(3)(b) of the Act, the information to be received, discussed or considered in relation to this Agenda Item is information the disclosure of which could reasonably be expected to confer a commercial advantage on a person with whom the Council is proposing to conduct business, and the information would prejudice the commercial position of the Council, in that the Council is currently engaged in a post tender negotiation with a preferred tenderer to finalise the terms and conditions of engagement for this service – the information to be considered in relation to this Agenda Item include detailed costings for in-house provision of waste resources services and other specific financial information, the disclosure of which would prejudice the Council's commercial position during the current ongoing negotiations.

In addition, the disclosure of this information would, on balance, be contrary to the public interest. The public interest in public access to the meeting has been balanced against the public interest in the continued non-disclosure of the information. The benefit to the public at large resulting from withholding the information outweighs the benefit to it of disclosure of the information. 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 the disclosure of Council's commercial position may severely prejudice Council's ability to be able to negotiate a cost-effective proposal for the benefit of the Council and the community in this matter and in relation to other contract negotiations.

If the Council resolved for the report containing the commercial information to remain in confidence, a Section 91(7) would be made at the conclusion of considering the item, such as:

That having considered Agenda Item 10.1 (Terms of Waste Resources Contract) in confidence under section 90(2) and (3)(b) of the Local Government Act 1999, the Council, pursuant to section 91(7) of that Act orders that the Tender documents and related Council reports and all minutes be retained in confidence for a period of 2 years, or until a contract has been signed and that this order be reviewed every 12 months.

13. Review of Confidentiality Orders

- 13.1 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.
- 13.2 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.
- 13.3 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.
- 13.4 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.

- 13.5 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.

14. 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:

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

15. Grievance

Council has established procedures for the review of decisions under section 270 of the Act for:

- Council and its committees;
- Employees of the Council; and
- Other persons acting on behalf of the Council.

Should a person be aggrieved about public access to either a meeting or document then they can lodge an application for review of that decision under the procedures established by Council. The procedures are available from Council's office or website (www.streakybay.sa.gov.au).

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. Records

Records in relation to this document will be recorded as per the current General Disposal Schedule.

17. Review and Evaluation

In accordance with section 92(2) of the Act, Council is required to review this code within 12 months after the conclusion of each periodic election. However, Council has the ability to review this code at any time if considered desirable.

During a declared pandemic / public health emergency Council:

- a) is not required to adopt any provision in this Code that would prevent or inhibit members from participating in Council meetings or Council committee meetings by electronic means;
- b) members may meet by electronic means to alter the Code of Practice, or substitute a new Code of Practice of the Council, even if the existing Code of Practice has been recently reviewed.

18. Further Information and Code Availability

This policy will be available for inspection at the Council offices listed below during ordinary business hours and available to be downloaded, free of charge, from Council's internet site: www.streakbay.sa.gov.au

District Council of Streaky Bay
29 Alfred Tce
Streaky Bay SA 5680

Copies will be provided to interested parties upon request. Email dcstreaky@streakybay.sa.gov.au

Version Details

VERSION	DATE ADOPTED	MINUTE BOOK NUMBER
V1.0	Unknown	Unknown
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V3.0	21 January 2016	08/16
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