

INFORMAL GATHERINGS POLICY

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DCSB-G-09.05

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Chief Executive Officer

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386308

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Governance

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Strategy 1.3 Ensure Council fulfils its legislated governance responsibilities, and its decision-making is supported by relevant policies and codes.

References and related Policies, Procedures and Forms:

Electronic Participation in Council Meetings Notice (No 1) 2020

Emergency Management Act 2004

Local Government Act 1999

Local Government (General) Regulations 2016

South Australian Public Health Act 2011

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. Introduction

1.1 Informal gatherings provide a valuable opportunity to enhance Council decision-making processes by providing opportunities for Council members to become better informed on issues and seek further clarification. Informal gatherings, however, should not be used, or be seen to be used, as a replacement for full debate and decision-making at Council meetings or Council committee meetings. Open and transparent Council meetings and Council committee meetings underpin representative democracy and ensure public confidence in Council's decision-making processes.

2. Policy Objective

2.1 The policy aims to ensure that the statutory requirements for openness and transparency in Council decision-making are observed; while providing an opportunity for confidential discussions among Council member where this is warranted by the nature of the gathering or subject matter to be discussed.

3. Definitions

Attendance at Information Gatherings – means members of the Council may participate in an informal gathering of the Council by electronic means. A member of the Council participating in an informal gathering by electronic means is taken to be present at the informal gathering provided that the member:

- (a) can hear all other members present at the informal gathering; and
- (b) can be heard by all other members present at the informal gathering.

Electronic means – includes a telephone, computer or other electronic device used for communication.

Form of Participation by Electronic Means – is where:

- (a) a Council member is to participate in an informal gathering by electronic means; and
- (b) the electronic means has the functionality to allow the Council member to participate in the informal gathering 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.

Notice No 1 – means the notice provided by the Chief Executive of the Department for Health and Wellbeing in the State of South Australia as set out below:

Pursuant to section 87 of the *South Australian Public Health Act 2011* the Chief Executive of the Department for Health and Wellbeing in the State of South Australia declared that an emergency which threatens to cause the death of, or injury or other damage to the health of any person is occurring or about to occur in relation to the transmission of COVID-19, and declared the emergency to be a public health emergency.

On 22 March 2020, the State Co-ordinator for the State of South Australia declared, pursuant to section 23 of the *Emergency Management Act 2004*, that a Major Emergency is occurring in respect of the outbreak of the Human Disease named COVID-19 within South Australia.

On 30 March 2020 the Minister for Transport, Infrastructure and Local Government issued a notice pursuant to section 2302B of the *Local Government Act 1999* (**Notice No 1**) varying or suspending the operation of the specified provisions of the *Local Government Act 1999* as set out in Schedule 1 to Notice No 1. Notice No 1 commenced operation on 31 March 2020.

For the period Notice No 1 has effect (as provided for in Notice No 1), this Informal Gatherings Policy is altered as set out below and those alterations have effect notwithstanding any other provision in this Informal Gatherings Policy to the contrary.

The alterations to this Policy are made consistent with Notice No 1 and the Council's Code of Practice for Access to Meetings and Code of Practice for Meeting Procedures.

Pandemic – means a world-wide health emergency is declared by the Director General of the World Health Organisation.

Public Access to Designated Informal Gatherings – means during the period within which Notice No 1 applies, public access to designated informal gatherings may be provided in accordance with sections 90(1a) and 90(1b) of the *Local Government Act 1999* however, as outlined in this Policy, minutes will not be recorded.

Public Health Emergency – is an emergency declared by the Chief Executive of the Department for Health and Wellbeing, which results in the enactment of the South Australian Public Health Emergency Plan.

4. Scope

- 4.1 This policy applies to informal gatherings of the Council or a Council committee, including designated informal gatherings or discussions.
- 4.2 An 'informal gathering' is a gathering or discussion to which all Council members or Council committee members (as the case may be) are invited.
- 4.3 The *Local Government (General) Regulations 2013* defines 'designated informal gathering or discussion' as:

an event organised and conducted by or on behalf of the council or chief executive officer to which members of the council or council committee (as the case may be) have been invited and that involves discussion of a matter that is, or is intended to be, part of the agenda for a formal meeting of the council or council committee.

- 4.4 An informal gathering which does not involve discussion of a matter that is, or is intended to be, part of the agenda for a formal meeting of the Council or Council committee, is not a 'designated informal gathering or discussion'.

5. Policy Statement

5.1 Purpose of informal gatherings or discussions

5.1.1 Section 90(8) of the *Local Government Act* allows informal gatherings or discussions to be held provided that the gathering or discussion does not obtain, or effectively obtain, a decision on a matter outside a formally constituted meeting of the Council or Council committee.

5.1.2 The *Local Government Act* sets out the following examples of informal gatherings or discussions:

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

5.1.3 Informal gatherings of Council members or Council committee members (either with or without Council staff) are, by their nature, non-compulsory. However, all Council members and Council committee members are encouraged to attend relevant informal gatherings, particularly where the informal gathering or discussion is intended to provide history, context or additional information to Council members or Council committee members.

5.2 Purpose of designated informal gatherings or discussions

5.2.1 Designated informal gatherings or discussions may be used to:

- discuss issues that involve strategy or policy or other matters of Council administration; and / or
- brief Council members or Council committee members on issues relevant to matters which in the future will be included on the agenda of a formal meeting of the Council or Council committee.

5.2.2 Designated informal gatherings and discussions will be used solely for the purpose of information sharing and not for the purpose of determining, or effectively determining, matters which should be determined at a formally constituted meeting of the Council or Council committee.

5.3 Designated informal gatherings or discussions to be open to the public, except in special circumstances

5.3.1 Designated informal gatherings or discussions will be held at a place open to the public, except where the designated informal gathering or discussion has been declared by the Council or Chief Executive Officer to be a 'confidential informal discussion'.

5.3.2 The Council or Chief Executive Officer may, on a case-by-case, declare a designated informal gathering or discussion to be a 'confidential informal discussion' where the designated informal gathering or discussion is either:

- a planning session of a general or strategic nature; or
- is a briefing session relating to information or a matter of a confidential nature within the ambit of section 90(3) of the Local Government Act (see attachment).

5.3.4 An informal gathering or discussion of the Council or a Council committee which is not a designated gathering or discussion will not be open to the public, unless otherwise determined by the Council or Chief Executive Officer.

5.4 Procedures applying to designated informal gatherings or discussions

5.4.1 Both the Chief Executive Officer and the Council are responsible for ensuring designated informal gatherings or discussions are conducted in accordance with the Local Government Act.

5.4.2 Designated informal gatherings or discussions are not subject to the procedural meeting requirements of the Local Government Act and *Local Government (Proceedings at Meetings) Regulations 2013*.

5.4.3 Designated informal gatherings or discussions will be chaired by the Chief Executive Officer or another senior Council officer. The Chair is responsible for ensuring that the purpose, intent and outcomes of the designated informal gatherings or discussions are consistent with section 90 of the Local Government Act.

5.4.4 Formal minutes will not be recorded of a designated informal gathering or discussion. Notes of a designated informal gathering or discussion may be tabled at the Council meeting following the designated informal gathering or discussion.

5.4.5 If a designated informal gathering or discussion has been declared to be a 'confidential informal discussion', then the designated informal gathering or discussion may be attended by Council members, the Chief Executive Officer and any other person invited to attend by the Council or the Chief Executive Officer.

5.4.6 If a confidential informal discussion declaration has been made in respect of only some of the matters to be discussed at a designated informal gathering or discussion, then these confidential matters will be scheduled to be discussed at the end of the agenda for the designated informal gathering or discussion. The designated informal gathering or discussion will be open to the public until immediately prior to the discussion on confidential matters commencing.

5.5 Publication of information relating to designated informal gatherings or discussions

5.5.1 For all designated informal gatherings or discussions, the following information will be published on the Council's website:

- (i) the place, date and time at which the designated informal gathering or discussion will be held;
- (ii) the matter that is to be discussed at the designated informal gathering or discussion; and
- (iii) whether or not the designated informal gathering or discussion is to be held at a place open to the public.

5.52 Where a confidential informal discussion declaration applies to a designated informal gathering or discussion, the reason for the designated informal gathering or discussion being held entirely or partially in confidence must be published on the Council's website.

6. Records

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

7. 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.

8. 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

9. Attachment

Information and matters within
the ambit of section 90(3), Local Government Act

- (a) information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead);
- (b) information the disclosure of which:
 - (i) could reasonably be expected to confer a commercial advantage on a person with whom the Council is conducting, or proposing to conduct, business, or to prejudice the commercial position of the Council; and
 - (ii) would, on balance, be contrary to the public interest;
- (c) information the disclosure of which would reveal a trade secret;
- (d) commercial information of a confidential nature (not being a trade secret) the disclosure of which:
 - (i) could reasonably be expected to prejudice the commercial position of the person who supplied the information, or to confer a commercial advantage on a third party; and
 - (ii) would, on balance, be contrary to the public interest;
- (e) matters affecting the security of the Council, members or employees of the Council, or Council property, or the safety of any person;
- (f) information the disclosure of which could reasonably be expected to prejudice the maintenance of law, including by affecting (or potentially affecting) the prevention, detection or investigation of a criminal offence, or the right to a fair trial;
- (g) matters that must be considered in confidence in order to ensure that the Council does not breach any law, order or direction of a court or tribunal constituted by law, any duty of confidence, or other legal obligation or duty;
- (h) legal advice;
- (i) information relating to actual litigation, or litigation that the Council or Council committee believes on reasonable grounds will take place, involving the Council or an employee of the Council;
- (j) information the disclosure of which:
 - (i) would divulge information provided on a confidential basis by or to a Minister of the Crown, or another public authority or official (not being an employee of the Council, or a person engaged by the Council); and
 - (ii) would, on balance, be contrary to the public interest;
- (k) tenders for the supply of goods, the provision of services or the carrying out of works;
- (l) information relating to a proposed amendment to a Development Plan under the *Development Act 1993* before a Development Plan Amendment proposal relating to the amendment is released for public consultation under that Act;
- (m) information relevant to the review of a determination of a Council under the *Freedom of Information Act*