

THE BAROSSA COUNCIL

INFORMAL GATHERINGS POLICY



Corporate Plan:	6.2 Ensure that Council's policy and process frameworks are based on principles of sound governance and meet legislative requirements.		
Policy Owner:	Chief Executive Officer	Previous Approval Date(s):	16/02/2016, 15/11/2016 24/01/2017 18/12/2018
Document Control Officer:	Governance Advisor	Current Approval Date:	21/04/2020
TRIM Reference:	17/7208*	Next Review Date:	Next periodic election

1. Purpose

- 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.
- 1.2 This Policy aims to ensure that the statutory requirements for openness and transparency in The Barossa Council's ("Council's") decision-making are observed; while providing an opportunity for confidential discussions among Elected Members or Council committee members where this is warranted by the nature of the gathering or subject matter to be discussed.
- 1.3 On 15 March 2020, the Chief Executive of the South Australian Department for Health and Wellbeing, pursuant to section 87 of the *South Australian Public Health Act 2011*, 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 South Australian State Co-ordinator declared, pursuant to section 23 of the *Emergency Management Act 2004*, that a Major Emergency is occurring in respect of the outbreak of COVID-19 within South Australia.

On 31 March 2020, the Minister for Transport, Infrastructure and Local Government issued a Notice pursuant to section 302B of the *Local Government Act* (the "Act") (the "Notice No 1") varying or suspending the operation of the specified provisions of the Act as set out in Schedule 1 to the Notice No 1. Notice No 1 commenced operation on 31 March 2020.
- 1.4 For the period that Notice No 1 has effect (as provided for in Notice No 1), this Informal Gatherings Policy is altered as set out in this Policy where indicated, and apply to all informal gatherings of Council. The alterations have effect notwithstanding any other provision in this Informal Gatherings Policy to the contrary.
- 1.5 The alterations to this Policy are made in line with the Notice No 1 and Council's Code of Practice for Access to Council and Committee Meetings and Documents.

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2. Scope

- 2.1 This Policy applies to informal gatherings of the Council or a Council committee, including designated informal gatherings or discussions.
- 2.2 An 'informal gathering' is a gathering or discussion to which all Council members or Council committee members (as the case may be) are invited, even if not all attend.
- 2.3 The *Local Government (General) Regulations 2013* define a '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.*
- 2.4 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'.

3. Policy Statement

3.1A Attendance at Informal Gatherings and Participation by Electronic Means

3.1A.1 For the period of operation of Notice No 1, Elected Members may participate in an informal gathering of the Council by electronic means. An Elected Member participating in an informal gathering by electronic means is taken to be present at the informal gathering provided that the Elected Member:

- can hear all other Elected Members present at the informal gathering; and
- can be heard by all other Elected Members present at the informal gathering.

3.1A.2 For the period of the operation of Notice No 1, where:

- an Elected Member is to participate in an informal gathering by electronic means; and
- the electronic means has the functionality to allow the Elected Member to participate in the informal gathering by being heard but not seen or by being both seen and heard; and
- the electronic means of the Council has the functionality to allow the Elected Member to be heard but not seen or to be both seen and heard,

the Elected Member must participate by being both seen and heard.

3.1B Public Access to Designated Informal Gatherings

3.1B.1 For the period of operation of Notice No 1, public access to designated informal gatherings may be provided in accordance with Sections 90(1a) and 90(b) of the *Local Government Act 1999*, as varied by Notice No 1, however, as outlined in this Policy, minutes will not be recorded.

3.1 Purpose of informal gatherings or discussions

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

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

3.1.2 Informal gatherings of Elected Members or Council committee members (either with or without Council staff) are, by their nature, non-compulsory. However, all Elected 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 Elected Members or Council committee members.

3.1.3 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 Council or Council committee.

3.2 Purpose of designated informal gatherings or discussions

3.2.1 Designated informal gatherings or discussions may be used to:

- discuss issues that involve strategy or policy or other matters of Council administration
- brief Elected Members or Council committee members on issues relating to matters which will be included on the agenda of a formal meeting of the Council or Council committee.

3.2.2 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.

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

3.3.1 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'.

For the period of operation of Notice No 1, refer clauses 3.1A and 3.1B of this Policy.

3.3.2 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
- 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](#)).

3.3.3 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.

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3.4 Processes applying to designated informal gatherings or discussions

- 3.4.1 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*.
- 3.4.2 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*.

For the period of operation of Notice No 1, refer to the Notice for specific provisions that have been varied or suspended, and alternative requirements, arrangements, procedures and conditions.

- 3.4.3 Designated informal gatherings or discussions will be chaired by the Mayor, or in his absence, the Deputy Mayor or in his/her absence, an Elected Member appointed at the meeting by the Elected Members present. 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*.
- 3.4.4 Formal minutes of a designated informal gathering or discussion will not be recorded. Notes of a designated informal gathering or discussion may be tabled at the Council meeting following the designated informal gathering or discussion.
- 3.4.5 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 Elected Members, the Chief Executive Officer and any other person invited to attend by the Council or the Chief Executive Officer.
- 3.4.6 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, unless visitors to the meeting form part of the confidential informal discussion and the Mayor or Chief Executive Officer has approved that the scheduled item can be undertaken earlier on the agenda.

For the period of operation of Notice No 1, refer clauses 3.1A and 3.1B of this Policy.

- 3.4.7 Should a matter be referred to the designated informal gathering for urgent discussion outside of the published agenda, it will be dealt with as an "Other Business" item.

3.5 Publication of information relating to designated informal gatherings or discussions

- 3.5.1 For all designated informal gatherings or discussions, the following information will be published on the Council's website at www.barossa.sa.gov.au:

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

- 3.5.2 Where a confidential informal discussion declaration applies to a designated informal gathering or discussion, the reason for the designated informal gathering or

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discussion being held entirely or partially in confidence must be published on Council's website.

4. Supporting Process

Complaint Handling under the Code of Conduct for Council Members

5. Related Policies and Codes

Code of Practice for Access to Council and Committee Meetings and Associated Documents
Code of Conduct for Council Members

6. Legislation and References

Local Government Act 1999 Section 90(8a)-(8e)
Local Government (General) Regulations 2013
Electronic Participation in Council Meetings (No 1) 2020, published in the South Australian Government Gazette on Tuesday, 31 March 2020

7. Review

This Policy will be reviewed by the Council in consultation with the relevant stakeholders, at the next periodic election or more frequently if legislation or Council's need changes.

8. Further Information

This Policy is available on Council's website at www.barossa.sa.gov.au. It can also be viewed electronically at Council's principal office at 43-51 Tanunda Road, Nuriootpa and all Council branches, during ordinary business hours. A copy of this Policy can be obtained at those venues upon payment of a fixed fee.

Any complaint in relation to this Policy or its application should be forwarded in writing addressed to the Chief Executive Officer, PO Box 867, Nuriootpa SA 5355 or barossa@barossa.sa.gov.au.

10. Policy Version History

Version No:	Approval Date:	Description of Change:
1.0	16/02/2016,	New Policy, February 2016
2.0	15/11/2016	Policy revised following amendments to the <i>Local Government Act 1999</i> and the commencement of the <i>Local Government (Variation) General Regulations 2016</i> .
3.0	24/01/2017	Policy revised following legal advice obtained by the Local Government Association on the definition of 'informal gatherings'.
4.0	18/12/2018	Policy reviewed and adopted following general elections.
5.0	XX/XX/2020	Policy revised in line with the Electronic Participation in Council Meetings (No 1) 2020 published in the South Australian Government Gazette on Tuesday, 31 March 2020.

9. Definitions

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The Act	Local Government Act 1999.
Electronic	Includes a telephone, computer or other electronic device used for communication.
Notice No 1	The Notice Pursuant to Section 302(B) of the Local Government Act 1999 – Public Health Emergency – Electronic Participation in Council Meetings (No 1) issued by the Minister for Transport, Infrastructure and Local Government and gazetted on Tuesday 31 March 2020.
The Regulations	Local Government (Procedures at Meetings) Regulations 2013.
10.	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 1991*.