

Common Seal and Meeting Conduct Local Law

Community Impact Statement



Part A – General Comments

1. Introduction

Council is proposing to make a new a new Common Seal and Meeting Conduct Local Law (**proposed Local Law**).

The proposed Local Law will supersede and replace the Meeting Procedure Local Law 2018 (**current Local Law**).

The proposed Local Law is to be made as a direct consequence of the requirement for Council to develop and implement Governance Rules by 1 September 2020, in order to meet compliance requirements of the *Local Government Act 2020* (**the 2020 Act**). The Governance Rules must include the requirements for Council and Delegated Committees conduct of meetings, decisions making and records of meetings.

Concurrently, the draft Governance Rules will be undergoing community consultation and engagement.

This Community Impact Statement has been prepared to inform the community about the proposed Local Law and to assist any member of the public who may wish to make a submission to Council during the public consultation process required under the *Local Government Act 1989* (**the 1989 Act**).

2. Background

The current local law was made under the 1989 Act by Council resolution in December 2018 (R371/18). Since that time, there has been the most significant legislative change in 30 years following the 2020 Act receiving Royal Assent on 24 March 2020. Section 60 of the 2020 Act requires that each Council develop, adopt and apply governance rules that describe the way they will conduct Council meetings and make decisions by 1 September 2020.

Many elements of the Governance Rules are derived from the Meeting Procedures Local Law 2018 (**Local Law**) that was adopted in December 2018. It is proposed that the new Governance Rules will embed the meeting procedures of Council; and thus, supersede replace the current Local Law. Therefore, in order to prevent duplication between the instruments, it is proposed that the remaining elements that are still required be developed into a new local law.

These provisions relate to the:

- regulation and use of the Common Seal, including offences relating to misuse; and
- meeting conduct requirements, including offences relating to petitions or joint letters; recording of Council meetings; and improper or disorderly conduct behaviour.

3. Methodology

The proposed Local Law is being developed under section 111(1) of the Act and will operate throughout the Ballarat City Council municipal district.

The development process included:

- benchmarking against the corresponding meeting procedures of other Victorian Councils to assess where Council's current Local Law could be improved;
- participation in co-design workshops with Local Government Victoria and governance peers from within the local government industry;
- engagement into the development of model Governance Rules;
- consulted publications including:
 - Local Government Victoria Guidelines for Local Laws Manual, best practice guidelines for the creation and enforcement of Local Laws;
 - Model Governance Rules published by Local Government Victoria accessed via www.engage.vic.gov.au; and
- consultation with Councillors to make necessary adjustments to the Local Law to ensure effective and efficient conduct of Council meetings in accordance with overarching governance principles outlined in the 2020 Act.

4. Objectives

It is planned that the proposed Local Law will incorporate the remaining elements of current Local Law;

This will allow the new provisions to operate for a full ten-year period (unless revoked sooner).

The general objectives of the Local Law are to:

- regulate the use of the Common Seal;
- prohibit unauthorised use of the Common Seal or any device resembling the Common Seal;
- meeting conduct requirements, including offences relating to petitions or joint letters; recording of Council meetings; and improper or disorderly conduct behaviour.

5. Consultation

The proposed Local Law will be presented to Council for endorsement on 8 July 2020 to enable it to be released for public exhibition for at least 28 days; during which, affected members of the community are invited to make written submissions as per the requirements of Section 119 and Section 223 of the *Local Government Act 1989*.

Those submitters who indicate that they wish to talk to their submissions in relation to the draft local law are invited to address Council at its Council meeting on 12 August 2020.

Following consideration of any submissions the proposed Local Law is being presented to Council on 26 August 2020 for adoption.

PART B – COMMENTS ON GOVERNANCE PROCEDURES

OVERALL

The proposed Local Law is being made under section 111(1) of the Act and will operate throughout the municipal district of the Ballarat City Council.

<p>Measures of success of proposed Local Law</p>	<p>The success of the proposed Local Law will be best measured by the extent to which it enhances the governance and integrity framework; and decision-making processes of the Council, including:</p> <ul style="list-style-type: none"> regulation and use of the Common Seal, including offences relating to misuse; and meeting conduct requirements, including offences relating to petitions or joint letters; recording of Council meetings; and improper or disorderly conduct behaviour. <p>Council will assess these outcomes as part of its periodic reviews of its governance and integrity framework.</p>
<p>Existing legislation that might be used instead.</p>	<p>There is no existing legislation that could be used instead of the Local Law.</p> <p>Both the 1989 Act and 2020 Act's provides the mechanism for the creation and use of Local laws pertaining to regulation of the Common Seal and meeting conduct.</p>
<p>State legislation more appropriate</p>	<p>Not applicable. There are no alternative mechanisms or instruments that can be used for this purpose.</p>
<p>Overlap of existing legislation</p>	<p>The proposed Local Law references offences for the misuse of Common Seal and conduct are Council meetings; and will operate in conjunction with the <i>Summary Offences Act 1966</i>.</p>
<p>Overlap of planning scheme</p>	<p>The proposed Local Law has no relevance to any Planning Scheme.</p>
<p>Risk Assessment</p>	<p>Council does not believe there are any risks associated with the proposed Local Law. As such, no formal risk assessment has been completed.</p> <p>Community consultation will be undertaken prior to the decision to make the proposed Local Law.</p>
<p>Legislative Approach adopted</p>	<p>The proposed Local Law is necessitated by the provisions not permissible within the Governance Rules and requirements of the 2020 Act.</p> <p><u>Conduct of Meetings:</u></p> <p>In relation to conduct of meetings, the proposed Local Law adopts a medium impact regulatory approach. Whilst being largely prescriptive,</p>

	<p>the proposed Local Law retains a level of discretion which is considered appropriate to facilitate the safe, orderly and security of the Council, Delegated Committee Members and public at meetings.</p> <p><u>Council's Common Seal:</u></p> <p>The proposed Local Law adopts a high impact regulatory approach.</p> <p>This approach is considered appropriate as it provides clear accountability for appropriate use and safekeeping of the Council seal.</p>
Restriction of competition	<p>The proposed Local Law relates only to Council processes with no National Competition Policy implications associated.</p>
Penalties	<p>Offences created under the proposed Local Law attract a maximum of 10 penalty units.</p> <p>Council has compared the general level of penalties provided for in the proposed Local Law with the local laws of other similar neighbouring councils.</p> <p>Council is satisfied that penalties are similar in nature and amount to like and neighbouring councils and are sufficient to act as a deterrent for most offences while also reflecting the seriousness of those offences.</p>
Permits & Fees	<p>Not applicable.</p>
Performance Standards or prescriptive	<p>Drafting of the proposed Governance Rules has adopted a blend of principle and prescription approaches which is considered appropriate given its purpose is to describe the procedures and processes for: the conduct of Council / Delegated Committees Meetings; form and availability of meeting records; election of Mayor/Deputy Mayor; Mayoral powers; election period policy; and management of conflicts of interest.</p> <p>The prescriptive nature of the proposed Governance Rules provides procedural certainty for Councillors, Council staff and the community.</p> <p>It is consistent with overarching governance principles and processes necessitated by the Act.</p>
Comparison with neighbouring and like Councils	<p>In drafting the proposed Local Law, the review considered comparisons with other Victorian councils' Local Laws ranging from municipal shires and regional cities through to metropolitan councils.</p> <p>The proposed Local Law is not substantially different from the local laws of other Victorian Councils with their approach to Common Seal regulating and meeting conduct offences.</p>
Charter of Human Rights	<p>The <i>Charter of Human Rights and Responsibilities Act 2006</i> (the Charter) contains twenty basic rights that promote and protect the values of freedom, respect, equality and dignity. Councils must not knowingly and disproportionately limit these rights and must always consider them when they create laws, develop policies and deliver services.</p>

	<p>The proposed Governance Rules has been reviewed for compatibility with the Charter. Particular attention was given to the following rights under the charter:</p> <ul style="list-style-type: none"> • Right to recognition and equality before the law • Right to privacy and reputation • Right to freedom of expression • Right to take part in public life • Right to a fair hearing. <p>The proposed Governance Rules is considered to be compatible with the Charter.</p>
<p>Consultation</p>	<p>The proposed Local Law has been reviewed in consultation with Councillors and members of Council staff.</p> <p>A community consultation process will be conducted in accordance with sections 119(2) and 223 of the 1989 Act.</p> <p>In developing this proposed Local Law, the Council has either undertaken or will undertake the following processes:</p> <ul style="list-style-type: none"> • a review of changes in legislation that might impact on the content of the proposed Local Law and appropriate amendments made; • various Council staff reviewed the existing document as to any issues with the current Local Law; • Council will consider a formal draft of the proposed Local Law at a meeting of Council and will be required to adopt the proposed Local Law in order that the formal public submission process can occur; • Submissions on the adopted proposed Local Law will be called for in public advertisements with a 28-day submission period available for the public to make any comments, suggestions and objections on the proposals; • Council will hear any person making a submission if a person so requests at a meeting with Council or representatives of Council; • Council will then formally consider the submissions and any proposed changes to the proposed Local Law; • Council will then adopt the Local Law and place advertisements in local paper and the Government Gazette after which time the Local Law comes into force

PART C – COMMENTS ON SPECIFIC PARTS OF THE PROPOSED LOCAL LAW

The proposed Local Law is being made under section 111(1) of the Act and will operate throughout the municipal district of the Ballarat City Council.

Chapter, Rules (s) of Governance Rules and Description / heading	Result
Design of document	<ul style="list-style-type: none"> The proposed Local Law has been designed to incorporate elements of the Meeting Procedure Local Law 2018. The design of the proposed Local Law has been developed to assist with readability for flow and easy navigation of the proposed rules.
Part A – Introduction (Title, Purpose & Definitions)	<ul style="list-style-type: none"> Updated consistent with industry practice and more recent Local Laws of councils. Definitions updated and/or amended for improved understanding of the proposed Local Law.
Part B – Common Seal	<ul style="list-style-type: none"> No change
Part C – Meeting Conduct Offences and Penalties	<ul style="list-style-type: none"> Provides clarity to the desired conduct at Council meetings and Delegated Committees. Minor amendments to wording to improve clarity and creates an offence for a member of a Delegated Committee to refuse to withdraw a remark made. Creates new provisions for the issuing of infringement notices; and process for payment of penalty.