



LOCAL LAW COMMUNITY IMPACT STATEMENT

JULY 2020

Local Law No. 2 – Common Seal and Miscellaneous Penalties 2020

PART A – General Comments

Background

At its meeting held on 23 June 2020, Surf Coast Shire Council resolved to repeal the current Local Law No. 2 of 2019 - Council Meeting Procedures & Common Seal and to develop a new Local Law No. 2 – Common Seal and Miscellaneous Penalties 2020.

Previously the use of the Common Seal and Council meeting penalties were included in a Local Law that also incorporated rules to regulate Council and Committee meetings. New provisions in the Local Government Act 2020 require Councils to develop separate Governance Rules to regulate the meetings, but the Governance Rules cannot include provisions for use of the Common Seal and application of penalties.

Accordingly, a draft Local Law titled Local Law No. 2 – Common Seal and Miscellaneous Penalties 2020 (the Local Law) has been prepared and is available for public inspection and comment in accordance with the community consultation requirements under section 223 of the *Local Government Act 1989*.

The meeting procedures have been removed and included in a Governance Rules document and the remaining sections relating to the use of the Common Seal and penalties for offences at Council meetings are mainly unchanged.

Objectives

The proposed Local Law has the following objectives:

- (a) regulating and controlling the use of Council's Common Seal;
- (b) promoting orderly behaviour for those attending Council meetings to ensure these are carried out in a respectful and efficient manner;
- (c) identifying offences and penalties related to disorderly behaviour at Council meetings and misuse of Council's Common Seal.



PART B – Comments on Proposed Local Law

<p>Measuring Success</p>	<p>The success of the proposed Local Law will be measured by the extent to which it enhances the governance framework including ensuring that legislative requirements are met.</p> <p>Performance indicators are included in the Local Government Performance Reporting Framework and Community Satisfaction Survey which are reported to Council and the community.</p>
<p>Existing Legislation</p>	<p>The <i>Local Government Act 2020</i> (the Act) requires Councils to hold a Common Seal that should be used in accordance with the Local Laws of the Council.</p> <p>Section 115 of the <i>Local Government Act 1989</i> states that Councils may include penalties in their Local Law, not exceeding 20 Penalty Points.</p> <p>These legislative requirements provide the legal basis for Councils to create specific Local Laws to regulate the use of the Common Seal and to set penalties for various offences.</p>
<p>State Legislation more appropriate</p>	<p>Council is of the view that the rules of Parliament have no application to use of the Common Seal and penalties and that Council's Local Law is more appropriate. This position is supported by the Act which demonstrates the intention for Councils to create their own Local Laws governing use of the Common Seal and application of penalties.</p>
<p>Overlap of existing legislation</p>	<p>The proposed Local Law will not overlap with existing legislation and stands alone.</p>
<p>The Planning Scheme</p>	<p>The Surf Coast Planning Scheme is not applicable to the current proposed Local Law.</p>
<p>Risk Assessment</p>	<p>No major issues have been identified as a result of the proposals and the proposed changes are intended to improve the efficiency of meetings and safeguard the use of the Common Seal of Council.</p>
<p>Legislative approach adopted</p>	<p>The proposed Local Law has been drafted in accordance with the requirements of the 1989 Act.</p>
<p>Restriction of Competition</p>	<p>The proposed Local Law does not restrict competition.</p>
<p>Penalties</p>	<p>Council has compared the general level of penalties provided for in this proposed Local Law with those included in the Local Laws of other similar sized Councils and also its neighbouring Councils. Penalties are of a similar nature and amount.</p> <p>Council feels that the penalties imposed are sufficient to act as a deterrent for most offences and also reflect the seriousness of the offences. The penalties under the proposed Local Law are unchanged from the current arrangements and are reasonable and proportionate in nature.</p>

Permits & Fees	There are no permits or fees in the proposed Local Law.
Performance standards or prescriptive	Council has adopted a prescriptive-based approach to regulate conduct at Council meetings and use of the Common Seal under the Local Law.
Comparison with other Councils	Similar Local Laws of neighbouring Councils were considered as part of Council's review process. This exercise revealed that the respective Local Laws contain similar provisions.
Charter of Human Rights & Responsibilities	Council regards the Victorian Charter of Human Rights and Responsibilities (the Charter) as an important reference in the development of Local Laws to ensure that such laws do not encroach upon a person's basic human rights, freedoms and responsibilities. As a public authority, Council appreciates its obligation to ensure that Local Laws are interpreted and applied consistently with fundamental human rights. Council has found that although certain clauses of the Local Law purport to regulate the conduct of both visitors and members (Councillors) of the Council, their inclusion is necessary to ensure the efficient and respectful conduct of Council business.
Community Consultation & Submissions	A submissions process will be conducted in accordance with the legislative requirements prescribed under section 223 of the Local Government Act 1989. That process requires Council to publish a public notice calling for written and/or oral submissions in relation to the proposed Local Law. Those submissions must then be considered by Council as part of the consultation process. This may include a Hearing of Submissions Committee meeting if any person requests the opportunity to be heard in support of their submission.



Part C – Comments on specific parts or provisions of the proposed Local Law

Part 2 – Common Seal	<i>Required under the Local Government Act 2020 to regulate the use of Council's Common Seal which affirms the collective will of the Council.</i>
The problem the provision is intended to address	<i>Councils are required to hold a Common Seal and so ensure this is kept in a safe place with restricted use, as described in this Local Law.</i>
Description of the problem	<i>Council requires rules to regulate the use of the Common Seal to ensure it is correctly applied and minimise the risk of intentional or unintentional misuse.</i>
Council objective	<i>To ensure the Common Seal is only used in the circumstances and form described.</i>
How does proposed Local Law provision help achieve objectives?	<i>The Local Law provides clear guidelines on the use and form of the Common Seal.</i>

Part 3 – Penalties	<i>Council considers identification of offences and proportional penalties are required to regulate behaviours at Council meetings to ensure they are conducted in a respectful and orderly manner.</i> <i>Council also considers that a penalty for misuse of the Common Seal is necessary to maintain the integrity of the seal and its significance.</i>
The problem the provision is intended to address	<i>Potential disorderly conduct at Council meetings leading to possible harm, damage to reputation and/or disruption of Council business.</i> <i>Potential misuse of the Common Seal and misrepresentation of Council's position.</i>
Description of the problem	<i>Potential disorderly conduct at Council meetings and misuse of the Common Seal.</i>
Council objective	<i>To clearly set out the types of offences and penalties that could apply and to provide advice on options for payment or challenge to anyone receiving a penalty.</i>
How does proposed Local Law provision help achieve objectives?	<i>By providing clear guidance on the types of unacceptable behaviours that could attract a penalty.</i>