

Local Law Community Impact Statement

Proposed Local Law No. 2 of 2018 – Council Meeting Procedures and Common Seal

Council provides the following information to the community in respect of the proposed Local Law.

PART A – General comments

Background

Under Section 91(1) of the Local Government Act 1989 (the Act) a Council must make a local law governing the conduct of meetings of the Council and special committees.

Whilst the current Local Law No. 2 of 2016 does not sunset until 2026, a review was considered to be necessary at this time in order to bring more structure, provide more clarity and to update the signing clause for the Common Seal.

The Act specifies, in various sections, a number of matters which must be included in the local law. Except as provided in the Act, conduct of meetings is at Council's discretion although over time accepted practices have evolved to ensure the orderly conduct of meetings.

Objectives

The proposed local law contains the following objectives:

- (a) regulating and controlling the procedures governing the conduct of meetings of the Council and special committees appointed by Council;
- (b) regulating and controlling the election of Mayor, Deputy Mayor, and the Chairpersons of any special committees;
- (c) regulating and controlling the use of Council's Common Seal;
- (d) promoting and encouraging community participation in the system of local government;
- (e) providing a mechanism through its formal meeting procedure to ensure effective and efficient Council decisions are made in a manner which acknowledges the role of local government within the Australian system of government;
- (f) providing for the administration of the Council's powers and functions; and
- (g) providing generally for the good government of the municipal district.

PART B – Comments on proposed local law overall

<p>Measures of success of proposed Local Law</p>	<p>As this local law is required under the Act, Council will continue to monitor any changes to the legislation to ensure it remains up to date.</p> <p>The success of the proposed local law will be measured by the extent to which it enhances the governance framework and decision making processes of Council including open and transparent meetings and that legislative requirements are met.</p> <p>Performance indicators are also included in the Local Government Performance Reporting Framework and Community Satisfaction Survey.</p>
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Existing legislation that might be used instead	<p>No existing legislation can be used in place of this local law, however this local law incorporates actions that Councillors and officers must take as a result of requirements in the Act including section 91 which requires Council to have this local law.</p> <p>For example: Section 71 – Election of the Mayor Section 73 – Precedence of the Mayor and election of a temporary Chair in the Mayors absence Section 79 – Disclosure of Conflicts of Interest Section 80A – Requirements to observe assembly of Councillors procedures Section 80B – Members of Council staff and Councillors to disclose conflicts of interest Section 80C – Persons to disclose interests to Council when providing advice Section 84 – Special Meetings Section 90 – Voting Section 91 - Conduct of meetings Section 93 – Minutes of meetings.</p>
State legislation more appropriate	Not applicable. Councils are required by state legislation to make local laws relating to Council and special committee meeting procedures.
Overlap of existing legislation	There is no overlap with other legislation in this local law. Some clauses expand on or clarify requirements in the Local Government Act 1989.
Overlap of planning scheme	There is no overlap of the Planning Scheme with this local law.
Risk assessment	Not having a local law of this kind would be a breach of the Act therefore Council is avoiding this exposure by complying with this requirement. The local law sets out a framework for Council, its staff and the public to govern how Council meetings will operate in conformity with the Act and other generally accepted meeting procedure guidelines.
Legislative Approach adopted	<p>Council believes in applying minimum imposition on the community through its local laws. This proposed local law reflects this approach by providing only for those matters required under the Act in relation to general meeting procedures and efficiency of running the meetings such as:</p> <ul style="list-style-type: none"> • adoption of standard meeting procedures • a small number of reasonable penalties for offences under the local law • the minimum number of offences being created.
Restriction of competition	Council has conducted a review of this proposed local law in accordance with National Competition Principles and believes that because of the nature and content of this local law there is no restriction of competition.
Penalties	<p>Council has compared the general level of penalties provided for in this proposed local law with those included in other similar sized Councils and its neighbouring Councils. All penalties are of a similar nature and amount.</p> <p>Council considers that the penalties imposed are sufficient to act as a</p>

	deterrent for most offences and are therefore appropriate. They are scaled to reflect the impact of the offence and are in line with the state government's penalty regime.
Permits	There are no permits applicable under this local law.
Fees	There are no fees applicable under this local law.
Performance standards or prescriptive	This local law is prescriptive rather than performance based because of the nature of the requirement of the Act in which Council is required to make a local law to include prescriptive clauses that govern meeting procedures.
Comparison with neighbouring and like Councils	<p>Council has compared this local law with the existing meeting procedure local laws of the following Councils and has found it to be consistent with the intent of those Local Laws including:</p> <ul style="list-style-type: none"> Golden Plains Shire Colac Otway Shire City of Casey City of East Gippsland City of Whitehorse Wyndham City City of Ballarat Shire of Campaspe City of Greater Bendigo Mildura Rural City Council.
Charter of Human Rights	<p>Council has assessed this proposed local law for compatibility with the Charter of Human Rights and Responsibilities and has not found any instances where the rights of any individual are impacted upon. Some examples of particular considerations are outlined below.</p> <p>There are minor restrictions on allowing the freedom of expression as it is necessary to regulate how the public can ask questions or participate in Council meetings. The restrictions are intended to provide for the efficient and orderly conduct of the meetings and are considered reasonable and justifiable pursuant to section 7(2) of the Act.</p> <p>Penalties apply for disorderly behaviour (see penalties section) and the Chair has the right to request that anyone acting in a disorderly way leaves the meeting room. This is considered to be a proportionate response and necessary to ensure the smooth running of the meeting. The Chair can suspend proceedings if this is deemed necessary.</p> <p>Members of the public will be asked to sign in before entering the meeting and this is considered to be a reasonable health and safety measure which will also allow follow-up where needed. Council retains records of visitors to the Civic Offices during normal business hours and this additional request for information is in line with this practice.</p> <p>The updated local law removes the requirement for Councillors and officers to stand to address the meeting to avoid potential discrimination against people with disabilities.</p> <p>When asking a question of Council members of the public are requested to state their name and suburb for the minutes. Such information can be withheld on request.</p> <p>As open Council meeting proceedings are recorded and posted on the website, anyone who does not wish their voice to be heard on the recording is requested to make this known to a member of staff who will</p>

	make alternative arrangements. Signage makes it clear that the proceedings are being recorded.
National Competition Policy	Council has assessed this proposed local law for compatibility with the National Competition Policy Principles and has not found any occurrences where the rights of any individual are impacted upon.
Consultation Meetings	<p>In developing this local law Council has/ will undertake the following processes:</p> <ul style="list-style-type: none"> • Review of document by Council staff through comparison with other Councils' local laws. • Reference made to 'The Better Practice Local Laws Guidelines' • Discussion with Councillors and the Executive team at a Council workshop • Review of changes in legislation that might impact on the content of the local law • Council consideration of a formal draft of the local law at an Ordinary Council meeting • Submissions on the adopted proposed local law called for in accordance with Section 223 of the Act. • Council to hear any person making a submission if a person so requests at a Hearing of Submissions meeting. • Council to formally consider a report outlining any submissions and any proposed changes to the proposed local law • Council to adopt the local law and advertise this in local papers and the Government Gazette after which time the local law comes into force.
Submissions	<p>Surf Coast Shire Council is now calling for public submissions from anyone affected by this proposed local law.</p> <p>Submissions close at 5pm on Sunday 6 May 2018 and can be provided in the following ways:</p> <ul style="list-style-type: none"> - Through Council's website at https://www.surfcoast.vic.gov.au/About-us/Your-Say - Emailed to info@surfcoast.vic.gov.au - By mail addressed to the Chief Executive Officer, Surf Coast Shire Council, PO Box 350, Torquay, VIC 3228. <p>Persons making a submission may make a request in their submission to be heard at a Hearing of Submissions meeting. In their submission submitters can nominate a representative to speak on their behalf. Council will set a time and place for such submitters to be heard.</p> <p>The proposed Local Law and Community Impact Statement are also available for inspection at Council's offices at 1 Merrijig Drive, Torquay VIC 3228.</p>

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

Some major and minor content issues have been addressed in the proposed local law. All content changes have been broken down clause by clause in the following table, however major content changes include:

- Updated definitions and clarification of meaning of ‘petitions’, ‘joint letters’, ‘notices of motion’, ‘motion’, ‘day’, ‘minutes’ and ‘deliver’;
- Updating of the signing clause for the Common Seal with Mayor/Deputy Mayor now to sign in addition to CEO;
- Increase in number of signatures required to constitute a petition or joint letter from more than one to at least ten;
- Introduction of provision for a Councillor to request their vote for the motion to be recorded;
- Removal of requirement to stand to address Council. Councillors may stand if they wish;
- Clarification of reasons to suspend Standing Orders;
- Removal of Part 7 and the ability to suspend any provision in the Local Law;
- Removal of the requirement for all Councillors to be present before an item of urgent business can be admitted to an Ordinary meeting of Council. Re-ordering of that clause to 24.2;
- Requirement for three months to elapse before a further notice of rescission or amendment can be received;
- Introduction of an additional offence of ‘disorderly conduct’ at the meeting;
- Clarification of circumstances under which a matter can be included as urgent business.
- Updated Notice of Rescission/Amendment form and clearer explanation at Schedule B;
- Improvements to language, clarity and order of the sections.

Specifically the proposed changes are as follows:

Section	Proposed Changes
Part 1 – clause 7	Clarification that ‘Day’ means a Council business day.
Part 1 – clause 7	Clarification that ‘Deliver’ includes electronic methods of transmission.
Part 1 – clause 7	Inclusion of definition of ‘Joint Letter’.
Part 1 – clause 7	Definition of ‘Leave of Absence’ to be updated to mean any meeting of Council.
Part 1 – clause 7	Clarification of definition of ‘Minutes’.
Part 1 – clause 7	Definition of ‘written’ extended to include emailed and faxed.
Part 1 – clause 7	Increase in number of signatories required to constitute a petition under the Local Law, from more than one signature to at least ten.
Part 4 – clause 14	Provision of an electronic agenda as standard practice and removal of hardcopy option.
Part 4 – clause 14	Reordering of sentence relating to admission of urgent business from clause 14.6 Attendance to section 24 Urgent Business.
Part 4 – clause 17	Conflict of interest – language streamlined.

Section	Proposed Changes
Part 4 – clause 19	<p>Petitions and joint letters to be signed by at least ten people. A letter from a single entity or organisation that is signed by multiple parties will not be classed as a joint letter.</p> <p>Council may consider admitting online petitions that are addressed direct to Council.</p>
Part 4 – clause 19	Add that a petition or joint letter may be disallowed if it relates to a matter for which there is already a primary avenue of redress.
Part 4 – clause 20	Public Questions to be directed to Council as a whole and not to individual or specific Councillors.
Part 4 – clause 20	Clarification that a Public Question will not be read out unless the person asking the question or their proxy is present at the time it is due to be read.
Part 4 – clause 22	Notices of rescission or amendment to have at least a period of 3 months elapse before a further notice to rescind or amend can be lodged on the same issue.
Part 4 – clause 24	<p>Urgent business updated to remove requirement for all Councillors to be present before urgent business can be admitted to an Ordinary Council agenda.</p> <p>Also clarify circumstances under which a matter can be included as urgent business including that items of Urgent Business need to be supported by an officer's report and Notices of Motion cannot be admitted into urgent business.</p>
Part 4 – clause 27	Removal of duplication at 27.2 and 27.3
Part 4 – clause 27	Clarification that absence by a Councillor from four consecutive meetings of Council could lead to the position being declared vacant, as per the Act.
Part 4 – clause 32	Removal of <u>requirement</u> for Councillors and officers to stand to address the meeting as this could be discriminatory towards people with disability. Councillors 'may' stand to address the meeting if they wish.
Part 4 – clause 34	<p>Clarification that where Councillors are seeking clarification by asking questions of officers throughout the meeting, such questions need to be:</p> <ul style="list-style-type: none"> • Directed through the CEO; • Relevant to an item on the agenda; • Seeking genuine clarification of a matter that is not already addressed in the officer's report; • Not objectionable in language, nature or tone; • Not intended to draw officers into debating a matter or justifying a recommendation; and • Not designed to canvass matters or disseminate information to the public.
Part 5 – clause 41	40.2.4 removal of clause that the Chairperson 'must use' a casting (second) vote. Contrary to the Local Government Act (Chairperson 'has' a second vote). No need to duplicate what is already in the Act.

Section	Proposed Changes
Part 5 – clause 42	Inclusion of provision that Councillor can request to have their vote for the motion adopted by Council recorded in the minutes, in addition to the existing provision to record a vote against an adopted motion.
Part 5 – clause 45	Suspension of Standing Orders – Introduce provision that the Chairperson can receive a motion to suspend standing orders where he/she believes the Councillors or the Public Gallery need a break due to the intensity or length of the meeting or to seek technical advice from a person not listed as an official attendee. Such suspension would normally be for five minutes or less. Clarification that suspension is not intended for Councillors to discuss the issue or seek to reach agreement outside a formal debate. Standing orders should be resumed as soon as possible.
Formerly Part 7 – clause 58	Whole section removed. Removes provision that allows Council to suspend any part of the Local Law by resolution.
Part 7 – clause 59	Update of wording to accompany Council's Common Seal to clearly differentiate from other signing clauses. Current wording is inconsistent with Council's delegations and a correction is required. New wording clear that use of the Common Seal is authorised by Council resolution. Mayor or Deputy Mayor to sign in addition to the CEO.
Part 8 – clause 60	Additional offence of 'disorderly conduct' introduced. At present it is an offence not to leave if asked by Chair, if Chair considers there is disorderly conduct. Currently no penalty for the disorderly conduct itself.
Part 9 – clause 61	Clarification of the right of a person being issued with an infringement notice to defend the prosecution in court.
Schedule B	Notice of Motion to Rescind or Amend - form updated to provide explanation and clear differentiation between rescission and amendment.
Schedule D	Conflict of Interest Declaration Form removed as administrative changes will be necessary under the foreshadowed amendments to the Local Government Act.