

Governance Local Law 2016

Community Impact Statement

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Community Impact Statement

This Community Impact Statement observes section 111A of the Act to assist the community in understanding the proposed Local Law and its intent.

PART A GENERAL COMMENTS

A copy of the Governance Local Law 2016 is available on Council's website at www.benalla.vic.gov.au and may be inspected at the Customer Service Centre 1 Bridge Street East, Benalla. Office hours are 8.30 am to 5.00 pm Monday to Friday, except public holidays.

In accordance with section 223 of the Act, the Council invited interested parties and members of the community to submit comments on the proposed *Governance Local Law 2016* (the Local Law) for the consideration of Council. Following this public consultation period, in accordance with statutory process, the Council made provision to consider the submissions ahead of any final determination and making of an updated *Governance Local Law 2016*. In the event there were no submissions received.

BACKGROUND

Under 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 (section 91) to ensure the orderly function of Council business and the use of the Council's Common Seal (section 5(3)(c)). The relevant provisions are Part 5 and Schedule 8 of the Act. This requirement is in addition to the other requirements in the Act applying to Council and special committee meetings. Council is expected to comply with all provisions.

Such a local law is the only local law that a Council is required to make. Failure to have a local law governing the conduct of meetings of the Council and special committees of the Council and the use of the Council's Common Seal is a failure to comply with the Act and is a compliance risk.

In February 2010 guidelines were published by the (then) Department of Planning and Community Development about the process to be followed when making or reviewing existing local laws. These guidelines have been used in the process followed to develop the Local Law.

The Local Law has been developed to support the objective identified in the *Council Plan 2013-2017* as follows:

We will be a high performing, efficient and innovative organisation based on sound financial management, accountability and good governance to provide best value service to our community.

The making of the Local Law revoked Local Law No 1 - Meeting Procedures 2008.

The Local Law reflects a number of amendments which have been made to the Act through the introduction of the *Local Government Legislation Amendment (Miscellaneous) Act* in October 2012, the *Local Government Amendment (Improved Governance) Act 2015* and the *Local Government (General) Regulations 2015* which have impacts on meeting procedures. The Local Law also includes a number of changes to provide for more effective and efficient conduct of Council meetings.

OVERVIEW OF THE GOVERNANCE LOCAL LAW 2016

The Local Law is an internal control of the Council which the Council is required to make under the Act.

The Local Law deals with key matters of principle around the election of the Mayor; the use of the Council's Common Seal and provides processes for the conduct of Council and Special Committee meetings. The law identifies offences against the Local Law and retains the ability to issue infringement notices for contravention of the Local Law.

The general purport of the Local Law is to:

- establish a law which will govern order of business, rules of debate, meeting procedure, public participation and the conduct of meetings
- regulate the use and control of Council's Common Seal, and create an offence for a person using the Common Seal without authority or using a replica of the Common Seal without authority
- regulate the procedure for the election of Mayor
- regulate the availability of agenda papers
- regulate the procedure of public question time at Ordinary Meetings of Council
- regulate the procedure in relation to people making a submission to a Special Committee of the Council
- regulate the procedure for petitions
- regulate the procedure for Points of Order
- describe the protocol for Council to suspend Standing Orders
- revoke the existing Meeting Procedure Local Law made in November 2008.

The following protocols and guidelines are included in the Local Law:

1. Procedure for the Election of the Mayor
2. Council's Common Seal
3. Business of Meetings
4. Guidelines for Petitions
5. Protocol for Council to hear and determine submissions

6. Guidelines for community members making submissions
7. Protocol for Public Question Time
8. Protocol for Suspending Standing Orders
9. Procedure for Points of Order
10. Councillor Code of Conduct

PART B COMMENTS ON THE LOCAL LAW

Measures of success of the Local Law	<p>As this Local Law is required under the Act, the Council will need to monitor changes to the Act to ensure that the Local Law is always consistent with the Act.</p> <p>The Council will measure the success of the Local Law by evaluating how efficient and participative meetings of Council and Special Committees are.</p>
Legislative Approach	<p>Council does not believe that there is any State legislation that is more appropriate to deal with the matters covered by the Local Law.</p> <p>The Local Law is necessary in order for Council to comply with section 91(1) of the <i>Local Government Act 1989</i>. No other legislation can be used.</p> <p>Except as provided within the Act, the conduct of meetings is at the discretion of the Council.</p> <p>The process for making a Local Law is set out in Part 5, sections 111-124 of the Act.</p>
Overlap with existing legislation	<p>The Council is unaware of any provision of the Local Law which overlaps, duplicates or creates inconsistency with existing legislation.</p>
Overlap of planning scheme	<p>The Council is unaware of any provision of the Local Law which overlaps, duplicates or creates inconsistency with any planning scheme.</p>
Risk Assessment	<p>Council must have this Local Law – to not do so would be in breach of the Act.</p> <p>The Council developed a risk management approach to the review and the development of the Local Law.</p> <p>The Local Law provides a template to the Council, its staff and the public in how Council will operate its meetings in conformity with the Act and other generally accepted meeting procedure guidelines and past practice.</p> <p>There are no mitigating risks associated with this Local Law.</p> <p>The Local Law required exhibition and the Council was required to consider any submissions made in accordance with Section 223 of the <i>Local Government Act 1989</i> prior to deciding whether or not to adopt the Local Law.</p>

Restriction on competition	The Council is of the view that the introduction of the Local Law imposes no restriction on competition and that the Local Law complies with the National Competition Principles.	
Penalties	Offence	Penalty Units
	Using the Common Seal or any device resembling the Common Seal without the authority of the Council	20
	Recording a meeting without prior consent or disclosing information contrary to the requirement	5
	Displaying placard or poster within Council Chamber or building	5
	Displaying objects or words or obstructing entrance to Council Meeting Room or Civic Centre	5
	Fraudulently signing a petition or joint letter	5
	A Councillor failing to comply with any sanction imposed under the Councillor Code of Conduct	5
	A Councillor refusing to withdraw an expression considered by the Chair to be offensive or disorderly, and apologise when called on twice by the Chair to do so	5
	Any person, not being a Councillor who is guilty of any improper or disorderly conduct to not leave the Chamber when requested by the Chair to do so	5
	Call to Order – any person failing to comply with a direction of the Chair in relation to the conduct of the meeting and the maintenance of order	2
Permits	There are no permits required with the Local Law.	
Fees	There are no fees associated with the Local Law.	
Performance standards or prescriptive	<p>The Local Law does not contain any performance standards.</p> <p>The Local Law creates a framework for meeting procedures. Due to the nature of the requirements of the Act in which the Council is required to make this local law there are a number of prescriptive clauses in the manner in which Council conducts its meetings.</p>	
Comparison with neighbouring and like Councils	<p>Each Council in Victoria is entitled under the Act to set its own meeting procedures.</p> <p>Part of the process in reviewing the Local Law included a review of Meeting Procedure Local Laws from neighbouring and like Councils.</p>	

<p>Charter of Human Rights</p>	<p>Council as a 'public authority' under the <i>Charter of Human Rights and Responsibilities Act 2006</i> (the Charter) must also ensure that a local law made by it is not incompatible with a human right.</p> <p>If a proposal restricts or interferes with a right, consideration will need to be given to determining whether the restrictions are reasonable and demonstrably justified under the Charter.</p> <p>Many of the provisions in the Local Law may restrict freedom of expression of the Charter of <i>Human Rights and Responsibilities Act 2006 (the Charter)</i>. This is because the provisions restrict how and when members (or the public through submission of public questions and speaking at meetings) can participate in meetings.</p> <p>To the extent to which the Local Law places limitations on freedom of expression, the limitations are considered reasonable and justifiable pursuant to section 7(2) of the Charter.</p> <p>The restrictions are intended to provide for the efficient and orderly conduct of Council meetings. This is balanced against and is proportionate to the ability for Councillors to debate motions and for members of the public to participate in the decision making process in a timely and appropriate manner.</p>
<p>Consultation</p>	<p>In the process of developing the Local Law, Councillors and lawyers have been consulted and the draft local law was exhibited to the public in accordance with section 223 of the Act.</p> <p>There were no submissions from members of the public. A number of amendments were made after review of the Local Law by Council's ;lawyers.</p>
<p>Submissions</p>	<p>Submissions were invited from the community in regard to the proposed local law in accordance with section 223 of the Act.</p> <p>A notice to this effect was placed in the <i>Benalla Ensign</i> on 29 June 2016 and in the <i>Victoria Government Gazette</i> on 30 June 2016 and also on the Council's website indicating that submissions would be received up to 5pm on 4 August 2016.</p> <p>An opportunity was scheduled to hear all submissions at a Special Meeting of the Finance & Operations Committee on 5 August 2016. No submissions were received.</p>

PART C AMENDMENTS TO LOCAL LAW NO 1 – MEETING PROCEDURES

The *Governance Local Law 2016* proposes to revoke *Local Law No 1 - Meeting Procedures 2008* in its entirety. The proposed amendments are classified into three groups.

- Community engagement
- Miscellaneous amendments
- Statutory amendments

COMMUNITY ENGAGEMENT

The first group of amendments relates to the way the Council ensures that its public participation process at meetings fits with its overall approach to community engagement.

A Council meeting is the formal way in which Council decisions are made. It is important that the community understand the purpose of Council meetings.

The decisions made at meetings should reflect the involvement the community has had through the development stage, not solely at the final decision making stage.

There are various ways in which the community can have input into Council's decision making.

- Statutory rights to make submissions under section 223 of the *Local Government Act 1989* on matters such as the Council Plan, the proposed Council budget and proposed local laws.
- Statutory rights in relation to planning decisions under the *Planning and Environment Act 1987* and plans that the Council is required to make under legislation such as the *Public Health and Wellbeing Act 2008*, the *Road Management Act 2004* and the *Domestic Animals Act 1994*.
- Advisory committees, project steering committees and project control groups provide information and advice to the Council on matters before any final decision is taken. Although the number of such committees varies as projects are commenced and completed there may be at any one time a total of around 20 advisory committees, project steering committees and project control groups with community representatives.
- Workshops, public meetings and surveys to encourage the involvement of interested community members on matters of significance prior to final decisions being taken.
- Individual or group presentations to Special Committees of the Council.

The previous provisions in the Local Law have been consolidated and rationalised in recognition of the fact that the Council meeting is the business end of processes and the Council must make decisions in relation to the matters on the agenda for the meeting. Despite providing opportunities for public participation in these meetings, the Council cannot avoid the responsibilities placed on it under the preamble to the Local Government Act (which is a legislative framework that provides for Councils to be accountable to their local communities in the performance of functions and the exercise of powers and the use of resources) or abrogate its decision making role. The proposed processes in the Local Law are intended to regulate how the community can participate in a meeting when all other consultation avenues have been completed or in the few instances where there is no specific consultation mechanism.

MISCELLANEOUS AMENDMENTS

AUDIO RECORDING OF MEETINGS

Consistent with many other Councils which have recently amended their Governance or Meeting Procedure Local Law to regulate how meetings may be recorded, Benalla's new Local Law will include these requirements. There are various recording devices available, including audio and audio visual equipment and mobile phones. It is becoming common practice for people to record events on their phones, often without people knowing that they are being recorded.

The change provides the Chief Executive Officer the opportunity to make an audio recording of proceedings of an Ordinary Meeting of Council, Special Meeting of Council and Special Committee Meeting except where the meeting is closed to the public in accordance with Section 89(2) of the Local Government Act, by means of a suitable audio device.

Any other person who wants to make an audio recording of a Council meeting should obtain the prior written consent of the CEO before noon on the day of the meeting, which must not unreasonably be withheld. The Chair may withdraw the consent that has been given at any time during the meeting.

A person representing the media may be given written consent by the CEO to make audio recordings of meeting proceedings for the duration of one Council year. The Chair may withdraw the consent that has been given at any time during a meeting.

The Council will notify members of the public that an audio recording will be made of meeting proceedings:

- in writing on the agenda for the meeting
- in writing by signage at the entrance to the meeting room
- verbally by the Chair at the commencement of the meeting.

The *Surveillance Devices Act* 1999 makes it an offence for a person to record a private conversation or a private activity without obtaining the consent of the parties involved. While Council meetings are required to be open to the public, and are therefore not private, (except for those things that a meeting may be closed for under section 89 of the Act), it is only fair that everyone in attendance at a Council meeting knows that it (or they) may be recorded.

In accordance with section 93 of the Act councils are required to keep accurate minutes of meetings which record attendance, details of each motion and any amendments, names of movers and seconders and whether motion is carried or not. The main purpose of audio recording is to:

- assist with preparation of the minutes
- confirm comments made by submitters or Councillors
- confirm actions requested or agreed to be undertaken by management
- clarify any resolution adopted by the Council or committee.

It is considered that an audio recording of meeting proceedings will provide a more detailed historical record than written minutes alone offer. Audio recordings of meeting proceedings will be stored and used by the Council in accordance with the law.

The official record of the meeting is the written minutes, not the audio recording, and the minutes must be confirmed by the council and signed by the Chair at the next meeting of the Council or the Special Committee.

NOTICES OF MOTION

Time frame for Notices of Motion – has been amended from 4 calendar days to 4 business days.

Often Notices of Motion raise complex and detailed questions. More detailed procedures have been included with the intention of clarifying the process for Councillors, both before and during Council meetings. The process is designed so that adequate notice of matters raised in the notice is given to

allow proper consideration by the Council and Council officers and a response which provides accurate and timely information.

PUBLIC PARTICIPATION AND QUESTION TIME

The provisions in Local Law No 1 Meeting Procedures 2008 have been consolidated and rationalised in recognition of the fact that the Council meeting is the business end of processes and the Council must make decisions in relation to the matters on the agenda for the meeting. There are a multitude of ways in which members of the public can have a say and attempt to influence the Council's decision on a particular matter or to contribute to the information that the Council has before it. Many opportunities which are statutory rights under legislation occur well before a decision is to be made. The processes in the Local Law are intended to regulate how the community can participate in a meeting when all other consultation avenues have been completed or in the few instances where there is no specific consultation mechanism.

PETITIONS

Petitions are a form of bringing a matter to the Council's attention or seeking information in a formal way from the Council. The Council wants the petition process to be strengthened as part of its meeting. Guidelines are available with some rules about how petitions should be submitted and dealt with.

REPORT OF COUNCILLOR ATTENDANCE AT MEETINGS

Councillors are appointed by the Council to represent it on many external bodies, such as the Municipal Association of Victoria and other bodies. Under the previous meeting procedures there is an agenda item for Councillors to report on their attendance at meetings of other organisations as Council's appointed representative.

Councillors will be encouraged to make greater use of this item to report information obtained at those meetings that could be important or relevant to the Council.

PROCEDURES TO ASSIST THE CHAIR

A number of minor amendments have been made to clarify some of the procedural requirements in the Local Law such as those prescribing the speaking order of Councillors on any motion, points of order and when the Chair must vacate the chair.

CONTENTS OF MINUTES

A number of minor amendments have been made to update the contents required to be included in minutes. In particular:

- the record of a division has been amended to include Councillors who abstained from voting
- the reference to pecuniary interests has been amended to refer to Conflict of Interest as defined in the Local Government Act.
- after a Councillor Conduct Panel has made a determination under section 81J, the Panel must give a copy of the decision to the Council which must be recorded in the minutes
- a record of the decision of VCAT in relation to a Councillor must be recorded in the minutes
- when the Council or Special Committee resolves to close a meeting to members of the public the reason must be recorded in the minutes
- if urgent or extraordinary circumstances prevent the Council from complying with the requirement to give public notice at least seven days before the holding of a Council or Special Committee meeting the Council must specify the urgent or extraordinary circumstances which prevented the Council from complying in the minutes
- in relation to resolutions recorded in the minutes, incorporate relevant reports or a summary of the relevant reports considered in the decision making process

If the minutes are confirmed the Chair at a Council or Committee meeting must initial each page and sign the final page of the minutes to certify that they have been confirmed.

STATUTORY AMENDMENTS

There are also some changes that reflect a number of amendments to the legislation through the introduction of the:

- *Local Government Legislation Amendment (Miscellaneous) Act 2012* on 30 October 2012
- *Local Government Amendment (Improved Governance) Bill 2015*. The first provisions came into force on 18 November 2015 to operate in the interim period until a new Local Government Act commences operation in 2018. The remainder of the Act came into effect on 1 March 2016 apart from items 13 and 56 which came into effect on 1 September 2016. Items 13 and 56 amend the grounds for disqualification of a councillor to include failure to sign a declaration that the councillor will abide by their council's councillor code of conduct, prohibition from managing a corporation and conviction of an offence punishable by two or more year's imprisonment (instead of 5 years).
- *Local Government (General) Regulations 2015* which commenced on 23 October 2015.

The changes affecting matters that relate to meeting procedures are listed below:

- quorums
- the election of the Mayor
- notice of meetings
- voting at meetings
- role of Councillors, Mayors and CEOs

It is important that the Local Law not be inconsistent with the Act. A review of the Local Law No 1 Meeting Procedures 2008 was undertaken to ensure consistency with the Act following the introduction of these Amendment Acts and regulations.

ELECTION OF THE MAYOR

The provisions relating to the election of the Mayor were taken from *Local Law No 1 Meeting Procedures 2008* and included in the *Governance Local Law 2016*. However some changes were made because of changes to the Act in 2010 and 2012 relating to voting. Nominations for the position of Mayor now need to be moved and seconded and put to the vote.

OFFENCES

Local Law No 1 - Meeting Procedures 2008 already contained offences for contravention of the Local Law in relation to conduct at meetings and misuse of the Council Common Seal. Because requirements have been included requiring that prior consent be obtained before recording a Council meeting, an additional offence has been created for failure to comply with that requirement.

There are several additional offences that have been introduced in order to facilitate undisrupted meetings.

PART D STATUS OF COUNCIL'S LOCAL LAW NO 1 – MEETING PROCEDURES 2008

Local Law No 1 - Meeting Procedures came into operation on 27 November 2008 and was revoked with the making of the *Governance Local Law 2016*.