

### 3.3 Proposed Common Seal and Conduct at Council Meetings Local Law

#### Abstract

The purpose of this report is for Council to consider commencing the statutory process to make the proposed Boroondara City Council Common Seal and Conduct at Council Meetings Local Law (proposed Local Law).

The proposed Local Law will revoke Council's Meeting Procedure Local Law 2017 (current Local Law) and replace the current Local Law to the extent that the current Local Law regulates the use of Council's common seal and creates offences.

The current Local Law addresses the meeting procedure applicable to Council (and Special Committee) meetings. It also regulates the use of Council's common seal and creates an offence for misuse of the common seal and disorderly conduct at Council (and Special Committee) meetings.

The meeting procedure applicable to Council (and Delegated Committee) meetings will now be addressed through Governance Rules made under the Local Government Act 2020 (2020 Act). As part of the transition to the 2020 Act, Council needs to revoke the current Local Law to make way for Council's Governance Rules.

However, the use of the common seal cannot be addressed through Governance Rules, nor can offences be created. Accordingly, Council will need to resolve to repeal the current Local Law and make the proposed Local Law to provide for the continued regulation of Council's common seal and offences in respect of conduct at meetings.

Proposed changes brought about by the proposed Local Law are not substantial and will, save for a minor change in terminology, reproduce the existing provisions of the current Local Law with respect to the regulation of the common seal and creation of offences.

Councillor feedback is sought on any necessary or desirable modifications to the proposed Local Law.

#### Officers' recommendation

That Council resolve to:

1. Commence the statutory process in accordance with Part 5 of the *Local Government Act 1989* to make the Boroondara City Council Common Seal and Conduct at Meetings Local Law.
2. Endorse the proposed Boroondara City Council Common Seal and Conduct at Meetings Local Law (as annexed to the Minutes) for the purposes of community consultation.

**Responsible director:** Phillip Storer  
Chief Executive Officer

---

## 1. Purpose

The purpose of this report is for Council to consider commencing the statutory process to make the proposed Boroondara City Council Common Seal and Conduct at Council Meetings Local Law (proposed Local Law).

## 2. Policy implications and relevance to community plan and council plan

This report is consistent with the Council Plan 2017-21, in particular strategy 7.2, which states “*Ensure transparent decision making through open governance processes*”.

It also supports Strategic Objective 7 of the Boroondara Community Plan 2017-27, to “*Ensure that ethical, financial and socially responsible decision making reflect community needs and are based on principles of accountability, transparency, responsiveness and consultation*”.

## 3. Background

Officers are proposing to make the new Boroondara City Council Common Seal and Conduct at Meetings Local Law.

The proposed Local Law will revoke Council’s Meeting Procedure Local Law 2017 (current Local Law) and replace the current Local Law to the extent that the current Local Law regulates the use of Council’s common seal and creates offences.

The current Local Law addresses the meeting procedure applicable to Council (and Special Committee) meetings. It also regulates the use of Council’s common seal and creates an offence for misuse of the common seal and disorderly conduct at Council (and Special Committee) meetings.

The meeting procedure applicable to Council (and Delegated Committee) meetings will now be addressed through Governance Rules made under the Local Government Act 2020 (2020 Act). As part of the transition to the 2020 Act, Council is revoking the current Local Law to make way for Council’s Governance Rules.

However, the use of the common seal cannot be addressed through Governance Rules, nor can offences be created. Accordingly, Council will need to resolve to repeal the current Local Law and make the proposed Local Law to provide for the continued regulation of Council’s common seal and offences in respect of conduct at meetings.

## 4. Outline of key issues/options

The purpose of the proposed Local Law is to:

- revoke the current Local Law;
- regulate the use of the common seal; and
- create offences relating to conduct at Council and Delegated Committee meetings.

The proposed Local Law will come into operation on 1 September 2020 and, unless it is revoked earlier, will expire 10 years after commencement.

On commencement of the proposed Local Law, the current Local Law will be revoked.

Proposed changes brought about by the proposed Local Law are not substantial and will, save for a minor change in terminology, reproduce the existing provisions of the current Local Law with respect to the regulation of the common seal and creation of offences.

The proposed Local Law has been reviewed by Council's lawyers who confirm that it complies with all regulatory requirements. A copy of the proposed Local Law is at **Attachment 1**.

## 5. Consultation/communication

The timelines to make the proposed Local Law is set out below.

<b>Date</b>	<b>Action</b>
13 July 2020	Council resolution to commence the statutory process to make the local law
16 July 2020	Public notice period commences with notice in Victoria Government Gazette and the Age newspaper
14 August 2020	Conclusion of public notice period and closing date for public submissions
24 August 2020	Consideration of public submissions (if any) by Council and resolution to adopt the local law
27 August 2020	Public notice of new local law in the Victoria Government Gazette and the Age newspaper
1 September 2020	Commencement of new local

Under s 223 of the *Local Government Act 1989* (the Act), Council is required to give public notice of the proposed Local Law and invite submissions for a period of at least 28 days.

The statutory consultation period will run from 16 July to 14 August 2020. Anyone who makes a written submission can request to be heard in support of their submission at the Council Meeting which considers the making of the proposed Local Law.

A Community Impact Statement (**Attachment 2**) 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 Act.

## 6. Financial and resource implications

The costs to make the proposed Local Law will be met within the current Governance operating budget and include the cost of Council officer time, legal advice and public notice.

## 7. Governance issues

Officers involved in the preparation of this report have no conflict of interest. The list of prescribed human rights contained in the Victorian Charter of Human Rights and Responsibilities has been reviewed in accordance with Council's Human Rights Compatibility Assessment Tool and it is considered the proposed actions contained in this report represent no breaches of, or infringements upon, those prescribed rights.

A review of the proposed Local Law against the Charter has been undertaken and is set out in the Community Impact Statement (**Attachment 2**).

## 8. Social and environmental issues

If Council resolves to make the proposed Local Law this will ensure Council continues to comply with its obligations under the 2020 Act.

An effective Common Seal and Conduct at Council Meetings Local Law will assist Council to ensure that decision making processes remain transparent and that high standards of integrity and accountability are maintained. This in turn reinforces public confidence in Council's ability to ensure good corporate governance within the municipality.

**Manager &  
report officer:** David Thompson, Governance



## **BOROONDARA CITY COUNCIL**

### **COMMON SEAL AND CONDUCT AT MEETINGS LOCAL LAW**

**DRAFT**

**Date Resolved By Council**

**Commencement Date:** 1 September 2020

**Revocation Date:** 1 September 2030

**Responsible Directorate:** Chief Executive Office

**DRAFT** Common Seal and Conduct at Meetings Local Law

Page 1 of

## TABLE OF CONTENTS

<b>PART A - INTRODUCTION .....</b>		<b>3</b>
1.	Title .....	3
2.	Purpose of this Local Law .....	3
3.	Authorising Provision .....	3
4.	Commencement and End Dates .....	3
5.	Revocation of Meeting Procedure Local Law .....	3
6.	Definitions and Notes .....	3
<b>PART C - COUNCIL'S COMMON SEAL .....</b>		<b>4</b>
7.	Council's <i>Common Seal</i> .....	4
<b>PART D - OFFENCES .....</b>		<b>5</b>
8.	Offences .....	5

## PART A - INTRODUCTION

### 1. Title

This Local Law will be known as the Boroondara City Council, "Common Seal and Conduct at Meetings Local Law".

### 2. Purpose of this Local Law

The purpose of this Local Law is to:

- 2.1 revoke Council's Meeting Procedure Local Law 2017;
- 2.2 regulate the use of the *common seal*;
- 2.3 prohibit unauthorised use of the *common seal* or any device resembling the *common seal*; and
- 2.4 create offences relating to conduct at *meetings*.

### 3. Authorising Provision

This Local Law is made under section 14 of the *Local Government Act 2020* and section 111(1) of the *Local Government Act 1989*.

### 4. Commencement and End Dates

This Local Law:

- 4.1 commences on 1 September 2020 and operates throughout the *municipal district*; and
- 4.2 ends on the 10<sup>th</sup> anniversary of the day on which it commenced operation, unless revoked earlier by Council.

### 5. Revocation of Meeting Procedure Local Law

On the commencement of this Local Law, Council's Meeting Procedure Local Law 2017 is revoked.

### 6. Definitions and Notes

- 6.1 In this Local Law:

"*Act*" means the *Local Government Act 2020*;

"*Chairperson*" means the *Chairperson of a meeting* and includes an acting, a temporary and a substitute *Chairperson*;

"*Chief Executive Officer*" means the Chief Executive Officer of *Council* or the person acting in or performing the position *Chief Executive Officer*;

"*common seal*" means the common seal of *Council*;

"*Council*" means Boroondara City Council;

## 4

"*Council Officer*" means a person appointed by the *Chief Executive Officer* as a member of Council staff, for the duration of their appointment;

"*Delegated Committee*" means a delegated committee established under section 63 of the Act;

"*Director*" means a *Council Officer* appointed by the *Chief Executive Officer* to Council's Executive Leadership Team, for the duration of that appointment;

"*Mayor*" means the Mayor of *Council*;

"*meeting*" means a properly constituted meeting of *Council* or a *Delegated Committee*;

"*municipal district*" means the municipal district of *Council*;

"*offence*" means an act or default contrary to this Local Law; and

"*penalty units*" mean penalty units has the same meaning as in section 110 of the *Sentencing Act 1991*.

- 6.2 Introductions to Parts, headings and notes are explanatory notes and do not form part of this Local Law. They are provided to assist understanding.

### PART C - COUNCIL'S COMMON SEAL

**Introduction:** The *common seal* is a device which formally and solemnly records the collective will of *Council*. The provisions in this Part are designed to protect the integrity of the *common seal*, and describe when it may be affixed to a document.

#### 7. Council's Common Seal

- 7.1 The *Chief Executive Officer* must ensure the security of the *common seal* at all times.
- 7.2 The *common seal* may only be used with the authority of *Council* or the *Chief Executive Officer exercising* a relevant delegation.
- 7.3 Unless *Council* resolves otherwise, the affixing of the *common seal* to any document must be attested to by the signatures of both:
- 7.3.1 the *Mayor* and the *Chief Executive Officer*;
- 7.3.2 in the absence of the *Mayor*, by one Councillor and the *Chief Executive Officer*; or
- 7.3.3 where the document relates to a matter in which the *Chief Executive Officer* has an interest, by one *Councillor* and a *Director*.
- 7.4 A person must not use the *common seal* or any device resembling the *common seal* without the authority of *Council* or the *Chief Executive Officer*.

**Penalty: 5 penalty units**

**PART D - OFFENCES**

**Introduction:** To maintain order at *meetings* and ensure the efficient and effective conduct of *Council* business, *Council* requires recourse to enforcement mechanisms. The provisions in this Part create offences as one enforcement mechanism.

**8. Offences**

It is an *offence* for:

8.1 a person, other than the *Chief Executive Officer* (or other *Council Officer* authorised by the *Chief Executive Officer*) to operate photographic, audio or video recording equipment or any other recording device at any *meeting* without first obtaining the consent of the *Chairperson*. Such consent may at any time during the course of such *meeting* be revoked by the *Chairperson* or resolution of *Council*;

**Penalty: 5 penalty units.**

8.2 a Councillor to not withdraw an expression considered by the *Chairperson* to be offensive or disorderly, and apologise when called on twice by the *Chairperson* to do so;

**Penalty: 2 penalty units**

8.3 any person, not being a Councillor, who is guilty of any improper or disorderly conduct, to not leave the Chamber when requested by the *Chairperson* to do so;

**Penalty: 5 penalty units**

8.4 any person to fail to comply with a direction of the *Chairperson* in relation to the conduct of the meeting and the maintenance of order;

**Penalty: 2 penalty units**

8.5 a Councillor to refuse to leave the Chamber on suspension.

**Penalty: 5 penalty units**

The Common Seal of the City of )  
Boroondara was hereunto affixed in the )  
presence of: )

..... Councillor

..... Chief Executive Officer

## Local Law Community Impact Statement (LLCIS)

### **Boroondara City Council Common Seal and Conduct at Meetings Local Law**

---

Boroondara City Council (**Council**) provides the following information to the community in respect of the Common Seal and Conduct at Meetings Local Law.

---

#### **1. INTRODUCTION**

Council is proposing to make the new Common Seal and Conduct at Meetings Local Law (**proposed Local Law**).

The proposed Local Law will revoke Council's Meeting Procedure Local Law 2017 (**current Local Law**) and replace the current Local Law to the extent that the current Local Law regulates the use of Council's common seal and creates offences.

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 (Act)*.

---

#### **2. BACKGROUND**

The current Local Law addresses the meeting procedure applicable to Council (and Special Committee) meetings. It also regulates the use of Council's common seal and creates an offence for misuse of the common seal and disorderly conduct at Council (and Special Committee) meetings.

The meeting procedure applicable to Council (and Delegated Committee) meetings will now be addressed through Governance Rules made under the *Local Government Act 2020 (2020 Act)*. As part of the transition to the 2020 Act, Council is revoking the current Local Law to make way for Council's Governance Rules.

However, the use of the common seal cannot be addressed through Governance Rules, nor can offences be created. Accordingly, Council has resolved to repeal the current Local Law and make the proposed Local Law to provide for the continued regulation of Council's common seal and offences in respect of conduct at meetings.

---

#### **3. OVERVIEW OF PROPOSED LOCAL LAW**

The purpose of the proposed Local Law is to:

- revoke the current Local Law;
- regulate the use of the common seal; and
- create offences relating to conduct at Council and Delegated Committee meetings.

The proposed Local Law will come into operation on 1 September 2020 and, unless it is revoked earlier, will expire 10 years after commencement.

On commencement of the proposed Local Law, the current Local Law will be revoked.

Proposed changes brought about by the proposed Local Law are not substantial and will, save for a minor change in terminology, reproduce the existing provisions of the current Local Law with respect to the regulation of the common seal and creation of offences.

Under s 223 of the Act, Council is required to give public notice of the proposed Local Law and invite submissions for a period of at least 28 days.

The statutory consultation period will run from 16 July to 14 August 2020.

Anyone who makes a written submission can request to be heard in support of their submission at the Council Meeting which considers the making of the proposed Local Law, details of which will be provided.

The proposed Local Law has been reviewed by Council's lawyers who confirm that it complies with all regulatory requirements.

A copy of the proposed Local Law is attached (**Attachment 1**) to this Community Impact Statement.

---

#### **4. EVALUATION OF THE PROPOSED LOCAL LAW**

In accordance with Guidelines issued by the Minister for Local Government in relation to the making of local laws, Council has conducted an evaluation of the Proposed Local Law. The evaluation is outlined in the following Table.

Issue	Evaluation
Objectives	<p>The objectives of the proposed Local Law are to:</p> <ul style="list-style-type: none"><li>• revoke the current Local Law;</li><li>• regulate the use of the common seal; and</li><li>• create offences relating to conduct at Council and Delegated Committee meetings.</li></ul>

Issue	Evaluation
Legislative Framework	<p>The Act gives councils broad powers to make local laws with respect to any function or power of the council and the 2020 Act gives councils the power to make local laws with respect to use of their common seals.</p> <p>The proposed Local Law addresses matters within Council's broad functions and powers.</p>
State legislation more appropriate	<p>State legislation permits Council to make Local Laws with respect to the use of its common seal and the orderly conduct of meetings. In developing the proposed Local Law, Council has not sought to address any issues which it considers are best addressed at the State or Federal level.</p>

Issue	Evaluation
Overlap with existing legislation	The proposed Local Law does not overlap with existing legislation, rather it operates in conjunction with the requirements of the 2020 Act.
Planning Scheme	Not applicable.
Legislative Approach	<p>Council has taken a high impact regulatory approach that is considered appropriate to:</p> <ul style="list-style-type: none"> <li>• facilitate the orderly conduct of Council and Delegated Committee meetings; and</li> <li>• provide clear accountability for appropriate use and safekeeping of the common seal.</li> </ul> <p>All provisions of the proposed Local Law are open to public scrutiny and comment.</p>
Performance Standards or Prescriptive Details	<p>Council has adopted a prescriptive approach to the proposed Local law because its purpose is to prescribe the circumstances in which:</p> <ul style="list-style-type: none"> <li>• offences may be committed; and</li> <li>• Council's common seal may be lawfully used.</li> </ul>
Risk Assessment	<p>No formal risk assessment has been undertaken.</p> <p>Council does not consider that there are any risks associated with the proposed Local Law.</p>
Measures of Success	The success of the proposed Local Law will be measured by monitoring the level of compliance with the proposed Local Law.
Permits and Fees	The proposed Local Law does not make provision for the issue of permits and does not prescribe any fees.

Issue	Evaluation
Penalties	<p>All offences created under the proposed Local Law attract varying maximum penalties, ranging from 2 penalty units to 5 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 like and 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>
Restriction of competition	Not applicable.
Comparison with other Councils	In drafting the proposed Local Law, Council examined Local Laws from a number of like and neighbouring councils to assess similarities and differences and ensure a reasonable degree of consistency in content, approach and penalties.
Charter of Human Rights	<p>The <i>Charter of Human Rights and Responsibilities Act 2006 (Charter)</i> contains twenty basic rights that promote and protect the values of freedom, respect, equality and dignity. Councils must not knowingly be in breach of these rights and must always consider them when they create laws, develop policies and deliver services.</p> <p>The proposed Local Law has been reviewed for compatibility with the Charter and is considered to be compatible with the Charter.</p>
Community Consultation	<p>The proposed Local Law has been reviewed in consultation with Councillors, members of Council staff and Council's legal advisers.</p> <p>A community consultation process will be conducted in accordance with ss 119(2) and 223 of the Act.</p> <p>This will require Council to give public notice of its intention to make the proposed Local Law and provide members of the public with an opportunity to make a written submission to Council in relation to the proposed Local Law. Council will consider submissions received before making a final decision on the proposed Local Law.</p> <p>A person who makes a written submission is entitled to request (in the submission) to be heard by Council in support of his/her submission. When Council makes a final decision on the proposed Local Law, it must notify in writing each submitter of the decision and the reasons for the decision.</p> <p>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.</p>

## 5. ATTACHMENTS

- **Attachment 1** - Proposed Boroondara City Council Common Seal and Conduct at Council Meetings Local Law