

7.17 Consideration of Public Submissions and Proposed Adoption of Common Seal and Conduct at Meetings Local Law

Abstract

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

On 13 July 2020 Council resolved to commence the statutory process to make the proposed Local Law. Public notice was given in the Government Gazette and Age newspaper on 16 July 2020. The public notice was also published on Council's web site on 16 July 2020 and the community were invited to have their say via the 'Have Your Say' section of the Council website. The closing date for submissions was 14 August 2020.

No written submissions were received.

The proposed Local Law, if made, 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.

Officers' recommendation

That Council resolve to:

1. Having complied with the requirements of Section 119(2) of the Local Government Act 1989 (the Act) and having received no submissions under Section 223 of the Act to make the Boroondara City Council Common Seal and Conduct at Council Meetings Local Law (as annexed to the Minutes) in accordance with Sections 111 and 119 of the Act.
2. To affix the common seal to the Boroondara City Council Common Seal and Conduct at Council Meetings Local Law.
3. To give notice of the making of the Boroondara City Council Common Seal and Conduct at Council Meetings Local Law in the Victorian Government Gazette and a public notice in the Age newspaper in accordance with Section 119(3) of the Act.
4. Having made the Boroondara City Council Common Seal and Conduct at Council Meetings Local Law to send a copy to the Minister for Local Government in accordance with Section 119(4) of the Act.
5. Revoke Council's Meeting Procedure Local Law 2017 effective from 1 September 2020.

**Responsible director: David Thompson
Governance**

1. Purpose

The purpose of this report is for Council to consider making the 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 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

On 13 July 2020 Council resolved to begin the statutory process to make the proposed Local Law.

The Act requires 28 days public notice to be given about a proposed local law. Public notice was given in the Government Gazette and Age newspaper on 16 July 2020. The public notice was also published on Council's web site on 16 July 2020 and the community were also invited to have their say via the 'Have Your Say' section of the Council website. The closing date for submissions was 14 August 2020.

No written submissions were received.

If Council resolves to make the proposed Local Law the remaining steps required are:

1. Give notice to the community in the Government Gazette and Age newspaper.
2. Make the Boroondara City Council Common Seal and Conduct at Meetings Local Law available on Council's website and from customer service.
3. Send a copy of the local law to the Minister for Local Government.
4. Commencement of Boroondara City Council Common Seal and Conduct at Meetings Local Law on 1 September 2020.

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

The officer involved in the preparation of this report has 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.

8. Social and environmental issues

If Council resolves to make the Boroondara City Council Common Seal and Conduct at Council Meetings Local Law this will ensure Council continues to comply with its obligations under the 2020 Act.

The Boroondara City Council 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

Date Resolved By Council

Commencement Date: 1 September 2020

Revocation Date: 1 September 2030

Responsible Directorate: Chief Executive Office

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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 10th 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;

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"*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