

## PART A – GENERAL COMMENTS

### 1. Introduction

Council is proposing to update its Local Law No. 18 – Meeting Procedures (**current Local Law**) to incorporate changes in local government legislation and to reflect current governance practice at the City of Ballarat.

The proposed new Meeting Procedure Local Law (**proposed MPLL**) will supersede and replace the current Local Law.

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* (**the Act**).

### 2. Background

Under Section 91(1) of the Act, Council must make a Local Law that prescribe the procedures governing the conduct of Council and Special Committee meetings. In addition, Council is also required to regulate the use of its common seal by way of a Local Law; and provide opportunities for community in Council's decision-making processes.

The current local law was made by Council resolution and was adopted by Council on August 2012 (R310/12). Since that time there have been several amendments made to the Act, and therefore, changes to the current local law are required to be made to reflect best practice governance at the City of Ballarat.

### 3. Methodology

The proposed MPLL is being made under section 111(1) of the Act and will operate throughout Council's municipal district.

The review process included:

- benchmarking against the corresponding Local Laws of other Victorian councils to assess where Council's Local Law could be improved;

- consulted publications including:
  - Local Government Victoria Guidelines for Local Laws Manual, best practice guidelines for the creation and enforcement of Local Laws;
  - Victorian Ombudsman, Deborah Glass, report presented to Parliament, titled Investigation into the transparency of local government decision making; and
- consultation with Councillors to make necessary adjustments to the Local Law to ensure the ongoing promotion of representation and fairness in discussion on matters, effective and efficient conduct of Council meetings in accordance with best practice governance.

#### **4. Objectives**

It is planned that the proposed MPLL with revision be established as a new Local Law rather than an amendment to the existing Meeting Procedures Local Law. This will allow the new provisions to operate for a full ten-year period (unless revoked sooner).

The general objectives of the Local Law are to:

- provide for the election of the Mayor and Deputy Mayor;
- regulate the use of the Common Seal;
- prohibit unauthorised use of the Common Seal or any device resembling the Common Seal;
- provide for the procedures governing the conduct of Council Meetings and Special Committees; and
- provide for the appointment of Councillors to Advisory Committees, Special Committee positions and external boards.

#### **5. Revisions**

The revision of the proposed MPLL aims to:

- ensure compliance with the Act;
- improve the structure, clarity and readability of the local law;
  - improve, simplify or clarify procedural matters; and
  - correct incidental formatting, numbering, positioning of clauses to allow natural sequential flow and/or typographical issues.
- provide more structure to Statutory Meeting, swearing in of Councillors and election of Mayor, Deputy Mayor and Chairpersons;

- urgent business, notices of motion, alterations of motions and points of order:
  - increase transparency and effective governance relating to decisions.
- procedural motions:
  - providing clarity of procedural activities permitted and functional purpose.
- Public Question time and representations:
  - increase transparency and effective governance relating to decisions;
  - create efficiencies in operations and governance operations of Council Meetings; and
  - more consistent with the *Charter of Human Rights and Responsibilities Act 2006*.

## **6. Consultation**

The proposed MPLL will be presented to Council for endorsement on 3 October 2018 to enable it to be released for public exhibition for at least 28 days; during which, affected members of the community are invited to make written submissions as per the requirements of Section 119 and Section 223 of the Local Government Act 1989.

Those submitters who indicate that they wish to talk to their submissions in relation to the draft local law are invited to address Council at its Council meeting on 21 November 2018.

Following consideration of any submissions the proposed MPLL is being presented to Council on 12 December 2018 for adoption.

## PART B – COMMENTS ON LOCAL LAW OVERALL

The proposed MPLL is being made under section 111(1) of the Act and will operate throughout the municipal district of the Ballarat City Council.

<b>Measures of success of proposed Local Law</b>	<p>The success of this proposed MPLL will be best measured by the extent to which it enhances the governance framework and decision-making processes of the Council, including:</p> <ul style="list-style-type: none"><li>• that Council meetings operate openly and transparently;</li><li>• that the overall objectives of the Local Law are met;</li><li>• that compliance with the Act is achieved.</li></ul> <p>Council will assess these outcomes as part of its periodic reviews of its governance framework.</p>
<b>Existing legislation that might be used instead.</b>	<p>There is no existing legislation that could be used instead of the Local Law.</p> <p>The proposed MPLL has been carefully prepared in accordance with the requirements of section 91(1) of the Act; and Council believes that no other legislation can be used instead of the proposed local law.</p> <p>Council must make a local law governing the conduct of Council meetings and Special Committee meetings, and regulate the use of the Common Seal.</p> <p>Except as provided for in the Act, the conduct of meetings is at the discretion of Council.</p>
<b>State legislation more appropriate</b>	<p>Not applicable. Council has a legal obligation under section 91(1) of the Act to make local laws governing the conduct of meetings of the Council and special committees.</p> <p>There are no alternative mechanisms or instruments that can be used for this purpose.</p>
<b>Overlap of existing legislation</b>	<p>Not applicable. It is not considered that the proposed MPLL overlaps existing legislation, rather it operates in conjunction with the requirements of the Act.</p>
<b>Overlap of planning scheme</b>	<p>The proposed MPLL has no relevance to any Planning Scheme.</p>
<b>Risk Assessment</b>	<p>The proposed MPLL enhances Council decision making by establishing the procedures and rules that apply to the conduct of Council meetings.</p> <p>This approach addresses the risk, that the community becomes disaffected by a perception that Council cannot effectively and efficiently make decisions about important matters that materially impact their lives, jobs and future or change the way the municipality is governed.</p>

	<p>Council does not believe there are any risks associated with the proposed MPLL.</p> <p>Community consultation will be undertaken prior to the decision to make the proposed MPLL.</p>
<b>Legislative Approach adopted</b>	<p>The proposed MPLL is necessitated by the provisions of the Act.</p> <p><u>Conduct of Mayoral Elections:</u></p> <p>In relation to the election of the Mayor, the proposed Local Law adopts a high impact regulatory approach that is highly prescriptive with no discretionary process. This is considered appropriate as it provides certainty and transparency to candidates and the community and ensures elections are conducted in a fair and equitable manner.</p> <p><u>Conduct of Meetings:</u></p> <p>In relation to conduct of meetings, the proposed MPLL adopts a medium impact regulatory approach. Whilst being largely prescriptive, the proposed MPLL retains a level of discretion which is considered appropriate to facilitate the orderly conduct of meetings.</p> <p><u>Council's Common Seal:</u></p> <p>The proposed MPLL adopts a high impact regulatory approach.</p> <p>This approach is considered appropriate as it provides clear accountability for appropriate use and safekeeping of the Council seal.</p> <p>The proposed MPLL has been drafted in accordance with the Act.</p>
<b>Restriction of competition</b>	<p>The proposed MPLL relates only to Council processes and there are no National Competition Policy implications associated with the proposal.</p>
<b>Penalties</b>	<p>The proposed MPLL creates a minimal number of offences. Penalties for these offences are considered reasonable.</p> <p>Benchmarking indicates the penalties prescribed are reasonable when compared with equivalent local laws of other municipalities.</p> <p>The penalties applying to all existing Local Law clauses were considered and reviewed and no new offences were prescribed.</p>
<b>Permits &amp; Fees</b>	<p>There are no permits established by, and no fees payable under, the proposed MPLL.</p>
<b>Performance Standards or prescriptive</b>	<p>Drafting of the proposed MPLL has adopted a prescriptive approach which is considered appropriate given its purpose is to describe the procedures and processes for the election of Mayor, use of the Common Seal and conduct of Council meetings and Committee meetings.</p> <p>The prescriptive nature of the proposed MPLL provides procedural certainty for Councillors, Council staff and the community.</p> <p>It is consistent with processes required by the Act.</p>

<b>Comparison with neighbouring and like Councils</b>	<p>In drafting the proposed MPLL, the review considered comparisons with other Victorian councils' Local Laws ranging from municipal shires and regional cities through to metropolitan councils.</p> <p>The proposed MPLL is not substantially different from the meeting procedure local laws of other Victorian Councils.</p>
<b>Charter of Human Rights</b>	<p>The Charter of Human Rights and Responsibilities Act 2006 (the Charter) contains twenty basic rights that promote and protect the values of freedom, respect, equality and dignity. Councils must not knowingly and disproportionately limit these rights and must always consider them when they create laws, develop policies and deliver services.</p> <p>The proposed MPLL has been reviewed for compatibility with the Charter. Particular attention was given to the following rights under the charter:</p> <ul style="list-style-type: none"> <li>• Right to recognition and equality before the law</li> <li>• Right to privacy and reputation</li> <li>• Right to freedom of expression</li> <li>• Right to take part in public life</li> <li>• Right to a fair hearing.</li> </ul> <p>The proposed MPLL has been reviewed for compatibility with the Charter. The key rights are the right to freedom of expression and the right to participate in the conduct of public life.</p> <p>The proposed MPLL is considered to be compatible with the Charter. Key aspects of the proposed MPLL in relation to the Charter follow:</p> <p><u>Conducting Business at Meetings</u></p> <p>Divisions 4, 5 and 6 contain provisions which could be considered to restrict the business which may be conducted at meetings and the manner in which Councillors and Special Committee members can participate. These include procedures and limitations around introducing general business, urgent business and notices of motion; speaking times; rules of debate; procedural motions and rescission motions.</p> <p>While the proposed MPLL impose procedural limitations, they do so in a manner which is considered proportionate to their purpose and objectives, taking into account the need to provide notice of business to be conducted at a meeting and the efficient and orderly conduct of meetings.</p> <p><u>Public Participation</u></p> <p>Divisions, 9, 10, 11 and 12 of the proposed MPLL provide for participation by the community in the conduct of Council and Committee meetings through public question time, petitions, joint letters, deputations and public submissions.</p> <p>The proposed MPLL regulate that participation with procedural limitations regarding the form, content and processes to be</p>

	<p>followed and these limitations engage the freedom of expression and the right to participate in public life provisions of the Charter. It is considered the provisions of the proposed MPLL are proportionate to the purpose and objectives of the MPLL, including the efficient and orderly conduct of meetings.</p> <p><u>Conduct and Behaviour</u></p> <p>Divisions 8 and 15 of the proposed MPLL regulate the conduct and behaviour of Councillors, members of Council staff and members of the at a Council or Special Committee meeting.</p> <p>These provisions again engage the freedom of expression and the right to participate in public life provisions of the Charter but again it is considered the proposed MPLL does so in a manner proportionate to the purpose and objectives of the proposed MPLL to provide for the efficient and orderly conduct of meetings.</p>
<b>Consultation</b>	<p>The proposed MPLL 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 sections 119(2) and 223 of the Act.</p> <p>In developing this proposed MPLL, the Council has either undertaken or will undertake the following processes:</p> <ul style="list-style-type: none"> <li>• a review of changes in legislation that might impact on the content of the proposed MPLL and appropriate amendments made;</li> <li>• various Council staff reviewed the existing document as to any issues with the current Local Law #18 Meeting Procedure;</li> <li>• Council will consider a formal draft of the proposed MPLL at an Ordinary Council meeting and will be required to adopt the proposed MPLL in order that the formal public submission process can occur;</li> <li>• Submissions on the adopted proposed MPLL will be called for in public advertisements with a 28-day submission period available for the public to make any comments, suggestions and objections on the proposals;</li> <li>• Council will hear any person making a submission if a person so requests at a meeting with Council or representatives of Council;</li> <li>• Council will then formally consider a report on the submissions and any proposed changes to the proposed MPLL;</li> <li>• Council will then adopt the MPLL and place advertisements in local papers and the Government Gazette after which time the MPLL comes into force</li> </ul>
<b>Public Submissions</b>	<p>The public consultation will open on 4 October 2018 and close on 1 November 2018.</p> <p>During this time members of the public are invited to make written submissions. Council will then consider submissions received</p>

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	<p>before making a final decision on the proposed MPLL.</p>
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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 MPLL, it must notify in writing each submitter of the decision and the reasons for the decision.

This Community Impact Statement has been prepared to inform the community about the proposed MPLL and to assist any member of the public who may wish to make a submission to Council.

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## PART C – COMMENTS ON SPECIFIC PARTS OR PROVISIONS OF THE PROPOSED LOCAL LAW

The proposed MPLL is being made under section 111(1) of the Act and will operate throughout the municipal district of the Ballarat City Council.

<b>Part, Clauses (s) or section of Local Law and Description / heading</b>	<b>Result</b>
Restructure of document	<ul style="list-style-type: none"><li>• The following table does not comment on minor alterations or grammatical changes.</li><li>• The proposed Local Law has been re-ordered and re-numbered for better flow for easier navigation.</li></ul>
Part A – Introduction (Title, Purpose & Definitions)	<ul style="list-style-type: none"><li>• Updated consistent with industry practice and more recent Local Laws of councils.</li><li>• Definitions updated and/or amended for improved understanding of the proposed Local Law.</li></ul>
Part B – Election of Mayor and Temporary Chairs	<ul style="list-style-type: none"><li>• Consistent with amendments to the Act, this Part now includes provision for a 2-year Mayoral term at Council's discretion.</li><li>• Wording of Clause 8 describing the procedure for conducting the Mayoral election has been reworded and process clarified in line with current practice and industry standards.</li><li>• Introduces the inclusion of deputy Chair at Council's discretion and clarifies that the same procedure for election of the Mayor will be used for election of deputy &amp; temporary Chairs and in the event of two or more candidates having an equality of votes the result will be determined by lot.</li><li>• Now includes the order of business and provision for candidate and Mayoral speeches as per current industry practice.</li></ul>
Part C – Common Seal	<ul style="list-style-type: none"><li>• No Change.</li></ul>
Part D – Council Office Holders	<ul style="list-style-type: none"><li>• No Change.</li></ul>
Part E – Meeting procedures Division 1 Notices of meetings and deliver of agendas	<ul style="list-style-type: none"><li>• Now describes fixing of; reasonable notice; and closure of meetings in accordance with Act.</li><li>• Further details the process for calling of Special Meetings and what may be considered on agenda.</li></ul>
Part E – Meeting procedures Division 2 Quorums	<ul style="list-style-type: none"><li>• No Change.</li></ul>
Part E – Meeting procedures Division 3 Conduct and business of meetings	<ul style="list-style-type: none"><li>• Now articulates changes in order of business by resolution.</li><li>• As per amendments to the Act and current practice, includes reference to managing a conflict of interest when Mayor/Deputy Mayor and/or Chairs declare a</li></ul>

	<p>conflict at same time.</p> <ul style="list-style-type: none"> <li>Urgent Business clause expanded to provide clarity about the process for Councillors wishing to admit business as urgent and what is/not urgent business.</li> </ul>
Part E – Meeting procedures Division 4 Motions and debate	<ul style="list-style-type: none"> <li>This Division has been extensively re-worded to reflect that Notices of Motions often raise complex and detailed questions. Therefore, more detailed process has been included to assist with clarifying the process for Councillors to ensure adequate notice and consideration is given when considering motions. This will improve transparency around the process and align process to be consistent with industry practice.</li> <li>Clause 31.4.2 timeframe for resubmission of notices of motion to 6mths to ensure adequate time between actions undertaken prior to revisiting motion and to improve transparency of decisions.</li> <li>Clause 31.4-31.10 now prescribes in detail CEO responsibilities for rejection/acceptance of notices of motion and includes the circumstances and requirements for preparation of a report and/or referral on certain matters.</li> <li>Clause 31.11 provides framework for a report to be prepared to provide Councillors with required information to make an informed decision and thus, increase transparency. This is consistent with industry practice.</li> <li>Clause 31.16 included to remove potential conflicts of interest from notice of motion process and improve transparency.</li> <li>Clauses 35, 37 and 39 have been updated to be consistent with industry practice and clarify the roles of Councillors in debate as motions are altered or amended.</li> <li>Clause 44 updated to enable moving of like type motions in a block.</li> <li>Clause 50 amended to ensure that focus of foreshadowed motions is to capture the formal decisions of Council in minutes and not the debate.</li> <li>Clause 51 simplified to focus on the role of the Mayor/Chair to facilitate the debate</li> </ul>
Part E – Meeting procedures Division 5 Procedural motions	<ul style="list-style-type: none"> <li>Consolidation of procedural motions included in table that were previously captured in separate parts of the MPLL.</li> </ul>
Part E – Meeting procedures Division 6 Rescission motions	<ul style="list-style-type: none"> <li>Aligned rescission notice with process for Notice of Motions to ensure consistency and transparency of decisions; and consistent with industry practice.</li> </ul>

Part E – Meeting procedures Division 7 Points of Order	<ul style="list-style-type: none"> <li>Now describes the grounds and process for Points of Order, wording consistent with industry practice.</li> </ul>
Part E – Meeting procedures Division 8 Public Question Time	<ul style="list-style-type: none"> <li>This Division has been extensively re-worded to improve transparency and resource rationalisation. This is 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.</li> <li>The inclusion of written submissions reflects access inequities to members of community to participate in public question time.</li> <li>This will provide opportunity for questions to be raised and timeliness for a response to be provided in the Chambers.</li> <li>There are numerous ways that the public can have their say and influence Council's decisions on matters before a decision is made. Many of these opportunities have a statutory right under legislation occur well before a decision is made. This process provided in the MPLL is intended to regulate how the community can participate in the meeting where no other specific consultation mechanism is available.</li> </ul>
Part E – Meeting procedures Division 9 Petitions and joint letters	<ul style="list-style-type: none"> <li>Now describes the process for petitions and joint letters, wording consistent with industry practice.</li> </ul>
Part E – Meeting procedures Division 10 Deputations and Presentations	<ul style="list-style-type: none"> <li>Describes the purpose and process for Councillor Briefings as to provide transparency of how information is processed by Council prior to a decision being made.</li> <li>Clarified process for deputations and process for inclusion in consultative process.</li> </ul>
Part E – Meeting procedures Division 11 Public submissions	<ul style="list-style-type: none"> <li>Now describes the process for public submissions, wording consistent the Act and industry practice.</li> </ul>
Part E – Meeting procedures Division 12 Voting	<ul style="list-style-type: none"> <li>Now describes the process for voting that reflects changes in the Act and industry practice.</li> </ul>
Part E – Meeting procedures Division 13 Minutes	<ul style="list-style-type: none"> <li>This division has been realigned to correct order of process for clarity and consistent with industry practice.</li> <li>Inclusion of the procedures for recording meetings and notifications to members of the public as per changes in technology; and legislative requirements for privacy and data protection.</li> </ul>

Part E – Meeting procedures Division 14 Conduct and behaviour	<ul style="list-style-type: none"><li>• The division has been amended to reflect changes in Act and inclusion of Councillor Code of Conduct policy as adopted by Council.</li></ul>
Part E – Meeting procedures Division 14 Additional duties of Chairperson	<ul style="list-style-type: none"><li>• Now describes the process for duties of Chairperson that is consistent with enabling a safe working environment for Council and expected conduct of public.</li></ul>
Part E – Meeting procedures Division 15 Suspension of standing orders	<ul style="list-style-type: none"><li>• No change, further detail provided in Division 5 Procedural motions that is consistent with industry practice.</li></ul>
Part E – Meeting procedures Division 16 Miscellaneous	<ul style="list-style-type: none"><li>• Wording has been amended to provide clarity and consistency with industry practice.</li></ul>
Part E – Meeting procedures Division 17 Special Committees	<ul style="list-style-type: none"><li>• Now reflects what elements required for Special Committees to provide clarity and consistency with industry practice.</li></ul>