

**ORDINARY MEETING OF COUNCIL
23 NOVEMBER 2009**

10	MEETING PROCEDURE LOCAL LAW – REVIEW SUBMISSIONS
LOCATION/ADDRESS:	N/A
GENERAL MANAGER:	MARK BRADY, GENERAL MANAGER CORPORATE SERVICES
PREPARED BY:	NORM MCCLELLAND, GOVERNANCE ADVISOR
FILE NO.:	16/07/51
ATTACHMENTS:	DRAFT MEETING PROCEDURE LOCAL LAW NO. 2/2009

1. EXECUTIVE SUMMARY

- 1.1 Section 91(1) of the *Local Government Act 1989* (the Act) requires councils to make a local law governing the conduct of meetings for Council and special committees.
- 1.2 At the Council meeting on 14 September 2009, Council resolved to remake the Meeting Procedure Local Law.
- 1.3 The Port Phillip Council Meeting Procedure Local Law:
 - 1.3.1 regulates proceedings at meetings of Council and special committees comprised solely of Councillors;
 - 1.3.2 provides for the election of the Mayor and Deputy Mayor, and Chairpersons of special committees comprised solely of Councillors; and
 - 1.3.3 regulates the use of the Common Seal of Council.
- 1.4 Council also resolved on 14 September 2009 to call for submissions to the Draft Meeting Procedure Local Law No 2/2009.
- 1.5 This report facilitates the consideration of public submissions by the Council.

2. RECOMMENDATION

That Council:

- 2.1 Review, hear and consider submissions to the Draft Meeting Procedure Local Law No 2/2009; and

- 2.2 Having considered submissions, proposes to adopt a new Meeting Procedure Local Law at its meeting on 14 December 2009.

3. BACKGROUND AND CONTEXT

- 3.1 The current Port Phillip Council local law governing the conduct of Council and special committee meetings comprised solely of Councillors was made in 2005.
- 3.2 The Act requires a local law to be revoked 10 years after the day on which it came into operation, however, Council also has the power to revoke a local law prior to the date on which it is due to sunset.
- 3.3 Even though the Meeting Procedure Local Law No. 2/2005 is not due to sunset until 2015, there are aspects of the current local law that do not comply with recent legislative changes.
- 3.4 Council received a Draft Meeting Procedure Local Law on 14 September 2009 which encompassed the changed legislative requirements, as well as, changes required by the Council. At this meeting the Council resolved to commence the process to make a new Meeting Procedure Local Law.
- 3.5 Council authorised the placement of public notices in the Victorian Government Gazette, the Emerald Hill Weekly and the Port Phillip Leader advising of its intention to:
- 3.5.1 make a new Meeting Procedure Local Law No. 2/2009; and
 - 3.5.2 revoke the Meeting Procedure Local Law No. 2/2005; as well as
 - 3.5.3 call for public submissions in accordance with section 223 of the Act to the draft Meeting Procedure Local Law.
- 3.6 Receipt of submissions closed on Friday 23rd October 2009.
- 3.7 Council resolved to hear and consider public submissions at the Ordinary Meeting of Council on Monday 23 November 2009.
- 3.8 At the close of the submission period one submission had been received.

3 CONSULTATION AND STAKEHOLDERS

- 4.1 The Act requires that a section 223 public submission process be conducted when making a local law. This requires allowing a period of 28 days in which submissions can be lodged and inviting submitters to speak to their submissions at a meeting of the Council. Advertisements were placed in the local papers, the Victorian Government Gazette and on Council's website calling for public submissions. Submissions could be lodged by post or by email.

- 4.2 The person who lodged the submission was advised that he could speak to his submission at this meeting of the Council. The submitter advised that he was unable to attend.

5. DISCUSSION

5.1 OPTIONS

- 5.1.1 As previously stated, Council received one public submission by the closing date.
- 5.1.2 The submission received from Mr Baré suggested that *“in Clause 15 [should be Clause 13, Mr Baré has misread the clause number] which has to do with handling motions. There seems to be no provision for Councillors to ask questions and / or seek clarification of the Councillor who has put the motion and / or the seconder. In the draft as framed, the only way of doing this, it seems, would be for a Councillor to ask the Mayor or Chair to suspend standing orders so that a question could be asked or clarification sought, for the response to be made and discussed, and then for standing orders to be resumed - a tortuous and necessarily byzantine process, it seems to me, for Council to saddle itself with. Far simpler to allow in Clause 15 [13] for Councillors to ask questions and / or seek clarification of the mover and / or the seconder.”*
- 5.1.3 Mr Baré has raised a reasonable point which has in the past been addressed without the formality of the suspension of standing orders. The recommendation could be accommodated by the inclusion of a Clause 13(c) – *Any Councillor seeking clarification of, or wanting to ask a question about a motion or amendment, must do so through the Chair and before the commencement of debate.*
- 5.1.4 Once Council has considered this submission, it can at its meeting on 14 December 2009:
- 5.1.4.1 Proceed with the statutory process to make a new local law without amendment using the draft Meeting Procedure Local Law No. 2/2009 attached to this report; or
- 5.1.4.2 Encompass the submitters recommendation into the draft local law with the addition of the italicized words contained in 5.1.3 above; or
- 5.1.4.3 Amend the draft local law in any way that it considers appropriate.

5.2 ALIGNMENT TO COUNCIL PLAN

- 5.2.1 The drafting of a new meeting procedure local law is consistent with Council's key direction of "Engaging and governing the city" as contained in the Port Phillip Council Plan 2009 – 2013. The Plan, under strategy 1.2.1, commits to "Promote a culture of good governance" by "Review local laws, meeting procedures and standing orders to ensure good governance".

5.3 POLICY IMPLICATIONS

- 5.3.1 The conduct of Council and special committees comprised solely of Councillors is currently governed by the Council Meeting Procedure Local Law No. 2/2005.
- 5.3.2 The revocation and making of local laws is governed by the Act. The making of a new meeting procedure local law requires that the existing local law be revoked.
- 5.3.3 The conduct of meetings of Council and special committees comprised solely of Councillors will be governed by the Act, the relevant local law and any additional resolutions of the Council.
- 5.3.4 Where the Council meeting procedure local law is silent on any issue relating to meeting administration, the conduct of the meeting is at the discretion of the Council meeting or special committee meeting, subject to the relevant provisions of the Act and any existing Council resolutions.
- 5.3.5 The local law is inoperative to the extent that it is inconsistent with any Act or regulation.
- 5.3.6 **National Competition Policy** – Council must demonstrate compliance with National Competition Policy in relation to local laws. Council is required to maintain an on-going awareness of the need to ensure local laws do not restrict competition by applying the competition test to any new or amended local law as outlined in Schedule 8 of the Act, specifically:
- 5.3.6.1 A local law must not restrict competition unless it can be demonstrated that:
- the benefits of the restriction to the community as a whole outweigh the costs; and
 - the objectives of the local law can only be achieved by restricting competition.
- 5.3.7 The draft new Meeting Procedure Local Law 2/2009 does not contain any clauses that restrict competition; it deals with meeting

administration and procedural matters, election of the Mayor and Deputy Mayor, and use of the Common Seal of Council. The proposed local law complies with the requirements of National Competition Policy.

5.3.8 **Charter of Human Rights** – the Charter of Human Rights recognises 20 human rights that local government must take into account when making local laws. Council is obliged to act compatibly with Charter Rights and give proper consideration to Charter Rights.

5.3.9 The Charter Rights are:

Recognition and equality before the law	Right to life
Protection from torture and cruel, inhuman or degrading treatment	Freedom from forced work
Freedom of movement	Privacy and reputation
Freedom of thought, conscience, religion and belief	Freedom of expression
Peaceful assembly and freedom of association	Protection of families and children
Taking part in public life	Cultural rights
Property rights	Right to liberty and security of person
Humane treatment when deprived of liberty	Children in the criminal process
Fair hearings	Rights in criminal proceedings
Right not to be tried or punished more than once	Retrospective criminal laws

5.3.10 Having considered the 20 human rights, it is believed that the Meeting Procedure Local Law is not incompatible with the requirements of the relevant rights outlined in the Charter. The proposed Local Law arguably provides support to some rights such as taking part in public life and freedom of expression.

5.4 FINANCE / RESOURCE IMPLICATIONS

5.4.1 The making of a new meeting procedure local law will have no immediate resource implications.

5.5 LEGAL & RISK IMPLICATIONS

5.5.1 Council must ensure that the correct procedure is followed to make the new local law, otherwise the local law may be rendered inoperative.

6. IMPLEMENTATION STRATEGY

6.1 TIMELINE

6.1.1 Following is the implementation plan for the making of the new meeting procedure local law:

6.1.1.1 September 14, 2009 – Council resolved to advertise the making of a new meeting procedure local law and call for public submissions.

6.1.1.2 September/October 2009 – advertisements placed and submissions received.

6.1.1.3 November 23, 2009 – Council hear submissions to the making of the new local law.

6.1.1.4 December 14, 2009 – Council adopt the new meeting procedure local law, place the required legislative advertisements and send a copy of the new local law to the Minister for Local Government.

6.2 COMMUNICATION

6.2.1 The making of the new meeting procedure local law will be widely advertised in the local press and on Council's website and will be made available at the Council offices for public inspection.

7. OFFICER DIRECT OR INDIRECT INTEREST

7.1 No officers involved in the preparation of this report have any direct or indirect interest in the matter.