



Community Impact Statement

Governance Local Law 2024

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1. Background

Wellington Shire Council Local Law No. 1 Processes of Municipal Government (Common Seal and Enforcement & Penalties) (Local Law No.1) was made in accordance with the *Local Government Act 1989* (the '1989 Act') and commenced operation in October 2014. Amendments to Local Law No. 1 were made on 1 September 2020 in order to meet compliance requirements of the *Local Government Act 2020* (the '2020 Act'). Local Law No. 1 is used to regulate the use of the common seal, set offences for unauthorised use of the common seal and set offences for conduct at meetings. Local Law No. 1 will sunset on its tenth anniversary, being 20 October 2024.

A Local Law is still necessary once Local Law No. 1 sunsets, as the use of the common seal cannot be addressed through Governance Rules or a policy. Nor can appropriate Council governance offences be created without a Local Law.

Council must have a common seal (see section 14(b) of the 2020 Act). A common seal is a rubber stamp that is used for the execution of documents. Council's common seal is used for various documents, including planning documents, appointments and agreements. Use of the common seal may or may not be appropriate, depending on the applicable legal requirements.

Council is proposing to title the new local law the 'Governance Local Law 2024'.

This Community Impact Statement has been prepared to inform the community about the proposed Governance Local Law 2024. The statement will assist any member of the public who intends to provide feedback during the consultation process which has been developed in accordance with Council's community engagement policy.

The proposed Governance Local Law 2024 has been reviewed by a qualified legal practitioner prior to being made available for public consultation.

2. Objectives

The proposed Governance Local Law 2024 will incorporate the current elements of Local Law No.1.

This will allow the new provisions to operate for a ten-year period (unless revoked sooner).

The general objectives of the proposed Local Law are to

- Regulate the use of the common seal;
- Prohibit unauthorised use of the common seal or any device resembling the common seal;
- Prohibit unauthorised use of the common seal or any device resembling the common seal and determine offences and associated penalties;
- Determine offences and associated penalties relating to conduct at Meetings; and
- Revoke Local Law No. 1.

3. Evaluation of the Local Law

Subject	Evaluation
Measures of Success of proposed Local Law	<p>The success of the proposed Local Law will be best measured by the extent to which it enhances the governance framework; including:</p> <ul style="list-style-type: none"> • regulation and use of the common seal, including offences relating to misuse; and • meeting conduct requirements. <p>Council will assess these outcomes as part of its periodic reviews of its governance framework.</p>
Existing legislation that might be used instead	<p>There is no existing legislation that could be used instead of the Local Law.</p> <p>Councils may make local laws for or with respect to any act, matter or thing in respect of which the council has a function or power under the 2020 Act or any other Act.</p> <p>Section 14(2b) of the 2020 Act stipulates that the common seal must be used in accordance with any applicable local law.</p> <p>This also provides the mechanism to create a local law that makes it an offence (carrying an infringement penalty) for a person who uses the common seal without authority or does not follow the direction given by the meeting Chair.</p>
Overlap with Existing Legislation	Inapplicable. There are no alternative mechanisms or instruments that can be used for this purpose.
Overlap with Planning Scheme	The proposed Local Law has no relevance to any Planning Scheme.
Risk Assessment	A thorough risk assessment was undertaken when drafting the proposed Local Law and is attached to this document.

Subject	Evaluation
Legislative Approach Adopted	<p>The proposed Local Law is necessitated by provisions of the 2020 Act.</p> <p>Council's Common Seal: While the proposed Local Law adopts a regulatory approach, this approach is considered appropriate as it provides clear accountability for the appropriate use and safekeeping of the common seal.</p> <p>Conduct of Meetings: The proposed Local Law adopts a regulatory approach in relation to conduct at meetings. This approach is considered appropriate to facilitate the safety, order and security of meetings.</p> <p>Provision for an internal review process for infringement notices is included within the proposed Local Law.</p>
Restriction of Competition	<p>The proposed Local Law relates only to Council processes with no National Competition Policy implications associated.</p>
Penalties	<p>Offences created under the proposed Local Law attract a maximum of 10 penalty units if the matter is taken to Court.</p> <p>Should an infringement notice be issued the value is between 3 and 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 neighbouring and other like councils.</p> <p>Council is satisfied that the penalties are similar in nature to those of neighbouring and like councils, being sufficient to act as a deterrent for most offences while also reflecting the seriousness of those offences.</p> <p>In conjunction with the Wellington Shire Council Local Laws Framework, Council has produced Enforcement</p>

Subject	Evaluation
	Guidelines to adhere to the principles of natural justice, during the delivery of enforcement action by Council officers. The principles outlined in the Enforcement Guidelines allow staff to gauge the compliance response on a spectrum from education through to prosecution. This reduces the opportunity for bias and personal attitudes to influence the approach plus importantly to create consistency.
Permits	The proposed Local Law relates only to Council processes with no permit implications associated.
Fees	The proposed Local Law relates only to Council processes with no fee implications associated.
Performance Standards or Prescriptive	<p>The use of the common seal is prescriptive, which is a requirement of the 2020 Act.</p> <p>The overarching provision for conduct at meetings is from the Governance Rules, which have adopted a blend of principle and prescriptive approaches that is considered appropriate given their purpose. The prescriptive nature of the Governance Rules provides procedural certainty for Councillors, Council staff and the community. It is consistent with overarching governance principles and processes necessitated by the Act.</p>
Comparison with Neighbouring and Like Councils	The proposed Local Law has been compared with those of neighbouring and like councils, including the general level of penalties provided for as detailed under 'Penalties' above.
Charter of Human Rights	<p>The Proposed Local Law has been reviewed in accordance with the requirements of the Victorian <i>Charter of Human Rights and Responsibilities Act 2006</i> (Charter).</p> <p>The restrictions on the use of the common seal or replica of the common seal engage the right of freedom of expression (see section 15(2) of the Charter). The restrictions imposed represent reasonable limits on the</p>

Subject	Evaluation
	<p>exercise of that right, given that they are directed at discouraging fraud or the misrepresentation of Council activities.</p> <p>Similarly the right to freedom of expression is engaged by the restriction on conduct at meetings. The restrictions constitute reasonable limits on that right, since they are designed to prevent the undue disruption of a meeting by any member of the public.</p> <p>This is equally the case in relation to the right to take part in the conduct of public life (as to which see section 18(1) of the Charter). Preventing undue disruption of a meeting is a legitimate objective, and the restrictions imposed are no more than what is necessary to ensure the achievement of that objective.</p>
Consultation	<p>The proposed Local Law has been developed in consultation with key stakeholders, including Councillors, Council staff and an external legal firm.</p> <p>Community engagement will be undertaken as part of the statutory process outlined in the 2020 Act.</p> <p>Council will publish a notice stating —</p> <ul style="list-style-type: none"> • that the copy of the proposed objectives of the proposed Local Law; • the intended effect of the proposed Local Law; and • that a copy of the proposed Local Law is available for inspection at Council's principal office, and on Council's Internet site. <p>The proposed Local Law will be available for a period of three weeks on Your Wellington, Your Say, which is an online consultation platform.</p>
Feedback	Feedback will be considered after undertaking the community engagement process outlined above.

4. Key Changes to Proposed Governance Local Law 2024

Section or Part	Result
Title of Local Law	The title of the Local Law has been changed from Governance Local Law 2024 Local Law No. 1 Processes of Municipal Government (Common Seal and Enforcement & Penalties) to Governance Local Law 2024. This title is consistent with the Community Local Law 2021, which is also in force. The year referenced in the title corresponds with the year that Council adopted the local law.
Design of document	<p>The proposed Local Law 2024 has been designed to incorporate the same elements of Local Law No.1</p> <p>The design of the proposed Governance Local Law has been developed to assist with readability for flow and easy navigation of the proposed provisions.</p>
Part 1 – Preliminary	<p>A preliminary section has been added to achieve consistency with industry practice and Wellington Shire Council Community Local Law 2021.</p> <p>The following headings have been added for clarity:</p> <ul style="list-style-type: none"> • Authorising Provisions • Objectives • Operation Date • Revocation Date • Scope • Division of Parts • Definitions. <p>A definitions clause has been included for improved understanding of the proposed Local Law.</p>

Section or Part	Result
Part 2 – Common Seal	<p>The wording for the common seal has been simplified by removing <i>hereunto</i></p> <p>Local Law 1:</p> <p>The Common Seal of WELLINGTON SHIRE COUNCIL was hereunto affixed this day of 2... in accordance with Local Law No. 1</p> <p>Proposed Governance Local Law 2024</p> <p>The Common Seal of WELLINGTON SHIRE COUNCIL was affixed this day of 20 in accordance with the Governance Local Law 2024.</p>
Part 3 – Meeting Conduct	<p>While an offence was already in place relating to meeting conduct, a Part for Meeting Conduct has been created in the proposed Local Law specifically to regulate conduct at a meeting.</p> <p>The wording of the offence has been updated from ‘Failure to comply with Chairperson’s direction’ to ‘Any person, not being a Councillor, who fails to comply with a lawful direction of the Chairperson in relation to the conduct of the Meeting is guilty of an offence’.</p> <p>The inclusion of the need for the direction to be lawful provides clarity that the direction is required to be a permitted direction. The limitation that the offence applies to any person other than a Councillor recognises that Councillors are already subject to the standards of conduct set out in Schedule 1 to the <i>Local Government (Governance and Integrity) Regulations 2020</i>.</p>
Part 4 – Related Documents	<p>The Part accompanies the standards of conduct for Meetings as set out in the Governance Rules. For this reason, the Governance Rules have been listed as a Related Document. This section also clarifies that the Governance Rules will be made available at the principal office of Council or on Council’s website.</p>

Section or Part	Result
Penalties	<p>The penalty units shown in the proposed Local Law are the maximum penalties which a Court can impose. It is always open to a Court to impose no penalty or a lesser penalty. The proposed Local Law reduces the maximum penalty for an offence under this Local Law from 20 penalty units to 10 penalty units.</p> <p>The value of a penalty unit as at March 2024 is \$192.31</p>
Infringements	<p>Fixed penalties for infringement notices have been reduced as follows:</p> <p>Use of common seal with the authority of Council has been reduced from 20 penalty units to 5 penalty units.</p> <p>Use of a replica of the common seal without the authority of Council has been reduced from 20 penalty units to 5 penalty units.</p> <p>The fixed penalty relating to meeting conduct has been reduced from 20 penalty units to 2 penalty units.</p>
Part 5 – Enforcement	<p>This Part was previously titled Enforcement and Penalties. This Part has been retitled Enforcement to achieve consistency with the Wellington Shire Council Community Local Law 2021. Subheadings include Offences, Exercise of Discretions, Review Rights, Penalties and Infringement Notices.</p>
Schedule 1	<p>The list of offences has been updated to correspond to the relevant clause and description in the proposed Local Law.</p>
Schedule 2	<p>Has been deleted. This schedule noted that the infringement notice would be in the form provided by section 81 of the 2020 Act. There is no need to repeat this in the proposed Local Law.</p>

5. Risk Assessment of Proposed Local Law

Problem	Impact on Council Objective	How does the Local Law deal with the problem?
The 2020 Act specifies that the Common Seal must be used in accordance with any applicable local law.	Significant	Regulates the use of the common seal.
Unauthorised use of the common seal	Significant	Allows Council to prohibit unauthorised use of the common seal or any device resembling the common seal.
Conduct at Council Meetings	Significant	Creates an offence as one enforcement mechanism, to accompany the standards of conduct for Meetings as set out in the Wellington Shire Council Governance Rules.

REVISION HISTORY

VERSION	DATE	UPDATE TYPE	SUMMARY OF CHANGES
Draft V.1	April 2024	New document	Document created to accompany the Governance Local Law 2024