



# RIGHT TO MAKE A SUBMISSION POLICY

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## 1. POLICY OBJECTIVE

The purpose of this Policy is to provide clear guidance on the process of dealing with submissions from the public to a Council proposal pursuant to section(s.) 223 'Right to make a Submission' of the Local Government Act (the Act) 1989.

The Act details a list of provisions where s.223 submissions are required, they are listed in **Attachment 1** of this Policy.

## 2. POLICY SCOPE

This Policy supports the Council Plan by engaging and working collaboratively with our community. It further supports Council to make informed decisions by providing opportunities for the community to participate in the decision making process.

This Policy and its associated guidelines and templates are to be used when planning for and administering formal submissions where a s. 223 'Right to make a Submission' applies.

This Policy does not apply to receipt of public submissions on proposals that fall outside the list prescribed in s. 223, including but not limited to:

- Planning matters
- Submissions/ requests received from Council's Public Presentation Sessions
- Public Question Time
- Engagement or Consultation to inform Strategies
- Petitions or Joint Letters (not presented as formal submissions)

## 3. POLICY STATEMENT

Council must comply fully with s. 223 of the Act in circumstances specified in the table in **Attachment 1** where a person has a legal right to make a submission about a Council proposal.

### **Transparency**

In the pursuit of transparency in Council decision making, meetings to hear, consider and decide s. 223 submissions will be open to the public in accordance with s. 89(1) of the Local Government Act 1989. Under exceptional circumstances Council (or a Special Committee established by Council) may resolve that the meeting be closed or part closed to hear individual submissions pursuant to s. 89(2)a-i. The reason for closing the meeting/ part meeting must be recorded in the Agenda and Minute of the relevant meeting along with the relevant clause.



Every attempt is to be made to ensure as much of the meeting as possible is open to the public.

### ***Human Rights and Responsibilities Charter***

People have the right to make a submission and the right to be heard in support of their submission in accordance with s. 223 of the Local Government Act 1989. The Victorian Human Rights and Responsibilities Charter specifically supports the right to freedom of expression with limitations (s. 15), to privacy and reputation unless the law allows otherwise (s. 13), to taking part in public life (s. 18) and to a fair hearing (s. 24).

To this end this Policy strives for openness and transparency by:

- Making public the names and addresses of submitters, but redacting other personal contact information.
- By hearing submitters in an open public setting so that other members of the public can also listen to the submissions unless a special case applies to an individual in accordance with clause 89(2)a-i where the submission may be heard in a closed session.
- Separating the hearing of submissions, from a later meeting where all submission are considered and determined.
- Providing each submitter with a written response outlining the Council (or Special Committee) decision in regard to their submission.

## **4. IMPLEMENTATION STATEMENT**

Council staff authorised to carry out the administrative functions associated with a s. 223 public consultation will manage the receipt, hearing, considering and deciding of submissions in accordance with the Local Government Act, or any other Act, requiring a s. 223 process.

Guidelines and templates to support these administrative functions are contained in a separate document CE13 Local Government Act 1989 S. 223 – Submission Guidelines. These guidelines provide the steps to be followed, actions required and the Officer/Team assigned responsibility to undertake them.

Guidance from Local Government Victoria is also provided in **Attachment 2 - Governance Practice Note No.4 Submissions from the Public** (Governance Practice Note) dated 18 October 2011 issued by Local Government Victoria.

Officers responsible for administering s. 223 functions should refer to these documents for guidance to ensure a consistent approach is applied.

Officers responsible for administering a s. 223 public engagement should liaise with the Corporate Planning & Council Business Team early in the planning process to ensure the steps that require Council's involvement are seamlessly and consistently applied.

This Policy and Guidelines will be published on Council's intranet.



## 5. RISK ASSESSMENT

If Council does not follow the requirements of s. 223 of the Act, it risks decisions being challenged in court.

If Council has acted in such a way that it:

- May be considered to have effectively concluded the matter before completion of the s. 223 process;
- fails to provide sufficient notice of a hearing;
- fails to give an adequate hearing, or consideration, to a submitter whose rights or interests are affected by a proposal, it may be found in court to have denied that person natural justice.

## 6. LEGISLATIVE PROVISIONS

### **Council Policy**

- [Communication and Engagement Policy](#) C06 2014 and its associated toolkit.

### **Legislative Provisions**

- Local Government Act 1989, s. 223 and other related sections as listed in Attachment 1
- Governance Practice Note No.4 Submission from the Public, October 2011 issued by Local Government Victoria
- Victorian Charter of Human Rights and Responsibilities 2006

## 7. DEFINITIONS

<b>Submissions</b>	A view/ opinion and/or question from a member of the public to a Council proposal normally provided in legible written form, addressed to the Chief Executive Officer and received by Council by the close off time set out in the Notice.
<b>Late submission</b>	Is a submission received after the closing day/time – this submission will not be accepted as part of the formal s. 223 process.
<b>A Public Notice</b>	A notice published in a newspaper generally circulating in the municipal district of the Council and on Council's website, in accordance with description contained in s. 3 of the Act.

## 8. ATTACHMENTS

- **Attachment 1:** Provisions in the Act where s. 223 applies
- **Attachment 2:** Governance Practice Note No.4 Submissions from the Public



## Attachment 1 Provisions in the Act where section 223 applies

Sections of the Act	Proposal
74(1), (1A), (1B)	Review of Mayoral and Councillor allowances
119(2) (c)	Making of a local law
125(1)	Proposed Council Plan
125(8)	Proposed adjustment to Council Plan relating to certain matters
127(1)	Proposal contained in budget
128(1)	Proposal contained in revised budget
157(2)	Decision to change system of valuation
163A	Proposal to make declaration of a special rate or charge
166(3)	Proposal to vary special rate or charge in certain circumstances
169(1B)	Granting of rebate or concession on rate or charge
189(1)	Proposed sale or exchange of land
190(3)	Proposed lease of land
192(1)	Proposed use of land for another purpose
196(1)	Proposal by Council to enter into regional library agreement
196(8)	Proposal by regional library to amend regional library agreement
199(1)	Proposal to undertake work to concentrate / divert drainage
200(1)	Proposed notice to owner / occupier to carry out drainage works
204(1)	Declaration of road as a public highway
204(2)	Declaration of road to be open to public traffic
207A	A person may make a submission on the proposed exercise of any power under the following clauses and as outlined below. Clauses 1(b), 2, 3, 7 and 8(1)a of schedule 10 Clauses 9, 10(1)c, 11 and 12 of schedule 11
Schedule 10, CI 1(b)	Fixing and altering the level of road
Schedule 10, CI 2	Deviation of road through certain land
Schedule 10, CI 3	Discontinuance of road and sale, transfer or retention
Schedule 10, CI 7	Fixing alignment of road
Schedule 10, CI 8(1) (a)	Narrowing or widening of road
Schedule 11, CI 9	Placing obstructions / barriers on road permanently
Schedule 11, CI 10(1)(c)	Placing obstructions / barriers on road temporarily for genuine traffic diversion experiments
Schedule 11, CI 11	Declaration of road to be a shopping mall
Schedule 11, CI 12	Restriction of road to vehicles of a certain size / weight



## Attachment 2

### Governance Practice Note No.4 Submissions from the Public

(Source document located at CM9 [D2963211](#))

Issued by Local Government Victoria



18 October 2011

## Submissions from the Public

In certain circumstances, a person has a legal right to make a submission about a Council proposal.

This Practice Note explains the various procedures Councils must follow when calling for and considering such public submissions.

### The Statutory Framework

Section 223 of the *Local Government Act 1989* (the Act) sets the framework which applies when a person is given a right to make a submission to a Council <sup>1</sup> proposal.

This ensures that people who may be affected by a proposal have a guaranteed right to participate in the Council's decision making process.

Section 223 only applies where the Act (or any other Act) specifies that a person has a right to make a submission under that provision – See **Attachment A**. It doesn't apply to consultation with the community on other proposals.

If the Council does not correctly follow the process set out in section 223, its decision may be challenged in the courts (See '*Ensuring Compliance*' below).

### The Submission Process

The Act requires Council to publish a public notice in a newspaper generally circulating in the municipality chosen by the Council, and on the Council website, setting out a number of things:

- *The matter to which the right applies.*
  - Sufficient information must be given to clearly explain what the Council intends to do – and if appropriate, why the Council is making the proposal.
  - References to land should be clear enough for a person to identify its location - a reference to title particulars only is insufficient.
  - If a map is included, it should be simple, correctly dimensioned and legible.
- *Prescribed details.*
  - A Council must include prescribed information in its public notice of preparation of a budget/revised budget <sup>2</sup>.
  - In some instances, the Act itself requires additional information to be included in the public notice (for example, local laws (s.119), proposed budget/revised budget (s.129(3), special rates/charges (s.163(1B) & s.163B(3)).







- *The date by which submissions are to be submitted.*
  - This date must be not less than 28 days after the date of publication of the public notice. (Note, a date must be specified – it is no longer sufficient to state only that submissions will be received within 28 days of the notice).
  - The notice should provide an address where submissions can be mailed and hand delivered.
  - If a Council publishes its public notices in multiple newspapers, the date selected for the submission deadline should be at least 28 days from the publication of the latest notice.
- *A submitter may request to be heard.*
  - The notice must state that a person making a submission is entitled to state in the submission that he or she wishes to appear in person, or be represented by a person specified in the submission, at a meeting to be heard in support of the submission.

As submissions will ultimately be considered at a meeting which is open to the public and must also be available for public inspection<sup>3</sup>, the public notice should include a statement outlining how submissions will be treated by the Council at this stage. (See 'Privacy Issues' below).

Suggested 'minimalist' wording for inclusion in a public notice is contained in **Attachment B**. Additional information to assist submitters where necessary is encouraged.

It is expected that, in addition to publication in the local press, a Council should send copies of the public notice to anyone it reasonably considers is likely to be directly affected by the proposal. The circumstances as to who should be notified would of course vary according to the nature of each proposal, but Council should be broad in its consultation in this regard.

In the case of special rates and charges, individual copies of the public notice must be sent to those liable<sup>4</sup>.

## The Decision Making Process

### Duty to Hear Submitters

If a person has requested to be heard in support of their submission, the Council must:

- provide the person with the opportunity to be heard in accordance with their request at a meeting of the Council, or a committee determined by the Council.
- fix the day, time and place of the meeting, and give reasonable notice of this to each person who has requested to be heard.

The hearing process (and the final decision on the matter) cannot be delegated to a member of Council staff (or, in the case of a regional library, a staff member or special committee)<sup>5</sup>.

If a committee is to hear submitters, all members of that committee must comply with the conflict of interest procedures set out in section 79 of the Act.

If the committee is an advisory committee<sup>6</sup> at which at least one Councillor is present, the requirements under the Act relating to an assembly of Councillors<sup>7</sup> also apply.



### Reporting of Hearings

If the committee hearing submitters is not responsible for making the decision on the proposal, it must provide a report on its proceedings, including a summary of hearings.

### The Final Decision

Only the Council or special committee can make the final decision on the proposal. It must –

- consider all submissions made and any report made under 223(1)(c);
- notify in writing each person who made a separate submission and in the case of a submission made on behalf of a number of people, one of them;
- include reasons for the decision in the above notification.

If this meeting is hearing submissions, prior notification to those wishing to be heard must be given under section 223(1)(b). Although not a requirement of the Act, it may be useful to also invite all other submitters to attend the meeting.

To remove doubt about the Council's reasons in arriving at its decision, and to accurately convey those reasons to submitters as required under the Act, it is desirable to have the reasons stated in the Council's resolution.

If a special committee is determining the matter, it can only make decisions within – and cannot exceed – the powers delegated to it by the Council. If, for example, the committee resolves to sell or lease land under the Act but also resolves that an agreement be entered into under section 173 of the *Planning and Environment Act 1987*, it must be delegated the relevant powers to do so under both Acts for the decisions to have effect.

### Proposals involving Exercise of Multiple Powers

If a proposal involves the exercise of multiple powers under the Act to which the right to make submissions apply, submissions received which refer to more than one of those powers may be dealt with at the same time.

### Related Issues

#### Staff Administrative Procedures

The Act allows a Council to authorise appropriate members of Council staff to carry out the administrative procedures necessary to enable the Council to carry out its functions under section 223.

The resolution to authorise staff may be made either generally or in respect of individual proposals (usually forming part of the Council's initial resolution to commence the relevant statutory procedures). This provision allows staff to assist the Council by undertaking various tasks including the following:

- Specify the details in the public notice under section 223(1)(a), including the deadline for submissions;
- Give notice of the meeting to hear submitters under section 223(1)(b)(iii);
- Draft the committee report under section 223(1)(c) subject to consultation with the committee;
- Write to submitters advising of the meeting at which the decision on the proposal is to be considered; and
- Notify submitters of the decision and reasons under section 223(1)(d)(ii).



## Privacy Issues

Submissions will contain peoples' personal information – care should be taken to ensure that this information is not unnecessarily disclosed. However, it is appropriate for submitters' names and addresses to be disclosed when submissions are being considered at public meetings of the Council or special committee. This enables transparent decision-making, allows Councillors and members to assess the weight to be given to submissions, and guards against false identities. In order to limit disclosure of a submitter's name and address outside the decision-making context (e.g. in an agenda report, which is subsequently published on the internet), it should be possible to detail the substance of a submission without divulging identifying details.

Further guidance on information privacy and the submission process is available from the Office of the Victorian Privacy Commissioner<sup>8</sup>.

## Ensure Compliance

The Act does not provide an automatic right of review of a Council's decision made under section 223. However, if a Council does not correctly follow the process set out in that provision, it risks the decision being challenged in court.

For example, a Council may be exposed to legal challenge if, for example, it publishes a public notice containing incorrect or defective information - or makes a decision outside the scope of the proposal in the public notice.

Similarly, a Council which fails to give an adequate hearing, or sufficient notice of a hearing, to a submitter whose rights or interests are affected by a proposal, may be found by a court to have denied that person natural justice.

- 1 The right to make a submission also applies to certain proposals of regional libraries. The term 'Council' in this practice note is taken to mean 'regional library' in that context. See Attachment A for a list of proposals which are subject to s.223 that apply to Councils and regional libraries.
- 2 Regulation 9, *Local Government (Finance and Reporting) Regulations 2004*.
- 3 Regulation 11(k), *Local Government (General) Regulations 2004*.
- 4 Section 163(1C) of the Act.
- 5 Section 98(1)(e) and 197B(1)(c) of the Act.
- 6 See section 3(1) of the Act for definition of 'advisory committee'.
- 7 See section 76AA of the Act for definition of 'assembly of Councillors'. See also section 80A of the Act.
- 8 Privacy Victoria: Info Sheet 01.05 – *Objectors, Submitters and Privacy*. [www.privacy.vic.gov.au](http://www.privacy.vic.gov.au)

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**While this document provides general guidance, the definitive statement of legal obligations is the law itself – particularly the relevant provisions of the *Local Government Act 1989*.**





## Submissions from the Public

### Example of Public Notice

XYZ City/Shire Council proposes to .....

*(Clearly explain what the Council intends to do – and if appropriate, why the Council is making the proposal.*

*References to land should be clear enough for a person to identify its location - a reference to title particulars only is insufficient.*

*If a map is included, it should be simple, correctly dimensioned and legible).*

This proposal is made under section ..... of the *Local Government Act 1989*.

A person may make a submission to this proposal. Submissions are to be received by no later than ..... and addressed to:

..... *(include a mailing address and if different, an address for hand delivery)*

Any person making a submission is entitled to state in the submission that he or she wishes to appear in person, or to be represented by a person specified in the submission, at a meeting to be heard in support of the submission.

Please note that copies of submissions (including submitters' names and addresses) will be made available at the Council or special committee meeting at which the above proposal will be considered. The Council is also required to make submissions available for public inspection for a period of twelve months.

For further enquiries, contact .....

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