



# **Bass Coast Ratepayers and Residents Association Inc.**

**SUBMISSION IN RESPONSE TO BASS COAST SHIRE  
COUNCIL DRAFT GOVERNANCE RULES 2020-21**

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## INTRODUCTION

This submission is presented by Bass Coast Ratepayers and Residents Association in response to the Bass Coast Shire Council Draft Governance Rules as at 29-June 2020 released for community feedback.

This submission has been prepared by the BCRRA committee in consultation with Association members, and other community members.

As all Councillors are aware, BCRRA is an incorporated association that is managed by volunteers from across Bass Coast Shire. The Association has several hundred members. BCRRA aims to improve transparency, engagement, and fiscal discipline at Bass Coast Shire Council. This submission is presented with these aims in mind.

As Councillors are also aware, BCRRA recently invited community members to participate in an online survey to gauge community feeling about Council and BCRRA. The Association received responses from 176 community members. Councillors will surely agree that this is not an insignificant result for any volunteer association.

Council has called on the community to provide feedback on its Draft Governance Rules, and in responding to that call BCRRA expects that all Councillors will give genuine and sincere consideration to this submission.

Given the clear demonstration that BCRRA is genuinely representative of community opinion the Association asks that, in accordance with the regular Councilor statement, in considering this submission Councillors will abide by their pledge to consider each and every item based on the individual merits of each item, without bias or prejudice, by maintaining an open mind and disregarding Councillors personal interests so as to avoid any conflict with their public duty.

The community elects Councillors to act as their representatives. The community does not elect Councillors to act as the representatives of the CEO, Council Officers, other Council staff, or contractors providing services to Council. It is a Councillors public duty to represent their constituents faithfully and honestly.

In representing the views of constituents, a Councillor may, from time to time, have a viewpoint that is not shared by some or all Councillors. BCRRA contends that it is an essential component of any open, transparent, and vibrant democratic process that a Councillor not be hindered or prevented from expressing their reasonable views, whether or not these views are supported by other Councillors.

Councillors will be aware the Bass Coast Shire still records below average in both the Similar Council Average and the All Council Average for community satisfaction with consultation and engagement.<sup>1</sup>

It is clear to BCRRA that parts of these draft rules as proposed will severely restrict Councillors reasonable freedom of expression in performance of their public duty and will increase barriers to the community's ability to engage with Council.

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<sup>1</sup> [Know Your Council](#)

Similarly, the Association considers that these newly proposed rule changes will be detrimental to Council's ability to properly and genuinely engage with the community.

BCRRA notes with exasperation that Part 1 of the draft rules document states that the governance rules should be read in the context of and in conjunction with Council's Public Transparency Policy. However, as the CEO has acknowledged to the Association, the Public Transparency Document has not yet been developed by Council and the policy will not be available to the community until Friday the 14th August. The Association presumes that at the time of preparing its submission, the Public Transparency Policy is also not yet available to Councillors, thereby denying them also the opportunity to read the draft rules in context of public transparency. BCRRA requests explanation from Council as to why this situation was allowed to happen.

## Division 3 – Business of Meetings

### 3.18 Agenda and the Order of Business

Bass Coast Shire Council Meeting Procedure Local Law 2018 (clause 16.5) requires that the CEO will consult with the Mayor on the preparation of the agenda. The Association believes that this requirement should remain in place as part of the new governance rules.

The proposed change appears to be contrary to the requirement of sections 18 and 46 of the Victorian Local Government Act 2020.

Council's proposed change, whereby the meeting agenda is prepared by the CEO without explicit reference to consultation with the Mayor, is a clear attempt by Council to literally control the agenda without reference to the community's elected representatives.

The proposed change is unacceptable to BCRRA and its members.

The Association believes that community has often witnessed how the concentration of power into the authority of a single person, including various CEO's from time to time, can have a disastrous impact against good governance, procedural fairness, transparency, and honest open democratic processes. The Association believes that, if left unchanged, this newly proposed rule creates unnecessary risk to the ability of Council to provide fair, balanced, and good outcomes for the community.

The Association requests that clause 3.18 be amended to read as follows:

*"The agenda for and the order of business for a Council meeting is to be determined by the Chief Executive Officer in consultation with the Mayor so as to facilitate and maintain open, efficient and effective processes of government."*

Refer to Local Government Act 2020 Part 2 Division 3

*Section 18 (1) The role of the Mayor is to—*

*(h) provide advice to the Chief Executive Officer when the Chief Executive Officer is setting the agenda for Council meetings*

## Division 6 – Rescission Motions

### 43. Notice of rescission.

The Association is alarmed at the extent to which the draft rules seek to restrict and prevent the introduction of a rescission motion.

The existing local law allows for a single Councillor to propose that a previous resolution of Council be rescinded.

Not only do the new draft rules prevent an individual Councillor from proposing a rescission motion, but further the draft rules now seek to impose a new 24-hour time limit on notices of rescission.

Paradoxically, the draft rules further state: “It should be remembered that a notice of rescission is a form of notice of motion. Accordingly, all provisions in this Chapter regulating notices of motion equally apply to notices of rescission”.

Yet, despite Council’s acknowledgement that a notice of rescission is a form of notice of motion, the draft rules seek nonetheless to set an entirely different standard to rules for a notice of rescission when compared with the rules for a notice of motion.

Note: Refer to *Local Government Act 2020 Part 2 Division 5*

*Section 28 (1) The role of every Councillor is—*

*(b) to represent the interests of the municipal community in that decision making*

Where any individual councilor believes that they can mount a reasonable case for a Council decision to be reversed, BCRRA believes it is in the interest of the community that the individual Councillor not be prevented from proposing a rescission, as is the case with any other motion in these draft rules.

The Association requests that Council be honest and sincere in the application of the rules around a rescission motion, and to demonstrate its sincerity by amending the rules to more accord with a notice of motion, as is already noted in the draft rules.

BCRRA requests the following changes:

- (i) clause 43.1.1 requiring at least 3 Councillor signatures be deleted entirely.
- (ii) clause 43.1.3 be amended to read as follows:

*“A notice of rescission must be in writing signed by a Councillor, and be lodged with or sent to the Chief Executive Officer at least 8 days prior to the Council meeting agenda being published and setting out –*

*(a) the resolution to be rescinded; and*

*(b) the meeting and date when the resolution was carried”*

## Division 8 – Public Question Time

### 53 Question Time

#### 53.3.2 Questions to be submitted by hard or soft copy

Allowing only electronic submission of questions discriminates against that section of the population without internet access. 2016 Census data states 19.5% of Bass Coast Shire dwellings have no internet access.

The Association requests that the proposed clause 53.3.2 be rewritten to read as follows.

*“be lodged by either hard copy or soft copy 48 hours prior to the Council meeting.”*

Note: Refer to *Local Government Act 2020 Part 3 Division 1*

*Section 56 - The community engagement principles*

*(d) participants in community engagement are entitled to reasonable support to enable meaningful and informed engagement*

#### 53.3.6 Reading of questions

Under the current circumstances with livestreaming, the person who submitted the question does not have to be physically present at the meeting to be able to view proceedings. The Chairperson has no way to determine whether questioners are viewing the livestream.

The record shows that at the July Council meeting most Councillors acknowledged that livestreaming is most likely to continue into the future as it is a beneficial service to the community.

The Association requests that clause 53.6 be amended to read as follows.

*“The Chair or a member of Council staff nominated by the Chair must read to those present at the meeting a question which has been submitted in accordance with this Rule”.*

#### 53.7 Disallowance of Questions

BCRRA contends that some of Council’s proposed reasons for disallowance of questions go too far and thereby prevent legitimate and reasonable questioning of Council by community members.

The Associations requests that clauses 53.7.7, 53.7.8, 53.7.9 and 53.7.10 each be deleted entirely.

### 53.9 & 53.10 Clarification of question

Disallowing clarification by the questioner and omitting preamble is contrary to the principles of good engagement and transparency.

Note: Refer to *Local Government Act 2020 Part 3 Division 1*

*Section 56 - The community engagement principles*

*(d) participants in community engagement are entitled to reasonable support to enable meaningful and informed engagement*

*Section 58 - The public transparency principles*

*(c) Council information must be understandable and accessible to members of the municipal community*

### 53.9 Question length and supporting content

Omission of reasonable preamble to give context can reduce the meaning of a question. If the initial response is not understood by the member of the gallery, they need an opportunity to clarify that response themselves.

The Association requests that the following changes be made to clauses 53.9;

*“All questions and answers must be as brief as possible, and no discussion may be allowed other than for the purposes of clarification. A member of the gallery whose question has been answered will be permitted to ask a supplementary question if that question is designed to clarify the answer given.”*

The Association requests that the following changes are made to clauses 53.10 as follows:

*“Questions must stand alone. At the discretion of the Chairperson preamble and additional information may not form part of the question at the meeting however the preamble and any supporting documents will be included in the minutes.”*

### 53.11 Grouping of questions

This should not detract from the individual questions. Whilst there will be circumstances when a single answer could be given for more than one question, it is important that each individual question is read and/or recorded in the minutes together with the answer.

The Association requests that clause 53.11 be amended to read

*“Like questions may be grouped together for the purposes of responses and a single answer provided. All questions will be separately read and/or recorded in the minutes.”*

### 53.13 Question put on notice.

If a question is unable to be answered at the meeting and is taken on notice the answer should, in addition to being separately sent to the questioner, form a part of question time at the next Council meeting and recorded in full in those minutes.

The Association requests that clause 53.13 be amended to read as follows:

*“A Councillor or the Chief Executive Officer may require a question to be put on notice. If a question is put on notice, a copy of the answer will be sent to the person who asked the question, in the same format it was received, and the answer will be included in question time at the next Council Meeting following the date of the answer.”*

## Division 9 – Petitions and Joint Letters

### 54. Petitions and Joint Letters

#### 54.4 Number of Petitioners

BCRRA is concerned to see the proposed increase of minimum petitioner signatories from 3 to 12.

BCRRA considers the proposed increase to the minimum required number of signatories to be discriminatory.

State and Federal Governments allow petitions with as few as one signatory to be presented to their assemblies.

Council’s proposed changes are contrary to its Community Engagement Policy, which states *“Bass Coast Shire residents and ratepayers have diverse needs and opinions, innovative ideas, and a wealth of local knowledge. Council is able to make better decisions on behalf of the community it serves when it draws on those resources.”*

The current requirement for a minimum of 3 signatories should not be increased. (A total of 13 petitions were tabled during 2019 and YTD 2020 has seen only 4 petitions presented thus far, demonstrating that the 3 signature requirement has not resulted in a superfluity of petitions.)

The Association requests that clause 54.4 be amended to read as follows;

*“Every petition or joint letter presented to Council must be in writing (other than pencil), typing or printing, contain the request of the petitioners or signatories, be signed by at least 3 people and submitted by the lead petitioner with a cover letter containing their contact details.”*



## CONCLUSION

Bass Coast Ratepayers and Residents Association has prepared this submission in good faith, and with the clear expectation that each and every Councillor will give genuine, sincere, and honest consideration to this submission.

BCRRA is gravely concerned that Council's proposed changes to its governance rules will undermine the reasonable open, vibrant, and free expression of opinion that lies at the heart of our democracy.

If left to stand unchanged as presented by Council, these proposed changes to governance rules will have a profoundly detrimental impact against the ability of Councillors and community members to present genuine and reasonable critique to Bass Coast Shire Council.

These proposed changes provide evidence of what appears to be a continuing pattern by this current Council to seek to cement and extend its authority and control over the community. It is a pattern that appears to seek to progressively stifle the ability of any Councillor or community member to question Council's decisions, actions, policies, and procedures.

It is clear to BCRRA that parts of these draft rules as proposed, will severely restrict Councillors reasonable freedom of expression in performance of their public duty.

The Association reminds Councillors that they are elected by the community to represent the community. The community does not elect Councillors to act as representatives for Council Officers and executives. It is a Councillors public duty to represent their constituents faithfully and honestly.

BCRRA fears that Bass Coast Shire Council may be using changes required by the new Local Government Act as cover to implement new governance rules which appear to have been designed with one eye on restraining and controlling Councillors and community members, in order to restrict or prevent free, open, and honest questioning and criticism of Bass Coast Shire Council.

The community can rightly question why Bass Coast Shire Council developed its new draft governance rules without community input from the early stages, and why Bass Coast Shire Council has allowed so very little time for the community to consider the proposed rules before submitting responses.

BCRRA believes that, over the course of time, further areas of concern will be uncovered in the new governance rules. Council should expect that future submissions and petitions to be put by BCRRA, in attempt to wind back the encroaching secrecy, restrictions, and control of expression that BCRRA believes this Council has worked to implement.