



Councillor and Staff Interactions

GOVERNANCE & INFORMATION SERVICES

**BALLARAT CITY COUNCIL
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1 DOCUMENT CONTROL INFORMATION

DOCUMENT CONTROL

| | |
|-------------------------|---|
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DOCUMENT HISTORY

| | Version | Date | Author |
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| Initial Draft | 1.00 | Feb 2011 | Annie De Jong |
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| Review Draft | 4.00 | February 2013 | Annie De Jong |
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2 POLICY STATEMENT

Intent:

This policy defines appropriate interactions between elected officials (Councillors) and employees of the City of Ballarat (staff). It defines potential, perceived and actual improper or undue influence or direction by Councillors of staff and provides direction and procedures on disclosing and addressing potential, perceived and actual conflicts of influence or direction, ensuring that risks associated with improper or undue influence are mitigated.

Objectives:

- To define improper or undue influence or direction;
- To define appropriate professional interactions between Councillors and staff;
- To provide a process for Councillor and staff interaction and communication; and
- To provide direction and procedures for disclosing and addressing situations of possible improper or undue influence or direction.

Statement:

The City of Ballarat is committed to the highest levels of integrity. Councillors and staff are expected to conduct their interactions with each other with respect, professionalism, objectivity, honesty and high standards of ethical behaviour.

Under the *Local Government Act 1989*, it is the responsibility of the Council (group of elected representatives) to appoint the Chief Executive Officer (CEO). It is the responsibility of the CEO to then appoint, manage and direct the resources (including staff) required for the successful operation of the organisation. The Council has no power under the Act to direct or manage staff and is responsible for the performance of the CEO only.

It is a breach of the Act for a Councillor to:

Improperly direct or improperly influence, or seek to improperly direct or improperly influence, a member of Council staff in the exercise of any power or in the performance of any duty or function by the member.

The City of Ballarat has both Staff and Councillor Codes of Conduct, which provide principles for guiding behaviour to reduce the risk of inappropriate interaction and breaches of the above Act.

What is considered appropriate professional interactions between Councillors and staff?

The City of Ballarat Councillor Code of Conduct outlines guiding principles for appropriate behaviour toward staff. The pertinent principles and consequent behaviours that apply to this policy include:

- Acting with courtesy towards Council staff and avoiding intimidatory behaviour;
- Acting with integrity and honesty in all dealings with Council staff;
- Acting with impartiality and in the best interests of the community as a whole;
- Avoiding actions personal or otherwise that may damage the Council or its ability to exercise good government;
- Complying with all relevant Federal, State and Local Laws;
- Recognising that we (Councillors) hold a position of trust and will not misuse or derive undue benefit from those positions;

- Refraining from exercising undue influence on members of Council staff to gain or attempt to gain a personal advantage;
- Not using Council resources, including staff, equipment and intellectual property for electoral or other personal purposes;
- Ensuring that Council resources are always used effectively and economically and for the purposes for which they are provided;
- Ensuring that Council resources are not used in a way that creates an impression of Council endorsement;
- Not using information gained by virtue of being a Councillor for any purpose than to exercise our role as a Councillor; and
- Recognising the requirements of the *Information Privacy Act 2000* regarding the access, use and release of personal information.

The City of Ballarat Staff Code of Conduct outlines guiding principles for appropriate behaviour of staff. The policy statement for all employees engaged by the organisation:

- To fulfil their duty to act honestly and exercise a reasonable degree of care and diligence;
- To provide a practical means for identifying and resolving situations which involve conflict of interest or improper use of their positions; and
- To act in a way which enhances public confidence in the system of Local Government.

The Staff Code of Conduct provides guidelines in relation to Ethic that outline the following items:

- The guidelines of Ethics asks you to exercise judgement and accept personal responsibility for the decisions that you make (rather than just complying with rules);
- The guidelines of Ethics provides a broad range of principles that provide guidance in cases where no specific rule is in place or where matters are genuinely unclear; and
- The Ethics guidelines is a document that expresses the organisation's underlying ethical principles, values, behaviours, and what it is trying to achieve. These include:
 - Equity and Justice;
 - Personal and Professional Responsibility; and
 - Duty of Care, Diligence and Honesty.

In addition, the Councillors and the public are entitled to expect that an employee will:

- Take all relevant information into consideration and exclude all irrelevant information or opinions;
- Take all reasonable steps to ensure the information upon which decisions are based is accurate, factual and complete; and
- Not act for an improper or ulterior purpose, or on irrelevant grounds.

What is improper or undue influence or direction?

Improper or undue influence or direction is defined by the City of Ballarat as behaviour that extracts a result that would be of benefit or gain to the perpetrator, which would not otherwise occur.

Benefit or gain can be in the form of information, financial or material gain.

Improper or undue influence or direction can include:

- Disrespecting the professional opinion, skills or expertise of staff through intimidatory, bullying, harassing or disrespectful behaviour;
- Using rank or position to seek information outside the formal briefing or reporting processes of Council;
- Pressuring staff to make a decision outside the formal Council decision making processes;
- Pressuring staff to provide information, services or assistance to one person, group or part of the community over another, outside a formal decision of Council;
- Pressuring staff to make a decision under delegated authority outside the formal reporting and decision making processes of Council; and
- Pressuring staff to make a decision or take action outside normal business process timeframes.

How should Councillors and staff interact and communicate?

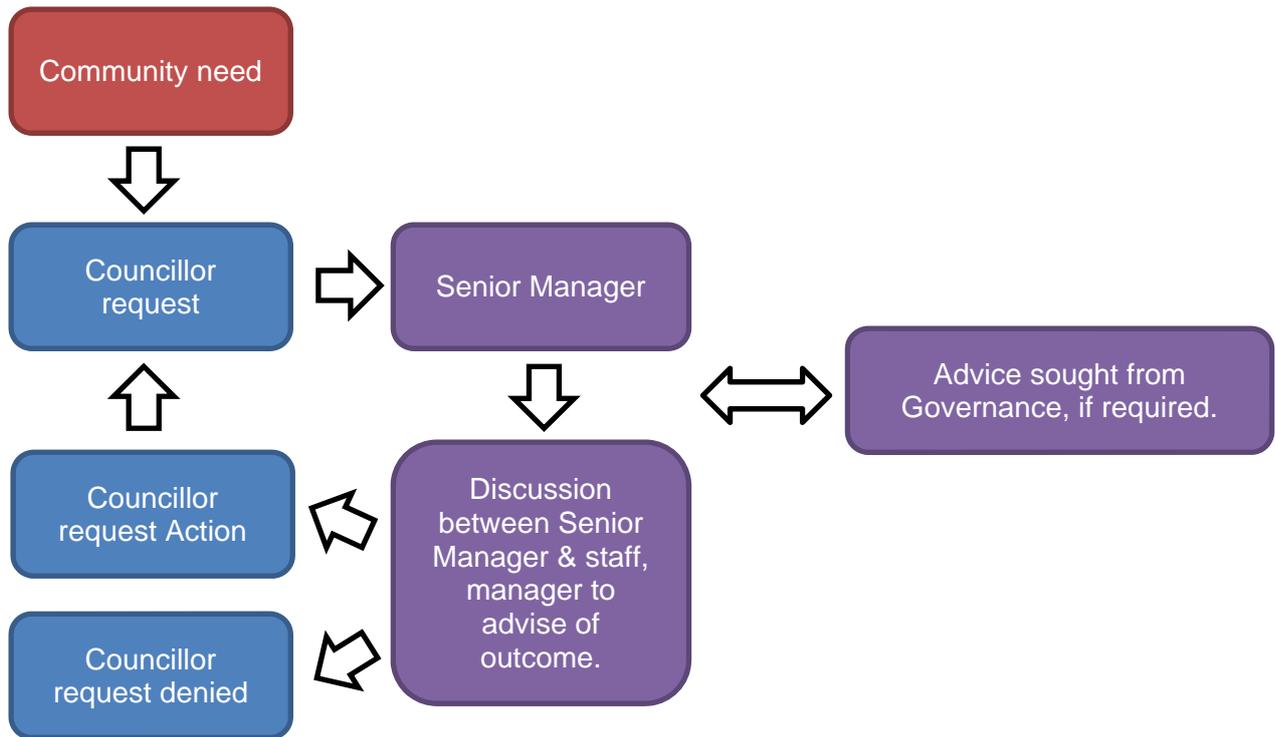
The organisation provides a range of business processes to ensure formal and appropriate interactions between Councillors and staff, including:

- Formal decision making processes;
- Committees and project teams; and
- Formal briefing processes.

Council also recognises the responsibility Councillors have to representing their constituents and in achieving the strategic priorities of the community, which requires access to information and resources.

Therefore Council has in place a process to assist appropriate Council and staff interactions and to mitigate the risks associated with inappropriate interactions when the above formal business processes are insufficient.

- Step 1: Councillor to raise request with relevant Senior Manager.
- Step 2: Senior Manager to discuss with staff if required.
- Step 3: Seek advice from Governance if unsure of appropriateness of request.
- Step 4: Management to determine whether request is actionable or to be denied.
- Step 5: Management to advise Councillor of decision and course of action.



How will situations of possible improper or undue influence or direction be addressed?

If a Councillor is not satisfied with the outcome of the above outlined process, or if, despite this process, it is considered that improper or undue influence or direction occurred, the matter can be raised, by any party involved, with the CEO and or the Chief Information Officer.

Dispute Resolution Procedures

In the event of a dispute occurring, the CEO will nominate a mediator acceptable to both parties, or failing agreement, nominated by the President of the Municipal Association of Victoria and appointed by the CEO. If a mediator is appointed, it is the expectation of the organisation that all parties will agree to cooperate with the dispute resolution process and use their best endeavours to assist the mediator when requested.

In the event that a dispute cannot be resolved through application of these processes, it may be referred to a Councillor Conduct Panel as per the Act *Section 81A – Application to Councillor Conduct Panel*.

If the dispute relates to a clear and apparent breach of Act, as determined by the CEO, it will be referred in the first instance to the Minister for Local Government and not the subject of an application to a Councillor Conduct Panel.

3 OWNER

The owner of this policy is the Chief Executive Officer.

All enquiries regarding this policy should be initially directed to the Chief Information Officer.

4 APPLICABILITY

This policy applies to all Councillors and full-time and part-time employees, as well as contract, temporary and casual employees engaged by the Council.

5 DEFINITIONS

Act: *Local Government Act 1989.*

Improper: not in accordance with propriety of behaviour or manners, or unsuitable or inappropriate, as for the purpose or occasion.

Influence: the action or process of producing effects on the actions, behaviour, opinions, etc., of another or others.

Direction: an order, command, management, control, guidance or supervision.

Interaction: the direct effect that one has on another and the consequent reciprocal response, as per the Act.

Councillor Conduct Panel means a panel of two people established by the Municipal Association of Victoria (MAV) under Schedule 5.

Gross misconduct by a Councillor means behaviour that:

- (a) Contravenes-
 - (i) The Councillor conduct principles; and
 - (ii) A section of this Act, the contravention of which has a penalty of at least 60 penalty units; or
- (b) Demonstrates that a Councillor is not of good character or is otherwise not a fit and proper person to hold the office of Councillor.

MAV means the body corporate known as the Municipal Association of Victoria established under the *Municipal Association Act 1907*.

Misconduct by a Councillor means:

- (a) Conduct by a Councillor that is in breach of the Councillor Code of Conduct; or
- (b) The failure of a Councillor to comply with a direction of a Councillor Conduct Panel where the Panel has not made a finding of misconduct against the Councillor.

Serious misconduct by a Councillor means—

- (a) the failure of a Councillor to comply with a direction of a Councillor Conduct Panel following a finding of misconduct made by the Councillor Conduct Panel in respect of the Councillor; or
- (b) The failure of a Councillor to cease conduct that contravenes the Councillor Code of Conduct after a Councillor Conduct Panel or VCAT has made a finding of misconduct or serious misconduct against the Councillor in respect of that behaviour; or
- (c) Conduct by a Councillor that contravenes the Councillor conduct principles after the Councillor has had a previous finding of misconduct, serious misconduct or gross

- misconduct made against them by a Councillor Conduct Panel or VCAT in the last 4 years; or
- (d) Conduct by a Councillor that contravenes-
- (i) The Councillor conduct principles; and
 - (ii) Section 76E or 77.

6 PROCEDURE AND GUIDANCE NOTES

This policy should be used by both Councillors and staff to assist them in understanding and defining their own interactions. It provides guidelines on how to behave and interact as well as outlining the type of treatment which can and is expected.

7 COMPLIANCE RESPONSIBILITIES

Councillors - to know, understand and comply with this policy.

CEO – to ensure the correct implementation of this policy across the organisation and Councillors and to monitor compliance with this policy.

Senior Management – to know, understand and assist in the application of the policy and to monitor the compliance with this policy.

Managers/Supervisors - to ensure staff are aware of and understand the policy.

Employees – to know, understand and comply with this policy.

8 CHARTER OF HUMAN RIGHTS COMPLIANCE

It is considered that this policy does not impact on any human rights identified in the Charter of Human Rights Act 2007.

9 REFERENCES AND RELATED POLICIES

The MAV Schedule 5 and the Act were referenced during the preparation of this policy.

| | Include - Name, Reference and location of reference |
|----------------------|---|
| Acts | <i>Local Government Act 1989</i> <i>Victorian Information Privacy Act 2000</i> |
| Regulations | |
| Codes of Practice | Councillor Code of Conduct Staff Code of Conduct |
| Guidance notes | Municipal Association of Victoria - Schedule 5 Municipal Association of Victoria – Now Your A Councillor and Citizen to Councillor Department of Planning and Community Development – About Councillors |
| Australian Standards | |
| Related Policies | Discipline and Termination Policy |