



20 September 2013

Mr Alan Young
City Manager
Fairfield City Council

Dear Alan

depa's response to "Councillor access to information and interaction with staff policy" Version 1

Deputy President Walton observed last Friday that it would be a "hollow" process if the unions did not receive a copy of this proposed policy in a way that allowed us to respond prior to the Council meeting on Tuesday 24 September.

I appreciate receiving a copy of this, albeit somewhat unusually slid under my office door, on Wednesday 18 September following the Council meeting the previous night. Thanks for providing it to me on Wednesday but whomever you sent over to deliver it should have knocked, come in and said hello. Otherwise it was a bit creepy.

But as I have not yet received the document in a more official way, I will prepare my response to Version 1.

Initial observations

Our document "Ten examples of unacceptable councillor/staff contact" identified practices which I believe neither you, your directors, nor group managers would have been aware of. For many of these practices we have multiple examples. It is regrettable that as general manager, with your obligations and responsibilities under the Local Government Act, you were not aware of these and any policy that arises from this current process must provide you with knowledge of the extent to which councillors are contacting staff, and the purpose of that contact.

The critical issue about councillor contact is not that councillors are not entitled to set a process in train to have reviewed, for example, the issuing of notices or fines under the Protection of the Environment Operations Act, or any other legislation. Councillors need to be satisfied that the Council is discharging their obligations properly and consistently but it is the manner in which this request for contact is made, and why the contact is required, that is critical.

Invariably the contact is aimed at achieving more lenient treatment. It is not the role of a councillor to do this - whether that be for polluters, illegal builders or other health or environmental offenders - but it is their role to be satisfied that the process conducted by the Council is proper, consistent with Council policies and, of paramount importance, consistent with the Council's obligations under legislation.

Version 1 doesn't distinguish between what is reasonable contact, or good and proper reason for contact to occur, and what is not.

The current arrangement agreed between us in the Industrial Relations Commission on 13 September means that any requests for contact now need to go directly to the relevant Group Manager, and if there is to be a meeting, on site or otherwise, with another employee reporting to the Group Manager, then the relevant Group Manager would also attend.

This is much better governance and management of the process than has existed historically because it allows the third level of management to make judge whether the contact should be provided, whether it is appropriate and whether it fits within the Code of Conduct.

Remembering that at Fairfield most requests for contact are aimed at influencing staff in one way or another, this needs to be properly dealt with in any policy. We accept that some councillors accept this limitation but the majority doesn't.

I now turn to provide observations on the document itself:

1 BACKGROUND

We accept the need for integration between councillors and staff but reject the idea of councillors having unfettered and undocumented access to operational staff. The document needs to continue, at the very least, the current interim arrangement of the request being made to the Group Manager.

We all know that the DLG, as part of its Better Practice Program identifies whether a Council does, or does not, have policy and procedures to supplement the Code of Conduct on the area of councillor/staff contact. They have reviewed 93 councils and I understand that of the 80% of councils which do have a policy and procedures there is invariably a proper form in which a Councillor makes application for contact but the policies generally fall into two categories when it comes to the primary request for contact - the primary contact is either the General Manager or another level of senior Management, usually the second level of management in the organisation.

If Fairfield were to adopt either of these practices, it would see the initial request for contact being made to the City Manager or the directors.

I have not seen a policy that provides unfettered access to over 80 "Authorised Contact Officers" and which provides no role for the first three levels of management in the organisation to oversee and monitor this process. If you have one, you could send it to me.

2 OBJECTIVES

I won't quibble with the objectives but if you are going to distinguish between "carrying out a civic duty and access for personal interest" you should also provide a section on what constitutes appropriate behaviour in "carrying out a civic duty". Namely, that satisfying themselves that the process has been carried out correctly is their responsibility, rather than lobbying, pressuring, influencing staff to be more lenient or relaxed.

If this isn't sufficiently documented in your policy and procedures, you are merely inviting complaints for breaches of the Code of Conduct. And, reminding you again of the "Ten examples of unacceptable councillor/staff contact", all of these examples are clearly breaches of the Code. No one made a complaint, because there is no supportive culture or mechanism to protect complainants because of the Council's history.

3 STAKEHOLDERS

I note that you have identified the position of City Manager as a stakeholder and understand that the City Manager needs to sign off on any policy and procedures, but we would rather see that stake be evidenced by an overseeing role rather than writing the position of City Manager out of the process almost entirely.

Ignorance may well be bliss, but not here and not when the City Manager "is generally responsible for the efficient and effective operation of the council's organisation" and "the day-to-day management of the council". Nor when the general manager is legislatively charged with the responsibility "to direct" staff.

It also makes sense, because good governance and integrity are critical and are legitimate expectations of local government by the community, to have the community listed as a stakeholder.

4 APPLICATION & IMPLEMENTATION

4.1 Application and Relationship with other Policies and Codes

We appreciate the breadth of your intention to apply the policy to all interaction between councillors whether that be "in-person, by telephone, Internet, email, writing or any other form of communication", but we would prefer to see some acknowledgement of the need for requests for contact to be in writing and the reasons for that request to be detailed. That, in itself, would discourage councillors from advocating on behalf of illegal builders and polluters, for example.

4.2 The Role of a Councillor

Section 232(2) prescribes the councillor's role as an elected person. The first dot point "to represent the interests of the residents in the ratepayers" is not discharged by requesting leniency or relaxed standards but in ensuring reliable and consistent governance and adherence to legislative obligations. Please acknowledge this.

Further, the third dot point "to facilitate communication between the community and the council" can't be used as an explanation for a councillor, together with the complainant, trying to "facilitate communication" when they are really pressing for more lenient regulation and inconsistent adherence to the law.

I also note in passing that 7.3 of the Code of Conduct requiring the staff to provide full information "sufficient to enable them to carry out this civic office functions and in accordance with Council procedures" requires a note that this civic office functions do not extend beyond ensuring reliable and consistent adherence to legislative obligations. No one has a civic office to advocate on behalf of offenders, other than a defence lawyer.

4.3 Obligations of Councillors

None of the councillors involved in the “Ten unacceptable examples” would confess that they were attempting to “direct” Council staff. Nor, probably, that they were trying to “influence” Council staff to obtain a more relaxed or lenient reaction from the Council as a regulator, even though that is exactly what they were trying to do.

There needs to be a special section, given the culture and history at Fairfield, making this clear. I could write it for you, if you would like.

Similarly, while none of the councillors involved in the “Ten unacceptable examples” would accept that they were trying to “direct or influence or attempt to direct or influence” proscribed in 6.2 (b) of the Code they clearly were. The distinction between being satisfied that legislative obligations have been discharged reliably and consistently is different to seeking a different result on behalf of an applicant or complainant. This needs to be noted.

4.4 Authorised Contact Officers

There should only be one, and it should be the City Manager.

Version 1 proposes more than 80 and each and all of these employees, most of them in operational roles, can be contacted in any way at all, including ways where there is no record, without any involvement of their Group Manager or the two layers of management above. This is not acceptable.

I note that there is an option for the councillor to make the request to the appropriate Contact Officer or the Manager Governance & Legal. We would prefer it to be made in writing to the Manager Governance & Legal although our preference remains to the GM.

And wherever this final document identifies the appropriate level of the organisation for the request for contact to be made, the request should always be in writing.

4.5 Request by Councillor for Staff to Attend a Meeting

4.5.1 should be amended that the initial contact is with the City Manager/GM.

4.5.2 should be amended that the request always be in writing.

The requirement in 4.5.3 of the councillor being obliged to “provide sufficient context, notice and information” should include the reasons for the contact. Please note that if 4.5.3 was currently part of your practice, the Mayor would not have phoned Mr Rodham and asked him to attend a meeting with no “context, notice and information” to allow Mr Rodham to “attend and sufficiently prepare”.

While we believe 4.5.3 is a good provision, we do not accept that the Mayor “has a day-to-day need to discuss a range of matters with Council staff” if the expectation is that this can involve discussions below the level of Group Manager. The Mayor has no greater authority to be involved in operational matters that are the GM’s responsibility than any other councillor and they all need to keep out of operational matters.

In relation to the amendment made on Tuesday night, that “the Mayor will enquire as to the availability of staff concerned to enable appropriate discussion enquiry”, the example in relation to Mr Rodham shows that the Mayor was not prepared to wait 30 minutes for the relevant Manager to return to the office and needs to be noted that there is no imperative for immediate meetings to satisfy complainants.

This amendment sets up a portable arrangement with unfettered access and no record-keeping. It is a high risk strategy.

4.6 Access to Council offices

4.6.1 should delete reference to the “appropriate Contact Officer and replace that with “relevant Group Manager”.

4.6.2 should be similarly amended..

4.7 Access to Council Information by Councillors

4.7.2 should be amended consistent with our request on 4.6.1 and 4.6.2.

4.7.6 is a wonderful provision that recognises the role of the City Manager. This should be how all requests for contact are made. And, to give you the benefit of the doubt, I’m assuming that it is not suggested that the amendment made on Tuesday night in 4.5.3 allowing the Mayor to be exempt from the specific provision of 4.5 doesn’t apply to “reconsideration of the decision” as identified earlier in 4.7.6.

I’m uncertain about the role of the Public Officer when you have not identified that position previously and I’m not sure where the roles of the Public Officer and the Manager Governance and Legal interrelate or overlap.

But you have identified the position of Manager Governance & Legal earlier.

We would prefer to see all requests for contact to the City Manager.

4.8 Inappropriate interactions

The prohibition of specific types of interactions is one thing, but it is important that there be no argument that a Council wanting a fine reviewed, or a different attitude taken to a demolition notice, for example, runs a real risk of breaching 4.8 (a) by discussing “operational staff matters”, 4.8 (e) “being overbearing the threatening”, 4.8 (g) by “directing or pressuring Council staff in the performance of their work, or recommendations they should make” and a request can compromise Council staff under 4.8 (h) by requesting “ad hoc advice to councillors...without recording of documenting interaction” etc.

4.8 (j) should also acknowledge restrictions on councillors attending on-site inspections when there are staff present discharging their regulatory and professional role. If you don’t want to amend the Code, this should be dealt with in any policy and procedures.

I note that 4.8 (j) allows the "Council's general manager" to permit this, reinforcing our view about the primary and critical role of the GM as the recipient of all requests for contact.

Where to from here?

Clearly there are many issues which will need to be discussed between us. I'm confident that the other two unions involved in these proceedings will be generally supportive of the observations and suggestions I have made in this letter and I acknowledge that the process is going to take longer than would allow us to conclude it before returning to the Commission on 27 September.

In those circumstances, I propose that the Council NOT formally adopt Version 1 when it meets on 24 September and that we advise the Commission on 27 September that the interim arrangements agreed between us on 13 September will continue in force until such time as we can reach agreement with the Council on an appropriate policy and procedures or the Commission resolves this matter for us if we are unable to do so.

Thank you again for the opportunity of participating in this consultative process.

Yours etc



Ian Robertson
Secretary