



# **Right to Make a Submission Policy**

**Governance**

**BALLARAT CITY COUNCIL  
Town Hall  
Sturt St  
Ballarat VIC 3350  
Tel. 5320 5500**

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## 1 DOCUMENT CONTROL INFORMATION

### DOCUMENT CONTROL

<b>Policy Name</b>	<i>Right to Make a Submission Policy</i>
<b>Business Unit</b>	Governance
<b>File Location</b>	<i>DocHub</i>
<b>Document status</b>	<i>Draft</i>
<b>Version</b>	1.00
<b>Version Date</b>	<i>July 2013</i>
<b>Next Review date</b>	<i>July 2015</i>

### DOCUMENT HISTORY

	Version	Date	Author
<b>Initial Draft</b>	1	July 2013	Melanie Harrison
<b>Final Draft</b>	1	November 2013	Annie De Jong
<b>Approved</b>	1	11 December 2013	Council Resolution R470/13
<b>Review Draft</b>			
<b>Review Final</b>			
<b>Approved</b>			

## 2 POLICY STATEMENT

### Intent:

The purpose of this Policy is to set the framework of the public's right to make a submission to a Council proposal under section 223 of the *Local Government Act 1989*.

### Objectives:

- Describe when section 223 applies to Council proposal processes;
- Ensure the Ballarat City Council complies with section 223 of the Act (or any other Act);
- Ensure that people who may be affected by a proposal have a guaranteed right to participate in the Council's decision making process; and
- Ensure good governance at the Ballarat City Council.

### Statement:

1. Section 223 only applies where the *Local Government Act 1989* (or any other Act) specifies that a person has a right to make a submission under that provision.
2. The policy provides details of legal requirements imposed by section 223 and provides steps to ensure that Council complies with the Act when giving notice to the public and in the management of submissions received.
3. A person must not use the section 223 process without the authority of a Council resolution.

## 3 OWNER

The owner of this policy is the Chief Executive Officer.

All enquiries regarding this policy should be directed to the Administrative Services Manager, Governance.

## 4 APPLICABILITY

The Policy applies to all full-time and part-time employees, and may apply to contract, temporary and casual employees engaged by the Council.

## 5 DEFINITIONS

**Act:** *Local Government Act 1989*.

**Advisory committee:** Committee established to advise Council only and has no delegated powers, duties or functions.

**Conflict of interest:** Division 1A of Part 4 of the Act deals with conduct and interests of Councillors, Special Committee member or Council Officer that must comply with the disclosure of a conflict of interest set out in section 79 of the Act when hearing and considering submission.

**Newspaper:** Council has chosen "The Courier" as this newspaper is generally circulating in the municipality.

**Open to the public:** Meetings to hear submission are to be open to the public under section 89 of the Act.

**Prescribed Information:** It is outlined under Regulation 9 of the *Local Government (Finance and Reporting) Regulations 2004* to comply with section 129 of the Act.

**Privacy:** Is the regulation of the management and handling of personal information and the Victorian *Information Privacy Act 2000* only protects information about identifiable individuals. Council works in the context that in the public realm, a person making a submission will have his or her personal details suppressed for safety purposes and discretion is used to ensure the balance of competing interest of the public process and personal safety.

**Public notice:** The public notice is published in the newspaper of the municipality (The Courier) and Council's website that notifies the public, allowing the public to make a submission on a proposal of Council before Council makes a decision on the proposal.

**Register:** Regulation 11(k) of the *Local Government (General) Regulations 2004* requires Council to have a register that is available for public inspection that contains a copy of all the submissions received during the previous 12 months.

**Right to make a submission:** Provision applies if a person is given a right to make a submission to the Council under the Act or any other Act.

**Special committee:** A committee of Council in which Council has delegated powers, duties or functions under section 86 of the Act.

**Sufficient public notice:** Section 89 of the Act stipulates that unless an urgent or extraordinary circumstance prevents Council, a Council must give at least seven days' notice before the holding of:

- a) An Ordinary Council meeting;
- b) A Special Council meeting; or
- c) A meeting of a special committee comprised solely of Councillors.

## 6 PROCEDURE AND GUIDANCE NOTES

### STAFF ADMINISTRATION PROCEDURES

The Ballarat City Council allows Council Officers to carry out the administrative procedures necessary to enable the Council to carry out its functions under section 223. An Officer's initial report will recommend that Council commence the relevant statutory requirements and this provision allows Officers 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 submissions 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).

## **PROPOSALS, PLANS AND DOCUMENTS FOR SECTION 223 PROCESSES**

Section 223 shall be applied to any of the following documents:

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

**NOTE:** This list is not exhaustive

**NOTE:** Section 223 shall be exempt by an Order of Council.

**NOTE:** While the Policy provides guidance, the definitive statement of legal obligation is the Act and law itself.

Section 223 has been applied to the following documents of Ballarat City Council:

- Wastewater Management Plan;
- Domestic Animal Management Plan;
- Waste Management Strategy; and
- Road/laneways discontinuances.

## **THE DECISION MAKING PROCESS**

### **Content of a submission**

To ensure consistency and that all members of the public have their right to make a submission, Councils “Application to Make a Submission Form” (Appendix 1) has been created to assist the

public in clearly identifying if they wish to also lodge a verbal submission. In addition, the form assists Council in ensuring compliance with the Act.

The form aims to clarify which correspondence is a submission and which is a general comment on the issue.

### **Duty to Hear Submissions**

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 Council, or a committee determined by the Council; and
- Fix the day, time and place of the meeting, and give reasonable notice of this to each person who has requested to be heard (see Appendix 2 and 3 for examples of notices.)

The hearing process (and the final decision on the matter) cannot be delegated to a Council Officer. In the case of a regional library the hearing process cannot be delegated to a staff member or committee.

If a committee is to hear submitters, all members of that committee must comply with the conflict of interest process.

If the committee is an Advisory Committee, the committee can hear submissions and can make a recommendation to Council, as an Advisory Committee does not have the delegation to make a decision. In addition, if at which at least one Councillor is present, the requirement under the Act relating to an Assembly of Councillors also applies.

The meeting to hear submissions must comply with Council's Meeting Policy and Local Law No.18 - Meeting Procedure in terms of public representation/submission and the management of the meeting.

### **Reporting of Hearings**

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

The Governance Unit can provide guidance to Officers and committee members on reports to Council.

### **The final decision**

Only the Council or special committee can make a final decision on the proposal and it must:

- Consider all submissions made and any report made under section 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; and
- Include the 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 reasons stated in the Council's report.

If a special committee is determining the matter, it can only make decisions within, and cannot exceed, the powers delegated to it by Council.

### **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.

### **RECOMMENDATIONS IN REPORTS**

When the draft proposal/plan is before Council, recommendations should include the words:

1. Endorse the draft (*full name of proposal/plan*).
2. Authorise the draft plan/proposal to be placed on public exhibition from 1 July 2013 and receive submission in accordance with section 223 of the *Local Government Act 1989* until 29 July 2013.  
Or;  
Authorise the draft plan/proposal to be placed on public exhibition for a period of 28 days to receive submission in accordance with section 223 of the *Local Government Act 1989*. **NOTE:** the public notice must specify the actual submission dates.
3. Following exhibition and consideration of any submissions received, present to Council the final plan/proposal for adoption.
4. Any other recommendation to ensure compliance with any Act.

If a submitter states in the submission that he or she wishes to appear in person, the recommendation in the report to Council or the Committee should include the words:

1. Note that the development of the (*full name of proposal/plan*) process has complied with section 223 of the *Local Government Act 1989* with respect to hearing verbal presentations in support of written submissions as requested by respondents.

Following exhibition and consideration of any submission received, the adoption of the plan/proposal must be adopted by Council and the recommendations should include the words:

1. Approve and adopt the (*full name of proposal/plan*).
2. Acknowledge the public submissions received on the *plan/proposal* and provide direct responses to all submitters, advising of the outcome/s.
3. Any other recommendation to ensure compliance with any Act.

### **PUBLIC NOTICE**

The Act requires Council to publish a public notice in The Courier and on Council's website that sets out the following:

1. *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; and



- If a map is included, it should be simple, correctly dimensioned and legible.
2. *Prescribed details:*
- A Council must include prescribed information in its public notice of a budget/revised budget; and
  - In some instances, the Act itself requires additional information to be included in the public notice:
    - Local Laws (section 119);
    - Proposed budget/revised budget (section 129(3); and
    - Special rates/charges (section 1631B) and section 163B(3)).
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 not 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 or provide an electronic email address where submission can be sent; and
  - 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.
4. *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 specified in the submission, at a meeting to be heard in support of the submission.

**NOTE:** Council's Media Unit will confirm timelines for any deadline for notices.

Appendix 2 outlines suggested wording for a public notice where a meeting has not been set, as the exhibition process may not require submitters that request to be heard. Additional information should be provided to assist submitters where necessary. Appendix 3 – a public notice example for the Council Plan and Budget, in which the meeting date to hear submissions is set.

As submissions will ultimately be considered at a meeting which is open to the public and must also be available for public inspection (via the register), the public notice should include a statement outlining how submissions will be treated by the Council at this stage.

It is expected, in addition to publication in the newspaper, 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, under section 163(1C) of the Act.

## PRIVACY

Submissions will contain peoples' personal information and care must be taken by Council to ensure that this information is not unnecessarily disclosed. In order to limit disclosure of a submitters' personal information outside the decision-making context (e.g. in an agenda report or register), it should be possible to detail the substance of a submission without divulging identify details. The submitter's personal details, unless the submission is on behalf of an organisation, will be suppressed for privacy purposes.

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 and allows Councillors and/or committee members to assess the weight to be given to submission and guards against false identifies.

If further guidance is required, Sheet 01.05 – *Objectors, Submitters and Privacy* published by the Office of the Victorian Privacy Commissioner is available from [www.privacy.vic.gov.au](http://www.privacy.vic.gov.au)

## COMPLIANCE

The Act does not provide an automatic right to review a Council's decision made under section 223. However, if a Council does not correctly follow the process set out in this policy and the Act, Council risks the decision being challenged in Court.

For example, a Council may be exposed to legal challenge if:

- It publishes a public notice containing incorrect or defective information;
- Makes a decision outside the scope of the proposal in the public notice; or
- A Committee makes a decision outside the delegated powers to that committee.

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.

## SECTION 223 REGISTER

To ensure compliance with Regulation 11(k) of the *Local Government (General) Regulations 2004*, Council must keep a register that is available for public inspection of "*Submissions received in accordance with section 223 of the Act during the previous 12 months.*"

The Governance Unit will maintain the register and is responsible for ensuring that peoples' personal information is not unnecessarily disclosed. The disposal of the submission from the register after the 12 month period is the responsibility of the Governance Unit.

An application must be in writing and is made by completing the "Application to view prescribed matters" form (Appendix 4) that is available from Council's website.

## 7 COMPLIANCE RESPONSIBILITIES

Managers/Supervisors  
Employees  
Chief Executive Officer  
Councillors

A person must not use the section 223 process without the authority of a Council resolution.

## 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 Local Government Victoria issued a Submission from the Public Guide and the Act, the *Local Government (General) Regulations 2004* and *Local Government (Finance and Reporting) Regulations 2004* were referenced during the preparation of this policy.

	<b>Include - Name, Reference and location of reference</b>
Acts	<i>Local Government Act 1989</i> <i>Victorian Information Privacy Act 2000</i>
Regulations	Ballarat City Council Local Law No.18 - Meeting Procedure <i>Local Government (Finance and Reporting) Regulations 2004</i> <i>Local Government (General) Regulations 2004</i>
Codes of Practice	Councillor Code of Conduct Staff Code of Conduct
Guidance notes	Submission from the Public Guide
Australian Standards	Sheet 01.05 – <i>Objectors, Submitters and Privacy</i>
Related Policies	Meeting Policy Information and Health Privacy Policy

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## APPENDIX 1

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### APPLICATION TO MAKE A SUBMISSION

*Local Government Act 1989, Section 223*

The following form should be completed where a person wishes to make a submission in relation to a matter that Council has resolved to be open for public submission as per the *Local Government Act 1989*. In completing this form please indicate if you wish to follow up your written submission with a verbal submission.

Attach any further information to this sheet if you are limited by the space available.

**Please use block letters when completing this form.**

Surname:  Given names:

Address (inc. Post Code):

Contact number:  eMail:

Please tick one only:  Written submission only  Request for verbal submission

Any person making a submission is entitled to state in the submission that he or she wishes to appear in person (tick "request for verbal submission" above), or to be represented by a person specified in the submission.

Name of representative:

Title of Council's proposal:

**Submission details:**

Additional space on next page, if required.

Page 1 of 2.

Submission continued...

Date of submission:

Once completed, please send this form to:

**City of Ballarat**  
**PO Box 655**  
**Ballarat, VIC 3353**  
**e:ballcity@ballarat.vic.gov.au**

*Upon receipt of this form, the applicant will be contacted by the appropriate Council Officer.*

**OFFICE USE ONLY**

Date received:  Verbal submission requested:  Yes  No

Who has been informed:  *This relates to Committee, Management, etc.*

Day, time & meeting location to hear submissions:

Public notice completed:  Yes  No Reason:

Submitter informed of meeting within 7 days:  Yes Date notified:   No Reason:

Committee responsible for decision:  Yes  No  
Date submitter notified of decision:

Report to Council resolved:  Yes  No

## APPENDIX 2

THE MATERIAL CONTAINED IN THE FOLLOWING ADVERTISEMENTS AND PUBLIC NOTICES IS STRICTLY **CONFIDENTIAL** AND IS SUPPLIED ON AN **EMBARGOED** BASIS UNTIL THE AGREED DATE OF PUBLICATION.



### **DRAFT DOMESTIC ANIMAL MANAGEMENT PLAN 2012-2016**

Under section 68A of the *Domestic Animals Act 1994*, every Council must prepare and implement a Domestic Animal Management Plan at every four year interval with the objective to outline Council's Plan for animal management. In 2008 Council adopted the previous Plan and accordingly the Plan is due for renewal and the draft Plan has been prepared for public comment and Council's endorsement.

Copies of the [DRAFT Domestic Animal Management Plan](#) and the [Right to Make a Submission Form](#) can be [downloaded](#) or obtained from The Phoenix Building, 25 Armstrong Street South, Ballarat Central during normal office hours.

Any person can make a submission to Council in relation to the draft Plan. Any person affected by the proposal may make a written submission in accordance with section 223 of the *Local Government Act 1989*.

Completed submissions on the form should be addressed to:

City of Ballarat  
PO Box 655  
Ballarat VIC 3353.

Email: [ballcity@ballarat.vic.gov.au](mailto:ballcity@ballarat.vic.gov.au)

Submissions can be delivered to Council Offices, 25 Armstrong St South, Ballarat.

All written submissions must be received by 5.00pm Friday 21 September 2012. Any person who has made a written submission must request in that submission if they wish to be heard in support of their submission.

For further information contact Council's Compliance Coordinator Robert Muscat on 5320-5500.



## APPENDIX 3

THE MATERIAL CONTAINED IN THE FOLLOWING ADVERTISEMENTS AND PUBLIC NOTICES IS STRICTLY **CONFIDENTIAL** AND IS SUPPLIED ON AN **EMBARGOED** BASIS UNTIL THE AGREED DATE OF PUBLICATION.



### SPECIAL COUNCIL MEETING

Notice is hereby given that a Special Meeting of the Ballarat City Council will be held at the Council Chambers, Town Hall, Sturt Street, Ballarat, on Wednesday 19 June 2013 commencing at 6.00pm.

The Special Meeting is called for the purpose of:

1. To hear verbal submissions in support of written submissions received in accordance with Section 223 of the *Local Government Act 1989* in relation to the 2013/14 City of Ballarat Proposed Budget.
2. To hear verbal submissions in support of written submissions received in accordance with Section 223 of the *Local Government Act 1989* in relation to the City of Ballarat Council Plan 2013-2017.
3. Questions from members of the public on the proposed Council Plan and Budget.

Members of the public must register to ask a question of Council in relation to the proposed Council Plan and Budget. To register, please contact the Governance Unit on 5320 5535 by 4.30pm on the Wednesday of the Special Council meeting.

Members of the public are welcome to attend.



**APPENDIX 4**

Print Form



Form To View Prescribed Matters

**PRESCRIBED MATTERS**

*Local Government Act 1989, Section 222*

Local Government (General) Regulations 2004, Regulation 11

Please use block letters when completing this form

Surname  Given Names

Address (inc. Post Code)

Telephone No.

Please select which register the applicant would like to view:

- |   |  |  |
|---|--|--|
| <input type="checkbox"/> (A) Details of current allowances fixed for the Mayor and Councillors. | <input type="checkbox"/> (G) List of all section 86 Special Committees of Council and purpose. | <input type="checkbox"/> (M) Details of property, finance and operating leases entered into by Council.  |
| <input type="checkbox"/> (B) The total annual remuneration for all senior officers.             | <input type="checkbox"/> (H) List of all ceased section 86 Special Committees of Council.      | <input type="checkbox"/> (N) Register of authorised officers.  |
| <input type="checkbox"/> (C) Details of overseas or interstate travel.                          | <input type="checkbox"/> (I) Minutes of section 86 Special Committees of Council meetings.     | <input type="checkbox"/> (O) List of donations and grants made by Council.   |
| <input type="checkbox"/> (D) Names of Council Officers required to submit a Return of Interest. | <input type="checkbox"/> (J) Register of delegations.  | <input type="checkbox"/> (P) List of names of the organisations of which the Council is a member.  |
| <input type="checkbox"/> (E) Names of Councillors who submitted Returns of Interest.            | <input type="checkbox"/> (K) Submissions received in accordance with section 223 of Act.       | <input type="checkbox"/> (Q) List of contracts value at \$100000 or more, which Council entered into without engaging in a competitive process or which are not contracts referred to in section 186(5). |
| <input type="checkbox"/> (F) Agendas and minutes of Ordinary and Special Council meetings.      | <input type="checkbox"/> (L) Agreements to establish regional libraries.                       |  |

If you have selected A, B, C, J or N please provide name of person/s, for G, H or I please provide committee name and F please provide dates.

Prescribed matters are available to the public under section 222 of the *Local Government Act 1989*. Council does not incur any liability in respect of any information provided in good faith under this section for inspection or copying in addition to any information contained in the documents containing prescribed matters. Applicants may request a copy of the document/s and will be charged 50c per A4 copy.

Signature:  Date:

Once form has been completed, please send to the:  
**Chief Information Officer**  
**PO Box 655, Ballarat, VIC, 3353**  
**p: 5320 5550**  
**e: [governance@ballarat.vic.gov.au](mailto:governance@ballarat.vic.gov.au)**

*Upon receipt of this form, the applicant will be contacted to arrange a suitable time to view requested prescribed matter. The applicant must bring identification.*

Office Use Only

Date inspected   ID sited

Who has been informed:  Date: