



What can and can't Councillors do?

Bob: Through our publication Newswatch over recent months, I've been quite critical of the way our Councillors have performed over varying issues. I haven't had any direct response from any particular Councillor but via other people and anecdotally, I have been accused of not knowing how Council works. I thought it could be helpful for me and other readers to find out a bit more about what they can and can't do, and maybe when and where they should be able to involve themselves. One comment I've heard mentioned more than once by Councillors is "I'm advised it's an administrative issue, I'm not allowed to be involved". One issue I'm personally aware of involved spending a couple of hundred thousand dollars of ratepayers money, yet when asked to help, Councillors said exactly that. What can you tell us about that?

Amanda: As you know, Bob, I was brought up in English local government which is like State and local government combined, and English Councillors would be horrified at some of the things NSW local government Councillors are told they cannot do. I also found when I first started as an officer in NSW local government that Councillors were not held in high esteem by the staff and are seen by some as 'the enemy' not part of the team to achieve an agreed direction. This is partly because of three tiers of government in Australia and preferential voting. This is reflected in the 2019 New South Wales Councillor Resilience Survey: 'In a small number of instances, the organisation was identified as harassing Councillors. Councillors responded that they are viewed as a stumbling block to the organisation.'

In the 2019/20 Local Government Association Guidance for New Councillors in England and Wales the emphasis is on an important community leadership role.

The community leadership role of councils was removed from the NSW Local Government Act in the recent reforms and since 1993 the emphasis has been increasingly on Councillors being a Board of Directors whose first duty is to the Council as an organisation.

In the most recent NSW Office of Local Government advice to Councillors for the 2017 elections - Information for Candidates:

<https://www.olg.nsw.gov.au/public/about-councils/become-a-councillor/information-for-candidates/>

The chapter on **How do councillors serve their communities?** Starts with:

'Councillors work together to make decisions about what the council will do to meet community needs and how money should be spent in the best interests of the whole community. Councillors are not involved in the day-to-day running of the council. That is the role of the general manager.'

This last statement is because of the Board of Directors model.

The 2017 Office of Local Government Councillor

Handbook starts its description of the role of Councillors with:

'Councillors comprise the governing body of a council in the same way that a Board of Directors is the governing body of a corporation. The Local Government Act 1993 prescribes the collective role of a council's governing body.'

Under the Act the general manager has the following functions:

» to conduct the day-to-day management of the council in accordance with the strategic plans, programs, strategies and policies of the council.....'

So, this is why Councillors are treated like Non-Executive Directors and are told they cannot get involved in operational issues and must only deal with strategic matters. It is my experience that this is a difficult line to draw and often causes conflict between Councillors and the General Manager.

Often Councillors take the opportunity of Council meetings to ask the General Manager or Chief Executive Officer questions about operational issues that they may have been prevented from asking on a day to day basis, or maybe they want to be heard asking those questions by the community and their supporters. This can tend to prevent the business from running smoothly in a Council meeting.

Bob: I'm also interested to know what our Councillors are paid to serve us? I suspect they get a set amount each year plus perks. Can you enlighten us more on this too?

Amanda: Council made a decision on 7th July to pay Councillors and the Mayor the maximum annual allowance for 2020/21 being \$24,320 for each Councillor and \$84,400 for the Mayor.

This was a 20% increase for each Councillor and a 31% increase for the Mayor as Orange's status had been increased to being a Regional Centre for which Councillors get paid more. This was an additional cost of \$64,310 or a 22% increase on the previous year.

Councillors also get other expenses and these are included in the Your Council Report <https://www.yourcouncil.nsw.gov.au/council-data/orange/2018/community-leadership/>

In 2017/18 total Orange City Councillor remuneration reported was \$284,000 and Councillor expenses were \$131,000. I find it strange that Conference expenses were reported as zero. So, the total was \$415,000.

I have addressed the issue of Councillor numbers previously and it always seems strange to me that the Local Government Act requires that not less than 12 months before the next ordinary election, the Council must determine the number of its councillors for the following term of office, but this does not seem to be done by Orange City Council. The 2021 local government elections are now less than a year away and will be for 1 popularly elected Mayor and 11 Councillors.

Bob: I appreciate Councillors can't be over everything that happens, but judging by some of the questions they ask and comments they make at Council meetings it seems they do not have too much information on the subject being discussed. I'm also aware that the papers for a Council meeting read like an encyclopedia. Should we reasonably expect Councillors to read through the reams of paper they are presented with as part of the job?

Amanda: As a former General Manager of a NSW Council it always annoyed me to see some Councillors arriving at Council meetings opening their envelopes that contained the business papers for the meeting, so clearly they had not read them. This always seemed to me to be disrespectful of the staff and the community they represented.

The NSW Department of Local Government in response to the question 'What should I focus on?' gave this advice some 10 years ago:

- 'Councillors have to balance elected representative role and governing body role
- You can best help individual members of the community by satisfying yourself that Council's policies are being carried out correctly
- The volume of business papers can be daunting - over time you will become skilled at recognising items that may need more attention, like potentially contentious issues. You should allow adequate time to prepare for debate and making decisions.'

Interestingly enough, if Councillors are Non-Executive Directors they need to be aware of Australian Case Law:

'Non-executive directors are not expected to have the same level of detailed operational knowledge about their organisation as executive directors (those employed by the organisation). However, the core duties for both executive and non-executive directors are the same. As stated by Justice Middleton in the Centro case:

"Directors are required to take reasonable steps to place themselves in a position to guide and monitor the management of the company. A director must become familiar with the fundamentals of the business in which the corporation is engaged; a director is under a continuing obligation to keep informed about the activities of the corporation; directorial management requires a general monitoring of corporate affairs and policies, and a director should maintain familiarity with the financial position of the corporation...It is clear that an objective standard of care is applicable to both executive and non-executive directors."

In Australia, it is considered good practice from a governance perspective for a majority of directors on a board to be non-executive and independent.