

Warrumbungle Shire Council

Records Management for Councillors

Procedure

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1. Introduction

Council is bound by the *State Records Act 1998* (NSW) (hereafter referred to as 'the Act') which establishes rules for best practice for recordkeeping, encouraging transparency and accountability.

Councillors, when discharging functions of Council, are subject to these rules as set out by the Act when they create or receive 'State Records'.

A council is identified as a public office under section 3(1) of the Act. Councillors are subject to the Act when they create or receive 'State Records' while undertaking business on Council's behalf. They are not subject to the Act when conducting personal business or business that is unrelated to their role as councillors.

1.2 What is a Record?

A 'record' is defined at s 3(1) of the Act as:

'any document or other source compiled, recorded or stored in written form or on film, or by electronic process, or in any other manner or by any other means'

A 'State record' is defined at s 3(1) of the Act as:

'any record made and kept or received and kept by any person in the course of the exercise of official functions in a public office, or for any purpose of a public office, or for the use of a public office'

1.2.1 Examples of State Records

Examples of State records include, but are not limited to:

- Correspondence, including emails, relating to any Council business (including correspondence sent to a Council-provided or private email or postal address);
- A petition received from a community group;
- Declarations concerning a councillor's pecuniary interests;
- Speech notes made for addresses given at official Council events;
- Complaints, suggestions or enquiries by residents about Council services;
- Any written response provided by the councillor to any of the above examples.

1.2.2 Examples of Records that are not State Records

Conversely, records that are created, sent or received by councillors when they are **not** discharging functions of Council are **not** considered to be State Records for the purposes of the Act.

Examples of records that are **not** State records include, but are not limited to:

- Records relating to political or electoral issues, eg lobbying for votes, supportive emails from members of the community regarding elections or political stances;
- Communications regarding matters of personal/general interest rather than Council interest, eg information from environmental or other interest groups not specific to issues being considered by councillors or Council;
- Records relating to attendance at sports functions, church fetes, or community functions when the councillor is not representing Council;
- Personal records of councillors such as personal emails, character references for friends (these should not be written on Council letterhead),

nomination for awards, and letters to local newspapers etc that are not related to Council business.

2. Records as a Resource

Records are a vital asset to Council. Many records created and received by councillors have the potential to:

- Support the work of councillors and Council's Delivery and Operational Plans, management and administration;
- Help councillors and Council deliver customer service in an efficient, fair and equitable manner;
- Provide evidence of councillors' actions and decisions and establish precedents for future decision-making;
- Protect the rights and interests of the Council, councillors and customers.

A small percentage of records created and received by Councillors will become archives, part of the cultural resources of the State.

3. Creating and Capturing Records

3.1 What Records to Create and Capture

Councillors should create and capture full and accurate records of any significant business undertaken in the course of their official duties for Council. Significant business can include:

- Providing advice, instructions or recommendations;
- Drafts of documents for Council containing significant annotations or submitted for comment or approval by others;
- Correspondence received and sent relating to their work undertaken for Council.

Council is responsible for:

- Creating and capturing records of Council or committee meetings where the Council is the secretary;
- Capturing any State records that it sends to councillors regarding Council business.

Creation of records of a confidential nature

On some occasions Councillors are approached and asked to keep matters discussed relating to Council business confidential. In this case they should refer the person to Council's *Privacy Management Plan*. This indicates that confidential conversations/ correspondence must still be recorded and registered into Council recordkeeping systems if they refer to Council business. There are policies and security controls in place to ensure these records have limited access, but these records may still need to be produced under relevant legislation, eg subpoena or the *Government Access (Public Access) Act 2009*. With security controls in place records are likely to be less at risk than if they were not in recordkeeping systems.

3.2 How to Create Records

Council has paper and electronic templates available for councillors to create emails, letters and memos while conducting business for the Council. These will assist councillors in ensuring that the essential information is recorded.

Details of significant advice, commitment, etc made during telephone or verbal conversations or via SMS should be recorded using the Council's standard file note template. Details should be recorded to include the following:

- Date and time;

- Parties involved;
- Summary of discussion;
- Commitments;
- Advice given; and
- Reasons for commitment/advice given.

Notes in councillors' diaries are generally not adequate where there are recordkeeping requirements; they should be converted into a formal file note. These records should be made as soon as possible after the event to ensure the information is accurate.

3.3 How to Capture Records

Records of Council business that are created or received by Councillors, with the exception of those sent from Council as they are already captured, should be saved into official Council recordkeeping systems as soon as is practicable so that Council can assist with their long term management.

Paper Records

Councillors are to keep paper records together and at each Ordinary Council meeting or not later than 38 days after creation of the record transfer them to the General Manager. Any confidential documents should be marked 'CONFIDENTIAL' so that appropriate security measures can be implemented.

Records received from Councillors will be registered into Council's recordkeeping system, with appropriate security controls attached.

Email and Electronic Records

Councillors are to keep any electronic records, including emails, together and at the end of each month or not later than 38 days after creation of the record transfer them to the Executive Assistant to the General Manager for registration into Council's recordkeeping system. Any confidential documents should be marked 'CONFIDENTIAL' so that appropriate security measures can be implemented.

For councillors utilising a Council email address, a copy of all emails is automatically securely stored in Council's archives.

Records received from councillors will be registered into Council's recordkeeping system, with appropriate security controls attached.

Councillors' Copies

Councillors may wish to retain a copy of any record. Copies should only be retained while needed for current Council business.

4. Registration of Records by Council

4.1 Registration Procedures

Records received from Councillors for registration will be handled in accordance with the Council's *Records Management Procedures*.

4.2 Councillors' Mail and Email

Any incoming mail or email (hereafter referred to as 'correspondence') addressed to councillors with no privacy markings will be opened and processed by Records staff.

Correspondence relating to Council business will be processed into Council's recordkeeping system.

Correspondence relating to operational matters will be processed into Council's recordkeeping system and assigned to the Executive Assistant to the General Manager for forwarding to the relevant staff member for response. Councillors will be notified of this and be provided a copy of the correspondence.

Any correspondence not related to Council business will be forwarded to the councillor.

5. Security and Confidentiality of Records

5.1 Building Controls

Council's paper records are kept securely in the administration buildings at Coolah and Coonabarabran, and at the Coonabarabran Depot with security controls to protect against unauthorised access.

5.2 System Controls

The Council's records management software which controls both paper and electronic records restricts access according to security levels.

5.3 Security Labels

Sensitive records in all formats have labels such as 'Commercial in Confidence' along with their associated management rules, as defined by the NSW Government Chief Information Office's *Guide to labelling sensitive information*.

5.4 Rules for Councillors and Council Staff

Council staff and Councillors are bound by Council's *Code of Conduct*, preventing unauthorised access or disclosure of Council records.

6. Access to Records of Council

6.1 Access Relating to Civic Duties

Councillors need to have access to information held by council to help them make informed decisions on matters under their consideration. This information should be relevant and appropriate to the discharge of their obligations eg records relating to matters before Council or due to be listed for which there is notification.

As a first step, Councillors should be directed to the General Manager using the attached *Request to Access Records* form.

6.2 Access Relating to Personal Interest

Councillors wishing to access records in relation to a matter of personal interest have the same rights as other members of the public. Access may be obtained, for example, under:

- The *Privacy and Personal Information Protection Act 1998*
- The *Health Records and Information Privacy Act 2002*
- The *State Records Act 1998*, or
- The *Government Access (Public Access) Act 2009*

6.3 Refusal of Access

If a Councillor is refused access to records, they should refer to any appeal provisions of the relevant Act.

6.4 More Information on Access

More information on gaining access to Council records can be obtained from the Director Corporate and Community Services.

7. Borrowing Records of Council

Under section 11(1) of the Act Councils are required to ensure the safe custody and proper preservation of records they are responsible for.

Councillors may view paper-based or electronic Council records on Council premises by arrangement with the Director Corporate and Community Services.

Archives may be viewed on Council premises by arrangement with the Director Corporate and Community Services. Photocopies of relevant pages can be made available to Councillors if restrictions on copying do not apply.

8. Unauthorised Access or Disclosure of Council Records

Section 664(1) of the *Local Government Act 1993* (NSW) ('the LGA') prohibits the disclosure of information obtained in connection with the administration or execution of the LGA, except in certain specific circumstances.

Councillors are also bound by Council's Code of Conduct and Code of Meeting Practice **not** to:

- Attempt to access records they are not authorised to see;
- Provide unauthorised access to other parties while Council records are in their care;
- Disclose confidential information about Council business; or
- Disclose personal information of employees, customers etc without the subject's consent.

These rules help to ensure that Council and its staff and clients are protected and that the requirements of relevant legislation, such as privacy legislation, are met.

9. Handling and Storage of Records

9.1 Damage or Neglect of Records is an Offence

Damage or neglect of a State record is an offence under s21 of the Act. Councillors should apply the storage and handling rules below to ensure records are protected.

9.2 Handling of Records

When handling Council records the following rules apply:

- Registered documents are not to be rearranged or removed from Council files (the order provides context for the records) and information on files should never be altered.
- No food or drink is to be consumed near records (grease and food particles can attract vermin and liquids can damage records if spilt on them).
- Strictly no smoking around records (due to airborne pollutants and the risk of fire).
- If records are damaged during handling, the Director Corporate and Community Services should be informed. No attempts should be made to repair the record (as some repairs can do long term damage).

Information on handling specific formats is available in State Records *Recordkeeping in Brief 14: Handle with care*.

9.3 Storage of Records

When storing Council records temporarily the following rules apply:

- Records are to be kept away from known risks such as water, fire, mould, vermin, vandalism, chemicals, direct sunlight, extreme temperatures etc;
- Electronic records should be protected against additional hazards such as viruses;

- Records should be secured appropriately to their level of sensitivity. No Council records should be left in plain view in vehicles or lying around the house; and
- Councillors who are storing records of a sensitive or confidential nature should ensure that they are appropriately protected.

Copies of confidential business papers or documents can be forwarded to the Executive Assistant to the General Manager for destruction.

10. Disposal of Records

10.1 Disposal in Accordance with the Act

State records held by Councillors must be disposed of in accordance with the Act. Such records should be returned to the Executive Assistant to the General Manager.

State Records NSW has issued *General Retention and Disposal Authority – Local Government Records (GA39)*, which outlines classes of records and how long they should be kept before being legally destroyed or transferred to archives. Periods specified are based on relevant legislation, guidelines and standards. Failure to keep records for the length of time specified in the GA39 may put councillors and Council at risk.

Other forms of authorised disposal include:

- By order of a court or tribunal.
- ‘Normal administrative practice’ (NAP) where ephemeral, duplicate or facilitative records can be destroyed. State records has produced *Guidelines on Normal Administrative Practice (NAP)* which provide further information on the application of NAP.

10.2 Liaison with Council for Disposal

Councillors should liaise with the Director Corporate and Community Services regarding the disposal of any records of Council business as Council is responsible for:

- Ensuring legislative requirements are met;
- Ensuring destruction is undertaken appropriately (eg that no sensitive information is released due to inappropriate destruction methods); and
- Documenting disposal decisions for accountability purposes.

11. Further Information

For more information about the use of this document, contact the Director Corporate and Community Services.

12. Attachments

12.1 Meeting note template

12.2 File note template

12.3 Request to Access Records form

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12.1 – Meeting Note Template

COUNCILLOR MEETING NOTE

SUBJECT

DATE **TIME**

PRESENT

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DISCUSSED

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ACTIONS/DECISIONS

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NAME **SIGNATURE**

COUNCILLOR

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