

	<b>Interaction between Councillors and Staff</b>
	<b>Strategic</b>

## 1. Purpose

This policy will:

- provide clear communication channels to ensure the speedy provision of accurate information;
- recognise the particular circumstances of the council;
- require adequate training of staff and Councillors on the need for the policy and its requirements;
- provide appropriate avenues for non-compliance; and
- be reviewed periodically to monitor its effectiveness and compliance.

## 2. Objectives of the Policy

The objectives of this policy are to:

- provide a documented process on how Councillors can access Council records;
- ensure Councillors have access to all documents necessary for them to exercise their statutory role as a member of the governing body of Council;
- ensure that councillors receive advice to help them in the performance of their civic duty in an orderly and regulated manner;
- provide direction on Councillors' rights of access to council buildings; and
- provide a clear and consistent framework for the reporting of, and appropriate application of sanctions for breaches of this policy.

## 3. Policy Scope

Based on the provisions in the *Local Government Act 1993*, Councillors and staff have distinctly different roles to play in Council. Council is responsible for the strategic direction and for determining the policy framework of Council. Council also has a statutory role as the consent authority, under both the *Environmental Planning and Assessment Act* and the *Local Government Act*, for applications for development consent and local approvals. The General Manager with the senior officers of Council is responsible for the effective management of the organisation and the carrying out of Council's policies and strategic objectives.

However, the distinction between these two roles may, depending on the desires and aspirations of Council and the community, be unclear. There needs to be personal interaction between Councillors and senior officers, particularly regarding access to and provision of information, to effectively integrate policy making and service delivery. This has created the need for guidelines that help Councillors and staff to understand fully their respective roles and how they should operate, in order to perform their job effectively.

## 4. Background

Formalising procedures to specify how these rights should be exercised has been done without trying to restrict a Councillor's legal right to access staff and information. This policy is not intended to limit any statutory and common law rights Councillors have to access information. However, Councillors should avoid any perceptions of wrongdoing when exercising their rights as an elected representative, particularly the appearance of trying to improperly influence staff.

## **5. Definitions**

### **5.1. Statutory provisions for Councillors and Staff**

Chapters 9 and 11 of the *Local Government Act 1993* set out the statutory roles and duties of Councillors and the General Manager. The introduction to Chapter 9 states that "each council is a statutory corporation. The Councillors are the governing body of the corporation and they have the responsibility of directing and controlling the affairs of the Council in accordance with this Act." Chapter 9 includes the following provisions.

#### ***The governing body (s.222)***

*The elected representatives, called "Councillors," comprise the governing body of the Council.*

#### ***The role of the governing body (s.223)***

- (1) *The role of the governing body is as follows:*
- (a) *to direct and control the affairs of the council in accordance with this Act,*
  - (b) *to provide effective leadership to the local community,*
  - (c) *to ensure as far as possible the financial sustainability of the council,*
  - (d) *to ensure as far as possible that the council acts in accordance with principles set out in Chapter 3 and the plans, programs, strategies and policies of the council,*
  - (e) *to develop and endorse the community strategic plan, delivery program and other strategic plans, programs, strategies and policies of the council,*
  - (f) *to determine and adopt a rating and revenue policy and operational plans that support the optimal allocation of the council's resources to implement the strategic plans ( including the community strategic plan) of the council and for the benefit of the local area,*
  - (g) *to keep under review the performance of the council, including service delivery,*
  - (h) *to make decisions necessary for the proper exercise of the council's regulatory functions,*
  - (i) *to determine the process for appointment of the general manager by the council and to monitor the general manager's performance,*
  - (j) *to determine the senior staff positions within the organisation structure of the council,*
  - (k) *to consult regularly with community organisations and other key stakeholders and keep them informed of the council's decisions and activities,*
  - (l) *to be responsible for ensuring that the council acts honestly, efficiently and appropriately.*
- (2) *The governing body is to consult with the general manager in directing and controlling the affairs of the council.*

#### ***The role of the Mayor (s.226)***

*The role of the Mayor is as follows:*

- (a) *to be the leader of the council and a leader in the local community,*
- (b) *to advance community cohesion and promote civic awareness,*
- (c) *to be the principal member and spokesperson of the governing body, including representing the views of the council as to its local priorities,*
- (d) *to exercise, in cases of necessity, the policy-making functions of the governing body of the council between the meetings of the council,*
- (e) *to preside at meetings of the council,*
- (f) *to ensure that meetings of the council are conducted efficiently, effectively and in accordance with this Act,*
- (g) *to ensure the timely development and adoption of strategic plans, programs and policies of the council,*
- (h) *to promote the effective and consistent implementation of the strategic plans, programs and policies of the council,*
- (i) *to promote partnerships between the council and key stakeholders,*

- (j) to advise, consult with and provide strategic direction to the general manager in relation to implementation of the strategic plans and policies of the council,
- (k) in conjunction with the general manager, to ensure adequate opportunities and mechanisms for the engagement between the council and the local community,
- (l) to carry out the civic and ceremonial functions of the mayoral office,
- (m) to represent council on regional organisations and at inter-governmental forums at regional, State and Commonwealth level,
- (n) in consultation with the councillors, to lead performance appraisals of the general manager,
- (o) to exercise any other functions of the council that the council determines.

### **The role of a Councillor (s.232)**

- (1) The role of a Councillor is, as follows:
  - (a) to be an active and contributing member of the governing body,
  - (b) to make considered and well informed decisions as a member of the governing body,
  - (c) to participate in the development of the integrated planning and reporting framework
  - (d) to represent the collective interests of residents, ratepayers and the local community,
  - (e) to facilitate communication between the local community and the governing body,
  - (f) to uphold and represent accurately the policies and decisions of the governing body,
  - (g) to make all reasonable efforts to acquire and maintain the skills necessary to perform the role of a councillor.
- (2) A councillor is accountable to the local community for the performance of the council.

### **The Functions of General Manager (s.335)**

The general manager of a council has the following functions:

- (a) to conduct the day-to-day management of the council in accordance with the strategic plans, programs, strategies and policies of the council,
- (b) to implement, without undue delay, lawful decisions of the council,
- (c) to advise the mayor and the governing body on the development and implementation of the strategic plans, programs, strategies and policies of the council,
- (d) to advise the mayor and the governing body on the appropriate form of community consultation on the strategic plans, programs, strategies and policies of the council and other matters related to council,
- (e) to prepare, in consultation with the mayor and the governing body, the council's community strategic plan, community engagement strategy, resourcing strategy, delivery program, operational plan and annual report,
- (f) to ensure that the mayor and other councillors are given timely information and advice and the administrative and professional support necessary to effectively discharge their functions,
- (g) to exercise any of the functions of the council that are delegated by the council to the general manager,
- (h) to appoint staff in accordance with the organisation structure determined under this Chapter and the resources approved by council,
- (i) to direct and dismiss staff,
- (j) to implement the council's workforce management strategy,
- (k) any other functions that are conferred or imposed on the general manager by or under this or any other Act.

## **6. Policy Statement**

### **6.1. Inappropriate interactions**

Council's policy is that the following interactions are inappropriate:

- Councillors approaching Council staff other than Directors for information on sensitive or controversial matters.

- Council staff approaching Councillors directly on individual staffing matters.
- Councillors approaching Council staff outside the council building or outside hours of work to discuss Council business.
- Council staff refusing to give information which is available to other Councillors to a particular Councillor because of the staff member's or Councillor's political views.
- Councillors who have lodged a Development Application with Council, discussing the matter with Council staff in staff-only areas of the Council building.
- Councillors being overbearing or threatening to Council staff.
- Councillors directing or pressuring Council staff in the performance of their work, or recommendations they should make.
- Council staff providing ad hoc advice to Councillors without recording or documenting the interaction as they would if the advice was provided to a member of the community.
- Councillors approaching Council staff organisations; for example unions and associations; in relation to staffing matters that relate to individual staff members rather than broader industrial policy issues.
- Council staff meeting with developers alone and outside office hours to discuss development applications or proposals.
- Councillors attending on-site inspection meetings with lawyers and/or consultants engaged by Council associated with current or proposed legal proceedings unless permitted to do so by Council's General Manager or, in the case of the Mayor, exercising their power under section 226 of the Act.

## 6.2. During meetings

The interaction between Councillors and staff at Council meetings and committee meetings is regulated by:

- s.360 of the *Local Government Act 1993*;
- s.249 of the *Local Government (General) Regulation 2005*;
- Council's Code of Conduct and
- Council's Code of Meeting Practice

Section 360 of the *Local Government Act 1993* enables Council to make regulations in regard to the conduct of Meetings, adopt Codes of Meeting Practice and states that Meetings must be conducted in accordance with the Code of Meeting Practice.

Section 249 of the *Local Government (General) Regulation 2005* details how, in Council Meetings, Councillors can ask questions of other Councillors by going through the Chairperson. The regulation also details the process Councillors must follow if they wish to ask a question of Council staff, by going through the General Manager.

## 6.3. Outside of meetings

The *Local Government (General) Regulation 2005 (S249 (2))* makes provision for a Councillor to obtain information at a Council Meeting, or by a Question on Notice at a Council Meeting.

- The General Manager is responsible to the Council for performance and direction of all staff and day to day management of Council. Therefore, it is appropriate that all requests for information and approaches to staff outside the forum of a Council or Committee meeting, be directed to the General Manager, or person/s nominated by the General Manager.
- Only Directors (or Senior Officer as defined in s.332) and Managers nominated by the General Manager can provide advice to Councillors.
- It is within the discretion of the General Manager to require Councillors to make an appointment with a senior officer, to put a request in writing, or to put it on notice to

the Council to obtain detailed or otherwise time consuming information. The General Manager must indicate in writing, the reasons for refusing a request.

- For all but straightforward advice on administrative matters, Councillors should put their requests for information or advice in writing to be answered by the General Manager or the appropriate Director. These written requests then form part of Council records and can be filed appropriately.
- A Director has the discretion to refer any request for information to the General Manager. The Director must indicate to the Councillor their reasons for the referral.
- If a Councillor is concerned about any refusal to provide information, they should firstly raise the matter with the General Manager (or the Mayor if it was the General Manager who refused to provide the advice). If the Councillor is still dissatisfied they should request the information by way of a Question on Notice to Council.
- Councillors must not attempt to direct Staff as to the performance of their work. Staff must report all such attempts immediately to their Director or the General Manager. Councillors must not request staff to undertake work for the Councillor or any other person.
- A Councillor, member of staff or delegate must not take advantage of their official position to improperly influence other Councillors, members of staff or delegates in the performance of their public or professional duties for the purpose of securing private benefit for themselves or for some other person.

#### **6.4. Access to Council Offices**

- As elected members of the Council, Councillors are entitled to have access to the Council Chambers, Committee Meeting and Training room, Mayor's office, Interview rooms and public areas of the Council's buildings during normal business hours and for meetings.
- Councillors who are not in pursuit of their civic duties have the same rights of access to Council buildings and premises as any other member of the public.
- A Councillor has no rights to enter staff-only areas without the express authorisation of the General Manager or nominee or by resolution of Council.
- Councillors must ensure that when they are within a staff area they are cognisant of potential conflict or pecuniary interest matters and should conduct themselves accordingly.

#### **6.5. Breaches of this Policy**

For this policy to be effective and meaningful, appropriate reporting of breaches and conduct reviews need to be established and consistently applied. All parties need to have confidence that the policy will be complied with and breaches will be dealt with appropriately. Any cases of clear breaches of the policy that are not dealt with appropriately will erode confidence in the ability of Council to deal with complaints and reduce the efficiency of the council.

The policy is linked with Council's Model Code of Conduct and breaches are dealt with accordingly.

##### **6.5.1. Reporting**

- All occasions of a Councillor or Staff member not complying with this policy should be immediately reported to the General Manager.
- Where the report relates to the conduct of a Councillor, the General Manager shall immediately assess and either informally resolve the complaint, refer to another agency or body or refer to the Complaints Coordinator as per the Model Code of Conduct Procedure.
- The Conduct Reviewer will undertake a preliminary investigation and either decline, resolve or refer the matter to the Mayor or General Manager or another body; or investigate or recommend a conduct review investigation.

- Where the report relates to the conduct of Staff, the General Manager shall deal with the matter according to the terms of employment of the staff member. Proven breaches should also be dealt with accordingly, that is, by counselling, disciplinary action or dismissal and make provision for procedural fairness including the right of an employee to be represented by their Union.
- Where a Councillor believes that the General Manager has failed to comply with the policy, the Councillor shall immediately report to the Mayor who will report the matter to the Complaints Coordinator.
- Before a report to Council by the Conduct Reviewer or Conduct Review Committee a preliminary assessment and investigation must be implemented as per the Model Code of Conduct procedures.

### **6.5.2. Sanctions**

If a breach has been determined, the Conduct Reviewer or Conduct Review Committee will provide to Council a report of the investigation and a recommendation of the sanctions. If Council elects to not accept this recommendation the Complaints Coordinator will notify the resolution to the Division of Local Government.

Sanctions for staff depend on the severity, scale and importance of the breach and must be in accordance with any staff agreements, awards, industrial agreements and contracts, and may include:

- counselling the Staff member;
- instituting Council disciplinary proceedings; or
- dismissal.

## **6.6. Access to Council records by Councillors**

### **6.6.1. Statutory provisions**

Councillors have a right to access council information that is reasonably necessary for exercising the functions of the civic office. The Government Information Public Access Act 2009 replaced section 12 of the Local Government Act 1993 and the Freedom of Information Act 1989 from 1 July 2010. The information made available in Council's Agency Information Guide is open access information for public access including Councillors. Public Access information is listed below:

*Government Information (Public Access) Regulation 2009*

*Extract from Schedule 1 Additional open access information – local authorities (Councils)*

#### **Information about local authority**

*(1) Information contained in the current version and the most recent previous version of the following records is prescribed as open access information :*

- a) the model code prescribed under s 440(1) and code of conduct adopted under section under s440(3) of the LGA,*
- b) Council's Code of Meeting Practice,*
- c) Annual Report,*
- d) Annual Financial reports,*
- e) Auditor's report,*
- f) Management Plan,*
- g) EEO Management Plan,*
- h) Policy concerning the payment of expenses incurred by, and the provision of facilities to councillors,*
- i) Annual reports of bodies exercising functions delegated by the local authority,*
- j) Any codes referred to in the LGA.*

(2) Information contained in the following records (wherever created) is prescribed as open access information:

- a) Returns of the interests of councillors, designated persons and delegates,
- b) Agendas and business papers for any meeting of Council or any committee of council (but not including business papers for matters considered when part of a meeting is closed to the public),
- c) Minutes of any meeting of the Council or any committee of the Council, but restricted (in the case of any part of a meeting that is closed to the public) to the resolutions and recommendations of the meeting),
- d) Departmental representative reports presented at a meeting of the Council in accordance with Section 433 of the LGA,

(3) Information contained in the current version of the following records is prescribed as open access information:

- a) Land Register,
- b) Register of investments
- c) Register of delegations
- d) Register of graffiti removal work kept in accordance with Section 13 of the Graffiti Control Act 2008,
- e) Register of current declarations of disclosures of political donations kept in accordance with section 328A if the LGA,
- f) The register of voting on planning matters kept in accordance with sections 375a of the LGA,

### **1. Plans and policies**

Information contained in the current version and the most recent previous version of the following records is prescribed as open access information:

- a) Local policies adopted by the council concerning approvals and orders,
- b) Plans of management for community land,
- c) Environmental planning instruments, development control plans made under the Environmental Planning and Assessment Act 1979 applying to land within the Council's area

### **2. Information about development applications**

(1) Information contained in the following records (whenever created) is prescribed as open access information:

- a) Development applications (within the meaning of the Environmental Planning and Assessment Act 1979) and any associated documents received in relation to a proposed development including the following:
  - i. Home warranty insurance documents,
  - ii. Construction certificates,
  - iii. Occupations certificates,
  - iv. Structural certification documents,
  - v. Town planner reports,
  - vi. Submissions received on development applications,
  - vii. Heritage consultant reports,
  - viii. Tree inspection consultant reports,
  - ix. Acoustics consultant reports,
  - x. Land contamination consultant reports,

- b) *Records of decisions on development applications (including decisions made on appeal)*
- c) *A record that describes the general nature of the documents that the Council decides are excluded from the operations of this clause by subclause (2).*

*(2) This clause does not apply to so much of the information referred to in subclause (1) (a) as consists of:*

- a) *The plans and specifications for any residential parts of a proposed building, other than plans that merely show its height and its external configuration in relation to the site on which it is proposed to be erected, or*
- b) *Commercial information, if the information would be likely to prejudice the commercial position of the person who supplied it or to reveal a trade secret.*

*(3) A council must keep the record referred to in subclause (1) (c).*

### **3. Approvals, orders and other documents**

*Information contained in the following records (whenever created) is prescribed as open access information:*

- a) *Applications for approvals under Part 1 of Chapter 7 of the LGA and any associated documents received in relation to such an application,*
- b) *Applications for approvals under any Act and any associated documents received in relation to such an application,*
- c) *Records of approvals granted or refused, any variation from local policies with reasons for the variation, and decisions made on appeals concerning approvals,*
- d) *Orders given under Part 2 of Chapter 7 of the LGA, and any reasons given under section 136 of the LGA,*
- e) *Orders given under the authority of any other Act,*
- f) *Records of building certificates under the Environmental Planning and Assessment Act 1979,*
- g) *Plans of land proposed to be compulsorily acquired by the Council,*
- h) *Compulsory acquisition notices,*
- i) *Leases and licences for the use of public land classified as community land,*
- j) *Performance improvement orders issued to a council under Part 6 of Chapter 13 of the LGA.*

The *Local Government (General) Regulation 2005*, provides a procedure for Councillors to obtain access to Council documents, without limiting any common law right of access. Clause 41 provides:

- 1) The General Manager may allow or refuse to allow any Councillor to inspect any record of the Council that the Councillor requests to see.
- 2) If the General Manager refuses to allow a Councillor to inspect any such record, the Councillor may, at a meeting of the Council, move for the production of the document. However, the Councillor must give notice of intention to move the motion.
- 3) If Council passes a motion for the production of a Council record, Council must ensure that the record:
  - a) is produced immediately and laid on the table for inspection by the Councillors; and
  - b) is made available for inspection by any Councillor on reasonable notice to the General Manager during the council's ordinary office hours on any day that is within one month after the passing of the motion.

### 6.6.2 Procedures

- Access to a Council file, record or other document can only be provided according to this policy to ensure that access is obtained in ways that are legal and appropriate. This policy does not limit or restrict statutory or common law rights of access.
- Councillors can request the general manager, the public officer or a person nominated by the general manager to provide access to a particular council record.
- Councillors who have a personal (as distinct from civic) interest in a document of council has the same rights of access as any other person.
- Councillors are entitled to access to all council files, records or other documents where that document is identified in Agency Information Guide or to a matter currently before the council.
- The General Manager shall not unreasonably decide that a document is not relevant to the performance of the councillor's civic duty and deny access to a council document. The General Manager must state their reasons for the decision if he refuses access.
- Councillors can request access to other documents of the Council either by a Notice of Motion to the council or a GIPA application.
- The General Manager, public officer or a person identified by the General Manager, shall keep a record of all requests by councillors for access to information (other than those listed in the Agency Information Guide, the *Government Information (Public Access) Act 2009* or by a Notice of Motion at a council meeting). These requests must be reported regularly to the council.
- Councillors, if not satisfied, with the response to their request for information have the right of review. Councillors who have been refused access to information are entitled to lodge a request under the GIPA Act. The GIPA Act provides three options to have a decision reviewed, internal review, an external review by the Information Commissioner; or external review by the Administrative Decisions Tribunal.

### 7. Responsibilities

Executive Services: General Manager

Corporate Services: Director Corporate and Community Services

### 8. Associated Documents

This Policy should be read in conjunction with the following Strategic Policies:

- Council's Model Code of Conduct
- Code of Meeting Practice
- Statement of Business Ethics
- Vision, Mission and Values
- Agency Information Guide

and the following Acts and Regulations

- Government Information (Public Access) Act 2009 (GIPA)
- Local Government Act (1993) (LGA)
- Local Government (General) Regulation 2005

## 9. Getting Help

Position: General Manager

Department: Executive Services

## 10. Version Control

Review Date: September 2020

Staff Member Responsible for Review: General Manager

<b>Policy Name</b>	<b>Version</b>	<b>Resolution</b>	<b>Date</b>
Interaction Policy between Councillors and Staff	1	140	21 April 2005
Interaction Policy between Councillors and Staff	2	100/1314	19 September 2013
Interaction Policy between Councillors and Staff	3	102/1718	21 September 2013