

# COUNCILLORS ACCESS TO INFORMATION AND INTERACTION BETWEEN COUNCILLORS AND STAFF POLICY



**Responsible Department:** Corporate Services  
**Responsible Section:** Corporate Services  
**Responsible Officer:** Director of Corporate Services

## Objective

- To provide a documented process on how Councillors can access Council records;
- To ensure Councillors have access to all documents necessary for them to exercise their statutory obligations;
- To ensure that Councillors receive advice from nominated staff to help them in the performance of their civic duty in a timely and regulated manner;
- To provide direction on Councillors' rights of access to Council buildings; and
- To provide a clear and consistent framework for the reporting of and appropriate application of sanctions for breaches of this policy.

## Policy

The *Local Government Act 1993* provides distinctly different roles for Councillors and Council staff.

The Council is responsible for strategic direction and for determining the policy framework of Council. The Council also has a statutory role as the consent authority, under both the *Environmental Planning and Assessment Act 1979* and the *Local Government Act 1993*, for applications for development consent and other 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.

The distinction between these two roles, however, may be unclear. There often needs to be personal interaction between Councillors and Council 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.

## **1. Inappropriate interactions**

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

- Councillors approaching any members of staff other than the General Manager for information on sensitive or controversial matters;
- Members of staff approaching Councillors directly (rather than via the General Manager) on staffing or political issues;
- Councillors approaching staff outside the Council building or outside hours of work or in non-work situations to discuss Council business;
- 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 a development application or other application before Council discussing the matter with the assessing planner or officer in staff-only areas of the Council;
- Staff being asked to answer questions or provide documents to Councillors who are overbearing, threatening or intimidating;
- Councillors directing or pressuring staff in the performance of their work or recommendations they should make; and
- Staff providing advice to Councillors without recording or documenting the interaction as they would if the advice was provided to a member of the community.

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

### **2.1 Statutory Provisions**

The following documents are available under Schedule 1 of the GIPA Regulation 2009 unless there is an overriding public interest against disclosure of the information:

1. Information contained in the current version and the most recent previous version of:

- the model code prescribed under section 440 (1) of the LGA and the code of conduct adopted under section 440 (3) of the LGA,
- code of meeting practice,
- annual report,
- annual financial reports,
- auditor's report,
- delivery plan/operational plan
- EEO management plan,
- policy concerning the payment of expenses incurred by, and the provision of facilities to, councillors,
- annual reports of bodies exercising functions delegated by the local authority,
- any codes referred to in the LGA.

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

- returns of the interests of councillors, designated persons and delegates,
- agendas and business papers for any meeting of the local authority or any committee of the local authority (but not including business papers for matters considered when part of a meeting is closed to the public),
- minutes of any meeting of the local authority or any committee of the local authority, 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,
- Departmental representative reports presented at a meeting of the local authority 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:

- land register,
- register of investments,
- register of delegations,
- register of graffiti removal work kept in accordance with section 13 of the Graffiti Control Act 2008,
- register of current declarations of disclosures of political donations kept in accordance with section 328A of the LGA,
- the register of voting on planning matters kept in accordance with section 375A of the LGA.

### **Council 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:

- local policies adopted by the local authority concerning approvals and orders,
- plans of management for community land,
- environmental planning instruments, development control plans and contributions plans made under the Environmental Planning and Assessment Act 1979 applying to land within the local authority's area.

### **Access to Information about development applications**

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

- 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:
- home warranty insurance documents,
- construction certificates,

- occupation certificates,
- structural certification documents,
- town planner reports,
- submissions received on development applications,
- heritage consultant reports,
- tree inspection consultant reports,
- acoustics consultant reports,
- land contamination consultant reports,
- records of decisions on development applications (including decisions made on appeal),
- a record that describes the general nature of the documents that the local authority decides are excluded from the operation of this clause by subclause (2).

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

- 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
- 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.
- A local authority must keep the record referred to in subclause (1) (c).

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

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

- applications for approvals under Part 1 of Chapter 7 of the LGA and any associated documents received in relation to such an application,
- applications for approvals under any other Act and any associated documents received in relation to such an application,
- records of approvals granted or refused, any variation from local policies with reasons for the variation, and decisions made on appeals concerning approvals,
- orders given under Part 2 of Chapter 7 of the LGA, and any reasons given under section 136 of the LGA,
- orders given under the authority of any other Act,
- records of building certificates under the Environmental Planning and Assessment Act 1979,
- plans of land proposed to be compulsorily acquired by the local authority,
- compulsory acquisition notices,
- leases and licences for use of public land classified as community land.

## 2.2 Procedures

- Access to a Council file, records or other documents 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 Director Corporate Services or the Director Engineering Services to provide access to a particular Council record. Access to such documents will be restricted to the Councillors' Rooms/Mayoral Office/Administration Building and is to be undertaken in the company of a staff member nominated by the General Manager.
- Councillors who have a personal (as distinct from civic) interest in a document of Council have the same rights of access as any other person.
- Councillors are entitled to access all files, records or other documents, where that document is identified in the Government Information (Public Access) Act, 2009 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 his/her reasons for the decision if access is refused.
- Councillors can request access to other documents of the Council either by a Notice of Motion to the Council or a Freedom of Information application.
- The General Manager, the Director Corporate Services or the Director Engineering Services, shall keep a record of all requests by Councillors for access to information (other than those listed in the Government Information (Public Access) Act, 2009 or by a Notice of Motion at a Council meeting). The record of these requests will be made available to any other Councillor who requests it. Any information that is given to a particular Councillor in the pursuit of their civic duties will also be made available to any other Councillor who requests it.
- Confidential information must only be used for Council purposes. While this may create some difficulties for Councillors when assessing the information, it is a necessary safeguard to protect Council's interests. It also helps to protect Councillors against allegations that they revealed information which damaged Council's interests.
- If the General Manager refuses to allow a Councillor to inspect any record or document, 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.
- If Council passes a motion for the production of a Council record, the Council must ensure that the record:
  - Is produced immediately and laid on the table for inspection by the Councillors; and
  - 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.

## 3. Interaction between Councillors and Council staff

### 3.1 During Meetings

The interaction between Councillors and staff at Council Meetings and Committee Meetings is regulated by:

- Section 360 of the Local Government Act;

- The Local Government (General) Regulation;
- Council's Code of Conduct and
- Council's Code of Meeting Practice.

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

Narrabri Shire Council has adopted a Code of Meeting Practice.

The Local Government (General) Regulation 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.

### **3.2 Outside of Meetings**

The Local Government (General) Regulation makes provision for a Councillor to obtain information at a Council meeting or by a Motion Pursuant to Notice submitted to 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 meetings be directed to the General Manager or either Director.
- Only those officers nominated by the General Manager can provide advice to Councillors.
- 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 nominated Council officer. These written requests then form part of Council records and can be filed appropriately. The General Manager must indicate in writing the reasons for refusing a request.
- A Council officer has the discretion to refer any request (from a Councillor) for information to the General Manager. The Council officer 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 Motion Pursuant to Notice to the 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.

### **4. Access to Council offices**

- As elected members of the Council, Councillors are entitled to have access to the Council Chamber, Mayor's Office (for the Mayor), the Councillors' Rooms and public areas of the Council's buildings.

- 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 his nominee or by resolution of the Council.

## **5. Breaches of this policy**

For this policy to be effective and meaningful, appropriate reporting of breaches and appropriate sanctions 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 the Council to deal with complaints and reduce the efficiency of the Council.

Breaches will be dealt with in accordance with the reporting and sanction provisions of this Policy.

## **6. 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 report the matter to the Mayor and, if considered necessary, to the next Council meeting.
- 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.
- 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 then discuss the matter with the General Manager and, if considered necessary, will report the matter to Council.
- Before a report to Council by the General Manager (or the Mayor), the General Manager (or the Mayor) should undertake preliminary inquiries to establish the facts. The preliminary investigations may take any form the Mayor and General Manager considers appropriate but must involve discussions with the staff member and Councillor involved. Natural justice principles need to be satisfied in dealing with an alleged breach and the evidence must be reviewed objectively.
- The Council must decide whether a matter reported to it under this policy, reveals a breach. The Council may take any steps provided in this policy that it considers reasonable in the circumstances.

## **7. Sanctions**

Council, having resolved that a Councillor has failed to comply with this policy, can, by resolution:

- Require the Councillor to apologise to the person concerned;
- Request a formal apology;
- Counsel the Councillor;
- Reprimand the Councillor;
- Resolve to make its decision on the matter public;
- Pass a censure motion at a Council or Committee meeting;

- Make public disclosures of inappropriate conduct (such as making the community aware of the breach through the media or annual report);
- Refer the matter to an appropriate investigative body if the matter is serious, and/or
- Prosecute any breach of the law.

Sanctions for staff depending on the severity, scale and importance of the breach, may include:

- Counselling the staff member;
- Documentation of the behaviour being placed on the personnel file;
- Non-renewal of an employment contract (if applicable);
- Instituting Council disciplinary proceedings;
- Dismissal;
- Prosecution.

*(Note: With respect to staff, in every case the disciplinary procedures set out in the relevant Award, Industrial Agreement or employment contact will apply)*

## References

- Section 360 of the *Local Government Act 1993*
- *The Local Government (General) Regulation 2005.*
- Council's Code of Conduct.
- *Government Information (Public Access) Act, 2009.*
- Council's Code of Meeting Practice.

## History

MINUTE NUMBER	MEETING DATE	DESCRIPTION OF CHANGE
405/2007	19 <sup>th</sup> June, 2007	Adopted
469/2011	16 <sup>th</sup> August 2011	Adopted with the words "or either Director" added
26/2012	21 February 2012	Reviewed
58/2013	5 February 2013	Reviewed
164/2017	15 August 2017	Reviewed