



# PROVISION OF INFORMATION TO AND INTERACTION BETWEEN COUNCILLORS AND STAFF POLICY

**Approval Date:** 11 June 2014  
**Review Date:** 11 June 2019  
**Responsible Officer:** General Manager

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## 1. PURPOSE

Based on the provisions of the Local Government Act 1993 Councillors and staff have distinctly different roles to within Council. The Council is responsible for the 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 development application consent and local approvals. The General Manager is responsible for the effective management of the organisation and carrying out of Council's policies and strategic objectives.

However, the distinction between these two roles may be unclear. There often 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 a policy to help Councillors and staff understand fully their respective roles and how they should operate in order to perform their job effectively.

This policy is not intended to limit any statutory and common law rights Councillors have to access information. Councillors should avoid any perceptions of wrongdoing when exercising their rights as an elected representative, particularly the appearance of trying to improperly influence staff or of personal advantage gained from their civic role.

## 2. POLICY STATEMENT

### AIMS:

This policy will:

- Provide clear communication channels to ensure the speedy provision of accurate information to Councillors.
- Identify the distinct role of Councillors and that of the General Manager and Staff.

## OBJECTIVES:

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 the 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.
- Provide a clear and consistent framework for interaction between Councillors and staff.

## 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:

### 1. *The governing body (s222)*

The elected representatives, called "councillors", comprise the governing body of the council.

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

The role of the governing body is to direct and control the affairs of the Council in accordance with this Act.

### 3. *The role of the mayor (s.226)*

The role of the mayor is:

- To exercise, in cases of necessity, the policy-making functions of the governing body of the council between meetings of the council.
- To exercise such other functions of the council as the council determines.
- To preside at meetings of the council.
- To carry out the civic and ceremonial functions of the mayoral office.

### 4. *The role of a councillor as a member of the governing body (s.232(1))*

The role of a councillor is, as a member of the governing body of the council:

- To provide a civic leadership role in guiding the development of the community strategic plan for the area and to be responsible for monitoring the implementation of the council's delivery program.
- To direct and control the affairs of the council in accordance with this Act.
- To participate in the optimum allocation of the council's resources for the benefit of the area.
- To play a key role in the creation and review of the council's policies and objectives and criteria relating to the exercise of the council's regulatory functions.
- To review the performance of the council and its delivery of services and the delivery program and revenue policies of the council.

5. *The role of a councillor as an elected person (s.232(2))*

The role of a councillor is, as an elected person:

- To represent the interests of the residents and ratepayers.
- To provide leadership and guidance to the community.
- To facilitate communication between the community and the council.

6. *The role of the general manager (s.335(1))*

The general manager is generally responsible for the efficient and effective operation of the council's organisation and for ensuring the implementation, without undue delay, of decisions of the council.

7. *The functions of the general manager (s.335(2))*

The general manager has the following particular functions:

- To assist the council in connection with the development and implementation of the community strategic plan and the council's resourcing strategy, delivery program and operational plan and the preparation of its annual report and state of the environment report.
- The day-to-day management of the council.
- To exercise such of the functions of the council as are delegated by the council to the general manager.
- To appoint staff in accordance with an organisation structure and resources approved by the council.
- To direct and dismiss staff.
- To implement the council's equal employment opportunity management plan.

8. *Other legislative function of the general manager (s.335(3))*

The general manager has such other functions as may be conferred or imposed on the general manager by or under this or any other Act.

## **ACCESS TO INFORMATION AND COUNCIL RECORDS:**

### **Councillor and Administrator Access to Information:**

The general manager and public officer are responsible for ensuring that members of the public, councillors and administrations can gain access to the documents available under the Government Information (Public Access) Act 2009.

The general manager must provide councillors and administrators with information sufficient to enable them to carry out their civic duties. This does not include details such as the warrant, vouchers, internal operational documents, staff and workers' compensation matters, etc. which are the domain of the general manager and senior staff.

Members of staff of Council must provide full and timely information to councillors and administrators sufficient to enable them to carry out their civic office functions and in accordance with council policy.

Members of staff of Council who provide any information to a particular councillor in the performance of their civic duties must also make it available to any other councillor who requests it and in accordance with Council policy.

Councillors and administrators who have a private, as distinct from civic, interest in a document of the Council have the same rights of access as any member of the public.

### **Councillor Requests for Information:**

Councillors and administrators are not to contact staff below the level of Director.

Requests for information should be made in writing addressed to the General Manager or email (and under normal circumstances) will be acknowledged on receipt and replied to within seven days. A copy of the response will be provided to all councillors as a matter of course.

Councillors must draft the request carefully and precisely detail the information, or the nature of the information sought. It is expected that councillor must act reasonably in making a request for information.

When dealing with a request by a Councillor for information, the general manager will act reasonably and as quickly as possible. Where appropriate, information will be provided by way of informal access in accordance with the GIPA Act 2009.

Where it is believed that significant resources will be required to respond to a request for information, the general manager will advise the Councillor and provide details of the estimates of time and/or costs that are likely to be incurred in providing the information. An indication will also be given of what other matters will not be attended to as a result of compiling the requested information.

### **Councillors & Administrators to properly examine and consider information:**

Councillors and administrators must properly examine and consider all the information provided to them relating to matters that they are dealing with to enable them to make a decision on the matter in accordance with Council's charter.

### **Refusal of access to documents:**

Where the general manager and public officer determine to refuse access to a document sought by a councillor or administrator they must act reasonably. In reaching this decision they must take into account whether or not the document sought is required by the councillor or administrator to perform their civic duty. The general manager or public officer must state the reasons for the decision if access is refused.

Councillors may then lodge a formal application for access to documents under the GIPA Act 2009 noting that an application fee is to be paid and a processing charge for dealing with an access application may be imposed.

Councillors who have been refused access to information under the GIPA Act 2009 have three options to have a decision reviewed:

- i) an internal review by the Review Officer;
- ii) an external review by the Information Commissioner;
- iii) an external review by the Administrative Decisions Tribunal.

### **NOTE:**

*It is not always possible to draw a clear line between the leadership and policy roles of a Councillor under section 232 of the Local Government Act 1993 and undertaking operational activities, which are the responsibility of staff. Councillors need to have an understanding of operational issues and access to accurate and timely information to make decisions required of them. The understanding can often only be obtained with the assistance of advice provided by staff through the general manager.*

### **Use of certain Council information:**

In regard to information obtained in your capacity as a Council official, you must:

- a) only access council information needed for council business;
- b) not use that council information for private purposes;
- c) not seek or obtain, either directly or indirectly, any financial benefit or other improper advantage for yourself, or any other person or body, from any information to which you have by virtue of your office or position with council;
- c) only release council information in accordance with established council policies and procedures and in compliance with relevant legislation.

### **Use and security of confidential information:**

You must maintain the integrity and security of confidential documents or information in your possession, or for which you are responsible.

In addition to your general obligations relating to the use of Council information, you must:

- a) protect confidential information;
- b) only release confidential information if you have authority to do so;
- c) only use confidential information for the purpose it is intended to be used;
- d) not use confidential information gained through your official position for the purpose of securing a private benefit for yourself or for any other person;
- e) not use confidential information with the intention to cause harm or detriment to your council or any other person or body;
- f) not disclose any information discussed during a confidential session of a council meeting.

### **Personal Information:**

*(Defined in the Privacy Legislation to mean information or an opinion about any individual whose identity is apparent or can reasonably be ascertained from the information or opinion).*

When dealing with personal information you must comply with:

- a) the Privacy and Personal Information Protection Act 1998;
- b) the Health Records and Information Privacy Act 2002;
- c) the Information Protection Principles and Health Privacy Principles;
- d) Council's Privacy Management Plan;
- e) the Privacy Code of Practice for Local Government.

### **INTERACTION BETWEEN COUNCILLORS AND COUNCIL STAFF:**

*PART 6 MODEL CODE OF CONDUCT FOR LOCAL COUNCILS IN NSW*

### **Obligations of Councillors and Administrators:**

Each Council is a body politic. The councillors or administrator/s are the governing body of Council. The governing body has the responsibility of directing and controlling the affairs of the Council in accordance with the Act and is responsible for policy determinations, for example, those relating to workforce policy.

Councillors or administrators must not:

- a) Direct council staff other than by giving appropriate direction to the General Manager in the performance of Council's functions by way of Council or Committee resolution, or by the Mayor or Administrator exercising their power under Section 226 of the Act (section352).

- b) In any public or private forum, direct or influence or attempt to direct or influence, a member of the staff or the council or a delegate of the council in the exercise of the functions of the member or delegate (Schedule 6A of the Act).
- c) Contact a member of the staff of the council on council related business unless in accordance with the policy and procedures governing the interaction of councillors and council staff that have been authorised by the Council and the general manager.
- d) Contact or issue instructions to any of council's contractors or tenderers, including council's legal advisers, unless by the Mayor or Administrator exercising their power under section 226 of the Act. This does not apply to council's external auditors or the Chair of Council's Audit Committee who may be provided with any information by individual councillors reasonably necessary for the external auditor or audit committee to effectively perform their functions.

### **Obligations of Staff:**

The general manager is responsible for the efficient and effective operation of the Council's organisation and for ensuring the implementation of the decisions of the Council without delay.

Members of staff of Council must:

- a) Give their attention to the business of council while on duty.
- b) Ensure that their work is carried out efficiently, economically and effectively.
- c) Carry out lawful directions given by any person having authority to give such directions.
- d) Give effect to the lawful decisions, policies and procedures of the council, whether or not the staff member agrees with or approves of them.
- e) Ensure that any participation in political activities outside the service of the Council does not conflict with the performance of their official duties.

### **Obligations during Meetings:**

You must act in accordance with Council's adopted Code of Meeting Practice and the Local Government (General) Regulation 2005 during Council and Committee meetings.

You must show respect to the Chair, other Council officials and any members of the public present during Council and Committee meetings or other formal proceedings of the council.

### **Inappropriate Interactions:**

You must not engage in any of the following inappropriate interactions:

- a) Councillors and administrators approaching staff and staff organisations to discuss individual or operational staff matters and not broader workforce policy issues.
- b) Council staff approaching councillors and administrators to discuss individual staff matters and not broader workforce policy issues.
- c) Council staff refusing to give information that is available to other councillors to a particular councillor.
- d) Councillors and administrators who have lodged a development application with Council, discussing the matter with Council staff in staff-only areas of the council.
- e) Councillors and administrators being overbearing or threatening to council staff.
- f) Councillors and administrators making personal attacks on council staff in a public forum.
- g) Councillors and administrators directing or pressuring council staff in the performance of their work or recommendations they should make.

- h) Council staff providing ad-hoc advice to councillors and administrators without recording or documenting the interaction as they would if the advice was provided to a member of the community.
- i) Council staff meeting with applicants or objectors alone AND outside office hours to discuss development applications or proposals.
- j) 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 or administrator, exercising their power under section 226 of the Act.

#### **ACCESS TO COUNCIL BUILDINGS:**

Councillors and administrators are entitled to have access to the Council Chamber; the Committee Room (subject to availability) and public areas of council's buildings during normal business hours and for meetings. Councillors and administrators needing access to these facilities at other times must obtain authority from the general manager.

Councillors and administrators must not enter staff-only areas of Council buildings without the approval of the general manager (or delegate) or as provided in the policy governing the interaction of councillors and council staff.

Councillors and administrators must ensure that when they are within a staff area they avoid giving rise to the appearance that they may improperly influence council staff decisions.

#### **Reporting breaches of the Code of Conduct:**

*PROCEDURES FOR THE ADMINISTRATION OF THE MODEL CODE OF CONDUCT FOR LOCAL COUNCILS IN NSW*

#### **When must a code of conduct complaint be made?**

A code of conduct complaint must be made within three months of the alleged conduct occurring or within three months of the complainant becoming aware of the alleged conduct.

A complaint made after three months may only be accepted if the general manager or, in the case of a complaint about the general manager, the Mayor, is satisfied that there are compelling grounds for the matter to be dealt with under the code of conduct.

All code of conduct complaints, other than those relating to the general manager, are to be made in writing to the general manager.

### **3. RELATED DOCUMENTS AND LEGISLATIVE PROVISIONS**

Local Government Act 1993  
Government Information (Public Access) Act 2009  
Privacy and Personal Information Protection Act 1998  
Health Records and Information Privacy Act 2002  
Information Protection Principles and Health Privacy Principles  
Council's Privacy Management Plan;  
Model Code of Practice for Local Government  
Code of Meeting Practice

**4. POLICY REVIEW**

This policy may be amended or revoked at any time and must be reviewed at least two (2) years since its adoption (or latest amendment).

**Policy Review History**

Date	Changes Made	Approved By
11 June 2014	Adopted by Council Minute No: 0912	Council Minute No #0912
11 June 2017	Reviewed	