

## Councillor access to staff and records

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<b>Linkage to Our Community Plan</b>	5 Our Leadership
<b>Objective</b>	5.1 We will have a strong, accountable and representative Government
<b>Strategy</b>	5.1.8 Undertake the civic duties of Council with the highest degree of ethics

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## 1. Purpose

This Policy will:-

- (a) provide clear communication channels to ensure the speedy provision of accurate information,
- (b) recognise the particular circumstances of Council,
- (c) require adequate training of staff and Councillors on the need for this Policy and its requirements,
- (d) provide appropriate sanctions for non-compliance, and
- (e) be reviewed periodically to monitor its effectiveness and compliance.

## 2. Background/legislative requirements

Chapters 9 and 11 of the Local Government Act, 1993 ('the Act') 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 entitlement of a Councillor to information is expressly included in the Code of Conduct. Part 7 provides guidance on the requirements of staff to provide information to Councillors. It states that Councillors must be provided with sufficient information to carry out their civic office functions.

The NSW Office of Local Government Guidelines for Appointment and Oversight of General Managers (July 2011) state that: *'The General Manager is also responsible for ensuring Councillors are provided with information and the advice they require in order to make informed decisions and to carry out their civic duties.'*

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

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

### ii. 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.

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

The role of the mayor is:-

- (a) to exercise, in cases of necessity, the Policy-making functions of the governing body of the Council between meetings of the Council (for example, urgent demolition orders, authority to financially assist the community by the allocation of resources during natural disasters, commencement of urgent legal action),
- (b) to exercise such other functions of the Council as the Council determines (eg, determining the appropriateness of holding a special event, approval of the General Manager's annual leave),

- (c) to preside at meetings of the Council, and
- (d) to carry out the civic and ceremonial functions of the mayoral office.

iv. 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:-

- (a) 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,
- (b) to direct and control the affairs of the Council in accordance with this Act (for example, input into preparation of Council's management plan, financial plan and organisational structure),
- (c) to participate in the optimum allocation of the Council's resources for the benefit of the area (for example, providing input into deciding priorities for construction and maintenance work),
- (d) 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 Councils' regulatory functions, and
- (e) to review the performance of the Council and its delivery of services, and the management plans and revenue policies of the Council.

v. The role of a Councillor as an elected person (s.232(2))

The role of a Councillor is, as an elected person:-

- (a) to represent the interests of the residents and ratepayers,
- (b) to provide leadership and guidance to the community, and
- (c) to facilitate communication between the community and the Council.

vi. 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.

vii. The functions of the General Manager (s.335(2))

The General Manager has the following particular functions:-

- (a) 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
- (b) to manage the Council on a day-to-day basis,
- (c) to exercise such of the functions of the Council as are delegated by the Council to the General Manager,
- (d) to appoint staff in accordance with the organisational structure and resources approved by the Council,
- (e) to direct and dismiss staff, and

- (e) to implement the Council's equal employment opportunity management plan.

viii. Access to Council records by Councillors

The Government Information (Public Access) Act 2009 (GIPA Act) promotes openness, accountability and transparency. It is designed to make Councils more proactive in providing information to the public. This includes Councillors. The procedures for dealing with GIPA Act applications will be followed should a Councillor have the need to resort to an informal or formal application under the Act.

The GIPA Act also includes provisions for members of the public to a general right of access to Council documents.

### 3. Policy statement

The objectives of this Policy are to:-

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

### 4. Procedures

- 4.1 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.
- 4.2 Councillors who have a personal (as distinct from civic) interest in a document of Council have the same right of access as any other person.
- 4.3 Councillors are entitled to have access to Council files, records or other documents in accordance with the GIPA Act.
- 4.4 Councillors can request such access either in writing or over the counter for access to a particular Council record.
- 4.5 Councillors are also entitled to have access to all documents relating to a matter currently before Council.
- 4.6 If Councillors wish to access any documents under 4.5 (which are not readily available as open access documents under GIPA Act), then they must direct their request in writing to the General Manager or the appropriate Director.
- 4.7 The General Manager or Director to whom the request is directed 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. They must state their reasons for the decision if they refuse access and must comply with the reporting provisions of the GIPA Act.

- 4.8 Councillors can also request access to documents of the Council by a Notice of Motion to Council.
- 4.9 Whenever access is sought by a Councillor to a document, the staff member to whom the request is made shall keep a record of the request (other than where the request is made for an open access document available to the public under the GIPA Act, or is made as an informal or formal request under the GIPA Act or by Notice of Motion). That request shall be registered in the corporate records system for that purpose.
- 4.10 All requests for access to documents, to which a member of the public would not be entitled, made under 4.5 shall be reported regularly to Council.
- 4.11 Under no circumstances may Councillors remove files or any other records of Council from Council premises.
- 4.12 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.

## **5. Interaction between Councillors and Council staff during meetings**

- 5.1 The interaction between Councillors and staff at Council meetings and committee meetings is regulated by:-
- (a) s.360 of the Act,
  - (b) cl. 249 of the Local Government (General) Regulation,
  - (c) Council's Code of Conduct and
  - (d) Council's Code of Meeting Practice.
- 5.2 Section 360 of the Act enables Council to make regulations in regard to the conduct of meetings, adopt a code of meeting practice and states that meetings must be conducted in accordance with the code of Meeting Practice.
- 5.3 Clause 249 of the Local Government (General) Regulation states:-
- '(1) A councillor:*
- (a) may, through the chairperson, put a question to another councillor, and*
  - (b) may, through the general manager, put a question to a council employee.*
- (2) However, a councillor or council employee to whom a question is put is entitled to be given reasonable notice of the question and, in particular, sufficient notice to enable reference to be made to other persons or to documents.*
- (3) The councillor must put every such question directly, succinctly and without argument.*
- (4) The chairperson must not permit discussion on any reply or refusal to reply to a question put to a councillor or council employee under this clause.'*

## **6. Interaction between Councillors and Council staff outside of meetings**

- 6.1 The General Manager is responsible to Council for the performance and direction of all staff and for the 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 a Director unless the request is for information available under the GIPA Act (refer clauses 8 and 4 above).
- 6.2 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.
- 6.3 Councillors must not request staff to undertake work for them or any other person, without the prior consent of the General Manager.
- 6.4 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.
- 6.5 Reference should also be made to the inappropriate interactions noted in clause 6.7 of Council's Code of Conduct.

## **7. Access to Council offices**

- 7.1 As elected members of Council, Councillors are entitled to have access to the Council chamber, Mayor's office, meeting rooms and public areas of the Council buildings.
- 7.2 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.
- 7.3 A Councillor has no rights to enter staff-only areas without the express authorisation of the General Manager or by resolution of Council.

## **Breaches of this Policy**

- 8 Reporting
  - 8.1 All occasions of a Councillor or staff member not complying with this Policy should be immediately reported to the General Manager (or to the Mayor if it involves the General Manager).
  - 8.2 Where the report relates to the conduct of a Councillor, the General Manager shall immediately report the matter to the Mayor and to the next Council meeting.
  - 8.3 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.
  - 8.4 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 Council.
  - 8.5 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 consider appropriate, but must involve discussion with the staff member and Councillor involved. The staff member



and/or Councillor must be made aware of the allegations against them and given a reasonable opportunity to respond to them.

- 8.6 The Council, or a Committee of all Councillors established for the purpose, must decide whether a matter reported to it under this Policy, reveals a breach. The Council may take any steps provided for in this Policy that it considers reasonable in the circumstances.

## **9. Sanctions**

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

- (a) require the Councillor to apologise to the person concerned,
- (b) request a formal apology,
- (c) counsel the Councillor,
- (d) reprimand the Councillor,
- (e) resolve to make its decision on the matter public,
- (f) pass a censure motion at a Council meeting,
- (g) make public disclosures of inappropriate conduct such as making the community aware of the breach through the media or the Annual Report),
- (h) refer the matter to an appropriate investigative body if the matter is serious, and/or
- (i) prosecute any breach of the law.

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

- (a) counselling the staff member,
- (b) instituting Council disciplinary proceedings,
- (c) dismissal, and/or
- (d) prosecution of any breach of the law.

## **10. Complaints**

Complaints about the operation of this Policy may be addressed to the NSW Ombudsman or to the Office of Local Government.