
Warringah Council Policy

Policy No. STR-PL 988

Councillor Access to Information and Interaction with Staff

Purpose of Policy

The purposes of this policy are to:

- Provide clear direction to staff regarding their obligation to assist Councillors and how Councillors can access Council records and interact with staff;
- 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; and
- Provide a clear and consistent framework for the reporting of, and appropriate application of sanctions for, breaches of this policy.

Policy Statement

1. Access to Information

Councillor and mayor access to information

- 1.1 The general manager must provide councillors and the mayor with information sufficient to enable them to carry out their civic office functions.
- 1.2 Members of staff of council must provide full and timely information to councillors and the mayor sufficient to enable them to carry out their civic office functions and in accordance with council procedures.
- 1.3 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 procedures.
- 1.4 Councillors and the mayor who have a private (as distinct from civic) interest in a document of council have the same rights of access as any member of the public.

Councillors and the mayor to properly examine and consider information

- 1.5 Councillors and the mayor 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

- 1.6 Where the general manager and public officer determine to refuse access to a document sought by a councillor or mayor they must act reasonably. In reaching this decision they must take into account whether or not the document sought is required for the councillor or mayor to perform their civic duty (see clause 10.2). The general manager or public officer must state the reasons for the decision if access is refused.

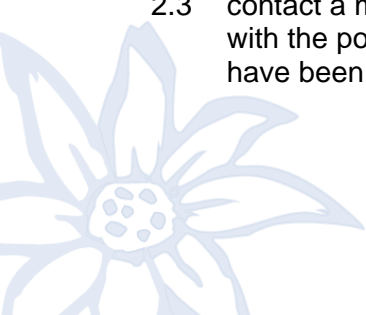
Use of certain council information

- 1.7 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
 - d) only release council information in accordance with established council policies and procedures and in compliance with relevant legislation
- 1.8 You must maintain the integrity and security of confidential documents or information in your possession, or for which you are responsible.
- 1.9 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.

2. Interaction Between Councillors and Council Staff

Councillors or the mayor must not:

- 2.1 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 mayor exercising their power under section 226 of the Act (*section 352*)
- 2.2 in any public or private forum, direct or influence or attempt to direct or influence, any other member of the staff of the council or a delegate of the council in the exercise of the functions of the member or delegate (*Schedule 6A of the Act*)
- 2.3 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



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- 2.4 contact or issue instructions to any of council's contractors or tenderers, including council's legal advisers, unless by the Mayor or mayor exercising their power under section 226 of the Act. This does not apply to council's external auditors who, in the course of their work, may be provided with information by individual councillors.

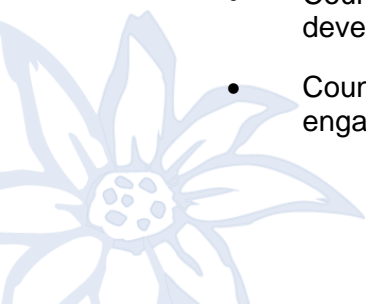
3. Councillor Access to Council Buildings

- 3.1 Councillors and the mayor are entitled to have access to the council chamber, committee room, mayor's office (subject to availability), councillor's rooms, and public areas of council's buildings during normal business hours and for meetings. Councillors and the mayor needing access to these facilities at other times must obtain authority from the general manager.
- 3.2 Councillors and the mayor must not enter staff-only areas of council buildings without the approval of the general manager, directors or managers. Councillors and the mayor 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.

4. Inappropriate interactions

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

- Councillors and the mayor approaching council staff other than directors or senior staff for information on sensitive or controversial matters.
- Councillors and the mayor approaching staff and staff organisations to discuss individual staff matters and not broader industrial policy issues.
- Council staff approaching councillors and the mayor to discuss individual staffing matters not broader industrial policy issues.
- Councillors approaching council staff outside the council building or outside hours of work to discuss council business.
- Council staff refusing to give information that is available to other councillors to a particular councillor.
- Councillors and the mayor who have lodged a development application with council, discussing the matter with council staff in staff-only areas of the council.
- Councillors and the mayor being overbearing or threatening to council staff.
- Councillors and the mayor making personal attacks on council staff in a public forum.
- Councillors and the mayor 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.

4.2 Information to help decide the appropriateness of contact between councillors and staff:

- Can I justify the need for the information or the approach to staff or councillor?
- Do I feel comfortable supplying the information or discussing this issue?
- Is it information that is publicly available, whether by statute or council policy?
- Is its release required to enable me to do my civic duty?
- How would a member of the public view my giving or receiving this information?
- Am I the right person to ask?
- Does council normally charge for this service?
- Am I entitled to the information under relevant legislation (for example, LGA, Freedom of Information Act)?

Contact should not be made where:

- It cannot be justified to members of the public.
- The information requested is not necessary for the performance of a councillor's role.
- It is known or should be known that the information should not be sought, nor expected to be provided.

5. Breaches , Complaint Handling and Sanctions

Breaches, complaint handling and sanctions relating to this policy will be in accordance with Sections 11-14 of Council's Code of Conduct.

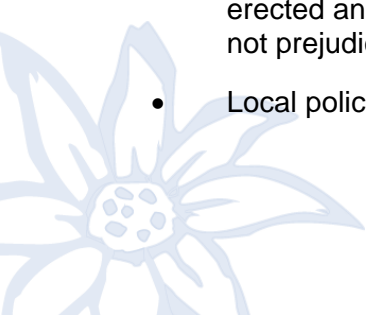


STATUTORY BASIS FOR ACCESS TO COUNCIL RECORDS BY COUNCILLORS

(refer Council's Code of Conduct: Section 9 Access to Information and Council Resources)

Section 12 (1), (1A) and (3) of the Local Government Act, 1993 provides that everyone is entitled to inspect, at the Council's offices during normal working hours, the current version of certain Council documents free of charge. These documents are:

- the model code prescribed under section 440(1) and the Council's adopted Code of Conduct;
- Council's Code of Meeting Practice;
- Annual Report;
- Annual Financial Reports;
- Auditor's Report;
- Management Plan;
- EEO Management Plan;
- Council's Land Register;
- Council's policy concerning the payment of expenses incurred by, and the provision of facilities to, Councillors;
- Register of Investments;
- Returns of the interests of Councillors, designated persons and delegates;
- Returns as to candidates' campaign donations;
- Agendas and business papers for Council and Committee meetings (but not including, business papers for matters considered when part of a meeting is closed to the public);
- Minutes of Council and Committee meetings, 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;
- any codes referred to in this Act;
- Register of delegations;
- Annual reports of bodies exercising delegated council functions;
- Applications under Part 1 of Chapter 7 of the Local Government Act 1993 for approval to erect a building, and associated documents, but in respect of the plans and specifications for any residential part of a proposed building, only those plans which show its height and its external configuration in relation to the site on which it is proposed to be erected and then, in respect of commercial information, only provided that information does not prejudice the commercial position of the person who supplied it or reveal a trade secret;
- Development applications (within the meaning of the Environmental Planning and Assessment Act 1979) and associated documents, but in respect of the plans and specifications for any residential part of a proposed building, only those plans which show its height and its external configuration in relation to the site on which it is proposed to be erected and then, in respect of commercial information, only provided that information does not prejudice the commercial position of the person who supplied it or reveal a trade secret;
- Local policies adopted by Council concerning approvals and orders;



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- Records of approvals granted, any variation from local policies with reasons for the variation and decisions made on appeals concerning approvals;
 - Records of building certificates under the Environmental Planning and Assessment Act 1979;
 - Plans of land proposed to be compulsorily acquired by the Council;
 - Leases and licenses for use of public land classified as community land;
 - 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 Council's area;
 - The Statement of Affairs, the Summary of Affairs and the register of policy documents required under the Freedom of Information Act 1989;
 - Departmental representatives' reports presented at a meeting of the Council according to s.433.
 - The register of graffiti removal work kept in accordance with Section 67C of the Local Government Act 1993.

Section 12 (2) and (5) of the Act provide that everyone is entitled to inspect any previous copies of the above documents, with Council being required to keep at least the previous year's document readily available.

Section 12 (6), (7) and (8) provide that, except for those documents which deal with:

- (a) personnel matters concerning particular individuals;
- (b) the personal hardship of any resident or ratepayer;
- (c) trade secrets; or
- (d) a matter the disclosure of which would:
 - (i) constitute an offence against an Act; or
 - (ii) found an action in breach of confidence;
- (e) that part of a draft or adopted plan of management that is the subject of a resolution of confidentiality under Section 36DA of the Local Government Act 1993;

and unless Council determines that it is contrary to the public interest, Council must allow inspection of its other documents free of charge.

Section 12A of the Act provides that if the general manager or any other member of Council's staff restricts access to a document from either the public or a councillor, a report must be presented to Council giving reasons for that restriction. These reasons must be publicly available. The Council must review the decision to restrict access no later than 3 months after it was imposed and if so requested by any person after the expiry of a period of 3 months after that review, carry out a further review of that restriction. The Council must remove that restriction if it finds no grounds for the restriction or if access is obtained under the Freedom of Information Act, 1989. A review is not required under this section if the restriction concerned has been removed.

Section 12B of the Local Government Act, 1993, provides for copies of documents to be made available either free of charge or upon payment of a fee. (Council's Access to Information Policy

sets out which documents will be provided free of charge and those for which a copy fee will be charged).

Sections 15(1) and 16(1) of the Freedom of Information Act 1989 also include provisions for members of the public to a general right of access to Council documents.

STATUTORY BASIS FOR COUNCILLOR AND STAFF INTERACTION

(refer Council's Code of Conduct: Section 8 Relationship between Council Officials)

To assist in understanding the relationship between Councillors and staff it is important to reflect on the various provisions of the Local Government Act that define the roles and responsibilities of each.

Chapters 9 and 11 of the Local Government 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 governing body (s.222)

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

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.

The role of the Mayor (s.226)

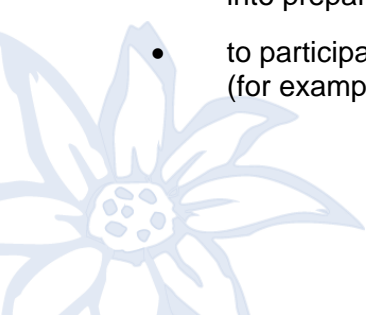
The role of the Mayor is:

- to exercise, in cases of necessity, the policy-making functions of the governing body of the council between meetings of the council (for example, urgent demolition orders, authority to financially assist the community by the allocation of resources during natural disasters, commencement of urgent legal action);
- to exercise such other functions of the council as the council determines (for example, determining the appropriateness of holding a special event such as a fun run, approval of the general manager's annual leave);
- to preside at meetings of the council; and
- to carry out the civic and ceremonial functions of the mayoral office.

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 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);
- 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);



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- 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; and
 - to review the performance of the council and its delivery of services, and the management plans and revenue policies of the council.

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; and
- to facilitate communication between the community and the council.

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.

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

The general manager has the following particular functions:

- to manage the council on a day-to-day basis;
- 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 organisational structure and resources approved by the council;
- to direct and dismiss staff; and to implement the council's equal employment opportunity management plan.

4. Amendments

This policy is due to for review on 9 September 2010.

5. Authorisation

This policy was adopted by Council on 9 September 2008.

6. Who is responsible for implementing this policy?

All staff

7. Document owner

General Manager.

