

10.9 Policy (Review) - Interaction Between Councillors and Staff.DOC

POLICY NAME: DRAFT REVIEW
**INTERACTION BETWEEN COUNCILLORS
AND STAFF**

POLICY REF: 102

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OBJECTIVES

The objectives of this policy are to:

- Provide direction on interaction between Councillors and council officers, to ensure both parties receive advice to help them in the performance of their civic roles in an orderly and regulated manner
- Provide guidelines on Councillor rights to access information, resources and premises in accordance with Council's Code of Conduct and other relevant policies and legislation
- Reference a clear and consistent framework through which breaches to this policy will be managed and reported in accordance with Council's Code of Conduct.

BACKGROUND

The Local Government Act (LGA) 1993 outlines the role of Councillors (s.232) and the Role of the General Manager (s.335).

There is a separation of responsibilities and accountabilities for both these roles under the LGA which has implications for the management of staff, access to information and access to Council premises for Councillors.

DEFINITIONS

- Group Manager** employee responsible for overseeing a range of sections within Council.
- Section Manager** employee who oversees the operations of a defined section within Council. Typically the section is a principal activity within Council's Delivery Program.

SCOPE OF POLICY

This Policy applies to:

- Councillors
- Council employees

RELATED DOCUMENTATION

As a minimum this Policy should be read in conjunction with:

- Local Government Act 1993
- Government Information (Public Access) Act 2009 (GIPA)
- Council's Code of Conduct
- Council's Code of Meeting Practice
- Privacy Management Plan
- Councillor Facilities and Expenses Policy
- DLG Model Code of Conduct and Guidelines (June 2008)
- DLG Promoting Better Practice Report - Ballina Shire Council (Oct 2008)
- DLG Councillor Guide (2008)

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Relevant legislation:

- Local Government Act 1993
- Government Information (Public Access) Act 2009 (GIPA)
- Local Government (General) Regulation 2005
- The Government Information (Public Access) Act 2009 (NSW) (GIPA)
- Privacy and Personal Information Protection Act 1998

POLICY

PART 1 INTERACTION BETWEEN COUNCIL OFFICIALS

1.1 Obligations of councillors

Each council is a body corporate. The councillors or administrator/s are the governing body of the 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 industrial relations policy.

Councillors or administrators must not:

- 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 (*section 352*)
- 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*)
- 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
- 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 who, in the course of their work, may be provided with information by individual councillors.

1.2 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:

- give their attention to the business of council while on duty
- ensure that their work is carried out efficiently, economically and effectively

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- carry out lawful directions given by any person having authority to give such directions
- give effect to the lawful decisions, policies, and procedures of the council, whether or not the staff member agrees with or approves of them.

1.3 During meetings

Respect must be shown 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. The interaction between Councillors and staff at Council meetings and committee meetings is regulated by:

- S.360 of the *Local Government Act*
- Cl.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* enables the 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.

Clause 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.

1.4 Outside of meetings

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 if approved by the General Manager, to the relevant Group or Section Manager.

Only Group Managers and Section Managers, nominated by either 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 Group or Section Manager, to put a request in writing, or to put it on notice to the Council to obtain detailed or otherwise time consuming information. Written requests then form part of Council records and can be filed appropriately.

For all straightforward advice on administrative matters, Councillors can contact the relevant Council officer, as would any member of the public.

A Group or Section Manager has the discretion to refer any request for information to the General Manager. The Group or Section Manager must indicate to the Councillor their reasons for the referral.

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1.5 **Inappropriate interactions**

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

- a) Councillors and administrators approaching staff and staff organisations to discuss individual staff matters and not broader industrial policy issues.
- b) Council staff approaching councillors and administrators to discuss individual staff matters and not broader industrial 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 developers 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.

- 1.6 It is appropriate that staff and staff organisations have discussions with councillors in relation to matters of industrial policy.

PART 2 ACCESS TO AND USE OF INFORMATION, RESOURCES AND PREMISES

2.1 **Rights of access to information**

Councillors have the same general right as members of the public to inspect and take away copies of records and documents and are subject to the same constraints.

The GIPA Act replaced section 12 of the LGA and the Freedom of Information Act 1989 from 1 July 2010. Schedule 1 to the Government Information (Public Access) Regulation 2009 incorporates the information that was previously contained under section 12 of the LGA. This information is open access information and is required to be provided by councils for public access on their websites.

The right to inspect a document under the *Local Government Act* includes the right to take away a copy of the document within certain limits.

2.2 Access to information

Councillors have a right to inspect any record of the Council provided that it is relevant to the exercising of their Councillor responsibilities in civic office and is not subject to privacy, confidentiality or legal restraint. This right does not extend to matters about which a Councillor is merely curious. The statutory role and duties of Mayor, Councillors and the General Manager are outlined in Sections 222, 223, 226, 232 and 335 of the *Local Government Act 1993*.

Each request will be treated on its merits but as a general rule those records immediately seen as relevant to the exercising of a Councillor's responsibility of civic office are:

- Matters before a Council meeting, either currently or within the current term of the Council; and/or
- Matters known by the General Manager to come before Council in the near future.

The completion of a formal access application form under the Government Information (Public Access) Act 2009 (GIPA) will be required for information concerning a third party(s), and may be required where a large amount of documentation or research will be required to satisfy the request.

When making a request for information, councillors should draft the request carefully and should precisely detail the information, or the nature of the information, sought. It is expected that councillors will act reasonably in making a request for information.

Councillors may also request access to other documents of the Council by a Notice of Motion to the Council.

When dealing with a request by a councillor for information, the general manager must act reasonably. Given that a councillor may need information to perform their public duty, if a request is to be denied, reasons for the refusal must be provided.

Where it is believed that significant resources will be required to respond to a request for information, the general manager should 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 should also be given of what other matters will not be able to be attended to as a result of compiling the requested information.

Councillors who have a personal or pecuniary interest in a document of Council have the same rights of access as any other person as stipulated by the Code of Conduct under the section 'Personal dealings with Council'.

There may be occasions where the release of personal information or information identifying a person would be contrary to the Privacy and Personal Information Protection Act 1998. The General Manager will act in accordance with the relevant law when providing information to councillors.

Councillors who have been refused access to information by the General Manager are also entitled to lodge a request under the GIPA Act, as a general member of the public, which will be assessed by Council's Records Section. The GIPA Act also provides three options to have a decision reviewed: an internal review by the agency (in this case, the council); an external review by the Information Commissioner; or external review by the Administrative Decisions Tribunal.

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2.3 Use of information by councillors

Reference should be made to Council's Code of Conduct which offers specific guidance to Councillors in dealing with information provided to them in the course of their civic duties.

It recognises that Councillors have a role both as a member of the governing body of the Council and as an elected person and importantly it recognises the difficulty for Councillors to reconcile the two areas of responsibility when dealing with Council information and documents. It notes that while it is desirable in the public interest to maintain open government, not all information available to Councillors is available to members of the public. Councillors are made privy to information of a confidential nature the disclosure of which is specifically prohibited in certain circumstances.

The right of Councillors to have access to records is for the purpose of exercising the office of Councillor. It does not carry with it the right to disclose any information obtained by a Councillor to another person, unless it is already in the public domain. A Councillor has no authority to release documents on behalf of Council.

The Mayor shall not cause the by-passing of the general access provisions by providing to another Councillor information made available through the Mayoral role.

Councillors shall not cause the by-passing of GIPA Act provisions by providing to a member of the public information made available to Councillors as an elected representative.

The General Manager will provide further guidance and assistance to Councillors in determining whether a document is confidential and/or not to be released.

2.4 Use of council resources

Access to and use of Council Resources is determined by Council's Councillors Expenses and Facilities Policy. As this policy is aligned with Council's Code of Conduct use of Council resources is outlined in the Code.

2.5 Access to council premises

Councillors, as elected members of the Council, are entitled to have access to the Council Chamber, Committee Room, Mayor's Office, Councillors' rooms and public areas of 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 the right to enter staff-only areas with the express authorisation of the General Manager, a Group Manager, or by resolution of Council.

This section should be read in conjunction with Council's Code of Conduct.

PART 3 REPORTING BREACHES

All occasions of a Councillor and Council officer not complying with this policy should be immediately reported to the General Manager.

As this policy is aligned with Council's Code of Conduct, breaches of this policy will be handled in accordance with the Code.

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REVIEW

This policy shall be reviewed at least every four years to ensure that it meets the relevant legislation and Codes of Conduct.