



**DUBBO REGIONAL
COUNCIL**

Policy for the Provision of Information to and Interaction Between Councillors and Staff

October 2017



COUNCIL POLICY

POLICY FOR THE PROVISION OF INFORMATION TO AND INTERACTION BETWEEN COUNCILLORS AND STAFF

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POLICY

PURPOSE

Based on the provisions in the Local Government Act 1993, Councillors and staff have distinctly different roles to play in 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 and the Local Government Act, for applications for development consent and local 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.

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 guidelines that help Councillors and staff to understand fully their respective roles and how they should operate, in order to perform their job effectively.

Formalising procedures to specify how these rights should be exercised should be done without trying to restrict a Councillor's legal right to access staff and information. This policy is not intended to limit any statutory and common law rights Councillors have to access information. However, Councillors should avoid any perceptions of wrongdoing when exercising their rights as an elected representative, particularly the appearance of trying to improperly influence staff.

This policy will:

- provide clear communication channels to ensure the speedy provision of accurate information;
- recognise the particular circumstances of the Council;
- require adequate training of staff and Councillors (as part of the induction process for Councillors and staff) on the need for the policy and its requirements;
- provide appropriate sanctions for non-compliance; and
- be reviewed as required to monitor its effectiveness and compliance.

BACKGROUND AND RELATED LEGISLATION

Chapters 9 and 11 of the Local Government Act 1993 set out the statutory roles and duties of Councillors and the General Manager. Chapter 9 includes the following provisions.

1. *Who Comprise the governing body? (section 222)*

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

2. *Role of the governing body (section 223)*

(1) The role of the governing body is as follows:

(a) to direct and control the affairs of the council in accordance with this Act,

- (b) to provide effective civic leadership to the local community,
 - (c) to ensure as far as possible the financial sustainability of the council,
 - (d) to ensure as far as possible that the council acts in accordance with the principles set out in Chapter 3 and the plans, programs, strategies and policies of the council,
 - (e) to develop and endorse the community strategic plan, delivery program and other strategic plans, programs, strategies and policies of the council,
 - (f) to determine and adopt a rating and revenue policy and operational plans that support the optimal allocation of the council's resources to implement the strategic plans (including the community strategic plan) of the council and for the benefit of the local area,
 - (g) to keep under review the performance of the council, including service delivery,
 - (h) to make decisions necessary for the proper exercise of the council's regulatory functions,
 - (i) to determine the process for appointment of the general manager by the council and to monitor the general manager's performance,
 - (j) to determine the senior staff positions within the organisation structure of the council,
 - (k) to consult regularly with community organisations and other key stakeholders and keep them informed of the council's decisions and activities,
 - (l) to be responsible for ensuring that the council acts honestly, efficiently and appropriately.
- (2) The governing body is to consult with the General Manager in directing and controlling the affairs of the council.

3. *Role of the Mayor (section 226)*

The role of the Mayor is as follows:

- (a) to be the leader of the Council and a leader in the local community,
- (b) to advance community cohesion and promote civic awareness,
- (c) to be the principal member and spokesperson of the governing body, including representing the views of the council as to its local priorities,
- (d) to exercise, in cases of necessity, the policy-making functions of the governing body of the Council between meetings of the Council,
- (e) to preside at meetings of the Council,
- (f) to ensure that meetings of the Council are conducted efficiently, effectively and in accordance with this Act,
- (g) to ensure the timely development and adoption of the strategic plans, programs and policies of the Council,

- (h) to promote the effective and consistent implementation of the strategic plans, programs and policies of the Council,
- (i) to promote partnerships between the Council and key stakeholders,
- (j) to advise, consult with and provide strategic direction to the General Manager in relation to the implementation of the strategic plans and policies of the Council,
- (k) in conjunction with the General Manager, to ensure adequate opportunities and mechanisms for engagement between the Council and the local community,
- (l) to carry out the civic and ceremonial functions of the Mayoral office,
- (m) to represent the Council on regional organisations and at inter-governmental forums at regional, State and Commonwealth level,
- (n) in consultation with the Councillors, to lead performance appraisals of the General Manager,
- (o) to exercise any other functions of the Council that the Council determines.

4. *The role of a Councillor (section 232)*

The role of a Councillor is:

(1) The role of a Councillor is as follows:

- (a) to be an active and contributing member of the governing body,
- (b) to make considered and well informed decisions as a member of the governing body,
- (c) to participate in the development of the integrated planning and reporting framework,
- (d) to represent the collective interests of residents, ratepayers and the local community,
- (e) to facilitate communication between the local community and the governing body,
- (f) to uphold and represent accurately the policies and decisions of the governing body,
- (g) to make all reasonable efforts to acquire and maintain the skills necessary to perform the role of a councillor.

(2) A councillor is accountable to the local community for the performance of the council.

5. *Functions of general manager (section 335)*

The general manager of a Council has the following functions:

- (a) to conduct the day-to-day management of the council in accordance with the strategic plans, programs, strategies and policies of the council,
- (b) to implement, without undue delay, lawful decisions of the council,

- (c) to advise the mayor and the governing body on the development and implementation of the strategic plans, programs, strategies and policies of the council,
- (d) to advise the mayor and the governing body on the appropriate form of community consultation on the strategic plans, programs, strategies and policies of the council and other matters related to the council,
- (e) to prepare, in consultation with the mayor and the governing body, the council's community strategic plan, community engagement strategy, resourcing strategy, delivery program, operational plan and annual report,
- (f) to ensure that the mayor and other councillors are given timely information and advice and the administrative and professional support necessary to effectively discharge their functions,
- (g) to exercise any of the functions of the council that are delegated by the council to the general manager,
- (h) to appoint staff in accordance with the organisation structure determined under this Chapter and the resources approved by the council,
- (i) to direct and dismiss staff,
- (j) to implement the council's workforce management strategy,
- (k) any other functions that are conferred or imposed on the general manager by or under this or any other Act.

SCOPE

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; and
- provide a clear and consistent framework for the reporting of, and appropriate application of sanctions for, breaches of this policy.

POLICY

INAPPROPRIATE INTERACTIONS

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

- (a) Councillors approaching staff and staff organisations to discuss individual staff matters and not broader industrial policy issues.
- (b) Council staff approaching councillors 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 who have lodged a development application with Council, discussing the matter with Council staff in staff-only areas of the Council.
- (e) Councillors being overbearing or threatening to Council staff.
- (f) Councillors making personal attacks on Council staff in a public forum.
- (g) Councillors 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 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, exercising their power under section 226 of the Act.

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

ACCESS TO INFORMATION AND COUNCIL RECORDS

Councillor access to information

- The General Manager and Public Officer (Director Corporate Services) are responsible for ensuring that members of the public and councillors can gain access to the documents available under GIPA Regulation Part 2.
- The General Manager must provide councillors with information that is reasonably necessary for exercising the functions of their civic office including their role in exercising community leadership, communicating Council policy and decisions to the community and representing the views of residents and ratepayers to Council.

Councillor requests for information

- This policy states that Councillors are not to contact staff below the level of Branch Manager.
- Requests for information must be in writing addressed to the General Manager (and under normal circumstances) will be replied to within 14 days.
- Councillors must draft the request carefully and precisely detail the information, or the nature of the information, sought. It is expected that Councillors 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. Where appropriate, information will be provided by way of informal access in accordance with the GIPA 2009. 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 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 able to be attended to as a result of compiling the requested information.
- Councillors may then lodge a formal application for access to documents under GIPA 2009 noting that an application fee is to be paid and additionally a processing charge for dealing with an access application may be imposed.
- Councillors who have been refused access to information are entitled to lodge a request under the GIPA Act. The GIPA Act 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.

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 LGA 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.

- Members of staff of council must provide full and timely information to councillors sufficient to enable them to carry out their civic office functions and in accordance with council procedures.
- 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.
- Councillors 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; that is, requests for information may be made under the GIPA Act.

Councillors to properly examine and consider information

Councillors 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.

Use of certain Council information

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

- only access Council information needed for Council business
- not use that Council information for private purposes
- 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
- 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 Council information, you must:
 - protect confidential information
 - only release confidential information if you have authority to do so
 - only use confidential information for the purpose it is intended to be used
 - not use confidential information gained through your official position for the purpose of securing a private benefit for yourself or for any other person
 - not use confidential information with the intention to cause harm or detriment to your council or any other person or body
 - not disclose any information discussed during a confidential session of a Council meeting

Personal information

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

Obligations of Councillors

- Each Council is a body corporate. The Councillors 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 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 exercising their power under section 226 of the Act (section 352)
 - (b) 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)
 - (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 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.

Obligations of staff

- The General Manager has the following functions (Section 335)
 - (a) to conduct the day-to-day management of the council in accordance with the strategic plans, programs, strategies and policies of the council,
 - (b) to implement, without undue delay, lawful decisions of the council,
 - (c) to advise the mayor and the governing body on the development and implementation of the strategic plans, programs, strategies and policies of the council,
 - (d) to advise the mayor and the governing body on the appropriate form of community consultation on the strategic plans, programs, strategies and policies of the council and other matters related to the council,

- (e) to prepare, in consultation with the mayor and the governing body, the council's community strategic plan, community engagement strategy, resourcing strategy, delivery program, operational plan and annual report,
 - (f) to ensure that the mayor and other councillors are given timely information and advice and the administrative and professional support necessary to effectively discharge their functions,
 - (g) to exercise any of the functions of the council that are delegated by the council to the general manager,
 - (h) to appoint staff in accordance with the organisation structure determined under this Chapter and the resources approved by the council,
 - (i) to direct and dismiss staff,
 - (j) to implement the council's workforce management strategy,
 - (k) any other functions that are conferred or imposed on the general manager by or under this or any other Act.
- 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) give effect to the lawful decisions, policies and procedures of the Council, whether or not the staff member agrees with or approves of them.

Obligations during meetings

- You must act in accordance with Council's Code of Meeting Practice, the Local Government Act 1993 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.

ACCESS TO COUNCIL OFFICES

- Councillors are entitled to have access to the Council chamber, Mayor's Office and Mayor's Conference Room (subject to availability), Councillors' Rooms and public areas of Council's buildings during normal business hours and for meetings. Councillors needing access to these facilities at other times must obtain authority from the General Manager.
- Councillors must not enter staff-only areas of Council buildings without the approval of the General Manager (or delegate) or as provided in the procedures governing the interaction of Councillors and Council staff.
- Councillors 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.

BREACHES OF THIS POLICY

- Any person, whether or not a Council official, may make a complaint alleging a breach of the Code of Conduct with regard to Inappropriate Interactions as specified in 6.7 of the Model Code of Conduct.
- For the purposes of Chapter 14, Part 1, Division 3 of the Act, failure by a Councillor to comply with an applicable requirements of this policy constitutes misbehaviour. (section 440F).

Protected disclosures

- The Public Interest Disclosures Act 1994 aims to encourage and facilitate the disclosure, in the public interest, of corrupt conduct, maladministration and serious and substantial waste in the public sector.
- The purpose that Act is to ensure that public officials who wish to make disclosures under the legislation receive protection from reprisals, and that matters raised in the disclosures are properly investigated.
- If a complaint under this Policy is or could be a protected disclosure, you must ensure that in dealing with the complaint, you comply with the confidentiality provisions of Council's Public Interest Disclosures policy or the Public Interest Disclosures Act as set out in section 22 as below:

"An investigating authority or public authority (or officer of an investigating authority or public authority) or public official to whom a protected disclosure is made or referred is not to disclose information that might identify or tend to identify a person who has made the protected disclosure unless:

- (a) the person consents in writing to the disclosure of that information, or*
- (b) it is essential, having regard to the principles of natural justice, that the identifying information be disclosed to a person whom the information provided by the disclosure may concern, or*
- (c) the investigating authority, public authority, officer or public official is of the opinion that disclosure of the identifying information is necessary to investigate the matter effectively or it is otherwise in the public interest to do so."*

Reporting breaches of the Code of Conduct

- You should report suspected breaches of this Policy by Councillors, members of staff of Council (excluding the General Manager) or delegates to the General Manager in writing.
- Where you believe that the General Manager has breached this Policy, you should report the matter to the Mayor in writing.
- Where you believe that the Mayor has breached the Code of Conduct you should report the matter to the Minister for Local Government in writing.
- Councillors should not make allegations of suspected breaches of the Code at Council meetings or in other public forums.

RESPONSIBILITIES

The Manager Governance and Risk is responsible for this policy.