

COUNCIL POLICY



Councillors' Access to Information & Interaction with Staff Policy

Commencement Date	24 February 2020
Council Department	General Managers Office
Contact Officer	General Manager
Revision Required	Every 4 years

Policy Review

This policy shall be reviewed at four (4) yearly intervals at least, to ensure it meets all statutory requirements and the needs of council. It may also be reviewed at other times as determined by council.

Revision History

Version	Council Meeting Date	Resolution No.	Responsible Officer
1	27 November 2006	373/06	General Manager
2	24 February 2020	26/2020	General Manager

Cowra Shire Council
Private Bag 342
Cowra NSW 2794

Phone: 02 6340 2000
Email: council@cowra.nsw.gov.au
Internet: www.cowracouncil.com.au

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1. Objectives

The objectives of this Policy are to:

1. Provide a documented process on how Councillors can access Council information and how Councillors and staff should interact,
2. Ensure Councillors have access to all information necessary for them to exercise their statutory role as a member of the governing body of the Council,
3. Ensure that Councillors receive advice to help them in the performance of their civic duty in an orderly and regulated manner,
4. Provide direction on Councillor's rights to access to Council buildings.

2. Aims

The *Local Government Act* provides distinctly different roles for Councillors and Council staff.

The *Local Government Act* requires that councillors as a group direct and control the Council's affairs, allocate resources, determine policy, and monitor its performance. As individuals, councillors also communicate Council policy and decisions to the community, exercise community leadership and represent the views of residents and ratepayers to Council. A Councillor's role extends beyond attendance at formal meetings of Council.

The *Local Government Act* makes it clear that the General Manager is responsible for the day to day operations of the Council.

Councillors have a right to access Council information that is reasonably necessary for exercising the functions of civic office, including those roles outlined above which extend beyond decision making at formal meetings. However, this is counterbalanced by the obligation to use this information appropriately and to maintain the integrity and security of confidential information.

The aim of the Policy is to promote a positive working relationship between Councillors as the elected people of the community and the staff employed to administer the operations of Council.

The Policy will help Councillors and staff understand their respective roles and how they should operate, in order to perform their role effectively. The Policy does not restrict Councillors' legal rights to access staff information and does not limit any statutory and common law rights Councillors have to access information.

3. Councillors Access to Information

Councillors' rights to access information include the statutory provisions of Council's Code of Conduct, the Government Information (Public Access) Act and the policy provisions contained within this Policy.

Code of Conduct provisions

Councillor access to information and the use of information is contained in Part 8 of the Code of Conduct for Councillors, which provides:

Councillor and administrator access to information

- The general manager is responsible for ensuring that councillors and administrators can access information necessary for the performance of their official functions. The general manager and public officer are also responsible for ensuring that members of the public can access publicly available council information under the *Government Information (Public Access) Act 2009* (the GIPA Act). (clause 8.1)
- The general manager must provide councillors and administrators with the information necessary to effectively discharge their official functions. (clause 8.2)
- Members of staff of council must provide full and timely information to councillors and administrators sufficient to enable them to exercise their official functions and in accordance with council procedures. (clause 8.3)
- Members of staff of council who provide any information to a particular councillor in the performance of their official functions must also make it available to any other councillor who requests it and in accordance with council procedures. (clause 8.4)
- Councillors and administrators who have a private interest only in council information have the same rights of access as any member of the public. (clause 8.5)

Refusal of access to documents

- Where the general manager or public officer determine to refuse access to information requested by a councillor or administrator, they must act reasonably. In reaching this decision they must take into account whether or not the information requested is necessary for the councillor or administrator to perform their official functions (see clause 8.2) and whether they have disclosed a conflict of interest in the matter the information relates to that would preclude their participation in consideration of the matter (see clause 8.6). The general manager or public officer must state the reasons for the decision if access is refused. (see clause 8.8)

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 access by virtue of your office with council
- d) Only release council information in accordance with established council policies and procedures and in compliance with relevant legislation. (clause 8.9)

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. (clause 8.10)
- In addition to your general obligations relating to the use of council information, you must:
 - a) Only access confidential information that you have been authorised to access and only do so for the purposes of exercising your official functions
 - b) Protect confidential information
 - c) Only release confidential information if you have authority to do so
 - d) Only use confidential information for the purpose for which it is intended to be used
 - e) Not use confidential information gained through your official position for the purpose of securing a private benefit for yourself or for any other person
 - f) Not use confidential information with the intention to cause harm or detriment to the council or any other person or body
 - g) Not disclose any confidential information discussed during a confidential session of a council or committee meeting or any other confidential forum (such as, but not limited to, workshops or briefing sessions). (clause 8.11)

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 (clause 8.12)

Government Information (Public Access) Act provisions

Section 6 requires Council to provide access to certain information (open access information) free of charge to all members of the public. This information is available on Council's website or, where Council has not been able to include the information on Council's website, by request.

Section 7 allows Council to provide access to other information unless there is an overriding public interest against disclosure of the information. For example, 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*.

Council Policy provisions

Councillor access to information is to be provided in accordance with this policy to ensure that access to information is obtained in ways that are legal and appropriate.

The following Policy applies for Councillors requesting access to information:

- Councillors can request the General Manager, Public Officer, Directors or other staff members nominated by the General Manager to provide access to a particular Council record.
- Councillors can request access to information relating to a matter on a meeting agenda from the General Manager, Director, Manager or other staff member responsible for the meeting report.
- Identified staff will expediently arrange for access to the requested documents. Any recommendation to deny access will be referred to the General Manager.
- Councillors who have a personal (as distinct from civic) interest in the information of Council only has the same rights to access as any other person.
- Councillors are entitled to access to all Council information identified in the *Government Information (Public Access) Act* as open access information.
- Councillors must not release health information about a third party except in accordance with the provisions of the *Health Records and Information Privacy Act*.

4. Councillor and Staff Interaction

Councillors rights to access and their responsibilities for interaction with Council staff includes the statutory provisions of Council's Code of Conduct, the Local Government Act and the policy provisions contained within this Policy.

Code of Conduct provisions

Councillor interactions with staff are contained in Part 7 of the Code of Conduct for Councillors, which provides:

Obligations of Councillors and Administrators

Each council is a body politic. The councillors or administrator/s are the governing body of the council. Under section 223 of the LGA, the role of the governing body of the council includes the development and endorsement of the strategic plans, programs, strategies and policies of the council, including those relating to workforce policy, and to keep the performance of the council under review. (clause 7.1)

Councillors or administrators must not:

- a) Direct council staff other than by giving appropriate direction to the general manager by way of council or committee resolution, or by the mayor or administrator exercising their functions under section 226 of the LGA
- 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 staff member or delegate
- 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 the council's contractors, including the council's legal advisers, unless by the mayor or administrator exercising their functions under section 226 of the LGA. (clause 7.2)

Obligations of staff

Under section 335 of the LGA, the role of the general manager includes conducting the day-to-day management of the council in accordance with the strategic plans, programs, strategies and policies of the council, implementing without undue delay, lawful decisions of the council and ensuring that the mayor and other councillors are given timely information and advice and the administrative and professional support necessary to effectively discharge their official functions. (clause 7.4)

Members of staff of council must:

- a) Give their attention to the business of the council while on duty
- b) Ensure that their work is carried out ethically, efficiently, economically and effectively
- c) Carry out reasonable and 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 interfere with the performance of their official duties. (clause 7.5)

Obligations during meetings

You must comply with rulings by the chair at council and committee meetings or other proceedings of the council unless a motion dissenting from the ruling is passed. (clause 3.19)

You must not engage in bullying behaviour (as defined under this Part) towards the chair, other council officials or any members of the public present during council or committee meetings or other proceedings of the council (such as, but not limited to, workshops and briefing sessions). (clause 3.20)

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 (other than matters relating to broader workforce policy), grievances, workplace investigations and disciplinary matters
- b. Council staff approaching councillors and administrators to discuss individual or operational staff matters (other than matters relating to broader workforce policy), grievances, workplace investigations and disciplinary matters
- c. Subject to clause 8.6, council staff refusing to give information that is available to other councillors to a particular councillor
- d. Councillors and administrators who have lodged an application with the council, discussing the matter with council staff in staff-only areas of the council
- e. Councillors and administrators approaching members of local planning panels or discussing any application that is either before the panel or that will come before the panel at some future time, except during a panel meeting where the application forms part of the agenda and the councillor has a right to be heard by the panel at the meeting
- f. Councillors and administrators being overbearing or threatening to council staff
- g. Council staff being overbearing or threatening to councillors or administrators
- h. Councillors and administrators making personal attacks on council staff or engaging in conduct towards staff that would be contrary to the general conduct provisions in Part 3 of this code in public forums including social media
- i. Councillors and administrators directing or pressuring council staff in the performance of their work, or recommendations they should make
- j. 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
- k. Councillors attending on-site inspection meetings with lawyers and/or consultants engaged by the council associated with current or proposed legal proceedings unless permitted to do so by the council's general manager or, in the case of the mayor or administrator, unless they are exercising their functions under section 226 of the LGA. (clause 7.6)

5. Councillor Access to Council buildings

Councillors rights to access Council buildings includes the statutory provisions of Council's Code of Conduct and the policy provisions contained within this Policy.

Code of Conduct provisions

Councillor access to Council buildings is contained to Part 8 of the Code of Conduct, which provides:

Councillor access to council buildings

Councillors and administrators are entitled to have access to the council chamber, committee room, mayor's office (subject to availability and approval by the mayor), councillors' rooms, 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. (clause 8.24)

Councillors and administrators must not enter staff-only areas of council buildings without the approval of the general manager (or their delegate) or as provided for in the procedures governing the interaction of councillors and council staff. (clause 8.25)

Councillors and administrators must ensure that when they are within a staff only area they refrain from conduct that could be perceived to improperly influence council staff decisions. (clause 8.26)

6. Reporting Breaches of the Policy

All occasions of a Councillor or staff member not complying with this Policy should be immediately reported to the General Manager. Reports relating to the General Manager should be made to the Mayor. Where the report, other than a report relating to a breach of the Code of Conduct, relates to the conduct of a Councillor, the General Manager shall immediately report the matter to the Mayor. Where the report, other than a report relating to a breach of the Code of Conduct, relates to the conduct of a member of staff, the General Manager shall deal with the matter according to the terms and conditions of employment of the staff member.

If the report relates to a breach of the Code of Conduct provisions, the matter is to be dealt with under the *Procedures for the Administration of the Model Code of Conduct for Local Councils in NSW*.