

Ku-ring-gai Council

Councillor Access to Information and Interaction with Staff Policy

1. Purpose

Under the provisions in the *Local Government Act 1993* (the Act), Councillors and staff have distinctly different roles to play in Council. The Council is responsible for the strategic direction, for determining the policy framework of Council and for allocating the resources. The Council also has a statutory role as the consent authority, under both the *Environmental Planning & Assessment Act 1979* and the *Local Government Act 1993*, 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 accessing 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 aims to help both parties understand clearly their role and how best to serve the organisation.

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Version	Effective date	Summary of changes			
1.0	2 June 1998	Original			
2.0	29 August 2007	Legislative update, minor review			
2.1	29 April 2009	Update after revised Code of Conduct adopted Min 33 OMC 24 Feb 2009			
2.2	9 August 2012	Legislative update (GIPA Act), minor review			

The intention of this policy is to:

- provide clear communication channels to ensure the speedy provision of accurate information
- recognise the particular circumstances of Ku-ring-gai Council
- involve adequate training of staff and Councillors on the need for the policy and its requirements
- provide appropriate sanctions for non-compliance
- be reviewed regularly to monitor its effectiveness and compliance.

This policy should be read in conjunction with Council's *Code of Conduct*, particularly section 9 (Relationship between Council Officials) and section 10 (Access to Information and Council Resources).

In this Policy the term "Councillor" also includes an Administrator and a Planning Panel member should such positions exist.

2. Objectives

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' access to Council buildings
- provide a clear and consistent framework for the reporting of, and appropriate application of sanctions for, breaches of this policy.

3. Approved Contact Positions and Inappropriate Interactions

Council recognises the importance of having a strong professional working relationship between the Councillors and the senior staff. Council acknowledges that Councillors need to have contact with certain staff on matters before the Council.

The positions that Councillors may have contact with for information and advice on matters before the Council are referred to in this Policy as *approved contact positions*. A list of approved contact positions is set out in **Attachment A**. The General Manager may provide Councillors with an updated list from time to time.

The list identifies the position title and the name of the incumbent as at the date stated. Where the incumbent in a position subsequently changes Councillors may have contact with the replacement incumbent as well as anyone who temporarily relieves in that position. Contact with staff in approved contact positions is deemed appropriate in accordance with this Policy unless otherwise directed by the Mayor or Council.

Advice, as distinct from basic information, cannot be obtained from other staff because, although it may be given in good faith, it could be incomplete, not given in its proper context or explained in a way that could be misleading.

Councillors may have contact with the Mayor's or Councillor's Personal Assistants for the purpose of receiving secretarial support as approved in the *Policy for the Payment of Expenses and Provision of Facilities to Councillors* or as otherwise approved by the Council or the General Manager.

Councillors may also have contact with:

- the Personal Assistants of the General Manager and the Directors for matters of a simple routine nature, such as seeking basic information, to leave a message or confirm attendance at a function
- staff of the information technology help desk for assistance with Council owned computers
- other staff where it is necessary as part of a routine administrative process of the Council.

However, the following interactions are deemed inappropriate (see clauses 9.7 and 9.8 *Code of Conduct*):

- (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 or administrator, 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.

Where staff are uncertain about speaking to or assisting a Councillor no action should be taken without first obtaining the approval of the relevant Director.

4. Legislation for Councillors and staff

Chapters 9 and 11 of 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 governing body (section 222)

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

The role of the governing body (section 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 (section 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 (e.g. 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 (e.g. determining the appropriateness of holding a special event such as a fun run)
- to preside at meetings of the Council
- to carry out the civic and ceremonial functions of the mayoral office.

The role of a Councillor as a member of the governing body (section 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 (e.g. 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 (e.g. input into deciding priorities for construction and maintenance work, etc)
- 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
- 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 (section 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
- to facilitate communication between the community and the Council.

The role of the General Manager (section 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 (section 335 (2), (3))

The General Manager has the following particular functions:

- the day-to-day management of the Council
- 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 organisation structure and resources approved by the Council
- to direct and dismiss staff
- to implement the Council's equal employment opportunity management plan.

The General Manager has such other functions as may be conferred or imposed on the General Manager by or under this or any other Act.

5. Access to Council Records by Councillors

Statutory Provisions

Schedule 1 to the Government Information (Public Access) Regulation 2009 provides that the Council must provide access to certain Council information free of charge to all members of the public. This information is open access information and is

required to be provided by Councils for public access on their websites.

Procedures

The following procedures apply to the access of Council records by Councillors:

- 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
- Councillors can request the General Manager to provide access to a particular Council record
- Councillors who have a personal (as distinct from civic) interest in a document of Council have the same rights of access as any other person
- Councillors are entitled to access to all Council files, records or other documents where that document is identified as open access information under the GIPA Act or to a matter currently before the Council
- the General Manager 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. The General Manager must state his/her reasons for the decision if they refuse access
- Councillors can request access to other documents of the Council either by a Notice of Motion to the Council or a GIPA application
- the General Manager shall keep a record of all requests by Councillors for access to information

If any Councillor requests a transcript or audio recording of Council's consideration of an item recorded in a Meeting, the request shall be made in writing to the General Manager within seven (7) days of the meeting setting out the reasons for the request. Any request for a transcript or audio recording of a debate at a meeting shall be complied with after the full cost of producing same has been met by the Councillor requesting the transcript or recording. Councillors are permitted to listen to the audio recording of the debate of a meeting, free of charge and access can be organised with a request to the Councillor's Personal Assistant.

Staff shall take all reasonable steps to ensure that the information upon which decisions or actions are based is factually correct and that all relevant information has been obtained.

Reasonableness and volume of requests for information

Council recognises the rights of every Councillor to access information, as set out in this Policy, in carrying out their role as a Councillor as set out in the Act.

While providing access to records and information for Councillors is an integral part of the staff organisation role within the responsibility of the General Manager, the balance between the volume and reasonableness of requests for information by individual councillors must be weighed against the amount of staff resources and associated costs of providing large volumes of information or in carrying out procedural reviews for individual Councillors. This also applies to repetition and duplication of the request.

Where there are issues regarding the volume, duplication and reasonableness of requests for information by individual Councillors, the General Manager shall have responsibility for determining if the information can be supplied, after assessing the impact the request will have on staff resources and other Council work. If the requests are deemed by the General Manager to breach the principles of reasonableness, or impact significantly on staff resources, then the General Manager should report the matter to the Council for determination. Options for alternative provision of information, such as verbal responses instead of typed lengthy responses, may be proposed by the General Manager.

6. Interaction between Councillors and Council staff

During meetings

The interaction between Councillors and staff at Council meetings and Committee meetings is regulated by:

- section 360 of the Act
- clause 249 of the *Local Government (General) Regulation* (the Regulation)
- Council's *Code of Conduct* and Council's *Code of Meeting Practice*.

Section 360 of the Act provides for Council to adopt a *Code of Meeting Practice* and states that meetings must be conducted in accordance with the Code.

Clause 249 of the Regulation 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.

Outside of meetings

Section 352 of the Act states that a member of staff is not subject to direction by the Council or by a Councillor as to the content of any advice or recommendation made by the Councillor. This does not prevent the Council or the Mayor from directing the

General Manager to provide advice or a recommendation.

The Regulation (clause 249) makes provision for a Councillor to obtain information at a Council meeting, or by a Question on Notice at a Council meeting. This process can also be extended to include Committee meetings if it is incorporated in Council's Code of Meeting Practice.

While the Regulation sets out the formal means for Councillors to obtain information, this policy sets out procedures designed to facilitate Councillors seeking information from staff according to the following guidelines:

- Councillors and staff must comply with this policy
- the General Manager is responsible to the Council for the performance and direction of all staff and day-to-day management of Council. Therefore, it is appropriate that all requests for information and advice outside of the forum of a Council or Committee meeting be directed to the staff in approved contact positions or as otherwise permitted by this Policy. Directors may also nominate a delegate staff member on a specific project
- for all but straightforward information and advice on administrative matters, Councillors should put their requests for information or advice in writing to be answered by the General Manager or the appropriate senior officer. These written requests then form part of Council records and can be filed appropriately
- if a Councillor is concerned about any refusal to provide information, they should firstly raise the matter with the General Manager or the Mayor (if it was the General Manager who refused to provide the advice). If the Councillor is still dissatisfied they should request the information by way of a Question on Notice to the Council
- 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
- Councillors must not request staff to undertake work for the Councillor or any other person
- Councillors 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 themselves, or any other person or body, from any information made available by virtue of the office of Councillor and only release Council information in accordance with established Council policies and procedures and in compliance with relevant legislation (see clause 10.8 *Code of Conduct*)
- contact and behaviour of staff and Councillors must be in accordance with Council's *Code of Conduct*.

7. Access to Council Offices

As elected members of the Council, Councillors are entitled to have access to the Council chamber, committee room, Councillors' rooms and public areas of the

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 no rights to enter staff-only areas without the express authorisation of the General Manager or a Director.

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.

8. Implementation

The implementation of this policy is the responsibility of the Council and the General Manager.

Councillors will be given initial/refresher training in this policy during induction.

9. Breaches of this Policy

For this policy to be effective and meaningful, appropriate reporting of breaches and appropriate sanctions need to be established and consistently applied. All parties need to have confidence that the policy will be complied with and breaches will be dealt with appropriately. Any cases of clear breaches of the policy that are not dealt with appropriately will erode confidence in the ability of the Council to deal with complaints and reduce the efficiency of the Council.

For Councillors and staff, the policy is linked with Council's Code of Conduct and breaches dealt with accordingly. Breaches that involve a failure to comply with this policy will be dealt with in accordance with complaints handling procedures contained in the Code of Conduct.

All occasions of a Councillor or staff member not complying with this policy should be immediately reported to the General Manager.

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.

Where a Councillor believes that the General Manager has failed to provide information to Councillors in accordance with the policy, the Councillor shall immediately report to the Mayor.

10. Associated Documents

Codes and Policies

Code of Conduct

Code of Meeting Practice

Conflict of Interests Policy

Policy for the Payment of Expenses and Provision of Facilities to Councillors

Internal Reporting Policy – Protected Disclosures

External References

Division of Local Government, Circular to Councils 10-30, Councillors Access to Information, dated 2 December 2010

Division of Local Government, Guidelines for the Model Code of Conduct for Local Councils in NSW, October 2008

Independent Commission Against Corruption, Under Careful Consideration: Key Issues for Local Government, March 1997

ATTACHMENT A

List of Approved Contact Positions	
Department and Position Title	Incumbent at 09/08/2012
CIVIC MANAGEMENT	
General Manager	John McKee
Corporate Lawyer	Jamie Taylor
Internal Ombudsman	Michael Langereis
COMMUNITY	
Director Community	Janice Bevan
Manager Communications	Tiffany Kellar
Manager Community and Recreation Property	Mark Taylor
Manager Community Development	Danny Houseas
Manager Customer Service	Mary Gillies
Manager Leisure and Cultural Development	Juan Perez
Media Relations Manager	Eric Aubert
CORPORATE	
Director Corporate	Rocky Naickar
Manager Finance	Tino Caltabiano
Manager Graphical Information Systems	Gary Lebens
Manager Human Resources and HR Systems	Bernice Pitt
Manager Information Technology	John Giovinazzo
Manager Purchasing and Insurance	Vacant
Manager Records and Governance	Matt Ryan
DEVELOPMENT AND REGULATION	
Director Development and Regulation	Michael Miocic
Manager Compliance and Regulation	Anne Seaton
Team Leader Compliance	Thomas Cooper
Manager Development Assessment Services	Corrie Swanepoel
Team Leader Development Assessment Team Central	Richard Kinninmont
Team Leader Development Assessment Team North	Selwyn Segall
Team Leader Development Assessment Team South	Shaun Garland
Team Leader Development Engineers	Kathy Hawken
Team Leader Landscape Assessment	Ian Francis
Heritage Advisor	Paul Dignam
OPERATIONS	
Director Operations	Greg Piconi
Manager Engineering Services	Ian Taylor
Manager Open Space Projects	David Morris
Manager Open Space Services	Matt Drago
Manager Traffic and Transport	George Koolik
Manager Waste, Drainage and Cleansing Services	Colin Wright
STRATEGY	
Director Strategy	Andrew Watson
Manager Integrated Planning, Property and Assets	Deborah Silva
Manager Environment and Sustainability	Marnie Kikken
Manager Urban and Heritage Planning	Antony Fabbro