

Kyogle Council

Provision of Information to and Interaction between Councillors and Staff Policy



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1 VALIDITY

This policy derives its validity from Council Resolution No: CO/1019/13.

2 INTRODUCTION

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.

There is often a need for personal interaction between Councillors and senior officers, particularly regarding access to and provision of information, to effectively integrate policymaking and service delivery. This has created the need for guidelines that help Councillors and staff to understand 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 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.

3 AIMS

The policy is designed to provide clear guidelines that help Councillors and employees to understand fully their respective roles and how they should operate, in order to perform their jobs effectively and maintain a respectful and harmonious relationship.

The Policy will:

- Provide a clear definition of the respective roles of elected members and Council employees;
- Provide clear communication channels to ensure the timely provision of accurate information;
- 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;

4 APPROPRIATE INTERACTIONS

Clause 335 of the Local Government Act 1993 describes the functions of the General Manager including giving direction to staff.

The General Manager authorises the following staff interactions;

- Contact between Councillors and Directors/Manager Corporate Services for matters specific to that Director's area of responsibility.
- Contact with the Executive Assistant to the General Manager for administrative and secretarial assistance.
- Contact with Customer Services staff for all regular service requests and enquiries.
- Contact with other specific staff is appropriate as part of a Councillor's role on an Advisory Committee, at Council events or meetings, and similar situations.
- Apart from the instances above, all communication with Councillors is to be made via the General Manager.

5 INAPPROPRIATE INTERACTIONS

Clause 7.2 of the Code of Conduct states that, 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 LGAb) 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

The following are some examples of inappropriate contact:

- Councillors approaching junior members of staff for information.
- Unauthorised members of staff approaching Councillors directly, on any area of Council business. Councillors approaching staff outside the Council building or outside hours of work to discuss Council business;

- Staff refusing to give information which is available to other Councillors to a particular Councillor because of the staff member's or Councillor's political views;
- Councillors who have a Development Application (DA) before Council discussing the matter with junior staff in staff-only areas of the Council;
- Councillors directing or pressuring staff in the performance of their work on recommendations they should make; and
- Staff providing advice to Councillors without recording or documenting the interaction as they would if the advice was provided to a member of the community.

6 STATUTORY PROVISIONS FOR COUNCILLORS AND STAFF

Chapters 9 and 11 of the Local Government Act set out the statutory roles and duties of Councillors and the General Manager. The introduction of 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);
- To preside at meetings of the council;
- To carry out the civic and ceremonial functions of the Mayoral Office.

232 The role of a councillor

(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.

335 Functions of general manager

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.

7 ACCESS TO RECORDS BY COUNCILLORS

The General Manager and the Public Officer are responsible for ensuring that members of the public, Councillors and administrators can gain access to documents under the Government Information (Public Access) Act 2009.

Where the General Manager and/or the Public Officer determine to refuse access to a document or information sought by a Councillor, they must act reasonably. In reaching this decision they must take into account whether or not the document sought is required for the Councillor to perform his or her civic duty. The General Manager or the Public Officer must state to the Councillor the reasons for the decision if access is refused.

Councillors can appeal the decision for refusal by contacting either the NSW Information Commissioner on 1800 194 210 and/or the Administrative Decisions Tribunal on 9223 4677. It should be noted that the Government Information (Public Access) Act only allows appeal to these bodies if an initial Formal Access to Information Application has been made and a Request for Review of determination sought.

Councillors are required to treat all information provided by staff appropriately and to adhere to any confidentiality requirements. If a Councillor is unsure whether a document or advice is confidential they should contact the relevant Director or Councillor HelpDesk for clarification prior to releasing the information.

Where possible, staff will clearly identify information which is confidential to assist Councillors in the appropriate handling of such information.

7.1 Procedures

This policy does not limit or restrict statutory or common law rights of access.

Councillors can request the General Manager, the Public Officer (Manager Corporate Services) or a person nominated by 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 member of the public.

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 their 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 Government Information Public Access application.

The General Manager, Public Officer or a person identified by the General Manager, shall keep a record of all requests by Councillors for access to information.

8 INTERACTION BETWEEN COUNCILLORS AND COUNCIL STAFF

8.1 During Meetings

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

S.360 of the Local Government Act;
Part 10 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 a code of meeting practice and state that meetings must be conducted in accordance with the Code of Meeting Practice.

Clause 9.16 of the Code of Meeting Practice details how Councillors may put a question to staff through the General Manager, as follows;

A councillor may, through the general manager, put a question to a council employee about a matter on the agenda. Council employees are only obliged to answer a question put to them through the general manager at the direction of the general manager.

Code of Meeting Practice also provides the following detail on Councillor Staff interactions;

9.17 A councillor or council employee to whom a question is put is entitled to be given reasonable notice of the question and, in particular, sufficient notice to enable reference to be made to other persons or to documents. Where a councillor or council employee to whom a question is put is unable to respond to the question at

the meeting at which it is put, they may take it on notice and report the response to the next meeting of the council.

9.18 *Councillors must put questions directly, succinctly, respectfully and without argument.*

9.19 *The chairperson must not permit discussion on any reply to, or refusal to reply to, a question put to a councillor or council employee.*

8.2 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 persons nominated by the General Manager.

It is within the decision of the General Manager to require Councillors to make an appointment with a senior officer, to put a request in writing, or to put it on notice to the Council to obtain information. The General Manager must indicate in writing, the reasons for refusing a request.

For all but straightforward advice on administrative matters, Councillors should put their request 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. A senior officer has the discretion to refer any request for information to the General Manager. The senior officer must indicate their reasons for the referral.

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.

A councillor, member of staff or delegate must not take advantage of their official position to improperly influence other Councillors, members of staff or delegates in the performance of their public or professional duties for the purpose of securing private benefit for themselves or for some other person.

9 ACCESS TO COUNCIL OFFICES

As elected members of the Council, Councillors are entitled to have access to the Council Chamber, Committee Room, Mayor's Office, 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 his/her nominee or by resolution of the Council.

10 Reporting

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 a Councillor, the General Manager shall immediately report the matter to the Mayor and to the next Council meeting as a confidential report.

All reports must be dealt with under Council's Code of Conduct, in accordance with the Provisions for the Administration of the Code of Conduct.

11 Related Policies and Legislation

- Code of Conduct
- Code of Meeting Practice
- Government Information Public Access Act 2009