

ITEM 12

POLICY REVIEW: COUNCILLOR ACCESS TO COUNCIL INFORMATION AND STAFF - POST EXHIBITION

This report presents a summary of submissions received on the Draft revised Access to Council Information and Staff by Councillors policy.

RECOMMENDATION

1. Council note the report on the revised Councillor Access to Council Information and Staff policy – post exhibition, and the submission made to the draft;
2. The revised Councillor Access to Council Information and Staff be adopted.

REPORT AUTHORISATIONS

Report of: Clare Phelan, Manager Governance and Information (Acting)

Authorised by: Kylee Cowgill, Director Corporate Services - Connected and Engaged City (Acting)

ATTACHMENTS

- 1 Draft Councillor Access to Council Information and Staff policy

BACKGROUND

The Councillor Access to Council Information and Staff policy incorporates the provisions of the Codes of Conduct relating to the level of access to information and staff that is appropriate for councillors. This policy sits within the suite of supporting policies to the Codes of Conduct.

Council at its meeting on 29 May 2017 resolved to place the Councillors Access to Council Information and Staff policy on public exhibition, inviting submissions from the public.

The exhibition of the draft policy was delayed as Council was in receipt of advice from a Councillor that they intended to lodge a rescission motion against the resolution. No rescission motion was forthcoming and the policy was subsequently placed on exhibition from 18 July 2017 until 28 August.

One submission was received during the engagement period.

Summary of submission received

Issue	Response
Page 1 Background – add the word “ stakeholders ” in the second paragraph, to read: <i>“This policy establishes procedures by which Councillors may access Council information and staff in order to undertake their statutory roles to provide effective civic leadership and to represent the collective interests of residents, ratepayers, the local community <u>and stakeholders</u>.”</i>	No impact Council may choose to add the additional wording to this sentence, without impact on the policy. Its inclusion is not considered to either add to or take away from the background information.
Page 1 Objective – add the words “ and as a representative of the electorate ” to the second point of the objectives to read <i>“ensure Councillors have access to all information necessary for them to exercise their statutory role as a member of the governing body of Council <u>and as a representative of the electorate</u>”</i>	Not supported Section 232 (1)(a), (1)(d) and (1)(e) of the Local Government Act 1993 outlines the Statutory role of a councillor to include a requirement to be an active and contributing member of the governing body, to represent the collective interests of residents, ratepayers and the local community.

Issue	Response
	This statutory function does not include reference to representation of an electorate.
<p>Page 1 Policy Statement – to remove the word “relevant” and add words “related to the topic” to the policy statement to read <i>“This policy aims to provide Councillors with all <u>relevant</u> information <u>related to the topic</u> ...”</i></p>	<p>Not supported</p> <p>The policy provision is to ensure Councillors receive all relevant information required on a matter. The requirement to provide all information would be overly burdensome on both Councillors and staff. A large amount of information is not relevant to the decision making process for councillors. The General Manager remains responsible for ensuring that councillors receive all relevant information on a matter and if there is a query in relation to the level of information provided, Councillors have a means of addressing that through appropriate processes.</p>
<p>Insert in appropriate place within in the Policy</p> <p><i><u>“Councillors have the right and responsibility to take information on proposed subject matter arising from staff to the community for iterative and interactive workshops prior to such subject matter being recommended to full Council.”</u></i></p>	<p>Not supported</p> <p>Councillors must act in accordance with the requirements of the Codes of Conduct and comply with policy in relation to the use of Council information.</p>
<p>Insert in appropriate place within in the Policy</p> <p><i><u>“Staff will provide to Councillors economic analyses of projects and or pending / proposed ideas that demonstrate the optimal allocation has occurred”</u></i></p>	<p>Not supported</p> <p>This inclusion is outside the objective of the policy to ensure Councillors have access to information required to exercise their statutory role. Council already has robust long term planning processes in place that consider the merit of various projects and initiatives from a variety of perspectives – strategic alignment, community interest, risk management, social benefit, and financial impact</p>
<p>Insert in appropriate place within in the Policy</p> <p><i><u>“Council staff are to provide resources and sufficient time for Councillors to elicit, process community, resident, ratepayer and stakeholder interests and to present publicly to Council”</u></i></p>	<p>Not supported</p> <p>This inclusion is outside the objective of the policy to ensure Councillors have access to information required to exercise their statutory role. In relation to engagement activities, Council has an Engagement policy that addresses this, that the current Council will have opportunity to review.</p>
<p>Insert in appropriate place within in the Policy</p> <p><i><u>“(General Manager) will advise the mayor and governing body of modern and innovative methodologies relating to eliciting group and community preferences through iterative and interactive preference sharing that generates an</u></i></p>	<p>Not supported</p> <p>The purpose of this inclusion appears to relate to community consultation, which is best addressed in the Engagement policy, which will be coming to council in the new year.</p>

Issue	Response
<u>informed understanding of costs, benefits and outcomes”</u>	
Submission disagrees with statutory provisions to protect business interests and believes there is an overwhelming public interest in disclosure regarding ‘Business Interests’.	Not supported Council must comply with relevant statutory obligations including the Government Information (Public Access) Act 2009.
Insert in appropriate place within in the Policy <u>“Any Councillor and or staff member has the right and protection to disclose concerns of bias or favourable treatment toward a business interest, with evidence, directly to an independent authority charged with investigatory powers and enforcement”.</u>	Not supported Where staff or councillors believe there is a conflict of interest that has not been identified appropriately by a delegated authority, they are able to raise those concerns through the provisions of the Codes of Conduct. Where there is belief the behaviour is fraudulent or corrupt, public officials may have protections under the Public Interests Disclosure Act 1994. The relevant policy for Council is the Internal Reporting policy.
Submission recommends replacing 2.2(d) in the draft policy with the clause <u>“A Councillor may access all information from the Public Officer relating to a particular investigation, topic or project that will assist in ensuring an effective outcome delivery.”</u>	Not supported The current policy provision allows for information on the impact of the request or the number of requests for information from a councillor, to assist with prioritisation and gives a better understanding of the cost of the request. The Councillor may believe the request is of significant importance or, where the information is not essential, may amend the request to include only specific information. It is appropriate that this inclusion remains and it does not deny a Councillor access to information that is necessary undertake their role.
Insert in appropriate place within in the Policy <u>“Council Briefings shall:</u> <i>i Honour all Councillors the right of prior notice of subject matter;</i> <i>ii Honour all Councillors the right of adequate time for discussion;</i> <i>iii Be conducted with correct meeting procedures that include minutes of the discussions;</i> <i>iv Have outcomes, including alternate views (considerations) included in the Business Paper that goes to Full and Open Council;</i> <i>v Therefore ensuring ethical standards,</i>	Not supported Councillor briefings and workshops are conducted in a manner appropriate to their purpose. They are an opportunity for councillors to receive information from staff on matters of significance to, or that are coming before Council, and ask questions or seek additional information, that might not otherwise be made public. Councillor briefings and workshops are not Council or Committee of Council meetings, are facilitated by staff and are not decision making forums. Agendas are distributed prior to the briefing date and are published on Council's website.

Issue	Response
<u>integrity of process, objectivity and transparency toward the subject matters presented.</u>	

PROPOSAL

This report recommends that Council adopt the revised Councillor Access to Council Information and Staff policy.

CONSULTATION AND COMMUNICATION

The Councillor Access to council Information and Staff policy was placed on public exhibition from 18 July 2017 until 28 August 2017 with submissions invited from the public.

PLANNING AND POLICY IMPACT

This report contributes to the delivery of Wollongong 2022 goal “We are a connected and engaged community”.

It specifically delivers on core business activities as detailed in the Governance and Administration Service Plan 2017-18.

CONCLUSION

The Councillor Access to Council Information and Staff policy has been reviewed, and the draft placed out on public exhibition. Submissions have been carefully considered. It is recommended Council note the submission, and adopt the revised Councillor Access to Council Information and Staff Policy.



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ADOPTED BY COUNCIL: [TO BE COMPLETED BY CORP SUPPORT]

BACKGROUND

Council's Code of Conduct for Councillors provides that Councillors (defined to include the Lord Mayor) have a right to access information held by Council that is reasonably necessary for them to exercise their functions of civic office.

This policy establishes procedures by which Councillors may access Council information and staff in order to undertake their statutory roles to provide effective civic leadership and to represent the collective interests of residents, ratepayers and the local community.

OBJECTIVE

The main objectives of this policy are to:

- provide a documented process for Councillors to access Council information,
- ensure Councillors have access to all information necessary for them to exercise their statutory role as a member of the governing body of Council,
- ensure that Councillors receive advice in an orderly manner to assist them in the performance of their civic duty,
- provide clarity on Councillors' rights of access to staff and to Council buildings,
- provide a clear and consistent framework, by reference to the relevant Code of Conduct and Procedure for the Administration of the Codes of Conduct, for the reporting of, and appropriate application of sanctions for, breaches of this policy.

POLICY STATEMENT

This policy aims to provide Councillors with all relevant information and an appropriate level of access to the staff of Council in order to exercise the functions of civic office and to facilitate informed decision making.

POLICY REVIEW AND VARIATION

- 1 Council is to have opportunity to review and adopt, at least once during its Term, each Council policy.
- 2 A resolution of Council is required to adopt any variations to this policy, with the exception of minor administrative changes, such as updates to legislative references, which may be endorsed by the Executive Management Committee (EMC). Endorsement of administrative changes made to this policy by EMC does not alter the requirement for it to be reviewed and adopted by each Term of Council.

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STATEMENT OF PROCEDURES

1 STATUTORY PROVISIONS FOR COUNCILLORS AND STAFF

The Local Government Act 1993 (the Act) provides that:

- Councillors (including the Lord Mayor) as a group comprise the governing body of the Council and the role of the governing body is set out in section 223(1) 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.

Section 223(2) of the Act states:

The governing body is to consult with the general manager in directing and controlling the affairs of the council.
- ~~to direct and control the affairs of the Council including the allocation of resources, determination of policy and monitoring of the Council's performance;~~
- As an individual, a Councillor's role is set out in section 232(1) 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.

Section 232(2) of the Act states:

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

~~to represent the interests of residents and ratepayers, provide leadership and guidance to the community and facilitate communication between the community and Council;~~
- The General Manager's functions are set out in section 335 as follows:

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- (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.*

~~is responsible for the efficient and effective operation of the Council's organisation and the day-to-day management of the Council. The General Manager is also required to assist the Council in the development of the community strategic plan, resourcing strategy, delivery program and operational plan; and~~

- The Public Officer is responsible for assisting people to gain access to public documents of the Council. The Public Officer is to be the contact person for Councillors who wish to access information to enable them to make informed decisions and to exercise the functions of civic office.

2 ACCESS TO COUNCIL INFORMATION BY COUNCILLORS

2.1 Statutory Provisions

- a The Government Information (Public Access) Act 2009 (the GIPA Act) provides a list of documents, prescribed as "open access information", which are required to be made available on Council's website and to be made available for public access, free of charge. These documents include Council's Codes of Conduct, Annual Report, register of delegations, development applications and leases of public land classified as community land.
- b The GIPA Act, however, provides that there is an overriding public interest against public disclosure of a range of documents and information as set out in the Act under the following broad headings: Responsible and Effective Government, Law Enforcement and Security, Individual Rights, Judicial Processes and Natural Justice, Business Interests of Agencies and Other Persons, Environment, Culture, Economy and General Matters, and Secrecy Provisions.
- c The NSW Office of the Information Commissioner has advised the Office of Local Government that it is expected that General Managers (and Public Officers) will act in accordance with relevant law when providing information to Councillors.

2.2 Procedure for Councillors to Access Council Information

- a Councillors wishing to access Council information, other than "open access information" as prescribed in the GIPA Act, must make application to the Public Officer by completing Council's online "Councillor Request" available through the Councillor Portal or via email to admin@wollongong.nsw.gov.au. The Councillor Request should be drafted carefully and should

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precisely detail the information being sought. It is expected that Councillors will act reasonably in making Requests.

- b Councillor Requests relating to the exercise of a Councillor's functions of civic office will be processed as soon as possible and a response (or an interim response in the case of a complex Request) will be provided in accordance with the following guidelines:
 - i same day response – information is easily accessible and no reference/investigation is required. Examples are:
 - copy of a Council document eg Development Consent,
 - request for basic information relating to an Agenda Item on the day of a Council meeting.
 - ii one (1) to five (5) working day response – information is on hand but needs to be processed for release. Examples are:
 - copy of submissions to an exhibited Development Application – documents are electronic and extra time required to extract and redact information where appropriate,
 - request containing a number of questions which may relate to more than one Division and where responses need to be collated into a single reply.
 - iii within 10 working days – investigation and research is required in order to provide the requested information. Examples are:
 - a comprehensive summary including Court Consent Orders for Planning Appeals,
 - copies of numerous Occupation Certificates where the files are stored offsite.

Where this investigation and research is extensive and/or complex and the 10 working day timeframe cannot be met, the Councillor lodging the request will be notified within five (5) working days and provided with an indication of when the information may be forthcoming.
- c If the Request relates to a Councillor's interest, other than civic, the Request must be made pursuant to the GIPA Act, the form for which is available on Council's website and will be processed in accordance with the timeframes set out in the Public Access to Council Documents and Information Policy.
- d Where it is believed that significant resources will be required to respond to a Councillor Request, or the number of Requests being submitted by a Councillor, the Public Officer will consider the time and/or costs that are likely to be incurred in providing the requested information and make a determination on granting access. An indication will also be given as to any other matters that will not be attended to as a result of compiling the requested information.
- e The Public Officer will maintain a Register of Councillor Requests. This Register can be found on the Request for Information and Service link on the Councillor Portal and enables a Councillor to identify a request from another Councillor and request a copy.
- f The following reports will be provided to Councillors via the Councillor Portal on a monthly basis:
 - i active Councillor requests,
 - ii completed Councillor requests for the previous three months.

2.3 Right of Review

The Public Officer must act reasonably in considering a Request and, if a Councillor's Request is refused, reasons for the refusal must be provided. In the event that a Request is refused the Councillor may either:

- a raise the matter with the General Manager and refer to the Code of Conduct which states that the General Manager must ensure Councillors are provided with information sufficient to enable them to carry out their civic office functions and
 - i if the General Manager determines the Public Officer acted reasonably in the decision to refuse access to the Council information sought by a Councillor, a Councillor may lodge a formal application under the GIPA Act,
 - ii if a Councillor considers that there has been a breach of this policy by the General Manager he/she may lodge a complaint with the Office of Local Government or

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- b make a formal application under the GIPA Act which will be processed in accordance with that Act and
 - i if there is a refusal of access under the Government Information (Public Access) Act 2009 (GIPA Act) a Councillor may ask for an internal review or an external review by the Information Commissioner. For more information see www.ipc.nsw.gov.au.
 - ii to report a Government Information Contravention (i.e. a failure to properly fulfil functions under the GIPA Act), Councillors should refer to the Internal Reporting Policy which states that:
 - i) Reports against staff may be made to the General Manager,
 - ii) Reports against the General Manager may be made to the Lord Mayor,
 - iii) Any report of a Government Information Contravention may be made to the Information Commissioner.

3 INTERACTION BETWEEN COUNCILLORS AND COUNCIL STAFF

3.1 During Meetings

- a The Local Government (General) Regulation 2005 provides that a Councillor may, through the Chairperson, put a question to another Councillor and, may through the General Manager, put a question to Council staff.
- b A Councillor or 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 documents.
- c A Councillor must put every question directly, succinctly and without argument.
- d The Chairperson must not permit discussion on any reply or refusal to reply to a question put to a Councillor or Council staff.

The General Manager or Council staff should use their best endeavours to provide answers to questions in a timely manner. It is not appropriate for the General Manager, Councillors or staff to ask the Council to determine whether the questions asked by individual Councillors should or should not be answered. It is also important that questions do not result in substantial new work or require the development of a new policy as part of the answer.

3.2 Outside of Meetings

- a Councillors may contact a Divisional Manager, Director or the General Manager to discuss, or to make arrangements to meet to discuss, Council services or projects.
- b Councillors must not make direct contact with Divisional staff without the approval of the General Manager, Director or Divisional Manager and where such approval has been granted must not direct or pressure staff in the performance of their work. Staff must immediately report all breaches to their Divisional Manager, Director or General Manager.
- c Councillors must not request staff to undertake work for the Councillor or for any other person with the exception of work of a clerical nature directly related to the performance of their civic duties. Such a request must be made to the Public Officer.
- d Councillors 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.

3.3 Councillor Briefings

- a Councillor briefing sessions are conducted to fully inform Councillors of matters of significance or complexity that are to be the subject of a staff report at a future meeting of Council or are of particular current interest to Council.
- b Councillor briefing sessions are not subject to specific provisions of the Act, the Regulation or Council's Code of Meeting Practice.

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- c The Office of Local Government in its Meetings Practice Note for Councils states that councils may hold briefing sessions under their general powers and such sessions are to be informal and to provide useful background information to Councillors.*
- d Councillor briefing sessions are not to be used for detailed discussions where agreement is reached or a de-facto decision is made and such discussions, exchanges of views and decisions are to be left to the open forum of a council meeting.*
- e Councillor briefing sessions are a means to enable Councillors to bring an informed mind to the appropriate decision-making forum.*
- f On occasion, confidential matters will be presented at Councillor Briefings and this will be noted in the presentation and accompanying documentation. Councillors and staff must maintain the integrity and security of confidential documents or information distributed or discussed at Councillor Briefings, in accordance with the Codes of Conduct and supporting policies*

3.4 Councillor Information Notes

Matters of general interest to Councillors may be the subject of an Information Note to Councillors from staff and are added to the monthly Information Folder via the Councillors' Portal. If an Information Note is marked confidential, Councillors and staff must maintain the integrity and security of confidential information in accordance with the Codes of Conduct and supporting policies.

4 ACCESS TO COUNCIL OFFICES AND BUILDINGS

- a As elected members of the Council, Councillors are entitled to have access to the Council Chamber, Level 10 Committee Rooms, Level 9 Function Room (Council briefings and official functions), Lord Mayor's Office (if available) and Councillors' Room in the Council Administration Building.
- b Councillors whilst 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.
- c A Councillor must seek the prior consent of the relevant Divisional Manager, Director or the General Manager before entering a particular work area of Council.

5 INAPPROPRIATE INTERACTIONS

Inappropriate interactions between Councillors and Council staff are set out in Council's Codes of Conduct for Councillors and Staff.

6 BREACHES OF THIS POLICY

A breach of this policy will be taken to be a breach of the relevant Code of Conduct and complaints alleging a breach of this policy must be made in accordance with the relevant Code of Conduct and will be dealt with in accordance with the Procedures for the Administration of the Codes of Conduct.

7 SUMMARY TABLE

The table below summarises the process for the handling of Councillor Requests as set out in this Policy.

COUNCILLOR REQUESTS

TYPE OF REQUEST	FORM OF REQUEST	PROCESS
Action (eg repairs to footpath, mowing of park)	Electronic Councillor Request via iPad template or via email to admin@wollongong.nsw.gov.au	Request entered into Customer Service Request system and allocated a request number which is notified to Councillor.
Access to Council documents for a purpose related to your role as a	Electronic Councillor Request via iPad template or via email to admin@wollongong.nsw.gov.au	Referral to Information Management for determination. If request is refused a formal application under GIPA Act may be submitted or Notice of Motion may be

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TYPE OF REQUEST	FORM OF REQUEST	PROCESS
Councillor		submitted to Council meeting.
Access to documents for a private purpose	Application under GIPA Act to Public Officer	Referral by Public Officer to Information Management for determination.
Access to Council workplace	Telephone request to relevant Divisional Manager, Director or General Manager	Co-ordination by Divisional Manager, Director or General Manager.
Advice (eg technical advice, current status of development application, request for allocation of capital budgets)	Electronic Councillor Request via iPad template or via email to admin@wollongong.nsw.gov.au	Registration and referral to relevant Divisional Manager with copy to Director and General Manager. Divisional Manager to update register as to progress of Request.
Administrative Support (eg stationery, office supplies, stenographic or clerical service)	Email to admin@wollongong.nsw.gov.au	Arranged in accordance with Councillors Expenses and Facilities Policy.
Discussion of Council services or projects	Telephone request or personal contact with relevant Divisional Manager, Director or General Manager	Co-ordination by Divisional Manager, Director or General Manager.

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SUMMARY SHEET	
Responsible Division	Governance and Information
Date adopted by Council	[To be inserted by Corporate Governance]
Date of previous adoptions	7 April 2014, 26 July 2011, 28 June 2004
Date of next review	April 2020
Responsible Manager	Governance and Corporate Support Coordinator
Authorised by	Manager Governance and Information