

TEMORA SHIRE COUNCIL



TEMORA

The Friendly Shire

PROVISION OF INFORMATION TO AND INTERACTION BETWEEN COUNCILLORS AND STAFF

ACTIVE

Review Details

ABOUT THIS RELEASE

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PLANNED REVIEW

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INTRODUCTION

Based on the provisions in the *Local Government Act*, 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.

AIMS

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 on the need for the policy and its requirements;
- Provide appropriate sanctions for non-compliance; and
- Be reviewed periodically to monitor its effectiveness and compliance.

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' 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.

INAPPROPRIATE INTERACTIONS

Council's policy is that the following interactions are inappropriate:

- Councillors approaching junior members of staff for information on sensitive or controversial matters;
- Members of staff approaching councillors directly (rather than via their director, staff representative or union delegate) on staffing or political issues;
- 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 building application (BA) or development application (DA) before council discussing the matter with junior staff in staff-only areas of the council;
- Junior staff being asked to answer questions or provide documents to councillors who are overbearing or threatening;
- Councillors directing or pressuring staff in the performance of their work, or 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.

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 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.

1. *The governing body (s.222)*

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

2. *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.

- (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 for 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 councils' 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 councils 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 councils' 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. *The role of the mayor (s.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 for 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 for 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 as a member of the governing body (s.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 (for example, 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 (for example, providing input into deciding priorities for construction and maintenance work);

- 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; and
- To review the performance of the council and its delivery of services, and the management plans and revenue policies of the council.

5. The role of a councillor as an elected person (s.232(2))

- (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.

6. The role of the general manager (s.335(7))

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.

7. The functions of the general manager (s.335(2))

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 implantation of the strategic plans, programs, strategies and policies for 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 implement the council's workforce management strategy,
- (j) Any other functions that are conferred or imposed on the general manager by or under this or any other Act.

GUIDING PRINCIPLES

INTERACTION BETWEEN COUNCILLORS AND COUNCIL STAFF

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*;
- Cl.21 of the *Local Government (Meetings) Regulation*;
- 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 codes of meeting practice and states that meetings must be conducted in accordance with the code of meeting practice.

Clause 21 of the *Local Government (Meetings) 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.

2. Outside of meetings

The Meetings Regulation (cl.21) makes provision for a councillor to obtain information at a council meeting, or by a Question on Notice at a council meeting. *[This process is extended to include committee meetings as it is incorporated in council's Code of Meeting Practice.*

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 person/s nominated by the general manager.

- Only those senior officers (as defined in s.332) and managers nominated by the general manager can provide advice to councillors.
- It is within the discretion 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 detailed or otherwise time consuming 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 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.
- A senior officer has the discretion to refer any request for information to the general manager. The senior officer must indicate to the councillor their reasons for the referral.
- 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.
- 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.

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 his nominee or by resolution of the council.

BREACHES OF THIS POLICY

1. 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.
- 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 comply with the policy, the councillor shall immediately report to the mayor who will report the matter to the council.
- Before a report to council by the general manager (or the mayor), the general manager (or the mayor) should undertake preliminary **inquiries to establish** the facts. The preliminary investigations may take any form the mayor and general manager considers appropriate, but must involve discussions with the staff member and councillor involved. Natural justice principles need to be satisfied in dealing with an alleged breach.
- The council, or a committee of all councillors established for the purpose, must decide whether a matter reported to it under this policy, reveals a breach. The council may take any steps provided for in this policy that it considers reasonable in the circumstances.

2. Sanctions

Council, having resolved that a councillor has failed to comply with this policy, can, by resolution:

- Require the councillor to apologise to the person concerned;
- Request a formal apology;
- Counsel the councillor;
- Reprimand the councillor;
- Resolve to make its decision on the matter public;
- Pass a censure motion at a council meeting (councils should not underestimate the power of public censure as a deterrent);
- make public disclosures of inappropriate conduct (such as making the community aware of the breach through the media or annual report);
- refer the matter to an appropriate investigative body if the matter is serious; and/or
- prosecute any breach of the law.

Sanctions for staff, depending on the severity, scale and importance of the breach, may include:

- Counselling the staff member;
- Instituting council disciplinary proceedings; or
- Dismissal.