COUNCILLOR ACCESS TO INFORMATION AND INTERACTION WITH COUNCIL STAFF POLICY

Adoption Date: 10 October 2016
Review Date: 10 October 2017
Responsible Officer: General Manager

POLICY STATEMENT

CMCC is committed to facilitating a respectful and harmonious relationship between Councillors and Council employees and seeks to provide clear guidelines for the provision of information to and interaction between Councillors and Council staff.

Policy Implementation Procedures, Guidelines and Documents
Code of Meeting Practice
Local Government Act 1993
Local Government (General) Regulations 2005
Under Careful Consideration: Key Issues for Local Government (ICAC)
Good Conduct & Administrative Practice – Guidelines for Councils (NSW Ombusman)
Government Information (Public Access) Act 2009
Privacy and Personal Information Protection Act
Health Records & Information Privacy Act 2002

Related CMCC Policies
Code of Conduct
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**Policy Review History** ...................................................................................................................... Error! Bookmark not defined.
1. 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 Council staff and councillors on the need for the policy and its requirements;
- Provide appropriate sanctions for non-compliance; and
- Be reviewed annually to monitor its effectiveness and compliance.

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 matter.
- Provide direction on councillors rights of access to Council buildings;
- Provide a clear and consistent framework for the reporting of, and appropriate application of sanctions for breaches of this policy; and
- To provide clear guidelines for provision of information and interaction between Councillors and Council staff.

3. Statutory Provisions for Councillors and Council 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.

3.1 The Governing Body (s.390)
(1) A county council must have a governing body elected by its constituent councils.
(2) Provisions concerning the membership of a county council’s governing body are to be as prescribed by the proclamation establishing the county council.
(3) A member of a county council is to be elected from among the councillors of the constituent councils in accordance with the regulations.
(4) The governing body of a county council is responsible for managing the affairs of the county council.

3.2 The functions of a County Council (s.394)
(1) The functions of a county council may, in accordance with a proclamation made for the purposes of this Part, comprise any one or more of the functions of a council under this or any other Act.
(2) A council may not undertake a function conferred on a county council whose area of operations includes the whole or any part of the council’s area, subject to the regulations or a proclamation made for the purposes of this Part.
(3) Subsection (2) does not prevent a council from exercising a function delegated to it by a county council.
3.3 The role of the Chairperson (s.391(A)) and Planning and Reporting Manual for Local Government in NSW

The role of the Chairperson is:
(a) to preside at meetings of the county council, and
(b) to exercise such other functions of the county council as the county council determines.

3.4 The role of a Councillor as an elected person (s.232 (2))

The role of a Councillor is, as an elected person:
(a) To represent the interests of the residents and ratepayers;
(b) To provide leadership and guidance to the community; and
(c) To facilitate communication between the community and the Council.

3.5 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.

3.6 The functions of the General Manager (s.335 (2))

The General Manager has the following particular functions:
(a) to assist the council in connection with the development and implementation of the community strategic plan and the council’s resourcing strategy, delivery program and operational plan and the preparation of its annual report and state of the environment report
(b) To manage the Council on a day-to-day basis;
(c) To exercise such of the functions of the Council as are delegated by the Council to the General Manager;
(d) To appoint staff in accordance with an organisational structure and resources approved by the Council;
(e) To direct and dismiss Council staff; and
(f) To implement the Council’s equal employment opportunity management plan.

3.7 Statutory Provisions

The Government Information (Public Access) Act 2009 came into force on 1 July 2010. Council’s various policies and procedures are currently being updated to reflect the provisions of the new legislation.

4. Access to Council records by Councillors

a) Councillors can request the General Manager, the Public Officer or other persons nominated by the General Manager to provide access to a particular Council record. Access to such documents will be restricted to the Administration Building and is to be undertaken in the company of a Council staff member nominated by the General Manager.

b) Councillors who have a personal interest (as distinct from civic) in a document of Council have the same rights of access as any other person under the provisions of the Government Information (Public Access) Act 2009.

c) The General Manager must provide Councillors with information sufficient to enable them to carry out their civic office functions.
d) Members of Council staff must provide full and timely information to Councillors sufficient to enable them to carry out their civic office functions and in accordance with Council procedures.

e) Councillors are entitled to access all files, records or other documents identified under the provisions of The Government Information (Public Access) Act 2009 or to a matter currently before the Council.

f) The General Manager or his nominee 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 or his nominee must act reasonably and state his/her reasons for the decision if access is refused.

g) Councillors can request access to other documents of the Council either by a Notice of Motion to the Council or an Access to Information application.

h) The General Manager and his nominee will keep a record of all requests by Councillors for access to information. The record of these requests will be made available to any other Councillor who requests it. Any information that is given to a particular Councillor in the pursuit of their civic duties is also made available to any other Councillor who requests it and in accordance with council procedures. These requests must be reported regularly to Council.

i) Confidential information must only be used for Council purposes.

j) If the General Manager or his nominee refuses to allow a Councillor to inspect any record or document, the Councillor may, at a meeting of the Council, move for the production of the document. However, the Councillor must give notice of intention to move the motion.

k) If Council passes a motion for the production of a Council record, the Council must ensure that the record:

• Is produced immediately and laid on the table for inspection by the Councillors; and

• Is made available for inspection by any Councillor on reasonable notice to the General Manager during the Council’s ordinary office hours on any day that is within one month after the passing of the motion.
5. Interaction between Councillors and Council Staff

5.1 During Meetings
The interaction between councillors and Council staff at Council meetings and Committee Meetings is regulated by:

- Section 360 of the Local Government Act
- Clause 249 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 codes of meeting practice and states that meetings must be conducted in accordance with the code of meeting practice.

Clause 249 of the Local Government (General) Regulation 2005 details how, in Council meetings, Councillors can ask questions of the 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.

5.2 Outside of Meetings
The General Regulation (Clause 249) makes provision for a Councillor to obtain information at a Council meeting, or by a question for next meeting at a Council meeting.

- The General Manager is responsible to the Council for performance and direction of all Council staff and day to day management of Council. Therefore, it is appropriate that all requests for information and approaches to Council 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 divisional directors 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 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 request for information or advice in writing to be answered by the General Manager. These written requests then form part of the Council records and can be filed appropriately. (Appendix A)
- If a Councillor is concerned about any refusal to provide information, they should firstly raise the matter with the General Manager (or the Chairperson) if it was the General Manager who refused to provide advice). If the Councillor is still dissatisfied they should request the information by way of “Questions on Notice to the Council”.
- Councillors must not attempt to direct Council staff as to the performance of their work. Council staff must report all such attempts immediately the General Manager.
- Councillors must not request Council staff to undertake work for the councillor or any other person.
• A councillor, member of Council staff or delegate must not take advantage of their official position to improperly influence other councillors, members of Council 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.

6. Inappropriate Interactions
The following interactions between Councillors and Council staff are considered to be inappropriate:
   a) Councillors approaching any member of Council staff other than the General Manager or Senior Weeds Officer for information especially information that is sensitive or controversial without prior authorisation from the General Manager;
   b) Members of Council staff approaching Councillors directly on staffing, political or Council matters both within business hours and outside the Council building, outside work hours and at non work situations;
   c) Members of Council 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 view;
   d) Councillors approaching Council staff outside the Council building, outside work hours or in a non work situation to discuss Council business;
   e) Councillors with development applications or other application before Council discussing the matter with planning and regulatory staff in staff only areas of Council;
   f) Council staff being asked to answer questions or provide information to Councillors who are behaving in a threatening or intimidating manner;
   g) Councillors directing Council staff in their work performance or recommendations to Council;
   h) Council staff providing advice to Councillors without recording or documenting the interaction as they would if the advice was given to the general public.

7. Use of Council Resources
• Councillors must not use council resources ethically, effectively, efficiently and carefully in the course of their public or professional duties and must not use them for private purposes (except when supplied as part of a contract or employment) unless this use is lawfully authorised and proper payment is made where appropriate.
• Councillors must be scrupulous in their use of council property, including intellectual property, official services and facilities and should not permit their misuses by any other person or body.
• Councillors must not avoid any action or situation which could create the impression that Council property, official services or public facilities are being improperly used for their own or any other person or body's private benefit or gain.
• The interests of a councillor in their re-election are considered to be a personal interest and as such the reimbursement of travel expenses incurred on election matters is not appropriate. Council letterhead, council crests and other information that could give the impression it is official council material must not be used for these purposes.
• Councillors must not convert any property of the council to their own use unless properly authorised.
• Councillors must not use Council’s computer resources to search for, access, download or communicate any material of an offensive, obscene, pornographic, threatening, abusive or defamatory nature.

8. Access to Council Premises

8.1 Access to Council Premises
• As elected members of the Council, Councillors are entitled to have access to the Council Chambers, committee room, Mayor’s office (subject to availability) and public areas of the Council’s buildings during normal business hours and for meetings.
• Councillors who are not performing their civic duties only 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 approval of the General Manager or his delegate or by resolution of Council.

9. Breaches and Sanctions

9.1 Breaches of this Policy
• Any occasions where a Councillor or Council staff member is 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 Chairperson and, if considered necessary, to the next Council meeting.
• Where the report relates to the conduct of Council staff, the General Manager shall deal with the matter according to the terms of employment of the Council staff member and in accordance with the Local Government (State) Award 2014.
• Where a Councillor believes that the General Manager has failed to comply with this policy, the Councillor should immediately report to the Chairperson who will then discuss the matter with the General Manager and, if considered necessary, will report the matter to Council.
• Before a report is presented to Council by the General Manager (or the Chairperson), the General Manager (or Chairperson) should undertake preliminary inquiries to establish the facts. The preliminary investigations may take any form the Chairperson or General Manager considers appropriate but must involve discussions with the Council staff member and Councillor involved. Natural justice principles need to be satisfied in dealing with an alleged breach and the evidence must be reviewed objectively.

9.2 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 adversely affected by the breach;
• 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 or Committee meeting;
• 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 Council staff depending on the severity, scale and importance of the breach, may include:
  • Counselling the Council staff member;
  • Documentation of the behaviour being placed on his/her personnel file;
  • Non-renewal of an employment contract;
  • Instituting Council disciplinary proceedings;
  • Dismissal;
  • Prosecution.

(Note: Any disciplinary procedures, dismissal or action in relation to a Council staff member must be made in accordance with the provisions of the Local Government (State) Award 2014).
10. Appendices

10.1 Appendix A – Councillor Enquiries/Work Requests

COUNCILLOR ENQUIRIES/WORK REQUESTS

For Action by: GM SWO (please cross)

Councillor:__________________

Date:____________ Time:__________

Received from:____________ Phone:____________

Location:____________________________________________

Describe Problem:
____________________________________________________

____________________________________________________

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____________________________________________________

OFFICE USE ONLY – Completion Report

Action Taken:
____________________________________________________

____________________________________________________

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____________________________________________________

____________________________________________________

____________________________________________________

Date of completion:____________

Approved by:__________________

Signed:__________________ Dated:__________________
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