



PARKES SHIRE COUNCIL

**COUNCILLOR ACCESS TO INFORMATION AND THEIR
INTERACTION WITH STAFF
POLICY**

AUGUST 2005

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INTRODUCTION

This Policy shall be known as Parkes Shire Council Councillor Access to Information and Their Interaction with Staff Policy.

PURPOSE

The aims of this Policy are to:-

- provide clear communication channels to ensure the speedy provision of accurate information;
- provide appropriate sanctions for non-compliance; and
- be reviewed periodically to monitor its effectiveness and compliance.

POLICY

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 members 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 Code.

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".

STATUTORY PROVISIONS FOR COUNCILLORS & STAFF

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 case 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;
- to preside at meetings of the Council; and
- to carry out the civic and ceremonial functions of the Mayoral office.

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.

The role of a Councillor as an elected person (s.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; and
- to facilitate communication between the community and the Council.

The role of the General Manager (s.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 (s.335(2))

The General Manager has the following particular functions:

- to manage the Council on a day-to-day basis;
- 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 organisational structure and resources approved by the Council;
- to direct and dismiss staff; and
- to implement the Council's equal employment opportunity management plan.

ACCESS TO COUNCIL RECORDS BY COUNCILLORS

Statutory Provisions

Section 12 of the Local Government Act provides that the Council must provide access to the current version of certain Council documents free of charge to all members of the public. These documents are:

- Council's code of conduct;
- Council's code of meeting practice;
- annual report;
- annual financial reports;
- auditor's report;
- management plan;
- EEO management plan;
- the Council's land register;
- Council's policy concerning the payment of expenses incurred by, and the provision of facilities to, Councillors;
- register of investments;
- returns of the interests of Councillors, designated persons and delegates;
- returns as to candidates' campaign donations;
- business papers of Council and committee meetings;
- minutes of Council and committee meetings;
- any codes referred to in this Act;
- register of delegations;
- annual reports of bodies exercising delegated Council functions;
- local policies adopted by the Council concerning approvals and orders;
- records of approvals granted and decisions made on appeals concerning approvals;
- records of building certificates;
- plans of land proposed to be compulsorily acquired by the Council;
- leases and licences for the use of public land classified as community land;
- plans of management for community land;
- environmental planning instruments, development control plans and plans made under s.94AB of the Environmental Planning and Assessment Act, 1979 applying to land within the Council's area;
- the statement of affairs, the summary of affairs and the register of policy documents required under the Freedom of Information Act, 1989; and
- departmental representatives' reports presented at a meeting of the Council according to s.433.

The Local Government (Meetings) Regulation, provides a procedure for Councillors to obtain access to Council documents, without limiting any common law right of access. Clause 41 provides:

- (1) The General Manager may allow or refuse to allow any Councillor to inspect any record of the Council that the Councillor requests to see.
- (2) If the General Manager refuses to allow a Councillor to inspect any such record, 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.
- (3) If the Council passes a motion for the production of a Council record, the Council must ensure that the record:
 - (a) is produced immediately and laid on the table for inspection by the Councillors; and
 - (b) if 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.

Sections 15(1) and 16(1) of the Freedom of Information Act, 1989 also include provisions for members of the public to a general right of access to Council documents.

Procedure For Accessing Council Files, Records Or Other Documents

Access to a Council file, record or other document can only be provided according to this Code to ensure that access is obtained in ways that are legal and appropriate. The policy does not limit or restrict statutory or common law rights of access.

Councillors can request the General Manager, the public officer 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 person.

Councillors are entitled to access to all Council files, records or other documents where that document is identified in s.12 of the Local Government Act or is relevant 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 the reasons for the decision if access is refused.

Councillors can request access to other documents of the Council either by a Notice of Motion to the Council or a Freedom of Information application.

The General Manager, public officer or person identified by the General Manager, shall keep a record of all requests by Councillors for access to information (other than those listed in s.12 of the Local Government Act, the Freedom of Information Act or by a Notice of Motion at a Council meeting). These requests must be reported regularly to Council.

INTERACTION BETWEEN COUNCILLORS AND COUNCIL STAFF

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.

Outside 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.

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 unless the General Manager has otherwise authorised.

Only officers nominated by the General Manager should provide advice to Councillors on matters requiring a decision of the Council or matters outside of the officer's delegated authority. The General Manager has nominated the Directors and Managers or equivalents as being such officers, however, other officers may be nominated from time to time upon application from a Councillor to the General Manager, or at the General Manager's discretion. Notwithstanding the above, Councillors are not to discuss matters where they have a potential conflict or pecuniary interest.

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 in writing to be answered by the General Manager or the appropriate nominated officer. These written requests then form part of Councils records and can be filed appropriately.

A Director, Manager or equivalent has the discretion to refer any request for information to the General Manager. The Director, Manager or equivalent 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 that 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.

INAPPROPRIATE INTERACTIONS

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

- Councillors approaching staff below Manager level or equivalent without prior agreement for information on sensitive or controversial matters;
- members of staff approaching Councillors directly on staffing or political issues;
- Councillors approaching staff outside the workplace or outside hours of work to discuss Council business;
- staff refusing to give information which is available to other Councillors to a particular Councillor;
- Councillors who have a building application (BA) or development application (DA) before Council discussing the matter with staff below the level of Manager or equivalent;
- Overbearing or threatening behaviour by Councillors in asking questions of staff or requesting the provision of documents;
- 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.

ACCESS TO COUNCIL OFFICES

As elected members of the Council, Councillors are entitled to have access to the Mayor's office, Chambers, Committee Room, Councillor's Interview Room 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.

For reasons of probity, Councillors should ensure that when they are within a staff area, they are cognisant of potential conflict or pecuniary interest matters and/or a perception that they may bring influence to bear on officers' decisions and should conduct themselves accordingly.

REPORTING

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

Where the report relates to the conduct of a Councillor the General Manager is to approach the Councillor raising the concerns expressed. Should this approach be unsuccessful the General Manager should raise the matter with the Mayor. Should the problem remain unaddressed, the General Manager should report the matter to the Council at its next 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 in accordance with the disciplinary procedures in the Local Government (State) Award or a staff contract.

Where a Councillor believes that the General Manager has failed to comply with this Code, the Councillor shall immediately report to the Mayor who will report the matter to the Council if considered appropriate.

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 and the disciplinary procedures in the Award 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 Code, reveals a breach. The Council may take any steps provided for in this Code that it considers reasonable in the circumstances.

SANCTIONS

Council, having resolved that a Councillor has failed to comply with this Code, 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;
- 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
- 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;
- demotion;
- suspension; or
- termination

ANNEXURE

List of Directors/Managers or Equivalents

Corporate Services

Director.....	Brian Matthews
Finance Manager	Bob Bokeyar
Administration Manager	Les Finn
Human Resources Manager	Rhonda Milgate
Information Services Manager	Anthony McGrath
Economic Development Manager	Michael Greenwood
Library Services Manager	Michael Barker
FDC Co-ordinator	Tracy Holmgreen
Tourism Manager	Monique Kronk

Operations

Director of Operations	Steve Barry
Works Engineer.....	Ray Graham
Maintenance Engineer	Lajos Szabo

Infrastructure

Director of Infrastructure.....	Kent Boyd
Environmental Services Manager	Peter Sullivan

Planning and Environment

Director.....	Steven Campbell
Development Planner.....	Andrew McIntyre
Senior Town Planner.....	Andrew Johns
Senior Development Officer	Michelle Bicket
Senior Environmental Health & Building Surveyor	Des Cowan