



Councillor Access to Council Information, Staff and Premises Policy



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RESPECT



INNOVATION



INTEGRITY



TEAMWORK



EXCELLENCE

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1. Introduction

Kiama Council is committed to cooperation and collaboration between Council staff and elected Councillors. This policy provides a framework for Councillors to access Council information, staff and premises in order to exercise the functions of civic office and to facilitate informed decision making.

2. Objectives

The objectives of this policy are to:

1. provide a documented process for Councillors to access Council information
2. ensure that Councillors receive advice in an orderly manner to assist them in carrying out their duties of civic office and inform decisions
3. provide clarity on Councillors' rights of access to staff and to Council buildings
4. provide a clear and consistent framework, by reference to the relevant *Code of Conduct* and *Procedures for the Administration of the Code of Conduct*, for the reporting of, and appropriate management of breaches of this policy.

3. Scope

This policy applies to the Mayor, Councillors and all employees of Council, including contractors and volunteers working for, and on behalf of, Council.

4. References

This document should be read in conjunction with:

- *Local Government Act 1993*
- *Local Government (General) Regulation 2005*
- *KMC Code of Conduct and the Procedures for the Administration of the Code of Conduct*
- OLG Circular to Councils 10-30 – *Councillors' Access to Information*
- *KMC Code of Meeting Practice*

5. Definitions

In this policy, the following terms have the following meanings:

administrator	an administrator of a council appointed under the LGA other than an administrator appointed under section 66
committee	see the definition of "council committee"
conflict of interests	a conflict of interests exists where a reasonable and informed person would perceive that you could be influenced by a private interest when carrying out your public duty
council	Kiama Municipal Council
council committee	a committee established by council comprising of councillors, staff or other persons that council has delegated functions to
council committee member	a person other than a councillor or member of staff of a council who is a member of a council committee other than a wholly advisory committee

council official	includes councillors, members of staff of a council, administrators, council committee members, delegates of council, council advisers, contractors and volunteers
councillor	any person elected or appointed to civic office, including the mayor
conduct	includes acts and omissions
delegate of council	a person (other than a councillor or member of staff of a council) or body, and the individual members of that body, to whom a function of the council is delegated
GIPA	<i>Government Information (Public Access) Act</i>
GM	General Manager of council
the Act	the <i>Local Government Act 1993</i>
local planning panel	a local planning panel constituted under the <i>Environmental Planning and Assessment Act 1979</i>
ManEx	Council senior management team comprising the General Manager and Directors
OLG	Office of Local Government
personal information	information or an opinion (including information or an opinion forming part of a database and whether or not recorded in a material form) about an individual whose identity is apparent or can reasonably be ascertained from the information or opinion
the Procedures	the <i>Procedures for the Administration of the Model Code of Conduct for Local Councils in NSW</i> prescribed under the Regulation
Public Interest Disclosure	under the <i>Public Interest Disclosures Act 1994</i> , council officials may make a <i>Public Interest Disclosure</i> to report serious wrongdoing without fear of being sued for defamation or breach of confidence. Council's public officer is also the disclosure officer for the purpose of this Act
Public Officer	Council is required to appoint a public officer under Section 343 of the Local Government Act. The public officer may deal with requests from the public concerning council's affairs and has responsibility for assisting people to gain access to council's public documents
the Regulation	the <i>Local Government (General) Regulation 2005</i>

6. Overview

The Act defines the roles and responsibilities of the Mayor and Councillors, and specifies that the GM is responsible for the efficient and effective operation of the Council's organisation and for ensuring the implementation of the decisions of Council without delay. The GM is also 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, will be directed to the GM, or person/s nominated by the GM.

In accordance with Council's Code of Conduct, Councillors, Administrators, staff, contractors and volunteers are expected to conduct their interactions with integrity, honesty and respect and to a high standard of ethical behaviour.

7. Obligations of councillors and administrators

- 7.1 Each council is a body politic. The Councillors or Administrator/s are the governing body of the Council. Under section 223 of the LGA, the role of the governing body of the Council includes the development and endorsement of the strategic plans, programs, strategies and policies of the Council, including those relating to workforce policy, and to keep the performance of the Council under review.
- 7.2 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 Act
 - b) 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
 - d) contact or issue instructions to any of the Council's contractors, including the Council's legal advisers, unless by the Mayor or Administrator exercising their functions under section 226 of the Act
- 7.3 Despite clause 7.2, Councilors may contact the Council's external auditor or the chair of the Council's audit risk and improvement committee to provide information reasonably necessary for the external auditor or the audit, risk and improvement committee to effectively perform their functions.

8. Obligations of staff

- 8.1 Under section 335 of the LGA, the role of the General Manager includes conducting the day-to-day management of the Council in accordance with the strategic plans, programs, strategies and policies of the Council, implementing without undue delay, lawful decisions of the Council and ensuring that the Mayor and other Councillors are given timely information and advice and the administrative and professional support necessary to effectively discharge their official functions.

Employees **must**:

- a) give their attention to the business of Council while on duty
 - b) ensure their work is carried out efficiently, economically and effectively
 - c) carry out reasonable and lawful directions given by any person having authority to give such directions
 - d) give effect to the lawful decisions, policies, and procedures of Council, whether or not the staff member agrees with, or approves of them
 - e) ensure that any participation in political activities outside the service of the Council does not conflict with the performance of their official duties.
- 8.2 In circumstances where staff are unsure whether or not they should provide information to, or respond to a request from a Councillor or Administrator/s, they should refer the matter to

their relevant Director or to the General Manager, or request that the Councillor or Administrator/s make the request through the General Manager.

- 8.3 Non-compliance with this Policy may be considered a breach of Council's Code of Conduct and will be dealt with in accordance with the Code.

9. Inappropriate interactions

9.1 You must not engage in any of the following inappropriate interactions:

- a) Councillors and Administrators approaching staff and staff organisations to discuss individual or operational staff matters (other than matters relating to broader workforce policy), grievances, workplace investigations and disciplinary matters
- b) Council staff approaching Councillors and Administrators to discuss individual or operational staff matters (other than matters relating to broader workforce policy), grievances, workplace investigations and disciplinary matters
- c) subject to clause 7.3, Council staff refusing to give information that is available to other Councillors to a particular Councillor
- d) Councillors and Administrators who have lodged an application with the Council, discussing the matter with Council staff in staff-only areas of the Council
- e) Councillors and Administrators approaching members of local planning panels or discussing any application that is either before the panel or that will come before the panel at some future time, except during a panel meeting where the application forms part of the agenda and the Councillor has a right to be heard by the panel at the meeting
- f) Councillors and Administrators being overbearing or threatening to Council staff
- g) Council staff being overbearing or threatening to Councillors or Administrators
- h) Councillors and Administrators making personal attacks on Council staff or engaging in conduct towards staff that would be contrary to the general conduct provisions in Part 3 of the Code of Conduct, in public forums including social media
- i) Councillors and Administrators directing or pressuring Council staff in the performance of their work, or recommendations they should make
- j) Council staff providing ad hoc advice to Councillors and Administrators without recording or documenting the interaction as they would if the advice was provided to a member of the community
- k) Councillors attending on-site inspection meetings with lawyers and/or consultants engaged by the Council associated with current or proposed legal proceedings unless permitted to do so by the Council's General Manager or, in the case of the Mayor or Administrator, unless they are exercising their functions under section 226 of the Act.

10. Access to information and council resources

10.1 The General Manager is responsible for ensuring that Councillors and Administrators can access information necessary for the performance of their official functions. The General Manager and Public Officer are also responsible for ensuring that members of the public can access publicly available Council information under the Government Information (Public Access) Act 2009 (the GIPA Act).

10.2 The General Manager must provide Councillors and Administrators with the information necessary to effectively discharge their official functions.

- 10.3 Members of staff of Council must provide full and timely information to Councillors and Administrators sufficient to enable them to exercise their official functions and in accordance with Council procedures.
- 10.4 Members of staff of Council who provide any information to a particular Councillor in the performance of their official functions must also make it available to any other Councillor who requests it and in accordance with Council procedures.
- 10.5 Councillors and Administrators who have a private interest only in Council information have the same rights of access as any member of the public.
- 10.6 Despite clause 10.4, Councillors and Administrators who are precluded from participating in the consideration of a matter under this policy because they have a conflict of interest in the matter, are not entitled to request access to Council information in relation to the matter unless the information is otherwise available to members of the public, or the Council has determined to make the information available under the GIPA Act.
- 10.7 Councillors and Administrators must only access Council information needed for Council business and must not use that Council information for private purposes.

10.8 Open Access Information

- a) The *Government Information (Public Access) Act 2009* provides a list 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 Code 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 may be consideration against public disclosure of documents under the general broad headings of: *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 General Manager and Public Officer are responsible for ensuring that members of the public, Councillors and Administrators can gain access to information available under the GIPA Act.
- d) The NSW Office of the Information and Privacy Commissioner has advised the Office of Local Government that it is expected that General Managers (and Public Officers) will act in accordance with relevant laws when providing information to Councillors and Administrators.

10.9 Other Information

Information not publicly available and not required for Councillors to carry out their civic office functions may be applied for through the GIPA application process. Forms are available on Council’s website or by contacting the Public Officer.

Access to staff personnel records will not be provided to Councillors or Administrators under any circumstances.

10.10 Refusal of access to documents

- a) Where the General Manager or Public Officer determine to refuse access to a document 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 their civic duty. The General Manager or Public Officer must state the reasons for the decision if access is refused.
- b) If a request for information has been refused the Councillor or Administrator may:
 - Raise the matter with the General Manager and refer to the Code of Conduct which states that the General Manager must ensure Councillors/Administrators

are provided with information sufficient to enable them to carry out their civic office functions

- Make a formal application under the GIPA Act, which will be processed in accordance with that Act
- If there is a refusal of access under the GIPA Act, or if the Councillor wishes to report a GIPA contravention, a Councillor may ask for an internal review or an external review by the NSW Information Commissioner.

11. Use and disclosure of council information

11.1 With regard to information obtained in the capacity of Councillor or Administrator you **must**:

- a) only access Council information needed for Council business
- b) not use that information for private purposes
- c) not seek to obtain, either directly or indirectly, any financial benefit or other improper advantage for yourself, or any other person or body, from any information to which you have by virtue of your office or position with Council
- d) only release Council information in accordance with established Council policies and procedures and in compliance with relevant legislation
- e) maintain the integrity and security of confidential documents or information in your possession, or for which you are responsible

11.2 In addition to your general obligations relating to the use of Council information, you must:

- a) only access confidential information that you have been authorised to access and only do so for the purposes of exercising your official functions
- b) protect confidential information
- c) only release confidential information if you have authority to do so
- d) only use confidential information for the purpose for which it is intended to be used
- e) not use confidential information gained through your official position for the purpose of securing a private benefit for yourself or for any other person
- f) not use confidential information with the intention to cause harm or detriment to the Council or any other person or body
- g) not disclose any confidential information discussed during a confidential session of a Council or committee meeting or any other confidential forum (such as, but not limited to, workshops or briefing sessions).

11.3 Personal Information

When dealing with personal information you must comply with:

- the *Privacy and Personal Information Protection Act 1998*
- the *Health Records and Information Privacy Act 2002*
- the Information Protection Principles and Health Privacy Principles
- the council's privacy management plan
- the Privacy Code of Practice for Local Government

12. Access to council buildings

- 12.1 Councillors and Administrators are entitled to have access to the Council chamber, Mayor's office (subject to availability), General Manager/Mayor reception area and public areas of Council's buildings during normal business hours and for meetings. Councillors and Administrators needing access to these facilities at other times must obtain authority from the General Manager.
- 12.2 Councillors and Administrators must not enter staff-only areas of Council buildings without the approval of the General Manager (or their delegate).
- 12.3 Councillors and Administrators must ensure that when they are within staff only areas they refrain from conduct that could be perceived to improperly influence Council staff decisions.

13. Document control

Version Control	Date reviewed	Date adopted	Amendment
V1	September 2019	TBA	New document

14. Signature

Name: Kerry McMurray – General Manager	Date: 22 October 2019
Signature: 	

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