ACCESS TO COUNCIL INFORMATION AND STAFF BY COUNCILLORS POLICY

MURRAY RIVER COUNCIL

POL105.V1

ADOPTED: 8 August 2017
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**INTRODUCTION**

The *Local Government Act 1993* (the ‘Act’) provides distinctly different roles for Councillors and Murray River Council (the ‘Council’) staff.

**The Council** is responsible for strategic direction and for determining the policy framework of the Council. The Council also has a statutory role as the consent authority, under both the Act and the *Environmental Planning and Assessment Act 1979* (the ‘EP&A Act’) for applications for development consent and other approvals.

**The General Manager**, along with the Senior Staff, is responsible for the effective management of the organisation and the carrying out of Council’s policies and strategic objectives.

The distinction between these two roles, however, may be unclear. There often needs to be personal interaction between Councillors and Council staff, 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 Council staff to understand fully their respective roles and how they should operate, in order to perform their job effectively.

The provision of sufficient, relevant and timely information is a critical aspect of the Councillor decision-making process. In this regard, the General Manager has an obligation to ensure that Councillors are provided with the necessary information to undertake their civic duties effectively.

**POLICY OBJECTIVES**

The main objectives of this Policy are to:

- Provide a documented process on how Councillors can access Council records;
- Ensure Councillors have access to all documents reasonably necessary for them to exercise their statutory role as a member of the governing body of the Council;
- Ensure that Councillors receive advice from Council staff to help them in the performance of their civic duty in a timely and regulated manner;
- Provide direction on Councillors’ rights of access to Council buildings;
- Facilitate a harmonious and respectful relationship between Councillors and Council staff, taking into account the differing roles that they are required to undertake, as defined by the Act;
- Complement the Council’s Code of Meeting Practice (POL101) and the Code of Conduct (POL100); and
- Provide a clear and consistent framework for the reporting of and appropriate application of sanctions or breaches of this Policy.

**POLICY STATEMENT**

This Policy aims to establish the procedures by which Councillors may access all relevant information and an appropriate level of access to the staff of the Council in order to undertake their statutory roles, to exercise community leadership and represent the views of residents and ratepayers.
SCOPE

This Policy applies to all officials of the Council.

DEFINITIONS

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
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<tbody>
<tr>
<td>Act or LGA</td>
<td>Local Government Act 1993 (NSW)</td>
</tr>
<tr>
<td>Advice</td>
<td>Refers to advice or information that is business related and that may influence a Councillor when making a decision</td>
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<tr>
<td>Advocacy</td>
<td>Support or argument for a cause, policy, etc</td>
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<tr>
<td>Council official</td>
<td>Includes Councillors, members of staff of the Council, an Administrator of the Council, Council committee members, conduct reviewers and delegates of the Council</td>
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<tr>
<td>Councillor</td>
<td>A person elected or appointed to civic office as a member of the governing body of the Council who is not suspended, including the Mayor</td>
</tr>
</tbody>
</table>
| Documents         | May refer to:  
  - Files / correspondence;  
  - Public Registers;  
  - Development and other applications; and/or  
  - Any other record of Council business, in whatever form                                |
| EP&A Act          | Environmental Planning and Assessment Act 1979                                                                                             |
| General Manager   | The General Manager of Council and includes their delegate or authorised representative                                                   |
| GIPA              | Government Information (Public Access) Act 2009                                                                                                |
| MANEX             | The Management Executive of the Council, consisting of the General Manager and the Directors                                               |
| NSW               | New South Wales                                                                                                                             |
| Record            | A document (including any written or printed material) or object (including a sound recording, coded storage device, magnetic tape or disc, microfilm, photograph, film, map, plan or model, or a painting or other pictorial or graphic work) that is, or has been made or received in the course of official duties by an Administrator, councillor, or an employee of the Council and, in particular, includes the minutes of meetings of the Council or of a Committee of the Council |
| Regulation        | Local Government (General) Regulation 2005 (NSW)                                                                                             |
| ‘You’             | For the purpose of this Policy, the term ‘you’ refers to Councillors and Council staff, or as specified otherwise throughout each section     |
PART 1 – STATUTORY PROVISIONS FOR COUNCILLORS AND STAFF

1.1 The Act provides that:

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

   LGA Sec 222

1.1.2 The role of the governing body is as follows:

   (a) to direct and control the affairs of the council in accordance with the 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 of the Act and the plans, programs, strategies and polices 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.

   LGA Sec 223(1)

1.1.3 The governing body is to consult with the General Manager in directing and controlling the affairs of the Council.

   LGA Sec 223(2)

1.1.4 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.

*LGA Sec 226(1)*

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

*LGA Sec 226(2)*

1.1.6 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 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 Chapter 11 of the Act 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 the or any other Act.

*LGA Sec 335*

1.1.7 The Public Officer:

- may deal with requests from the public concerning the Council's affairs
- has the responsibility of assisting people to gain access to public documents of the Council
- may receive submissions made to the Council
- may accept service of documents on behalf of the Council
- may represent the Council in any legal or other proceedings
- has such other functions as may be conferred or imposed on the Public Officer by the General Manager or by or under the Act
- is subject to the direction of the General Manager.

*LGA Sec 343(1) and (2)*

1.1.8 The Public Officer (generally Council's Director Corporate Services), General Manager and Manager Governance and Councillor Support are the contact persons for Councillors who wish to access Council information to enable them to make informed decisions and to exercise the functions of civic office.
PART 2 – ACCESS TO COUNCIL RECORDS BY COUNCILLORS

Councillors are to comply with Council’s Code of Conduct (POL100) and this Policy regarding access to Council records, as outlined below:

2.1 Councillor access to information

2.1.1 The General Manager and Public Officer are responsible for ensuring that members of the public and Councillors can gain access to the documents available under the GIPA.

2.1.2 The General Manager must provide Councillors with information sufficient to enable them to carry out their civic office functions.

2.1.3 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.

2.1.4 Council staff who provide any information to a particular Councillor in the performance of their civic duties must also make it available to any other Councillor who requests it and in accordance with Council procedures.

2.1.5 If a Councillor has a private (as distinct from civic) interest in a document of the Council, the Councillor has the same rights of access as any member of the public.

2.2 Councillors to properly examine and consider information

2.2.1 A Councillor must properly examine and consider all the information provided to them in relation to matters that Councillors are dealing with to enable them to make a decision on the matter in accordance with Council’s Charter.

2.3 Refusal of access to documents

2.3.1 Where the General Manager and 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 (see Clause 2.2). The General Manager or Public Officer must state the reasons for the decision if access is refused.

2.4 Use of certain Council information

2.4.1 In regard to information obtained in the capacity as a Councillor, a Councillor must:
(a) only access Council information needed for Council business;
(b) not use the Council information for private purposes;
(c) not seek or 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 role as a Councillor with the Council;
(d) only release Council information in accordance with established Council policies and procedures and in compliance with relevant legislation.
2.5 Use and security of confidential information

2.5.1 A Councillor must maintain the integrity and security of confidential documents or information in their possession, or for which they are responsible.

2.5.2 In addition to a Councillor’s general obligations relating to the use of Council information, a Councillor must:
   (a) protect confidential information;
   (b) only release confidential information if you have authority to do so;
   (c) only use confidential information for the purpose it is intended to be used;
   (d) not use confidential information gained through your official position for the purpose of securing a private benefit for yourself or for any other person;
   (e) not use confidential information with the intention to cause harm or detriment to the Council or any other person or body;
   (f) not disclose any information discussed during a confidential session of a Council meeting.

2.6 Personal information

2.6.1 When dealing with personal information, a Councillor must comply with the:
   (a) Privacy and Personal Information Protection Act 1998;
   (b) Health Records and Information Privacy Act 2002;
   (c) Information Protection Principles and Health Privacy Principles;
   (d) Council’s Privacy Management Plan;
   (e) Privacy Code of Practice for Local Government.

2.7 The Government Information (Public Access) Act 2009 (GIPA)

2.7.1 GIPA promotes openness, accountability and transparency of government agencies. It is designed to make government agencies more proactive in providing information to the public. This includes being proactive in providing information to Councillors.

2.7.2 Council has an obligation under GIPA to publicise certain ‘open access information’ on its website, unless there is an overriding public interest against disclosure of the information or unless to do so would impose unreasonable additional costs to Council. In addition, Council is required to comply with the spirit and intent of GIPA and applicable common law and Council’s Code of Conduct (POL100), so as to provide open access to Council’s documents, other than where public interest considerations against disclosure outweigh the public interest considerations in favour of disclosure. For example, there may be occasions where the release of:
   (a) personal information/information identifying a person; or
   (b) business information; or
   (c) information concerning government affairs,
   would not be released under GIPA due to public interest considerations.
2.8 Council procedures

2.8.1 Access to Council files, records or other documents can only be provided according to
this Policy to ensure that access is obtained in ways that are legal and appropriate.
However, this Policy does not limit or restrict statutory or common law rights of access.

2.8.2 A Councillor is entitled to access all files, records or other documents, where that
document is identified as ‘open access’ information in GIPA, or where the
document/information relates to a matter currently before the Council.

2.8.3 The General Manager shall not unreasonably decide that a document is not relevant to
the performance of a Councillor’s civic duty and deny access to a Council document.
The General Manager must state his/her reasons for the decision if access is refused.

2.8.4 A Councillor can request access to other documents of the Council either by a notice of
motion to the Council or a Formal Access Application under GIPA.

2.8.5 Any information that is given to a particular Councillor in the pursuit of their civic duties
will also be made available to any other Councillor who requests it.

2.8.6 Confidential information must only be used for Council purposes. While this may create
some difficulties for Councillors when assessing the information, it is a necessary
safeguard to protect the Council’s interests. It also helps to protect a Councillor against
allegations that they revealed information which damaged the Council’s interests.

2.8.7 A Councillor who has a personal (as distinct from civic) interest in a document of the
Council has the same rights of access as any other person.

2.8.8 A Councillor must not release personal information about a third party, except in
accordance with the provisions of the Privacy and Personal Information Protection Act
1998.

2.8.9 If the General Manager refuses to allow a Councillor to inspect any record or document
of the Council, the Councillor may:
(a) 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; or
(b) lodge a Formal Access Application (to the appropriate Council officer) under
GIPA.

GIPA provides three options to have a decision reviewed:
i. An internal review by the Council;
ii. An external review by the Privacy and Information Commissioner; or
iii. An external review by the NSW Civil and Administrative Tribunal (NCAT).

2.8.10 If the Council passes a motion for the production of a Council record, the Council must
ensure that the record is made available for inspection by any Councillor on reasonable
notice to the General Manager during Council’s ordinary office hours on any day that is
within one (1) month after the passing of the motion.

2.8.11 Where it is believed that significant resources will be required to respond to a request
for information, the General Manager should advise the Councillor and provide details
of the estimates of time and/or costs that are likely to be incurred in providing the
information. An indication should also be given of what other matters will not be able to
be attended to as a result of compiling the requested information.
2.8.12 In the event that a matter is unable to be resolved internally, or a Councillor remains dissatisfied with the outcome after following the procedures set out above, the matter is to be referred to the complaint handling branch of either the NSW Ombudsman’s Office or the Office of Local Government (Department of Premier & Cabinet).
PART 3 – INTERACTION BETWEEN COUNCILLORS AND COUNCIL STAFF

Council officials are to comply with Council’s Code of Conduct (POL100) and this Policy regarding interaction between Councillors and Council staff, as outlined below:

3.1 Obligations of Councillors

3.1.1 Council is a body politic. The Councillors are the governing body of the Council. The governing body has the responsibility of directing and controlling the affairs of the Council in accordance with the Act and is responsible for policy determinations,

3.1.2 A Councillor must not:
   (a) Direct Council staff, other than by giving appropriate direction to the General Manager in the performance of the Council’s functions by way of a Council or committee resolution, or by the Mayor exercising power under Section 226 of the Act;
   LGA Sec 352
   (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 member or delegate;
   LGA Schedule 6A
   (c) Contact a member of the staff of the Council on Council-related business, unless in accordance with this Policy; and
   (d) Contact or issue instructions to any of the Council’s contractors or tenderers, including Council’s legal advisers, unless by the Mayor exercising power under Section 226 of the Act.

3.2 Obligations of staff

3.2.1 The General Manager is responsible for the efficient and effective operation of the Council’s organisation and for ensuring the implementation of the decisions of the Council without delay.

3.2.2 Members of staff of the Council must:
   (a) Give their attention to the business of the Council while on duty;
   (b) Ensure that their work is carried out efficiently, economically and effectively;
   (c) Carry out lawful directions given by any person having authority to give such directions;
   (d) Give effect to the lawful decisions, policies and procedures of the Council, whether or not the staff member agrees with or approves of them; and
   (e) Ensure the participation in any activities (including political) outside the service of the Council, does not conflict with the performance of their official duties.

3.3 Obligations during meetings

3.3.1 All Council officials must act in accordance with Council’s Code of Meeting Practice (POL101) and the Local Government (General) Regulation 2005 during Council and committee meetings.
3.3.2 All Council officials must show respect to the chair, other Council officials and any members of the public present during Council and committee meetings or other formal proceedings of the Council.

3.4 Obligations outside of meetings

3.4.1 The General Manager is responsible to the Council for performance and direction of all of Council's staff and the day-to-day management of the 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 persons nominated by the General Manager.

3.4.2 For all but straightforward advice on administrative matters, a Councillor should put their requests for information or advice in writing to be answered by the General Manager or the appropriate Council officer. These written requests then form part of the Council's records and can be filed appropriately. The General Manager must indicate in writing the reasons for refusing a request.

3.4.3 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).

3.4.4 A Councillor must not attempt to direct Council staff as to the performance of their work. Council's staff must report all such attempts immediately to their Director or the General Manager.

3.4.5 A Councillor must not request Council's staff to undertake work for the Councillor or any other person.

3.4.6 A Councillor, member of Council 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.
PART 4 – INAPPROPRIATE INTERACTIONS

4.1 In accordance with the provisions of Council’s Code of Conduct (POL100) and this Policy, the following interactions have been deemed inappropriate, and should not be carried out by Council officials under any circumstances:

(a) A Councillor approaching a member of the Council’s staff and staff organisations to discuss individual or operational staff matters other than broader workforce policy issues;
(b) A member of the Council’s staff approaching a Councillor to discuss individual or operational staff matters other than broader workforce policy issues;
(c) A Councillor discussing with a member of the Council’s staff a Development Application they have lodged with the Council in staff-only areas of the Council;
(d) A Councillor being overbearing or threatening to a member of the Council’s staff;
(e) A Councillor making personal attacks on a member of the Council’s staff in a public forum;
(f) A Councillor directing or pressuring a member of the Council’s staff in the performance of their work, or recommendations they should make (staff performance issues should be addressed to the General Manager); and
(g) A Councillor 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 General Manager.
PART 5 – COUNCILLOR ACCESS TO COUNCIL BUILDINGS

5.1 Subject to availability, a Councillor may book, during normal office hours, free of charge, a room to hold a meeting or similar event at a Council office.

5.2 A Councillor has no rights to enter staff-only areas of the Council without the express authorisation of the General Manager or their delegate or by resolution of the Council.

5.3 A Councillor must ensure that when they are within a staff area they avoid giving rise to the appearance that they may improperly influence Council staff decisions.

5.4 A Councillor who is not in pursuit of their civic duty have the same rights of access to Council buildings and premises as any other member of the public.

5.5 A Councillor will have after-hours access to areas of Council buildings, booked and/or designated area whenever a Council or committee meeting is scheduled.
PART 6 – BREACHES OF THIS POLICY

6.1 All parties need to have confidence that this Policy will be complied with and breaches will be dealt with appropriately. Any breaches of this Policy that are not dealt with appropriately will erode confidence in the ability of the Council to deal with complaints and reduce the efficiency of the Council.

6.2 Non-compliance with this Policy is considered to be a breach of Council’s Code of Conduct (POL100).

6.3 Breaches will be dealt with in accordance with the provisions of Part 8 of Council's Code of Conduct (POL100), and the Procedures for the Administration of the Code of Conduct.
<table>
<thead>
<tr>
<th>Version No.</th>
<th>Details</th>
<th>Date</th>
<th>Resolution No.</th>
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<tbody>
<tr>
<td>1</td>
<td>Initial Issue – On 12 May 2016, the Premier of NSW, The Hon Mike Baird MP, made the Local Government (Council Amalgamations) Proclamation 2016 under the Local Government Act 1993, whereby Murray Shire Council and Wakool Shire Council were amalgamated to constitute the new area to be known as Murray River Council, effective immediately.</td>
<td>8 Aug 2017</td>
<td>080817</td>
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Council reserves the right to review, vary or revoke this policy at any time

This Policy is scheduled for review in August 2021