

## ACCESSING INFORMATION

Wollondilly Shire Council is committed to being open, accountable, fair and effective in the exercise of its functions. In doing so we recognise that we must take into account:

- privacy of others,
- legal professional privilege, and
- commercially sensitive information.

There is a right of access under the *Government Information (Public Access) Act* (GIPA) to certain documents held by us unless there is an overriding public interest against disclosures (OPIAD) not to provide access. We will seek to ensure you are able to access information without the need for formal requests.

This will be achieved by publishing mandatory release (open access) information on our website, unless there is an OPIAD, or to do so would impose an unreasonable additional cost on Council.

If we are unable to publish information on the website we will make the information viewable in another way e.g. hard copy at Council's administration centre. The release of requested information that is not available on our website or in other publications will be decided within the guidelines of the GIPA Act.

Where practicable, we will deal with requests to inspect documents in accordance with the GIPA Act free of charge but a reasonable photocopying fee may be payable and for access to versions of documents that are not reasonably accessible or are not able to be forwarded electronically (by email). All charges are detailed in our schedule of fees and charges.

Council may also provide access to information under other legislation. Under the *NSW Privacy and Personal Information Protection Act 1998* (PPIPA) and the *NSW Health Records and Information Privacy Act 2002* (HRIPA) an individual has a right to request access to and amend records held by us which contains their personal details, matters related to their business affairs and any records containing information about their health.

Where information about an individual is held in documents, files or systems that include information about other persons, any request should be made under the GIPA Act. The Act provides for consultation with other affected parties prior to disclosure of information concerning third party personal or business affairs.

Under the *NSW Environmental Planning and Assessment Act 1979* (EPA) and *NSW Environmental Planning and Assessment Regulation 2000* there is a right to access

development application registers and documents held by Council subject to restrictions set out in s.268(3)

## HOW INFORMATION IS MADE AVAILABLE

There are four ways that you may access information, unless there is an OPIAD. These include:

1. Mandatory release of information (Open Access)
2. Proactive release of information
3. Informal release of information (in response to an informal request)
4. Formal release in response to a formal request for access – (Access Application)

## MANDATORY RELEASE – (OPEN ACCESS)

The Government Information (Public Access) Regulation 2009 requires that certain documents held by us are to be made publicly available for inspection, free of charge. You are entitled to inspect these documents either on our website (unless there is an unreasonable additional cost to us to publish these documents on the website) or at the Council administration centre during ordinary office hours.

The following mandatory release (or open access) information is available on our website:

- Register of contracts
- Policy documents
- Councils information guide
- Disclosure log
- A record of open access information that we do not make publicly available on the basis of an OPIAD

There is also *Additional Open Access* information in the GIPA Regulation that we must make available on our website (unless to do so would impose an unreasonable cost or diversion of resources). Where we cannot place the information on our website we will make the information available by inspection at Council's administration centre.

## ADDITIONAL OPEN ACCESS INFORMATION

### 1. INFORMATION ABOUT COUNCIL

- The model code of conduct prescribed under section 440(1) of the Local Government Act
- Councils adopted Code of conduct
- Code of Meeting Practice
- Annual Report
- Annual Financial Reports
- Auditor's Report
- Management Plan
- EEO Management Plan

- Policy concerning the Payment of Fees, Expenses and Provision of Facilities to the Mayor and Councillors
- Annual Reports of Bodies Exercising Functions Delegated by Council (e.g. Section 355/377 Committees)
- Any Codes referred to in the Local Government Act
- Returns of the Interests of Councillors, Designated Persons and Delegates
- Agendas, Business Papers and Minutes of Council/Committee meetings (except meetings that are closed to the public)
- Division of Local Government, NSW Department of Premier and Cabinet Representative Reports presented at a meeting of Council
- Land Register
- Register of Investments
- Register of Delegations
- Register of Graffiti removal works
- Register of current Declarations of Disclosures of Political Donations
- Register of Voting on Planning Matters

## 2. PLANS AND POLICIES

- Local Policies adopted by Council concerning approvals and orders
- Plans of Management for Community Land
- Environmental Planning Instruments, Development Control Plans and Contribution Plans

## 3. INFORMATION ABOUT DEVELOPMENT APPLICATIONS

Development Applications and any associated documents received in relation to a proposed development created after 1 July 2010:

- Home Warranty Insurance documents
- Construction Certificates
- Occupation Certificates
- Structural Certification Documents
- Town Planner Reports
- Submissions received on Development Application
- Heritage Consultant Reports
- Tree Inspections Consultant Reports
- Acoustic Consultant Reports
- Land Contamination Consultation Reports
- Records of decisions on Development Applications including decisions on appeals
- Records describing the general nature of documents that Council decides to exclude from public view after application of public interest test considerations

## 4. APPROVALS, ORDERS AND OTHER DOCUMENTS

- Applications for approvals under part 7 of the LGA
- Applications for approvals under any other Act and any associated documents received
- Records of approvals granted or refused, any variation from Council Policies with reasons for the

variation, and decisions made on appeals concerning approvals

- Orders given under Part 2 of Chapter 7 of the LGA, and any reasons given under section 136 of the LGA
- Orders given under the Authority of any other Act
- Records of Building Certificates under the Environmental Planning and Assessment Act 1979
- Plans of land proposed to be compulsorily acquired by Council
- Compulsory Acquisition Notices
- Leases and Licenses for use of Public Land classified as Community Land

## PROACTIVE RELEASE

In addition to mandatory release of information, we will proactively release as much other information as possible. Such other information might include frequently requested information or information of public interest that has been released as a result of other requests. The information will be available on the website, free of charge. Hard-copies will be provided at the lowest reasonable cost.

We will review our commitment to release information proactively at least annually, to identify the kinds of information that may be made publicly available. In doing this we hope to:

- improve service delivery – by increasing agency efficiency and responsiveness; providing information to the community faster leading to greater customer satisfaction
- increase community participation in governance processes and decision-making – by enabling active participation in our decision making, design and delivery of services; promoting accountability
- a better informed community – raising community awareness of our strategic intentions and initiatives; driving innovation, improving standards
- reduce costs and resourcing needs by decreasing the number of access applications – by reducing administrative effort and costs for Council and the community; facilitating planned release of information; providing flexibility in the manner in which we can release information and context on the use and interpretation of the released information

## INFORMAL RELEASE

We will release other information in response to an informal request, subject to any reasonable conditions.

However, further to the lodgement of an informal request, we may require a formal access application to be submitted where the information you seek:

- is of a sensitive nature that requires careful weighing of the considerations in favour for and against disclosure, or
- contains personal or confidential information about a third party that requires consultation, or

- would involve an unreasonable amount of time and resources to produce
- If a fee for photocopies of documents provided is payable, it will be listed in Councils adopted Fees and Charges

## FORMAL RELEASE

We may release information in response to a formal access application. This would only be if the information is not available in any other way. We will generally disclose information in response to a valid formal access application for information that is held by us and not otherwise available to you, the applicant.

We can refuse a formal request for information if there is an OPIAD or if searching for the requested information would require unreasonable and substantial diversion of our resources.

## WHAT STEPS DO I NEED TO TAKE TO GAIN ACCESS TO INFORMATION

You may obtain access to information by searching our website to see if it is already available. If not contact us and ask for the information. We will advise whether the information requested:

- is mandatory release or additional open access - information that is readily available and where and how you can get the information
- should be made available as part of a proactive release of information
- can be disclosed through an informal release – e.g.: where no third party personal information is involved
- requires a formal access application – e.g.: because consultation with a third party is required

When you ask for information over the telephone, by email or on request from us at Council's administration centre we will provide the information as quickly as possible. At times we may ask you to complete an '*Informal Access to Information*' request form. The form is available on our website. There is no fee required on application.

If you are unable to access the information you have requested informally you can make a formal request for access using our '*Formal Access to Information*' form. This is available on our website, by mail or on request from Councils administration centre.

A fee of \$30.00 must be paid when lodging the form and processing charges may be applicable (there is no GST in relation to these charges).

## EXEMPTIONS TO ACCESS – (OPIAD)

If we decide there is an OPIAD on information we will provide an explanation of the reasons for applying an exemption. We will not classify information as exempt unless there are

reasons for doing so. Where documents contain exempt information, we can remove that information to allow us to release any remaining information contained within a requested document.

In determining whether there is an OPIAD of information, we will apply the public interest test.

The GIPA Act provides an exhaustive list of public interest considerations against disclosure. These are the **only** considerations against disclosure we will consider in applying the public interest test.

These considerations are grouped under the following headings:

- 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
- secrecy provisions (in legislation other than those listed in Schedule 1)
- exempt document under interstate Freedom of Information legislation

In applying the public interest test, we will **not** take into account:

- that disclosure might cause embarrassment to, or loss of confidence in, the Council
- that any information disclosed might be misinterpreted or misunderstood by any person

We will consider any submissions made by an applicant in relation to an OPIAD.

Under the GIPA Act there are 12 categories of information (8 of which appear to affect local government) for which there is a **conclusive presumption** of an OPIAD. This is known as 'excluded information'.

1. Information subject to an overriding secrecy law (26 specifically named Acts)
2. Information subject to the direction or order of a court or other body with the power to receive evidence on oath
3. Information subject to legal professional privilege
4. 'Excluded information' (judicial and prosecutorial information, information about complaints handling and investigative functions, competitive and market sensitive information and information in relation to specific functions of the Public Trustee)
5. Documents affecting law enforcement and public safety
6. Specific information relating to transport safety

7. Specific reports concerning the care and protection of children
8. Specific information relating to Aboriginal and environmental heritage

Generally under the GIPA Act, we must not publish and must refuse requests to disclose information in the above categories. Formal applications for 'excluded information' are invalid under the Act.

## COPYRIGHT

A large amount of information which is available for public access belongs to third parties and is the subject of copyright, such as plans and reports submitted with development applications. Access to this information is provided to you in accordance with the GIPA Act and other relevant legislation, such as the *Environmental Planning and Assessment Act 1979*. Copyright laws apply to this information and you are advised to seek the consent of the copyright owner before reproducing the information in any way.

## TIME LIMITS

In respect of formal applications, we will notify you of the decision on an application within 20 working days, unless we agree to extend the time. We may also extend the time by up to 15 working days where consultation with a third party is required or if we need to retrieve records from archives.

If access is deferred by us, we will notify you and include the reason for deferral and the date on which you will be given access. A decision to defer access is reviewable (see Your Rights of Review and Appeal below). If we do not decide your access application within the above timeframes, it is deemed 'refused'. We will refund the application fee and you may seek internal or external review of this refusal. This will not apply if an extension of time has been arranged or payment of an advance deposit is pending.

## YOUR RIGHTS OF REVIEW AND APPEAL

Where you are refused access under a formal application, we will provide details of the reasons for refusal to you in writing. If you have been refused access by us for access to information under the GIPA Act there are 4 options of review available.

1. You can apply to Council for an **internal review**. This is a review by someone more senior than the original decision maker and there is a \$40 fee.

You have 20 working days from receiving a Notice of Decision to ask for an internal review.

2. If you are not satisfied with the internal review, or do not want one, you can ask for a **review by the**

**Information Commissioner**. You have 40 working days from being notified of a decision to ask for this review.

3. If you are not satisfied with the decision of the Information Commissioner or the internal reviewer or if you do not want to take these options you can apply directly to the **NSW Civil and Administrative Decisions Tribunal (NCAT)**. You have 40 working days from notification of the original decision to make this application.
4. If you have had a review by the Information Commissioner you have 20 working days from notification of the Information Commissioner's decision to apply for review by the NCAT.

**It is noted that there are no rights of review in respect of informal applications, but an applicant may make a formal application at any time.**

## COUNCILLORS ACCESS TO INFORMATION

Councillors have a right to access Council information that is reasonably necessary for exercising the functions of their civic office, including roles which extend beyond decision-making at formal meetings.

When making a request for information, Councillors should draft the request carefully and should precisely detail the information, or the nature of the information, sought. It is expected that Councillors will act reasonably in making a request for information.

When dealing with a request by a Councillor for information, the Chief Executive Officer must act reasonably. Given that a Councillor may need the information to perform their public duty, if a request is to be denied, reasons for the refusal must be identified.

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

Councillors may request access to Council information by providing a written request to the Chief Executive Officer. Councillors may also apply for information by making a Formal access application with payment of the associated charges.