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Access to Information Held by Council – Frequently Asked Questions

These questions address and elaborate on issues covered in the Access to Information Policy. These questions are based on common inquiries made in relation to access to information held by Council. It is advisable that the Policy be referred to in the first instance as it will address the majority of issues.

1. What documents are available for inspection at Council without the need for a formal written application?

Some documents about Council are available as a matter of routine and can be inspected without any formal procedures. Business papers and minutes of open Council meetings, the Annual Report, the Management Plan, policy documents, and planning instruments are examples of such documents. Many of these documents are available on Council's website at www.wsc.nsw.gov.au.

Publicly exhibited development applications and associated documents are available for inspection without formal written application during the period indicated. It is Council policy to make submissions received, including objections in respect of a publicly exhibited development, available for inspection if requested prior to the making of a decision.

Council also maintains public registers that are available for inspection by members of the public in consultation with the Customer Service staff. Registers that contain personal information can be inspected on Council premises but prior to any copies being made Council is required to ensure that any person seeking the information is doing so for a purpose consistent with the purpose for which the register was created. Council will require a statutory declaration from a person regarding the purpose for which access is sought.

A member of the public may view and copy one entry in a public register without having to provide a reason.

All other documents a written application is necessary.

2. What costs are involved in applying for access to information?

As far as possible, Council will deal with requests to inspect documents in accordance with the NSW Local Government Act 1993 free of charge. However, reasonable photocopying charges may be payable under the Act.

The Freedom of Information Application fee is \$30.00 and processing charges may also be applicable.

Any charges applicable are detailed in Council's adopted Schedule of Fees and Charges.

3. What are Council's obligations?

- To process Freedom of Information Applications with 21 days of receipt unless the applicant is advised otherwise.
- To process Access to Information Requests as soon as possible have regard to the available resources;
- To process access to information requests taking into consideration the public interest;
- To liaise with customers on details of their application where appropriate;
- To promote the use of Council's website to provide access to a wide range of documents;
- To ensure that individuals' privacy is maintained in accordance with the Privacy Management Plan.
- To ensure staff have up-to-date training on dealing with access to information requests.

4. What is the "public interest"?

The "public interest" is not defined within any Act but it has been variously described as "something which is of serious concern and benefit to the public", not merely something of individual interest. It has also been held that public interest does not mean "of interest to the public" but "in the interest of the public", i.e. it serves the interests of the public.

The Deputy NSW Ombudsman, Mr Chris Wheeler, has recently released a paper on the public interest and concludes that the main objective in using the term 'the public interest' is to "direct consideration away from private, personal, parochial or partisan interests towards matters of broader (i.e. more 'public') concern."

5. What restrictions are there in accessing information held by Council?

Under current State legislation some information held by Council may not be released. Accordingly, Council may restrict access to some information where:

- Council is satisfied that allowing access would on balance be contrary to the public interest;
- the information discloses legal advice and/or correspondence between Council and its legal representatives;
- information in advice from Council insurers or their agents;
- disclosure of the information would reveal personnel matters concerning particular individuals, eg. personal, health or disciplinary matters regarding staff;
- disclosure would reveal information concerning the personal hardship of a resident or ratepayer;
- disclosure of personal information eg details of complainants;
- disclosure of the information would reveal trade secrets eg on occasions this may occur in a tender submission;
- disclosure of the information would constitute an offence or a breach of confidence; or
- disclosure of the information would if disclosed confer a commercial advantage on a party with whom Council is conducting (or proposes to conduct) business (Section 12 1(a)).

6. What happens if Council refuses to provide documents associated with my 'Application for Access to Information'?

If access to any document(s) is refused you will be advised of the reasons for the refusal and, where appropriate, other means of access will be suggested (such as submitting a Freedom of Information Application). Where a member of the public is refused access under section 12 of the Local Government Act 1993, staff will provide details of the reasons for refusal to the member of the public in writing. A report will be submitted to Council and the matter will be reviewed within 3 months. The member of the public can request further review of the decision after 3 months of the original review.

Any member of the public who is dissatisfied with Council's handling of the request for documents or Council's procedures in relation to access to information, under the Local Government Act 1993, may lodge a complaint with the NSW Ombudsman who can provide advice on the process to be followed.

7. What information can be provided about a named individual?

Information about a named individual can only be provided to another person or organisation where disclosure is consistent with Council's obligations under the Local Government Act, the Freedom of Information Act, the Privacy and Personal Information Protection Act 1998 or the Health Records and Information Privacy Act 2002. Those Acts do not prohibit disclosure but set out circumstances in which the Council may provide information including where this is consistent with the purpose for which the information was collected; where the person has consented to the disclosure or was made aware of information of this kind is usually disclosed; or where another act or law permits disclosure. There are a variety of other circumstances where Council may disclose personal information to other agencies including law enforcement authorities. For further information please refer to the Privacy Management Plan.

8. What information is available about property ownership?

Council will provide a single entry to the Rates register which includes the current owners name and address without requesting a reason. Council however will not provide details on multiple property ownership unless there is an emergency (Section 302 of Local Government Act) or other considerations justify disclosure of the name and/or contact details of the owners.

The Land Title registers maintained by the NSW Land and Property Information Service at the Department of Lands can be accessed from that office, from approved land information brokers and online. Details of online searches that include the name of the current owner are available at: <http://lpi-online-lpi.nsw.gov.au>

9. What information can I access about development applications?

Information about the status of particular development applications can be provided to any member of the public. Such information is available from the Development Application Register (see information regarding accessing Public Registers in FAQ 1 above).

Plans of the internal layout or design of a residential building are not available at anytime but access to the height and external configuration of a building and other plans such as shadow diagrams and landscape plans are. Council assessment reports and other documents created or received in the course of consideration of a Development Application are not available for inspection prior to the application being determined by council staff or Council.

Access to Development Application documents after an application has been determined is as provided in the Environmental Planning and Assessment Act 1979 and the Environmental Planning and Assessment Regulation 2000 and section 12(1) of the Local Government Act.

10. How do I obtain Submission Letters?

Fill out an 'Application for Access to Information' Form and under the heading of Details of Request write "submissions/objection" and provide the Land Use Application Number.

Submission and objection letters lodged pursuant to the Development Application notification process are deemed to be lodged as part of a public process. Objectors and supporters are informed by a neighbour notification letter that their submissions will be made public. However, under section 739 of the Local Government Act 1993, a person may request that their name and address be removed from documents available for public inspection, if disclosure would place that person or members of their family's personal safety at risk. Council is required to give consideration to the public interest in determining requests for access to submissions.

It is important that submission letters only contain information relevant to the Development Application and not information of a personal nature.

11. Can I access details of a complaint?

In accordance with Council's Release of Complainant Policy, Council will not release the personal details or identifying information of any person making a complaint. This does not cover submissions to development applications and these details will be made available subject to the applicant having been provided with the pre collection privacy statement.

Requests for access to complaints held by Council should be made under Freedom of Information.

Where a copy of the complaint cannot be provided to an applicant, Council will outline the substance of the complaint so that applicants may fully understand the circumstances and concerns of other members of the public.

12. What information can I obtain about employees of Council?

Personnel information about Council employees is not publicly available.

13. What information can I obtain about tenders and contracts?

Information about the name and price of a successful tenderer is publicly available. Any request for additional information or access to documents concerning tenders and contracts may be available under Section 12 using an 'Application for Access to Information' Form.

Information will not be made available, however, if the disclosure could confer a commercial advantage/disadvantage on a party with whom Council is conducting (or proposes to conduct) business.

14. When can I apply for information under the Freedom of Information Act 1989?

A Freedom of Information application can be made for access to any documents. Applicants are encouraged to utilise the Freedom of Information Act 1989 where documents may be contentious or concern the affairs of others.

If a Freedom of Information application is lodged for documents which could be made available under section 12 of the Local Government Act 1993, the Council will contact the applicant. If the applicant agrees to withdraw the Freedom of Information application and written confirmation is received, Council will refund the application fee and process the application under the Local Government Act. If the applicant does not wish to withdraw the application the matter will be dealt with in accordance with the provisions of the Freedom of Information Act 1989.

If your application is refused, only partly granted, or you are unhappy with the fees charged, you can seek an internal review of the decision. This is a review of the decision by a more senior person

within the organisation. You have 28 days from the date of the decision in order to lodge an application for internal review.

The application for review should be in writing and addressed to the Principal Officer of the agency. You must specify the decision you want reviewed and include the review fee of \$40 or \$20 if the original fee was reduced. The agency must then make a decision on your application for review within 14 days. If you do not have a response within 14 days, it is considered to be a refusal.

If you are still not happy with the outcome of the internal review you can seek review by the NSW Ombudsman, who can investigate the decision and make recommendations.

You can then appeal to the Administrative Decisions Tribunal within 60 days of the Ombudsman's decision or refusal to investigate. Alternatively, you can appeal directly to the ADT following an internal review. If the matter is taken to the tribunal, ordinary legal costs will have to be paid.