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1. ACCESSING INFORMATION

Maitland City Council is committed to being open, accountable, fair, and effective in the exercise of its functions, and to handle personal and health information in a fair and reasonable manner. Council will seek to ensure that legitimate requests for access to information are granted, subject to the need to protect the privacy of others, commercially sensitive information, and where disclosure of the requested information would not be in the public interest.

These guidelines are intended for use, in conjunction with Council's Right of Information Policy, by Council staff and sets out the documents and types of information that are open access, those that will require a formal access application form and those that will not generally be available for inspection or copying. Council staff can continue to release open access information proactively as part of the requirements of their position. If staff have any questions or require assistance in determining whether information can be released, they can contact Council's Right to Information Officer for guidance.

Requests to inspect documents that are deemed 'open access' in accordance with the *Government Information (Public Access) Act 2009* (NSW) ('GIPA Act') will be available free of charge via the Council website www.maitland.nsw.gov.au. Copies requested from Council will be available on request but subject to a reasonable photocopy fee. All charges are detailed in Council's annual Schedule of Fees and Charges.

Members of the public have a legally enforceable right to access government information. There is a presumption in favour of the disclosure of Council information unless there is an overriding public interest against disclosure and subject to the restrictions outlined in Schedule 1 of the GIPA Act.

The GIPA prescribed four modes for releasing Government information:

1. Mandatory Proactive Release

This is information that Council proactively publishes on the Council website, free of charge unless to do so would impose unreasonable additional costs to Council, such as an agency information guide, policies affecting how Council make decisions and provide services, and a register of government contracts. These examples are considered to be open access information.

2. Authorised Proactive Release

This is information which Council voluntarily makes available to the general public. Council takes the initiative to release as much information as possible, in an appropriate manner and free of charge or at the lowest possible cost. Information of particular public interest or which is frequently released informally will be considered for Proactive release in the future.

3. Informal Release Request

An informal request is simply where Council is asked for information. This may be requested by phone, e-mail, letter, or in person. A range of Council information is already provided by staff members in response to ad hoc queries and the GIPA Act encourages such an approach unless there is an overriding public interest against disclosure. Factors to be taken into account in deciding what is appropriate to be released informally include the volume of information sought and the time required to respond to the request, whether the information concerns a third party or is considered contentious. There are no specific timeframes and no appeal rights in regard to informal requests and, in some circumstances, it may be necessary to refuse and advise that a Formal Access application should be submitted.

There is no fee required for an informal information access request.

4. Formal Access

Some government information may require a formal access application in accordance with the GIPA Act.

A formal access application is required in the following circumstances:

- if information is not available via proactive or informal release, or
- if access to DA documents prior to 1 July 2010 is required, or
- the request involves a large volume of information (generally requiring more than 30 minutes of processing time), or,
- the request requires extensive research and accordingly will involve an unreasonable amount of time and resources to produce, or
- the request contains personal or confidential information about a third party which may require consultation, or
- the request is of a sensitive nature that requires careful weighing of the consideration in favour of and against disclosure.

Council also may provide access to information under other legislation. Under the NSW *Privacy and Personal Information Protection Act 1998* ('PPIP Act') and the NSW *Health Records and Information Protection Act 2002* ('HRIP Act'), an individual has the right to access and amend records held by Council which contain their personal details, matters relating to their business affairs and any records containing information about their health.

Where information about an individual is held in documents, files or filing systems that include information about other persons, any request should be made under the GIPA Act. The GIPA Act provides for consultation with other affected parties prior to disclosure of information concerning their personal or business affairs. This consultation allows the third parties concerned to advise Council if they object to Council releasing their information. Council must also consider the requirements of the PPIP Act when determining documents for release.

Under the NSW *State Records Act 1998* Council is required to give an access direction (whether the records open or closed) for all their records that are at least 30 years old in what is described as the 'open access period'. From 1 January 2024, the open access period will change to 20 years, and records aged 20 or more years that do not have access directions in place will be open to the public by default.

Under the NSW *Environmental Planning and Assessment Act 1979* ('EPA Act') and Regulations 2000 there is a right to access Development Application registers and documents held by Council subject to restrictions set out in cl.268(3).

2. PROVISION OF ADVICE AND ASSISTANCE

Council will provide advice and assistance to a person who requests or proposes to request access to government information, for the purpose of assisting the person to access, or seek access to, information that is or may be made publicly available, and to the extent that would be reasonable to expect Council to provide.

The following specific advice and assistance will be provided to a person who requests access to government information:

- advice as to whether or not the information is publicly available from the agency and (if it is) how the information can be accessed,
- advice on how to make an access application for the information if the information is not publicly available from Council but appears likely to be held by Council,
- if the information appears unlikely to be held by Council but appears likely to relate to the functions of some other agency, the contact details of the other agency,
- the contact details of the NSW Information Commissioner and advice on the availability of and how to access any information published by the NSW Information Commissioner that may be relevant to the person's request.

3. INFORMATION AVAILABLE

Council publishes open access and mandatory release, information on its website unless there is an overriding public interest against disclosure or to do so would impose an unreasonable additional cost on Council. Should costs be deemed reasonable, Council will make the information available in another suitable format such as viewing a hard copy at the Maitland Administration Office. Information identified as open access information and is available on council's website includes:

- Council's policy documents,
- Council's Agency Information Guide – A publication guide with information about the Council's structure and functions, and listing the type of information that is publicly available,
- A disclosure log of formal access applications where in council's opinion the information release may be of interest to other members of the public,
- A register of government contracts worth more than \$150,000 that Councils has with private sector bodies, and
- A record of open access information that council does not make publicly available on the basis of an overriding public interest against disclosure.

In addition, Schedule 1 of the *Government Information (Public Access) Regulation 2018* (NSW) ('GIPA Regulation') requires that certain documents held by Council, are to be made publicly available for inspection, free of charge. The public is entitled to inspect these documents either on Council's website (unless there is an unreasonable additional cost to Council to publish these documents on the website) or at the offices of the Council during ordinary office hours or at any other place as determined by Council. Any current and previous documents of this type may be inspected by the public free of charge. Copies can be supplied for reasonable copying charges as shown in Councils' annual Schedule of Fees and Charges.

These documents are:

1. Information about Council
 - The model code of conduct prescribed under section 440(1) of the Local Government Act
 - Council's adopted Code of Conduct
 - Code of Meeting Practice
 - Annual Report
 - Annual Financial Reports



- Auditor's Report
- Integrated Plans – comprises of the Community Strategic Plan, Delivery Program, Operational Plan, Workforce Strategy, Long Term Financial Plan, and the Asset Management Plan
- EEO Management Plan
- Policy concerning the Payment of 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 1993 ('LGA')
- 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)
- Office 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
- Register of Planning Agreements
- Register of Development Contributions
- Register of Applications for Development Consent
- Register of Applications for Complying Development Certificates
- Register of Determination of Applications for Development Consent
- Register of Determination of Applications for Complying Development Certificates

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 – made under the Environmental Planning and Assessment Act 1979 applying to land within Council's local government area

3. Information about Development Applications

Development Applications made on or after 1 July 2010 and any associated documents received in relation to a proposed development (subject to copyright owner approval). For example:

- Home Warranty Insurance documents
- Construction Certificates
- Occupation Certificates
- Structural Certification Documents
- Town Planner Reports
- Submissions received on Development Applications – subject to the provisions of the Privacy and Personal information Protection Act 1998 (NSW)
- Heritage Consultant Reports
- Tree Inspections Consultant Reports
- Acoustic Consultant Reports
- Land Contamination Consultant 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 1 of Chapter 7 of the LGA and any associated documents received
- 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
- Performance Improvement Orders issued under Part 6 of Charter 13 of the LGA

In addition, from time-to-time Council will make as much other information as possible publicly available in an appropriate manner, including on their Council website. The information will be available free of charge or at the lowest reasonable cost. Such other information includes frequently requested information or information of public interest that has been released as a result of other requests.

Council will endeavour to release other information in response to an informal request, subject to any reasonable conditions as Council thinks fit to impose. However, notwithstanding the lodgement of an informal application, Council may require a formal access application to be submitted where the information sought:

- Is of a sensitive nature that requires careful weighting of the considerations in favour of and against disclosure, or
- Is not otherwise routinely provided by Council, 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.

Access to information subject to copyright

Copies of documents provided are given for information purposes only and are provided by Council to meet its requirements under relevant legislation. Copyright laws still apply to each document. The copyright-owner's consent is required prior to the release of any copyright protected documents such as documents on development applications.

Copyright protected material submitted to Council is not to be published, copied, or distributed unless Council has copyright owner's express consent to do so. Such material however may be viewed by the public.

This Policy provides that without copyright owner's consent:

- DA notification plans will be available on the Council's website or Application Tracker and will not be removed after the submission period or assessment period.
- Other plans not showing the internal configurations and specifications of residential developments and other documents associated with the DA and being identified as copyright protected material may be available on the Council's website or Application Tracker if in the public's interest and will not be removed after the submission period or assessment period.
- Plans showing the internal configurations of residential developments will not be available on the Council's website or Application Tracker.
- Public access to hard copy DA files may be provided upon application of 'Request to view file' under the GIPA Act and will be vetted to ensure that plans showing the internal configurations and specifications of



residential developments are not made available. No copyright protected material may be copied from the file.

Council's development related application forms include wording to the effect that the applicant and owner are signing to acknowledge that all plans and documentation accompanying forming part of that application may be publicly available under GIPA Act and may appear on Council's website or Application Tracker.

Any other identified copyright protected materials relating to matters other than DAs will not be published on the Council's website under the GIPA Regulation.

Resident / Public Submission Letters

In accordance with Schedule 1 of the GIPA Regulation, submission letters concerning development applications are open access information and therefore are publicly available.

Submission letters (including the identifying particulars of the authors) to Council on matters of policy or proposals (other than development applications) including LEP/DCP changes, draft management plans, matters on exhibition and other public consultations are deemed to be for the purpose of public process and are therefore available for inspection. Council will give consideration to the 'public interest' and requests for confidentiality by submitters in determining access to submission letters.

All invitation for public submissions will include a statement that their submissions including identifying particulars will be made public. The provisions of the GIPA Act may, after due process, result in submissions marked confidential by the writer being released to an applicant.

Plans showing internal configurations and specifications of residential developments

The EPA Act provides access to all documents associated with a development application. Schedule 1, section 3(2)(a) to the GIPA Regulation states that the open access requirement do not apply to the internal floor plans or specifications for any residential parts of a proposed building, other than plans showing the heights and external configuration of the site.

4. EXEMPTIONS TO ACCESS

Council may refuse a request for information if there is an overriding public interest against disclosure or if searching for the requested information would require unreasonable and substantial diversion of the Council's resources.

Council will always explain to the applicant its reasons for applying an exemption. Council will not classify information as exempt unless there are clear reasons for doing so. Where documents contain exempt information, any remaining information contained within the requested document will be available under the Act.

4.1. Public Interest Test

In determining whether there is an overriding public interest against the disclosure of the information, Council will fully consider the public interest test.

The public interest test requires balancing factors for and against disclosure of each piece of government information. That balancing must be undertaken within the context of the GIPA Act.

Accordingly, the:

- Object of the GIPA Act
- Four legislative pathways through which information can be released,
- Presumption in favour of disclosure of information,
- Limited factors which operate against disclosure of information,
- Identification of irrelevant considerations, and



- Principles that apply to the Public Interest Test

all form part of the legislative context in which the public interest test be undertaken.

Following recognition of the legislative context, the public interest test then requires the decision maker to:

1. Identify the relevant public interest considerations in favour of disclosure,
2. Identify the relevant public interest considerations against disclosure, and
3. Determine the weight of the public interest considerations in favour of and against disclosure and come to a conclusion about whether the factors in favour of disclosure outweigh the factors against disclosure (taking into account the presumption in favour of disclosure).

In applying the public interest test, Council 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.

Council will consider any submissions made by an applicant in relation to public interest considerations, as well as any factors personal to the applicant.

4.2. Excluded Information

The GIPA Act provides an exhaustive list of public interest considerations against disclosure that may be taken into account when determining if there is an overriding public interest against releasing the information. These are the only considerations against disclosure that Council will consider in applying the public interest test.

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 of the GIPA Act)
- Exempt documents under interstate Freedom of Information legislation.

Under the GIPA Act there are 12 categories of information (eight of which appear to affect local government) for which there is a conclusive presumption of an overriding public interest against disclosure. These eight are:

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

In dealing with informal applications Council will apply a similar decision-making framework.



5. ACCESSING INFORMATION AND MAKING AN APPLICATION

The public may obtain access to information as follows:

- by searching the Council's website to see if it is already available.
- by contacting Council and requesting the information. Council will advise whether the information requested:
 - Is open access, or mandatory release information that is readily available and where and how to get the information.
 - Should be made available as part of a proactive release of information.
 - Can be disclosed through an informal release, for example where no third-party personal information is involved.
 - Requires a formal access application, for example because consultation with a third party is required.

5.1. Informal Request

To make an informal request for access to information under the GIPA Act, Council may require the completion of an informal access request, which can be completed online through Council's website. No fee is required for an informal access request.

5.2. Formal Access Application

To make a formal application for access to information under the GIPA Act, the 'Formal Access Application Form – GIPA' should be completed, which can be downloaded from Council's website, and be accompanied by a \$30 application fee. Processing charges (charged at \$30 per hour) may be applicable. There is no GST in relation to these charges.

If a fee for photocopies of documents provided under the GIPA Act is payable, it will be listed in Council's annual Schedule of Fees and Charges and is GST inclusive.

5.2.1. Time Limits

Upon receipt of a formal application, Council must acknowledge receipt of the application and accept or reject the application within 5 working days. Any additional charges will be specified in the acknowledgement to the applicant.

If the application is invalid and does not contain enough information to process, the Right to Information Officer will assist the applicant to enable a valid application.

Council will notify applicants of the decision regarding access to information within 20 working days, unless the applicant agrees to extend the time. Council may also extend the time by up to 15 working days where consultation with a third party is required or if Council needs to retrieve records from archives.

5.2.2. Deferral

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



5.2.3. Rights of Review and Appeal

Where a member of the public is refused access under a formal application under GIPA Act, staff will provide details of the reasons for refusal to the member of the public writing. An applicant who has been refused access by Council to information requested under a formal application for access to information under the GIPA Act has three options of review available.

- 1. Internal review:** Applicants 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 that must accompany the application for an internal review. Applicants have 20 working days from receiving notice of a decision to ask for an internal review. An application for internal review will be acknowledged within 5 working days of receiving the application. A notice of decision on an internal review will be provided within 15 working days of receiving the application for internal review. This may be extended by up to 10 working days where there is a need to consult.
- 2. External review by the NSW Information Commissioner:** If an applicant is not satisfied with the internal review, or does not want one, they can request a review by the NSW Information Commissioner. Applicants have 40 working days from being notified of a decision to request this review. For further information on how to request a review by the NSW Information Commissioner:

Email: ipcinfo@ipc.nsw.gov.au

Phone: 1800 472 679

Website: www.ipc.nsw.gov.au

- 3. External review by NSW Civil and Administrative Tribunal:** If an applicant is not satisfied with the decision of the Information Commissioner or the internal reviewer or if they do not want to take these options they can apply to the NSW Civil and Administrative Tribunal (NCAT). If the applicant has already had a review by the NSW Information Commissioner they have 20 working days from notification of the NSW Information Commissioner's decision to make this application. If they haven't had a review by the NSW Information Commissioner, they have 40 working days from notification of the internal review decision to make this application. For further information on how to apply for a review by NCAT:

Email: aeod@ncat.nsw.gov.au

Phone: 1300 006 228

Website: www.ncat.nsw.gov.au

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

6. VARIATION AND REVIEW

The Right to Information Guidelines will be reviewed every three years, or earlier if deemed necessary, to ensure that it meets the requirements of legislation and the needs of Council. The Guidelines will continue in force until superseded, rescinded or varied with by legislation or a new decision of the General Manager. Any draft revised versions, where there are significant amendments, will be provided to Council for noting.