



**CABONNE COUNCIL**

THE GENERAL MANAGER  
POST OFFICE BOX 17  
MOLONG 2866

Phone: 02 6392 3200

Fax: 02 6392 3260

Contact:

Website: [www.cabonne.nsw.gov.au](http://www.cabonne.nsw.gov.au)

Email: [council@cabonne.nsw.gov.au](mailto:council@cabonne.nsw.gov.au)

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The Director, Justice Policy  
Department of Justice  
GPO Box 6, Sydney NSW 2001  
Via email: [justice.policy@agd.nsw.gov.au](mailto:justice.policy@agd.nsw.gov.au)

Dear Director,

**Review of the Government Information (Public Access) Act 2009 (the Act)**

Council welcomes the review and appreciates the opportunity to make a submission relating to the above.

The basis of Council's submission relates to the requirement under the Act and the Government Information (Public Access) Regulation 2009 (the Regulation) to place information about development applications (DAs) on Council's website.

Whilst there is a provision at s6(2) that "*(unless to do so would impose unreasonable additional costs on the agency)*", Council is concerned that at some point a determination will be made as to "unreasonable" which would require Council to place the DAs on its website.

Council is of the view that a one word change to s6(2) of the Act would be sufficient to allow an option for councils in areas such as ours where there is little or no demand for the DAs to be on the website. Members of our communities and the public generally may apply in person or request an emailed copy to be provided.

Section 6(2) reads "*Open access information is to be made publicly available free of charge on a website maintained by the agency (unless to do so would impose unreasonable additional costs on the agency) and [emphasis added] can be made publicly available in any other way that the agency considers appropriate.*"

Changing "and" to "or" would allow councils to comply where their resources permit and allow councils who do not have the resources or demand to use alternative



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methods. If considered necessary a guideline can be issued as to what "other ways" are acceptable.

Making every DA available on the website based on a possibility that someone may wish to view it is not considered the best way to meet accessibility goals.

Further, Council is aware that the Department of Planning & Environment is progressing the implementation of ePlanning which is making DA information available over the internet. With the implementation of this system DA information reasonably required is available to satisfy most enquiries. Anyone requiring further information can contact the council to request further information.

Accordingly, Council suggests that as ePlanning is providing the DA information (reasonably required) it further supports a view that there is no need for DA information to be placed on the website in the manner and to the extent currently required by GIPA.

#### Impact on resources

To place documents on a website they must be in an electronic format. Not all councils operate their records electronically, and even when they do the DA documentation / files tend to sit outside Council's EDRMS, in part due to the size of plans and the need for staff to take the information (files) out in the field.

Whilst there is available technology that can be invested in, a significant change is required, most particularly amongst the culture / mindset of the staff that work in this area.

Further, the Information Commissioner has issued Guideline 3: "*Development Applications For local councils – personal information contained in development applications: What should not be put on council websites*". This guideline means that DA documents must not only be scanned but they must also be redacted to comply. The redaction decision is a requirement in time of a fairly senior person to read through each DA and ensure all stipulated information is redacted prior to uploading onto the website.

In conclusion, Council submits that the GIPA legislation should be amended, by the way suggested or other means, to remove the mandatory obligation for DA documents to be placed on a council's website.

If you wish to discuss this matter further, please contact me on 02 6392 3208.

Yours faithfully,



Andrew L Hopkins  
**General Manager**

Encl. Please see below for legislative references.

## Legislative references

### **Government Information (Public Access) Act 2009**

#### **Mandatory proactive release of certain government information**

##### 6 Mandatory proactive release of certain government information

(1) An agency must make the government information that is its

"open access information" publicly available unless there is an overriding public interest against disclosure of the information.

Note : Part 3 lists the information that is open access information.

(2) Open access information is to be made publicly available free of charge on a website maintained by the agency (unless to do so would impose unreasonable additional costs on the agency) and can be made publicly available in any other way that the agency considers appropriate.

#### **What constitutes open access information**

##### 18 What constitutes open access information

The following government information held by an agency is the agency's "open access information" that is required to be made publicly available by the agency under section 6 (Mandatory proactive release of certain government information):

- (a) the agency's current agency information guide (see Division 2),
- (b) information about the agency contained in any document tabled in Parliament by or on behalf of the agency, other than any document tabled by order of either House of Parliament,
- (c) the agency's policy documents (see Division 3),
- (d) the agency's disclosure log of access applications (see Division 4),
- (e) the agency's register of government contracts (see Division 5),
- (f) the agency's record (kept under section 6) of the open access information (if any) that it does not make publicly available on the basis of an overriding public interest against disclosure,
- (g) such other government information as may be prescribed by the regulations as open access information.

## Government Information (Public Access) Regulation 2009 - Schedule 1

### SCHEDULE 1 – Additional open access information-local authorities

#### 3 Information about development applications

- (1) Information contained in the following records (whenever created) is prescribed as open access information:
  - (a) development applications (within the meaning of the Environmental Planning and Assessment Act 1979 ) and any associated documents received in relation to a proposed development including the following:
    - (i) home warranty insurance documents,
    - (ii) construction certificates,
    - (iii) occupation certificates,
    - (iv) structural certification documents,
    - (v) town planner reports,
    - (vi) submissions received on development applications,
    - (vii) heritage consultant reports,
    - (viii) tree inspection consultant reports,
    - (ix) acoustics consultant reports,
    - (x) land contamination consultant reports,
  - (b) records of decisions on development applications (including decisions made on appeal),
  - (c) a record that describes the general nature of the documents that the local authority decides are excluded from the operation of this clause by subclause (2).
- (2) This clause does not apply to so much of the information referred to in subclause (1) (a) as consists of:
  - (a) the plans and specifications for any residential parts of a proposed building, other than plans that merely show its height and its external configuration in relation to the site on which it is proposed to be erected, or
  - (b) commercial information, if the information would be likely to prejudice the commercial position of the person who supplied it or to reveal a trade secret.
- (3) A local authority must keep the record referred to in subclause (1) (c).