

HEAD OF POWER

- *Local Government Act 2009*
- *Planning Act 2019*, Chapters 2 and 3

INTENT

The purpose of this policy is to manage the participation of various stakeholders within development application and plan making processes.

SCOPE

This policy applies to all employees, Councillors and the Councillor Advisor, and is consistent with the legislative requirements relating to councillors in the *Local Government Act 2009*, the *Planning Act 2016* and the *Integrity Act 2009*.

This policy does not apply to unanticipated or social engagements that occur from time to time between Councillors, developers or submitters. However, Councillors should carefully consider the implications of social engagements with these persons and be mindful at all times of their obligations under the *Local Government Act 2009* and the Code of Conduct for Councillors in Queensland.

This policy also applies to Councillor interactions with the community related to the making of planning instruments such as planning scheme amendments, new planning scheme preparation, infrastructures charges resolutions, neighbourhood/local area plans or the like.

DEFINITIONS

Councillor means the Mayor and Councillors of Council.

Councillor Advisor means an appropriately qualified person appointed to assist the Mayor in performing their responsibilities under the *Local Government Act 2009*.

Employee means a local government employee as defined pursuant to the *Local Government Act 2009*.

Development application has the meaning in the *Planning Act 2016*.

Developer means an applicant for a development approval or a prospective applicant for a development approval, their advisors, and representatives including consultants. It includes any lobbyist acting on behalf of a developer. If the applicant is a body corporate, the term includes office holders and employees of the applicant. If the applicant is a partnership, the term includes partners and employees of the applicant. It also includes the owner of land that is the subject of a development application or prospective development application.

Interaction means a pre-arranged engagement in relation to a development matter (including face to face, virtual or by telephone).

Lobbyist has the same meaning as defined in the *Integrity Act 2009*, that is, a person or entity who carries out lobbying for a third-party client.

Local Planning Instrument has the meaning in the *Planning Act 2016* and also includes Infrastructure Charges Resolutions, Flood Hazard Area Resolutions, Amenity and Aesthetic Policy or other similar documents created to form part of the development assessment process.

Submitter is a person who has made a submission, or expressed an intention to make a submission, about a development application or Local Planning Instrument as provided under the *Planning Act 2016*. It includes any lobbyist or consultant acting on behalf of a submitter.

POLICY STATEMENT

1. The ability of members of the community to discuss matters of interest in an open and transparent way with Councillors, and Council itself, is vital to efficient and effective local government.
2. Contact with Councillors is undertaken by many people in the community in relation to a broad range of matters. Lobbyists, developers and submitters seek access to Councillors to discuss potential and existing development applications and land use policy matters. The public has a clear expectation that such contact is carried out ethically and transparently.
3. It is always the aim of Council that all such interactions and any decisions relating to planning and development matters are legal, ethical and impartial. Such principles are reflected in section 4 the *Local Government Act 2009* (i.e. the “local government principles”) and section 12 of that Act (the responsibilities of councillors).
4. This policy has been developed to provide clear guidance of the various roles and responsibilities involved with planning and development processes, including the development of planning policy and determination of development applications.
5. Council has delegated to the Chief Executive Officer powers under the *Planning Act 2016* to decide development applications. Some of these powers have then been subdelegated to appropriate employees.
6. The *Local Government Act 2009* outlines the particular requirements for Councillors in relation to managing prescribed conflicts of interests and declarable conflict of interests. This policy will also assist Councillors to avoid any potential conflicts of interests relating to development applications made to Council.
7. Council will, from time to time, make or amend its Local Planning Instruments relevant to the regulation and assessment of development. This policy assists the stakeholders in determining when and how interactions between the relevant stakeholders should take place.
8. Appendix 1 outlines the roles of each stakeholder in the plan making and development application processes and responsibilities for same, to ensure good governance and decision making.

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9. Appendix 2 outlines the guidelines for Councillor interactions with Developers, Lobbyists and Submitters.
10. If a Councillor has a prescribed or a declarable conflict of interest in relation to a development application which is under assessment they must not:
 - a. Interact with a developer or submitter in relation to that matter; or
 - b. Influence, attempt to influence or discuss the matter with another Councillor who is partly responsible or an employee who is wholly or partly responsible for deciding the matter.
11. Councillors and employees are required to adhere to the limits of their roles outlined in the Appendix. They will also assist other external parties to understand and act within the roles ascribed to them.

ASSOCIATED DOCUMENTS

- Acceptable Requests Guidelines Policy
- Amenity and Aesthetics, and Building Work Involving Removal or Rebuilding Policy (November) 2017
- *Bundaberg Regional Council Planning Scheme 2015*
- Charges Resolution (No.1) 2021
- Code of Conduct for Councillors in Queensland
- Contact with Lobbyists Policy
- Flood Hazard Area Resolution 1/2019
- *Integrity Act 2009*
- Media Relations Policy
- *Public Records Act 2002*
- Recordkeeping Policy

DOCUMENT CONTROLS

Council will review this policy biennially or in response to changes in law or best practice.

POLICY OWNER

Group Manager Development.

Appendix 1 – Roles of stakeholders

PLANNING STAGE	ROLES			
	Applicant/developer/lobbyist	Councillors	Council employees	Submitters/public
1. Local Planning Instrument Preparation	Nil	<ul style="list-style-type: none"> • Raise policy issues with employees • Formulate and review policy positions and strategic direction including confidential workshops/briefings 	<ul style="list-style-type: none"> • Provide information to Council and document Council's planning intentions 	Nil
2. Local Planning Instrument notification	<ul style="list-style-type: none"> • Provide input/submissions during industry stakeholder meetings and public consultation • Make a submission 	<ul style="list-style-type: none"> • Attend stakeholder/public consultation meetings to listen to community input • Refer issues raised by stakeholders to employees 	<ul style="list-style-type: none"> • Prepare draft planning instruments for public advertising and conduct • Stakeholder/public consultation 	<ul style="list-style-type: none"> • Make a submission • Provide input/submissions during public consultation
3. Local Planning Instrument Adoption	Nil	<ul style="list-style-type: none"> • Not accept lobbying/submissions within 24 hours prior to Ordinary Council meeting • Adopt Local Planning Instruments by Council resolution 	<ul style="list-style-type: none"> • Prepare final report to Council including outcomes of consultation 	Nil
4. Development Application Pre-application Meetings	<ul style="list-style-type: none"> • Submit preliminary development application information and attend pre-application meeting with employees 	<ul style="list-style-type: none"> • Attend formal pre-application meetings in accordance with requirements of Appendix 2. • Receive developer information but avoid offering support or comment, either personally or on behalf of Council, to developers until employees assessment is completed • Respond to factual inquiries following advice from senior employees, discussing only matters that are publicly known when discussing with the general public • Request details/information from employees on pre-application discussions in accordance with Acceptable Requests Guidelines Policy • Must not interact with the developer if a conflict of interest is likely 	<ul style="list-style-type: none"> • Co-ordinate pre-application meeting and provide notes • Provide Councillor updates on major developments • Provide copies of pre-application meeting minutes to the Divisional Councillor and attendees of the pre-lodgement meeting 	Nil

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PLANNING STAGE	ROLES			
	Applicant/developer/lobbyist	Councillors	Council employees	Submitters/public
5. Development Application	<ul style="list-style-type: none"> Submit application 	<ul style="list-style-type: none"> Councillors notified of new applications on a regular basis Request details / information on any application in accordance with Acceptable Requests Guidelines Policy Call any application up to a Council meeting for determination at any time 	<ul style="list-style-type: none"> Receive and acknowledge application Issue an application briefing note to all Councillors and Chief Executive Officer for moderate and high complexity applications Provide Councillors updates on major developments as needed 	<ul style="list-style-type: none"> Request details/information on any application via PD Online or by contacting the Duty Planner
6. Information and Referral Stage	<ul style="list-style-type: none"> Respond to request for additional information and refer application to referral agency (if required) 	<ul style="list-style-type: none"> Request details / information on any application in accordance with Acceptable Requests Guidelines Policy 	<ul style="list-style-type: none"> Issue request for further information (if required) Receive referral agency response Engage with stakeholders to the application as necessary to progress its assessment 	<ul style="list-style-type: none"> Request details/information on any information request via PD Online or by contacting the Duty Planner
7. Public Notification (where required)	<ul style="list-style-type: none"> Advertise the application in accordance with Act requirements 	<ul style="list-style-type: none"> Receive informal objections and encourage a properly made submission to be made Forward any material received to the Chief Executive Officer or Group Manager Development Listen to applicant and/or submitter but avoid offering support or opinion until employees assessment is completed and report prepared for Ordinary meeting. In the case of delegated authority applications, advice is received from senior employees (Group Manager/Manager) 	<ul style="list-style-type: none"> Make file available for viewing via PD Online and as requested in person Acknowledge submissions Provide an updated briefing note to the Councillors and Chief Executive Officer including the issues raised by submitters 	<ul style="list-style-type: none"> Make a submission Send copy to Councillors

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PLANNING STAGE	ROLES			
	Applicant/developer/lobbyist	Councillors	Council employees	Submitters/public
8. Decision (delegated)	Nil.	<ul style="list-style-type: none"> Request details/information on any application in accordance with the Acceptable Requests Guidelines Policy Raise any concerns with the Group Manager Development, or Chief Executive Officer Applications recommended for refusal discussed with Chief Executive Officer and Divisional Councillor prior to issue Any Councillor can request that the application be reported to an Ordinary Council meeting for determination 	<ul style="list-style-type: none"> Assess and decide application Provide a copy of the employees' delegated report to the Divisional Councillor and the Mayor to allow them to either ask questions or refer the application to Council for decision Where a Divisional Councillor has declared a Conflict of Interest in the application, the Group Manager Development will provide a copy of the employee's report to all Councillors without a conflict prior to exercising his delegation in accordance with the adopted procedure Issue decision notice Chief Executive Officer or Group Manager may refer application to Ordinary Council meeting for determination 	<ul style="list-style-type: none"> Any properly made submission receives a copy of the decision notice – request further information about decision from employees

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PLANNING STAGE	ROLES			
	Applicant/developer/lobbyist	Councillors	Council employees	Submitters/public
9. Decision (Reported to Council)	<ul style="list-style-type: none"> Request to address Councillors at a Planning and Development Committee meeting Applicant is notified of the date that the employee's report is being presented to the Council meeting 	<ul style="list-style-type: none"> Listen to applicant and/or objector contact but avoid offering support or opinion until employees assessment is completed and report prepared for Ordinary Council meeting Not accept lobbying/submissions within 24 hours prior to Ordinary Council meeting Genuinely consider the development application, any submissions to the application, council's report, including the assessment and recommendations by employees, prior to them making a decision on the proposed development Decide application by resolution of Council Where the decision is not consistent with employee recommendation, provide written reasons for the alternate recommendation Make public comment on the decision of Council in accordance with Council's Media Relations Policy 	<ul style="list-style-type: none"> Prepare assessment report and recommendation for inclusion in Ordinary Meeting Agenda Issue Decision Notice in accordance with decision of Council 	<ul style="list-style-type: none"> Request to address Councillors at a Councillor Consultation Day Submitters are notified of the date that the employee's report is being presented to the Council meeting Any properly made submission receives a copy of the decision notice – request further information about decision from employees or Councillors
10. Negotiated decision (delegated)	<ul style="list-style-type: none"> Submit representations 	<ul style="list-style-type: none"> Request details/information on any application in accordance with the Acceptable Requests Guidelines Policy Not attend formal meetings between employees and applicants/consultants to discuss representations on conditions of approval. Not interact with the developer or submitter/s in relation to the decision until after the appeal period has expired 	<ul style="list-style-type: none"> Decide representations and issue Negotiated Decision Notice 	

PLANNING STAGE	ROLES			
	Applicant/developer/lobbyist	Councillors	Council employees	Submitters/public
11. Negotiated decision (reported to Council if original decision made by Council other than for minor changes)	<ul style="list-style-type: none"> Submit representations 	<ul style="list-style-type: none"> Not attend meetings between employees and parties to the application to discuss representations Not accept lobbying/submissions within 24 hours prior to Ordinary Council meeting Where required, decide representations by resolution Where the decision is not consistent with employee recommendation, provide written reasons for the alternate recommendation Not interact with the developer or submitter/s in relation to the decision until after the appeal period has expired 	<ul style="list-style-type: none"> Prepare assessment report and recommendation for inclusion in Ordinary Meeting Agenda Issue Negotiated Decision Notice 	
12. Appeal	<ul style="list-style-type: none"> Lodge appeal with Planning and Environment Court or elect to be a co-respondent to any submitter appeal Restrict contact with Council to via legal representatives 	<ul style="list-style-type: none"> Refrain from interactions with the appellants or co-respondents and should avoid commenting publicly about matters before the Planning and Environment Court 	<ul style="list-style-type: none"> Implement Council's adopted Planning Appeal Protocol Provide confidential Councillor updates as required Liaise with Council's solicitors and experts as required 	<ul style="list-style-type: none"> Lodge appeal with Planning and Environment Court or elect to be a co-respondent to any applicant appeal Restrict contact with Council to via legal representatives

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Appendix 2 – Guidelines for Councillor Interactions with Developers, Lobbyists and Submitters

Adopting a structured approach to Councillors' interactions with developers and submitters will allow Councillors to engage appropriately in the public interest and reduce their risk of engaging in misconduct or corrupt conduct.

Under the *Integrity Act 2009*, lobbyists are required to inform Councillors that they are a lobbyist when making initial contact (for example, when seeking to arrange a meeting). In addition to the record keeping requirements detailed below, interactions between Councillors and lobbyists must be recorded in Council's *Register of Contact with Lobbyists*. Nothing in this policy requires a Councillor to meet with a lobbyist at any time.

1. Meeting or Exchanging Other Communication with Potential Developers and Lobbyists (where no proposal is presently before Council)

Councillors may encourage responsible and appropriate development in Council's local government area. Councillors should not feel inhibited, in any communications, with potential developers and lobbyists (for a potential development), in promoting the benefits of developing in Council's local government area.

However, in dealings with potential developers and lobbyists (for a potential development), Councillors:

- Must make clear to potential developers and lobbyists that they can provide general information on the application process but cannot give definitive advice about any likely decision;
- Should suggest that the developer or lobbyist consider seeking independent professional advice;
- If applicable, must encourage potential development applicants and lobbyists to seek preliminary advice on their proposal by utilising the established process for pre-lodgement meetings with Council staff;
- Must not in any way represent the Council's possible attitude to the potential application.

Similarly, in relation to potential submitters to a development application, Councillors should not feel inhibited about discussing with potential submitters what is publicly known about a potential development application. Councillors:

- Must make clear to potential submitters that they can provide general information on the application process but cannot give definitive advice about any likely decision;
- Should suggest that the submitter consider seeking independent professional advice;
- Must not in any way represent the Council's possible attitude to the potential application.

In all exchanges of communication with a potential developer, lobbyist (for a potential development) or potential submitter, Councillors should keep and maintain a written record of same. This written record should detail, as a minimum, the date and time of the exchange, the format of the exchange (i.e. face to face meeting, telephone call, exchange of emails or exchange of correspondence), a summary of the matters raised with the Councillor and a summary of the Councillor's response.

2. Meeting or Exchanging Other Communication with Developers, Lobbyists and Submitters (after a development application has been lodged)

After a development application has been lodged, if a Councillor engages in any meetings, telephone discussions, email or other correspondence or exchange with a developer, lobbyist or submitter where they are seeking the Councillor's support or opposition (as the case may be) to a development application (except where providing an acknowledgement only), any such response or comment from the Councillor must include the following statements:

- That any opinions expressed by the Councillor are personal to the Councillor and do not in any way represent the Council's possible attitude to the development application; and
- In relation to Council's possible decision on the application, that the Councillor's principal obligation is to serve the public interest by ensuring that their decision is:
 - consistent with the planning legislation, Council's planning scheme and policies; and
 - made after having appropriate regard to any officer's (or Council appointed consultant's) advice; and
 - not influenced by any other irrelevant or inappropriate consideration.

Meetings between Councillors and developers, lobbyists or submitters where substantive issues concerning the application are to be discussed, must only occur by arrangement through the office of Council's CEO (or delegate) and only in circumstances where a Council officer (with adequate knowledge of the development application) is also present.

Where development matters arise during the course of an otherwise unrelated meeting, Councillors should:

- Where it is not practical to immediately cease the discussion, make all reasonable attempts to include a Council officer with adequate knowledge of the development application in the conversation.
- Offer to arrange a further meeting to discuss the matter, in accordance with the forementioned clause.
- Provide a written summary to the Chief Executive Officer (or delegate) of the exchange as per the below clause.

Councillors must keep a written record summarising the matters discussed during any

meeting, telephone discussion, email or other correspondence or exchange. This written record should detail, as a minimum, the date and time of the meeting or exchange, a summary of the matters raised with the Councillor and a summary of the Councillor's response.

3. Councillor attendance at pre-lodgement meetings

Proponents of development, lobbyists or consultants may seek formal pre-lodgement advice from Council's technical officers by way of the Council's established pre-lodgement advice service.

At the time that a pre-lodgement meeting is booked, an invitation to attend the meeting will also be sent to the Councillor whose division the proposal is located in as well as the Chair of the Planning and Development Committee. Both the divisional Councillor and the Chair may nominate another Councillor who is a member of the Planning and Development Committee to attend in their place. The maximum number of Councillors at a pre-lodgement meeting will be two (2).

When requesting a meeting, customers will be provided the option to elect not to have any Councillors present. In this case, the divisional Councillor and the Chair will be notified that a meeting is being held without Councillors at the request of the customer and they will be provided with a copy of the meeting outcomes once finalised.

Whilst attending a formal pre-lodgement meeting, Councillors:

- Must act as observers only;
- May ask questions of either the proponent or officers that seek to increase their understanding of the matters being discussed;
- Must not ask questions in a way that is designed to influence the advice being given by officers; and
- Must refrain from making any other comments about the matters being discussed, including their personal views of the proposal or the advice being given by officers.

After the meeting, Councillors are free to engage with the proponent as outlined in section 1 above.

The matters discussed at a pre-lodgement meeting should be treated as commercial in confidence, and not discussed with parties not present at the pre-lodgement meeting. The pre-lodgement meeting outcomes document is not a publicly available document under the *Planning Act 2016*, and should not be released to any parties not present at the meeting without permission of the proponent and the Chief Executive Officer except where allowed by other Council policies and procedures or relevant laws.

4. Presentations to Planning and Development Committee

A Planning and Development Committee has been established for the purpose of considering and advising the Council in relation to strategy and policy for the Planning and Development services and functions of council.

To assist it in this role, meetings of the Planning and Development Committee will provide the opportunity to developers, lobbyists and members of the community to address and make submissions for the Committee to consider.

In receiving such presentations and submissions, members of the Planning and Development Committee will act in accordance with the principles and requirements as set out in sections 1-3 above.