

## 1. Purpose

The purpose of this Policy is to:

- Maintain free and open access to Councillors and Council itself, which is vital to efficient and effective Local Government;
- Provide a Policy, as to how Councillors should interact with Lobbyists and the development industry, which will assist in better decision making and ensures Council fulfils its obligations and is seen to be fulfilling its obligations and duties in an ethical and impartial manner. Such principles are reflected in Section 4 of the *Local Government Act 2009* and comply with the responsibilities of Councillors set out in Section 12 of the Act;
- Provide ethical guidance for Councillors when dealing with Lobbyists, potential Developers or Developers who have made a development application and that the general public has a clear expectation that such contact is carried out ethically and transparently;
- Promote transparency, equity and public accountability, and to assist in better decision making, this Policy provides guidance for Councillors when dealing with Lobbyists, potential Developers, Submitters or their representatives or consultants; and
- Protect Councillors and Council from aspersions of inappropriate behaviour.

For avoidance of doubt, this Policy is in addition to the requirements and processes imposed upon Councillors and Lobbyists by the *Integrity Act 2009* (for example, the requirement for Lobbyists to be registered before undertaking lobbying activities.)

## 2. Scope

This Policy applies to all Councillors who have or may potentially have contact with a Lobbyist (either registered or unregistered), a Developer or a Submitter who may make a development application.

This Policy does not apply to social interaction between Councillors and other persons simply because those other persons act as Lobbyists or Developers, or are Submitters in respect of a current development application. However Councillors are reminded of their obligation to both avoid conflicts of interest and disclose potential conflicts of interest and are required to carefully consider possible implications of social interaction with Lobbyists, Developers or Submitters.

## 3. Responsibility

The CEO is responsible to ensure:

- After a development application has been lodged, any request for a meeting between Councillors and Developers, Lobbyists or Submitters should only occur by arrangement through the Office of Council's Chief Executive Officer (or his/her delegate) and only in circumstances where a Council Officer (with adequate knowledge of the development application) is also present; and
- In the event that a development application should proceed to any type of court proceeding (i.e. Court of Appeals), no meeting between Councillors and Developers, Lobbyists or Submitters should take place unless approved by the Council's Chief Executive Officer (or his/her delegate). or with such meeting being approved on a without prejudiced basis.

## 4. Definitions

To assist in interpretation, the following definitions shall apply:

**Contact** - shall mean contact via telephone, email, written correspondence and face-to-face meetings.

**Councillors** - elected members of a local government, including the Mayor - for purposes of the *Integrity Act 2009*, a Councillor is included in the definition of a government representative (refer to Section 44 of the *Integrity Act 2009*).

**Lobbyist** - as defined in the *Integrity Act 2009*.

**Developer** - means an applicant for development approval. 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.

**Development Approval** - means a development application that has been approved by Council.

**Lobbying Activity and Control** - as defined in section 42 of the *Integrity Act 2009*.

**Submitter** - shall mean a person who makes a properly made submission about the application. (Schedule 3 Dictionary of the *Sustainable Planning Act 2009*).

## 5. Policy

### 5.1 Meeting or Exchanging other Communication with Potential Developers and Lobbyists (where no proposal presently before Council)

Councillors may encourage responsible and appropriate development in Council's 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, even 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 the development's or Lobbyists chance of success;
- Should suggest that the Developer or Lobbyist seeks 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 and; and
- Must state 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 potential application. The Councillor must be aware that if they do give a personal opinion on the potential development, this may preclude them from being involved in any decisions on the development in the future.

#### 5.1.2 Potential Submitters



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. Again, Councillors:

- Must make clear to potential Submitters that they can provide general information on the application process but cannot give definitive advice about the Developer's chance of success;
- Should suggest that the Submitter seeks independent professional advice; and
- Must state 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 potential application. The Councillor must be aware that if they do give a personal opinion on the potential development, this may preclude them from being involved in any decisions on the development in the future.

### **5.1.3 Record of Communication**

In all exchanges of communication with a potential Developer, Lobbyists (for potential development) or proposed Submitter, Councillors are required to keep and maintain a written record of all exchanges of communication with a potential Developer, Lobbyist or Submitter. The written record should detail as a minimum:

- a) The date and time of the exchange;
- b) The format of the exchange (i.e. face to face meeting, telephone call, exchange of emails or exchange of correspondence);
- c) A summary of the matters raised with the Councillor; and
- d) A summary of the Councillor's response.

## **5.2 Meeting between Councillors with Developers, Lobbyists and Submitters after a Development Application has been lodged with Council**

### **5.2.1 Meetings**

After a development application has been lodged, any request for a meeting between Councillors and Developers, Lobbyists or Submitters should only occur by arrangement through the Office of Council's Chief Executive Officer (or his/her delegate) and only in circumstances where a Council Officer (with adequate knowledge of the development application) is also present.

At any such meeting, again Councillors must state:

- 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. The Councillor must be aware that if they do give a personal opinion on the potential development, this may preclude them from being involved in any decisions on the development in the future; 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 his/her decision is:
  - i. Consistent with the planning legislation, Council's planning scheme and policies; and



- ii. Made after having appropriate regard to any officer's (or Council appointed consultant's) advice; and
- iii. Not influenced by any other irrelevant or inappropriate consideration.

### **5.2.2 Record of Meeting**

Councillors must keep a written record of any such communications. This written record should detail, as a minimum:

- the date and time of the exchange;
- the format of the exchange (i.e. telephone call, exchange of emails or exchange of correspondence); and
- a summary of the matters raised with the Councillor and a summary of the Councillor's response.

### **5.2.3 Other Communications**

After a development application has been lodged, if a Councillor engages in telephone discussions, email or other correspondence 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, any such response 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 his/her decision is:-
  1. consistent with the planning legislation, Council's planning scheme and policies;
  2. made after having appropriate regard to any officer's (or Council appointed consultant's) advice; and
  3. not influenced by any other irrelevant or inappropriate consideration.

Councillors must keep a written record of any such communications. This written record should detail, as a minimum, the date and time of the exchange, the format of the exchange (i.e. 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.

### **5.3 Meeting between Councillors with Developers, Lobbyists and Submitters if a Development Application is Subject to Legal Proceedings:**

In the event that a development application should proceed to any type of court proceeding (i.e. Court of Appeals) no meeting between Councillors and Developers, Lobbyists or Submitters should take place unless approved by the Council's Chief Executive Officer (or his/her delegate) such meeting being approved on a without prejudiced basis.

Councillors must keep a written record of any such communications. This written record should detail, as a minimum:



- the date and time of the exchange;
- the format of the exchange (i.e. telephone call, exchange of emails or exchange of correspondence); and
- a summary of the matters raised with the Councillor and a summary of the Councillor's response.

#### 5.4 Records

The Act requires that local governments keep proper records of contacts they have with lobbyists, both those on the Lobbyists Register and those who are not, either because they are not obliged to register by the Act or because they have failed to do so notwithstanding the requirements of the Act.

Both the Crime and Misconduct Commission and the Integrity Commissioner have requested standardisation of the records of contact to be maintained by all agencies for reporting purposes and for public record keeping purposes in accordance with the Public Records Act and a template for the recording of contacts with a view to ensuring standardisation has been produced and is annexed hereto marked "A".

It is recommended that Councillors utilise the template for recording of communications as mentioned in the policy, as well as any other communication in which Councillors may be involved.


To enable Council to meet its record keeping requirements and to submit relevant returns of "contacts" as and when required, or upon demand by the Integrity Commissioner, Councillors should remit completed recordings to the office of the Chief Executive Officer within fourteen (14) days of communications as specified occurring.

## 6. Related Procedures

The Chief Executive Officer can approve any Procedures that may be directly associated with this Policy.

## 7. Other: Relevant Legislation.

- *Local Government Act 2009* -Section 4 Local Government Principles
- *Local Government Act 2009* – Section 12 Responsibilities of Councillors
- *Integrity Act 2009*- Section 71 Lobbying by unregistered entity prohibited
- *Public Sector Ethics Act 1994* *Public Records Act 2002*
- *Sustainable Planning Act 2009*

DOCUMENT HISTORY AND STATUS						
Action	Name			Position	Signed	Date
Approved by Council	Alan Rayment			CEO		28/04/2020
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Date of Contact	Name and Title of Principal Departmental Officer	List of all other Public Officials Present	Name of Registered Lobbyist (including names of all lobbyists present)	Client of Lobbyist (including names of all present)	Method of Contact	Purpose of Contact	Issue	Outcome from Contact

