

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.

DEFINITIONS

Councillor means the Mayor and Councillors of the Bundaberg Regional Council.

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.

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.

POLICY STATEMENT

1. This policy has been developed to provide clear guidance of the various roles and responsibilities involved with the planning and development application processes.
2. 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.
3. 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.
4. Council will also, 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.
5. Appendix 1 outlines the roles of each stakeholder in the development application process and responsibilities for same, to ensure good governance and decision making.
6. Appendix 2 outlines the guidelines for Councillor interactions with Developers, Lobbyists and Submitters.
7. 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.
8. 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"> Not attend formal pre-application meetings 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 	Nil

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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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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 Chief Executive Officer 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 Chief Executive Officer will provide a copy of the employee's report to all Councillors prior to exercising his delegation in accordance with the adopted procedure Where the Chief Executive Officer has declared a conflict of interest, the Group Manager Development will provide a copy of the employee's report to the Divisional Councillor or (where the Divisional Councillor has a conflict of interest) all Councillors 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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9. Decision (Reported to Council)	<ul style="list-style-type: none"> Request to address Councillors at a Councillor Consultation Day 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 	

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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

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.

1. If a developer or lobbyist wants to discuss a development matter with a Councillor, this should be referred to the Chief Executive Officer or other nominated employee, to co-ordinate and diarise a meeting appointment. A meeting in this context may be face-to-face, virtual or by telephone.
2. If the request to discuss a development matter is made either after the holding of a formal pre-lodgement meeting or the lodgement of a development application, the developer or lobbyist will be encouraged to present the discussion to the whole Council at an upcoming Council consultation day.
3. When meeting with a developer or submitter about a development application, a Councillor must conduct the meeting in the presence of an appropriate third party. Some examples of an appropriate third party are the Mayor, the Chief Executive Officer, the Group Manager Development, or other appropriate senior employee.
4. All meetings with a developer or submitter, including public meetings, must either be electronically recorded with the knowledge of the developer or submitter or a contemporaneous written record prepared. At a minimum this record should include:
 - the date of the interaction.
 - the format of the interaction.
 - all parties or persons involved in the interaction.
 - a summary of the matter/s raised with the Councillor.
 - a summary of the Councillor's response/s.
 - When interacting with a developer or submitter about a development application, Councillors should:
 - state that any opinions expressed by the Councillor are personal to the Councillor and do not in any way represent a formal Council view.
 - make it clear that a final decision can only be made after all relevant material has been prepared and considered.
 - make clear that they can provide general information on the application process but cannot give definitive advice about a proposed development's prospects of success.
 - maintain the confidentiality of any information, records, briefings, and discussions that, if released at a particular point in time, could prejudice the interests of Council, the public at large, or another party.
 - suggest that the developer or submitter seeks independent professional advice where relevant.

Councillors must disclose to other Councillors who were not at the meeting (and the Chief Executive Officer if not present), the recording or other record made of the meeting, so that all decision makers have access to the same information. The record of the meeting should be stored in accordance with Council's Recordkeeping Policy.

Printed copies are considered uncontrolled. Before using a printed copy, verify that it is the current version.

5. While Councillors are entitled to express a personal opinion about a development application, they should be aware that the expression of a personal opinion, whether positive or negative, may impact on the perception of their impartiality as a decision maker should they be required to decide the matter.
6. 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 above, 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.