

GO4 – Draft Interaction with Developers, Lobbyists and Submitters Policy

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TRIM 861

EXECUTIVE SUMMARY

- The purpose of this report is to return the exhibited Draft Interaction with Developers, Lobbyists and Submitters Policy for consideration.
- It is recommended that the Interaction with Developers, Lobbyists and Submitters Policy be adopted as exhibited.

REPORT

Currently a number of Governance processes are being reviewed as part of Council's Governance Health Check. The Governance Health Check is being implemented to prepare for the changing nature of Local Government and the future growth of the Shire.

A first step as part of the Governance Health Check was to complete a policy classification review and the adoption of a new policy framework. The policy framework has been reported to Council's Audit Committee and Council and during this process it was identified a policy to guide on the interaction with Developers, Lobbyists and Submitters was needed.

The Draft Interaction with Developers, Lobbyists and Submitters Policy will be a new Policy of Council providing an ethical guidance for Councillors and staff when dealing with parties included in or associated with a planning proposal or development application.

At Council's meeting on Monday 16 November 2015, it was resolved the draft Interaction with Developers, Lobbyists and Submitters Policy be placed on public exhibition for a period of 21 days and that a further report come back to Council following this exhibition. The Draft Interaction with Developers, Lobbyists and Submitters Policy was placed on public exhibition from 18 November 2015 to 15 December 2015.

At the time of writing this report no submissions have been received.

The outcome of the exhibition was reported at the 21 December 2015 Council meeting where it was resolved a further workshop be undertaken with Councillors. This workshop occurred on 23 May 2016.

CONSULTATION

- Placed on Public exhibition 18 November 2015 to 15 December 2015
- Councillors
- Council Staff
- Council's Audit Committee

Report of Governance to the Ordinary Meeting of Council held on Monday 20 June 2016

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FINANCIAL IMPLICATIONS

This matter has no financial impact on Council's adopted budget or forward estimates.

ATTACHMENTS

1. Interaction with Developers, Lobbyists and Submitters Policy.

RECOMMENDATION

That the Interaction with Developers, Lobbyists and Submitters Policy be adopted.

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1. POLICY OBJECTIVES

- 1.1 This Policy provides ethical guidance for Councillors and staff when dealing with parties involved in or associated with a planning proposal or development application.
- 1.2 The Policy aims to:
 - preserve confidence in the good governance of the Shire and the processing of planning proposals and development applications
 - minimise the likelihood of claims being made of improper dealings, bias or conflict of interest
 - promote transparency.

2. BACKGROUND

- 2.1 Free and open access to Councillors, and Council itself, is vital to efficient and effective local government and contact with Councillors is undertaken by many people in the community in relation to a broad range of matters. Lobbying is common in local government and appropriate lobbying of Councillors is part of the democratic process. The most common form occurs when a group or individual makes direct contact with a Councillor in an attempt to influence a council decision.
- 2.2 Lobbyists, developers and submitters seek access to Councillors to discuss potential and existing planning proposals, development applications and other projects. Interactions with community members, lobbyist, developers and submitters are also a way for Councillors to obtain information that maybe relevant to their decision-making. The public has a clear expectation that such contact is carried out ethically and transparently so as not to undermine public confidence in impartial decision-making.
- 2.3 The role of Councillors is to represent the interests of the residents and ratepayers, provide leadership and guidance to the community and facilitate communication between the community and the council.
- 2.4 To promote transparency, equity and public accountability, and to assist in better decision making, this policy provides guidance for Councillors and staff when dealing with lobbyists, potential developers or developers and submitters.
- 2.5 Occasionally a lobbyist can try to improperly influence a Councillor's decision-making and Councillors should take care that their duty is to consider issues fairly, properly and not be compromised by participating in lobbying practices that are outside the bounds of appropriate or lawful behaviour. It is always the aim of council to ensure that all dealings are legal, ethical and impartial and give effect to the local government principles set out in the Local Government (LG) Act 1993, and the principles in the Environment Planning and Assessment (EPA) Act and associated Regulations.
- 2.6 For avoidance of doubt, this Policy clarifies requirements and processes imposed upon Councillors and staff. This Policy does not seek to circumvent or undermine requirements within the current legislation; rather, it seeks to provide clarification and guidance for the assistance of Councillors, staff and the public who interact with Council regarding a range of matters.

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3. APPLICABILITY

- 3.1 This Policy applies to all Council business-related contact between Councillors and lobbyists, developers and submitters and Council staff.
- 3.2 It 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.

4. GUIDELINES

Potential Developments and Potential Submitters

- 4.1 Councillors may encourage responsible and appropriate development in the Wollondilly 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 development in Council's local government area. However, in all dealings with potential developers and lobbyists for a potential development, Councillors and staff must adhere to Council's Code of Conduct and:
 - 4.1.1 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 developer's or lobbyists chance of success;
 - 4.1.2 Must suggest that the developer or lobbyist seeks their own independent professional advice;
 - 4.1.3 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
 - 4.1.4 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.
- 4.2 Similarly, in relation to potential submitters to a planning proposal or development application, Councillors should not feel inhibited about discussing with potential submitters what is publicly known about a potential development application. Again, Councillors and staff must adhere to Council's Code of Conduct and:
 - 4.2.1 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;
 - 4.2.2 Must suggest that the submitter seeks their own independent professional advice; and
 - 4.2.3 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.

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- 4.3 Often the environment can make it difficult for Councillors to avoid informal discussions and in these situations Councillors should exercise judgement when deciding whether to be involved in private meetings with people seeking to influence a Council decision. Suspicions of inappropriate lobbying can occur when discussions are not open to public scrutiny. Transparency is a useful means of governing accountability and perceptions of fairness in lobbying processes. To help ensure transparency in planning related discussions whilst being lobbied Councillors should adhere to Council's Code of Conduct and:
- 4.3.1 Document meetings with proponents.
 - 4.3.2 Conduct meetings in official locations, such as Council premises or at an authorised inspection.
 - 4.3.3 Where possible, have Council officers or other people present during meetings.
 - 4.3.4 Encourage applicants who have approached them for a meeting to discuss significant development to write to the General Manager or Mayor seeking a meeting with all Councillors and relevant staff.
 - 4.3.5 Provide copies of information presented during lobbying meetings to Council officers for consideration and assessment (if required), distribution to other Councillors and filing as part of Council's record keeping system.
 - 4.3.6 Ask people who have requested a meeting to put their arguments, concerns and views in writing.
 - 4.3.7 Make a declaration at a Council meeting about planning activities they have been engaged in that are not part of Council's formal processes when the matter is before Council for consideration.
 - 4.3.8 All Councillor workshops with potential developers and lobbyists (for a potential development) will be minuted and published on the Council website and noted in the Mayoral minute.
 - 4.3.9 Where Council is involved as an applicant in a development issue, a probity plan will be developed and implemented to guide all interactions and involvement of Councillors and Council staff.
- 4.4 Councillors and staff should keep and maintain a written record of all exchanges of communication with a potential developer, lobbyist for a potential development or potential submitter. The 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 and a summary of the response. This response is to be provided to Council staff for filing as Council is required to keep and maintain appropriate records in accordance with the State Records Act and Council's Records/Information Management Policy.

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Meetings after a Planning Proposal or Development Application Has Been Lodged

- 4.5 After a planning proposal or development application has been lodged, any requests for meetings between Councillors and developers, lobbyists or submitters must occur by arrangement through the General Managers office or the Director of Planning and only in circumstances where a Council officer (with adequate knowledge of the development application) is also present.
- 4.6 At any meeting, telephone discussions, email or other correspondence exchange with a developer, lobbyist or submitter where support or opposition is being sought for a development application, Councillors must state:
- 4.6.1 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 planning proposal or development application; and
- 4.6.2 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:
- consistent with the planning legislation, Council's planning scheme and policies;
 - made after having appropriate consideration of any Council staff's (or Council appointed consultant's) advice; and
 - not influenced by any other irrelevant or inappropriate consideration.
- 4.7 Councillors must keep a written record summarising the matters discussed at the meeting. This written record should detail, as a minimum, the date and time of the meeting, a summary of the matters raised with the Councillor and a summary of the Councillor's response. This response is to be provided to Council staff for filing as Council is required to keep and maintain appropriate records in accordance with the State Records Act and Council's Records/Information Management Policy.
- 4.8 The staff member must maintain an independent record of the meeting.
- 4.9 During various phases of the development assessment process, Councillors and staff may be contacted by applicants and / or submitters for information regarding the progress of an application, and they may also wish to discuss the merits of that application.
- 4.10 If Councillors are concerned at the manner in which application/s are being assessed, these concerns should be discussed with the General Manager or the Director Planning.

Other Communications

- 4.11 Council is required to keep and maintain appropriate records in accordance with the State Records Act and Council's Records/Information Management Policy. Councillors and staff should be mindful of these requirements in regard to the manner in which records from such meetings are maintained. All communication should be clear, direct and accountable (written confirmation) in order to minimise the risk of perception of inappropriate influence being brought to bear on the business relationship.

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- 4.12 Councillors and staff must comply with obligations within the Local Government Act 1993 and Code of Conduct in dealings with planning proposals and development application matters. If a Councillor is aware that they may have a conflict of interest, they must make that declaration, remove themselves from discussions regarding the matter, pending notification to the General Manager, and potentially further advice being provided.
- 4.13 Attachment 1 to this Policy provides a simple checklist for items to be taken into account by Councillors and staff during interactions with the public, including applicants, developers, consultants and submitters involved in planning proposals and development applications.

Tendering

- 4.14 The lobbying of Councillors by tenders about the outcome of a tender process is an exception to the principle that lobbying is permissible. Lobbying of Councillors by tenderers is not permissible.
- 4.15 The conditions which govern tender processes are based on a request for tender (RFT) and contain statements prohibiting proponents from approaching Councillors during a tender process.
- 4.16 Tender processes do not include mechanisms for community feedback.

What Council asks of Developers, Lobbyist and Submitters – Council's Statement of Business Ethics

- 4.17 Council's aspiration is for all developers, lobbyist, landowners and submitters who may be undertaking development-related activity to observe the following principles (Council's Statement of Business Ethics) when interacting with Council in relation to any actual or potential planning proposal or development application:
 - 4.17.1 Provide accurate and reliable advice and information when required;
 - 4.17.2 Declare actual or perceived conflicts of interest as soon as you become aware of the conflict;
 - 4.17.3 Act ethically, fairly and honestly in all dealings with Council;
 - 4.17.4 Take all reasonable measures to preserve the integrity and keep confidential any confidential information provided to you by Council;
 - 4.17.5 Refrain from engaging in any form of collusive practice, including offering Council employees inducements or incentives designed to improperly influence the conduct of their duties;
 - 4.17.6 Respect legislative processes established under various Acts of Parliament;
 - 4.17.7 Respect the integrity of the Council and acknowledge that all determinations adopted by resolution have been thoroughly investigated by staff and carefully considered by the elected body of Council;
 - 4.17.8 Act with moral conscious at all times respecting statutory protocols and procedures;

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- 4.17.9 Refrain from discussing Council business or information in a disrespectful way with the media;
- 4.17.10 At all times be courteous towards the public, Council staff and Councillors and not bring the Council into disrepute;
- 4.17.11 Obey all relevant laws and contractual obligations;
- 4.17.12 Assist Council to prevent unethical practices in our business relationships;
- 4.17.13 Comply with privacy legislation in relation to personal information obtained through dealings with Council or work undertaken for Council; and
- 4.17.14 Communicate clearly and respond promptly to questions resolving any issues quickly.

Why is Compliance Important?

- 4.18 Developers, lobbyist and submitters should also be aware of the consequences of not complying with Council's ethical requirements when engaging with Council. By complying with this Statement of Business Ethics, damaging allegations of unfair or unethical conduct can be avoided in dealings with this Council.
- 4.19 Demonstrated corrupt or unethical conduct could lead to:
 - damage to reputation
 - investigation for corruption
 - matters being referred for criminal investigation
 - criminal prosecution.
- 4.20 Consequences for Councillors, staff and delegates may include:
 - investigation
 - misconduct charges
 - loss of civic office for Councillors
 - disciplinary action including termination of employment
 - potential criminal charges.

Gifts, Benefits and Hospitality

- 4.21 In general, Council expects its staff to decline gifts and benefits offered by parties with whom Council conducts business. Developers, lobbyist and submitters should refrain from offering any such 'incentives' to Council staff as all offers will be formally reported to Council by its officers. Hospitality is however appropriate provided it is linked to business dealings with Council and provided it complies with the provisions set out under "Gifts and Benefits Policy" in the Code of Conduct for Council Employees Statement.
- 4.22 If a gift is accepted, Council requires the staff member to record the gift in a publicly accessible Gifts and Benefits Register.

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Conflicts of Interest

- 4.23 All Councillors and Council staff are required to disclose any conflicts of interest. Council extends this requirement to all our business partners, contractors and suppliers. Should a conflict of interest arise or be recognised in any dealing with Council you must notify and declare this conflict of interest to Council in writing.
- 4.24 A conflict of interest occurs when a public official is in a position to be influenced, or appear to be influenced, by private interests when doing their job. A conflict of interest can involve avoiding personal disadvantage as well as gaining personal advantage. A private interest may include social and professional activities and interests with individuals or groups, including family and friends, as well as financial interests. There are different types of conflict of interest:
- 4.24.1 *Actual conflict of interest:* A public official is in a position to be influenced by their private interest when doing their job.
- 4.24.2 *Perceived conflict of interest:* A public official is in a position to appear to be influenced by their private interests when doing their job.
- 4.24.3 *Potential conflict of interest:* A public official is in a position where they may be influenced in the future by their private interests when doing their job.
- 4.24.4 *A pecuniary interest* involves a situation where there is the potential to gain or lose financially from a public position, for example from owning property, having unpaid debts to others, or receiving hospitality or travel.
- 4.24.5 *A non-pecuniary interest* does not have a financial component. It can involve personal or family relationships or involvement in sporting, social or cultural activities that could influence judgements or decisions, even though there is no financial benefit to the individual.

Confidentiality

- 4.25 All Council information should be treated as confidential unless otherwise advised to you by Council.

Use of Council Equipment, Resources and Information

- 4.26 All Council equipment, resources and information should only be used for the purpose it is made available by Council and as per the guidelines in councils Code of Conduct.

Contracted Employees

- 4.27 All contractors must comply with Council's Statement of Business Ethics (4.17) for doing business with Council. The Business Statement of Business Ethics will be included in Council's Contractual documents. If contractors employ sub-contractor(s) in their work for Council, they must ensure sub-contractor(s) are aware of this Statement Of Business Ethics and observe it in their dealings with Council.

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Reporting Unethical Behaviour (Internal Reporting Protocol)

4.28 The Council is committed to promoting ethical behaviour. Reports of unethical behaviour, fraud, corruption, maladministration or waste can be made to Council's Governance Manager. External reporting can also be made to:

- Independent Commission Against Corruption;
- NSW Ombudsman; or
- The Office Local Government.

4.29 Public officials reporting corrupt conduct, maladministration or waste may be protected by the Protected Disclosures Act 1994. This Act protects public officials who are disclosing corrupt conduct from reprisal or detrimental action and ensures disclosures are properly investigated.

Who to Contact

4.30 If you have any questions regarding this Statement of Business Ethics or wish to provide information about suspected corrupt conduct, you should contact the appointed probity officer for the project or, where a probity officer has not been appointed, Council's Governance Manager, on telephone 46771100 or at council@wollondilly.nsw.gov.au.

5. RESPONSIBILITY/ACCOUNTABILITY

5.1 Definitions

For the purposes of this policy, the following terms are defined: -

"**Councillor**" means the Mayor and Councillors of Wollondilly Shire Council.

"**communicate**" includes communicate in person, in writing, by telephone or by email or other electronic means

"**Developer**" means a person who invests in and develops the potentialities of property.

"**lobbyist**" means:

- (a) a third-party lobbyist, or
- (b) any other individual or body that lobbies Council (including an individual engaged to undertake lobbying for a third-party lobbyist).

"**third-party lobbyist**" means an individual or body carrying on the business (generally for money or other valuable consideration) of lobbying Council officials on behalf of another individual or body.

"**Making a development application**" in so far as it applies to Councillors and staff may include actions associated with provision of advice regarding, preparation of and processing of development application/s lodged under the EPA Act, including, but not limited to:

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- Pre-lodgement enquiries, meetings and responses provided
- Informal meetings and discussions regarding proposed development applications not yet lodged for assessment
- Application lodgement
- Acknowledgement Notices, discussions regarding amendments or clarification regarding same
- Information Requests, discussions regarding same or clarification regarding requirements, responses or meetings
- Information Responses provided by an Applicant or Applicant's representative, including discussions regarding same, clarification or provision of further information
- Clarification of outstanding or additional, unforeseen information required during the assessment for an Application
- Meetings, site visits, telephone conversations and other discussions regarding a development application/s lodged with Council
- Preliminary advice, discussions, site meetings, telephone conversations, post lodgement requests and enquiries regarding applications lodged with Council for assessment, including applications for which Council is a 'concurrence agency' or similar in accordance with the EPA Act, or other State legislation.

"meeting" with a Council official, means a meeting held in person with the official or by means of a teleconference.

"planning proposal application" means an application or request by a person (other than a public authority within the meaning of the Environmental Planning and Assessment Act 1979):

- (a) to initiate the making of an environmental planning instrument or plan under that Act in relation to any development, project or activity on a particular site, or
- (b) for consent to, or approval of, any development, project or activity under that Act or for the modification of any such consent or approval.

"Probity Plan" means a detailed plan that addresses probity issues in Councils commercial dealing and the actions to be taken throughout a process where Council is both the proponent (the developer) as well as the consent authority to ensure:

- the Council observes the highest standards of probity consistent with the public interest
- there is integrity in the negotiation process and that the process set out in the negotiation plan is followed
- the process is conducted objectively and consistently
- all confidential information is secured and handled to the expectations of the parties
- all actual, potential or perceived conflicts of interest are addressed and effectively managed
- accountability is maintained
- confidence is preserved in the chosen processes; and decisions and processes are defensible.

"Staff" means full time and part time staff of Wollondilly Shire Council including contract staff and consultants.

"Submitter" means someone who submits something (as an application or a published view) for the judgment of others.

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6. RELATED POLICIES AND PROTOCOLS

- 6.1 Gift and Benefits Policy GOV0051
- 6.2 Complaint Handling GOV0054
- 6.3 Internal Reporting AP0022
- 6.4 Council's adopted Code of Conduct

7. RELATED PROCEDURES

- 7.1 Nil

8. RELATED LEGISLATION

- 8.1 Local Government Act 1993 (NSW)
- 8.2 Environmental Planning and Assessment Act 1979 (NSW)
- 8.3 Model Code of Conduct – Division of Local Government, Department of Premier and Cabinet
- 8.4 State Records Act 1998 (NSW)
- 8.5 Protected Disclosures Act 1994 (NSW)
- 8.6 Independent Commission Against Corruption Act 1988 (NSW).

9. ATTACHMENTS

- 9.1 Councillor Interaction with Developers - Checklist

10. RESOURCES

- 10.1 Lobbying of Government Officials Act 2011
- 10.2 Lobbying Of Government Officials (Lobbyists Code of Conduct) Regulation 2014
- 10.3 Independent Commission Against Corruption *Lobbying Local Government Councillors – A Guide for Councillors, constituents and other interested parties*

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11. IMPLEMENTATION STATEMENT

11.1 To ensure this policy is implemented effectively, Council will employ a variety of strategies involving awareness, education and training. These strategies will be aimed at Councillors, staff and council representatives and will involve:

- 11.1.1 Discussions at Councillor Workshop regarding the policy.
- 11.1.2 Training at Staff meetings.
- 11.1.3 Policy published on Council's website.

12. POLICY HISTORY

| | | |
|------|----------------------|---|
| 12.1 | Date First Adopted | ## / ## / ## |
| 12.2 | Most Recent Adoption | ## / ## / ## |
| 12.3 | Next Review Date | ## / ## / ## |
| 12.4 | Responsible Officer | Executive Director – Community Services and Corporate Support |

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Attachment 9.1

Councillor Interaction with Developers - Checklist

Councillors can involve themselves in discussions with developers, their constituents and others about planning matters. However, difficulties can be avoided if you follow these useful hints:

Do

- ✓ Consider your requirements under the NSW Local Government Act 1993 and the Code of Conduct
- ✓ Be prepared to meet with applicants and officers before a DA is lodged, not after it has been submitted
- ✓ Always involve officers and in discussions with developers, their consultants or representatives
- ✓ Inform officers about any approaches made to you and seek advice
- ✓ Be aware of what predisposition, pre-determination and bias mean in your role
- ✓ Preface discussions with disclaimers; keep notes of meetings and phone calls and make clear at the outset that the discussions are not binding
- ✓ Ensure meeting notes are filed as business records of Council
- ✓ Be aware of what personal and prejudicial interests are
- ✓ Recognise the distinction between giving advice and engaging in negotiation and when this is appropriate in your role
- ✓ Use meetings to show leadership and vision
- ✓ Encourage positive outcomes
- ✓ Be aware that you can engage in discussions but you must have and be seen to have an open mind at the point of decision making
- ✓ Suggest that the developer seek independent professional advice

Don't

- × Use your position improperly for personal gain or to advantage your friends or close associates
- × Meet developers alone or put yourself in a position where you appear to favour a person, company or group – even a friendly private discussion with a developer could cause other to mistrust your impartiality
- × Attend meetings or be involved in decision-making where you have a conflict of interest - except when speaking when the general public are also allowed to do so
- × Seek to influence officers or put pressure on them to support a particular course of action in relation to a planning application
- × Compromise the impartiality of officers
- × Give definitive advice about the developer's chance of success

**Adapted from "positive engagement – a guide for planning Councillors" – Planning Officers Society – England*

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