

Policy



STRATEGIC

COUNCILLOR INVOLVEMENT IN DEVELOPMENT APPLICATIONS

Head of Power

Local Government Act 2009

Related Legislation

Local Government Regulations 2012

Planning Act 2016

Public Sector Ethics Act 1994

Integrity Act 2009

Key Supporting Council Document

Lockyer Valley Regional Council Corporate Plan (2017-2022):

5.7 Compliant with relevant legislation

Definitions

<i>CEO</i>	Council's Chief Executive Officer.
<i>Council</i>	Lockyer Valley Regional Council.
<i>Councillor</i>	Mayor and Councillors of Lockyer Valley Regional Council.
<i>Council Officer</i>	All employees of Lockyer Valley Regional Council whether employed on a contract, permanent, temporary or part-time arrangement.
<i>Conflict of Interest</i>	Refers collectively to "prescribed conflicts of interest" and "declarable conflicts of interest" as defined under the <i>Local Government Act 2009</i> .
<i>Consultant</i>	An individual or entity engaged on behalf of the developer for a Development Application or proposed Development Application as applicant and includes an individual or entity engaged as a consultant on behalf of the developer and/or landowner for the Development Application or proposed development

	application. The term also includes those engaged to prepare technical/specialist reports for a development application.
<i>Development Application</i>	An application for development that requires assessment against the provisions of the local government planning scheme(s) and other local planning instrument(s).
<i>Developer</i>	An applicant for a Development Application or a prospective applicant for a Development Application and/or their advisors and representatives. 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.
<i>Developer, Lobbyist, Consultant and/or Submitter Engagement Register</i>	A register of engagements between Councillors and/or Developers, Lobbyists and Submitters in relation to Development matters that is kept and maintained by Council.
<i>Interaction</i>	A pre-arranged engagement in relation to a development matter and includes meetings either virtually, by phone or in person and written correspondence.
<i>Lobbyist</i>	Has the same meaning as defined in the <i>Integrity Act 2009</i> , that is a person or entity who carries out lobbying for a third-party client.
<i>Submitter</i>	A person who has made a submission, or who may make a submission, about a Development Application during the application process, whether the submission is properly made or not as provided under the <i>Planning Act 2016</i> .

Policy Objective

The objective of this policy is:

- To establish how Councillors should interact with developers, consultants, lobbyists and submitters in relation to Development Applications as prescribed by the *Planning Act 2016*.
- To assist Councillors in their decision-making process in relation to development applications by avoiding conflicts of interest.
- To provide guidance for Councillors when dealing with developers, consultants, lobbyists and submitters.
- To promote transparency, equity and public accountability in relation to interactions between Councillors and developers, consultants, lobbyists and submitters.
- To ensure that all decisions are legal, ethical and impartial and to ensure that decisions are also seen to be legal, ethical and impartial in the eyes of the community.

Policy Statement

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

This policy does not apply to social interactions between Councillors and other persons who are developers, consultants, lobbyists or submitters; however, a Councillor should carefully consider the implications of social

interactions with developers, consultants, lobbyists and submitters. Councillors should be mindful of their obligations to avoid conflicts of interests and to ensure that perceived or actual conflicts of interests are disclosed at the appropriate time.

Council is committed to representing the public interests of the region. Free and open access to Councillors and Council, is vital to efficient and effective local government.

Council aims to ensure that all decisions are legal, ethical and impartial and in accordance with the local government principles, and the responsibilities of Councillors as identified in the *Local Government Act 2009*.

Councillors engage with many people in the community in relation to a broad range of matters. Councillors play an important role in supporting economic development in the region and representing and synthesising community views.

The Development Assessment process is a legal process as prescribed by the *Planning Act 2016*. It must be transparent, unbiased, unfettered and legally correct. The provisions as outlined by the *Planning Act 2016* and the *Planning Regulation 2017* require that the Assessment Manager does not pre-determine applications prior to the required assessment being undertaken.

Developers, lobbyists, consultants and submitters seek access to Councillors to discuss potential and existing development applications and other projects for a range of reasons. The community has a clear expectation that these interactions are undertaken transparently and in the public interest.

It is expected that Councillors may interact with developers, lobbyists, consultants or submitters on development related matters. Council recognises that adopting a structured approach to these interactions will significantly reduce the risk of perceived or actual conflict(s).

Further, this policy does not apply to Councillor interactions with the community in relation to the making or amending of planning schemes or planning instruments.

Councillor Roles in the determining of Development Applications

The *Planning Act 2016* and the *Economic Development Act 2012* prescribes the circumstances in which Council decides a development application. In some circumstances, Council delegates the authority to do this through the CEO, who may delegate this authority to an appropriate officer.

In accordance with Council's delegations register, which may be amended from time to time, Council will decide the following applications and all other applications will generally be decided by the Group Manager Community and Regional Prosperity, Manager Planning, Policy and Community Wellbeing or the Coordinator Development Assessment by delegation.

Lockyer Valley Regional Council Councillors currently decide the following Development Application types:

- Development Application Variation Requests;
- Development Application Refusals;
- Impact assessable Development Applications that receive submissions;
- Development Applications where the applicant is Council;
- Any other Development Applications that the Coordinator Development Assessment, Manager Planning, Policy and Community Wellbeing or Group Manager Community and Regional Prosperity or the Chief Executive Officer determines should go to Council:
 - Economically significant Development Applications;
 - Development Applications that are of a sensitive nature (i.e. poultry farms).

Guidelines for Councillor Interactions with Developers, Lobbyists, Consultants and Submitters

1. Councillor(s) should seek to ensure that, wherever practicable, another Councillor(s) and a senior member of the Planning, Policy and Community Wellbeing team are present at any interaction with developers, lobbyists, consultants or submitters where development related matters are to be discussed.
2. When interacting with a developer, lobbyists, consultant or submitter about development related matters, Councillors should, wherever practicable:
 - a. State that any opinions expressed by the Councillor(s) are personal to the Councillor and do not in any way represent a formal Council view.
 - b. Make clear that they can provide general information on the application process but cannot give definitive advice about a proposed development's prospects for approval.
 - c. Suggest that the developer, lobbyist, consultant or submitter seek independent professional advice where relevant.
 - d. Encourage the developer, lobbyists, and/or consultant to seek advice and utilise Council's Pre-lodgement Meeting process to seek the views of Council Officers in relation to the application requirements.
3. Councillors are not to discuss matters that may relate to any Development Application by the developer or consultant that are under appeal. A written record of the interaction must be prepared each time a Councillor interacts with a developer, lobbyist, consultant or submitter about a development related matter. This record must be prepared by the Councillor and include, at a minimum:
 - The date of the interaction;
 - The format of the interaction;
 - The names of all parties or persons involved in the interaction/s;
 - A detailed summary of the matters raised with the Councillor(s) including a copy of any material provided at the meeting; and
 - A detailed summary of the advice provided by the Councillor(s) and staff involved.

4. A record of this interaction will be kept in Council's electronic recording keeping system.
5. Whilst Councillors are entitled to express their personal opinion, Councillors should be aware that, if they express a personal opinion, whether positive or negative, about a development related matter, that this may impact on the perception of their impartiality as a decision-maker should they be required to decide a development application. Councillors should consider any triggers requiring declaration of an actual or perceived conflict of interest at the time the application is to be decided by the Council. If expressing an opinion before an officer assessment report is available, Councillors should clearly state that a final decision can only be made after all relevant material has been prepared and considered.

Councillor Engagement with developers, lobbyists, consultants and/or submitters prior to the lodgement of a Development Application

6. During interactions with developers, lobbyists, consultants and/or submitters prior to the lodgement of a Development Application with Council, Councillors should not feel inhibited in promoting the benefits of developing in the region and encouraging responsible and appropriate development and investment. Councillors may also feel able to express their understanding of community views and attitudes in relation to development related matters.
7. When interacting with a developer, lobbyists, consultants and/or submitters about a potential development, Councillors should consider and abide by paragraphs 2-4 of this policy, particularly for larger or potentially more controversial developments.
8. Councillors should not feel inhibited or unable to discuss publicly known information about a potential development with the public.
9. It should be noted that Pre-lodgement meetings are considered confidential and cannot be discussed outside of Council.

Councillor Engagement with developers, lobbyists, consultants and/or submitters during the pre-lodgement phase of a Development Application (application is being prepared for lodgement)

10. Councillors are able to attend formal pre-lodgement meetings between developers and Council Officers and must have regard to paragraphs 2-4 of this policy. It is noted that Councillors receive a weekly report of Development Activity in the region which includes information in relation to Applications lodged, Applications decided and pre-lodgement meetings held.
11. Any requests for information from Council Officers should be in accordance with the Council Policy: Acceptable Requests by Councillors for Advice or Information Policy (ECM: 3945251).

Councillor Engagement with developers, lobbyists, consultants and/or submitters post lodgement and during the Assessment of the Development Application (after the application is lodged)

12. Once a Development Application is lodged with Council and is under assessment by Council Officers, Councillors should not initiate or seek to be involved in meetings with developers, lobbyists, consultants and/or submitters about the application that is under assessment. Councillors may seek information about the Development Application, in accordance with the Council Policy: Acceptable Requests by Councillors for Advice or Information Policy (ECM: 3945251).
13. Councillors must not direct, or attempt to direct, a Council Officer in the course of their duties to assess and report on a Development Application that is under assessment.
14. If a Councillor is invited to and agrees to engage in an interaction with a developer, lobbyist, consultant and/or submitter during the assessment stage, Councillors must have another Councillor or Councillors attend with them as well as the Group Manager Community and Regional Prosperity or Manager Planning Policy and Community Wellbeing. Additionally, details in relation to the interaction, as set out in paragraph 3 of this policy, should be conveyed by Councillors to the CEO so this information can be captured in Council's Developer, Lobbyist, Consultant and/or Submitter Engagement Register.

Councillor Engagement with developers, lobbyists, consultants and/or submitters during the Development Application Decision Part (Part 5 of the DA Rules when an application is being decided)

15. If the Development Application is being decided by Council Officers under delegation, it is generally not appropriate for Councillors to interact with a developer, lobbyist, consultant and/or submitter about the development application. Councillors may convey any comment received and/or refer developers, lobbyists, consultants and/or submitters to the CEO or the Group Manager Community and Regional Prosperity or Manager Planning Policy and Community Wellbeing.
16. If the Development Application is to be decided by Council, and not by Council Officers under delegation, Councillors are advised not to interact with a developer, lobbyist, consultant and/or submitters leading up to the meeting where the decision is to be made. Should a Councillor interact with a developer, lobbyist, consultant and/or submitters, Councillors must consider the guidelines as outlined in paragraphs 2-4 of this policy. Councillors must convey and record any comments received to the CEO, the Group Manager Community and Regional Prosperity or the Manager Planning Policy and Community Wellbeing and all Councillors.

17. After Council Officers have prepared a report and made a recommendation and that report has been listed on the Council Meeting agenda, Councillors may seek additional information from Officers to ensure their duties are properly discharged when deciding the application. The request for information can be made to the CEO, Group Manager Community and Regional Prosperity or the Manager Planning Policy and Community Wellbeing.
18. Council Officers may opt to have a Council Workshop Item listed on the Agenda of a Council Workshop should Officers deem that necessary and beneficial to Councillors. It should be noted that this is not a decision-making forum but an informal opportunity to provide information to Councillors in relation to the Development Application.
19. As required by the Planning Act 2016, Councillors must ensure they genuinely consider the development application, any submissions to the application, the Council Officers Delegated Report; including the assessment and recommendations by Council Officers, prior to making a decision on the proposed development.
20. Confidentiality must be maintained for any information that, if released, could prejudice the interests of Council or another party.

Councillor Engagement with developers, lobbyists, consultants and/or submitters post Development Decision and Appeal (after the application has been decided)

21. Once a decision has been made, Councillors are required to respect the decision of Council.
22. Once a decision has been made and until such time as any appeal period is finished, Councillors must not engage with a developer, lobbyist, consultant and/or submitter in relation to the matter and in the case of an appeal, this also includes appellants or co-respondents to an appeal. Councillors may interact with these parties where that interaction is in relation to a different matter.
23. Councillors must not seek to influence the manner in which conditions of a development approval are applied.

Related Documents

- Communicating and Meeting with Lobbyists Guideline
- Acceptable Requests by Councillors for Advice or Information Policy
- Developer, Lobbyist, Consultant and/or Submitter Engagement Register