

Policy



STRATEGIC

COUNCILLOR INVOLVEMENT IN DEVELOPMENT APPLICATIONS

Head of Power

Local Government Act 2009

Key Supporting Council Document

Lockyer Valley Regional Council Corporate Plan (2022-2027):

- Lockyer Planned – a development assessment process that delivers quality development that is consistent with legislation, best practice and community expectations
- Lockyer Leadership and Council - 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>	A person or company undertaking an approved development, or a prospective applicant for a proposed development, or an applicant for a current Development Application, and/or their advisors and representatives. It includes any Lobbyist or Consultant 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.
<i>Developer, Lobbyist, Consultant and/or Submitter Engagement Register</i>	A register of engagements between Councillors and/or Developers, Lobbyists, Consultants 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> . It includes any Lobbyist or Consultant acting on behalf of a Submitter.

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.

This policy will assist Councillors when interacting with these stakeholders and promotes decision making in the public interest, good governance and enhanced community confidence in Council.

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 under the *Local Government Act 2009* and the Code of Conduct for Councillors in Queensland and avoid Conflicts of Interests and where required ensure that 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 Development 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 Conflicts of Interest.

As prescribed in legislation, it is an offence for Councillors to accept gifts, benefits or donations from Developers at any time. The Electoral Commission of Queensland (ECQ) administers this legislation under the prohibited donors scheme.

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 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 this power to certain Council Officers.

When Council is deciding a Development Application, the provisions of the *Planning Act 2016* require that Councillors individually and the Council collectively, must not pre-determine a Development Application and cannot consider matters that are irrelevant or unrelated to a development assessment process.

In accordance with Council's delegations register, which may be amended from time to time, Council will decide the following types of Development Applications assessable under the relevant planning scheme:

- Application for Preliminary Approval including variation requests to vary the effect of a planning scheme;
- Impact assessable Development Applications recommended by Council officers for refusal;
- 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, Group Manager Community and Regional Prosperity or the Chief Executive Officer determines should go to Council such as:
 - Economically significant Development Applications;
 - Development Applications that are of a sensitive nature.

All other applications for development assessable under the planning scheme 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.

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

Adopting a structured approach to Councillors' Interactions with Development, Lobbyists, Consultants 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, Lobbyist, Consultant or Submitter wants to discuss a development matter with a Councillor, this should be referred to the office of the CEO or other nominated Council Officer, to co-ordinate and diarise a meeting appointment. A meeting in this context may be face-to-face, virtual or by telephone.
2. Councillor(s) should seek to ensure that another Councillor(s) and a senior member of the Planning, Policy and Community Wellbeing team or their delegate are present at any Interaction with Developers, Lobbyists, Consultants or Submitters where development related matters are to be discussed.
3. When Interacting with a Developer, Lobbyist, 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 Development Application process but cannot give definitive advice about a proposed or current Development Application's prospects for approval.
 - c. Suggest that the Developer, Lobbyist, Consultant or Submitter seek independent professional advice where relevant.

- d. Encourage the Developer, Lobbyist, 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 Development Application requirements.
 - e. 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.
4. Councillors are not to discuss matters that may relate to any Development Application by the Developer or Consultant that are under assessment or 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 and kept in Council's electronic record keeping system. 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.
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.
6. Councillors should consider any triggers requiring declaration of a Conflict of Interest at the time the Development 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.

Stages of the Development Assessment Process

Under this policy, Councillors have additional obligations in relation to their Interactions with Developers, Lobbyists, Consultants and Submitters at each of the following stages in the development assessment process:

Pre-application (when there is no application before Council or in the process of being drafted)

7. During Interactions with Developers, Lobbyists, Consultants and/or Submitters during the pre-application stage, 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 express their understanding of community views and attitudes in relation to development related matters.
8. When Interacting with a Developer, Lobbyists, Consultants and/or Submitters about a potential development, Councillors should consider and abide by Guidelines 2-6 in this policy, particularly for larger or potentially more controversial developments.

- Councillors should not feel inhibited or unable to discuss publicly known information about a potential development with the public.

Pre-lodgement (when there is no application before Council, but an application is being prepared for lodgement)

- Councillors are able to attend formal pre-lodgement meetings between Developers and/or Consultants and Council Officers in order to gain a more detailed understanding of a project or development proposal but should listen only and not contribute to any discussion. Councillors must have regard to Guidelines 2-6 of this policy. It should be noted that pre-lodgement meetings are considered confidential and cannot be discussed outside of Council.
- It is noted that Councillors receive a weekly report of development activity in the region which includes information in relation to Development Applications lodged, Development Applications decided and pre-lodgement meetings held.
- Any requests for information from Council Officers should be in accordance with the Acceptable Requests by Councillors for Advice or Information Policy.

Post-lodgement and during the assessment of the Development Application (after the application is lodged)

- 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 Development Application that is under assessment. Councillors may seek information about the Development Application, in accordance with the Acceptable Requests by Councillors for Advice or Information Policy.
- 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.
- If a Councillor is invited, 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 CEO, Group Manager Community and Regional Prosperity, Manager Planning Policy and Community Wellbeing or delegate. Additionally, Councillors must have regard to Guidelines 2-6 of this policy and details in relation to the Interaction as set out in paragraph 4 of this policy should be conveyed by the Councillor to the CEO so this information can be captured in Council's Developer, Lobbyist, Consultant and/or Submitter Engagement Register.
- If a Councillor has a Conflict of Interest in relation to a Development Application which is under assessment they must not:
 - discuss the matter with any other Councillor or Council Officer who is or may be a participant in deciding that matter;
 - Interact with a Developer, Lobbyist, Consultant or Submitter in relation to that matter.

Development Application Decision (Part 5 of the Development Assessment Rules when a Development Application is being decided)

A. If the Development Application is being decided by Council Officers under delegation

17. 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, particularly where the Developer, Lobbyist, Consultant or Submitter is aggrieved by the Council Officers' assessment or decision of the Development Application or is seeking the Councillor's intervention in the Council Officers' assessment or decision.
18. Councillors may convey any comment received and/or refer Developers, Lobbyists, Consultants and/or Submitters to the CEO, the Group Manager Community and Regional Prosperity, Manager Planning Policy and Community Wellbeing or delegate.
19. If a Councillor has a Conflict of Interest in relation to the Development Application, they must not direct, influence, attempt to influence or discuss the matter with any Council Officer who is a participant in assessing or deciding that matter.

B. If the Development Application is to be decided by Council, and not by Council Officers under delegation

20. 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 Guidelines 2-6 of this policy.
21. Councillors must convey and record any comments received and key information arising from such Interaction to the CEO, the Group Manager Community and Regional Prosperity, the Manager Planning Policy and Community Wellbeing or delegate and all Councillors. Councillors must disclose to other Councillors who were not part of the Interaction, the recording or other record made of the Interaction, so that all decision makers have access to the same information.
22. After Council Officers have prepared a report including a recommendation and that report has been listed on the Council Meeting agenda, Councillors may seek additional information from Council Officers to ensure their duties are properly discharged when deciding the Development Application. The request for information can be made to the CEO, Group Manager Community and Regional Prosperity, the Manager Planning Policy and Community Wellbeing or delegate.
23. Council Officers may opt to have a Council workshop item listed on the agenda of a Council workshop should Council 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.

24. As required by the *Planning Act 2016*, Councillors must ensure they genuinely consider the Development Application, any submissions to the Development Application and the Council Officer's delegated report (including the assessment and recommendations by Council Officers) prior to making a decision on the Development Application.
25. If a Councillor has a prescribed or declarable Conflict of Interest in the Development Application, they must declare the Conflict of Interest to the CEO and at any Council meeting at which the matter is being considered and they must not:
 - Interact with Developers, Lobbyists, Consultants or Submitters in relation to that matter; or
 - influence, attempt to influence or discuss the matter with another Councillor or Council Officer who is wholly or partly responsible for deciding the matter.
26. Confidentiality must be maintained for any information that, if released, could prejudice the interests of Council or another party.

Post-decision and during any Appeal (after the Development Application has been decided)

27. Once a decision on a Development Application has been made, Councillors are required to respect the decision.
28. The post-decision stage of any Development Application is particularly sensitive and can involve negotiations between parties having an interest in the outcome of the Development Application. Under the *Planning Act 2016*, every applicant has the right to negotiate with Council on conditions and the scope of any approval issued by Council. All such negotiations must be attended by Council Officers or representatives, and Councillors should not be involved.
29. Once a decision has been made and until such time as any appeal period has ended, Councillors must not engage with a Developer, Lobbyist, Consultant and/or Submitter in relation to the matter. Councillors may interact with these parties where that interaction is in relation to a different matter.
30. If an appeal is lodged, Councillors must refrain from Interactions with the appellants or co-respondents and should avoid commenting publicly about matters before the Planning and Environment Court or a Development Tribunal.
31. Council Officers and Council's legal representatives manage the conduct of an appeal. During the course of an appeal 'without prejudice' meetings may be held between the parties to try to reach an agreement or limit the issues in dispute. Councillors do not attend 'without prejudice' meetings. Council officers will advise Council:
 - when an appeal is made;
 - when something significant occurs in relation to an appeal; and
 - when an appeal is resolved.
32. Councillors must not seek to influence the manner in which conditions of a development approval are applied and implemented by Council Officers.

Human Rights

Council is committed to respecting, protecting and promoting human rights. Council has an obligation under the *Human Rights Act 2019* to give proper consideration to human rights when making a decision, and to act and make decisions in a way that is compatible with human rights. To the extent that an act or decision under this policy may engage human rights, Council will have regard to the *Human Rights Act 2019* in undertaking the act or making the decision.

Relevant Legislation

- *Economic Development Act 2012*
- *Integrity Act 2009*
- *Local Government Regulation 2012*
- *Planning Act 2016*
- *Planning Regulation 2017*
- *Public Records Act 2002*
- *Public Sector Ethics Act 1994*

Related Documents

- Acceptable Requests by Councillors for Advice or Information Policy
- Code of Conduct for Councillors in Queensland
- Communicating and Meeting with Lobbyists Guideline
- Developer, Lobbyist, Consultant and/or Submitter Engagement Register
- Council's planning schemes, policies and documents and other relevant planning instruments