

1. Purpose

- 1.1 Council is committed to serving the public interest and pursuing matters that advantage the Whitsunday region and its community, including in the context of development matters. Many aspects of development proposals seek to advance the economic and community development goals and environment and liveability aspirations which Council seeks to realise through its Corporate Plan, regional strategies and initiatives. The way in which Council discharges its obligations in managing, assessing and deciding development applications can generate investor confidence and employment growth, accommodate and respond to public interests and preserve and enhance the region's natural assets.
- 1.2 Councillors and Council employees are frequently contacted by proponents and participants in the development assessment process regarding proposals or specific development applications. While there is no express statutory prohibition on Councillors or Council employees engaging with proponents and participants in the development assessment process, these interactions should always be carried out ethically, lawfully, transparently and in the public interest.
- 1.3 Distinct from developing and implementing regional and Council strategies, the development application and assessment process is a defined statutory process that must be transparent, objective and legally correct. In respect of all aspects of the development assessment process, Council will always aim to:
 - 1.3.1 reinforce its commitment to open, transparent, efficient, effective and objective decision-making in accordance with statutory requirements;
 - 1.3.2 provide for appropriate involvement by stakeholders in the decision-making process;
 - 1.3.3 support Councillors in discharging their responsibilities for the strategic direction of Council and the region, representing the interests of the region and their constituents and acting in a way that promotes integrity;
 - 1.3.4 assist Councillors to avoid any inference or allegations of dishonesty, bias or undue influence in the performance of their public or professional duties ;
 - 1.3.5 keep Councillors regularly informed of development related matters; and
 - 1.3.6 minimise the risk of non-compliance with legislation by Councillors.
- 1.4 The purpose of this policy is to:
 - 1.4.1 clarify how Councillors may engage with Developers in the current and future interest of the Whitsunday region, particularly where there is no matter before the Council;
 - 1.4.2 provide a framework for how Councillors should engage with Developers or Submitters once a matter has been formally lodged with the Council; and

- 1.4.3 provide guidance on where a Councillor has, or is likely to have, a Prescribed conflict of interest or Declarable conflict of interest in relation to a particular development application.

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

2. Scope

- 2.1 Councillors and Council employees (delegated and non-delegated) may represent the interests of the Whitsunday community as a whole in an advocacy role for investment attraction, promoting sustainability, industry development and generating business and investment confidence. Such activities, conducted ethically and lawfully, are appropriate roles for Councillors and Council employees and are not inconsistent with the requirements of this Policy.
- 2.2 This policy applies to Councillors and is consistent with the LGA, the *Integrity Act 2009* (Qld) and the Planning Act.
- 2.3 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 this policy, the LGA and the Code of Conduct for Councillors in Queensland
- 2.4 This policy does not apply to Councillor interactions with the community about the making or amending of planning instruments such as planning scheme amendments, new planning scheme preparation, neighbourhood/local area plans or the like.

3. Policy Statement

- 3.1 Council is committed to representing the overall public interest of the Whitsunday area. Council must ensure that all decisions are legal, ethical, and impartial in accordance with the Local Government Principles, and the responsibilities of councillors identified in the LGA.
- 3.2 Councillors engage with many people in the community in relation to a broad range of matters. Open access to Councillors and Council itself is vital to efficient and effective local government.
- 3.3 Developers and Submitters seek access to Councillors to discuss potential and existing development applications and other projects. The community has a clear expectation that interactions with these stakeholders are undertaken transparently and in the public interest.

- 3.4 It is an offence for councillors to accept gifts, benefits, or donations from property developers as prescribed in the Local Government Electoral Act 2011 (Qld). The ECQ administers this legislation under the prohibited donors scheme.

4. Guiding Principles

Councillor Roles in Development Applications

- 4.1 The Planning Act and Economic Development Act prescribe the circumstances in which Council decides a development application. In some circumstances, Council delegates this power to Employees.
- 4.2 When Council is deciding an application, the provisions of the Planning Act and the Development Assessment Rules apply.
- 4.3 Councillors individually and the Council collectively, must not pre-determine an application and cannot consider matters that are irrelevant or unrelated to a development assessment process.

Guidelines For Councillor Interactions with Developers, Lobbyists and Submitters

- 4.4 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, or being accused of engaging in, a conduct breach, misconduct or corrupt conduct.
- 4.5 If a Developer or Lobbyist wants to discuss a formally lodged Development Application with a Councillor, the request 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.
- 4.6 When meeting with a Developer or Submitter about a formally lodged Development Application, a Councillor should conduct the meeting in the presence of an appropriate third party. Examples of an appropriate third party include the CEO, the Director of Planning, or other appropriate senior officers of Council.

[Note: Records of meetings must be kept in accordance with the Public Records Act 2002 (Qld). A recording of a meeting, including an audio recording, is a document under the Right to Information Act 2009 (Qld) and may be releasable.]

- 4.7 When interacting with a Developer or Submitter about a formally lodged Development Application, Councillors should:
- 4.7.1 state that any opinions expressed by the Councillor are personal to the Councillor and do not in any way represent a formal Council view;

- 4.7.2 make it clear that a final decision can only be made after all relevant material has been prepared and considered, and must be assessed and decided in accordance with the Planning Act;
 - 4.7.3 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;
 - 4.7.4 maintain the confidentiality of any information, records, briefings, and discussions that, if released at a particular point in time, could prejudice the assessment process interests of council, the public at large, or another party; and
 - 4.7.5 suggest that the Developer or Submitter seek independent professional advice where relevant.
- 4.8 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.
- 4.9 Under the *Integrity Act 2009* (Qld), 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 should 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.

Stages Of The Development Assessment Process

- 4.10 Councillors have additional responsibilities in relation to their interactions with Developers and Submitters at each of the following stages in the development assessment process, as detailed below.
- 4.11 Pre-application (When there is no application before Council):
- 4.11.1 Councillors may interact with Developers in the pre-application stage to promote the benefits of developing in the Whitsunday Region and encourage responsible and appropriate development;
 - 4.11.2 Councillors can also discuss what is publicly known about a potential development with the general public;
 - 4.11.3 However, if a Councillor is likely to have a conflict of interest should a particular Development Application be lodged with Council, it is recommended that the Councillor refrain from interacting with the developer in relation to that matter.

[Note: Conflict of interest obligations under the LGA can extend to discussing a conflicted matter]

4.12 Formal Pre-lodgement Meetings (Meetings between Developers and Council Employees):

- 4.12.1 Reports on formal pre-lodgement requests and scheduled pre-lodgement meetings are provided to Councillors if requested;
- 4.12.2 A Councillor's requests for advice or information relating to a formal pre-lodgement meeting should be made in accordance with Council's Acceptable Request Guidelines;
- 4.12.3 Councillors may attend a formal pre-lodgement meeting in order to gain a more detailed understanding of a project or development proposal

4.13 Formal-lodgement and assessment of development applications (after an application is lodged):

- 4.13.1 Councillors must not direct, or attempt to direct, an Employee in the course of their duties to assess and report on a Development Application.

[Note: Section 1704 of the LGA prohibits a Councillor directing an Employee, other than the Mayor directing the CEO. It is misconduct to breach this prohibition.]

- 4.13.2 Councillor requests for advice or information relating to a development application should be made in accordance with Council's Acceptable Request Guidelines Policy.
- 4.13.3 Once a Development Application is lodged and is being assessed by Employees, Councillors should not initiate nor seek to be involved in internal meetings or meetings with the Developer about the Development Application under assessment.
- 4.13.4 If a Councillor is invited, and agrees, to engage in an interaction with a Developer or Submitter at this stage of the process, those interactions should occur having regard to the guidelines for Councillor interactions with Developers and Submitters (see above).
- 4.13.5 If it becomes necessary for a Councillor to provide feedback on issues of concern to the community, the Councillor may initiate a meeting with a Developer or Submitter having regard to the guidelines for Councillor interactions with Developers and Submitters (see above).
- 4.13.6 If a Councillor has a Prescribed conflict of interest or Declarable conflict of interest in relation to a Development Application which is under assessment, they must not:
 - 4.13.6.1 discuss the matter with any other Councillor or Employee who may be a participant in deciding that matter; or

4.13.6.2 interact with a Developer or Submitter in relation to that matter.

4.14 Development application decision (when an application is being decided)

4.14.1 If the Development Application is being decided by Employees under delegation:

4.14.1.1 It is generally not appropriate for Councillors to interact with a Developer or Submitter about a Development Application, particularly where the Developer or Submitter is aggrieved by the Employees' assessment of the Development Application, or is seeking the Councillor's intervention in the assessment or decision.

4.14.1.2 Councillors should advise the Developer or Submitter to speak directly to the CEO or other appropriate senior officer (i.e., Director of Planning) if they are aggrieved. Similarly, if Councillors receive any information from a Developer or Submitter, they should provide it to the CEO or other appropriate senior officer.

4.14.1.3 If a Councillor has either a Prescribed conflict of interest or Declarable conflict of interest in relation to the Development Application, they must not participate in relation to the decision.

[Note: See section 150EE of the LGA.]

4.14.2 If the application is to be decided by Council, rather than under delegation:

4.14.2.1 While Councillors are not obligated to do so, it is acceptable for Councillors to interact/meet with Developers and Submitters leading up to the meeting where the decision is to be made;

4.14.2.2 In these instances, Councillors should follow the guidelines for Councillor interactions with Developers and Submitters (see above).

4.14.2.3 Councillors should convey any key information arising from such meetings to the CEO and the Director of Planning or equivalent, if they are not present at that meeting.

4.14.2.4 Councillors should disclose to other Councillors who were not at the meeting the recording or other record made of the meeting, so that all decision makers have access to the same information.

4.14.2.5 After Employees have prepared a report and made a recommendation, and that report has been listed on a Council meeting agenda, Councillors may seek additional information from Employees to ensure their duties are properly discharged when deciding the Development Application. Information may be provided through a Council briefing, general meeting (or delegated decision committee) or

through a request in accordance with Council's Acceptable Request Guidelines.

- 4.14.2.6 As required under the Planning Act, Councillors should ensure they 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. The assessment of a Development Application must occur pursuant to the process detailed in the Planning Act.
- 4.14.2.7 If a Councillor has a Prescribed conflict of interest or Declarable conflict of interest in relation to the Development Application, they must declare the interest to the CEO and manage the conflict in accordance with the ordinary processes.

[Note: if a Councillor has a Declarable conflict of interest, clearance from Council is required before the Councillor can participate in relation to the matter. A Councillor with a Prescribed conflict of interest cannot participate in relation to a matter. Note the wide definition of 'participate' in section 150EE of the LGA]

4.15 Post-Development Decision and Appeal (After An Application Has Been Decided).

- 4.15.1 Once a decision has been made by Council, Councillors should respect that decision.
- 4.15.2 The post-decision phase of any Development Application is particularly sensitive and can involve negotiations between parties having an interest in the outcome of the application. Under the Planning Act, every applicant has the right to negotiate with Council on conditions and the scope of any approval issued by Council. All such negotiations should be attended by Council Employees or representatives, and Councillors should not be involved.
- 4.15.3 From the time a decision has been made until the end of the appeal period, Councillors should not engage with the relevant Developer or Submitter in relation to the Development Application.
- 4.15.4 If an appeal is lodged, Councillors should also refrain from interactions about the matter with the Appellants or Co-Respondents and should avoid commenting publicly about matters before the Planning and Environment Court. Comments from Councillors while an appeal is ongoing can prejudice the appeal and undermine Council.
- 4.15.5 Employees 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. Employees will advise Councillors:

- 4.15.5.1 when an appeal is lodged;
- 4.15.5.2 when something significant occurs in relation to an appeal; and
- 4.15.5.3 when an appeal is resolved.

5. Related Polices and Legislation

Economic Development Act 2012;

Integrity Act 2009;

Local Government Act 2009;

Planning Act 2016;

Public Records Act 2002.

Code of Conduct for Councillors in Queensland;

Acceptable Requests Guidelines;

Whitsunday Regional Council planning scheme, policies and documentation, and other relevant planning instruments;

Register of Contact with Lobbyists;

Development Assessment Rules.

6. Definitions

CEO means the Chief Executive Officer of Council.

Council means Whitsunday Regional Council.

Councillor means the elected representatives who hold (current) office with Council, including the Mayor.

Development application has the meaning given under the Planning Act, and for the purpose of this policy includes a potential or mooted development application, and an application in which Council is an assessment manager or referral agency (however described).

Development Assessment Rules has the meaning given by the Planning Act.

Developer means an applicant for a development approval or a prospective applicant for a development approval, their advisors, and representatives. 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.

Economic Development Act means the *Economic Development Act 2012* (Qld)

ECQ means the Electoral Commission of Queensland.

STRATEGIC POLICY

Councillor Roles in Development Matters (GOV_10)

Endorsed by Council

27 November 2024

Employee means a person who carries out work in any capacity for Council, including for example temporary, or permanent employees, contractors, sub-contractors, employees of a labour hire company, outworkers, trainees, apprentices, volunteers and work experience students.

Interaction means a pre-arranged engagement in relation to a development matter (including face-to-face, virtual or by telephone).

LGA means the *Local Government Act 2009* (Qld)

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 Government Principles has the meaning given in the LGA.

Planning Act means the *Planning Act 2016* (Qld).

Submitter is a person who has made a submission, or expressed an intention to make a submission, about a Development Application as provided under the Planning Act. It includes any lobbyist or consultant acting on behalf of a submitter.

COUNCIL POLICY

Date Adopted by Council	27 November 2024	Council Resolution	OM2024/11/27.9
Effective Date	27 November 2024	Next Review Date	November 2024
Responsible Officer(s)	Manager Governance and Administration	Revokes	
Public Consultation: Yes / No	No		