



## **COONAMBLE SHIRE COUNCIL**

### **Lobbying of Councillors Policy**

<b>RESOLUTION NO:</b> <b>4455</b>	<b>MEETING:</b> <b>14 August 2019</b>
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#### **INTRODUCTION**

In this Policy, the term “lobbying” is used to cover those types of communication between local government councillors and the community that include representatives to councillors by special interest groups, by individuals with a direct interest in a council decision and by advocates acting on behalf of others.

Lobbying is common in local government. The most common form occurs when a group or individual makes direct with a councillor in an attempt to influence a council decision. Councillors are lobbied over such issues as:

- Development matters;
- The upgrading of local facilities, including playgrounds and sporting amenities;
- Revenue decisions, including the setting of business; and
- Mining, farming or special rates.

The Independent Commission Against Corruption’s (ICAC) view is that appropriate lobbying of Councillors is normal. In many cases lobbying is part of the democratic process and is an acceptable feature of the relationship between citizens and their elected representatives.

It is in the public interest that lobbying is fair and does not undermine public confidence in impartial decision-making.

#### **AIMS OF POLICY**

This Policy has been prepared to assist the Mayor and Councillors to manage the conflict of roles that may arise when they receive representations from special interest groups, by individuals with a direct interest in a Council decision or by advocates acting on behalf of others seeking the Councillor to represent their interests in a matter before the Council.

**DEFINITIONS**

In this Policy: <b>Term</b>	<b>Definition</b>
Councillor	Refers to all elected representatives of Council, including all Councillors and the Mayor.
Councillor as Advocate	Shall mean a Councillor, or the Mayor, who has accepted a role on behalf of a person to advocate the merits of a matter before the Council, as opposed to exercising the role of an elected representative to support the merit of the application in debate in the governing body or the Committee concerned.
Interested Party as Advocate Lobbyist	These include professional technical experts such as planners, lawyers, architects and related experts together with representative groups who perform the negotiation process designed to match client desire with Council discretion.
Individual lobbyist	Individual property owners, self-employed developers, corporations with development or property interests in the local government area.
Lobbying	The activities undertaken by an individual or group who work or conduct a campaign to influence members of Council to support and/or vote according to the individual's or group's special interest.

**POLICY STATEMENT****GENERAL PROVISIONS****The roles of Councillors**

The conflict of roles noted above has the potential to impede effective and impartial decision-making, and is identified as a corruption risk by Council and by ICAC. Councillors can be lobbied over such issues as:

- Development matters including development applications and land zoning;
- Tenders;
- Provision of services to interest groups;
- Upgrading of local facilities, including playgrounds and sporting amenities; and
- Revenue decisions, including setting rates and charges.

A Council can be lobbied in their capacity as a Councillor representing the interests of a constituent or in their capacity as a member of the governing body of the Council.

**Statutory role as a member of the governing body**

When in attendance at a Council meeting, a Councillor is subject to a number of governance obligations as outlined in the *Local Government Act 1993* (the Act). Council's code of Meeting Practice and Code of Conduct guides a Councillor as a member of the governing body.

When acting as a member of Council, Councillors are subject to the overriding and predominant duty to serve the interests of Council. This duty carries with it an obligation to act honestly and impartially. In this capacity Councillors are also obliged to exercise their powers or functions in accordance with the legislative authority conferred on Council and the relevant restrictions on exercise of these powers or functions.

**Statutory role as an elected representative**

As an elected representative, a Councillor's role is:

- To represent the interests of the residents and ratepayers;
- To provide leadership and guidance to the community; and
- To facilitate communication between the community and the council.

**Lobbying of Councillors**

Appropriate lobbying of Councillors is normal. It is part of the democratic process and is an acceptable feature of the relationship between citizens and their elected representatives. However, there can be an inbuilt conflict stemming from section 232 of the Act, which accords a Councillor two roles:

- As a member of the governing body of Council; and
- As an elected representative.

This Policy is intended to protect the integrity of decision-making whilst recognising a Councillor's legitimate interest in representing the community.

It is in the public interest that lobbying is fair and does not undermine public confidence in impartial decision-making. Councillors should take care that their duty to consider issues fairly and properly is not compromised by participating in lobbying practices that are outside the bounds of appropriate or lawful behaviour.

Inappropriate or unlawful conduct on the part of someone lobbying a Councillor usually involves an attempt to obtain preferential consideration or treatment based on factors other than the merits of a matter. Examples of inappropriate or unlawful conduct by Councillors that could occur during the lobbying process include:

- Accepting undisclosed payments or benefits whilst making a decision that affects the giver's interests;
- Accepting a political donation in return for the favourable exercise of discretion during decision-making;

- Granting access to a particular individual or group while unreasonably denying similar access requested by another party;
- Fettering discretion by giving undertakings to an interested party, or making public statements in support of or in opposition to a proposal prior to Council considering all the information relevant to a decision. Councillors are under a particular obligation to give true consideration to all mandated matters when dealing with statutory powers such as section 4.15 of the *Environmental Planning and Assessment Act 1979*;
- Allowing an applicant's viewpoint or issues to take precedence in decision making over the statutory provisions of section 4.15 of the *Environmental Planning and Assessment Act 1979*;
- Acting in a manner that exceeds the role of a Councillor as defined in section 232 of the Act as a result of being lobbied;
- Disclosing confidential information whilst being lobbied; and
- Being unduly influenced by factors that are irrelevant to the merits of the matter under consideration.

Councillors who are lobbied over Council matters by close friends, associates or relatives should also consider whether the nature of their relationship with the proponent and the impact of the matter on the proponent's interests give rise to a pecuniary or non-pecuniary interest. In such cases, Councillors should manage the matter in accordance with the provisions of Council's Code of Conduct.

### **Transparency**

Councillors should exercise judgement when deciding whether to be involved in private meetings with people seeking to influence a Council decision. These meetings have the potential to undermine public confidence in Council decision-making and adversely affect a Councillor's reputation.

Transparency provides a mechanism for accountability and fairness in lobbying processes. There are a number of ways Councillors can help ensure transparency whilst being lobbied. These include:

- Documenting meetings with proponents;
- Generally conducting meetings in official locations such as Council premises;
- Having other people present during meetings;
- Inviting applicants who have approached them for a meeting to discuss a significant development to write to Council seeking a meeting with all Councillors and relevant staff;
- Providing 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 records;
- Asking people who have requested a meeting to put their arguments in writing; and
- Making a declaration at a Council meeting about lobbying activities they have been engaged in that are not part of Council's formal processes.

A Councillor may, in fulfilling his or her role as an elected representative, receive and consider the views of the community, including the community's stance on draft Local Environment Plans (LEPs), draft Development Control Plans (DCPs) and Development Applications (DAs).

It can be difficult to distinguish the above representational role from advocating on behalf of particular residents or ratepayers, or a specific interest group, particularly where there are competing community interests.

There is a potential conflict between the concepts of an impartial decision making who is obliged to consider all sides to a development issue and that of an advocate for a particular individual/group.

### **STANDARD RESPONSE TO BE PROVIDED ON RECEIVING A COMMUNICATION**

When an interested party seeks to communicate with a Councillor about a matter before, or to be taken before the Council, the Councillor must indicate the limits to what he or she can do for the person. Set out in Appendix A are examples of appropriate response statements.

### **CONVEYING REPRESENTATIONS TO THE GENERAL MANAGER**

It is important that details of representations to Councillors by any person regarding a matter before the Council, or one which will come before the Council for decision are passed on by the Councillor, either :

- Directly to the General Manager by the Councillor for forwarding to the relevant Council officer/s; or
- Directly to Council by the applicant or interested party in the ordinary manner.

This information will then be put on the Council record and formally assessed and actioned by the Council officers.

Where practicable, the Councillor should insist that the submission be provided in writing. Where this is not practicable, the Councillor is required to take a file note of the comments made and forward this information to the General Manager as soon as possible.

### **MEETINGS WITH APPLICANTS OR INTERESTED PARTIES**

To avoid perceptions of partial conduct, Councillors should only meet with an applicant or an interested party when:

- The applicant or interested party has put the request in writing; and
- After a development application has been lodged, any requests for meetings between Councillors and developers, lobbyists or submitters must occur by arrangement through the General Manager's office and

only in circumstances where a Council officer (with adequate knowledge of the development application), is also present.

After a DA has been lodged, if a councillor engages in telephone discussions, email or other correspondence exchange with a developer, lobbyist or submitter (whether seeking the Councillor's support or opposition to a development application), the Councillor 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 development application; and
- 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:
  - (a) consistent with the planning legislation, Council's planning scheme and policies; and
  - (b) made after having appropriate consideration of any officer's (or council appointed consultant's) advice; and
  - (c) not influenced by any other irrelevant or inappropriate consideration.

Councillors must keep a written record of the communication. The written record should detail, as a minimum, the date and time of the exchange, the format of the exchange (i.e. telephone call, exchange of emails or exchange of correspondence), a summary of the matters raised with the Councillor and a summary of the Councillor's response. A copy of that record must be provided to the General Manager within seven (7) days of the contact taking place.

Councillors must be alert to the motives and interests of the lobbyist and need to avoid saying and doing anything which could be viewed as granting preferential treatment. The meeting should be restricted to business hours and, if possible, held in an appropriate location such as Council offices.

In the case of large scale or controversial or politically sensitive DAs a simultaneous site visit for all Councillors will be organised by staff at the appropriate time.

#### **LIMITS ON COMMUNICATION BETWEEN COUNCILLORS AND STAFF REGARDING A DEVELOPMENT MATTER**

Any other communications by the Councillor regarding a DA/draft LEP/draft DCP should be directed to the General Manager, or person/s nominated by the General Manager.

**DECLARATION AT COUNCIL MEETINGS**

Where Councillors have been approached as provided for in this Policy and the matter is referred to council for consideration, the Council must make a declaration that :

- He or she was approached by the applicant or interested party regarding the matter (naming the applicant or interested party concerned); and
- That he or she has followed this Policy.

This is not a declaration of a conflict of interest but simply a declaration that Council's adopted Policy has been adhered to.

**PARTICIPATION AND VOTING AT COUNCIL MEETINGS**

Councillors must apply the provisions of Council's Code of Conduct and Code of Meeting Practice in determining whether they have a conflict of interests before participating in discussion and voting on a matter. If a Councillor deems that they have a conflict of interests, then such conflict must be managed in accordance with the provisions provided in Council's policies.

**VOTING WHERE ADVOCATING FOR APPLICANT OR INTERESTED PARTY ON MATTERS**

If a Councillor elects to advocate on behalf of an applicant or interested party at a Council meeting at which the matter is to be considered, it may be perceived that a conflict of interests exists. This is because there is a potential conflict between the concepts of an impartial decision maker who is obliged to consider all sides to a development issue and that of an advocate for a particular individual/group.

Therefore, prior to advocating or representing the position of the applicant or interested party, the Councillor must consider whether any conflict of interests exist and if such conclusion is reached, declare such interest in accordance with Council's Code of Meeting Practice, and take such appropriate action to manage any conflict in accordance with Council's Code of Conduct.

As a guideline it would be safer for a Councillor, when acting as an advocate on behalf of an applicant or interested party, to declare such situation and not partake in the voting on such an item because of the real or perceived conflict of interest that such action could create.

As far as developmental matters are concerned, it should be noted that at the Councillor Professional Development Weekend held on 2<sup>nd</sup> & 3<sup>rd</sup> August 2019, the advice was given to Councillors not to act as an advocate for an applicant, as it could constitute a breach of Section 232 (the role of a Councillor) of the Local Government Act 1993.

**BREACHES OF THE POLICY**

Council’s adopted Code of Conduct makes provision for dealing with breaches of the Code. It requires Councillors to comply with Council policies and administrative procedures. Should a Councillor breach the Lobbying Policy and a complaint is lodged regarding that conduct, then the complaint may be dealt with under the provisions of the Code and Administrative Procedures.

**APPLICABILITY**

This policy applies to all elected representatives (comprising all Councillors, including the Mayor) or Coonamble Shire Council in their interactions with interested parties as advocate or individual lobbyists.

**VARIATION AND REVIEW**

This Policy will be reviewed every three (3) years or as required.

**IMPLEMENTATION / COMMUNICATION**

The Policy will be promoted to Councillors as a part of the Councillor induction process after each General Election. In addition, it will be included as part of the Governance implications when preparing Council reports related to planning matters and other controversial matters.

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General Manager

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Date

## **APPENDIX A**

### **Examples of standard response to be provided on receiving a communication**

- I am happy to arrange for any comments you have on the matter/development application/draft LEP/draft DCP to be conveyed to the Council officer dealing with the matter. If the matter relates to development and determined by Council, your comments will also be reported to these forums. If you have not already done so, please put your comments in writing.
- If you also want to meet with me to voice your concerns, I would be happy to attend a meeting assisted by a Council officer or officers. Please make your request for a meeting in writing and I will arrange for a meeting to be held in the company of a Council officer.
- You need to realise that if the matter is referred to Council, I have to publicly declare that I have received submissions from you. You should also note that when I sit with other Councillors as the Council to assess and determine development application/draft LEP/draft DCP, I will only be able to have regard to matters considered to be relevant at law, and my determination of the application will be based on its merit.