

DEVELOPMENT INTERACTION GUIDELINES

Intent This Policy provides ethical guidance for Councillors and staff when dealing with parties involved in or associated with a development application.

Scope The provisions of this policy apply to all Councillors and staff.

PROVISIONS

Contact with Council is undertaken by many people in the community in relation to a broad range of matters. The public has a clear expectation that such contact is carried out ethically and transparently.

For avoidance of doubt, this policy clarifies requirements and processes imposed upon Councillors and staff by the *Local Government Act 2009*¹, *Integrity Act 2009*², *Sustainable Planning Act 2009*³ and associated Regulations. This Policy does not seek to circumvent or undermine requirements within this legislation, rather, the Policy seeks to provide clarification and guidance for the assistance of Councillors, staff and the public who interact with Council regarding a range of matters.

Definitions

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

“Councillor” means the Mayor and Councillors of Cairns Regional Council.

“Making a development application” for purposes of Section 42(2)(j) of the *Integrity Act 2009* and this Policy 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 *Sustainable Planning Act 2009*, including, but not limited to:

- Pre-lodgement enquiries, meetings and responses provided thereto;
- 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 Decision Period 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 *Sustainable Planning Regulation 2009*, or decision maker under Local Law or other State legislation.

“Staff” means full time and part time staff of Cairns Regional Council including contract staff and consultants.

¹ Available for download at <http://www.legislation.qld.gov.au/LEGISLTN/CURRENT/L/LocalGovA09.pdf>

² Available for download at <http://www.legislation.qld.gov.au/LEGISLTN/CURRENT/I/IntegrityA09.pdf>

³ Available for download at <http://www.legislation.qld.gov.au/LEGISLTN/CURRENT/S/SustPlanA09.pdf>

Other terms used in this policy and not defined above are already defined within the *Local Government Act 2009*, *Integrity Act 2009*, *Sustainable Planning Act 2009*, and / or their associated Regulations.

Requirements

- Councillors and staff must comply with obligations within the *Local Government Act 2009*, *Integrity Act 2009* and relevant Codes of Conduct in dealings with development application matters. If a Councillor is aware that they may have a conflict of interest, they must remove themselves from discussions regarding the matter, pending notification to the Chief Executive Officer, and potentially further advice being provided.
- Technical consultants including town planners, engineers, architects and / or economists need not be registered Lobbyists for purposes of the *Integrity Act 2009*, in order to enable discussions with Councillors and staff to occur. Notwithstanding, interaction between technical consultants and Councillors and staff must be undertaken in compliance with requirements in that Act and this General Policy.
- Councillors and staff cannot give definitive advice regarding an Applicant's chances of being successful in the Application as proposed.
- 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. Table 1 below illustrates Council's preferred manner of addressing these requests for contact in various phases of the process:

Table 1

Phase	Councillor	Manager	Planning Officer	Written Record
Pre-Lodgement enquiries, including meetings	M	Y	Y	Y
Application lodgement	M	M	Y	Y
Acknowledgement Notice	M	M	Y	Y
Information Request	M	Y	Y	Y
Information Response	M	M	Y	Y
Additional information	M	M	Y	Y
Additional meetings, site visits or discussions	M	M	Y	Y
Referral agency decision	M	M	Y	Y
Council decision phase, but are able to request an update as to status and timing only	N	Y	Y	Y
Council decision phase with registered lobbyist	M	Y	Y	Y

M = As requested, invited or required

Y = Involvement required

N = No involvement required or permitted

- If Councillors are concerned at the manner in which application/s are being assessed, these concerns should be discussed with the Manager Strategic Planning and Approvals or General Manager Planning & Environment.
- In addition to Table 1 above, in order to allay any confusion that may result, it is confirmed that within the decision phase, Councillors and staff may respond to queries from applicants and / or technical consultants in regard to progress of an Application, or other technical matters, including provision of additional information if required. If applicants, technical consultants and / or lobbyists are seeking contact to attempt to influence a decision or recommendation from staff, contact should be undertaken with due regard to requirements of the *Integrity Act 2009*.

Importantly, Councillors and officers should be mindful of requirements in regard to:

- Recording of meetings, issues discussed and advice / comment provided;
 - Ensuring that meeting attendees are fully briefed prior to the meeting on issues to be discussed at meetings, and / or the development application or issue in question;
 - Ensuring that officers involved in the assessment of applications are involved in the meeting, if possible, and / or informed of the outcomes or major issues discussed at or raised during such meetings.
- Appendix 1 to this General 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 development applications.
 - Council is required to keep and maintain appropriate records in accordance with the *Public Records Act 2002*. Further requirements in regard to maintenance of an illegal lobbyist register and records requirements are confirmed within the *Integrity Act 2009*. Additional detail regarding Council's requirements in respect to record keeping is available within those Acts, and Administrative Instruction - Recordkeeping. Councillors and staff should be mindful of these requirements in regard to the manner in which records from such meetings are maintained.

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This policy is to remain in force until otherwise determined by Council.

General Manager Responsible for Review:

Human Resources & Organisational Change

ADOPTED: 15/06/2011
CURRENT ADOPTION: 15/06/2016
DUE FOR REVISION: 15/06/2020
REVOKED/SUPERSEDED:



Peter Tabulo
Chief Executive Officer

Appendix 1

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	Don't
<ul style="list-style-type: none"> ✓ Consider your requirements under the <i>Local Government Act 2009</i> to represent the whole Council area before your Division ✓ Be prepared to meet with applicants and officers before a DA is lodged, not after it has been submitted ✓ Always involve officers and structure discussions with developers, their consultants or representatives ✓ Inform officers about any approaches made to you and seek advice ✓ Familiarise yourself with Council's Code of Conduct and follow it when you are representing Council ✓ Keep your register or interests up to date ✓ Follow Council's Planning Code ✓ Be aware of what predisposition, predetermination 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 ✓ 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 ✓ Stick to policies included in adopted plans, but also pay heed to any other considerations relevant to planning ✓ Use meetings to show leadership and vision ✓ Encourage positive outcomes ✓ Ask for training, if required, in probity matters ✓ Recognise that you can lobby and campaign but that this may remove you from the decision making process ✓ Feed in both your own and your local community's concerns and issues ✓ 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 	<ul style="list-style-type: none"> ✗ 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 ✗ Accept gifts or hospitality ✗ Prejudge or be seen to prejudge an issue if you want to be a decision maker on a proposal ✗ 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