



Council Policy

DEVELOPMENT ASSESSMENT – ROLES AND RESPONSIBILITIES OF COUNCILLORS AND COUNCIL OFFICERS

Corporate Plan Reference:	
Endorsed by Council:	6 March 2014
Policy Author:	Interim Director, Community & Development

POLICY PURPOSE AND SCOPE

The purpose of this policy is to provide Councillors and officers with guidelines for their involvement in discussions with parties having a direct material interest in any particular development proposal or development application. Contact with Council is undertaken by many people in the community in relation to a broad range of matters including development proposals. The outcome of this policy is that such contact is carried out ethically and transparently.

This policy applies to all Councillors and officers of the Noosa Shire Council, particularly as dealings relate to IDAS under SPA. It is important to note that, once a development application moves past a simple enquiry and into the pre-lodgement phase, caution must be exercised and the principles of this policy applied.

The Codes of Conduct for Councillors and Employees, as well as an understanding of the general principles for managing conflicts of interests, should be understood and read in conjunction with this policy.

POLICY STATEMENT

The Development Assessment (DA) process is a legal process. It must be transparent, unbiased, unfettered and legally correct. The provisions of the SPA, particularly IDAS, require that the “assessment manager” (usually Council) does not pre-determine an application.

Each Councillor has an obligation under the Local Government Act 2009 (the Act) to represent the overall public interest for the Shire. In doing so, Councillors must comply with the “Statutory Provisions” Act and have regard to the Local Government principle of transparent and effective processes and decision making in the public interest outlined in Section 4(2) of the Act.

In all communications with development proponents and others having, or likely to have, a direct material interest in a development proposal, Councillors are required to, at all times, conduct themselves in such a manner that their actions and comments:

- (1) cannot be readily construed as representing the views of Council as a whole unless those comments and actions either reflect current Council policy or are specifically authorised by a resolution of Council, and
- (2) promote and maintain the public’s trust and confidence in Council.

Pre-Application Phase

During the pre-application phase, Councillors when meeting with or approached by development proponents should not attempt to influence the form of a particular development beyond what is clearly stated in Council's planning scheme and adopted policies.

Pre-Lodgement Meetings with Council Planning Staff

Pre-lodgement meetings are used to reach consensus on policy, statutory obligations and layout issues. As such, attendees representing Council's interests at pre-lodgement meetings will be Council Planning staff who are likely to be involved in the assessment of the subsequent development application. Officers should be cautious about offering definitive comment on a prospective application until a full assessment can be made.

Application Assessment Phase

Once an application has been lodged, Councillors should not involve themselves in meetings or external discussions about an application under assessment nor should they direct, or attempt to direct, an assessment officer in the course of that officer's duties to assess and report on a development application.

Officers may openly communicate concerns about the application with the applicant but should remain cautious about offering definitive comment on the application until a full assessment can be made.

Decision Stage

After Council officers have prepared a report and made an assessment, and that report has been provided as part of the normal Council meeting agenda process, Councillors may seek any necessary information via staff or a Council-organised site visit to ensure their duty is discharged in deciding the application.

Councillors are able to receive information from an applicant or submitter but should take care not to advocate on behalf of the applicant and should avoid making any commitment about their likely decision on the application until the matter is considered at a Council Committee or Meeting

Post Decision Phase & Appeals

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 SPA, every applicant has the right to negotiate with Council on conditions and the scope of any decision issued by Council.

All such negotiations must be attended by Council Officers staff and Councillors should not be involved.

Should an appeal be lodged, it is inappropriate for Councillors to enter into discussions with applicants, appellants or third party submitters.

Senior officers and Council's legal representatives manage the conduct of the Appeal. During the course of the Appeal 'without prejudice' meetings may be held between the parties in the appeal to try to reach an agreement, or at least limit the issues in dispute. Councillors should not attend 'without prejudice' meetings. Officers should ensure that Councillors are briefed on the outcomes of the meeting and seek direction from Council where an alternative direction is proposed.

At All Times

Each Councillor must avoid making any statement to a party having a direct material interest in a development application which that Councillor knows, or should reasonably believe, would be construed as a view of Council as a whole, since further information and facts may be presented during the course of the Council meeting at which the application is considered.

It is acknowledged that Councillors may be approached at any time and without notice by persons having an interest in a development proposal. In these circumstances it is expected Councillors would explain the views expressed in the discussion do not represent the views of Council as a whole and that a Council decision would only be reached after having the benefit of the final report by the assessing officer.

GUIDING PRINCIPLES FOR COUNCILLORS

- The primary duty of a Councillor, and the Council, is to govern in the wider public interest of the community as a whole, and to pursue matters to the advantage of the Council and the Noosa Shire.
- Councillors should not confuse their general representative responsibilities (advocating, lobbying, brokering) with the specific assessment manager role/legal determination responsibilities under the SPA. Similarly, Council officers should not confuse their roles of providing good customer service with biased or subjective technical advice.
- For Councillors to avoid conduct which indicates a reasonable apprehension of bias they must ensure that they genuinely consider the relevant material, the development application and recommendations by Council officers prior to reaching a position.
- Confidentiality should be maintained for 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 as per S171 Act – use of information by Councillors.
- Councillors may view Council files, and are invited to make all necessary enquiries, but all requests should be through the relevant staff member.

GUIDING PRINCIPLES FOR OFFICERS

- Officers are to act in the public interest and to take policy direction from the Mayor and Council.
- Anyone with a proper interest in a development matter, including Councillors, should be kept informed.
- Officers are to regularly communicate with applicants advising on the progress of an application, likely information required and issues that the assessment will need to consider.
- Notwithstanding the fact that every development application and documentation relating to it (including supporting material, properly made submissions, information requests and referral agency responses) are publically accessible, officers should refrain from disclosing any information not publicly accessible or which may breach confidentiality or give any party a commercial advantage.

RELATED POLICIES AND LEGISLATION

Councillor Code of Conduct
Employee Code of Conduct
Noosa Planning Scheme, Policies and Documentation
Local Government Act 2009
Sustainable Planning Act 2009
Public Sector Ethics Act 1994

Version control:

Version	Reason/ Trigger	Change (Y/N)	Endorsed/ Reviewed by	Date
1.0	New Policy		Council	06/03/2014
	Eg. Review			