

# Wagga Wagga City Council

## LOBBYING OF COUNCILLORS POLICY

<b>REFERENCE NUMBER</b>	POL 091		
<b>ORIGINAL APPROVAL DATE</b>	28 May 2007		
<b>RESPONSIBLE MANAGER</b>	Manager Audit, Risk and Governance		
<b>RESPONSIBLE DIRECTORATE</b>	Governance		
<p>This document is to be reviewed every four years or in the first twelve months of the new term of Council, whichever is the earliest.</p> <p>Next Review Date: September 2020</p>			
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1	May 2007	Res No: 07/282	23 July 2007
2	May 2009	Res No: 09/077	27 July 2009
3	June 2013	Res No: 13/187	29 July 2013
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6	August 2017	Res No: 17/279	28 August 2017

## PART 1: INTRODUCTION

### 1.1 Policy Objectives

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.

### 1.2 Definitions

In this Policy:

<b>Term</b>	<b>Definition</b>
<b>Councillor</b>	Refers to all elected representatives of Council, including all Councillors and the Mayor
<b>Councillor as Advocate</b>	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
<b>Interested Party as Advocate Lobbyist</b>	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
<b>Individual Lobbyist</b>	Individual property owners, self-employed developers, corporations with development or property interests in the local government area
<b>Lobbying</b>	The activities undertaken by an individual or group who work or conduct a campaign to influence members of a Council to support and/or vote according to the individual's or group's special interest

### 1.3 Scope of Policy

This policy applies to all elected representatives (comprising all Councillors, the Mayor and Administrator) of the City of Wagga Wagga in their interactions with interested parties as advocate or individual lobbyists.

## **1.4 Legislative Context**

- Local Government Act 1993 (“the Act”)
- Independent Commission Against Corruption Act 1988
- State Records Act 1998
- Government Information (Public Access) Act 2009
- Public Interest Disclosures Act 1994
- Environmental Planning and Assessment Act 1979 (“EP&A Act”)

## **1.5 Related Documents**

- POL 046 – Processing Development Applications lodged by Councillors Staff and Individuals
- POL 089 – Provision of Information to and Interaction Between Councillors and Staff
- POL 097 – Protected Public Interest Disclosures Policy
- POL 112 – Conflicts of Interest Policy
- Council’s adopted Code of Conduct
- ICAC Publication - “Lobbying local government councillors – a guide for councillors, constituents and other interested parties”
- Code of Meeting Practice
- Code of Conduct
- Code of Conduct Administrative Procedures

## **PART 2: POLICY CONTENT**

### **2.1 General Provisions**

#### ***2.1.1 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 the Independent Commission Against Corruption (ICAC). Councillors can be lobbied over such issues as:

- development matters including land zoning
- tenders
- provision of services to interest groups
- upgrading of local facilities, including playgrounds and sporting amenities
- revenue decisions, including setting rates and charges

A Councillor 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.

#### ***2.1.2 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.

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.

#### ***2.1.3 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
- to facilitate communication between the community and the council.

## 2.1.4 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 79C of the EP&A Act
- Allowing an applicant's viewpoint or issues to take precedence in decision making over the statutory provisions of section 79C of the EP&A Act
- 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
- 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 the Act (in the case of a pecuniary interest) and the Code of Conduct (in the case of non-pecuniary interest).

### **2.1.5 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
- 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.

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 maker who is obliged to consider all sides to a development issue, and that of an advocate for a particular individual/ group.

## **2.2 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.

## **2.3 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 to the General Manager as soon as possible.

## **2.4 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
- the Councillor arranges as part of this policy and the Interactions between and Provision of information to Councillors and Staff policy that a Council officer also be in attendance at the meeting

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 the Civic Centre offices.

## **2.5 Limits on communication between Councillors and Staff regarding a development matter**

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

the General Manager. The provisions of POL 089 Provision of Information to and Interaction Between Councillors and Staff Policy must be applied and adhered to.

## **2.6 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 Councillor 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.

## **2.7 Participation and voting at Council Meetings**

Councillors must apply the provisions of Council's Code of Conduct, Code of Meeting Practice and POL 112 Conflicts of Interest Policy 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. This is discussed further under clause 2.10.

## **2.8 No participation and voting where advocating for applicant or interested party on a development matter**

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. Prior to advocating or representing the position of the applicant or interested party, the Councillor must advise the Council of such advocacy and consider whether any conflict of interests exists. If it is determined that a conflict of interests exists then the Councillor must take such appropriate action to manage any conflict in accordance with Council's adopted Code of Meeting Practice and POL 112 Conflict of Interests Policy. This also applies to advocating on behalf of a person at a decision making forum such as the Southern Regional Joint Planning Panel.

## **2.9 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.

**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 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.*