

## Organisational guideline

### Roles and responsibilities of a Councillor and a Council employee participating on development assessment matters

Corporate Plan reference:	Our Service Excellence Our Outstanding Organisation
Endorsed by Chief Executive Officer:	7/02/2023
Executive responsible for policy:	Group Executive, Customer and Planning Services

## Introduction

This guideline establishes a framework to guide a Councillor and a Council employee on their roles and responsibilities in participating on development assessment matters.

This guideline has been developed in the interests of facilitating compliance with Council's obligations under the *Local Government Act 2009*, the *Public Sector Ethics Act 1994* and the *Planning Act 2016* and to support the integrity of the actions of Council employees and Councillors in the development assessment process.

This guideline must be read and complied with in accordance with the requirements of the associated Strategic Policy for Councillor and Council employee participation on development assessment matters.

## Guideline Application

### Development Assessment Process – Key considerations in decision-making

The *Planning Act 2016* prescribes the circumstances in which a local government decides a development application. In some circumstances, a local government delegates this power to certain Council employees<sup>1</sup>.

The *Planning Act 2016* requires that the "assessment manager" (usually a Council or a delegated Council employee) does not pre-determine an application and cannot consider matters that are irrelevant or unrelated to a development application.

Due consideration and objectivity must apply throughout the entire development assessment process. Commitment to a particular view too early in the process can mislead the applicant, or give rise to inappropriate expectations, or compromise the perception of an objective outcome free of bias. This can potentially damage the reputation of Council and place the decision made by Council on the application at risk of legal challenge.

Under the *Planning Act 2016*, Council must ensure that documents and information relevant to a development application are accessible for the public to view, including all information provided by the applicant, submitters and referral agencies, along with Council communications with the applicant,

<sup>1</sup> Section 257 and section 259 of the *Local Government Act 2009*

submitters and referral agencies.

Confidentiality obligations are established for Councillors and Council employees under sections 171 and 200 (respectively) of the *Local Government Act 2009* and these obligations apply to any confidential information, records, briefings and discussions known to be confidential to Council. Should confidential information be released at any point during the process, this could prejudice the interests of Council, the community or another party.

Development applications must be dealt with in accordance with the statutory requirements of the *Planning Act 2016* and with due regard to the ethical principles outlined in section 4 of the *Public Sector Ethics Act 1994* and the local government principles in section 4 of the *Local Government Act 2009*. The clear separation of duties, roles and responsibilities of Councillors and Council employees performing assessment roles is both essential and reflective of good corporate governance and decision-making practice.

For Councillors to avoid conduct which could be perceived as constituting a reasonable apprehension of bias, they must (where they are participating in a decision-making process on a development application) genuinely consider the below prior to reaching a position on a proposal<sup>2</sup>:

- applicable legislation;
- all relevant materials associated with the development application and the assessment process;
- the development application itself; and
- recommendations made by Council employees.

Failure by a Councillor to do so could leave that Councillor personally exposed to a complaint of misconduct and/or provide a basis for the decision of Council on the development application to be subject to judicial review on the grounds the decision was not free of bias.

### **Councillor and Council employee involvement in, and engagement with, participants in the development assessment process**

**Schedule 1** outlines the protocols for participation by a Councillor and a Council employee during each stage of the development assessment process, along with specific guidance on Councillor interaction and engagement with proponents and participants.

It is considered that in adopting a structured participation approach, Councillors are better able to perform their responsibilities in the public interest and minimise the perception of inappropriate conduct, misconduct or corrupt conduct. Councillors and Council employees should conduct themselves in such a manner that their actions or comments cannot be construed as representing the views of Council as a whole, unless those comments and actions reflect current Council policy or are consistent with a Council resolution.

It is acknowledged that there are a variety of different types of interaction or engagement that can take place between a proponent or participant and a Councillor which can range from an informal conversation at a function to formal discussions via phone, social media, email or a meeting – some of which may be of an unsolicited nature.

When interacting or engaging with a potential applicant (proponent) about a matter that may become the subject of a development application, Councillors should:

- State and make clear that any opinions expressed by the Councillor are personal to the Councillor and do not in any way represent the view of Council.
- Make clear that they can provide general information on seeking advice from the relevant areas of Council but cannot give advice about a proposed development's prospects of success or professional planning or development advice.
- Suggest that the proponent seeks independent professional advice where relevant.
- Encourage the proponent to seek preliminary advice on their proposal by attending a pre-lodgement meeting with Council employees.
- Make and retain a file note of the discussion matters, including matters discussed and any advice provided by the Councillor. The file note is to be retained as a public record of Council.

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<sup>2</sup> *McGovern v Ku-Ring-Gai Council* [2008] NSWCA 209

Once a development application has been lodged and becomes a “live” application, Councillors and those Council employees who do not hold a delegation to assess the application are not to initiate or seek to be involved in discussions or meetings with participants in the development assessment process and should refrain from making any public statements on the application. Where contact or interactions do occur with a participant in the development assessment process in respect of a “live” application (eg. where initiated by the applicant or by a submitter), it is recommended that Councillors and non-delegated Council employees:

- arrange for other Councillors (if the interaction involves a Councillor) and relevant Council employees to be present at this interaction and/or electronically record the interaction (noting the Councillor must ensure that all participants are aware of the discussion matters being recorded and consent to the recording of the discussion or meeting – it is an offence to record a meeting or discussion with another party without that person’s consent)
- in the event that the interaction is not electronically recorded, a written record of the interaction should be prepared and maintained, with a copy provided to the Chief Executive Officer and the Branch Manager, Development Services. This record should include, at a minimum:
  - the date of the interaction;
  - the format of the interaction;
  - all parties or persons involved in the interaction/s;
  - a summary of the matter/s raised with the Councillor; and
  - a summary of the Councillor’s response/s.
- not discuss a development application which is the subject of an appeal.

In relation to development applications that are decided by a Council employee under delegation from Council and in instances where the site for the application is not located in a Councillor’s division, the Councillor should ensure their interaction with any participants in the development assessment process for that application:

- is consistent with the objectives and principles of this Guideline and their statutory obligations; and
- does not place themselves in a position that could create a conflict of interest or a perception of bias, should the application eventually be called up to Council for decision.

## Negotiating Infrastructure Agreements

The *Planning Act 2016* makes provision for an applicant and a Council to enter into an Infrastructure Agreement:

- for the provision of infrastructure over and beyond established standards; and/or
- to establish the responsibilities or secure the performance of a party about a development condition.

This provision exists specifically for developments that generate an additional impact on existing infrastructure which may not have been accounted for in standard codes and policies. Advantages of an Infrastructure Agreement are that they can:

- provide a level of certainty about the extent of infrastructure works to be provided and a monetary contribution to be paid in advance of applying for a development approval;
- provide for refunds, crediting or offsets where a developer is incurring the entire construction cost for an infrastructure item which benefits a wider area;
- provide for infrastructure charges to be collected for infrastructure items where these monetary contributions can be refunded to the developer over time; and/or
- vary the payment timing for an infrastructure charge.

While a Councillor may identify to the Branch Manager, Development Services some aspect of infrastructure provision that they believe should apply to a large impacting development, the Councillor should not participate in negotiating the content of an Infrastructure Agreement with the applicant. The Infrastructure Agreement becomes part of the development proposal and should be

considered by the Council (or a delegated Council employee) as a part of the entire development assessment package.

Involvement in direct negotiations on an Infrastructure Agreement could be viewed as 'pre-determining' an application outcome, or 'advocacy' on behalf of the applicant or other parties, which may impart material benefit to the applicant or others, or impact community benefit outcomes. Such action may give rise to questions of apprehended bias by the Councillor when participating in deciding the application or seeking to unduly influence the decisions and actions of a Council employee acting under delegation from Council.

### **Engagement with participants in the development assessment process on unrelated matters**

It is recognised that from time to time, a participant in a development assessment process may seek to engage with a Councillor, Councillors as a group or a Council employee on matters unrelated to a specific development application.

In such circumstances, the engagement by Councillors and non-delegated Council employees with those parties on unrelated matters is not prohibited but may give rise to other integrity risks linked to the "live" development application or any current appeal – if the engagement is not managed appropriately.

For Council employees, they should be aware of their obligations under the Employee Code of Conduct in this regard.

Councillors should be aware that section 150L of the *Local Government Act 2009* provides the circumstances which could give rise to a Councillor engaging in misconduct, which includes conduct which is or involves a breach of the trust placed in the Councillor, either knowingly or recklessly.

While there is no guarantee of mitigating the emergence of these risks, where a Councillor agrees to engage with a participant in a development assessment process on a matter unrelated to a specific "live" development application or appeal, the following actions should be considered and where applicable, applied by the Councillor:

- Ensure the engagement is recorded in the Councillor's official diary/calendar.
- Obtain a written commitment prior to the engagement with the participant in the development assessment process that they will not raise or discuss any matters associated with the current "live" development application or appeal.
- Arrange for attendance at the meeting of other Councillors and relevant Council employees.
- Prepare and maintain a written record of the engagement including the matters discussed and the persons in attendance and provide a copy of the written record of the engagement to all persons in attendance, with a copy retained as a Council record.

Should any Councillor have concerns about participating in such an engagement or need guidance on the relevant risk mitigation actions to consider in any particular circumstance, they should seek the advice of the Group Executive, Civic Governance (or such other officer nominated by the Chief Executive Officer) prior to the engagement.

### **Councillor Requests for matters to be called up to Council**

An impact assessable application which would otherwise be determined by a Council employee under delegated authority, may be called up by a Councillor for consideration and decision by Council at any time following lodgement of the application, but no later than three business days after receipt of the final Briefing Note from Council employees advising of the proposed decision to be made by the delegated Council employee.

Where a Councillor requests a development application and/or development related matter be called up to a Council Meeting for decision, any such request will need to be made in writing to the Chief Executive Officer and copied to the Branch Manager Development Services.

Code assessable applications are ordinarily decided by Council employees under delegation from Council. This is because such applications are viewed under the *Planning Act 2016* as a technical assessment. Prescribed legislative assessment timeframes and processes apply to code assessable applications, requiring Council to decide the application within an identified statutory assessment timeframe - or otherwise 'deemed approval' provisions will apply (which may lead to an application

being approved when it has impacts which cannot be adequately mitigated). Requesting a code assessable application be brought to the Council for decision risks enlivening the 'deemed approval' provisions if the timeframe for bringing the application to Council exceeds the prescribed statutory decision-making timeframe. Councillors should ensure they are fully aware of the prescribed timeframes in relation to any code assessable application which they may be contemplating for an application being called up for consideration by Council.

### Council employees acting under delegated authority

The following criteria apply when a Council employee exercises delegated authority relating to a development application and all general development related matters.

An application must be escalated to the Branch Manager Development Services, Group Executive Customer and Planning Services and/or Chief Executive Officer for a decision, or to a Council Meeting for a Council decision if, in the opinion of the delegated Council employee, the matter:

- is considered likely to be of significant public interest or concern;
- raises a significant conflict with policy, process or existing project; and/or
- is, or could reasonably appear to be, inconsistent with a previous decision by the Council.

Examples of where these criteria apply are:

- The matter could set a precedent (such as building height, bulk, scale, lot size) that could adversely affect Council's policy direction for the region.
- An impact assessable development application has given rise to 100 or more properly made submissions opposing the development during public notification.
- The matter involves a significant Infrastructure Agreement or a significant amendment to an Infrastructure Agreement.

### Conflicts of Interest<sup>3</sup>

Where a Council employee has a conflict of interest or a material personal interest in a development application, they must immediately notify their Executive Leadership Team representative and the Chief Executive Officer in writing. A Council employee with a conflict of interest (real or perceived) is prohibited from being involved in any part of the assessment process for that development application and is prohibited from discussing the matter with any persons<sup>4</sup> dealing with the application on behalf of Council.

To appropriately manage a conflict of interest by a Council employee, the Group Executive Customer and Planning Services, in consultation with the Chief Executive Officer and the Manager, Corporate Governance, may need to establish additional processes or requirements on how the application will be assessed and decided. Internal procedures are also in place to ensure the risk of any conflict of interest is minimised and, should it be necessary, may include appointing an external independent expert to undertake assessment of the application.

For Councillors, as required by Chapter 5B of the *Local Government Act 2009*:

- Where a Councillor has a **prescribed conflict of interest** in a development application, they must inform the Chief Executive Officer of the interest at the earliest opportunity after they become aware of the existence of the prescribed conflict of interest and must not participate in a decision on the application. This also means the Councillor with the prescribed conflict of interest must not participate in discussing the application with other Councillors, Council employees, the applicant or other interested stakeholders before the decision is made.
- Where a Councillor has a **declarable conflict of interest** in a development application, they must inform the Chief Executive Officer of the interest at the earliest opportunity after they become aware of the declarable conflict of interest. Further, the Councillor must not participate in a decision on the application unless Council authorises (by resolution) that the Councillor may do so. A Councillor with a declarable conflict of interest must not engage in discussions with the

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<sup>3</sup> The Code of Conduct for [Councillors](#), [Employee Code of Conduct](#), [Conflicts of Interest Policy](#), as well as an understanding of the general principles for managing conflicts of interests, should be understood and read in conjunction with this Guideline.

<sup>4</sup> This includes consultants, contractors, Council employees etc.

applicant or Council employees assessing the development application to which the interest relates unless and until Council authorises the Councillor to participate in a decision on the application.

- Where a Councillor reasonably believes or reasonably suspects that another Councillor has a prescribed or declarable conflict of interest in a matter, the Councillor must report that belief or suspicion to the person presiding at the meeting at which the matter is being considered or to the Chief Executive Officer – and in doing so must include the facts and circumstances forming the basis of the belief or suspicion.

## Roles and Responsibilities

### Councillors

The primary duty of a Councillor is to represent the current and future interests of the residents of the local government area. The role of the Council is to provide for the good rule and governance of the local government area.

Councillors must not confuse their general representational responsibilities (advocating) with the specific ‘assessment manager’ role that resides with Council under the *Planning Act 2016*. Under certain circumstances, the assessment manager role may be delegated by the Council to a Council employee (a “delegated Council employee”).

If a Councillor is concerned with the manner in which a Council employee handles any stage of the development assessment process, then the matter should be raised with the Chief Executive Officer in the first instance. Under section 170 (3) of the *Local Government Act 2009*, Councillors are prohibited from directing Council employees.

Councillors may view information on any development application on Council’s website or by directing a request to the Branch Manager Development Services, Group Executive Customer and Planning Services, or other delegated Council employees as designated by the Chief Executive Officer.

### Delegated Council employee

Council employees are provided with frameworks and delegations to undertake their roles in development assessment and statutory planning matters. These, along with all relevant adopted Council policies, are to be followed and adhered to throughout the course of a development assessment or statutory planning process.

The primary duty of delegated Council employees relating to development assessment matters is to provide full, considered and objective professional advice to Council, Councillors and the wider community as a whole.

Delegated Council employees should not use the authority delegated to them, to interpret Council’s corporate objective of service excellence as authorisation for providing biased or subjective technical advice. Council employees have a duty under the Employee Code of Conduct and *Public Sector Ethics Act 1994* to provide advice which is objective, independent, apolitical and impartial.

Council employees must also respect the role of Councillors in representing the interests of the region and the residents of their respective divisions.

## Definitions

**Call-up** – means a written request from a Councillor to the Chief Executive Officer that a development application be determined by the full Council and not by a Council employee under delegated authority.

**Close associate** – means any of the following in relation to a participant in a development assessment process -

- a) a spouse;
- b) a parent, child or sibling;
- c) a partner in a partnership;

- d) an employer, other than a government entity, regardless of whether the employment is for remuneration or undertaken on a voluntary basis;
- e) an entity, other than a government entity, for which the participant in a development assessment process is an executive officer, board member or registered member; or
- f) an entity in which the participant in a development assessment process or a person mentioned in any of paragraphs (a) to (e) has an interest, other than an interest of less than 5% in an entity that is a listed corporation under the *Corporations Act 2001*.

**Council employee** – means the Chief Executive Officer, senior contract employees, contract employees, award employees, casual employees, part-time employees, contractors, contingent workers, agency casual and volunteers.

**Councillor** – means a person elected to represent the community in Council, including the Mayor and Deputy Mayor.

**Declarable Conflict of Interest** – has the meaning prescribed in section 150EN of the *Local Government Act 2009*.

**Deemed approval** – means the circumstances provided for in section 64 of the *Planning Act 2016* which allow an applicant for a code assessment development application to issue a deemed approval notice to a local government that has not made a decision on the application within the decision-making period and once issued, the development is deemed to have been approved and Council is limited to imposing conditions on the approval.

**Delegated authority** – means a person or body lawfully delegated powers by the local government under the *Local Government Act 2009*, to make a decision.

**Delegated Council employee** – means a Council employee position which is authorised to make decisions under the *Planning Act 2016* or other planning legislation by virtue of that authority having been delegated by Council or the Chief Executive Officer.

**Engage with participants in the development assessment process** can include variety of different types of interaction or engagement that can take place between a proponent or participant and a Councillor and can range from an informal conversation at a function to formal discussions via telephone, social media, email or a meeting – some of which may be of an unsolicited nature.

**Non-delegated Council employee** – means any Council employee who is not a delegated employee for the purpose of this Guideline.

**Participants in the development assessment process (or participants)** – means a person or entity external to Council associated with a proposed development or formally lodged development application and includes:

- a) applicants;
- b) representatives of, and consultants and contractors engaged by, an applicant;
- c) lobbyists as defined in the *Integrity Act 2009*;
- d) submitters to a development application;
- e) government agencies referenced as referral for a development application (to the extent that this Guideline can be binding on these agencies); or
- f) close associates of any of the persons or entities identified in (a), (b), (c) and (d) above.

**Participate in a decision** – as provided for in section 150EE of the *Local Government Act 2009*, without limiting when a person participates in a decision, a reference to a Councillor or other person participating in a decision includes a reference to the Councillor or other person —

- a) if the Councillor or other person is wholly or partly responsible for making the decision — considering or discussing the matter to which the decision relates before the decision is made; and
- b) considering, discussing or voting on the decision in a local government meeting; and
- c) considering or making the decision under—
  - (i) an Act; or

- (ii) a delegation; or
- (iii) another authority.

**Prescribed Conflict of Interest** – has the meaning prescribed in sections 150EG, 150EH and 150EI in the *Local Government Act 2009*.

**Proponent** – means a person or entity with a development proposal that has not yet been formally lodged as a development application.

A full list of relevant definitions can be found in the *Planning Act 2016*, relevant Planning Schemes (including Kawana Waters Development Control Plan No. 1) and local laws for the Sunshine Coast Council.

## SCHEDULE 1

ACTIVITY	PARTICIPATION BY COUNCILLOR AND COUNCIL EMPLOYEE		
	Delegated Council Employee	Non-Delegated Council Employee	Councillor
<p><b>Pre-Application Stage - Development Advice Services</b> (including pre-lodgement meetings)</p>	<p><b>Role = Technical advice</b></p> <p>Council employees provide preliminary technical advice to a proponent to address any specific issues or information required for a pending application.</p> <p>Caution should be exercised in offering any definitive outcome comments to the proponent in relation to any pending application.</p> <p>Pre-lodgement meetings must be convened by Council employees and are intended to discuss technical requirements of the Planning Scheme and other State or Local policies that are relevant to the proposal and process related considerations.</p>	<p><b>Role = Limited</b></p> <p>Other Council employees without the relevant delegations may participate in pre-lodgement meetings if invited to do so by the proponent and agreed by the Branch Manager, Development Services. Other Council employees must not provide technical or statutory planning advice to the proponent or their representatives or consultants or seek to influence the advice provided in the pre-lodgement meeting by the delegated Council employee.</p>	<p><b>Role = Limited</b></p> <p>When approached by a proponent with a proposal that may result in a development application, a Councillor may engage with the proponent but should take care in offering any definitive comment that could be construed as pre-determining the Councillor's position on a future application or give rise to expectations of a particular outcome.</p> <p>A pre-lodgement meeting must only be arranged by the relevant Council employees in recognition that such meetings are intended to have a focus on technical and process considerations.</p> <p>Should a Councillor wish to attend a pre-lodgement meeting, they should obtain prior approval from the Chief Executive Officer, Group Executive or Branch Manager, Development Services and attend only in an observer capacity.</p> <p>Councillors should refrain from providing any technical development advice. Councillors should refer the proponent to their consultant and/or Council's Development Services Branch for such advice.</p> <p>The risk is the perception of "pre-determining" an application and the test is one of "objective" and "unfettered" decision-making.</p>

ACTIVITY	PARTICIPATION BY COUNCILLOR AND COUNCIL EMPLOYEE		
	Delegated Council Employee	Non-Delegated Council Employee	Councillor
<b>Lodgment Stage</b>	<p><b>Role = Technical advice</b></p> <p>When lodged, a development application undergoes a preliminary assessment and advice is issued to the applicant to ensure all mandatory information has been submitted with the application.</p> <p>Caution should be exercised in offering any definitive outcome comments to the applicant in relation to the application.</p> <p>Council employees will prepare and disseminate information on new applications received on the previous business day in an application listing generally emailed to Councillors on a daily basis, thus affording opportunity for Councillors to comment at the beginning of the assessment process.</p>	<p><b>Role = Nil except technical advice</b></p> <p>Once a development application is lodged, other Council employees without the relevant delegations should have no involvement in the development assessment process except for responding to an internal referral from the delegated Council employees for specific technical input and/or advice required as part of the assessment process for the application.</p>	<p><b>Role = Nil except enquiry</b></p> <p>When approached, Councillors should maintain a cautionary approach to offering any definitive comment to the applicant or any other participant in relation to a current application.</p> <p>Councillors should not initiate or seek to be involved in meetings with the applicant or any other participant about the application under assessment.</p> <p>Should such contact occur, Councillors are strongly encouraged to follow the process outlined in this Guideline, make a file note of the discussions and provide a copy of the file note to the parties participating in the contact, the Chief Executive Officer and the Branch Manager, Development Services.</p> <p>Councillors can request updates, information and details on the application from Council employees throughout the application process. However, Councillors must not direct or attempt to direct a Council employee or to apply time associated pressures.</p> <p>The risk is the perception of interference and “pre-determining” an application and the test is one of “objective” and “unfettered” decision-making.</p>

ACTIVITY	PARTICIPATION BY COUNCILLOR AND COUNCIL EMPLOYEE		
	Delegated Council Employee	Non-Delegated Council Employee	Councillor
<b>Application Stage – Assessment of an Application</b>	<p><b>Role = Technical assessment</b></p> <p>Council employees have the requisite delegation to undertake a technical assessment of the application against the Planning Scheme and other relevant State and Local policies.</p> <p>For impact assessable applications that require public notification, Council employees will provide information to the Divisional Councillor (and any other Councillor that has expressed an interest in the application during the assessment process) prior to the public notification period to advise of the notification period and the associated timeframes.</p>	<p><b>Role = Nil except technical advice</b></p> <p>Other Council employees without the relevant delegations should have no involvement in the development assessment process except for responding to an internal referral from the delegated Council employees for specific technical input and/or advice required as part of the assessment process for the application.</p>	<p><b>Role = Nil except enquiry</b></p> <p>Councillors should limit any public commentary or discussion on a current development application to information that is already publicly known. Councillors should take care if approached by members of the community or submitters to an application, to avoid expressing any view that may be construed as an opinion or pre-determined position on the application.</p> <p>Councillors should not initiate contact with, or seek to be involved in meetings with, the applicant or the applicant’s representative/s in relation to a specific development application while the assessment process is underway.</p> <p>Should any contact occur with a participant in the development assessment process, Councillors are strongly encouraged to follow the process outlined in this Guideline, make a file note of the discussions and provide a copy of the file note to the parties participating in the contact, the Chief Executive Officer and the Branch Manager, Development Services.</p> <p>Councillors can request updates, information and details on the application from Council employees throughout the application process. However, the Councillor must not direct or attempt to direct a Council employee or to apply time associated pressures.</p> <p>Councillors should not offer any definitive view to the applicant, the applicant’s representative/s or submitters in relation to the application and should refer them to the relevant Council employee while in the assessment stage, including public notification.</p> <p>The risk is the perception of interference and “pre-determining” an application and the test is one of “objective” and “unfettered” decision-making.</p>

ACTIVITY	PARTICIPATION BY COUNCILLOR AND COUNCIL EMPLOYEE		
	Delegated Council Employee	Non-Delegated Council Employee	Councillor
<p><b>Decision Stage (decided by Council employees under delegation)</b> (For example, code assessable applications and matters permitted under delegation from Council)</p>	<p><b>Role = Technical assessment and decision</b></p> <p>Council employees will prepare a report for the delegated Council employee to exercise their delegation to make a decision on the application.</p> <p>For impact assessment applications, prior to making the decision under delegation, Councillors will be afforded three business days to review the report and proposed decision, which will be outlined to Councillors in a Briefing Note.</p> <p>If no response is received after three business days, the delegated Council employee will make a decision on the application.</p> <p>Where determined under delegation, the Divisional Councillor (and any other Councillor that has expressed an interest in the application during the assessment process) will be notified of the decision when made.</p>	<p><b>Role = Nil</b></p> <p>Other Council employees without the relevant delegations should have no involvement in this stage of the development assessment process.</p>	<p><b>Role = Nil except enquiry or call-up</b></p> <p>Councillors should have no involvement with the applicant, the applicant's representative/s or submitters during the decision stage of the application.</p> <p>Should any contact occur with a participant in the development assessment process, Councillors are strongly encouraged to follow the process outlined in this Guideline, make a file note of the discussions and provide a copy of the file note to the parties participating in the contact, the Chief Executive Officer and the Branch Manager, Development Services.</p> <p>Councillors must not direct or attempt to direct a Council employee making a decision under delegation or seek to apply time associated pressures. However, Councillors may request further information or seek to call-up an application to Council to determine, rather than a decision being made by a Council employee.</p> <p>Councillor requests for an application to be brought before Council for a decision must be directed to the Chief Executive Officer, with a copy to the Branch Manager Development Services.</p> <p>Councillors should be aware of the risk that calling-up code assessable applications for decision by Council may result in a 'deemed approval' due to the prescribed timeframes and processes in the <i>Planning Act 2016</i>.</p> <p>The risk is the perception of interference and "pre-determining" an application and the test is one of "objective" and "unfettered" decision-making.</p>

ACTIVITY	PARTICIPATION BY COUNCILLOR AND COUNCIL EMPLOYEE		
	Delegated Council Employee	Non-Delegated Council Employee	Councillor
<p><b>Decision Stage (decided by Council)</b> (For example, impact assessable applications with over 100 properly made submissions against the development)</p>	<p><b>Role = Technical assessment and recommendation</b></p> <p>For impact assessable applications, within five business days of the conclusion of the public notification period, Council employees will prepare and send a Briefing Note to all Councillors outlining a summary of the application, any submissions received and any key issues/considerations.</p> <p>Council employees will be guided by those matters identified in the Council employees acting under delegated authority section of this Guideline (aligning with the terms of delegation to Council employees) to determine if the application can be decided by a delegated Council employee or by Council at a Council Meeting.</p> <p>Where an application is to come before Council, Council employees will prepare a Council Meeting report on the application including a detailed employee's assessment report, for Council's consideration and decision.</p>	<p><b>Role = Nil</b></p> <p>Other Council employees without the relevant delegations should have no involvement in this stage of the development assessment process.</p>	<p><b>Role = Participate in a decision</b></p> <p>Where the application is to come before Council at a Council Meeting, Councillors should take a cautionary approach not to advocate or express a view prior to the meeting at which the application is to be considered. Councillors should also refrain from publicly expressing any view on behalf of the applicant or any submitter in relation to the application.</p> <p>Councillors should not make any commitment about their likely position on the application prior to a Council meeting as further information and facts relevant to the development application may be presented during the course of the Council Meeting.</p> <p>For technical matters, Councillors should refer the applicant, the applicant's representative/s or submitters to the relevant Council employee while in the decision stage.</p> <p>If a Councillor has any contact with a participant in the development assessment process in relation to the development application that is to be considered at the Council meeting, it is recommended the Councillor:</p> <ul style="list-style-type: none"> <li>• ensure a record of the contact and the matters discussed has been made and retained; and</li> <li>• disclose that contact to the Council meeting.</li> </ul>

ACTIVITY	PARTICIPATION BY COUNCILLOR AND COUNCIL EMPLOYEE		
	Delegated Council Employee	Non-Delegated Council Employee	Councillor
<p><b>Post-Decision Stage</b> (including requests for a Negotiated Decision and Changes to an Approval)</p>	<p><b>Role = Technical assessment and decision or recommendation</b></p> <p>Council employees undertake an assessment of any request for a negotiated decision or change to the approval and prepare an employee's recommendation report on the application.</p> <p>Where the original decision was made by Council at a Council Meeting, Council employees will be guided by those matters identified in the Council employees acting under delegated authority section of this Guideline (aligning with the terms of delegation to Council employees) to determine if the application can be decided by a delegated Council employee or by Council at a Council Meeting.</p>	<p><b>Role = Nil except technical advice</b></p> <p>Other Council employees without the relevant delegations should have no involvement in the development assessment process except for responding to an internal referral from the delegated Council employees for specific technical input and/or advice required as part of the assessment process for the application.</p>	<p><b>Role = Nil except enquiry or call-up</b></p> <p>The post-decision stage is particularly sensitive as the applicant may suspend and/or appeal a decision.</p> <p>Where a Negotiated Decision is requested by the applicant, Councillors should take a cautionary approach to engaging with the applicant, the applicant representative/s or submitters, including any comments on conditions of approval as conditions are subject to review by the Court against the tests for reasonableness and relevancy.</p> <p>For technical matters, Councillors should refer the applicant, the applicant's representative/s or submitters to the relevant Council employee while in the post-decision stage.</p>

ACTIVITY	PARTICIPATION BY COUNCILLOR AND COUNCIL EMPLOYEE		
	Delegated Council Employee	Non-Delegated Council Employee	Councillor
<b>Appeal Stage</b> (to the Tribunal or the Planning and Environment Court)	<p><b>Role = Technical advice</b></p> <p>Council's legal representative(s) manage the conduct of an appeal under instruction from the Branch Manager, Development Services. 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.</p> <p>Where appropriate, Council employees will ensure the Divisional Councillor (and any other Councillor that has expressed an interest in the application during the assessment process) are briefed prior to any 'without prejudice' meetings and on the outcomes resulting from these meetings.</p> <p>Council employees will be guided by those matters identified in the Council employees acting under delegated authority section in this Guideline to determine if any aspects of the appeal need to be presented to Council at a Council Meeting to seek direction.</p>	<p><b>Role = Nil except Technical Advice</b></p> <p>Other Council employees without the relevant delegations should have no involvement in the appeal process except for responding to an internal referral from the delegated Council employees for specific technical input and/or advice required as part of the appeal process.</p>	<p><b>Role = Nil</b></p> <p>Once an appeal is filed, it is inappropriate for Councillors to enter into discussions with applicants, appellants or submitters on any matters related to the appeal, including attempting to mediate a settlement or a compromise different from the Council decision.</p> <p>Should any contact occur with a participant in the development assessment process during the appeal stage, Councillors are strongly encouraged to follow the process outlined in this Guideline, make a file note of the discussions and provide a copy of the file note to the parties participating in the contact, the Chief Executive Officer and the Branch Manager, Development Services.</p> <p>Councillors should not make any public statements on an application which is subject to an appeal process.</p> <p>Councillors should not attend 'without prejudice' meetings or Tribunal proceedings. Where necessary, Council employees will ensure Councillors are briefed on the outcomes of the meetings and Tribunal/Court proceedings.</p> <p>The risk of an individual Councillor participating in the appeal process could give rise to an allegation of inappropriate interference or misconduct.</p>

ACTIVITY	PARTICIPATION BY COUNCILLOR AND COUNCIL EMPLOYEE		
	Delegated Council Employee	Non-Delegated Council Employee	Councillor
<b>Others Development Matters</b> (such as master planned areas for Kawana Waters Development Control Plan and for Priority Development Areas declared under the <i>Economic Development Act 2012</i> )	<b>Role = Technical advice</b> Processes are in place for Council employees to provide any technical advice or information to the relevant entities responsible for deciding such matters. In considering such matters, Council does not act as the assessment manager but provides advice or a position to the relevant decision-making body. For example, in the case of the Kawana Waters Development Control Plan, Council makes a recommendation to the determining entity (e.g. Department of Natural Resources). Where necessary, Council employees will ensure that Councillors are briefed on such matters.	<b>Role = Technical advice</b> Due to Council not being the decision-making entity, non-delegated Council employees have a similar role to a delegated Council employee, providing technical input or information to the relevant entities responsible for deciding such matters, where requested to do so.	<b>Role = Cautionary</b> In considering such matters, Council does not act as the assessment manager but provides advice or a position to the relevant decision-making body. For example, in the case of the Kawana Waters Development Control Plan, Council instead makes a recommendation to the determining entity (e.g. Department of Natural Resources). Councillors should exercise caution in offering any definitive comment to the applicant or a submitter in relation to the application, particularly as decision-making rests with another entity. Councillors should not provide any technical advice on these matters. Councillors should refer the proponent to their consultant and/or Council's Urban Growth Projects Branch for such advice. Councillors should exercise a cautionary approach and not make any statements to the applicant, applicant representative/s or submitter that may be contrary to any adopted position of Council.

Version control:

Version	Reason/ Trigger	Change (Y/N)	Endorsed/ Reviewed by	Date
1.0	Create new	N	Chief Executive Officer	7/02/2023

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