



# muswellbrook shire council

## Councillor Meetings with Property Developers and Lobbyists Policy

MSC17E

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## Policy Context

The Councillor Meetings with Property Developers and Lobbyists Policy informs the community of the requirement for the disclosure of all meetings held between elected councillors and proponents of property development activities or their delegates, officers, employees or agents; and registered lobbyists advocating on behalf of third party interests. The Policy aims to uphold the principle that all councillors determining a Planning Application or other matter in Council's capacity as a consent or regulatory authority, must give such matters proper, genuine and realistic consideration and have access to the same information to assist in the determination of that matter.

Council is committed to a transparent and accountable process of development planning assessment and determination. This Policy strengthens the rigour of that transparency and accountability.

## Policy Objectives

The objectives of this Policy are to:

- A. Enhance Council's open, transparent and accountable assessment and determination of Planning Applications; and
- B. Establish a public register of all meetings between elected councillors and Property Developers; and Lobbyists.

## Policy Principles

The following principles set the foundation of this Policy:

- Council is transparent and accountable to its community and partners;
- Statutory, regulatory, policy and public interest considerations will always inform Council's decision-making processes; and
- The community must have confidence in Council's decision-making processes and that Council will exercise its statutory functions appropriately in the circumstances

## Definitions

**Lobbyist** means a third-party lobbyist, or any other individual or body that lobbies Muswellbrook Shire Council councillors and Council officials (including an individual engaged to undertake lobbying for a third-party lobbyist).

**Lobbyists Code of Conduct** means the NSW Lobbyist Code of Conduct pursuant to the *Lobbying of Government Officials (Lobbyists Code of Conduct) Regulation 2014*, as amended from time to time.

**Planning Application** means an application or request by a person (other than a public authority within the meaning of the Environmental Planning and Assessment Act 1979):

(a) to initiate the making of an environmental planning instrument or plan under that Act in relation to any development, project or activity on a particular site, or

(b) for consent to, or approval of, any development, project or activity under that Act or for the modification of any such consent or approval.

**Political Donation** has the meaning given to it by the *Electoral Funding Act 2018* (as amended)..

**Property Developer** means an individual or a corporation (including his, her or its delegates, officers, employees, agents or contractors) if--

(i) the individual or a corporation carries on a business mainly concerned with the residential or commercial development of land, with the ultimate purpose of the sale or lease of the land for profit, and

(ii) in the course of that business--

(A) 1 Planning Application has been made by or on behalf of the individual or corporation and is pending, or

(B) 3 or more Planning Applications made by or on behalf of the individual or corporation have been determined within the preceding 7 years, or

(iii) the individual or a corporation has lodged a Planning Application with Council, or has requested or undertaken a pre-lodgement meeting with Council officials with respect to a Planning Application for which no final determination has been made, or it is otherwise known that a Planning Application is likely to be lodged with Council.

## Policy Statement

### 1. Transparency of Council's decision-making governance processes

Councillors receive many requests from their constituents, industry leaders, Property Developers, objectors to developments and others for meetings and opportunities to discuss a broad range of issues. Each person making such a request expects to be listened to and will often seek to influence a decision of Council. A crucial principle of open democratic governance is that all participants have a right to have their say and that all views are given due consideration. It is equally important that the views of some not have more bearing on decision-making than those of all others. To fortify confidence in Council's decision-making, this Policy sets a standard requiring the disclosure of meetings held between Councillors and those who may be seen to exert undue influence on Councillors, including Property Developers and Lobbyists. This Policy should not be seen to impugn Property Developers or Lobbyists, but to provide a higher level of transparency to their dealings and maintain public confidence in Council's exercise of its functions as a planning and regulatory authority.

All Property Developers and Lobbyists seeking meetings with councillors must complete a Property Developer and Lobbyist Meeting Request Disclosure Form, which the General Manager will adopt and may amend from time to time. All meeting attendees must undertake to abide by the Lobbyists Code of Conduct.

All meetings with councillors must take place at Council's Administration Centre or at a location agreed to by the General Manager. The General Manager and/or their appointed member/s of staff must attend and record notes of the meeting, which must be stored in Council's Electronic Document and

Records Management System<sup>1</sup>. A Councillor must neither meet with nor discuss any Planning Application in the absence of the General Manager and/or their appointed member/s of staff.

Council will publish on its website and in its Annual Report a register of all meetings with Councillors attended by Property Developers and Lobbyists, which will record the following:

- Date of meeting;
- Name of organisation(s);
- Name(s) of people in attendance and their position(s);
- Name of any lobbying firm personnel in attendance;
- Development Application reference (if applicable); and
- Details of all political donations made pursuant to State and Commonwealth law made by the organisation and/or its ten largest shareholders in the five (5) years prior to the meeting.

### **Administrative arrangements**

The General Manager may prepare and amend from time to time procedures, guidelines, forms and templates to assist in the administration of this Policy.

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<sup>1</sup> Pursuant to Council's Records Management (Councillors) Policy and the *State Records Act 1998*

## Associated Legislation and Regulations

*Commonwealth Electoral Act 1918*

*Government Information (Public Access) Act 2009*

*Government Information (Public Access) Regulation 2018*

*Electoral Funding Act 2018*

*Environmental Planning and Assessment Act 1979*

*Environmental Planning and Assessment Regulation 2000*

*Local Government Act 1993*

*State Records Act 1998*

*Independent Commission Against Corruption Act 1988*

## Associated Council Documentation

Governance Policy

Code of Conduct

Records Management Administrative Guidelines

Records Management Policy

# Appendix 1 - Property Developer and Lobbyist Meeting Request Disclosure Form

## MUSWELLBROOK SHIRE COUNCIL

### Property Developer and Lobbyist Meeting Request Disclosure Form

Please complete and submit this form with your meeting request. The information provided in those parts of the table marked with an asterisk may be disclosed in Council's Annual Report and website.

Proposed Meeting Summary	
Proposed date of meeting*	
Name of organisation(s)*	
Name(s) of people who will be attending and their positions*	
Name of lobbying firm and personnel (if attending) *	
Purpose and topic of meeting*	
Development Application reference (if applicable) *	
Contact information	
Name, phone and email of contact person	

- I understand that the information contained in this form and marked with an asterisk may be published in Council's Annual Report and on Council's website.
- I understand this information does not contain market sensitive information or other information for which there is an overriding public interest against disclosure as defined in the *Government Information Act (Public Access) Act 2009*.
- My organisation and I agree to abide by the attached Ethical Standards.
- By making this declaration, my organisation and its representatives consent to the public release of the information contained in this form and marked with an asterisk. I am authorised to complete this form on my organisation's behalf.

**Name:** \_\_\_\_\_

**Position:** \_\_\_\_\_

**Date:** \_\_\_\_\_

If the purpose of the meeting is to discuss a development matter (including Development Applications), Council policy or decision making, you must complete the Statutory Declaration over the page:

For further information please contact Council's Public Officer on (02) 6549 3700.

**Statutory Declaration**  
**OATHS ACT 1900, NSW, EIGHTH SCHEDULE**

I, \_\_\_\_\_, do solemnly and sincerely declare that  
*{name of declarant}*

- Following are the details of all Federal and NSW political donations made by my organisation and its shareholders in the last five years:

Date	Political Party/Candidate	Amount

Details of additional political donations are attached as Annexures to this Statutory Declaration  
*{\* please cross out any text that does not apply}*

and I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the  
*Oaths Act 1900.*

Declared at: \_\_\_\_\_ on \_\_\_\_\_  
*[place] [date]*

\_\_\_\_\_  
*[signature of declarant]*

in the presence of an authorised witness, who states:

I, \_\_\_\_\_, a \_\_\_\_\_,  
*[name of authorised witness] [qualification of authorised witness]*

certify the following matters concerning the making of this statutory declaration by the person who made it: *{\* please cross out any text that does not apply}*

1. \*I saw the face of the person OR \*I did not see the face of the person because the person was wearing a face covering, but I am satisfied that the person had a special justification<sup>1</sup> for not removing the covering, and
2. \*I have known the person for at least 12 months OR \*I have confirmed the person's identity using an identification document and the document I relied on was \_\_\_\_\_

\_\_\_\_\_  
*[describe identification document relied on]*

\_\_\_\_\_  
*[signature of authorised witness]*

\_\_\_\_\_  
*[date]*

For further information please contact Council's Public Officer on (02) 6549 3700.

<sup>1</sup> The only "special justification" for not removing a face covering is a legitimate medical reason (at September 2018)



## Schedule 1 NSW Lobbyists Code of Conduct Part 1 Preliminary

### 1 Name of Code

This is the *NSW Lobbyists Code of Conduct 2014*.

### 2 Purpose of Code

This Code sets out the ethical standards of conduct, and other requirements, to be observed by lobbyists in connection with the lobbying of NSW Government officials in order to promote transparency, integrity and honesty.

### 3 Lobbyists to whom Code applies

This Code applies to third-party lobbyists and to all other individuals and bodies that lobby NSW Government officials (including individuals engaged to undertake lobbying for a third-party lobbyist).

### 4 Meaning of “lobbying”

- (1) For the purposes of this Code, **lobbying** a NSW Government official means communicating with the official for the purpose of representing the interests of others in relation to any of the following:
  - (a) legislation or proposed legislation or a government decision or policy or proposed government decision or policy,
  - (b) a planning application,
  - (c) the exercise by the official of his or her official functions.
- (2) Lobbying extends to:
  - (a) any such communication whether or not in the course of carrying on the business of lobbying NSW Government officials, and
  - (b) any such communication by a person who works for an organisation for the purpose of representing the interests of the organisation or its members, and
  - (c) any such communication for the purpose of representing community interests.
- (3) However, lobbying does not include:
  - (a) any communication by a member of Parliament acting in the ordinary course of his or her duties as a member (or any communication by a constituent of a member of Parliament in the ordinary course of seeking electorate advice or assistance from the member), or
  - (b) any communication by a NSW Government official acting in the ordinary course of his or her duties as a NSW Government official.

## Part 2 Ethical standards of conduct applying to all lobbyists

### 5 Lobbyists to disclose matter to be discussed at proposed meeting

Lobbyists who seek a meeting to lobby NSW Government officials must disclose to the officials before the meeting the nature of the matter to be discussed.

## **6 Lobbyists to disclose any interest in matters discussed at meeting**

Lobbyists who meet NSW Government officials must disclose to the officials before the meeting commences any financial or other interest they have in the matter to be discussed at the meeting.

## **7 Lobbyists not to engage in misleading, corrupt etc conduct**

Lobbyists must not engage in any misleading, dishonest, corrupt or other unlawful conduct in connection with a meeting or other communication for the purpose of lobbying NSW Government officials.

## **8 Lobbyists to provide true and accurate information**

Lobbyists must use all reasonable endeavours to satisfy themselves of the truth and accuracy of all material information that they provide in connection with a meeting or other communication for the purpose of lobbying NSW Government officials.

# **Part 3 Third-party lobbyists—additional standards and requirements**

## **9 Third-party lobbyists required to be registered**

Third-party lobbyists must not meet or otherwise communicate with NSW Government officials for the purpose of lobbying unless:

- (a) they are registered on the Register of Third-Party Lobbyists, and
- (b) any individuals they engage to undertake the lobbying for them are registered on the Register, and
- (c) they have provided all other information required to be included in the Register in connection with their lobbying business.

### **Note—**

Conduct obligations that apply to Ministers and other NSW Government officials include an obligation not to permit lobbying of them by unregistered third-party lobbyists, and restrictions on meetings at which they are lobbied by lobbyists on the Lobbyists Watch List.

## **9A Third-party lobbyists required to appoint responsible officer**

Third-party lobbyists must:

- (a) appoint, in the manner and form approved by the Electoral Commission, a person having a management, financial or other interest in the lobbyist as the officer of the lobbyist responsible for compliance with its obligations under the [Lobbying of Government Officials Act 2011](#) and this Code, and
- (b) give the Electoral Commission a copy of any such appointment, and
- (c) ensure that the officer annually undertakes and completes the online training approved by the Electoral Commission for the purposes of this clause.

### **Note—**

Section 9 (7) (a) of the [Lobbying of Government Officials Act 2011](#) provides that the Electoral Commission may cancel or suspend the registration of a third-party lobbyist (or any individual engaged to undertake lobbying for a third-party lobbyist) if the lobbyist (or an individual so engaged) contravenes this Code.

#### 10 Lobbyists to disclose if they are third-party lobbyists and identity of their clients

- (1) Third-party lobbyists must disclose to NSW Government officials they lobby:
  - (a) that they are third-party lobbyists, and
  - (b) the names of any individuals they have engaged to undertake the lobbying, and
  - (c) the name of the individual or body whose interests the lobbyist is representing, and
  - (d) if the individual or body whose interests the lobbyist is representing is a foreign principal:
    - (i) that the individual or body is a foreign principal, and
    - (ii) the foreign country in respect of which the individual or body is a foreign principal.
- (2) The information is to be disclosed before any meeting is held, or other communication made, for the purpose of the lobbying.

#### 11 Third-party lobbyists not to lobby on matters related to Government board or committee of which they are members

Third-party lobbyists must not lobby on a matter that relates to the functions of a NSW Government board or committee of which they (or the individuals they engage to undertake the lobbying for them) are members.

#### 12 Third-party lobbyists not to exaggerate or misrepresent their access to political parties or Government

Third-party lobbyists (and the individuals they engage to undertake the lobbying for them) must not make exaggerated or misleading claims to their clients about the nature or extent of their access to political parties, the Government or Government agencies or to persons associated with them.

#### 13 Third-party lobbyists to keep party political involvement separate from lobbying activities

Third-party lobbyists (and the individuals they engage to undertake the lobbying for them) must keep separate from their lobbying activities any personal activity or involvement on behalf of a political party.

#### 14 Prohibition on success fees for third-party lobbyists

Third-party lobbyists are, by the [Lobbying of Government Officials Act 2011](#), prohibited from receiving or agreeing to receive (or agreeing that other persons are to receive) success fees for the lobbying of NSW Government officials.

## Part 4 Definitions

#### 15 Meaning of words used in this Code

In this Code:

**communicate** includes communicate in person, in writing, by telephone or by email or other electronic means.

**foreign country** and **foreign principal** have the same meanings as in the [Foreign Influence Transparency Scheme Act 2018](#) of the Commonwealth.

**Note—**

The current version of the Commonwealth Act is available on the Federal Register of Legislation at [www.legislation.gov.au](http://www.legislation.gov.au).

**lobbyist** means:

- (a) a third-party lobbyist, or
- (b) any other individual or body that lobbies NSW Government officials (including an individual engaged to undertake lobbying for a third-party lobbyist).

**meeting** with a NSW Government official, means a meeting held in person with the official or by means of a teleconference.

**NSW Government official** means any of the following:

- (a) a NSW Minister or Parliamentary Secretary,
- (b) a staff member of a NSW Minister or Parliamentary Secretary (including a staff member in an electorate office),
- (c) the head of a NSW Public Service agency,
- (d) a person employed in the Public Service of New South Wales, the Transport Service of New South Wales or any other service of the Crown,
- (e) an individual who is engaged under a contract to provide services to or on behalf of the Public Service of New South Wales, the Transport Service of New South Wales or any other service of the Crown,
- (f) a member (however expressed) of, or of the governing body of, a NSW statutory body, but does not include a local government official.

**planning application** means an application or request by a person (other than a public authority within the meaning of the [Environmental Planning and Assessment Act 1979](#)):

- (a) to initiate the making of an environmental planning instrument or plan under that Act in relation to any development, project or activity on a particular site, or
- (b) for consent to, or approval of, any development, project or activity under that Act or for the modification of any such consent or approval.

**Register of Third-Party Lobbyists** means the Register of Third-Party Lobbyists established under the [Lobbying of Government Officials Act 2011](#), and (until a register is so established) means the Register of Third-Party Lobbyists kept by the Secretary of the Department of Premier and Cabinet.

**Note—**

Persons registered on the Register of Third-Party Lobbyists kept by the Secretary of the Department of Premier and Cabinet before the commencement of this Regulation are taken to be registered on the Register to be kept by the Electoral Commission under the Act. Officers of registered political parties are not eligible to be registered on the Register of Third-Party Lobbyists.

**third-party lobbyist** means an individual or body carrying on the business (generally for money or other valuable consideration) of lobbying NSW Government officials on behalf of another individual or body.

## Authorisation Details

<b>Authorised by:</b>	Council 28 July 2020
<b>Minute No:</b>	12.3
<b>Date:</b>	(at the close of public exhibition) 5 May 2021
<b>Review timeframe:</b>	2 years
<b>Department:</b>	Governance
<b>Document Owner:</b>	Manager Governance

## Details History

Version No.	Date changed	Policy type	Modified by	Amendments made
2	02/11/2022	External	Business Improvement Officer	Updated document name in Associated Council Documentation from "Records Management (Councillors) Policy" to "Records Management Policy" Inserted Appendix 1 - Property Developer and Lobbyist Meeting Request Disclosure Form. Inserted the NSW Lobbyists Code of Conduct Legislation.