

Attachments

Council Meeting

Monday 13 February 2023

10.2 Endorsement of Draft Interaction with Developers and Lobbyists Policy for Consultation

Attachment 1	Draft Interaction with Developers and Lobbyists Policy.....	3
Attachment 2	LGI Guidelines on Interactions with Developers for Councils (extract from Winter 2022 Newsletter)	11

10.2 Endorsement of Draft Interaction with Developers and Lobbyists Policy for Consultation

Attachment 1 Draft Interaction with Developers and
Lobbyists Policy

Attachment 2 LGI Guidelines on Interactions with
Developers for Councils (extract from
Winter 2022 Newsletter)

10.2 – ATTACHMENT 1. Draft Interaction with Developers and Lobbyists Policy



WHITEHORSE
CITY COUNCIL

Whitehorse City Council

Interaction with Developers and Lobbyists Policy

10.2 – ATTACHMENT 1. Draft Interaction with Developers and Lobbyists Policy

1. PURPOSE

Council must represent the interests of the community, and engagement with community members is an essential component of the democratic process.

To ensure optimal decision making regarding budgetary and planning proposals, Council requires access to information from both submitters (including community members and developers) and objectors (including individuals or community groups).

Lobbyists provide advice on public policy processes and assist individuals and organisations in communicating their views on matters of public interest to government, with the aim of improving outcomes for individuals and the community. Lobbying activities should be ethical and transparent, enabling Council to make informed decisions in the public interest.

This policy serves to preserve the integrity of Council and its representatives when engaging with developers and lobbyists by ensuring that interaction is conducted in accordance with the highest standards of transparency, integrity and honesty, and is open to public scrutiny.

2. OBJECTIVES

The objectives of this policy are to

- Ensure that interactions of Council representatives with developers and lobbyists are open, transparent and accountable
- Avoid actual or perceived conflicts of interest
- Mitigate lobbying-related risk to minimise opportunities for misconduct or corrupt behaviour

3. SCOPE

This policy applies to all representatives of Whitehorse City Council, in all situations where interaction may occur with developers and lobbyists outside of a Council Forum, Council Briefing or Council Meeting.

4. DEFINITIONS

Council representative

Council representatives include:

- Councillors
- Council officers
- Contracted Council service providers and their employees

Developer

An individual, body corporate or company engaged in business that:

- Regularly involves the making of relevant planning applications in connection with the residential or commercial development of land, with the ultimate purpose of the sale or lease of the land for profit; and
- Includes any consultant, lobbyist, advisor, agent, representative or person closely associated with a

10.2 – ATTACHMENT 1. Draft Interaction with Developers and Lobbyists Policy

	developer and who is appointed to promote or advocate for the developer's interests or proposal.
<i>Lobbyist</i>	<p>A person, company or organisation who conducts lobbying activities on behalf of a third party client, but does not include:</p> <ul style="list-style-type: none">• Charitable, religious and other organisations endorsed as deductible gift recipients• Non-profit organisations or associations that represent the interests of their members• Individuals making representations on behalf of family and friends regarding their personal affairs• Members of trade delegations visiting Australia• Members of professions whose activities are regulated by an Australian government scheme dealing with government representatives as part of their day-to-day work• Members of professions who occasionally make representations to a level of government on behalf of others as an incidental part of their professional services, such as doctors, lawyers and accountants• Representatives of other Government agencies
<i>Lobbying activity</i>	<p>Any contact with a Council representative in an effort to influence Council decision making, including:</p> <ul style="list-style-type: none">• The making or amendment of a local law; or• The development or amendment of a Council policy or program; or• The awarding of a Council contract or grant, or the allocation of funding. <p>This includes contact by telephone, electronic mail, written mail, online meetings, or face to face meetings.</p>
<i>Register of Lobbyists</i>	<p>The record of registered lobbyists maintained by the Victorian Public Sector Commission</p>

10.2 – ATTACHMENT 1. Draft Interaction with Developers and Lobbyists Policy

5. CONDITIONS OF ENGAGEMENT

5.1 *Developers and lobbyists*

Developers and lobbyists shall observe the following conditions when engaging with Council representatives:

- They must advise that they are a developer or lobbyist or employee, contractor or person otherwise engaged by these
- If a lobbyist, they must also advise:
 - Whether they are currently listed on the *Register of Lobbyists*;
 - That they are making contact on behalf of a third party or parties;
 - The name of the third party or parties and the nature of the third party's issue; and
 - Whether they also act for any other third party currently involved in a Council process.
- They should not approach Councillors directly, approaches should be made via Council's normal contact methods by emailing customer.service@whitehorse.vic.gov.au or telephoning 9262 6333
- They must not offer gifts or hospitality to Council representatives
- They must not engage in any conduct that is corrupt, dishonest, or illegal, or cause or threaten any detriment
- They must use all reasonable endeavours to satisfy themselves of the truth and accuracy of all statements and information provided to parties whom they represent, Council, and the wider public

5.2 *Council representatives*

The role of Council staff is to assess an application and provide an impartial, professional opinion and recommendation to councillors.

The role of an elected councillor in the decision-making process is to approve or refuse the application on the information and recommendation provided by council staff. To avoid prejudicing the eventual decision, councillors must not make up their mind about a development application until they have read the officers report and heard all sides of the debate.

When interacting with developers and lobbyists, Council representatives must:

- Prior to meeting:
 - Ensure that any lobbyist is registered on the *Register of Lobbyists* maintained by the Victorian Public Sector Commission prior to meeting
 - Ensure that parties from outside Council are aware of the requirements applying to them under this policy
- Disclose any conflicts of interest, whether general or material, in accordance with Part 6, Division 2 of the *Local Government Act 2020* and Chapter 4 of the *Whitehorse City Council Governance Rules*.
- Neither solicit nor accept any gift, in accordance with the *Whitehorse City Council Councillor Gift Policy* and *Council Staff Gift Policy*.
- Within 7 days of the meeting complete the Declaration of Contact with Developers or Lobbyists (where officer/s and Councillor/s attend the meeting an officer will complete the declaration and include all attendees).

10.2 – ATTACHMENT 1. Draft Interaction with Developers and Lobbyists Policy

- Immediately report to the Manager Governance and Integrity if it is known or suspected that a developer or lobbyist has breached any of the above conditions.

The following additional conditions apply to Councillors:

- Ensure that it is clear that they can provide only general information on the application process and cannot give advice about, or commit to the development's chance of success.
- If applicable encourage potential developers and lobbyists to seek preliminary advice on their proposal via the pre-application process set out by the City Planning and Development Department at Council.
- Not state any opinions or provide any advice regarding the proposal (other than that stated above). The Councillor must be aware that if they do give a personal opinion on the potential development, this may preclude them from being involved in any decisions on the development in the future.
- When attending a formal meeting with developers or lobbyists Councillors shall request a Senior Council Officer be present.

6. REGISTER OF CONTACT WITH DEVELOPERS AND LOBBYISTS

6.1 Council will maintain a *Register of Contact with Developers and Lobbyists* that contains the following information:

- The date, time and venue of the contact;
- The name and title of Council representative/s in attendance;
- The name and role/organisation of developer or lobbyist;
- The name of the client represented, if applicable;
- The names of any other parties present;
- The mode of contact; and
- Matters discussed.

6.2 The register will be available for public perusal on the Council website and updated on a quarterly basis, with a report providing details of any meetings between Council representatives and developers or lobbyists in the previous 12 months presented to Council's Audit & Risk Committee annually.

10.2 – ATTACHMENT 1. Draft Interaction with Developers and Lobbyists Policy

7. RESPONSIBILITIES

Parties	Roles and Responsibilities	Timelines
All Staff	Ensure that any interaction with developers or lobbyists is conducted in accordance with this policy and is reported to the Governance and Integrity department.	Within 7 days of contact
Councillors	Ensure that any interaction with developers or lobbyists is conducted in accordance with this policy and is reported to the Governance and Integrity Department	Within 7 days of contact
Developers and Lobbyists	Conduct any interaction with Council representatives in accordance with the <i>Principles of Engagement</i> contained within this policy.	Ongoing
Manager Governance and Integrity	Ensure that: <ul style="list-style-type: none"> • Details of interactions are saved in content manager and recorded in Council’s <i>Register of Contact with Developers and Lobbyists</i> within 7 days of receipt • The register is published on the Council website on a quarterly basis • An annual report detailing interactions over the previous 12 months is provided to the Audit and Risk Committee. 	Ongoing

8. RELATED POLICIES AND LEGISLATION

Local Government Act 2020

Victorian Government Professional Lobbyist Code of Conduct

Whitehorse City Council Public Transparency Policy

Interactions with Developers - Local Government Inspectorate Guide

Charter of Human Rights and Responsibilities Act 2006

9. REVIEW

Responsible Manager: Manager Governance and Integrity

Date Adopted: March 2023

Date of Next Review: March 2027

This policy has been reviewed for compliance with the *Charter of Human Rights and Responsibilities Act 2006*.

10. APPENDICES

Appendix A – Declaration of Contact with Developers or Lobbyists form

10.2 – ATTACHMENT 1. Draft Interaction with Developers and Lobbyists Policy



APPENDIX A

Declaration of Contact with Developers or Lobbyists

Details of contact:

(To be completed by Council Representative responsible for contact – see over for information)

Date, time and venue:	
Name and title of Council representative/s in attendance:	
Name and role or organisation of developer or lobbyist	
Name of client represented <i>(if applicable)</i>	
Other parties present <i>(if applicable)</i> :	
Mode of contact	
Matters discussed	

(Copy and paste the statement below for completion by each Council representative listed above)

Declaration by Council Representative:	
I declare that my contact with the developer or lobbyist identified above was in accordance with the Whitehorse City Council <i>Interactions with Developers and Lobbyists Policy</i> and <i>(select applicable)</i> :	
<input type="checkbox"/> I have a conflict of interest, or relationship with the developer/lobbyist, its employees or contractors. Details: _____ _____	
<input type="checkbox"/> I do not have a conflict of interest, or relationship with the developer/lobbyist, its employees or contractors.	
Name: _____	Title: _____
Signature: _____	Date: _____

10.2 – ATTACHMENT 1. Draft Interaction with Developers and Lobbyists Policy

Completion and submission of this form:

- The Council representative responsible for contact with a developer or lobbyist is to complete the *Details of contact* section and coordinate completion and submission of this form:
 - In relation to a meeting (in person or online), the responsible person is the person who hosted or coordinated the contact
 - In relation to an email or letter, the responsible person is the person who signed the letter or whose signature block appeared on the email.
- The declaration is to be completed and signed individually by all Council representatives present
- Email the completed form within 7 days to: governance@whitehorse.vic.gov.au
- Where it is not practicable to complete the form (e.g. when unplanned contact occurs), the responsible person is to forward details of contact to Governance. The form will then be populated and returned to the responsible person for signature of the declaration.

Forms will be saved in Content Manager and details entered into Council's *Register of Contact with Developers and Lobbyists*.

Any questions regarding contact with developers and lobbyists should be directed to the Senior Governance Officer on 9262 8863 or emailed to Governance.

10.2 – ATTACHMENT 2. LGI Guidelines on Interactions with Developers for Councils (extract from Winter 2022 Newsletter)

Interactions with developers must be appropriate

Reproduced from the Local Government Inspectorate Winter 2022 newsletter

Should a councillor meet with developers? This is a question we are often asked about in our integrity work – especially as the issue has received more attention in recent years.

Councillors are often required to make decisions about planning and developments in their municipality. As part of seeking information, may interact with developers on upcoming projects.

The community is often concerned about the potential influence of developers especially when there are large sums of money at stake. This is potentially an issue with councils on Melbourne’s outer fringe experiencing population growth.

Operation Sandon has thrown the issue into the spotlight. The Independent Broad-based Anti-corruption Commission operation held public hearings in 2019 and 2020 into allegations of serious corrupt conduct in relations to planning and property development decisions at the City of Casey. The hearings looked at the transparency and integrity of planning and property development decision making, including:

- donations or in-kind assistance to election candidates
- donations, gifts, pro bono services or other hospitality
- the use of professional lobbyists or planning consultants.

Until IBAC’s report is released with specific recommendations, councils can still work to improve transparency and minimise the risk of corruption in relation to planning and property development decisions in their own communities.

1. Councillors should avoid comment before a decision

The role of council staff is to assess the application and provide an impartial, professional opinion and recommendation to the councillors. The role of an elected councillor in the decision-making process is to approve or decline the application on the information and recommendation provided by council staff. To avoid prejudicing the eventual decision, councillors must not make up their minds about a development application until they have read the officer's reports and heard all sides of the debate.

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Any involvement a councillor has with a development application during its assessment has the potential to damage the integrity of the final determination. It is important that councillors avoid making public comments that could be seen as supporting or opposing an application.

In addition, councillors should not be seen to be trying to influence the public by commenting on the application or signing petitions during the public comment period.

2. Councillors should avoid meeting developers one-on-one

We recommend that councillors should not be meeting with developers one-on-one if they have an application before council or are about to make one. A one-on-one meeting with a developer runs the risk of a councillor being accused of bias.

Requests for a meeting should go through official council channels, such as a generic council inbox. Councillors should only meet with a developer with a council officer present. Alternatively, councils could require that all councillors are invited to any meeting with developers.

If councillors were approached as the ward representative, they might still need to engage with developers. However, it is important for councillors to be mindful if a developer has or will soon have an application before council.

3. Councillors should avoid accepting gifts and hospitality from developers

Councillors should be open and transparent in their dealing with developers. This will protect them from any situations which may create a conflict of interest. They should avoid accepting hospitality or gifts of any sort from developers and lobbyists. Councillors also need to consider their council's gift policy if they do accept a gift of any kind from a developer or planning applicant.

It is important for councillors to remember that they need to make strategic decisions which benefit the municipality – but they need to ensure they are complying with existing planning schemes.

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4. Councils should create a policy to guide councillor interactions with developers

Creating a policy which clearly sets out how councillors should interact with developers will create the ground rules for interactions, help with transparency and manage community expectations. Everybody will understand what is expected and this will aid oversight.

5. Councils should keep a register of councillor interactions with developers

Keeping a record of the interactions councillors have with developers will ensure any meetings are open and transparent and available for the public to see.