

TAMWORTH REGIONAL COUNCIL

ANNEXURES for ORDINARY COUNCIL AGENDA

9 MARCH 2021

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Policy: 2150-116

Councillor roles in development matters

Head of Power

Local Government Act 2009

Related Legislation

Planning Act 2016

Integrity Act 2009

Objective

The objective of this policy is to ensure that ethical and transparent interactions occur between Councillors and developers, lobbyists and submitters.

This policy will assist Councillors when interacting with these stakeholders and promote good decision making and enhanced community confidence in the good governance of the Moreton Bay Region.

Definitions

CEO means Council's Chief Executive Officer.

Councillor means the Mayor and Councillors of Moreton Bay Regional Council.

Council officer means all employees of Council, whether employed on a permanent, temporary, or part-time basis.

Conflict of interest refers collectively to 'prescribed conflicts of interest' and 'declarable conflicts of interest' as defined under the *Local Government Act 2009*.

Development application means an application for development that requires assessment against the provisions of the planning scheme, other local planning instrument or Priority Development Area Development Scheme.

Developer means an applicant for a development approval or a prospective applicant for a development approval, their advisors and representatives. If the applicant is a body corporate, the term includes office holders and employees of the applicant. If the applicant is a partnership, the term includes partners and employees of the applicant.

Interaction means a pre-arranged engagement in relation to a development matter (including face to face, virtual or by telephone).

Lobbyist has the same meaning as defined in the *Integrity Act 2009*, that is, a person or entity who carries out lobbying for a third-party client.

Submitter is a person who has made, a submission about a development application as provided under the *Planning Act 2016*.

Application

This policy applies to Councillors and is consistent with the legislative requirements relating to Councillors and lobbyists in the *Local Government Act 2009*, the *Planning Act 2016* and the *Integrity Act 2009*.



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This policy does not apply to unanticipated or social engagements that occur from time to time between Councillors and lobbyists, developers or submitters. For clarity, this policy does not apply to interactions with persons who from time to time are a lobbyist, developer or submitter when they are not acting in that capacity.

However, Councillors should carefully consider the implications of social and other engagements with these persons and be mindful at all times of their obligations under the *Local Government Act 2009* and the Code of Conduct for Councillors in Queensland.

This policy does not apply to Councillor interactions with community related to the making of planning instruments such as planning scheme amendments, new planning scheme preparation, neighbourhood plans or the like.

Policy Statement

Council is committed to representing the overall public interest of the region. Council aims to ensure that all decisions are legal, ethical, and impartial in accordance with the local government principles, and the responsibilities of Councillors identified in the *Local Government Act 2009*.

Councillors engage with many people in the community in relation to a broad range of matters. Councillors play an important role in supporting economic development of the region and also in appreciating and synthesising community views, therefore open access to Councillors, and Council itself, is vital to efficient and effective local government.

Developers, lobbyists and submitters seek access to Councillors to discuss potential and existing development applications and other projects. The public has a clear expectation that interactions with these stakeholders is undertaken transparently and in the public interest.

As prescribed in legislation, Councillors must not accept gifts, benefits or donations from developers and lobbyists at any time.

Councillors must also be mindful at all times of their obligations with regards to conflicts of interest.

GUIDELINES FOR COUNCILLOR INTERACTIONS WITH DEVELOPERS, LOBBYISTS AND SUBMITTERS

1. For the reasons mentioned above it is expected that Councillors will interact with developers, lobbyists or submitters on development related matters. Council recognises adopting a structured approach to these interactions will significantly reduce the risk of misconduct.
2. Councillors should seek to ensure that, wherever practicable, another Councillor(s) is present at any interaction with developers, lobbyists or submitters where a development related matter is to be discussed.
3. When interacting with a developer, lobbyist or submitter about a development matter, Councillors should, wherever practicable:
 - state that any opinions expressed by the Councillor are personal to the Councillor and do not in any way represent a formal Council view;
 - make clear that they can provide general information on the application process but cannot give definitive advice about a proposed development's prospects of success;
 - not discuss other matters that may relate to a different development application by the developer that is under appeal;
 - suggest that the developer, lobbyist or submitter seeks independent professional advice where relevant; and
 - encourage the developer and/or lobbyist to seek preliminary advice on their proposal by attending a pre-lodgement meeting with Council officers.



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4. A written record of an interaction should be prepared each time a Councillor interacts with a developer, lobbyist or submitter about a development related matter. 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 matters raised with the Councillor; and
 - a summary of the Councillor's response.
5. Under the *Integrity Act 2009*, lobbyists are required to inform Councillors that they are a lobbyist when making initial contact (for example, seeking to arrange a meeting). In addition to the record keeping requirements detailed above, interactions between Councillors and lobbyists must be recorded in Council's *Register of Contact with Lobbyists*.
6. While councillors are entitled to express a personal opinion, Councillors should be aware that, if they express a personal opinion, whether positive or negative, about a development related matter, this may impact on the perception of their impartiality as a decision maker, should they be required to decide a development application. If expressing an opinion before officer assessment reports are available, councillors should clearly state that a final decision can only be made after all relevant material has been prepared and considered.

COUNCILLOR ROLES IN DEVELOPMENT APPLICATIONS

7. The *Planning Act 2016* and *Economic Development Act, 2012* prescribes the circumstances in which a Council decides a development application. In some circumstances, Council delegates this power to Council officers.
8. When Council is deciding an application, the provisions of the *Planning Act 2016*, particularly the *Development Assessment Rules*, require that Councillors individually, and Council collectively, must not pre-determine an application, and cannot consider matters that are irrelevant or unrelated to a development assessment process.
9. Councillors are to engage with Council officers about a development application in accordance with Council's *Acceptable Requests by Councillors for Advice or Information Policy* and as stated in this policy.
10. Under this policy, Councillors' have additional obligations in relation to their interactions with developers, lobbyists and submitters at each of the following stages in the development assessment process:

Pre-Application (when there is no application)

11. During interactions with developers and/or lobbyists in the pre-application stage, Councillors should not feel inhibited in promoting the benefits of developing in the Moreton Bay Region and encouraging responsible and appropriate development. Councillors may also express their understanding of community views and attitudes in relation to development related matters.
12. When interacting with a developer and/or lobbyist about a potential development Councillors should consider the guidelines in paragraphs 2 - 6, particularly for larger or more potentially controversial developments.
13. Councillors should not feel inhibited about discussing what is publicly known about a potential development with the public.



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Pre-lodgement (when an application is being prepared for lodgement)

14. Councillors must not attend formal pre-lodgement meetings between developers and Council officers, but may attend separate meetings having regard to the guidelines in paragraphs 2 - 6. Reports on pre-lodgement requests and scheduled pre-lodgement meetings are provided to Councillors weekly.
15. Councillor requests for advice or information relating to a pre-lodgement meeting must be made in accordance with paragraph 9, Council's *Acceptable Requests by Councillors for Advice or Information Policy*.

Post-lodgement and Assessment of Development Applications (after an application is lodged)

16. Once a development application is lodged and is being assessed by Council officers, Councillors should not initiate or seek to be involved in internal meetings or meetings with the developer or lobbyist about the application under assessment.
17. Councillors receive a weekly report advising of all development applications lodged across the region. Council officers will notify all Councillors of all impact assessable development applications received to make Councillors aware of those applications to be publicly notified.

Divisional Councillors will also be notified of applications lodged for those predetermined categories of Code assessable development within their division.

Councillor comment will be sought (within 10 business days of notification) in relation to the above applications.

18. Councillors must not direct, or attempt to direct, a Council officer in the course of their duties to assess and report on a development application.
19. Councillor requests for advice or information relating to a development application must be made in accordance with paragraph 9, Council's *Acceptable Requests by Councillors for Advice or Information Policy*.
20. If a Councillor is invited to and agrees to engage in an interaction with any interested parties during this stage, this should occur having regard to paragraphs 2 - 6. Additionally, details about the interaction and any comments made may be conveyed to the CEO or Director Planning.

Development Application Decision (when an application is being decided)

21. If the development application is being decided by Council officers under delegation, it is generally not appropriate for Councillors to interact with a developer, lobbyist or submitter about the development application. Councillors may convey any comment received or refer developers, lobbyists or submitters to the CEO or Director Planning.
22. If the application is to be decided by Council, and not by officers under delegation, it is acceptable for Councillors to interact with a developer, lobbyist and submitter(s) leading up to the meeting where the decision is to be made. In these instances, Councillors should consider the guidelines in paragraphs 2 - 6. Councillors are encouraged to convey any comment received to the CEO and to convey to all Councillors.



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23. After Council officers have prepared a report and made a recommendation, and that report has been listed on a Council meeting agenda, Councillors may seek additional information from officers to ensure their duties are properly discharged when deciding the application. Information may be provided through a Council Briefing, General Meeting (or Delegated Decision Committee) or through a request made in accordance with paragraph 9, Council's *Acceptable Requests by Councillors for Advice or Information Policy*.
24. As required under the *Planning Act 2016*, Councillors must ensure they genuinely consider the development application, any submissions to the application, Council's report, including the assessment and recommendations by Council officers, prior to making a decision on the proposed development.
25. Confidentiality must be maintained for any information that if released, could prejudice the interests of Council or another party.

Post Development Decision and Appeal (after an application has been decided)

26. Once a decision has been made, Councillors are required to respect the decision of Council.
27. The post-decision phase of any development application is particularly sensitive and can involve negotiations between parties having an interest in the outcome of the application. Under the *Planning Act 2016*, every applicant has the right to negotiate with Council on conditions and the scope of any decision issued by Council. All such negotiations are attended by Council officers or representatives, and Councillors are not involved.
28. Once a decision has been made and until such time as an appeal period is finalised, Councillors must not engage with a developer, lobbyists or submitter in relation to the matter and in the case of an appeal, appellants or co-respondents to an appeal. Councillors may interact with these parties where that interaction is in relation to a different matter.
29. Council officers and Council's legal representatives manage the conduct of an appeal. During the course of an appeal 'without prejudice' meetings may be held between the parties to try to reach an agreement or limit the issues in dispute. Councillors do not attend 'without prejudice' meetings. Council officers will advise Council:
 - when an appeal is lodged;
 - when something significant occurs in relation to an appeal; and
 - when an appeal is resolved.
30. Councillors must not seek to influence the manner in which conditions of development approval are implemented by Council officers.

Related Documents

This Policy complements and is to be implemented in conjunction with other Council policies, directives and relevant documents published by other agencies including, but not limited to:

- (1) Register of Contact with Lobbyists
- (2) Code of Conduct for Councillors in Queensland
- (3) Acceptable Requests by Councillors for Advice or Information Policy: 2150-004
- (4) Moreton Bay Regional Planning Scheme, policies and documentation and other relevant planning instruments



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Monitoring and Review

Councillors will be provided training on the requirements of this policy at the commencement of each Council term. This Policy will be reviewed for applicability, effectiveness, and consistency with relevant legislation, Council resolutions, and other Council documents. Reviews of this policy will occur as required, or at least once every four years.

Responsibility

This Policy is to be:

- (1) implemented by the Manager Development Services; and
- (2) reviewed and amended in accordance with the "Review Triggers" by the Director Planning.

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Document Control			
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Version 1	General Meeting (MP. 20/1868)	12.11.2020	A20072313



Introduction

In this brochure, the term “lobbying” is used to cover those types of communication between local government councillors and the community that include representations to councillors by special interest groups, by individuals with a direct interest in a council decision and by advocates acting on behalf of others.

Lobbying is common in local government. The most common form occurs when a group or individual makes direct contact with a councillor in an attempt to influence a council decision. Councillors are lobbied over such issues as:

- development matters
- the upgrading of local facilities, including playgrounds and sporting amenities
- revenue decisions, including the setting of business, mining, farming or special rates.

The Commission’s view is that appropriate lobbying of councillors is normal. In many cases lobbying is part of the democratic process and is an acceptable feature of the relationship between citizens and their elected representatives.

Section 232(2) of the *Local Government Act 1993* also makes it clear that councillors have a representative role in considering the views of constituents and communicating with them. Section 232(2) states:

- (2) *The role of a councillor is, as an elected person:*
- 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.

Section 79C of the *Environmental Planning and Assessment Act 1979* (EP&A Act) also makes it clear that relevant views of members of the public are applicable to the merit assessment of development applications.

Interactions with community members are also a way for councillors to obtain information that may be relevant to their decision-making. In development matters, for example, the Land and Environment Court has made it clear that where council determines a development application, councillors should not rely exclusively on council officers to consider all matters relevant to the determination but must also consider the relevant matters themselves.¹

Inappropriate lobbying

It is in the public interest that lobbying is fair and does not undermine public confidence in impartial decision-making. Lobbying is a two-way process between councillors and lobbyists. Occasionally a lobbyist can try to improperly influence a councillor’s 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.

It is not possible to define every type of activity that could constitute inappropriate or unlawful lobbying. Generally, however, 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:²

- accepting undisclosed payments or benefits whilst making a decision that affects the gift giver’s interests
- accepting a political donation in return for the favourable exercise of discretion during decision-making. Ideally, councillors should keep the lobbying and fundraising activities in which they are involved quite separate to avoid even the perception that a political donation could influence their decision-making

Lobbying local government councillors

- granting access to a particular individual or group while *unreasonably* denying similar access requested by another party. The Commission is, however, mindful of the fact that the part-time nature of councillors' work can impose time constraints on their ability to meet all requests for meetings
- fettering discretion by giving undertakings to an interested party prior to considering all the information relevant to a decision. Councillors are under a particular obligation to give real consideration to all mandated matters when dealing with statutory powers such as 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 Local Government Act as a result of being lobbied. An example could be directing council staff over the content of any advice or recommendation on a council matter as a result of being lobbied by a third party³
- 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 Local Government Act (in the case of a pecuniary interest) and the DLG Model Code of Conduct (in the case of a non-pecuniary interest).

Transparency

Councillors work in a unique environment which is often characterised by:

- a lack of time during business hours to attend to council matters
- a likelihood of chance encounters with people who have an interest in council matters
- limited availability of resources such as support staff
- high community demand for accessibility.

The Commission acknowledges that this environment can make it difficult for councillors to avoid informal discussions with constituents who seek to lobby them. It would also be unnecessarily onerous and impractical to require councillors to avoid such contact, especially for routine and non-controversial matters.

Nevertheless, councillors should exercise judgement when deciding whether to be involved in private meetings with people seeking to influence a council decision. Suspicions of inappropriate lobbying can occur when lobbying is not open to public scrutiny. Regardless of whether such suspicions are justified, they still have the potential to undermine public confidence in council decision-making and adversely affect a councillor's reputation.

Transparency is a useful means of governing accountability and perceptions of 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.

Councillors can consider these options in situations where it would be beneficial to have some form of record about what transpired between themselves and a proponent. Examples include matters where complaints of preferential treatment have already been made, or in matters involving individuals who have been the subject of complaints of preferential treatment in the past.

Late submissions

Most councils invite public participation, by way of lobbying, by interested parties when called upon to determine development applications. Codes and practices intended to control and manage the process vary from council to council. Some prohibit accepting submissions later than two days before the meeting at which the development application is to be determined. Others invite submissions (mostly oral) at the meeting at which the development application is to be determined.

Lobbying local government councillors

It goes without saying that councils, in the discharge of their planning discretion, are entitled to develop appropriate codes of practice. It is, however, the law that a body discharging a public function is not entitled to adopt a code or practice which has the effect of precluding receipt of relevant matters for consideration.

On the other hand, councils are entitled to regulate, in a general way, how to deal with submissions and the like and they are entitled to discourage or prohibit manipulative lobbying practices – both by those who support the development and those who oppose it.

Councils must discharge their public function fairly and impartially. But what amounts to fairness and impartiality varies according to the circumstances of the case.

When dealing with lobbying in the context of determining development applications, a council must first ask whether the received submission should be entertained (and bearing in mind that it must be relevant to the development application applied for and may not be significantly different from it). The next is to determine how it should be managed and in this regard issues of significance and fairness would need to be addressed.

Tendering

The lobbying of councillors by tenderers about the outcome of a tender process is an exception to the principle that lobbying is permissible. In other words, lobbying of councillors by tenderers is normally NOT permissible. The conditions which govern tender processes are based on a request for tender (RFT). RFTs usually contain statements prohibiting proponents from approaching councillors (and council officers not nominated as contact people) during a tender process.

RFTs also contain selection criteria for choosing a successful tenderer. Most selection criteria are based on objective technical and pricing issues and do not involve a 'political' dimension or subjective decisions. Tender processes also typically do not include mechanisms for community feedback. Community views on issues like the decision to undertake a tender process, and in what form, are typically sought prior to the issuing of an RFT.

Further information

Further information can be obtained by contacting the Commission on (02) 8281 5999 or toll free on 1800 463 909 (for callers outside metropolitan Sydney).

Further information can also be obtained from the DLG Model Code of Conduct available from the DLG website at www.dlg.nsw.gov.au.

Endnotes

- ¹ In *Centro Properties Limited v. Hurstville City Council & Anor* (2004) NSW LEC 401, McCellan CJ advised (at 55), "In the absence of the delegation of the decision-making function to an officer, the corporate body must itself consider the issues relevant to the development application before it. It may be informed about those issues by the council officer's report which may not, and often will not, disclose all of the information considered by the officer and his or her complete reasoning processes." There may be cases where councillors need to make some enquiry to discharge their obligation to consider relevant matters and this may entail communicating with affected/interested parties.
- ² Many of the examples referred to in this section also contravene the provisions of the Department of Local Government's Model Code of Conduct.
- ³ Section 352 of the Local Government Act also makes it clear that a member of staff is *not* subject to direction by council or an individual councillor as to the content of any advice or recommendation.

Caveat on use of this brochure

This publication provides readers with advice, guidance and/or recommendations regarding specific governance issues.

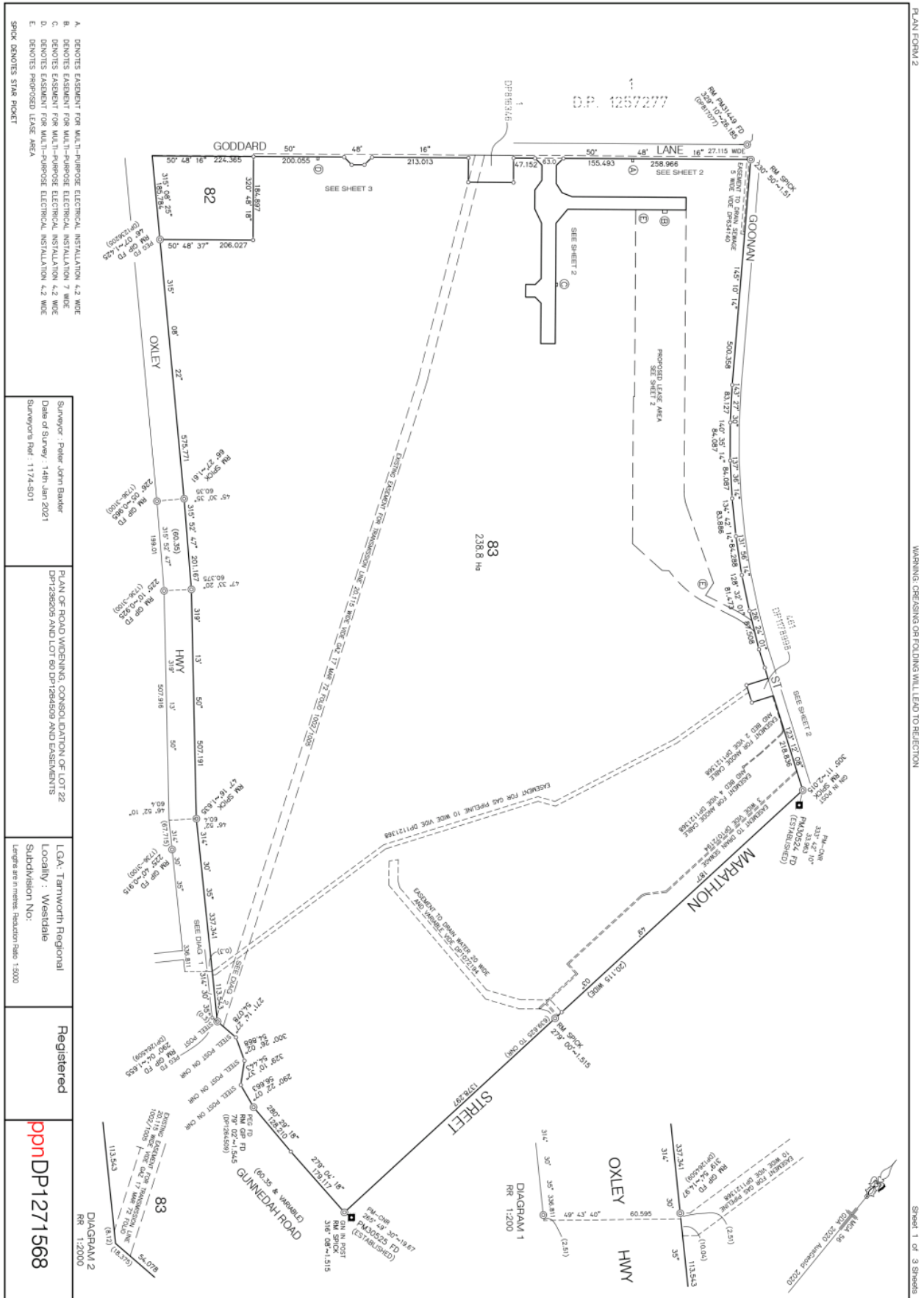
The advice relates to what the Commission considers at the time of publication to be best practice in relation to these issues. It does not constitute legal advice and failure to implement the advice, guidance and recommendations contained herein would not necessarily constitute corrupt conduct, which is defined in the *Independent Commission Against Corruption Act 1988*.

Councils are welcome to refer to this publication in their own publications. References to and all quotations from this brochure must be fully referenced.

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The logo for the Independent Commission Against Corruption (ICAC) features the letters 'I·C·A·C' in a large, white, serif font, with small dots between the letters. The background is a dark blue rectangle with a yellow horizontal bar at the top left.

INDEPENDENT
COMMISSION
AGAINST
CORRUPTION



- A. DENOTES EXISTANT FOR MULTI-PURPOSE ELECTRICAL INSTALLATION 4.2 WVE
- B. DENOTES EXISTANT FOR MULTI-PURPOSE ELECTRICAL INSTALLATION 7 WVE
- C. DENOTES EXISTANT FOR MULTI-PURPOSE ELECTRICAL INSTALLATION 4.2 WVE
- D. DENOTES EXISTANT FOR MULTI-PURPOSE ELECTRICAL INSTALLATION 4.2 WVE
- E. DENOTES PROPOSED LEASE AREA
- SPICK DENOTES STAR PICKET

Surveyor: Peter John Baker Date of Survey: 14th Jan 2021 Surveyors Ref: 1174-S01	PLAN OF ROAD WIDENING, CONSOLIDATION OF LOT 22 DP1259205 AND LOT 60 DP12584509 AND EASMENTS	LGA: Tamworth Regional Locality: Westdale Subdivision No: Lengths are in metres. Reduction Ratio: 1:5000	Registered	ppn DP1271568 DIAGRAM 2 RR 1:2000
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PLAN FORM 2

WARNING: CREASING OR FOLDING WILL LEAD TO REFLECTION

Sheet 1 of 3 Sheets

