



ENGAGING WITH LOBBYISTS AND BUSINESS CONTACTS

November 2017

PROCEDURE

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1. Introduction

This Procedure for Engaging with Lobbyists and Business Contacts expands on the Department of Planning & Environment (**Department**) *Engaging with Lobbyists and Business Contacts Policy*. It provides guidance and procedures for employees to follow when interacting with lobbyists and business contacts in the course of their duties.

While it is preferable that the NSW Government agencies that form part of the Planning & Environment cluster will also comply with this Procedure, cluster agencies are free to implement and follow their own policy and procedures for engaging with lobbyists, if so desired by their agency head.

This Procedure and the *Engaging with Lobbyists and Business Contacts Policy* applies to all permanent, temporary and casual staff, volunteers and other Government sector employees who are on secondment or assigned to the Department.

All contractors and consultants to the Department must comply with this Procedure when working at or visiting Department workplaces.

For the purposes of this Procedure, “employees” refers to all people to whom the *Engaging with Lobbyists and Business Contacts Policy* applies.

2. Lobbying

(a) Forms of lobbying

Lobbying is communicating with a Government official for the purpose of representing the interests of others in relation to:

- Legislation or proposed legislation;
- A Government decision or proposed Government decision;
- A planning application; or
- The exercise by a Government official of their official functions.

Lobbying **does not** include any communications by a Member of Parliament or a Government official who is acting in the ordinary course of their duties.

(b) Methods of lobbying

Lobbying extends to any communication – in person, in writing, by telephone, email or other electronic means:

- Whether or not it occurs in the course of carrying on the business of lobbying a Government official – an approach is still lobbying even if it occurs in an incidental way to other business activity;
- By a person who works for an organisation for the purpose of representing the interests of the organisation or its members; or
- For the purposes of representing community interests.

Examples of lobbying include:

- A third-party lobbyist telephones the Department to obtain an update on the progress of their client's development application.
- Employees attend a meeting with a community action group formed to oppose the granting of a petroleum production licence to a large energy company. This meeting with the action group is considered to be lobbying, whether or not politicians are also in attendance.
- A community arts centre requests a meeting with senior officials to discuss the Government's proposal to change the way in which grants for the arts sector are assessed
- A senior employee attends an industry conference and sits next to Head of Government Relations of a large development company. Over lunch, the Head of Government Relations briefs the senior employee on development applications before the Department.

Examples not considered to be lobbying include:

- A policy manager from an industry association emails a director at the Department to ask what the closing date is for submissions to a policy review.
- A lobbyist meets an employee at a social function, but does not discuss anything to do with their client's planning application or the official's duties.
- An applicant for a mineral exploration tenement telephones the department to clarify the information required for inclusion in the application regarding financial capacity
- An employee meets an artist at a community exhibition that has been funded by the Department but does not discuss the Department's role in funding community arts organisations.

(c) Third-party lobbyists

A **third-party lobbyist** (previously known as a 'registered lobbyist') is an individual or body carrying on the business (generally for money or other valuable consideration) of lobbying Government on behalf of a third-party.

Third-party lobbyists must be registered on the Government's *Register of Third-Party Lobbyists* (**Lobbyists Register**) and must comply with the *NSW Lobbyists Code of Conduct* (**Lobbyists Code**).

- Third-party lobbyists who are not registered, or who breach the terms of the *Lobbying of Government Officials Act 2011* can be placed on the **Lobbyist Watch List** and must be dealt with differently to registered third-party lobbyists – see section 4 below.
- If a person is listed on the Lobbyists Register, they are to be considered a third-party lobbyist, regardless of the capacity in which they purport to interact with the Department.
- A person who is not listed on the Lobbyists Register, but whose employer is listed, will not be considered a third-party lobbyist if they only perform a professional advisory role and do not undertake lobbying activity.
 - For example, someone employed as a planning consultant or as a legal advisor by a registered lobbyist firm will be considered to be an “other” lobbyist, rather than a third-party lobbyist, unless they attempt to act beyond that limited role.
 - A professional service provider, whose role is dedicated to lobbying Government officials on behalf of the firm’s clients, must be registered as a third-party lobbyist.
- If someone who is not themselves recorded on the Lobbyists Register, but is working for a registered organisation, attempts to lobby a government official on behalf of a client, they should be advised of their responsibility to be registered and the meeting should be terminated.

(d) “Other” lobbyists

Individuals and organisations that are not third-party lobbyists but their representational activities are still captured under the *Lobbying of Government Officials Act 2011* if they lobby Government officials. They are known in this policy as **other lobbyists because some of their activities are captured under the definition of lobbying.**

Examples of other lobbyists include:

- Representatives of corporations who are promoting the interests of their organisation;
- Representatives of industry or trade associations;
- Representatives of religious or charitable organisations;
- Representatives of business, community, or environmental groups;
- Planning consultants; or
- Professional service providers, such as economists, lawyers or accountants.

(e) Business contacts

A business contact is an individual person, organisation or Government agency that communicates with the Department about a specific application, proposal, or other matter for which the Department has assessment or decision making responsibility, who is not a third-party lobbyist or other lobbyist.

Examples of business contacts include:

- Government agencies acting as proponents or developers;
- Local councils, councillors, or employees of a local council communicating with the Department on matters of planning, development or policy;
- Individual proponents representing their own interests;
- Individual objectors to a planning proposal;
- Individual applicants or holders of a mining or exploration licence
- Applicants for departmental grants; or
- Participants in an open and public hearing on a policy, planning or development matter.

3. NSW Lobbyists Code of Conduct

The *NSW Lobbyists Code of Conduct* (**Lobbyists Code**) sets out standards and requirements for lobbyists.

All lobbyists must:

- Disclose the matter in advance that they wish to discuss when seeking a meeting with a Government official;
- Disclose any financial or other interest they may have in the matter to be discussed before the meeting commences;
- Not engage in any misleading, dishonest, corrupt or other unlawful conduct in relation to their lobbying; and
- Use all reasonable endeavours to satisfy themselves of the truth and accuracy of all material information they provide.

Third-party lobbyists, and any individuals they engage to lobby on their behalf, **must also:**

- Not meet or otherwise communicate with a Government official unless they are registered on the Lobbyists Register;
- Prior to any meeting or communication with a Government official, disclose:
 - Their status as third-party lobbyists;
 - The names of any individuals they have engaged to undertake lobbying on their behalf; and
 - The name/s of their clients;

- Not lobby on a matter that relates to a NSW Government board or committee of which they, or the individuals they engage to lobby on their behalf, are a member;
- Not make exaggerated or misleading claims to their clients about the nature or extent of their access to political parties or Government;
- Keep separate from their lobbying activities any personal involvement with a political party; and
- Not receive success fees for lobbying a Government official.

Examples of Lobbyist Code requirements include:

- Representatives of a major consortium (some employees, some investors) who claim there is a strong community support for their project must:
 - Verbally discuss any financial interest they have in the project before the meeting commences; and
 - Ensure their claims are accurate.
- A third-party lobbyist attending a social function at which an employee will be present must not discuss their lobbying work, or their client's interests with the employee.
- A third-party lobbyist working for an industry group who has engaged economic consultants to model proposed changes to a State Environmental Planning Policy must:
 - Be registered on the Lobbyists Register and disclose their status;
 - Formally apply for any meeting;
 - Disclose the matter they want to discuss and any financial or other interest they may have in it;
 - Advise the name of their client;
 - Provide the names of all proposed attendees, including those working for their organisation and those of the economic consultants;
 - Not engage in any misleading, dishonest, corrupt or other unlawful conduct; and
 - Satisfy themselves of the truth and accuracy of all their materials.

4. Prohibited lobbying

There are restrictions on the contact that employees can have with lobbyists. Government officials must not permit lobbying by:

- A third-party lobbyist who is not registered on the Lobbyist Register;
- An individual engaged to undertake lobbying for a third-party lobbyist who is not themselves registered;

- Any lobbyist who has failed to make the disclosures required of them under the Act and the Lobbyists Code (see the Department's *Engaging with Lobbyists and Business Contacts Procedure* for further information);
- A lobbyist whose name has been placed on the Lobbyist Watch List, unless;
 - At least two Government officials (other than a Minister, a Parliamentary Secretary or a member of their staff) are present during any communication with the lobbyist;
 - One of those Government officials takes notes of the communications with the lobbyist, and provides a copy of those notes to the Secretary.

5. Procedures for dealing with lobbyists and business contacts

5.1 Third-Party Lobbyists

Employees must use the following procedures when dealing with third-party lobbyists:

(a) Meeting requests

A third-party lobbyist wishing to meet with an employee must lodge a *Third-Party Lobbyist Meeting Request* form, which is available on the Department's website. The form must be lodged **at least one week in advance** of the proposed meeting date.

The *Third-Party Lobbyist Meeting Request* form must contain the following information:

- Their status as a third-party lobbyist;
- The names of the person/s representing the lobbyist;
- The name/s of the client/s they are representing;
- The reason for the meeting and issues to be discussed; and
- Any financial and other interest they have in the issue/s to be discussed.

(b) Scheduling meetings

A third-party lobbyist seeking to meet or otherwise conduct lobbying communications with the Department without completing the *Third-Party Lobbyist Meeting Request* form must be referred to the Department's website to access and complete the form.

After receipt of the completed *Third-Party Lobbyist Meeting Request* form:

- Check that the applicant is registered on the Lobbyist Register;
- Ensure that all required information (as set out above) has been provided;
- If all requirements have been met, seek the approval of a director or above to schedule the meeting; then
- Once approval of a director or above has been obtained, schedule the meeting and provide meeting details to the applicant.

(c) Meetings

Meetings with third-party lobbyists must be held at Departmental offices or other Government premises:

- Even if the meeting is held by teleconference.
- Meetings must not be held in cafes or other non-official locations.

If a meeting needs to be held at a site or Council premises, written approval is required from an Executive Director or senior executive manager.

At least two Departmental officers must attend the meeting. One or more of the Departmental officers must be a:

- Director or above, for meetings in greater metropolitan Sydney; and
- General manager or above, for regional meetings.

(d) Other communications

Telephone contact, email contact and other written contact is part of conducting business with the Department's stakeholders and their third-party lobbyists.

Such calls should only be taken by directors or above, and other employees who are contacted should refer such calls immediately. A contemporaneous filenote should be made by the employee who received the call and included in the relevant file.

➤ A third-party lobbyist contacting a Government official must disclose the following information (the employee must not deal with the lobbyist unless this information is provided and the lobbyist informed of their obligations under the Lobbyist Code):

- Their status as a third-party lobbyist;
- The names of the person/s representing the lobbyist;
- The name/s of the client/s they are representing;
- The reason for the meeting and issues to be discussed; and
- Any financial and other interest they have in the issue/s to be discussed.

Other forms of electronic contact including SMS, social media or instant messages between employees and third-party lobbyist is permitted, but only for routine and/or logistical matters.

5.2 Other Lobbyists

Employees must use the following procedures when dealing with lobbyists **other than** third-party lobbyists:

(a) Scheduling meetings – other lobbyists

A lobbyist other than a third-party lobbyist (**other lobbyist**) must provide basic information to the Department before a meeting is scheduled:

- The reason for the meeting and issues to be discussed; and
- Any financial and other interest they have in the issue/s to be discussed.
 - A *Third-Party Lobbyist Meeting Request* form is **not** required.
- Once requirements have been met, the employee must seek the approval of a team leader, director or above to schedule the meeting.
- Once approval has been obtained, schedule the meeting and provide meeting details to the other lobbyist.
- If someone who works for a registered lobbying organisation is attending a meeting as an “other lobbyist” (being in a professional services capacity and not themselves recorded on the *Lobbyist Register*), but attempts to lobby a Government official on behalf of a client, they should be advised of their responsibility to be registered and the meeting should be terminated.

(b) Meetings – other lobbyists

- Meetings with other lobbyists may held at:
 - Departmental offices or other Government premises;
 - On site; or
 - The organisation’s premises.
 but not at cafes or other non-official locations.
- At least two Departmental officers must attend a meeting in greater metropolitan Sydney.
- A team leader or a more senior officer must attend a meeting in the regions.

(c) Other communications – other lobbyists

Telephone contact, email contact and other written contact is part of conducting business with the Department's other lobbyists.

- Telephone contact may be conducted by an employee on their own, but where possible should also involve a team leader, director or above.
- The other lobbyist should be:
 - requested to disclose the issue for discussion and any financial or other interest they may have in the matter; and
 - informed that a record of the communication will be saved to the Department's records management system.
- Employees must keep appropriate records of all telephone, email or other written contact.
- **Other forms of electronic contact** including SMS, social media or instant messages between employees and third-party lobbyist is permitted, but only for routine and/or logistical matters.

5.3 Business Contacts**(a) Scheduling meetings**

There is no requirement for an employee to know in advance issues being discussed with a business contact before a meeting can be organised. Any employee can make a decision to request, accept or decline a meeting, and there is no requirement for more than one person to attend.

- Business contacts who are not third-party lobbyists do **not** have to complete a *Third-Party Lobbyist Meeting Request* form but each Division may develop practice notes that assist staff to manage and record their meetings with business contacts.

(b) Other communications

Telephone contact, email contact and other written contact is part of conducting business with business contacts. Employees must keep appropriate records of all telephone, email or other written contact.

Other forms of electronic contact including SMS, social media or instant messages between employees and third-party lobbyist is permitted, but only for routine and/or logistical matters.

6 Record keeping

The Department requires records to be kept for all meetings and communications with third-party lobbyists, other lobbyists and for significant meetings with business contacts.

6.1 Record-Keeping Procedures – Third-Party Lobbyists

Employees must use the following record-keeping procedures when dealing with third-party lobbyists.

The completed, approved *Third-Party Lobbyist Meeting Request form* must be filed in the Department electronic record management system.

The following naming convention is to be used for electronic filing:

- Third-Party Lobbyist Meeting Request;
- Name of the Department employee dealing with the issue;
- Date of the contact in YY/MM/DD format

Example: *Third-Party Lobbyist Meeting Request - J Smith - 250617*

A file note of the meeting, telephone call or other contact must be made, containing:

- Items of discussion;
- Any substantive issues raised;
- When and where it took place;
- Any key decisions, advice, actions, outcomes, guidance or information given to the third-party lobbyist, and who in the Department made/gave them; and
- Who is responsible for actions arising.

- Completed file notes should be sufficiently clear and detailed to allow anyone reading them to understand who was there, what took place, and the decisions advice, actions, outcomes or guidance given.
- If a discussion concerns more than one area of legislation policy, assessment or exercise of the Department's official duties, the record must include each item discussed.
- File notes should be appropriately protected, preserved, accessible, and useable by persons within the Department.

Third-party lobbyists must be informed up front that the records of the discussion will be published on the Department's website, using the Department's *Third-Party Lobbyist Contact form*, which is available on PEOcan.



The *Third-Party Lobbyist Contact* form must:

- Be used to record any meeting, telephone call, email or other written communication with a third-party lobbyist;
- Be submitted for approval by their director or above, once completed;
- Be sent to the Secretary, a Deputy Secretary or the Director Governance and Performance **within five days** of the contact for approval to publish; and
- Once approved, be published on the Department's website **within 10 days** of the date of the contact.

See **Appendix 2** for approval rights for the *Third-Party Lobbyist Contact* form.

6.2 Record-Keeping – Other Lobbyists and Business Contacts

A **record** of communications with other lobbyists and business contacts must be prepared and filed.

- A record of any communication with other lobbyists and business contacts may be made using:
 - The *Other Lobbyist Contact* form for other lobbyists;
 - The *Business Contact* form for business contacts;
 - A file note;
 - By email to the employee's manager; or
 - By minuting the meeting.
- The record must outline the details of the contact or meeting.
- An email record must be electronically filed but need not be approved.
- A file note or Contact Form must be approved by the employee's team leader or more senior manager **within 10 days** of the contact.
- Naming conventions for saving electronic records are:
 - Type of record
 - Name and company of the third-party lobbyist, other lobbyist or business contact
 - Project number and name (if applicable)
 - Name of the Departmental employee dealing with the issue;
 - Date of contact in YY/MM/DD format

➤ Examples:

Third-Party Lobbyist Meeting Record – Phil Jones, IAL Consulting – 9999 Bridge Street Redevelopment – J Smith – 250617

Other Lobbyist Telephone Record – Melanie Jones, Property Council of Australia – SEPP 64 amendments – J Smith – 250617 – file note

*Business Contact Meeting Record – Dan Jones, NSW Health – Kings Cross Hospital
– J Smith – 250617 – email*

Assessment Reports Disclosure – contact with third-party lobbyists and other lobbyists must be disclosed in assessment reports dealing with specific planning proposals and/or development matters by including:

- Electronic file reference;
- The date;
- The name of the third-party lobbyist or other lobbyist;
- Who they represented;
- The nature of the contact;
- The subject matter; and
- The outcome of any discussion.

7. Monitoring the Lobbyists Policy

The Executive Director Governance and Performance is responsible for the effective management of the Lobbyists Policy. The effectiveness of the Lobbyists Policy will be reviewed at least every two years.

APPENDIX 1**DEFINED TERMS****in this Procedure**

Business contact	means an individual, organisation or Government agency that communicates with the Department about a specific planning proposal and/or development matter, but who is not a third-party or other lobbyist.
Development matter	means any matter or proposal relating to the development and use of land or to environmental planning and assessment.
Government official	means: <ul style="list-style-type: none"> • A Minister of Parliamentary Secretary; • A staff member of a Minister or Parliamentary Secretary (including a staff member in an electorate office); • The head of a Public Service agency; • 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; • 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; or • A member (however expressed) of, or of the governing body of, a statutory body.
Lobbying	means communicating with a Government official for the purposes of representing the interests of others in relation to: <ul style="list-style-type: none"> • Legislation or proposed legislation; • A Government decision or proposed Government decision; • A planning application; or • The exercise by a Government official of their official functions.
Lobbyists Code	means the NSW Lobbyists Code of Conduct.
Lobbyists Register	means the <i>Register of Third-Party Lobbyists</i> , which is kept and maintained by the NSW Electoral Commission.
Lobbyists Watch List	means the list maintained by the NSW Electoral Commission that contains the names and other identifying details of any third-party or other lobbyist placed there by the Commission as a result of contraventions of the Lobbyist Code or the Act.
Other lobbyist	means any individual or body that lobbies a Government official other than a third-party lobbyist; this includes individuals engaged to undertake lobbying for a third-party lobbyist.
Third-party lobbyist	means an individual or body carrying on the business (generally for money or other valuable consideration) of lobbying Government officials on behalf of another individual or body (previously known as a registered lobbyist).

APPENDIX 2

**APPROVAL RIGHTS
FOR THE
THIRD-PARTY LOBBYIST CONTACT FORM
(Section 6.1)**

POSITION	CATEGORY	COMMENTS
All employees	Creator	Attending and recording meetings where director is also present. Saving record of meeting and advising Approver. Viewing published records.
Directors and above	Approver	As above. Finalising records for completion before sending them to Publisher. Advising Publisher that record is ready to be published. Viewing unpublished records.
Secretary, Deputy Secretaries, Executive Director Governance and Performance	Publisher	As above. Authorising records to appear on the Department website.