

COUNCIL POLICY



Managing Conflicts of Interest for Council Related Development Policy

Managing Conflicts of Interest for Council Related Development Policy

Commencement Date	27 March 2023
Council Department	Environmental Services
Contact Officer	Larissa Hackett
Revision Required	Every 4 years

Policy Review

This policy shall be reviewed at four (4) yearly intervals at least, to ensure it meets all statutory requirements and the needs of council. It may also be reviewed at other times as determined by council.

Revision History

Version	Council Meeting Date	Resolution No.	Responsible Officer
I	27 March 2023	40/2023	Director-Environmental Services

Cowra Shire Council
Private Bag 342
Cowra NSW 2794

Phone: 02 6340 2000
Email: council@cowra.nsw.gov.au
Internet: www.cowracouncil.com.au

Table of Contents

1. Introduction 1

2. Purpose..... 1

3. Definitions 1

4. Policy 1

 4.1 Management controls and strategies 1

 4.2 Identifying whether a potential conflict of interest exists, assessment of level risk and determination of appropriate management controls.....3

5. Forms – Management Statement Example 3

6. Related legislation 4

1. Introduction

Councils are development regulators, however they can also be the developer, landowner or hold a commercial interest in the land they regulate. Where councils have this dual role, an inherent conflict can arise between their interests in the development and their duty as regulator.

Identifying these conflicts of interest early and finding ways to address them is crucial to good governance and allows council to strengthen its relationship with communities and build and enhance trust.

2. Purpose

This Policy aims to manage potential conflicts of interest and increase transparency at all stages of the development process for council-related development and meet the legislative requirements of Section 66A Environmental Planning and Assessment Regulation 2021.

This Policy applies to council-related development.

3. Definitions

A word or expression used in this policy has the same meaning as it has in the *Environmental Planning and Assessment Act 1979* (the Act), and any instruments made under the Act, unless it is otherwise defined in this policy.

Application	means an application for consent under Part 4 of the Act to carry out development and includes an application for a complying development certificate and an application to modify a development consent.
Council	Means Cowra Council
Council-related development	means development for which the council is the applicant developer (whether lodged by or on behalf of council), landowner, or has a commercial interest in the land the subject of the application, where it will also be the regulator or consent authority. This Policy may apply to certain State Significant or Regionally Significant Developments which are defined under the Act. The Act specifies how these applications are to be determined.
Development process	means application, assessment, determination, and enforcement
The Act	means the Environmental Planning and Assessment Act 1979.

4. Policy

4.1 Management controls and strategies

(1) The following management controls are to be applied to:

A. The **assessment** of an application for council-related development.

Where Council is the assessing authority, the application shall not be prepared by Council's Environmental Services Department. Alternatively, applications may be prepared by another Division of Council or external consultancy.

B. The **determination** of an application for council-related development

Development Applications:

- (a) For minor developments assessed to involve minimal risk of conflict of interests - DA to be assessed by Environmental Services staff after following correct advertising and notification procedures that state Council's interest in the matter.
- (b) The assessment report to be reported to Council for determination of the development proposal. No delegation of authority to be used in the determination of the DA.
- (c) For applications assessed to involve moderate to significant risk of conflict of interest - DA to be assessed by a suitable independent expert to undertake the assessment. The assessment report to be then reported to Council for determination of the development proposal. No delegation of authority to be used in the determination of the DA.

C. The **regulation** and **enforcement** of approved council-related development

Dependent on the regulation and enforcement activity required, may be undertaken by:

- (i) A private certifier or
- (ii) Council, under delegation for building and subdivision work where Council is nominated as the Principal Certifying Authority or required to be by the Act. or
- (iii) Council staff under delegation in ensuring separation of regulation/enforcement activities and project management or
- (iv) Engagement of an independent third party.

(2) The management strategy for the following kinds of development is that no management controls need to be applied:

- a. Commercial fit outs and minor changes to the building façade
- b. Internal alterations or additions to buildings that are not a heritage item
- c. Advertising signage
- d. Minor building structures projecting from a building over public land (such as awnings, verandas, bay windows, flagpoles, pipes, and services)
- e. Development where Council only receives a small fee for the use of the land.

4.2 Identifying whether a potential conflict of interest exists, assessment of level risk and determination of appropriate management controls.

- (1) Development applications lodged with the Council that are council-related development are to be referred to the General Manager or delegate for a conflict-of-interest risk assessment. Note: Council-related development is defined in sub-section 1.1.
- (2) The General Manager or delegate is to:
 - a. Assess whether the application is one in which a potential conflict of interest exists,
 - b. Identify the phase(s) of the development process at which the identified conflict of interest arises,
 - c. Assess the level of risk involved at each phase of the development process,
 - d. Determine what (if any) management controls should be implemented to address the identified conflict of interest (in each phase of the development process if necessary) having regard to any controls and strategies outlined in Section 2 of this Policy and the outcome of this assessment of the level of risk involved as set out clause 2.2 (2)(c) of this Policy, Note: The General Manager or delegate could determine that no management controls are necessary in the circumstances.
 - e. Document the proposed management approach for the proposal in a statement that is published on the NSW Planning Portal.

5. Forms – Management Statement Example

Conflict of Interest Management Statement	
Project name	Blue River Civic Place
DA number	DA50/xxxiv
Potential conflict	BlueStar Council is the applicant, Blue River Civic Place has estimated capital investment of \$5.1 million and the council expects to receive revenue through renting commercial office spaces.
Management strategy	<p>The Council is managing potential conflicts of interests in this matter as follows:</p> <ul style="list-style-type: none"> • The application will be referred to the regional planning panel to determine the development application. • Council development assessment staff not involved with preparing the application will assess the DA. The staff will remain separated from the project team. • A private certifier will be engaged to undertake the certification for the development. • Key project milestones following the development consent will be reported at a public council meeting.
Contact	Anyone with concerns about council fulfilling its obligations should report their concerns to the council.

6. Related legislation

- Environmental Planning and Assessment Amendment (Conflict of Interest) Regulation 2022
- State Environmental Planning Policy (Planning Systems 2021)
- Local Government Act 1993
- Roads Act 1993