

COUNCIL POLICY



Code of Planning Practice - Processing of Development Applications

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Council Department Environmental Services

Contact Officer Director-Environmental Services

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1. Purpose

The purpose of this Code is to describe the process for assessing and determining all development applications in the Cowra Shire, except those categorised as 'complying development'. The latter categories are dealt with in the State Environmental Planning Policy (Exempt & Complying Development Codes) 2008.

This Code is aimed at Council staff, Councillors, residents, applicants and the community in general.

2. Date of Adoption of this Code

This Code was adopted by Council on 26 March 2007 and is effective immediately.

3. Application of this Code

This Code sets pathways for the lodgement, assessment and processing of development applications, reviews of determinations sought by applicants under Section 8.3 of the Environmental Planning and Assessment Act (EP&A Act) and any modifications sought under Section 4.55 of the EP&A Act.

4. Aims

This Code aims to:

- (a) Provide transparency about the process used in Cowra Shire Council for the application and assessment of development applications;
- (b) Ensure that delegations are appropriate and that there is a separation of responsibilities in considering development applications;
- (c) Ensure that decision-making about development applications is transparent, objective and fair and that applications are determined on the basis of planning merit in accordance with the EP&A Act - and not as a result of undue influence; and
- (d) Minimise the risks of corruption and improve public confidence in the administration and determination of development applications.

5. Background

The Independent Commission Against Corruption (ICAC) acknowledge there is often a lot at stake in the development process, as decisions can affect the quality of people's lives and financial situations. For these reasons the process used to determine development applications can give rise to many concerns and complaints. These issues were picked up in ICAC's Taking the Devil Out of Development - interim report and position papers (May 2002 and December 2002), Corruption Risks in NSW Development Approval Process position paper (September 2007) and in ICAC's report on Anti-Corruption Safeguards and the NSW Planning System (February 2012). In these reports, ICAC identified key risk areas for state and local planning authorities in dealing with development applications and provided a number of recommendations designed to address these risks including the need to:

- Better inform applicants and objectors about council values and business ethics;

Improve the community's (residents and developers) understanding of the roles that Councillors and staff are obliged to fulfill when assessing and determining development applications and of the matters that will be considered in assessment and the processes and systems involved;

- Ensure the notification process used for developments is open and transparent and takes account of the size, impact and importance of the development proposed;
- Ensure appropriate delegations and separation of responsibilities in considering development applications;
- Implement changes to the law to penalise applicants who gain an approval through corrupt means;
- Provide guidance on what constitutes a modification to an application, prescribe a minimum requirement for notification and limiting the use of delegated authority for the approval of modifications;
- Provide Councillors with guidelines about their role and responsibilities in the development assessment process;
- Clarify what to do when the council is both developer and consent authority; and
- Ensure planning instruments are reviewed regularly by Council's and kept up-to-date.
- Ensure that planning authorities are required to provide regular information and updates to the public about development applications under assessment, including any significant changes made to an application.
- Ensure that planning staff maintain a professional distance from regular applicants.

Cowra Shire Council has already adopted a Code of Conduct and Code of Meeting Practice that provides guidance on how Councillors and Council staff should properly conduct themselves in a local government context. Cowra Shire Council is committed to taking action that improves public confidence in the way development applications are processed and assessed in the Shire. This Code of Planning Practice - Development Applications provides specific guidelines on how Councillors and staff should properly process and determine development applications.

6. The Development Application (DA) Process

The following outlines 7 key steps in the process used by Cowra Shire Council for lodging and assessing development applications:

6.1 Preliminary DA information sought and provided:

The applicant is invited to seek information from Council's Customer Service Centre or Department - Environmental Services to assist with the preparation of a DA. Council officers are happy to provide any relevant environmental planning policies, standards and codes to assist with the preparation of a DA. Council has developed a DA Guide to assist proponents properly prepare a DA as well as understand the DA process that will be followed in relation to the type of development proposed. The DA fees can also be calculated at this stage. Counter or telephone advice and copies of council environmental planning policies, standards and codes are generally

provided free of charge.

6.2 Pre-lodgement DA Form:

For a detailed response to a more complicated development proposal, an applicant is invited to complete a 'Pre-Lodgement DA Form' and specialist assessment officers will provide written comments and be available for a meeting to discuss the proposal. Within this forum Council assessment officers make a broad assessment of the development proposed, the likely issues that will need to be addressed in the DA and comment if there is any doubt about the nature of the proposed project. The applicant will be formally advised in writing of the outcome of the pre-lodgement assessment within 14 days of lodgement. The pre-lodgement process is provided by Council free of charge.

6.3 DA Lodgement:

Staff from Environmental Services will check the application for completeness at time of lodgment. Staff will complete a DA Checklist to streamline the process at the counter. Provided the DA Checklist is completed and there are no obvious problems or deficiencies that need to be addressed prior to lodgement, the DA will be receipted by Council. Incomplete applications may be rejected by staff under Section 51 Rejection of development applications, of the EP&A Act Regulations and will be returned to the proponent.

6.4 Preliminary Assessment:

Upon receipt of a DA, Council's Manager – Planning Services will review the DA to confirm its completeness, the type of development proposed, notification/advertising requirements and the assessment officer who will be responsible for the processing of the application. It is at this stage that Council will write to the applicant acknowledging receipt of the application. Council may contact the applicant to request clarification of a DA matter or seek additional information.

6.5 Advertising and notification:

Depending on the type of development proposed, development applications will either be notified or advertised in accordance with Council's Development Control Plan 2014.

The E&A Act provides for the advertising of designated development and integrated development.

Council reserves the right to extend the notification or advertising period for any development proposal beyond the minimum requirements where it is considered justified.

Where Council has an interest in a DA (eg Council is the applicant, owns the land the subject of the DA, or will likely benefit from the approval of the application) the DA will be advertised and a statement detailing Council's interest in the DA will be included in the public notice.

Any written submissions received as a result of advertising and/or notification will be considered in the assessment of the development proposal.

6.6. Assessment:

The responsible assessment officer is required to assess the DA in accordance with Section 4.15 of the EP&A Act and makes detailed comparative checks to assess whether the application complies with the requirements of any State Environmental Planning Policies, Regional

Environmental Plans, Cowra Local Environmental Plan 2012, Council's Development Control Plan 2014 and any additional Council policies.

The assessment may necessitate the Council seeking comments from other government authorities who may have an interest in the development application.

Where the development proposal is consistent with all environmental planning instruments and Council policies, and no objections are received, it may be appropriate for the responsible assessment officer to make the decision about the DA under delegated authority or forward to a more senior officer (ie the Manager – Planning Services or Director - Environmental Services) for determination under delegated authority. All assessments and recommendations undertaken under delegated authority are to be peer reviewed prior to determination by another staff member possessing the appropriate delegations. A record of the peer review is to be retained on file along with the assessment report.

Where the development proposal is inconsistent with an environmental planning instrument or Council policy, or where substantive written objections have been received, or where the proposal is considered to be contentious or involve Council interests, a report will be tabled at a Council Meeting for determination of the DA.

6.7 Determination:

Under Section 4.16 of the EP&A Act, Cowra Shire Council has the power to determine a DA by granting consent, either unconditionally or subject to conditions, or refusing consent to the application.

The determination of a DA will be communicated to the applicant in writing, with advice about the legal ability to review or appeal under the determination in accordance with the EP&A Act. Council will also write to any person who made a written submission/objection to the development proposal, advising its determination of the DA.

Regular public notice of development consents granted by the Council is given in the Cowra Guardian, in accordance with Section 4.59 of the EP&A Act. It should be noted that the validity of the consent cannot be challenged in Court, unless the challenge is made within 3 months of the date of the public notice in the local newspaper.

7. Waiving DA Fees

Any dealings the Council may have with a proponent or applicant regarding the waiving of Development Application Fees must not involve Environmental Services staff.

Environmental Services or Customer Service staff do not have delegated authority to waive fees. Development Applications will therefore not be accepted unless the appropriate DA Fees are paid, or unless there is a prior resolution of Council that the fees are not required to be paid by the applicant, and will be paid by the Council.

Any person who wishes to make a request to the Council to waive fees must do so in writing, addressed to the General Manager of Cowra Shire Council. The grounds for the request to waive fees must be detailed in the letter.

Upon receipt of a request to waive fees the General Manager is required to report to the Council on the merits of the request, with a recommendation to either accede or not accede to the

waiving of fees.

In such cases where Council accedes to a request to waive fees, the Council will offer to pay/refund the relevant fees as a donation pursuant to Section 356 of the Local Government Act 1993.

8. Development Applications Involving Council Interests

Where the Council has an interest in a development proposal, consideration should be given to utilising independent parties in the assessment and determination process. In such cases where Council does have an interest in a development application, the Director – Environmental Services is required to ensure that the application is processed in accordance with one or more of the following processes:

- 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. 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.
- 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.
- For applications assessed to involve moderate to significant risk of conflict of interest - DA to be assessed by another Council. 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.
- For applications assessed to involve moderate to significant risk of conflict of interest - DA to be assessed by a suitable independent expert or another Council and then reported to Council for determination. No delegation of authority to be used in the determination of the DA.

9. Review of a Determination

Under Section 8.3 of the EP&A Act an applicant can request Council to review a determination of a DA. However, there is no right of review for a determination of a complying development certificate or for a determination in respect of Designated development, Integrated development or a determination made in respect of application made by the Crown. An application form must be included together with a written statement listing the grounds of the review and the relevant fee.

10. Modify a Development Consent

Under Section 4.55 of the EP&A Act an applicant can apply to modify a development consent to correct a minor error or to carry out modifications involving minimal environmental impact. This may be appropriate if the applicant disagrees with particular conditions of consent or decides to amend certain aspects of the proposal. An application form must be included together with a written justification for the proposed modification and plans indicating proposed modifications or changes. You must also pay an application fee. The application will be advertised and/or notified in

accordance with Council's Development Control Plan 2014.

11. Appeal to the Land and Environment Court

An applicant who is dissatisfied with their notice of determination can appeal to the Land and Environment Court within 12 months of the day on which they received Council's notice of determination. Separate application must be made with the NSW Land and Environment Court to appeal a determination.

12. Statement of Ethics for Development Applications

This section is to inform and guide applicants, objectors and all other people of Council's values and ethics in regard to development proposals that have to be assessed and then determined by Council. This Statement needs to be read in conjunction with and subject to Council's Code of Conduct.

"All parties need to appreciate that Council, (and its delegates) in their formal role of determining a development application has to consider the matters prescribed in legislation in a way that is open and fair and is seen to be open and fair to all parties.

Any member of the community may approach a Council assessment officer (during normal business hours) on any matter relating to a DA. Council assessment officers (in particular planning and environmental health and building surveyors) are employed by Council to process applications in a transparent, objective and fair manner. They will listen to the views of objectors and applicants alike and record them for consideration in their assessment. They will help all parties understand the project and process that has to be followed to obtain a decision.

Similarly, it is in order for any member of the community to approach a Councillor to explain their position in relation to a DA. However, no Councillor should be expected to offer support or oppose a DA. No Councillor should be asked to or expected to lobby other Councillors to support or oppose a project.

Do not expect a Councillor to indicate support for or take any part in lobbying for or against a development even if it is near their property. It would be totally inappropriate and a serious conflict of interest for any Councillor to be involved in a campaign of letter writing to other neighbours for or against a development that is near their property, or for that matter anywhere else in the shire. Do not expect a Councillor to speak to or lobby an assessment officer. Any such approach is contrary to Council's Code of Conduct and must be reported by the Officer. Such an approach could seriously delay the processing of the application.

In their role as decision-makers, Councillors need to behave in a way, almost like a judge, that gives confidence to all parties that no-one is being given any special consideration and the application is being dealt with on its merits. It is bad practice and an unacceptable practice for an application to be determined on the basis of "pressure" from objectors or applicants or other parties.

It is a criminal act and totally unacceptable for any party to offer inducements, such as free lunches or dinners, holidays, cash or donations to any Councillors or Council Officers to favourably or unfavourably consider an application. Should an unavoidable situation arise in regard to lunch, dinner or coffee, the Councillor or Council Officer must pay for their share of the costs, record the event in the Register of Interests and reclaim their expense from Council."

An applicant or objector who forms an opinion that they are not getting a "fair go" in discussions with Council Officers over a DA, should formally request a more senior officer to become

involved in an attempt to resolve differences. In such instances, the first approach should be to the Manager – Planning Services, then the Director - Environmental Services and then the General Manager.

13. Delegation of Authority

As consent authority, Cowra Shire Council has the power under Section 4.16 of the EP&A Act to determine a DA, provided due consideration is given to any limitations of its powers and due process is followed.

Under the Local Government Act 1993, Council can delegate certain powers to the General Manager who in turn can sub-delegate any of those functions to another person or council body. A current copy of all staff delegations are included in Dataworks (Council's Document Management System).