



Managing conflicts of interest for Council related development applications Policy

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| Policy, General Manager's Directive, Procedure, Procedural Guideline, Work Instruction | Policy (External) |
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| Section / Department | Governance Services |
| Linkage to Our Community Vision | 5 Civic Leadership |
| Objective | 5.1 Council is an organisation that embraces business excellence |
| Strategy | 5.1.4 Best practice, sustainability principles, accountability and good governance are incorporated in all that we do |



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1. Policy Summary

This Policy is in accordance with the Environmental Planning and Assessment Regulation 2021, that requires local councils to prepare and publicise a policy that sets out how they propose to manage potential conflicts of interest for Council-related development applications.

This Policy aims to manage potential conflicts of interest transparently at all stages of the development process for Council-related development applications.

2. Policy Scope

This policy applies to Council-related development.

3. Definitions

The following definitions apply throughout this policy.

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|------------------------------------|--|
| Act | means the <i>Local Government Act 1993</i> (NSW) |
| Application | means an application for consent under Part 4 of the <i>Environmental Planning and Assessment Act 1979</i> to carry out development and includes an application for a complying development certificate and an application to modify a development consent. |
| Code of Conduct | means the Code of Conduct adopted by Council |
| Council | means Bellingen Shire Council |
| Councillor | means a person elected or appointed to civic office as a member of the governing body of council who is not suspended, including the mayor |
| Council-related development | <p>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. It also includes an application made by a Council staff member or Councillor.</p> <p>This Policy may apply to certain State Significant or Regionally Significant Developments which are defined under the EP&A Act. The Act specifies how these applications are to be determined.</p> |
| Development process | means application, assessment, determination, and enforcement |
| EP&A Act | means the <i>Environmental Planning and Assessment Act 1979</i> |



4. Related Legislation, Guidance and Policies

The Policy should be read in conjunction with the following Council policies and documents:

- Code of Conduct - Councillors and Staff

The Policy should be read in conjunction with the following documents/legislation:

- *Environmental Planning and Assessment Act 1979*
- *Environmental Planning and Assessment Regulation 2021*
- *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*

5. Provisions for managing conflicts of interest

- 5.1 Development Applications, that are considered Council-related development as defined in this policy, must be referred to the Group Leader Development and Compliance for a conflict of interest risk assessment.
- 5.2 The conflict of interest risk assessment must:
 - 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 in accordance with factors identified in clause 5.3 of this policy.
 - d) Determine what (if any) management controls should be implemented to address the identified conflict of interest at each phase of the development address the risk identified in 5.2(c). Controls and strategies are outlined in clause 5.9 of this policy.
- 5.3 Factors to be considered when determining level of conflict of interest and resulting risks:
 - a) Is Council a direct or indirect beneficiary of this application.
 - b) Value of potential commercial gains resulting from the making of the application.
 - c) Cost of works associated with the application.
 - d) Is the application exempt from management controls/strategies as per 5.9 of this policy.
- 5.4 The conflict of interest management approach for the application is documented in a statement that is published on the NSW Planning Portal.
- 5.5 For low risk Council related development where no management controls or strategies have been identified, Council is still required to communicate this decision through a statement published on the NSW Planning Portal.
- 5.6 Council-related development applications must be exhibited for a minimum of 28 days to ensure transparency during the assessment process (Environmental Planning and Assessment Act 1979, schedule 1, clause 9B).
- 5.7 All notification correspondence for Council-related development is to state that the conflict of interest management statement is available on both Council's Applications Tracking site and the NSW Planning Portal.



5.8 The following management controls may be applied to:

- a) The assessment of an application for Council-related development:
 - Enter into a shared service agreement with a neighbouring council for the assessment of the application.
 - Use an external consultant to complete the assessment of development applications.
 - Use external certifiers to complete the assessment of complying development certificates.
- b) The determination of an application for Council-related development:
 - Regional planning panel to determine development application.
 - Engage a private certifier for certification activities such as the issuing of complying development certificates, construction certificates and occupation certificates.
 - Publish certificates issued under Part 6 of the Environmental Planning and Assessment Act 1979 on the NSW Planning Portal.
- c) The regulation and enforcement of approved Council-related development:
 - Enter into a shared service agreement with a neighbouring council for the compliance and enforcement of development consent.
 - Principal Certifying Authority to assist in the compliance and enforcement of conditions construction certificates and complying development certificates.
 - Report enforcement milestones or actions to Council.

5.9 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) Signage which does not generate a commercial return.
- d) Minor building structures projecting from a building facade over public land (such as awnings, verandas, bay windows, flagpoles, pipes, and services).
- e) Development where the Council might receive a small fee for the use of their land.



6. Responsibilities / Accountabilities

- 6.1 Council officers making applications for Council-related development are required to refer the application to the Group Leader Development and Compliance.
- 6.2 Persons responsible for the preparation of a Council related Development Application shall ensure that any assessment of risk required by this policy, and any determination of assessment pathways, is completed prior to the lodgement of any Development Application on the NSW Planning Portal.
- 6.3 Persons responsible for the preparation of a Council related Development Application shall prepare the relevant application and allow sufficient time for processing of the Application (including the engagement of external contractors to assess the Application where necessary) without an expectation of priority being attached to the determination of the application relative to applications that have been submitted by external applicants.
- 5.4 Council development assessment officers reviewing lodged development applications must refer Council-related development applications to the Group Leader Development and Compliance.
- 6.5 Council building certifiers reviewing lodged complying development certificates, construction certificates, occupation certificates and building information certificates must refer Council-related development to the Group Leader Development and Compliance.
- 6.6 Council's Group Leader Development and Compliance is responsible for undertaking conflict of interest risk assessment and documenting what management controls or strategies are to be implemented during the phases of the application in a management statement. Documentation is to be provided to the General Manager.
- 6.7 Council's administration staff is responsible for publishing the management statement on the NSW Planning Portal.
- 6.8 Council's Group Leader Development and Compliance is to ensure that the management controls and strategies are adhered to during the entire development cycle.