



POLICY

Conflict of Interest – Dealing with Council related development throughout the development process

Date adopted by Council	27 February 2023
Minute number	23/029
Endorsed by	Senior Management Group
CM Ref	CD-2/23
Due for review	February 2027
Related documents	N/A
Responsible officer	Director Planning & Infrastructure Services
Department/Section	
Category	Regulatory Compliance
Community Strategic Plan goal	Responsible Governance 5.1 Effectively and efficiently manage the business of Council, while encouraging an open and participatory Council with an emphasis on transparency, community engagement, action and response



Policy Statement

Council is a development regulator but can also be the developer, landowner or hold a commercial interest in the land it regulates. As a result, an inherent conflict can arise between Council's interests in the development and its duty as a 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 the community and build and enhance trust.

Objective

This policy aims to manage potential conflicts of interest and increase transparency at all stages of the development process for council-related development.

Scope

This policy applies to council-related development.

Definitions

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 Upper Hunter Shire 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
Development process	means application, assessment, determination, and enforcement
the Act	means the Environmental Planning and Assessment Act 1979.

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

** Notes included in this policy do not form part of the policy.

Policy Details

1. Management controls and strategies

1.1 The following management controls may be applied to:

- a. The assessment of an application for council-related development
 - Applications for council-related development (other than the kinds of development listed under clause 1.2 below) shall be assessed by an independent planning consultant engaged by Council.



- b. The determination of an application for council-related development
 - All applications (other than an application to modify a development consent pursuant to Section 4.55(1) of the Act) for Council-related development shall be determined by Council.
 - Applications for Council related development (other than the kinds of development listed under clause 1.2 below) shall only be determined by Council following a peer review of the assessment report by a neighbouring Council.
- c. The regulation and enforcement of approved council-related development
 - Building and subdivision certification (Part 6 of the Act) in respect of Council-related development (other than the kinds of development listed under clause 1.2 below), shall be undertaken by a private certifier engaged by Council.
 - Enforcement matters relating to Council-related development (other than the kinds of development listed under clause 1.2 below), shall be referred to a neighbouring Council or external consultant for investigation and recommended action. The outcome of the investigation and recommendation shall be reported to the full Council. Enforcement matters relating to other Council-related development shall be investigated by Council staff and reported to the full Council.

1.2 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 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.
- f. development having a capital investment value of less than \$1,000,000.

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

2.1 Development applications lodged with the council that are council-related development are to be referred to the general manager for a conflict-of-interest risk assessment.

Note: Council-related development is defined in the definitions section of this policy.



- 2.2 The general manager 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 clause 1 of the policy and the outcome of the general manager’s assessment of the level of risk involved as set out clause 2.2(c) of the policy,

Note: The general manager 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.

Note: The following is an example of a statement that could be published by councils to document its proposed management approach in a particular circumstance.

Scenario

BlueStar Council is upgrading one of their assets, ‘Blue River Civic Place’. Council is the landowner and the applicant and is proposing to redevelop the site into a mixed-use development with a total capital investment value (CIV) of \$4.9 million. The development application seeks approval for the construction and use of an additional 2 storeys on an existing 3 storey building comprising a childcare centre, commercial office spaces and partial use of the building for council’s public administration

Example management statement

<i>Council conflict of interest management statement</i>	
Project name	Blue River Civic Place
DA number	DA21/0001
Potential conflict	BlueStar Council is the applicant. Blue River Civic Place has an estimated capital investment value of \$4.9 million and the council expects to receive revenue through renting commercial office spaces.
Management Strategy	<p>The council is managing potential conflicts of interest in this matter as follows:</p> <ul style="list-style-type: none"> • The application will be referred to the local 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. • Green Hill Council has agreed to peer review any regulatory decisions should compliance decisions be made. • 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.



Responsibilities

Councillors (policy template only)

Councillors will review and adopt this policy as required.

Senior Management Group

The Senior Management Group will review and endorse this policy as required.

Director Planning & Infrastructure Services

The Director Planning & Infrastructure Services will ensure this policy is reviewed and updated accordingly and will present the final policy to SMG for review and endorsement. The Director will ensure that management statements are published on the NSW Planning Portal.

All Staff

All staff will abide by this policy and provide constructive feedback to their respective coordinator, supervisor or manager in relation to the policy and its implementation.

References and Related Legislation

- Environmental Planning and Assessment Act 1979
- Environmental Planning and Assessment Regulation 2021
- Council-related Development Application Conflict of Interest Guidelines

Version History

Version No.	Date	CM Ref	Reason for Review
1	17/02/2023	CD-2/23	New Policy