

POLICY NAME

Managing Conflict of Interest for Council
Related Development

DATE ADOPTED

17 April 2023

REVIEW DATE

17 April 2027

COUNCIL MINUTE NUMBER

PRC36

POLICY TYPE

Council

RESPONSIBLE DEPARTMENT

Governance

RELATED DOCUMENTS

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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.

Policy statement

This Policy is adopted to ensure that Council has a thorough and transparent process for dealing with potential conflicts of interest where Council is the developer, landowner or holds a commercial interest in land that is regulated.

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.

Scope

This Policy applies to council-related development.

1. 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 Penrith City 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.

2. Policy

2.1 Management controls and strategies

When dealing with potential conflicts of interest for council-related development, Council will consider this policy and implement controls based on the level of risk:

a) Low Risk

Development Applications (except those identified in 2.2) not required to be determined by the Local Planning Panel (as outlined in the Minister's Panel Direction) or another Panel will be assessed and determined by Council staff under delegation. Council may engage the services of another council or an independent consultant to conduct a peer review.

b) Moderate Risk

Development Applications outside the parameters required in the low risk category, will be either assessed under delegation with a peer review or assessed by an independent consultant completely. These Applications are required to be determined by a Local Planning Panel unless the Capital Investment Value requires them to be determined by a Regional Planning Panel. Council assessment staff will not be involved with the preparation of the application other than to provide advice in the same way they would to an applicant normally.

c) High Risk

For Development that is particularly high risk due to its scale or community interest, then the controls that apply to moderate risk applications will be imposed in addition to the requirement that assessment reports be prepared by an external consultant.

d) The regulation and enforcement of approved council-related development:

- May be undertaken by, depending on the circumstances by:
 - (i) a private certifier or
 - (ii) Council staff under delegation in accordance with Council's compliance and enforcement policy ensuring separation between relevant departments
 - (iii) engagement of a neighbouring Council; or
 - (iv) otherwise as required by the relevant legislation.

2.2 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.

3. 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

(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 3 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.

4. Summary of Requirements

- a) Council-related development applications will be accompanied by a management strategy statement, which explains how Council will manage potential conflicts of interest.
- b) Council will record any conflicts of interest in connection with each council-related development application, and the measures taken to manage the conflicts, in its existing DA register.
- c) All Council-related development applications will be exhibited for a minimum of 28 days.

5. Forms – Management Statement Example

Conflict of interest management statement	
Project name	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

Document Control

Policy History	Date