



# COUNCIL-RELATED DEVELOPMENT APPLICATION CONFLICT OF INTEREST POLICY

#02.04.19

## 1. BACKGROUND

Councils are development regulators but can also be the developer, landowner or hold a commercial interest in the land they regulate. Where Council has this dual role, a potential conflict can arise between Council's interests in the development and its 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 their relationship with communities and build and enhance trust.

The following requirements have been introduced into the Environmental Planning and Assessment Regulation 2021 to address conflicts of interest in Council related development applications:

- Councils must adopt and have a policy that specifies how conflicts of interest in connection with council-related development applications will be handled. The policy must comply with the requirements in the guidelines developed by Department of Planning and Environment;
- Council-related development applications must now be accompanied by either a management strategy statement, which explains how the council will manage potential conflicts of interest, or a statement that the council has no management strategy for the application;
- Councils must record conflicts of interest in connection with each council-related development application, and the measures taken to manage the conflicts, in their existing Development Application register; and
- Council-related development applications must be exhibited for a minimum of 28 days to ensure transparency during the assessment process.

## 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 applications and meet the legislative requirements of the Environmental Planning and Assessment Regulation 2021.



### 3. POLICY OBJECTIVES

The objectives of this Policy are to:

- establish management controls and/or management strategies to address potential conflicts of interest at the different phases of the development process for the types of Council-related development applications that the council could be involved in;
- outline the process through which potential conflicts of interest will be identified, the risks assessed and appropriate management controls determined; and
- outline the process that will be followed to publicly communicate the management approaches for each development subject to the policy.

### 4. LEGISLATION

The Policy relates to the following legislation:

- *Environmental Planning and Assessment Act 1979*
- *Environmental Planning and Assessment Regulation 2021*
- *Local Government Act 1993*
- *Protection of the Environment Operations Act 1997*

### 5. APPLICATION/SCOPE

This policy applies to all Council-related development applications which are the subject of an application made under Part 4 of the *Environmental Planning and Assessment Act 1979*, and lodged on or after 3 April 2023.

For the purposes of this policy, an application for development on private land does not become a council-related development simply due to the proposal including works on a public road managed by a council, such as driveway or other minor works.

### 6. POLICY

#### 6.1 Management controls and/or management strategies to address potential conflicts of interest at the different phases of the development process

The following management controls will be applied to:

##### a) The assessment of an application for council-related development

- i. all Council-related development applications will not be prepared by staff within Councils Environmental Services Department. Applications are to be prepared by another Council Department or external consultant;



- ii. the assessment of Council-related development applications with a capital investment value of \$2 million or less, or in the case of a subdivision involving the creation of ten (10) allotments or less, can be undertaken by Council staff under delegation;
- iii. all Council-related development with a capital investment value exceeding \$2 million, or in the case of a subdivision involving the creating more than ten (10) allotments, will be referred to an external party for assessment;
- iv. all applications for Council-related development will be publically exhibited in accordance with the Weddin Shire Council Community Participation Plan, for a minimum of 28 days, inviting comments or submission from members of the public;
- v. suitable records are to be kept of all communication between the applicant and Council staff. This is to be via the NSW Planning Portal or other formal record such as email; and
- vi. any application for Council-related development which is the subject five (5) or more submissions, will be referred to an external consultant for assessment.

#### **b) The determination of an application for council-related development**

- i. all Council-related development applications will be reported to Council for determination, unless the development meets the criteria to be Regionally Significant Development or State Significant Development;
- ii. all Council-related development applications which meet the criteria to be Regionally Significant Development will be referred to the Western Region Planning Panel for assessment and determination; and
- iii. all Council-related development applications which meet the criteria to be State Significant Development, will be referred to the Department of Planning for assessment and determination.

#### **c) The regulation and enforcement of approved council-related development**

- i. dependent on the regulation and enforcement activity required, Council officers under delegation for building and subdivision work may regulate a Council-related development application, where Council has been nominated as the Principal Certifier;
- ii. Council cannot be nominated as the Principal Certifier for a Council-related development application, where the capital investment value is \$2 million or more. In this case a private certifier will be engaged or Council will enter into a shared services arrangement with a neighbouring Council. In this case regulation and enforcement will be undertaken by the nominated certifier or Council;
- iii. all certificates issued under Part 6 of the *Environmental Planning and Assessment Act 1979*, will be published on the NSW Planning Portal;
- iv. any complaints relating to Council-related developments applications, which require significant enforcement action, will be reported to Council; and



- v. any complaints regarding Council-related development applications, which relate to offences under the *Protection of the Environment Operations Act 1997*, will be reported to the NSW Environment Protection Authority (EPA) as the appropriate regulatory authority.

## **6.2 Process through which potential conflicts of interest will be identified, the risks assessed and appropriate management controls determined;**

- a) All Council-related development applications are to be referred to the General Manager for a conflict-of-interest risk assessment.
- b) The General Manager is to:
  - i. assess whether the application is one in which a potential conflict of interest exists;
  - ii. identify the phase(s) of the development process at which the identified conflict of interest arises;
  - iii. assess the level of risk involved at each phase of the development process;
  - iv. 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 the management controls outlined in clause 6.1 and the outcome of the General Manager's assessment of the level of risk involved as set out clause 6.2(2)(c).

## **6.3 Process that will be followed to publicly communicate the management approaches for each development application subject to the policy.**

- a) The General Manager is to document the proposed management approach for the proposal in a statement that is published on the NSW Planning Portal at the time of lodgement of the development application. The statement shall be made in the form included in Appendix 1 to this Policy.
- b) A copy of the proposed management approach will be included with the documents which are publically exhibited.
- c) A copy of the proposed management approach will be made available free of charge to any member of the public.
- d) A copy of the management approach undertaken will be included in Councils Development Application register.



## 7. DEFINITIONS

Key Terms	Meaning
<b>development application</b>	an application for consent under Part 4 of the Act to carry out development and includes an application to modify a development consent and does not include an application for a complying development certificate.
<b>council</b>	Weddin Shire Council
<b>council-related development application</b>	a development application, for which a Council is the consent authority, that is <ol style="list-style-type: none"> <li>a. made by or no behalf of the Council, or</li> <li>b. for development on land, other than a public road within the meaning of the Local Government Act 1993               <ul style="list-style-type: none"> <li>–</li> <li>i. of which the Council is an owner, a lessee or a licensee, or</li> <li>ii. otherwise vested in or under the control of the Council. 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</li> </ul> </li> </ol>
<b>development process</b>	means application, assessment, determination, and enforcement
<b>the Act</b>	means the <i>Environmental Planning and Assessment Act 1979</i> .

Note:

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.



<b>Title: Council-Related Development Application Conflict of Interest Policy</b>		
<b>Department: Environmental Services</b>		
<b>Version</b>	<b>Date</b>	<b>Author</b>
1 - 02.04.19	Adopted 097/23 18 May 2023	Director Environmental Services
<p>This policy may be amended or revoked at any time and must be reviewed at least three (3) years since its adoption (or latest amendment). The Director Environmental Services will be responsible for the review of this policy. Review of this policy will incorporate relevant legislation, documentation released from relevant state agencies and best practice guideline.</p>		
<b>Review Date:</b>		
<b>Amendments in the release</b>		
<b>Amendment History</b>	<b>Date</b>	<b>Detail</b>
<b>Annexure Attached:</b>		
<p><b>Noreen Vu</b> <b>General Manager</b></p>		



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## APPENDIX 1

<b>Conflict Of Interest Management Statement</b>	
<b>Project name</b>	
<b>DA number</b>	
<b>Potential conflict</b>	
<b>Management strategy</b>	
<b>Contact</b>	