

# Council-related Development Application Conflict of Interest Policy

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# 1. 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.

# 2. Background

This Policy has been prepared 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.

# 3. Scope

This policy applies to Council-related development and not councillor or personal staff conflicts. The policy should be read in conjunction with Federation Council's Code of Conduct

# 4. Policy statement

The policy has been adopted to

- establish management controls and/or a management strategy to address potential conflicts of interest at the different phases of the development process for the types of council-related development 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.

# 5. Process for identifying and managing potential conflicts of interest

## 5.1 Management controls and strategies

- (1) The following management controls may be applied to:
  - a. the **assessment** of an application for Council-related development
    - all Council-related development with a construction value exceeding \$2M shall be referred to an external party for assessment;
    - communication between the applicant and Council's assessment staff is to be made via public avenues (ie. NSW Planning Portal) or email. Direct access to the assessment staff by the applicant is not permitted;
    - Council development assessment staff who have no involvement in preparing the application will be responsible to assess or manage the assessment of the development application;

- Council-related development will be exhibited for a minimum of 28 days to ensure transparency during the assessment process;
  - other Council-related development may be referred for external assessment where deemed appropriate by the General Manager; Deputy General Manager; Director Planning, Place and Sustainability; or Manager Planning and Development.
- b. the **determination** of an application for Council-related development:
- all Council-related development with a construction value of over \$5M is to be referred to the Western Regional Planning Panel for determination;
  - all Council-related development which receives an objection during the notification period shall be reported to Council for determination;
  - as per the existing delegations of Council to the General Manager, all applications for proposed Development on Council owned or controlled land, for a capital investment value of between \$250,000 and \$5,000,000, regardless of if any objections are received or not, are to be referred to Council for determination; and
  - other Council-related development may be referred to Council for determination where deemed appropriate by the General Manager; Deputy General Manager; Director Planning, Place and Sustainability; or Manager Planning and Development.
- (2) In accordance with the legislation, no management controls need to be applied following kinds of development:
- commercial fit outs, change of use of tenancies and minor changes to a building façade
  - internal alterations and additions to buildings that are not a heritage item
  - advertising signage
  - minor building structures projecting from a building facade over public land (such as awnings, verandas, bay windows, flagpoles, pipes, and services)
  - Ancillary structures within public reserves and Council managed land, such as sheds and shade structures not exceeding 100sqm in area and wall height not exceeding 6m.
  - development where the council might receive a small fee for the use of their land.

## 5.2 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 a delegate) for a conflict-of-interest risk assessment.

*Note: Council-related development is defined in section 6.*

- (2) The general manager (or their 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 clause 6 of the policy and the outcome of the general manager's

assessment of the level of risk involved as set out clause (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.*

**(3) Management Statement**

- a. Note: Management statements should include at a minimum:
  - The nature of the interest, ie. what is Council’s relationship with the development – landowner, landlord, etc;
  - Council’s investment or financial risk associated with the development;
  - management strategy or mitigation measures on how the conflict will be managed; and
  - Council contact (generally the delegated authority who will decide the development application or the staff member managing the external assessment of the application).
- b. The following is an example of a statement that could be published by Councils to document its proposed management approach for a Council- related development.

**Scenario**

*Federation Council is upgrading one of their assets, ‘Federation 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 Council conflict of interest management statement**

<i>Council conflict of interest management statement</i>	
<i>Project name</i>	<i>Federation Civic Place</i>
<i>DA number</i>	<i>DA2024/0001</i>
<i>Potential conflict</i>	<i>Federation Council is the applicant. Federation Civic Place has an estimated capital investment value of \$5 million and the council expects to receive revenue through renting commercial office spaces.</i>

<i>Management strategy</i>	<p><i>The council is managing potential conflicts of interest in this matter as follows:</i></p> <p><i>The application will be referred to the regional planning panel to determine the development application.</i></p> <p><i>An external party will assess the DA.</i></p> <p><i>A private certifier will be engaged to undertake the certification for the development.</i></p> <p><i>Council X has agreed to peer review any regulatory decisions should compliance decisions be made.</i></p> <p><i>Key project milestones following the development consent will be reported at a public council meeting.</i></p>
<i>Contact</i>	<i>Anyone with concerns about council fulfilling its obligations should report their concerns to the council.</i>

## 6. Definitions

In this policy:

**application** means an application for consent under Part 4 of the Act to carry out development and includes an application to modify a development consent but it does not include an application for a complying development certificate

**council** means Federation 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

## 7. References & Associated Documents

Environmental Planning and Assessment Act 1979

Environmental Planning and Assessment Regulation 2021

Local Government Act 1993

Council-related Development Application Conflict of Interest Policy Guidelines – NSW Government

## 8. Policy History

Version	Date	Changes / Amendments
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1.0	14/03/2024	Draft for Council Meeting
2.0	04/06/2024	FINAL for adoption by Council

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