

Policy - Managing Conflict of Interest in Council-Related Development Applications

OBJECTIVE:

To manage potential conflicts of interest and increase transparency in the decision making process for Council-related development and meet the legislative requirements of Section 66A NSW *Environmental Planning and Assessment Regulation 2021*.

POLICY:

The *NSW Environmental Planning and Assessment Regulation 2021* requires all Councils in NSW to adopt a conflict of interest policy for Council-related development applications. This Policy is to establish the process through which potential conflicts of interest will be identified, procedures for risk assessment identified and management statement implemented.

1. Definitions:

A word or expression used in this policy has the same meaning as it has in the *NSW Environmental Planning and Assessment Act 1979* (the Act), and any instruments made under the Act, unless it is otherwise defined in this policy.

Definitions:

Application	<i>means an application for consent under Part 4 of the Act to carry out development and includes an application to modify a development consent. It does not include an application for a complying development certificate.</i>
Council	<i>means Tamworth Regional Council.</i>
Council-related development	<i>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.</i>
Development process	<i>means application, assessment, determination, and enforcement.</i>
The Act	<i>means the NSW Environmental Planning and Assessment Act 1979.</i>
Conflict of Interest Management Statement	<i>means the document required to be submitted with a Council-related development applications which explains how the council will manage potential conflicts of interest, or informs that Council has no management strategy for the application.</i>

2. Management controls and strategies

- 2.1** For all *Council-related development* applications, the following management controls are to be applied:
- A Conflict of Interest Management Statement must be prepared and submitted with the application and published on the NSW Planning Portal.

- b) Where Council is the assessing authority, the application shall not be prepared by Council's Liveable Communities Directorate. Alternatively, applications may be prepared by another Division of Council or external consultancy.
- c) In identifying whether a potential conflict of interest exists an assessment of risk is to be undertaken. All Development applications lodged with the Council that are *Council-related development* are to be reviewed at lodgement to determine whether the Conflict of Interest Management Statement submitted is suitable and addresses this Policy.
- d) All *Council-related development* applications are to be publicly exhibited for a minimum 28 days.
- e) The management controls outlined in the Table 1 are to be applied to the assessment and determination of *Council-related development* applications.

Development Type	Management Control
<i>Council-related development</i> with a cost of works up to \$250,000	<ul style="list-style-type: none"> to be assessed by Council staff. to be determined under delegated authority by the Manager of Development, Director of Liveable Communities or General Manager; or to be determined at a Council meeting at the discretion of the Director of Liveable Communities where there is a significant public interest.
<i>Council-related development</i> with a cost of works between \$250,000 and \$5 million	<ul style="list-style-type: none"> to be assessed by Council staff. Should there be a perceived conflict of interest, the application will be peer reviewed by a third-party consultant prior to determination if assessed by Council staff. to be signed under delegated authority by the Manager of Development, Director of Liveable Communities or General Manager; or to be determined at a Council meeting at the discretion of the Director of Liveable Communities where there is a significant public interest.
<i>Council-related development</i> with a cost of works greater than \$5 million	<ul style="list-style-type: none"> to be assessed by third party consultant. to be determined by the Northern Regional Planning Panel
<i>Council-related development</i> involving a Section 4.55(1) or Section 4.55(1A) modification* (*Minor error, misdescription, miscalculation or minimal environmental impact)	<ul style="list-style-type: none"> to be assessed by Council staff to be determined under delegated authority by the Manager of Development, Director of Liveable Communities or General Manager; or to be determined at a Council meeting at the discretion of the Director of Liveable Communities where there is a significant public interest.
<i>Council-related development</i> involving a Section 4.55(2) modification* (*all other modifications)	<ul style="list-style-type: none"> to be assessed by Council staff. to be determined under delegated authority by the Manager of Development, Director of Liveable Communities or General Manager; or

	<ul style="list-style-type: none"> to be determined at a Council meeting at the discretion of the Director of Liveable Communities where there is a significant public interest; or (where relevant) to be determined by the Northern Regional Planning Panel as specified under Section 275 of the Environmental Planning and Assessment Regulation 2021.
<i>Council-related development</i> that is State Significant Development	<ul style="list-style-type: none"> To be assessed and determined by the NSW Department of Planning and Environment.

Table 1 – Management controls for Council related development applications

- f) The regulation and enforcement of approved Council-related development, may be undertaken by:
- (i) a private certifier; or
 - (ii) Council, under delegation for building and subdivision work where Council is nominated as the Principal Certifying Authority or required to by the Act; or
 - (iii) Council staff under delegation in accordance with Council's compliance policy ensuring separation of regulation/enforcement activities and project management; or
 - (iv) engagement of an independent third party.

2.2 Unless it is determined by the Director of Liveable Communities that there is significant public interest. The types of applications that may include a Conflict of Interest Management Statement advising that Council has no management strategy for the application are the following:

- a) minor commercial fit outs, alterations or additions to buildings that are not a heritage item;
- b) demolition of a building/structure that is not a heritage item;
- c) advertising signage that are not to be installed on a heritage item;
- d) minor building structures on public land (such as awnings, verandas, bay windows, flagpoles, pipes, amenity buildings and services);
- e) The installation of solar energy systems and small-scale battery systems in connection with an existing building; or
- f) Temporary events and structures to be erected for a duration of 3 days or less and cost of works less than \$10,000;

2.3 This Policy does not apply to works such as driveways in road reserves or structures/connection in drainage reserve or similar works as these are not considered Council-related applications.

3. Conflict of Interest Management Statement example

See Table 2 (*over page*) for an example of a Conflict of Interest Management Statement.

Conflict of interest Management Statement

Project name	Blue River 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.

Table 2: Conflict of Interest Management Statement Example