

Conflicts of Interest Policy

Dealing With Development Applications Lodged by Council Staff, Councillors and Council

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| Adoption Date: | 20/09/2022 |
| Amendment Date: | |
| Minute Number: | MIN22.641 |
| Review Date: | 01/12/2024 |
| Directorate: | City Development |
| Record Number: | POL22/149 |

Part 1 Preliminary

1) Name of policy

This policy is the Conflicts of Interest Policy.

2) Aim of Policy

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

3) Scope

This policy applies to council-related development and where an applicant is a staff member or Councillor.

4) Definitions

(1) 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 Shoalhaven 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

development process means application, assessment, determination, and enforcement

general manager – is referred to as the Chief Executive Officer (CEO)

the Act means the *Environmental Planning and Assessment Act 1979*.

(2) 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

(3) Notes included in this policy do not form part of the policy.

Part 2 Process for identifying and managing potential conflicts of interest.

5) Management controls and strategies

- (1) The following management controls may be applied to:
 - (a) the **assessment and determination** of an application for council-related development. Refer to Table 1 for controls.
 - (b) the regulation and enforcement of approved council-related development
Options could include:
 - use of independent consultants
 - enter into a shared services arrangement with a neighbouring Council
 - Public reporting on key milestones such as construction and occupancy certificates.
- (2) The management strategy for the following kinds of development is that not 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 façade 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.

6) 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 CEO for a conflict-of-interest risk assessment.

Note: Council-related development is defined in section 4.

- (2) The CEO 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 5 of the policy and the outcome of the general manager's assessment of the level of risk involved as set out clause 6(2)(c) of the policy,

Note: The Chief Executive Officer 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.

7) Where staff and Councillors have a potential conflict of interest

- (1) The following principles must be adhered to:
 - (a) If a Council staff member is the applicant and/ or landowner or is the delegated staff member to act as an applicant for a Council project / development, any discussion relating to the affected DA processing, status, etc, must be undertaken in the staff member's (ie, applicant) own time (if the matter is a private or personal project), in a public location (eg, foyer, front counter).
 - (b) If a Councillor or staff member is the applicant and/ or landowner, the Councillor or staff member must not use his/ her position to influence the Assessing Officer in the processing of his/ her application.
 - (c) The assessing officer is to ensure that all processes undertaken during the assessment of any DA are in accordance with Council's policies, procedures, and legislative requirements. The applicant is not to be given any special, preferential treatment nor discriminated against.
 - (d) Trim containers are to be 'blocked' where a staff member or a Council officer as delegate /applicant for a Council application is applicant / owner.
- (2) How to ascertain if the DA is to be reported to Council for determination – applicant/owner is a staff member or Councillor.

Generally, any DA lodged where the applicant and/ or landowner is a Council staff member or Councillor, the DA should be processed in the normal manner, which may include determination under delegated authority.

If one (1) or more of the following matters are triggered, the DA is to be reported to the elected Council for determination:

- (a) the scale and extent of the DA lodged eg, pergola / pool vs larger commercial proposal.
- (b) the proposed DA seeks a substantive variation to any performance based DCP or Council Policy.
- (c) the proposed DA creates significant public interest and/ or large numbers of submissions.
- (d) The applicant and/ or landowner is a staff member within City Development unless otherwise deemed exempt by the Director of City Development; and
- (e) The extent of any public perception of a possible conflict of interest that may exist between the DA lodged and the applicant's and/ or landowner's relationship with the City Development Directorate (ie, relevant assessment staff).

8) Implementation

To be implemented by City Development

9) Declarations of Conflicts of Interest

Where a staff member, team within Council, or a Councillor, is party to a development application as applicant and/or landowner, the person(s) must advise their supervisor of their conflict of interest and ensure that this procedure and Council's Code of Conduct are adhered to. Declarations must be made when submitting an application via the NSW Planning Portal.

10) Review

This policy must be reviewed within one year of the election of every new Council, or earlier should circumstances arise to warrant revision.

Table 1 – Assessment & Determination Criteria

| Category of DA where Council is both Applicant and Landowner, or where Council has an interest on the land | Assessment | Determination |
|--|---|---|
| <p>Minor DA</p> <p>Minor DAs refers to development that is small-scale, routine operational and/ or non-controversial. The determination of “minor” shall be made after consideration of the following criteria, at the discretion of the Director City Development:</p> <ul style="list-style-type: none"> - The estimated value of the works to be undertaken. - The potential impact on surrounding residential amenity associated with the proposed development. - The consistency of the proposed works with an existing Council Management Plan or strategy. - Whether the proposal involves any substantial variations from existing Council policy; and - Whether the proposal will lead to any financial benefit for Council. <p>Examples include replacement amenities block, internal refurbishment of a building. Less than 5 lot subdivision.</p> | <ul style="list-style-type: none"> • Assessment must be by Council staff not involved in the application and peer reviewed by immediate supervisor. • A management statement to be prepared and exhibited with DA, unless it is of a kind referred to in Part 2, (5) (2) of the Policy | <ul style="list-style-type: none"> • Determination under delegated authority. <p>(Other than for development on community land under section 47E s. of the <i>Local Government Act 1993</i>.)</p> |
| <p>Routine DA (not minor) or other form of DA that takes place within Council’s industrial estates or on Council reserves and complies with zoning, land use provisions and Council policies, with no substantial or numerous submissions</p> <p>Examples include, a 5-lot subdivision, a new amenities block, alterations and addition to existing buildings. A new fire station.</p> | <ul style="list-style-type: none"> • Assessment by Council staff not involved in the application and peer reviewed by senior member of staff. • Assessment by external independent town planning consultant (in accordance with Council’s <i>Purchasing Policy</i>) may be required, if determined by the Director, City Development. • Management statement to be prepared and exhibited with DA. • <i>Potential</i> referral to Risk & Audit Committee. | <ul style="list-style-type: none"> • Determination under delegated authority by Senior staff, <p>(Other than for development on community land under section 47E of the <i>Local Government Act 1993</i>.)</p> |
| <p>Major DA</p> <p>Major DAs refer to development that is large-scale, significant and/ or controversial. The determination of “major” shall be</p> | <ul style="list-style-type: none"> • Engage external independent town planning consultant (in accordance with Council’s <i>Purchasing Policy</i>), to: | <ul style="list-style-type: none"> • Report to council for determination. <p>OR</p> <ul style="list-style-type: none"> • |

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| <p>made after consideration of the following criteria, at the discretion of the Chief Executive Officer / [Director City Development]:</p> <ul style="list-style-type: none">- The estimated value of the works to be undertaken.- If the DA is Regional Development (<i>under the State Environmental Planning Policy (Planning Systems) 2021</i>).- The potential impact on surrounding residential amenity associated with the proposed development.- The consistency of the proposed works with an existing Council Management Plan or strategy.- Whether the proposal involves any substantial variations from existing Council policy; and- Whether the proposal will lead to any financial benefit for Council. <p>Examples include: Coastal protection works, new industrial estates, new community facilities and libraries.</p> | <ul style="list-style-type: none">• Management Statement to be prepared and exhibited with DA.• For applications that do not trigger referral to the Regional Planning Panel, a referral may be required to the Audit and Risk Committee. | <ul style="list-style-type: none">• Determination by the Regional Planning Panel if the Capital Investment Value (CIV) of the application is >\$5million in accordance with Schedule 6 of the State Environmental Planning Policy (Planning Systems) 2021. <p>Regional applications must be independently assessed.</p> |
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Table 2 - Example management statement

Note: The management statement must be published on DA Tracking (or Portal if mandated).

| <i>Council conflict of interest management statement</i> | |
|---|--|
| Project Name | |
| DA number | |
| Potential conflict | |
| Management strategy | <p>Refer to Table 1 for guidance. The strategy could include (examples only)</p> <ul style="list-style-type: none"> • The DA to be peer reviewed • Assessment staff are not project team staff • ‘Independent assessment • Determination by the Regional Planning Panel • Key milestones post determination reported to Council and published |
| Contact | Anyone with concerns about council fulfilling its obligations should report their concerns to the council. |