

# Council-related Development Application Conflicts of Interest Management Policy

<b>Reference number:</b>	POL 045
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<b>Policy owner:</b>	Manager Development Assessment & Building Certification
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This policy is the 'Council-related Development Application - Conflicts of Interest Management Policy' establishes the method in dealing with council-related development throughout the development process.

## Purpose

Councils are development regulators. But they also can be the developer, landowner or hold a commercial interest in the land they regulate. Where councils have this dual role, an inherent conflict can arise between their interests in the development and their duty as regulator.

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

## Scope

This policy applies to council-related development, the subject of a development application with Wagga Wagga City Council.

## Policy Provisions

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

- (1) Management controls and strategies
  - (a) The following management controls may be applied to:
    - (i) the assessment of an application for council-related development:
      - Development applications with a CIV (capital investment value) of less than \$5,000,000 will be assessed by Council's Development Assessment & Certification Division or an independent Planning Consultant, as determined by the General Manager.

- The applicant/proponent shall only engage with the assessing officer/s of the development application, the same as any other member of the general public.
  - The development application shall be placed on public exhibition for a minimum of twenty-eight (28) days.
- (ii) the determination of an application for council-related development
- Council-related development with a CIV of less than \$5,000,000 shall be determined by the General Manager (or their delegate).
  - Council-related development with a CIV of more than \$5,000,000 shall be determined by the Southern Regional Planning Panel a statutory body independent of Council. Councillor representatives/members of the Southern Regional Planning Panel shall declare a conflict of interest in the matter and shall not participate in the assessment or determination of the application.
- (iii) the regulation and enforcement of approved council-related development
- The regulation and enforcement of approved council-related development shall be the same as for any other approved application, in accordance with the relevant legislation.
- (2) The management strategy for the following kinds of development is that no management controls need to be applied:
- commercial fit outs and minor changes to the building façade
  - internal alterations or 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)
  - development where Council might receive a small fee for the use of their land.
- (3) In circumstances where Council is of the opinion that the development is not a standard development, controversial projects, etc., Council may consider alternate options to the assessment and determination of the development application, such as referral to either:
- another council; or
  - an independent contractor; or
  - the Southern Regional Planning Panel
- (4) In circumstances where Council is of the opinion that the development is not a standard development, controversial projects, etc., Council may consider alternate options to the regulation and/or enforcement of the site and/or development consent, such as:
- referral to a private certifier (engagement)
  - publication of certificates issued under Part 6 of the Act on the NSW Planning Portal
  - reporting of key milestones to the full council

## 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 section 4.

- (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 clause 5 of the policy and the outcome of the general manager’s assessment of the level of risk involved as set out clause 10(c) of the policy

**Note:** The general manager (or delegate) may determine that no management controls are necessary in the circumstances.

- (e) e document the proposed management approach for the proposal in a statement that is published on the NSW Planning Portal

The following is an example of a statement to be published by council to document its proposed management approach in a particular circumstance.

### Management Statement Example

The following is an example of a statement to be published by council to document its proposed management approach in a particular circumstance.

Conflict of interest management statement	
Project name	Riverside Civic Place
DA number	DA50/xxxx
Potential conflict	Wagga City Council is the applicant, Riverside Civic Place has estimated capital investment of \$5.1 million and the council expects to receive revenue through renting commercial office spaces.
Management strategy	The Council is managing potential conflicts of interests in this matter as follows: 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.

Conflict of interest management statement	
	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.

## Legislative Context

- *Environmental Planning and Assessment Act 1979*
- Environmental Planning and Assessment Regulation 2021

## Related Documents

- Processing development applications lodged by Councillors, staff and individuals of which a conflict of interest may arise, or on council owned land policy (POL 046)
- Code of Conduct
- Conflicts of Interest Policy (POL 112)

## Definitions

Term	Definition
Application	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
Council	Wagga Wagga City Council
Council-related development	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	Application, assessment, determination, and enforcement the Act means the <i>Environmental Planning and Assessment Act 1979</i>
the Act	<i>Environmental Planning and Assessment Act 1979</i>
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.	

## Revision History

Revision number	Council resolution	Council meeting date
1	Res No: 23/2023	21 August 2023