



Attachment 1 to Item 4.3.4

Draft Managing Conflict of Interest for Council Related Development Policy

Date of meeting: 11 July 2023
Location: Council Chambers
Time: 6:30 p.m.



Managing Conflict of Interest for Council Related Development

DRAFT COUNCIL POLICY

Division:	City Planning	Policy Number:	
Branch:	Development Assessment	Adopted Date:	
Responsible Officer:	Manager Development Assessment	Next Review Date:	
Director:	Director City Planning	Version:	1



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1. TITLE

Managing Conflict of Interest when dealing with Council related development.

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 and meet the legislative requirements of Clause 66A Environmental Planning and Assessment Regulation 2021.

This Policy applies to council-related development.

2.1 Definitions

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

Council-related development means development for which 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.

Development process means application, assessment, determination, and enforcement

The Act means the Environmental Planning and Assessment Act 1979.

2.2 Policy background

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.

Identifying these conflicts of interest early and finding ways to address them is crucial to good governance and allows council to strengthen its relationship with communities and build and enhance trust.

3. SCOPE

3.1 Management controls and strategies

1. The following management controls may be applied to:
 - a) The **assessment** of an application for Council related development:
 - (i) Council's Development Assessment Team will not be involved in the preparation or lodgement of the Development Application.
 - (ii) Enter into a service agreement with an adjoining Council for the assessment of the Development Application;
 - (iii) Utilise an external Planning Consultant to complete the assessment of Development Applications;
 - (iv) Records of meetings and the like shall be documented and registered in ECM.



- b) The **determination** of an application for Council-related Development Applications:
- (i) Development that satisfies the requirement to be reported to, and determined by the Hawkesbury Local Planning Panel as per the Ministerial Local Planning Directions with the exception of development types outlined in Part 2 of this document;
 - (ii) that meet the criteria of a regionally significant development in accordance with State Environmental Planning Policy (Planning Systems) 2021 shall be reported to, and determined by the Sydney Western City Planning Panel.
 - (iii) Engage a Private Certifier for certification services including the issue of Complying Development Certificates, Construction Certificates and Occupation Certificates;
 - (iv) Publish certificates issued under Part 6 of the Environmental Planning and Assessment Act 1979 on the NSW Planning Portal.

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

Dependent on the regulation and enforcement activity required, may be undertaken by:

- (i) Enter into a service agreement with an adjoining Council for the compliance and enforcement of a Development Consent;
 - (ii) Utilise the services of a Private Certifier to assist in the certification of a development in this category;
 - (iii) Reporting of particular milestones to Council's General Manager.
2. The management strategy for the following kinds of development is that no 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 over public land (such as awnings, verandas, bay windows, flagpoles, pipes, and services); and
 - e) development where Council only receives a small fee for the use of the land.

3.2 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 delegate for a conflict-of-interest risk assessment.
Note: Council-related development is defined in sub-section 1.1.
2. The Manager Development Assessment 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 Section 2 of this Policy and the outcome of this assessment of the level of risk involved as set out clause 2.2 (2)(c) of this Policy, Note: The Manager Development Assessment 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.



Forms – Management Statement Example

Project name	
DA number	
Potential conflict	
Management strategy	
Contact	

4. BACKGROUND

Changes to the Environmental Planning and Assessment Regulation 2021 require that NSW councils implement a Policy which manages Conflict of Interest for Council-related development. In response to this statutory requirement, a policy has been developed that is generally in accordance with the council-related Development Application Conflict of Interest Guidelines published by the NSW Department of Planning and Environment.

5. ROLES AND RESPONSIBILITY

Responsibility	Roles and Responsibility
Overall responsibility for the Document Control policy.	Director City Planning - Approve minor changes to procedure
The following Council-related applications must be referred to the Manager Development Assessment - applications for Council-related development - lodged development applications - lodged complying development certificates, construction certificates, occupation certificates and building information certificates.	Manager Development Assessment - undertake a conflict of interest risk assessment and document what management controls or strategies are to be implemented during the phases of the application in a management statement
Ensure that the management controls and strategies are adhered to during the entire development cycle.	Manager Development Assessment

6. RELATED DOCUMENTS

- Environmental Planning and Assessment Act 1979
- Environmental Planning and Assessment Amendment (Conflict of Interest) Regulation 2021
- State Environmental Planning Policy (Planning Systems) 2021)
- Hawkesbury Local Environmental Plan 2012
- Hawkesbury Development Control Plan 2002
- Local Government Act 1993