

POLICY NAME: CONFLICTS OF INTEREST FOR COUNCIL-RELATED DEVELOPMENT APPLICATIONS

POLICY REF: C14

MEETING ADOPTED: 23 February 2023
Resolution No. 230223/17

POLICY HISTORY:



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PART 1 PRELIMINARY

1.1 Objective

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

1.2 Scope

This policy applies to all Council-related development.

1.3 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 and an application for a complying development certificate.

council means Ballina Shire 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*.

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

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

1.4 Savings

This Policy will not apply to development applications lodged prior to the date of adoption of the Policy.

PART 2 PROCESS FOR IDENTIFYING AND MANAGING POTENTIAL CONFLICTS OF INTEREST

2.1 Council-related Development Applications

The Act defines a **council-related development application** as:

a development application for which council is the consent authority, that is:

- (a) *made by or on behalf of the council, or*
- (b) *for development on land:*
 - (i) *of which council is the owner, a lessee, or a licensee, or*
 - (ii) *otherwise vested in or under the control of the council.*

NOTE: This specifically **excludes** applications made by a private developer where the only aspects of the proposal that relate to council-owned land involve connection of driveway to a public road and/ or connection of stormwater to council infrastructure or drainage reserve.

Other than applications for the kind of development referred to in Section 2.3.2 (below), a council-related development application must be accompanied by a statement specifying how the council will manage conflicts of interest that may arise in connection with the application because the council is the consent authority.

That statement must reflect the terms and requirements of this policy.

An application for development of the kind of development referred to in Section 2.3.2 (below) must include a statement that no management controls are required, in accordance with this policy.

2.2 Conflict of Interest Risk Assessment

2.2.1 Prior to the finalisation of submission of a council-related development application, the proposal is to be referred to the Director, Planning and Environmental Health, or their delegate, to undertake a conflict of interest risk assessment.

2.2.2 In reviewing the development application, the Director or their delegate will:

- assess whether the application is one in which a potential exists for conflict of interest.
- identify which phases of the development process at which the identified conflict of interest arises.
- assess the level of risk involved at each phase of the development process.
- determine what (if any) management controls should be implemented to address the identified conflict of interest having regard to the controls and strategies outlined below and the level of risk identified.
- document the proposed management approach for the proposal in a statement that is published on the NSW Planning Portal with the lodgement of the DA (see Sample Statement in Appendix 1).

2.3 Management Controls and Strategies

2.3.1 The management control options below may be applied to:

- the assessment and determination of an application for council-related development – Refer to Table 1 (below)
- post development applications and processes such as subdivision works certificates and construction certificates.
- the regulation and enforcement of approved council-related development.

Management control options include:

- use of independent consultants and/or private certifiers,
- shared services arrangements with a neighbouring council,
- public reporting on key milestones, such as construction and occupation certificates.

2.3.2 No management controls need to be applied to the following kinds of development:

- commercial fit outs and minor changes to building façade

- internal alterations and additions to buildings that do not affect the heritage value of a listed heritage item.
- advertising signage
- minor building structures projecting from a building façade over public land (such as awnings, verandahs, bay windows, flagpoles, pipes, and services)
- development where the council might receive a small fee for the use of land.
- minor modifications to an existing development approval.

Table 1: Assessment & Determination Criteria

Category of DA	Assessment Options	Determination
<p>Minor DA Refers to development that is small-scale, routine operational, and/or non-controversial¹</p>	<p>Assessment by staff not involved in the preparation of the application and peer review by Development Services Section manager or coordinator.</p>	<p>Determination under delegated authority, other than for development on community land under section 47E of the <i>Local Government Act 1993</i>.</p>
<p>Standard DA Refers to development proposed on council-owned or managed land that substantially complies with zoning, landuse provisions and council policies, with no substantial or numerous submissions²</p>	<p>Assessment by staff not involved in the preparation of the application and peer reviewed by PEHD Division Director or Development Services Section Manager.</p> <p>Assessment by external independent town planning consultant.</p>	<p>Determination under delegated authority by Director, Planning and Environmental Health or Manager Development Services, other than for development on community land under section 47E of the <i>Local Government Act 1993</i>.</p>
<p>Major DA Refers to large-scale, significant and/ or controversial DAs³ Includes Regionally Significantly Development as defined in <i>State Environmental Planning Policy (Planning Systems) 2021</i></p>	<p>Assessment by staff not involved in the preparation of the application and peer reviewed by PEHD Division Director or Development Services Section Manager, or</p> <p>Assessment by external independent town planning consultant, or</p> <p>Assessment by neighbouring council planning staff.</p>	<p>Determination by elected council, or</p> <p>Referral to Northern Regional Planning Panel for determination (regionally significant development).</p>

Notes:

1. **Designation as *Minor DA* is to be made based on project-specific assessment of criteria, including, but not limited to:**
 - *the estimated value of the works to be undertaken,*
 - *the potential impact on surrounding residential amenity and/or environmental values of the site and locality,*
 - *whether the proposal will lead to any financial benefit for council.*

2. *Examples of a **Standard DA** include alterations and additions to an existing building, new community infrastructure, subdivision of land.*

The Director Planning and Environmental Health, or delegate, shall determine which assessment option is to be pursued and whether the application is to be referred to Council's Audit, Risk and Improvement Committee.

3. *For each **Major DA**, the Director Planning and Environmental Health, in consultation with the General Manager, shall determine which assessment and determination options are to be pursued and whether application is to be referred to Council's Audit, Risk, and Improvement Committee.*

PART 3 INFORMATION AND REVIEW

3.1 Background

Council is the development regulator within Ballina Shire. In some circumstances, Council can also be a developer, landowner, or hold a commercial interest in the land we 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 councils to strengthen their relationship with communities and build and enhance trust.

Recent changes to the *Environmental Planning and Assessment regulation 2021* have introduced a requirement for councils to assess, identify, and manage potential conflicts of interest where they are both a proponent and a regulator for a development proposal.

This policy has been developed to ensure that Council meets its statutory requirements in relation to the potential for conflicts of interest.

3.2 Related Documentation

Environmental Planning and Assessment Act 1979

Environmental Planning and Assessment Regulation 2021

Local Government Act 1993

3.3 Review

The Conflicts of Interest Policy is to be reviewed within one year of the election of a new Council.

APPENDIX 1 – EXAMPLE MANAGEMENT STATEMENT***Ballina Shire Council Conflict of Interest Management Statement***

Project name:

DA number:

Potential Conflict:

Management Strategy:

Ballina Shire Council is managing potential conflicts of interest in this project as follows:

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Contact:

Anyone with concerns about Council fulfilling its obligations should report their concerns to