

Draft Managing Conflicts of Interest: Council-related Development Policy

Policy Approval and Distribution

Approved by	Council resolution
Responsible Officer	Manager, Sustainable Development
Council Service Unit	Sustainable Development
Next Review Date	
Relevance to Community Strategic Plan	4. Collaborative and progressive leadership 4.4 Recognised as a premier local government Council that represents and advocates for community needs

Version Control

Ref	Date	Description	Resolution Number
0.1	28-03-2023	Presented to Council for Adoption	TBA

Purpose

Council has a role as both regulator of development and as a proponent of development when it allows or carries out works on its own land or assets (that is, Council-related development).

For Council-related development, this policy aims to:

- manage potential conflicts of interest that can arise;
- establish appropriate management controls for the development process; and
- to increase transparency at all stages of the Council-related development.

Scope

This policy applies to all Council-related development.

The policy is consistent with the NSW Department of Environment and Planning Guidelines on section 66A of the *Environmental Planning and Assessment Regulation 2021*.

Definitions

In this policy:

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

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.

Capital Investment Value means the all costs necessary to establish and operate the development (as established in section 3 and Schedule 7 of the Regulation).

Council means Cootamundra-Gundagai Regional Council.

Council-related development is a development application, for which Council is the consent authority, that is:

- made by, or on behalf of, the Council; or
- for the development on land
 - of which the Council is an owner, a lessee or a licensee; or
 - otherwise vested in, or under, the control of Council.

Development process means application, assessment, determination and enforcement.

Management Control means an action or measure that will be taken to manage potential conflicts of interest identified for any given Council-related development, that together form a Management Strategy.

Management Strategy Statement means 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. The Management Strategy Statement includes Management Controls.

the Regulation means the *Environmental Planning and Assessment Regulation 2021*.

A word or expression used in this Policy has the same meaning as it has in the Act, and any instrument made under the Act, unless it is otherwise defined in this Policy.

Notes included in this Policy do not form part of this Policy.

Legislative Framework

This policy should also be read in conjunction with the following legislation:

- the *Environmental Planning and Assessment Act, 1979 (and in particular, Part 4)*;
- the *Environmental Planning and Assessment Regulation 2021*;
- *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*;
- *State Environmental Planning Policy (Planning Systems) 2021*;
- *Cootamundra Local Environment Plan, 2013*; and
- *Gundagai Local Environment Plan, 2011*.

Part 1: Process for identifying potential conflicts of interest

Council-related development applications will be handled in the following manner.

1.1 Assessing the risk of conflict-of-interest

The application will be referred to the Deputy General Manager, Corporate, Community and Development for an assessment of the risk of a conflict-of-interest. That assessment must:

- i. determine whether the application is one in which a potential conflict of interest exists;
- ii. identify the phase(s) of the development process at which any potential conflict-of-interest exists;

- iii. assess the level of risk involved at each phase of the development process, in accordance with the factors stated at Clause 1.2 of this Policy;
- iv. determine what, if any, Management Controls should be implemented as a Management Strategy to address the identified conflict-of-interest at each phase of the development, consistent with the measures stated at Section 2 of this Policy; and
- v. Prepare a Management Strategy Statement (incorporating the identified Management Controls) to be submitted with the application and published on the NSW Planning Portal.

Where a risk assessment determines that no management controls or strategies are necessary in the circumstances of the application, a Management Strategy Statement to that effect must also be prepared, submitted with the application and published on the NSW Planning Portal.

Note: A Management Strategy Statement template such as the one provided at Appendix A to this policy may be used by Council to submit with the application.

1.2 Factors to be considered in assessing the risk of a conflict-of-interest

The following factors should be considered, as a minimum, when assessing the level of conflict-of-interest and resulting risks. Other factors specific to the development, and not identified in the following list, may be relevant and should be considered and recorded in the risk assessment.

- i. Whether Council is a beneficiary of the application, either directly or indirectly, financially or in any other way;
- ii. The Capital Investment Value of the application;
- iii. The scale and nature of the application, its apparent consistency with relevant planning controls, and/or the degree to which it varies from planning controls, (reasonably relying on the Statement of Environmental Effects submitted with the application); and
- iv. The likelihood of the application attracting a significant level of community attention and/or submissions.

1.3 Council-related development where no Management Controls are deemed necessary

The Management Strategy for the following kinds of Council-related development is that no Management Controls need to be applied:

- i. Commercial fit-outs and minor changes to building facades;
- ii. Internal alterations or additions to buildings that are not a heritage item or included in a heritage conservation area;
- iii. Advertising signage.

NOTE:

- *This Clause does not preclude a risk-assessment of other Council-related developments determining that no Management Controls are required.*
- *Clause 5.10(3) of the Cootamundra Local Environmental Plan 2013 and the Gundagai Local Environmental Plan 2011, enables minor and maintenance works to be carried out on heritage items (or items in a heritage conservation area) where no adverse impact on the heritage significance of the building will result. Advice from Council's independent, external heritage consultant should be sought where relevant, under this Clause.*

Part 2: Development process management controls

Where potential conflicts of interest have been identified through the risk-assessment process (Clauses 1.1 and 1.2 of this Policy), the following controls may be applied to the development process.

Factors such as the Capital Investment Value (CIV) of the application may be considered in determining how Management Controls are applied to all phases of the development process. As a general principle, the larger the CIV of the Council-related development, the greater the reliance on external and independent expertise should be.

2.1 Assessing a Council-related application

The following Management Controls may be applied to the process of assessing a Council-related application, with the aim of ensuring that the assessment is not carried out by Council officers with any involvement in the application (including the provision of pre-application advice):

- Engaging a 'peer-review' of an assessment undertaken by Council's own staff, either by an adjoining Council or by an external, independent person/contractor/consultant with relevant expertise and experience;
- Using an external, independent planning person/contractor/consultant to carry out the assessment;
- Engaging the assessment services of a neighbouring or other council.

2.2 Determining a Council-related development

No Council-related development application will be approved under delegated authority, with all such applications to be determined by a full, public meeting of the Council.

For other Council-related developments that are not required to be determined by Regional Planning Panels (under Clause 3, Schedule 6 of *State Environmental Planning Policy (Planning Systems) 2021*) the following options for determining applications may be implemented as part of the Management Strategy:

- Including in the report to Council on a Council-related development application, a clear statement on how the Management Strategy for the application was implemented;
- Establishing and using a local planning panel, consistent with the requirements of Division 2.5 of the Act; or
- Referring the assessment of the Council-related development to the relevant Regional Planning Panel.

2.3 Regulating and enforcing Council-related development

The following Management Controls may be applied to the process of ensuring a Council-related development complies with the development consent and all relevant legal requirements:

- Using the services of another/adjoining council to carry out regulatory/compliance/enforcement activities (which may include building certification) for the development;
- Using a private Principal Certifying Authority for construction certification and enforcement of consent conditions;

- Reporting to Council on the progress and compliance status of the development. Reporting could reasonably occur at the commencement of the development (for example, issue of a Construction Certificate or physical commencement of the work); at a midway point of the development; where compliance issues or complaints from the public arise; and at the issue of an Occupation Certificate.

Part 3: Responsibility / accountability

For Council-related developments:

- The Deputy General Manager, Corporate, Community and Development has the responsibility for carrying out the conflict of interest risk assessment, for determining the applicable Management Strategy and Management Controls, and for preparing the Management Strategy Statement;
- The Manager, Sustainable Development has responsibility for ensuring that:
 - the Management Strategy Statement for each Council-related development is published on the NSW Planning Portal;
 - Council-related development is publicly exhibited in a manner consistent with Council's adopted notification/advertising policy, for at least 28 days;
 - Council's register of development applications and development consents is updated in relation to conflicts of interest, in accordance with Section 240 and 240(3)(m) of the Regulation;
 - The Management Strategy and Management Controls are adhered to during the development process; and
 - reports to Council on compliance of the development are provided (consistent with Clause 2.3 of this Policy).

Related CGRC Documents

This policy should be read in conjunction with Cootamundra-Gundagai Regional Council's adopted policies:

- *'Code of Conduct for Council Staff'*;
- *'Code of Conduct for Councillors'*;
- *'Legislative Compliance Policy'*.

Review Period

This document is to be reviewed every four (4) years to ensure that it remains relevant and meets legislative requirements.

Appendix A



[EXAMPLE] CONFLICT OF INTEREST MANAGEMENT STRATEGY

EXAMPLE STRATEGY ONLY

Project Name:	<i>Civic Centre Redevelopment</i>
Development Application Number:	
Potential Conflict:	<i>Cootamundra-Gundagai Regional Council is the applicant. The development has an estimated Capital Investment Value of \$XX and when completed, Council expects to receive revenue from the leasing of commercial office spaces.</i>
Management Strategy:	<i>Council will manage the potential conflicts of interest by:</i> <ul style="list-style-type: none">• <i>Having the application assessed by an external, independent planning professional;</i>• <i>Referring the application to the Regional Planning Panel for determination;</i>• <i>Using a private certifier to certify all necessary stages of the development; and</i>• <i>Reporting on key project milestones or regulatory issues that arise to a public Council meeting.</i>
Contact:	<i>Anyone with concerns about Council fulfilling its obligations should report their concerns to Council's [Officer/Position].</i>