

POLICY: COUNCIL DEVELOPMENTS CONFLICT OF INTEREST POLICY

DATE ADOPTED: Director Corporate Services & Finance Report #8.3.6
Ordinary Meeting of Council 19 April 2023
Resolution Number: ORD2023-93

FILE REFERENCE: 02.00018

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

1. INTRODUCTION

This policy is the Council Developments Conflict of Interest Policy which relates to conflicts of interest for Council-related development throughout the development process.

2. DEFINITIONS

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 Bathurst Regional 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. For clarification, this Policy does not include private applications lodged by Councillors or staff.

development process means application, assessment, determination, and enforcement

the Act means the Environmental Planning and Assessment Act 1979.

controversial development means a development that is likely to attract disagreement from a significant number of residents.

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.

3. CONTEXT

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 sets out Council's approach to identifying and managing any conflicts of interest deriving from council-related development.

4. PROCESS FOR IDENTIFYING AND MANAGING POTENTIAL CONFLICTS OF INTEREST

- a) Identifying whether a potential conflict of interest exists, assessment of level of risk and determination of appropriate management controls
- i. Development applications lodged with Council that are council-related development are to be referred to the General Manager, or their delegate, for a conflict-of-interest risk assessment.
 - ii. The General Manager 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 implemented by the Council such as those listed under 'Management controls and strategies' below, 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 General Manager 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.
- b) Management controls and strategies
- i. The following management controls may be applied to different stages of development approval for council-related development, based on an assessment of risk by the General Manager. The risk assessment could for example include consideration of the type of development (non-controversial small-scale development, development of a certain value with/without a commercial interest, controversial development), or the capital investment value of the proposed development.
 - a. the assessment and determination of an application for council-related development
 - i. assessment and/or determination of an application could be undertaken by council staff under delegation – this might be appropriate if the proposal is considered to be a low-level risk or non-controversial. For more controversial projects, this might only be possible if strict role separation controls are imposed.

ii. The application could also be referred for external assessment with a recommendation of a determination for Council's consideration to either:

- a consultant.
- Peer review by a neighbouring council and/or entering into a shared services arrangement with a neighbouring council

It should be noted that the Determination of the application would need to be undertaken by Council at an Ordinary Council Meeting.

The involvement of an external third party might be appropriate for development where council has a commercial interest in the land, or the development is seen to be a political priority for the council.

b. the regulation and enforcement of approved council-related development may include:

- i. Engagement of a private certifier
- ii. Publication of certificates issued under Part 6 of the Act on the NSW Planning Portal
- iii. Peer review by a neighbouring council and/or entering into a shared services arrangement with a neighbouring council
- iv. Reporting of key milestones to the full council.

Note: For example, council will enter into a shared services arrangement with a neighbouring council.

c) Development Not Requiring Management Controls to be Applied:

- a. Exempt developments
- b. Commercial fit outs and minor changes to commercial buildings
- c. Internal alterations or additions to buildings that are not a heritage item
- d. Advertising signage
- e. Minor building structures projecting from a building facade over public land (such as awnings, verandas, bay windows, flagpoles, pipes, and services)
- f. Development where the council might receive a fee for the use of their land.
- g. Community groups on Council land
- h. Subdivisions comprising boundary adjustments, provision for public facilities and/or assets, road widenings etc and community land used for a public purpose.
- i. Temporary structures and/or the use of land for community events.