

TEMORA SHIRE COUNCIL



TEMORA

The Friendly Shire

CONFLICT OF INTEREST POLICY FOR COUNCIL-RELATED DEVELOPMENT

ACTIVE

Review Details

ABOUT THIS RELEASE

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REVIEW

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PLANNED REVIEW

Planned Review	Revision Description		Review by
October 2023	Review		CAG

PART A Outline

Aim

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

Objectives

This policy is aimed at fulfilling the following objectives:

- (a) establish management controls and/or a management strategy to address potential conflicts of interest at the different phases of the development process for the types of council-related development that the council could be involved in,
- (b) outline the process through which potential conflicts of interest will be identified, the risks assessed and appropriate management controls determined, and
- (c) outline the process that will be followed to publicly communicate the management approaches for each development subject to the policy.

Legislative and regulatory requirements

- Environmental Planning and Assessment Regulation 2021

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 councils to strengthen their relationship with communities and build and enhance trust.

The following requirements have been introduced into the Environmental Planning and Assessment Regulation 2021 to address conflicts of interest in council related development:

- Councils must adopt and have a policy that specifies how conflicts of interest in connection with council-related development applications will be handled. The policy must comply with the requirements in these Guidelines (section 66A).
- Council-related development applications must now be accompanied by either a management strategy statement, which explains how the council will manage potential conflicts of interest, or a statement that the council has no management strategy for the application (section 36A).

- Councils must record conflicts of interest in connection with each council-related development application, and the measures taken to manage the conflicts, in their existing DA register (section 242A).
- Council-related development applications must be exhibited for a minimum of 28 days to ensure transparency during the assessment process (Environmental Planning and Assessment Act 1979, schedule 1, clause 9B).

This policy is intended to guide Councillors, Council officers and the community in relation to decision making surrounding Council-related development.

Scope

This policy applies to all Council-related development.

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 it does not include an application for a complying development certificate.

council means Temora 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.

(2) 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.

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

PART B Procedures

Management controls and strategies

The following management controls may be applied to:

- the **assessment** of an application for council-related development,
- the **determination** of an application for council-related development, and/or
- the **regulation and enforcement** of approved council-related development

Where a potential conflict of interest is recognised, Council will enact their shared services arrangement with neighbouring councils, including Coolamon Shire Council and Bland Shire Council, or use an external independent consultant or planning panel, to form part of the assessment and/or determination process. A management strategy statement will form part of the development application, to record the reasons for Council's decisions in relation to managing conflicts of interest.

Different controls apply for dealing with proposed developments based on the level of risk. Controls applied are based on:

- a. risk category – low, moderate, high, very high
- b. types of development – non-controversial small-scale development, development of a certain value with/without a commercial interest, controversial development, or
- c. capital investment value of the proposed development.

Identifying whether a potential conflict of interest exists, assessment of level risk and determination of appropriate management controls

Development applications lodged with the council that are council-related development are to be referred to the general manager (or a delegate) for a conflict-of-interest risk assessment.

Note: Council-related development is defined in section 4.

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 outlined in the policy and the outcome of the general manager's assessment of the level of risk involved as set out in 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.

Assessment and determination

An external third party (neighbouring Council or independent consultant) can be engaged for development where council has a commercial interest in the land.

Regulation and enforcement

Where deemed necessary by the general manager, the following controls may be considered to manage potential conflicts of interest in relation to enforcement and regulation.

- 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.

Councils may seek input from its audit and risk committee to provide guidance for the types of controls that could be applied in specific circumstances.

Low level risk development

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 facade over public land (such as awnings, verandas, bay windows, flagpoles, pipes, and services)
- e. development where the council might receive a small fee for the use of their land.