

DEVELOPMENT CONFLICT OF INTEREST POLICY

QUALITY CONTROL			
EDRMS REFERENCES	12/114 – D24/54196		
RESPONSIBLE POSITION	Director Infrastructure and Environment		
APPROVED BY	Council		
REVIEW DATE		REVISION NUMBER	1
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1. INTRODUCTION

Council has a function as a development regulator. Council can also be the developer, landowner, land manager or hold a commercial interest in the land it regulates. Where Council has this dual role, an inherent conflict can arise between their interests in the development and duty as regulator.

Council employs staff to carry out its duties as a regulator. A member of staff or an elected councillor may also hold an interest in a development. Where this is the case, the relationship between the staff employed to carry out regulatory functions and the staff or councillor with an interest needs to be analysed to ensure it will not cause a conflict between the competing interests.

The purpose of this policy is to manage potential conflicts of interest that may arise in conjunction with Council-related Development Applications (DA) and development where a council employee or elected member has an interest.

2. POLICY OBJECTIVE

This policy aims to provide a framework with processes and procedures to ensure potential conflicts of interest are identified and managed appropriately for Council-related development and development where staff or elected members have an interest.

3. POLICY SCOPE

This policy applies to:

- Council-related developments
- Development where an elected member or an employee of Council has an interest

This policy does not apply to:

- development applications that include development on a public road, as defined by the Local Government Act 1993, unless the development is otherwise included in

the scope (for example, if Council, an elected member, or an employee is the applicant for the Development Application)

- development that is exempt development
- development that is permitted without consent

4. POLICY STATEMENT

The following are the guiding principles and standards that Council must adhere to for the implementation of this policy.

Part 4.1 of the policy relates to Council-related development.

Part 4.2 of the policy relates to development where an elected member or an employee of Council has an interest in the development.

4.1 COUNCIL-RELATED DEVELOPMENT

4.1.1. Process for establishing management approach

4.1.1.1. When Council related development applications are lodged

Development applications lodged with Council that are Council-related development are to be referred to the General Manager for a conflict-of-interest risk assessment.

4.1.1.2. General Manager

Upon receiving a referral of a council-related development under this section, 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 as necessary), having regard to any controls and strategies outlined in this policy and the outcome of the general manager's assessment of the level of risk involved.

Note: The General Manager could determine that no management controls are necessary in the circumstances or that only standard controls should apply.

- (e) document the proposed management approach for the proposal in a management statement that is published on the NSW Planning Portal and made publicly available.

Note: a template Management Statement and example are provided in Appendix B.

4.1.2. Process for Identifying and Managing Potential Conflicts of Interest

4.1.2.1. Management controls

Council-related development shall have standard controls and/or special controls applied as determined to be appropriate to the particular case to ensure conflicts are effectively managed.

Standard controls will usually be applied to all Council-related development unless there are extraordinary circumstances and/or alternative controls no less effective are in place.

The following are considered standard controls:

- (f) the individual who conducts the assessment of any application shall not be the same individual who determines the application except in unavoidable circumstances.
- (g) relevant staff shall not participate in or contribute to the development design, planning, execution or documentation and shall not be involved in project team.
- (h) Where a council-related development becomes the subject of any proceeding before the Land and Environment Court (for example, Class 1 merit review proceedings or Class 4 judicial review proceedings), external legal representatives and consultants will be engaged to conduct the matter on behalf of the City.
- (i) All certification work for council-related development will be undertaken by a private certifier or staff of another council.

Note: At time of writing, 25(2) of the Building and Development Certifiers Regulation 2020 provides that it is not a conflict of interest for a certifier to issue a certificate on behalf of a council to the council if the development has a capital investment value of less than \$2,000,000.

This provision does not cover other certification work such as exercising the functions of a Principal Certifier or carrying out critical stage inspections. As a result, council would need to engage a private certifier or another council to carry out that certification work even if an employee certifier were able to issue a certificate free from conflict.

- (j) Record Management controls are to be implemented such that Council's record system containers are to be 'blocked' (preventing access and changes) from the project team and any staff member or Council officer acting as delegate/applicant for a Council application.
- (k) The assessing officer is to ensure that all processes undertaken during the assessment of any DA are in accordance with Council's policies, procedures, and legislative requirements.
- (l) If a Council staff member is the applicant or is delegated to act as an owner/applicant for a Council-related development, any discussion relating to the affected DA processing, status, etc., must be appropriately recorded and preserved in Council's record management system, and involve no less than 3 people.

The staff member must not use their position to influence relevant staff in their consideration of the development.

- (m) Council's Audit, Risk and Improvement Committee shall be provided a copy of the management statement for the development and given access to the documentation relating to the development process on request.

4.1.2.2. Special controls not required for certain development

The following kinds of development require no special controls to be applied unless otherwise determined by the General Manager:

- 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 or insignificant fee for the use of their land.
- f. Any modifications to an approved council-related development application made under sections 4.55(1) or 4.55(1A) of the Act.
- g. Minor maintenance and restoration of a heritage item.
- h. changes of use from one permitted use to another with no greater than minor impacts on the amenity of the surrounding area
- i. alteration or addition of minor structures in parks and other public places (such as shade structures in public playgrounds).

4.1.2.3. Special controls for Development assessment and determination

Controls for the phases of a development process including assessment and determination of a Development Application are to be based the scale of development and controls set out in the table to Appendix A.

4.1.2.4. Special controls for regulation of development

For the regulation/compliance phase of a council-related development, the following special controls may be applied. The selection of controls shall be proportionate to the risk posed, as determined by the General Manager (refer clause 4.1.1.2).

- (a) Delegation of compliance/investigation powers to an external body (such as a contractor, another council, or a joint organisation)
- (b) Independent audits and reports at specified stages.
- (c) Tabling of reports and records with Council's Audit, Risk and Improvement Committee, and/or the elected Council.

4.2 COUNCILLOR OR COUNCIL EMPLOYEE RELATED DEVELOPMENT

4.2.1 Principles

The following principles must be adhered to:

a. If a Council staff member is the applicant and/or landowner or is the delegated staff member to act as an applicant for a Council project / development, any discussion relating to the affected DA processing and status, must be:

- undertaken in the staff member's (i.e., applicant) own time (if the matter is a private or personal project), and
- held in a public location (e.g., foyer, front counter).

b. If a Councillor or staff member is the applicant and/ or landowner, the Councillor or staff member must not use his/ her position:

- to influence the assessing officer in the processing of his/ her application.

c. The assessing officer is to ensure that:

- all processes undertaken during the assessment of any DA are in accordance with Council's policies, procedures, and legislative requirements.
- the applicant is not to be given any special, preferential treatment nor discriminated against.

d. Record Management controls are to be implemented:

- If a Council staff member is the applicant or is delegated to act as an owner/applicant for a Council-related development, any discussion relating to the affected DA processing, status, etc., must be appropriately recorded and preserved in Council's record management system, and involve no less than 3 people.

4.2.2 Determination of Development Application

Any DA that is lodged where the applicant and/or landowner is a Council staff member or Councillor, the DA should be processed in the normal manner, which may include determination under delegated authority.

If one (1) or more of the following matters are triggered, the DA is to be referred to the elected Council for determination:

- the scale and extent of the DA lodged e.g., pergola / pool vs larger commercial proposal,
- the proposed DA seeks a substantial variation to any performance based DCP or Council's Local Environmental Plan or policy,
- the proposed DA creates significant public interest and/ or large numbers of submissions,

- the applicant and/or landowner is a staff member within the Planning and Development Team unless otherwise deemed exempt by the Director of Infrastructure and Environment, and
- the extent of any public perception of a possible conflict of interest that may exist between the DA lodged and the applicant's and/ or landowner's relationship with the Planning and Development Team (i.e., relevant assessment staff).

5. IMPLEMENTATION

The following Council officers are responsible for the implementation and the adherence to this policy.

5.1 Roles and Responsibilities

This policy is to be implemented by the Director Infrastructure and Environment.

Council employees shall refrain from personal activities that would conflict with proper execution and management this policy. Council's Code of Conduct provides guidance for recognising and disclosing any conflicts of interest.

Elected members who become aware of a development they have an interest in (as defined in this policy) should advise the General Manager in writing as soon as practicable.

Council employees who become aware of a development they have an interest in (as defined in this policy) should advise the Director Infrastructure and Environment in writing as soon as practicable.

5.2 Communication

This Policy will be communicated to the community and staff in accordance with Council's Policy, Procedure and Process Framework and Council's Business Paper process. Following adoption by Council the Policy will be made available on Council's website.

6. ASSOCIATED DOCUMENTS

The following documentation is to be read in conjunction with this policy.

Code of Conduct Policy

The following include conflict of interest provisions that may apply in addition to this policy:

- Council's Code of Conduct Policy (adopted under section 440 of the *Local government Act 1993*)
- Building and Development Certifiers Act 2018 (particularly Part 3)
- Building and Development Certifiers Regulation 2020 (including the Code of Conduct in Schedule 5)
- Practice Standard for Registered Certifiers (published by NSW Fair Trading for the purposes of clause 9 of the *Building and Development Certifiers Regulation 2020*).

7. REVIEW

Review of this policy will incorporate relevant legislation, documentation released from relevant state agencies and best practice guidelines.

The standard review period will be within each term of Council following the Local Government Elections, or as required to ensure that it meets legislation requirements and the needs of the community and Council. The responsible Council officer will be notified of the review requirements three (3) months prior to the expiry of this policy.

The Director Infrastructure and Environment is responsible for the review of this policy.

8. LEGISLATIVE AND LEGAL FRAMEWORK

This policy is to be read in conjunction with the following legislation and statutory instruments subordinate to them:

- Environmental Planning and Assessment Act 1979
- Local Government Act 1993
- Building and Development Certifiers Act 2018

9. DEFINITIONS

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 Broken Hill City 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*.

Development has the same meaning as in the Act

Note: At the time of publication, Section 1.5 of the reads:

- (1) For the purposes of this Act, **development** is any of the following—
 - (a) the use of land,
 - (b) the subdivision of land,
 - (c) the erection of a building,
 - (d) the carrying out of a work,
 - (e) the demolition of a building or work,
 - (f) any other act, matter or thing that may be controlled by an environmental planning instrument.
- (2) However, development does not include any act, matter or thing excluded by the regulations (either generally for the purposes of this Act or only for the purposes of specified provisions of this Act).
- (3) For the purposes of this Act, the carrying out of development is the doing of the acts, matters or things referred to in subsection (1).

Relevant staff means staff with delegation and/or authority to carry out Council's regulatory, compliance and enforcement functions with respect to development.

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.

Appendix A – Specific controls for assessment and determination of

Assessment & Determination Criteria		
Category of DA where Council is the both the applicant and landowner, or where Council has an interest on the land	Assessment	Determination
<p>MINOR DA</p> <p>Minor DAs refers to development that is small scale, routine operational and/or non-controversial.</p> <p>The determination of "minor DA" shall be made after consideration of the following criteria, at the discretion of the General Manager:</p> <ul style="list-style-type: none"> • The estimated value of the works to be undertaken. • The potential impact on surrounding residential amenity associated with the proposed development. • The consistency of the proposed works with an existing Council management plan or strategy. • Whether proposal involves any substantial variations from existing Council policy, DCP or Local Environmental Plan. • Whether the proposal will lead to any financial benefit for Council. • Council-related development with a construction value less than \$2M <p>Examples include replacement of amenities block, or internal refurbishment of a building.</p>	<p>Assessment must be undertaken by Council staff not involved in the preparation of the application and assessment to be peer reviewed by immediate supervisor.</p> <p>A management statement to be prepared and exhibited with the DA for 28 days.</p>	<p>Determination under delegation</p>
<p>ROUTINE DA (not minor)</p> <p>Council-related development with a construction value exceeding \$2M</p>	<p>Engage independent town planning consultant/s for the formulation of the statement of environmental effects.</p> <p>Engage an independent town</p>	<p>Report to Council for determination.</p>

	<p>planning consultant for the assessment of development application.</p> <p>Management statement to be prepared and exhibited with the DA for 28 days.</p>	
<p>MAJOR DA</p> <p>Major DA refer to development that is large scale, significant and/or controversial.</p> <p>The determination of a “major” DA shall be made after consideration of the following criteria, at the discretion of the General Manager:</p> <ul style="list-style-type: none"> • The estimated value of the development to be undertaken. • If the DA is classified as Regional Development. • The potential impact on surrounding residential amenity associated with the proposed development. • The consistency of the proposed development with an existing Council Management Plan or strategy. • Whether the proposed development involves any substantial variations from an existing Council policy; and • Whether the proposal will lead to financial benefit for Council. <p>Examples: New industrial estates, new community facilities and libraries.</p>	<p>Engage independent town planning consultant/s for the formulation of the statement of environmental effects in the case of a major DA or regional development.</p> <p>Engage an independent town planning consultant for the assessment of development application in the event of a contentious DA and/or regional significant development.</p> <p>Management statement to be prepared and exhibited with the development application for 28 days.</p>	<p>Report to Council for determination; or</p> <p>Determination by Regional Planning Panel if the capital Investment Value is over \$5M, in accordance with Schedule 6 of the State Environmental Planning Policy (Planning Systems) 2021.</p> <p>All regional significant applications MUST be independently assessed by independent Town Planning Consultant.</p>

Appendix B – Management Statement Template

The management statement must be published on Council's DA Tracker (or NSW Planning Portal if mandated).

Council Conflict of Interest Management Statement	
Project Name	
Project Address	
DA/PAN Number	
Potential Conflict	
Management Strategy	<p><i>The strategy could include (examples only):</i></p> <ul style="list-style-type: none"> • <i>the DA to be peer reviewed,</i> • <i>assessment staff is not involved in project team,</i> • <i>independent assessment,</i> • <i>determination by Regional Planning Panel</i> • <i>key milestones post determination reported to Council and published.</i>
Contact	<p>Anyone with concerns about Council fulfilling its obligations should report their concerns in writing to Broken Hill City Council via council@brokenhill.nsw.gov.au or post PO Box 448, Broken Hill NSW 2880.</p>

Note: The following is an example of a statement that could be published by council to document its proposed management approach in a particular circumstance.

Scenario

BlueStar Council is upgrading one of their assets, 'Blue River Civic Place'. Council is the landowner and the applicant and is proposing to redevelop the site into a mixed-use development with a total capital investment value (CIV) of \$4.9 million. The development application seeks approval for the construction and use of an additional 2 storeys on an existing 3 storey building comprising a childcare centre, commercial office spaces and partial use of the building for council's public administration.

Example management statement

Council conflict of interest management statement	
Project name	Blue River Civic Place
DA number	DA21/0001
Potential conflict	BlueStar Council is the applicant. Blue River Civic Place has an estimated capital investment value of \$4.9 million and the council expects to receive revenue through renting commercial office spaces.
Management strategy	<p>The council is managing potential conflicts of interest in this matter as follows:</p> <ul style="list-style-type: none"> • The application will be referred to the local planning panel to determine the development application. • Council development assessment staff not involved with preparing the application will assess the DA. The staff will remain separated from the project team. • A private certifier will be engaged to undertake the certification for the development. • Green Hill Council has agreed to peer review any regulatory decisions should compliance decisions be made. • Key project milestones following the development consent will be reported at a public council meeting.
Contact	Anyone with concerns about council fulfilling its obligations should report their concerns to the council.