

Conflict of Interest in the Development Process Policy

Date Adopted: 28 March 2023

Version: 1.1

Policy Objectives

The objectives of this policy are to:

- manage potential conflicts of interest at all stages of the development process for Council-related development,
- establish guidelines to increase transparency in Division 5.1 assessments where Council is the proponent and in Council-initiated planning proposals,
- establish guidelines in relation to the lodgement of development and/or construction certificate applications by councillors and staff of Maitland City Council,
- ensure the integrity of the development assessment process,
- promote transparency and accountability in Council's decision making.

Policy Scope

This policy applies to:

- Council-related development, Division 5.1 assessments where Council is the proponent and Council-initiated planning proposals, and
- All councillors and staff lodging development applications or construction certificate applications with Maitland City Council.

Policy Statement

In the planning and environment space, situations arise where Council holds dual roles. Council is a consent authority and development regulator, but may also be a developer, landowner or hold a commercial interest in the land it regulates. At times, Council may be the assessing authority for development applications submitted by its own staff members or councillors.

When carrying out development permitted without consent, Council is the determining authority for environmental impact assessments, as well as the proponent. As a planning proposal authority, Council may initiate a planning proposal, while also being responsible for the governance of that proposal.

Identifying and finding ways to address conflicts of interest that may arise where Council holds dual roles is crucial to good governance and allows Council to strengthen its relationship with communities and build and enhance trust. This Policy specifies how potential conflicts of interest will be managed in connection with:

- council-related development applications under Part 4 of the Act,
- Division 5.1 assessments where Council is the proponent,
- Council-initiated planning proposals, and

- staff and councillor applications.

1. Managing Council-related development applications

In addition to complying with the conflict of interest requirements in the Regulation, Council officers will take the steps set out below to identify and manage potential conflicts of interest:

1.1 Identification/assessment of conflicts of interest and determination of management approach

Potential conflicts of interest will be identified, the risks assessed, and appropriate management controls determined as follows:

- Referral: development applications lodged with Council that are Council-related development are to be referred to the Manager Development & Compliance or delegate for a conflict-of-interest risk assessment.
- Exhibition: all Council-related development applications will be exhibited for a minimum of 28 days to ensure transparency during the assessment process, in accordance with Schedule 1, clause 9B, of the Act.
- Assessment: the Manager Development & Compliance or delegate is to:
 - Assess whether the application is one in which a potential conflict of interest exists;
 - Identify the phase(s) 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 management controls or management strategy should be implemented to address the identified conflict of interest (in each phase of the development process if necessary) having regard to the controls and strategies outlined in Part 1.2 of this policy and the outcome of the Manager Development & Compliance or delegate's assessment of the level of risk involved.

1.2 Management controls and strategies

The management controls and strategies to address potential conflicts of interest at the different phases of the development process for the types of council-related development in which Council could be involved are set out below.

Management Controls

| Risk category | Assessment and Determination Controls |
|---------------|--|
| Low | <ul style="list-style-type: none"> • Assessment under delegation by Council's development staff not involved in the application. • Review of determination by Coordinator Planning & Development. |
| Moderate | <ul style="list-style-type: none"> • Assessment under delegation by Council's Senior Development staff not involved in the application. • Review of determination by Manager Development & Compliance. |
| High | <ul style="list-style-type: none"> • Refer to external third-party consultant for: |

| | |
|-----------|---|
| | <ul style="list-style-type: none"> • Assessment; or • Peer review of the assessment undertaken by Council's Senior Development staff not involved in the application. • Determination by full Council. |
| Very high | <ul style="list-style-type: none"> • Refer to external third-party consultant for assessment. • Determination by Hunter Central Coast Regional Planning Panel. |

The following management controls may be applied to the **regulation and enforcement** of approved Council-related development:

- Maintain and make available all Council-related development on Council's website DA register,
- Engagement of a private certifier to investigate significant compliance issues.

Management Strategy

The management strategy for the following kinds of development is that no management controls need to be applied:

- Commercial fit outs and minor changes to the building façade;
- Internal alterations or additions to buildings that are not a heritage item;
- Advertising signage;
- Minor building structures projecting from a building façade over public land (such as awnings, verandas, bay windows, flagpoles, pipes, and services);
- Development where Council might receive a small fee for the use of their land.

1.3 Communication of management approach

The management approaches adopted for each council-related development will be publicly communicated as follows:

- Management Statement: the Manager Development & Compliance or their delegate is to document the proposed management approach for the proposal in a statement that is published on the NSW Planning Portal, in the format set out in Annexure A, and
- DA register: measures taken to manage conflicts of interest in connection with each Council-related development application will be recorded in the DA register on Council's website, in accordance with s242A of the Regulation.

2. Managing Division 5.1 assessments

As a public authority, Council can carry out certain types of development – primarily relating to essential transport and infrastructure – without the need for development consent, but subject to environmental assessment under Division 5.1 of the Act.

For all Division 5.1 assessments where Council is the proponent, Council officers will take the following steps to ensure appropriate separation between responsibilities and avoid any potential conflict of interest:

- Guidelines: division 5.1 assessment will be undertaken in accordance with the Guidelines for Division 5.1 assessments, first published in June 2022 by the State of NSW through Department of Planning and Environment (as amended and updated from time to time).
- Assessment: assessment documentation (i.e. the REF document and any Species Impact Statement or Biodiversity development assessment report) and any technical studies will be prepared, or reviewed and certified, by suitably qualified environmental impact assessment or technical specialists.
- Determination: determination will be undertaken by an authorised Council officer with delegated authority to determine whether the activity may or may not proceed. Council staff authorised to undertake the determination may not be the same Council staff who prepared or reviewed the assessment documentation.
- Publication: prior to the commencement of works, the REF will be published on Council's website or the NSW Planning portal in accordance with clause 171(4) of the Regulation.

3. Managing Council-initiated planning proposals

Council may initiate an LEP amendment or a new LEP by drafting a planning proposal. As the planning proposal authority, however, Council is also responsible for ensuring the quality and content of information contained within a planning proposal. For Council-initiated planning proposals, Council officers will take the following steps to ensure the LEP-making process is transparent, accountable and efficient:

- Guidelines: Council-initiated planning proposals will be undertaken in accordance with the Local Environmental Plan Making Guidelines, first published in December 2021 by the State of NSW through Department of Planning and Environment (as amended and updated from time to time).
- Land disposal: Where the planning proposal involves reclassification of land from 'operational' to 'community', and Council may or will benefit financially from disposal or development of that land in future:
 - Council will comply with LEP practice note 16-001 regarding the classification and re-classification of public land through a local environmental plan,
 - an external consultant will be engaged to carry out all pre-lodgement steps of the Local Environment Plan Making Guidelines and to prepare the planning proposal, and
 - Council staff not involved in the preparation of the planning proposal or instruction of any external consultant to prepare the planning proposal, will review the planning assessment to evaluate whether the proposal has strategic and site-specific merit, prior to reporting the proposal to a Council meeting for formal consideration.
- Planning assessment: Council staff will evaluate whether the proposal has strategic and site-specific merit, and whether preliminary issues have been addressed. If Council staff determine that the planning proposal is to be supported, Council staff will prepare and submit an assessment report to a council meeting for formal consideration. Council staff performing the planning assessment may not be the same Council staff who prepared, or instructed an external consultant to prepare, the planning proposal.

4. Managing Councillor and staff applications

To ensure the preservation and integrity of the development process and promote transparency and accountability in Council's decision making, all development applications and/or construction certificates in which councillors or Council staff have a pecuniary interest shall be referred to Council for determination, with the exception of the following:

- The person's proposed/current private residence or associated development,
- Change of use proposals to existing industrial or commercial buildings,
- Development that, in the opinion of the Manager Development & Compliance or their delegate, is minor in nature and will not adversely affect the amenity of the adjoining land.

These exceptions shall only apply when:

- No objections have been received by Council;
- The development is substantially in compliance with Council's adopted development standards;
- The Manager Development & Compliance or their delegate is not of the opinion that the application could be contentious and it would be in the interests of the applicant for the application to be determined by Council.

Councillors and Council staff must ensure that on each and every occasion they make an application in which they have a pecuniary interest, notice of the application is given to:

- The Office of the General Manager (for Councillors), or
- The Manager Development & Compliance or their delegate (for Council staff).

5. Reviewing and monitoring

Compliance with this Policy will be monitored by way of a quarterly report to Council's Audit, Risk and Improvement Committee.

Policy Definitions

| | |
|---|--|
| 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 Maitland City Council |
| Council-initiated planning proposal: | means an LEP amendment or new LEP that is initiated by Council rather than a developer, landowner or third party. |
| Council-related development: | means development for which 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, and the consent authority is Council or the Regional Planning Panel. |

| | |
|---------------------------------|---|
| development process: | means application, assessment, determination, and enforcement. |
| Division 5.1 assessment: | means the environmental impact assessment activities performed by Council as the determining authority under Division 5.1 of the Act. |
| LEP: | means Local Environmental Plan. |
| Pecuniary interest: | <p>means an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person. A person will also be taken to have a pecuniary interest in matter if the pecuniary interest is the interest of:</p> <ul style="list-style-type: none"> • a person's spouse or de facto partner or a relative of the person, • a partner or employer of the person, or • a company or other body of which the person, or a nominee, partner or employer of the person, is a shareholder or member. |
| REF: | means review of environmental factors. |
| Regulation: | means the <i>Environmental Planning and Assessment Regulation 2021</i> . |
| The Act: | means the <i>Environmental Planning and Assessment Act 1979</i> . |

Policy Administration

| | |
|-----------------------------|---|
| Business Group: | City Planning |
| Responsible officer: | Director City Planning |
| Council reference: | Ordinary Council Meeting 28 March 2023 – Item 11.1 |
| Policy review date: | Three (3) years from date of adoption |
| File number: | 103/1 |
| Relevant legislation | <ul style="list-style-type: none"> • Environmental Planning and Assessment Act 1979 • Environmental Planning and Assessment Regulation 2021 |
| Related documents | <ul style="list-style-type: none"> • Code of Conduct |

Policy History

| VERSION | DATE APPROVED | DESCRIPTION OF CHANGES |
|---------|---------------|--|
| 1.0 | 28 March 2023 | New policy adopted |
| 1.1 | - | Updated to new branding and alignment to organisation structure. No change to content. |