



# POLICY MANUAL

<b>Policy title:</b>	<b>Conflict of Interest Policy – Council Related Development Applications</b>
<b>Policy number:</b>	5.2.34
<b>Objective:</b>	To ensure compliance with the <i>Local Government Environmental Planning and Assessment Regulation 2021</i> to address conflicts of interest in council-related development.
<b>Link to community vision/service:</b>	Our decisions and actions are open, transparent, effective and in the interests of all.
<b>Program Area:</b>	Governance / Development Services
<b>Policy created:</b> March 2023 <b>Adopted by Council:</b> 11 April 2023	<b>Council reviewed:</b> 11 July 2023
<b>Last reviewed by staff:</b> 10 July 2023	<b>TRIM Ref:</b> ED23/37087

## 1. BACKGROUND

Council is the development regulator for the Lismore City Council Local Government Area. In some circumstances Council can also 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 the regulator.

Identifying these conflicts of interest early and finding ways to address them is crucial to good governance and allows Council to strengthen its relationship with the community and build and enhance trust.

Recent changes to the *Environmental Planning and Assessment Regulation 2021* have introduced a requirement for councils to assess, identify and manage potential conflicts of interest where they are both a proponent and a regulator for a development proposal.

This policy has been developed to ensure Council meets its statutory requirements in relation to the potential for conflicts of interest.

## 2. AIM OF POLICY

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

## 3. SCOPE

This policy applies to Council-related development.

#### 4. DEFINITIONS

A word or expression used in this policy has the same meaning as it has in the *Environmental Planning and Assessment Act 1979* (the Act), and any instruments made under the Act, unless otherwise defined in this policy.

Term	Description
Application	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	Lismore City Council
Council-related development	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	Application, assessment, determination and enforcement
The Act	<i>Environmental Planning and Assessment Act 1979</i>

#### 5. CONFLICT OF INTEREST RISK ASSESSMENT

Prior to the finalisation of submission of a council-related development application, the proposal is to be referred to the Chief Community Officer or their delegate, to undertake a conflict of interest risk assessment.

In reviewing the development application the Chief Community Officer or their delegate will:

- Assess whether the application is one in which a potential exists for conflict of interest
- Identify which phases 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 (if any) management controls should be implemented to address the identified conflict of interest having regard to the controls and strategies outlined below and the level of risk identified
- Document the proposed management approach for the proposal in a statement that is published on the NSW Planning Portal with the lodgement of the DA (see Sample Statement in Appendix A)

#### 6. MANAGEMENT CONTROL AND STRATEGIES

6.1 The management control options below may be applied to:

- the assessment and determination of an application for council-related development – Refer to Table 1 (below)
- post development applications and processes such as subdivision works certificates and construction certificates
- the regulation and enforcement of approved council-related development.

Management control options include:

- use of independent consultants and/or private certifiers

- shared services arrangements with a neighbouring council
- public reporting on key milestones, such as construction and occupation certificates.

6.2 No management controls need to be applied to the following kinds of development:

- commercial fit outs and minor changes to building façade
- internal alterations and additions to buildings that do not affect the heritage value of a listed heritage item.
- advertising signage
- minor building structures projecting from a building façade over public land (such as awnings, verandahs, bay windows, flagpoles, pipes and services)
- development where the council might receive a small fee for the use of land.
- minor modifications to an existing development approval

**Table 1: Assessment and Determination Criteria**

Category of DA	Assessment Options	Determination
<p><b>Minor DA</b> Refers to development that is small-scale, routine operational, and/or non-controversial<sup>1</sup></p>	<p>Assessment by staff not involved in the preparation of the application and peer review by Manager of Statutory Planning or Coordinator.</p>	<p>Determination under delegated authority, other than for development on community land under section 47E of the <i>Local Government Act 1993</i></p>
<p><b>Standard DA</b> Refers to development proposed on council-owned or managed land that substantially complies with zoning, landuse provisions and council policies, with no substantial or numerous submissions<sup>2</sup></p>	<p>Assessment by staff not involved in the preparation of the application and peer reviewed by Chief Community Officer or Manager of Statutory Planning.</p> <p>Assessment by external independent town planning consultant.</p>	<p>Determination under delegated authority by Chief Community Officer or Manager of Statutory Planning other than for community land under section 47E of the <i>Local Government Act 1993</i></p>
<p><b>Major DA</b> Refers to large-scale, significant and/or controversial DAs<sup>3</sup> Includes Regionally Significantly Development as defined in State Environmental Planning Policy (Planning Systems) 2021</p>	<p>Assessment by staff not involved in the preparation of the application and peer reviewed by Chief Community Officer or Manager Statutory Planning or</p> <p>Assessment by external independent town planning consultant, or</p> <p>Assessment by neighbouring council planning staff.</p>	<p>Determination by elected council or</p> <p>Referral to Northern Regional Planning Panel for determination (regionally significant development)</p>

Notes:

1. Designation as **Minor DA** is to be made based on project specific assessment of criteria, including but not limited to:
  - The estimated value of the works to be undertaken,
  - The potential impact on surrounding residential amenity and/or environmental values of the site and locality
  - Whether the proposal will lead to any financial benefit for council.
2. Examples of **Standard DA** include alterations and additions to an existing building, new community infrastructure, subdivision of land.

The Chief Community Officer or delegate, advise the Audit Risk & Improvement Committee of these applications at its next scheduled meeting.

3. For each **Major DA**, the Chief Community Officer, advise the Audit Risk & Improvement of these applications at its next scheduled meeting.

## 7. RELATED LEGISLATION

- *Environmental Planning and Assessment Act 1979*
- *Environmental Planning and Assessment Regulation 2021*
- *Local Government Act 1993*
- *Local Government (General) Regulation 2021*
- *Roads Act 1993*
- *State Environmental Planning Policy (Planning Systems) 2021*

## 8. FURTHER INFORMATION

For further information about this policy contact the Statutory Planning Section.

**Appendix A – Example of a management statement**

<b>Lismore City Council Conflict of interest management statement</b>	
<b>Project name</b>	
<b>DA number</b>	
<b>Potential conflict</b>	
<b>Management strategy</b>	
<b>Contact</b>	Anyone with concerns regarding this should contact

