

Policy

Managing Conflicts of Interest for Council-Related Development

Responsible portfolio	Strategy	Document Register ID	250.2023.124.1
Policy owner	Strategic Land Uses Planner	Review date	February 2025
Date of Council Meeting	16/02/2023	Resolution Number	28/23
Legislation, Australian Standards, Code of Practice	<p>Environmental Planning and Assessment Regulation 2021 (section 30B, 66A, 240A)</p> <p>Environmental Planning and Assessment Act 1979 No 203 (schedule 1, clause 9B)</p>		
Aim	<p>The aim of this policy is to establish management controls to address potential conflicts of interest at the different phases of the development process for the types of council-related development that Council could be involved in. It will outline the process through which potential conflicts of interest will be identified, the risks assessed, and appropriate management controls determined. It will also outline the process that will be followed to publicly communicate the management approaches for each development subject to the policy.</p>		

Part 1 Preliminary

1 Name of policy

The policy is the Managing Conflicts of Interest for Council-Related Development.

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

1) 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 Snowy Monaro Regional Council.

Council-related development means development for which Council is the applicant developer (whether lodged by or on behalf of council), landowner, lessee, licensee, has a commercial interest in the land the subject of the application, or under the control of council, where it will also be the regulator or consent authority.

Note: *Land vested in or under the control of Council includes public land within the meaning of the Local Government Act 1993.*

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 instrument 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 2 Process for identifying and managing potential conflicts of interest

5 Management controls and strategies

- 1) The following management controls may be applied to:
- a. The **assessment** of an application for council-related development
 - i. Routine Application
 - a. Assessment by council staff under delegation with strict role separation controls.
 - b. Assessment reviewed by supervisor or manager.
 - ii. Major Application
 - a. Assessment by either a neighbouring council or an independent consultant in accordance with Council's Purchasing and Tendering policy.
 - iii. Role separation controls
 - a. The project managers are from a different team than those assessing the application.

- b. Assessing officers and project managers will ensure that their documents and records containing sensitive material are not accessible by staff of the other department.
 - b. The **determination** of an application for council-related development
 - i. Routine Application
 - a. Determination made by an open council meeting.
 - ii. Major Application
 - a. Determination made by an open council meeting.
 - b. Determination by the Regional Planning Panel if the Capital Investment Value of the application is >\$5 million in accordance with Schedule 6 of the State Environmental Planning Policy (Planning Systems) 2021.
 - c. Determination made by Regional Planning Panel if a Councillor is part of the Project Control Group for the development.
 - d. Regional applications must be independently assessed.
 - c. The **regulation and enforcement** of approved council-related development
 - i. Council will enter into a shared services arrangement with a neighbouring council for any development that is considered a Major Application.
 - ii. Key milestones of the development process will be reported to the full council.
 - iii. Notification of breaches and enforcement action will be taken to Department of Planning and Environment and to the public.
- 2) 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 façade over public land (such as awnings, verandas, bay windows, flagpoles, pipes, and services)
 - e. Development where Council might receive a small fee (up to \$1000) for the use of their land.

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

- 1) Major development applications subject to this policy lodged with Council are to be referred to senior staff for a conflict-of-interest risk assessment.
- 2) The senior staff 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 clause 5 of the policy and the outcome of the senior staff's assessment of the level of risk involved as set out clause 6(2)(c) of the policy,

Note: the senior staff 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

- 3) The level of risk should be assessed against a conflict-of-interest risk assessment as outlined below:

Level of Risk	Criteria
Routine Application	<ul style="list-style-type: none"> • Capital investment value of the proposed development is under \$1,000,000 • Complies with zoning, land use provisions and Council policies • No more than five (5) objectors by way of individual submissions from different households (note that a petition or pro-forma documents are counted as one objection) • Type of development with commercial interest for Council
Major Application	<ul style="list-style-type: none"> • Capital investment value of the proposed development exceeds \$1,000,000 • Development seen to be a political priority for Council and/or Councillors • Type of development with commercial interest for Council • Controversial development: <ul style="list-style-type: none"> ○ Potential impact on surrounding residential amenity associated with the proposed development ○ Whether the proposal involves any substantial variations from an existing Council policy, management plan or strategy ○ Numerous and substantial submissions – more than five (5) objectors by way of individual submissions from different households

Part 3 Public exhibition of Council-related development applications

7 Management strategy statement

- 1) All Council-related development applications are to be accompanied by:
 - a. A management strategy statement that specifies how Council will manage conflicts of interest that may arise in connection with the application because Council is the consent authority; or
 - b. A statement that Council has no management strategy for the application.
- 2) Minimum public exhibition period for a council-related development application – 28 days.

Example Management Strategy Statement

[Project Name]

Property Address	[Address]
Legal Description	Lot [*] Sec [***] DP [*****]
Application No	[**.*.*.*.*]
Development Proposal	[Description and details of development proposal]
Potential Conflict	<p>[EXAMPLE:</p> <p><i>Snowy Monaro Regional Council is the applicant. Blue River Civic Place has an estimated investment value of \$4.9 million and Council expects to receive revenue through renting commercial office spaces.]</i></p>
Management Strategy	<p>[EXAMPLE:</p> <p><i>Council is managing potential conflicts of interest in this matter as follows:</i></p> <ul style="list-style-type: none"><i>• The application will be referred to the local planning panel to determine the development application</i><i>• Council development assessment staff not involved with preparing the application will assess the application. The staff will remain separated from the project team.</i><i>• A private certifier will be engaged to undertake the certification for the development</i><i>• Green Hill Council has agreed to peer review any regulatory decisions should compliance decisions be made</i>

	<i>Key project milestones following the development consent will be reported at a public council meeting.]</i>
Applicant	[APPLICANT – either Council or on behalf of Council]
Consent Authority	Snowy Monaro Regional Council

Council is seeking community comment on the proposal. Anyone with concerns about council fulfilling its obligations (with Council being both applicant and consent authority) should report their concerns to Council. All submissions should be made, in writing, to the Chief Executive Officer:

8 Related Documents

This procedure should be read in conjunction with the following documents:

Documentation

Variation

Council reserves the right to review, vary or revoke this policy and should be reviewed periodically to ensure it is relevant and appropriate.