

COUNCIL-RELATED DEVELOPMENT – CONFLICT OF INTEREST POLICY

Objective

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

Legislative Requirements

The following requirements to address conflicts of interest in Council related development, pursuant to the *Environmental Planning and Assessment Regulation 2021*:

- Councils must adopt and have a policy that specifies how conflicts of interest in connection with Council-related Development applications will be handled (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).

Scope

This policy applies to Council-related Development, excluding development applications for temporary uses, ancillary works within road reserves (i.e. driveways, footpaths etc.), ancillary works to public reserves and parks (i.e. amenities buildings, fences, play equipment), easements over Council land and tree removals.

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 to modify a development consent it does not include an application for a complying development certificate.
Council	means Gilgandra Shire Council.
Council-related Development	Means a development application for which the Council is the consent authority, that is made by or on behalf of the Council, or for development on land of which Council is an

owner, a lessee or licensee, or otherwise vested in or under the control of the Council.

Development Process means application, assessment, determination, and enforcement.

The Act means the *Environmental Planning and Assessment Act 1979* (NSW).

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.

Policy

PROCESS FOR IDENTIFYING AND MANAGING POTENTIAL CONFLICTS OF INTEREST

Management Controls and Strategies

1. The following management controls may be applied to:
 - a. the assessment of an application for Council related development
 - i. All Council-related Development with a construction value exceeding \$2M shall be referred to an external body (adjoining Council or consultant) for assessment. Note - All Council-related Development with a construction value exceeding \$5M shall be assessed by Council staff and referred to the Western Regional Planning Panel for determination – and is not subject to this policy.
 - ii. Communication between applicant and Council's assessment staff is to be made via public avenues, for example the NSW Planning Portal, front counter, phone, or email (Council@gilgandra.nsw.gov.au).
 - iii. Council development assessment staff not involved with preparing the application will assess the DA. The staff will remain separated from the project team.
 - b. the determination of an application for Council-related Development
 - i. All Council-related Development with construction works shall be reported to the General Manager for determination.
 - ii. All Council-related Development with a construction value exceeding \$1M shall be reported to Council for determination. Note - All Council-related Development with a construction value exceeding \$5M shall be referred to the Western Regional Planning Panel for determination – and is not subject to this policy.
 - iii. All Council-related Development applications that receive objections during assessment shall be referred to Council for determination.
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 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
- f. Where other State bodies are the consent authority for Council-related Development

Identifying Whether a Potential Conflict of Interest Exists, Assessment of Level of 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 delegate) for a conflict-of-interest risk assessment.

Note: Council-related Development is defined in Section 4.

The General Manager 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 (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 above and the outcome of the General Manager's assessment of the level of risk involved as set out above
- Document the proposed management approach for the proposal in a statement that is published on the NSW Planning Portal (See Example in Appendix A).

Relevant Legislation

- *Environmental Planning and Assessment Act 1979 (NSW).*
- *Environmental Planning and Assessment Regulation 2021*

Associated Documents

Nil

APPENDIX A

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.

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.

Responsible Officer:	Director Growth and Liveability		
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