

PURPOSE

This Policy aims to manage potential conflicts of interest and increase transparency at all stages of the development process for Council-related development and meet the legislative requirements of Section 66A Environmental Planning and Assessment Regulation 2021.

POLICY INTENT

The main objectives of this policy are to:

1. Manage potential conflicts of interest and increase transparency at all stages of the development process for Council-related development;
2. Avoid any occasion for suspicion of improper conduct in the exercise of development assessment functions for Council-related development;
3. Outline the process for identifying and managing potential conflicts of interest; and
4. Comply with the Council-related Development Application Conflict of Interest Guidelines published by the Department of Planning.

WOLLONGONG 2032 OBJECTIVES

This policy aligns with Goal 5 of our Community Strategic Plan, “*We have a healthy community in a liveable city*” and in particular the objective that suburbs and places are liveable and safe. This policy relates to Community Strategic Plan 5.2 Urban areas are created and maintained to provide a healthy and safe living environment for our community.

SCOPE

This Policy applies to Council-related development.

POLICY

Councils are development regulators. However, they also can 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. Identifying these conflicts early and finding ways to address them is crucial to good governance and allows Council to strengthen its relationship with communities and build and enhance trust. Council is committed to ensuring that all involved are confident in an impartial, professional, fair and transparent development assessment process.

For the purposes of this policy, there is a conflict of interest or a perceived conflict of interest for development applications for which the land owner, applicant or applicant’s consultant (who may represent the applicant and/or have prepared the Statement of Environmental Effects, architectural plans or other development application documentation) is:

- a) the Council;
- b) a Councillor;
- c) a member of Council staff who is principally involved in the exercise of Council’s functions under the EP&A Act 1979;

- d) a member of Parliament (either the Parliament of New South Wales or Parliament of the Commonwealth);
- e) a relative (within the meaning of the *Local Government Act 1993*) of a person referred to in b) to d)

but not development for the following purposes:

- internal alterations and additions to any building that is not a heritage item;
- advertising signage;
- maintenance and restoration of a heritage item; or
- minor building structures projecting from the building facade over public land (such as awnings, verandas, bay windows, flagpoles, pipes and services, and sun shading devices).

1. Management controls and strategies

1.1 The following management controls are to be applied to:

- a) The assessment and determination of an application for Council-related development.
 - Council-related applications and approvals to modify development consents will be referred to the Wollongong Local Planning Panel for determination, as required by Schedule 2 of the Local Planning Panel Directions – Council is not the consent authority.
 - Council-related development over \$5million will be referred to the Southern Regional Planning Panel for determination – Council is not the consent authority.
 - Certification of Council-related development must be undertaken in accordance with the requirements of the Conflict-of-Interest Provisions detailed in the Building and Development Certifiers Act 2018 and the Building and Development Certifiers Regulation 2020.
- b) The regulation and enforcement of approved Council-related development.

Dependent on the regulation and enforcement activity required, may be undertaken by:

- (i) a private certifier, where appointed to be the Principal Certifier (within their area of responsibility/authority), or
- (ii) Council, under delegation for building and subdivision work where Council is nominated as the Principal Certifier or required to by the Act. or
- (iii) Council staff under delegation in accordance with Council's compliance policy ensuring separation of regulation/enforcement activities and project management or
- (iv) engagement of an independent third party.

1.2 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 over public land (such as awnings, verandas, bay windows, flagpoles, pipes, and services)
- e) development where Council only receives a small fee for the use of the land.

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

- 2.1 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.
- 2.2 The General Manager or delegate 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) Note: The General Manager or delegate 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.

LEGISLATIVE REQUIREMENTS

The following legislation is related to this Policy:

- Environmental Planning and Assessment Act 1979
- Environmental Planning and Assessment Regulation 2021
- Environmental Planning and Assessment Amendment (Conflict of Interest) Regulation 2022
- Local Government Act 1993
- State Environmental Planning Policy (Planning Systems) 2021)
- Roads Act 1993

REVIEW

This Policy will be reviewed every two years from the date of each adoption of the policy, or more frequently as required.

REPORTING

There are no reporting requirements under this Policy.

ROLES AND RESPONSIBILITIES

Following are the roles responsible for implementation of actions under this policy:

Councillors

The Councillors shall provide leadership in adhering to the requirements of this Policy.

Executive

The Executive shall lead staff (either directly or through delegated authority) in their understanding of and compliance with this Policy and related documents.

Manager Development Assessment & Certification

The Manager Development Assessment shall:

- provide guidance to Councillors, Executive and other Council staff as to the content and implementation of this Policy;

- ensure the timely review of this Policy; and
- assist in investigations of alleged non-compliance with this Policy.

Managers

Managers shall provide guidance to Council staff within their respective Divisions as to the content and implementation of this Policy, seeking guidance from the policy owner as required.

Council staff

Development Assessment and Certification staff shall read, understand, and comply with this Policy.

RELATED STRATEGIES, POLICIES AND PROCEDURES

The following documents are related to this Policy:

- Community Participation Plan
- Community Engagement Council Policy
- Code of Conduct Councillors
- Code of Conduct Staff
- DAC Procedures Manual

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 it is otherwise defined in this policy.

Application	means an application for development consent under Part 4 of the Environmental Planning and Assessment Act 1979 (NSW) 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 Wollongong 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. This definition excludes applications in relation to public roads. This Policy may apply to certain State Significant or Regionally Significant Developments which are defined under the Act. The Act specifies how these applications are to be determined.
Development process	means application, assessment, determination, and enforcement
The Act	means the Environmental Planning and Assessment Act 1979.
WLPP	means the Wollongong Local Planning Panel, or such other local planning panel as is constituted for all or part of the Wollongong local government area from time to time.

APPROVAL AND REVIEW	
Responsible Division	Development Assessment and Certification
Date adopted by Council	31 July 2023
Date/s of previous adoptions	Nil
Date of next review	31 July 2027