

ADOPTED

COUNCIL MEETING MIN 381/22

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1. Objective

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

2. 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).

3. 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.

4. Definitions

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 Mid-Western Regional Council.

council-related development means development for which the council is the applicant developer (whether lodged by or on behalf of council), landowner (including community land, operational land, crown land under trust management of Council), 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 means application, assessment, determination, and enforcement

the Act means the *Environmental Planning and Assessment Act 1979*.

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.

5. Policy

5.1 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@midwestern.nsw.gov.au). Direct access to assessment staff offices by the applicant is not permitted.
- iii. Council development assessment staff not involved with preparing the application will assess the DA. The staff will remain separated from the project team.
- iv. Council development assessment staff and project development teams are to be located in different/separate offices of Council's administration building, with separate reporting lines – i.e. reporting to different directors.

b. the determination of an application for council-related development

- i. All council-related development with a construction value exceeding \$150K 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 between 1-6 objections during assessment, shall be circulated to Council, and if called up, reported to Council for determination.
- iv. All council-related development applications that receive seven (7) or more 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 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 a delegate) for a conflict-of-interest risk assessment.

Note: Council-related development is defined in section 4.

The general manager 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 this policy and the outcome of the general manager's assessment of the level of risk involved as set out above.

Note: The general manager 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 (see Example in Appendix A).