

## 11.3 Conflicts of Interests Policy - Dealing with Council-Related Development throughout the Development Process

REPORT BY THE GOVERNANCE CO-ORDINATOR  
TO 14 DECEMBER 2022 ORDINARY MEETING  
GOV400098, GOV400047

### RECOMMENDATION

#### That Council:

1. **receive the report by the Governance Co-ordinator on the Conflicts of Interests Policy - Dealing with Council-Related Development throughout the Development Process;**
2. **place the Conflicts of Interests Policy - Dealing with Council-Related Development throughout the Development Process on exhibition for 28 days to seek feedback from the community; and**
3. **adopt the Conflicts of Interests Policy - Dealing with Council-Related Development throughout the Development Process if no submissions are received during the exhibition period.**

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### Executive summary

This report seeks Council endorsement for the newly created Conflicts of Interests Policy - Dealing with Council-Related Development throughout the Development Process. This policy has been created to comply with amendments to the *Environmental Planning and Assessment (EP&A) Regulation*.

### Disclosure of Interest

Nil

### Detailed report

Amendments to the *Environmental Planning and Assessment (EP&A) Regulation* have been made to strengthen transparency and accountability in the planning system. These amendments will come into effect on 3 April 2023.

Council will be required to:

- Have a conflict of interest policy in place that advises how they would manage any potential conflict of interest that may arise when a council assesses development applications, where they have a commercial interest in the outcome.
- Prepare a management statement which must be exhibited with the development application, which details the potential conflict and the way they propose to manage it.
- Exhibit council-related development applications for a minimum of 28 days and record in their DA register the steps taken to manage any conflicts.

This policy has been prepared in line with the model template provided by the NSW Department of Planning and Environment.

The policy applies to all council-related development with exclusion of development applications for temporary uses, ancillary works within road reserves (i.e. driveways, footpaths), ancillary work to public reserves and parks (i.e. amenities buildings, fences, play equipment), tree removal and easements over council land as the legislation allows for no management controls where the risks of a conflict of interest are very low.

It was also determined not to include *regulation* and *enforcement* controls as these were not mandated by the legislation.

A conflict of interest form will be created and must be submitted by the applicant with all Council-related development applications. This will be used to assess the level of risk involved and determine which management controls (if any) should be implemented to manage the risk.

A number of management controls have been created to reduce any conflict of interest risks associated with staff interaction as well as controls for the assessing and determination of applications based on the value of the development.

- All council-related development with a construction value exceeding \$2M shall be referred to an external body (another council or a qualified consultant) for assessment.
- All council-related development with a construction value exceeding \$150K shall be reported to the General Manager for determination.
- All council-related development with a construction value exceeding \$1M shall be reported to Council for determination.

Any council-related development with a value exceeding \$5M shall be referred to the Western Regional Planning Panel for determination and is not subject to this policy.

## Community Plan implications

<b>Theme</b>	<b>Good Government</b>
Goal	An effective and efficient organisation
Strategy	Prudently manage risks associated with all Council activities

## Strategic implications

### Council Strategies

Local Environment Plan 2012  
Development Control Plan 2013

### Council Policies

Code of Conduct

### Legislation

Environmental Planning and Assessment Act 1979

## Financial implications

Financial implications involved with having to engage an external consultant for the assessment of council-related development between \$2 million to \$5 million.

## Associated Risks

Not having a policy in place when legislation comes into effect will delay any council-related development applications until a policy is adopted.

ASHLEIGH MARSHALL  
GOVERNANCE CO-ORDINATOR

SIMON JONES  
DIRECTOR COMMUNITY

29 November 2022

*Attachments:* 1. Conflicts of Interests Policy - Dealing with Council-Related Development Throughout the Development Process.

APPROVED FOR SUBMISSION:

BRAD CAM  
GENERAL MANAGER



## POLICY

### Conflict of Interests Policy – Dealing with Council-Related Development Throughout the Development Process

*A prosperous  
and progressive  
community.*

ADOPTED		VERSION NO	VERSION 1.1
COUNCIL MEETING MIN	[xx/xx]	REVIEW DATE	[DATE TO REVIEW]
DATE:	[INSERT DATE]	FILE NUMBER	GOV400047

## 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.

**POLICY: CONFLICT OF INTERESTS POLICY – DEALING WITH COUNCIL-RELATED DEVELOPMENT THROUGHOUT THE DEVELOPMENT PROCESS | VERSION 1.1, 30 NOVEMBER 2022**

**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.

**POLICY: CONFLICT OF INTERESTS POLICY – DEALING WITH COUNCIL-RELATED DEVELOPMENT THROUGHOUT THE DEVELOPMENT PROCESS | VERSION 1.1, 30 NOVEMBER 2022**

(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).