

POLICY REGISTER

COUNCIL RELATED DEVELOPMENT APPLICATION CONFLICT OF INTEREST POLICY

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Part 1 Preliminary

1) Name of Policy

This Policy is the Council Related Development Application – Conflict of Interest Policy.

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 (development application and development process).

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 to modify a development consent. It does not include an application for a complying development certificate. Council means Warren Shire 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. 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 instruments 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

• Control – The assessment of the application is to be undertaken by Council staff delegation.

- o Suitable when proposal is low risk or non-controversial.
- o Appropriate when effective role separation controls are imposed.

• Control – The application is referred for external review, assessment to either: a local planning panel; Consultant; or DPE support staff.

- o Suitable when higher level of role separation is required due to the nature of the project.
- o External party may carry out:
 - Specific matter review for part of an assessment;
 - Carry out a peer review of staff assessment;
 - Perform the role of assessment officer and prepare DA assessment report.

(Note: the involvement of an external third party might be appropriate for development where Council has commercial interest in the land, or the development is seen to be a political priority for the Council).

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

- Control – The determination of the application is to be undertaken by Council staff delegation.
 - o Suitable when proposal is low risk or non-controversial.
 - o Appropriate when effective role separation controls are imposed.
- Control – The determination of the application is to be undertaken by report to public Council meeting.
 - o Suitable when proposal is medium risk or submissions of objection have been received.
 - o Appropriate when effective role separation controls are imposed.
- Control – The application is referred for external determination to a Regional planning panel.
 - o Suitable when proposal is high risk or controversial.

(Note: the involvement of an RPP would require negotiation as the Panel is not required to accept referrals).

c. the regulation and enforcement of an application for Council-related development

- Control – Publication of certificates issued under Part 6 of the Act on Council’s Website and NSW Planning Portal.
 - o Suitable when proposal is low or medium risk and Council staff are the certifier (construction certificate, subdivision works certificate and occupation certificate).
 - o Appropriate when effective role separation controls are imposed.
- Control – Engagement of a private certifier.
 - o Suitable when proposal is medium or high risk (construction certificate, subdivision works certificate and occupation certificate).
 - o Appropriate when effective role separation controls are imposed.
- Control – Peer review by a neighbouring council and/or entering into a shared services arrangement with a neighbouring council.
 - o Suitable when role separation is not able to be achieved for part or whole of process.
- Control – reporting of key milestones to the full Council.
 - o Appropriate when effective role separation controls are imposed.

(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.

6) Identifying whether a potential conflict of interest exists, assessment of level risk and determination of appropriate management controls (1) 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.

(2) 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 clause 5 of the Policy and the outcome of the General Manager's assessment of the level of risk involved as set out clause 6(2)(c) of the Policy,

(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.