



CUMBERLAND  
CITY COUNCIL

# Council-related Development Application Conflict of Interest Policy

## AUTHORISATION & VERSION CONTROL

<b>Policy Number</b>	POL-063
<b>Policy Owner</b>	Director Governance & Risk
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## INTRODUCTION

Under the provisions of the *Environmental Planning and Assessment Regulation 2021*, Council must adopt a policy that specifies how conflicts of interest in connection with council-related development applications lodged with Cumberland City Council within the Cumberland Local Government Area will be handled. The Policy must also comply with the Department of Planning and Environment's *Council-related Development Application Conflict of Interest Guidelines*.

## PURPOSE

The purpose of this Policy is to:

- Establish Council's management strategy and the controls that will be applied to address potential conflicts of interest at the different phases of the development process for the types of council-related development that the council could be involved in.
- Outline the process through which potential conflicts of interest will be identified, the risks assessed, and appropriate management controls determined, and
- Outline the process that will be followed to publicly communicate the management approaches for each development subject to the Policy.

## SCOPE

This Policy applies to council-related development.

## DEFINITIONS

- 1) In this Policy:

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

**Council** means Cumberland City Council.

**Council-related development** means development for which 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 does not include development applications which include development on public roads managed by a council, such as driveway for a dwelling house across a footpath or other minor works.

**Development 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.

**Development process** means application, assessment, determination, and enforcement.

**LGA** means Local Government Area.

- 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 STATEMENT**

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

## **PRINCIPLES**

This Policy is to ensure that potential conflicts of interest are identified and managed appropriately in council-related development, underpinned by transparency and good governance principles.

## **REQUIREMENTS**

Council-related development applications will be accompanied by a management strategy statement, which explains how Council will manage potential conflicts of interest.

Council will record any conflicts of interest in connection with each council-related development application, and the measures taken to manage the conflicts, in its existing DA register.

All Council-related development applications will be exhibited for a minimum of 28 days to ensure transparency during the assessment process.

The process Council will follow for identifying and managing potential conflicts of interest is outlined below:

### ***Management controls and strategies***

When dealing with potential conflicts of interest for council-related development, Council will implement controls based on the level of risk, factoring in the below:

- a) risk category: low, moderate, high, very high.
- b) type of development: non-controversial small-scale development, development of a certain value with/without a commercial interest, controversial development.
- c) capital investment value of the proposed development.

1) The following management controls may be applied to:

- a) the assessment of an application for council-related development:  
(*Applies to all risk categories*)

- Council's development assessment staff or independent consultant will not be involved in preparing or lodging the application.
- The applications shall only be assessed by staff or independent consultant/s that are not involved with preparing or lodging the application.
- The development assessment staff or independent consultant/s will remain entirely separate from the internal Council team working on the matter.
- All internal meetings relating to the DA must be appropriately documented and registered in Council's Electronic Records Management System.

b) the determination of an application for council-related development:

*(Applies to moderate, high and very high risk development applications)*

- All applications will be referred to an Independent Planning Panel to determine the development application with the exception of the types of development mentioned under point (2).

c) The regulation and enforcement of approved council-related development:

- A private certifier will be engaged to undertake the certification of the development for any project.
- For high or very risk matters, a report will be provided to Council's Audit, Risk and Improvement Committee outlining the measures undertaken in managing the DA in adherence to this Policy.
- Publication of certificates issued under Part 6 of the Act on the NSW Planning Portal.
- Key milestones will be reported to Council.

2) The management strategy for the following kinds of development is that no management controls need to be applied:

*(Applies to low risk development applications)*

- 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) Section 4.55 applications that do not need to be referred to an Independent Planning Panel.

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

Development applications lodged with Council that are a council-related development are to be referred to the General Manager (or delegate) for a conflict-of-interest risk assessment.

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) having regard to any controls and strategies outlined in the Policy and the outcome of the General Manager's assessment of the level of risk involved as set out in the Policy.

The General Manager (or delegate) could determine that no management controls are necessary in the circumstances. Where this is the case, Council will still publicly communicate that fact to ensure transparency.

- e) document the proposed management approach for the proposal in a statement that is published on the NSW Planning Portal.

## **RELATED LEGISLATION**

- *Environmental Planning and Assessment Act 1979;*
- *Environmental Planning and Assessment Regulation 2000;*
- *Environmental Planning and Assessment Regulation 2021 and*
- *Local Government Act 1993.*

## **RELATED DOCUMENTS AND COUNCIL POLICY**

- *Council Management Statement*

## Template Council Management Statement

Project Name	{Insert Name of Project}
DA Number	{DA #####}
Potential Conflict	{Clearly identify potential conflicts that may arise as a result of this Council-related development application}
Management Strategy	<p>Cumberland City Council is managing potential conflicts of interest in this matter as follows:</p> <p><i>-Clearly distinguish strategies which will be implemented to mitigate the potential Conflict that has been identified</i></p>
Contact	<p><i>Anyone who has concerns about Council fulfilling its obligations should report their concerns to Council.</i></p> <p>E: <a href="mailto:Council@cumberland.nsw.gov.au">Council@cumberland.nsw.gov.au</a></p> <p>T: (02) 8757 9000</p>