


Hay Shire Council Policy



Title of Policy	Conflict of Interests Policy – Dealing with Council-Related Development Throughout the Development Process		
This applies to	Council-Related Development		
Author	Jack Terblanche	Date Approved:	Council
Position of Author	Director Infrastructure and Planning	Authorised by:	
Legislation, Australian Standards, Code of Practice.	Environmental Planning and Assessment Regulation 2021:		
Related Policies/Procedures	Notification and Advertising of a Development Application Policy		
Attachments	A: Example		
Aim	Transparent handling of Council Development Applications		
Version	Details	Date	
Version 1	Initial Issue	20/3/2023	
Superseded Policies			
The Policy			

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).

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- 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 Hay Shire 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*.

Note: 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.

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5. Management Controls and Strategies

5.1 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.
- b) the determination of an application for council-related development
 - i) All council-related development with a construction value exceeding \$100K shall be reported to the General Manager for determination.
 - ii) All council-related development with a construction value exceeding \$500K shall be reported to Council for determination.
 - iii) 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.
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.
 - iv) All council-related development applications that receive objections during assessment shall be referred to Council for determination.

5.2 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.

5.3 The regulation and enforcement of approved council-related development

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

- a) a private certifier or

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- b) Council, under delegation for building and subdivision work where Council is nominated as the Principal Certifying Authority or required to by the Act. or
- c) Council staff under delegation in accordance with Council's compliance policy (if adopted) ensuring separation of regulation/enforcement activities and project management or
- d) engagement of an independent third party.

6. Identifying Whether A Potential Conflict Of Interest Exists, Assessment Of Level Risk & 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 authorised delegate) for a conflict-of-interest risk assessment.

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.

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Attachment A: Example

Scenario

BlueStar Council is upgrading one of their assets, 'Blue River Civic Place'. Council is the landowner and the applicant and is proposing to redevelop the site into a mixed-use development with a total capital investment value (CIV) of \$4.9 million. The development application seeks approval for the construction and use of an additional 2 storeys on an existing 3 storey building comprising a childcare centre, commercial office spaces and partial use of the building for council's public administration.

Example management statement

Council conflict of interest management statement	
Project name	Blue River Civic Place
DA number	DA21/0001
Potential conflict	BlueStar Council is the applicant. Blue River Civic Place has an estimated capital investment value of \$4.9 million and the council expects to receive revenue through renting commercial office spaces.
Management strategy	<p>The council is managing potential conflicts of interest in this matter as follows:</p> <ul style="list-style-type: none">• The application will be referred to the local planning panel to determine the development application.• Council development assessment staff not involved with preparing the application will assess the DA. The staff will remain separated from the project team.• A private certifier will be engaged to undertake the certification for the development.• Green Hill Council has agreed to peer review any regulatory decisions should compliance decisions be made.• Key project milestones following the development consent will be reported at a public council meeting.
Contact	Anyone with concerns about council fulfilling its obligations should report their concerns to the council.

Source: <https://www.planningportal.nsw.gov.au/sites/default/files/documents/2022/Council-related%20Development%20Application%20Conflict%20Of%20Interest%20Guidelines%20-%20September%202022.pdf>

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