



**BYRON
SHIRE
COUNCIL**

DRAFT Policy

Managing conflict of interest for Council related development

2023

Information about this document

Date Adopted by Council	
Resolution No	
Document Owner	Director Sustainable Environment and Economy
Document Development Officer	Manager Sustainable Development
Review Timeframe	4 years (unless required by legislation to review within 12 months of an election)
Last Review Date	N/A
Next Scheduled Review Date	TBA

Document History

Doc No.	Date Amended	Details/Comments eg Resolution No.

Further Document Information and Relationships

Related Legislation	Environmental Planning and Assessment Amendment (Conflict of Interest) Regulation 2022
Related Policies	Code of Conduct Policies
Related Standards, Procedures, Statements, documents	N/A

Note: Any reference to Legislation will be updated in the Policy as required. See website <http://www.legislation.nsw.gov.au/> for current Acts, Regulations and Environmental Planning Instruments.

CONTENTS

Introduction	1
1.1 Objectives	1
1.2 Scope.....	1
1.3 Definitions	1
Statement	1
Process for identifying and managing potential conflicts of interest	2
3.1 Management controls and strategies	2
3.2 Identifying whether a potential conflict of interest exists, assessment of level risk and determination of appropriate management control.....	3
Annexure 1 - Sample Management Statement	4

Introduction

1.1 Objectives

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

1.2 Scope

This policy applies to council-related development.

1.3 Definitions

1.3.1 List here all the terms and acronyms used in the Policy, and their definitions. List in alphabetical order.

Policy acronym	Definition
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 Byron 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.

1.3.2 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.

Statement

Councils are development regulators. But they also can be the developer, landowner or hold a commercial interest in the land they regulate. Where council **has** this dual role, an inherent conflict can arise between their interests in the development and their duty as regulator.

Identifying these conflicts of interest early and finding ways to address them is crucial to good governance and allows council to strengthen **our** relationship with communities and build and enhance trust.

Process for identifying and managing potential conflicts of interest

3.1 Management controls and strategies

- (1) The following management controls may be applied to:
 - a. the **assessment** of an application for council-related development
 - Director Sustainable Environment and Economy (SEE) to determine if an external consultant should undertake development assessment or if it is assessed by staff.
 - b. the **determination** of an application for council-related development
 - In accordance with the Delegations of Authority in relation to development applications at the time of determination.
 - That meet the criteria of a regionally significant development shall be reported to and determined by the Northern Regional Planning Panel.
 - The Planning Review Committee may call up development applications for consideration outside this criterion in accordance with the Code of Meeting Practice.
 - c. the **regulation and enforcement** of approved council-related development

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

 - (i) a private certifier or
 - (ii) Council, under delegation for building and subdivision work where Council is nominated as the Principal Certifying Authority or required to by the Act. or
 - (iii) Council staff under delegation in accordance with Council's **enforcement** policy ensuring separation of regulation/enforcement activities and project management or
 - (iv) engagement of an independent third party.
- (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 over public land (such as awnings, verandas, bay windows, flagpoles, pipes, and services)

- e. development where Council only receives a small fee for the use of the land.

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

(1) The Director SEE 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 Section 3.1 of this Policy and the outcome of this assessment of the level of risk involved as set out clause 3.2(1)c. of this Policy,

The Director SEE 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 with the application during exhibition.

Annexure 1 - Sample Management Statement

Conflict of Interest Management Statement	
Project name	Blue River Civic Place
DA No.	10.2023.XYZ.1
Potential conflict	Council is the applicant; Blue River Civic Place has estimated capital investment of \$5.1 million and the council expects to receive revenue through renting commercial office spaces.
Management Strategy	<p>The Council is managing potential conflicts of interests in this matter as follows:</p> <ul style="list-style-type: none">• An external consultant planner will be engaged to assess the development application.• The application will be referred to Council meeting to determine the development application.• A private certifier will be engaged to undertake the certification for the development.• 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.