



**Conflict of Interest Policy -
Development Applications related to
Council, Councillors and Council
Employees**

POLICY OBJECTIVE

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

SCOPE

This policy applies to Council-related development and where an applicant/landowner is a staff member of Council or a Councillor.

LEGISLATIVE PROVISIONS

Environmental Planning & Assessment Act 1979
Environmental Planning & Assessment Regulation 2021
Local Government Act 1993

POLICY STATEMENT

Council is the development regulator within the Goulburn Mulwaree local government area. In some circumstances, Council can also be a developer, landowner, or hold a commercial interest.

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 the communities and build and enhance trust. Additionally, where the applicant/landowner is a staff member or elected member of Council, a perceived conflict of interest may arise.

The *Environmental Planning and Assessment Regulation 2021 (EP&A Reg)* requires Council's to assess, identify, and manage potential conflicts of interest where they are both a proponent and a regulator for a development proposal. Section 66A of the EP&A Reg requires Council to adopt a conflict of interest policy for Council-related development applications and consider the policy in determining applications.

This policy has been developed to ensure that Council meets its statutory requirements in relation to the potential for conflicts of interest.

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 or any works carried out under Part 5 of the Environmental Planning and Assessment Act 1979.

Council means Goulburn Mulwaree Council.

Council-related development means a development application for which a Council is the consent authority, that is –

- (a) Made by or on behalf of the council, or
- (b) For development on land-
 - i. Of which the council is an owner, a lessee or a licensee, or
 - ii. Otherwise vested in or under the control of the council

Note: Land vested in or under the control of the council includes public land within the meaning of the Local Government Act 1993

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

Staff Development means a development application that is made by a landowner (applicant) or on behalf of a landowner, that is

- a) An employee who is currently employed by the Council as a member of staff; or
- b) An elected member of the Council; or
- c) A registered company and/or business whether for profit or not that either employs, is managed or is directed by a Councillor or an employee.

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 this Act, unless it is otherwise defined in this policy.

Process for Identifying and Managing Potential Conflicts of Interest

1. The management control options below may be applied to:
 - (a) The assessment and determination of an application for Council-related development – refer to Table 1: Assessment & Determination Criteria, attached.
 - (b) Post-consent applications and processes such as subdivision works certificates and construction certificates.
 - (c) The regulation and enforcement of approved Council-related development.

Management control options include:

- Use of a peer-review process managed by the Director Planning and Environment.
- Use of independent consultants and/or private certifiers.
- Shared services arrangements with a neighbouring council.
- Public reporting on key milestones, such as construction and occupation certificates.

2. No management controls need to be applied to the following kinds of development:
 - (a) Commercial fit outs and minor changes to building façade
 - (b) Internal alteration and additions to buildings. In the case of heritage items, alterations and additions to the building that do not affect the heritage value of a listed heritage item
 - (c) Advertising signage
 - (d) Minor building structures projecting from a building façade over public land (such as awnings, verandahs, bay windows, flagpoles, pipes and services)
 - (e) Development where Council might receive a small fee for the use of its land
 - (f) Minor modifications to an existing development approval.

The above exemptions will only apply if the proposal does not have the potential to limit existing free public access to public land (as defined in the Local Government Act 1993).

3. Identifying whether a potential conflict of interest exists, assessment of risk level and determination of appropriate management controls
 - a. Development applications lodged with Council that are Council-related development are to be referred to the CEO (or a delegate) for a conflict-of-interest risk assessment.
 - b. The CEO (or nominated delegate) is to:
 - i. Assess whether the application is one in which a potential conflict of interest exists;
 - ii. Identify the phase(s) of the development process at which the identified conflict of interest arises;
 - iii. Assess the level of risk involved at each phase of the development process;
 - iv. 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 previously and the outcome of the CEO's assessment of the level of risk involved as set out in Clause 3(b) above;
 - v. Document the proposed management approach for the proposal in a statement that is published on the NSW Planning Portal.

Mandatory 28-Day notification period for council-related development

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 98). This extra notification period is to be identified at the advertising stage of the development application process.

Where staff and Councillors have a potential conflict of interest

1. The following principles must be adhered to:
 - a. If a council staff member is the applicant and/or land owner, or is the delegated staff member to act as an applicant for a Council project/development, any discussion relating to the affected DA processing, status, etc, must be undertaken in a public location (e.g. foyer, front counter) and in the staff members own time if the matter is a personal project.
 - b. If a Councillor or staff member is the applicant and/or land owner, the Councillor or staff member must not use his/her position to influence the Assessing Officer in the processing of his/her application.
 - c. The assessing officer is to ensure that all processes undertaken during the assessment of any DA are in accordance with Council's policies, procedures and legislative requirements. The applicant is not to be given any special, or preferential treatment nor discriminated against.
2. How to ascertain if the DA is to be reported to Council for determination, where the applicant/owner is a Council staff member or Councillor.

Generally, any DA lodged where the applicant and/or land owner is a Council staff member or Councillor, the DA should be processed in the usual manner, which may include determination under delegated authority.

If one (1) or more of the following matters are triggered, the DA is to be reported to the elected Council for determination:

- a. If required by Council's Development Assessment and Decision Making Policy;
- b. The proposed DA creates significant public interest and/or large numbers of submissions;



GOULBURN MULWAREE COUNCIL CONFLICT OF INTEREST POLICY - DEVELOPMENT APPLICATIONS RELATED TO COUNCIL, COUNCILLORS AND COUNCIL EMPLOYEES

- c. The applicant and/or land owner is a staff member within the Planning & Environment Directorate or Councillor unless otherwise deemed exempt by the Director Planning & Environment. The Director Planning & Environment will consider the scale of the proposed development and the role held by the applicable applicant/owner when granting an exemption.

Table 1 – Assessment & Determination Criteria for Council-Related Development

Category of DA where Council is both Applicant and Landowner, or where Council has an interest on the land	Assessment	Determination
<p>Minor DA</p> <p>Minor DAs refers to development that is small-scale, routine operational and/or non-controversial. The determination of ‘minor’ shall be made after consideration of the following criteria, at the discretion of the Director Planning & Environment:</p> <ul style="list-style-type: none"> • The estimated value of the works to be undertaken; • The potential impact on surrounding residential amenity associated with the proposed development; • The consistency of the proposed works with an existing Council Management Plan or strategy; • Whether the proposal involves any substantial variations from existing Council policy; and • Whether the proposal will lead to any financial benefit for Council. <p>Examples include replacement amenities block, internal refurbishment of a building, less than 5 lot subdivision.</p>	<ul style="list-style-type: none"> • Assessment must be by Council staff not involved in the application and peer reviewed by immediate supervisor. • A management statement to be prepared and exhibited with the DA, unless is it of a kind referred to in (2) under “Process for Identifying and Managing Potential Conflicts of Interest” in this policy 	<ul style="list-style-type: none"> • Determination under delegated authority by senior staff <p>(Other than for development on community land under <u>section 47E</u> of the <i>Local Government Act 1993</i>)</p>
<p>Routine DA</p> <p>Not minor or other form of DA that takes place on Council land or on Council reserves and complies with zoning, landuse provisions and Council policies, with no substantial or numerous submissions.</p> <p>Examples include, a 5 lot subdivision, a new amenities block, alterations and additions to existing buildings.</p>	<ul style="list-style-type: none"> • Assessment by Council staff not involved in the application and peer reviewed by senior member of staff. • Assessment by external independent town planning consultant may be required, if determined by the Director Planning & Environment. • Management statement to be prepared and exhibited with the DA. • Potential referral to Risk & Audit Committee 	<ul style="list-style-type: none"> • Determination under delegated authority by senior staff <p>(Other than for development on community land under <u>section 47E</u> of the <i>Local Government Act 1993</i>)</p>



GOULBURN MULWAREE COUNCIL CONFLICT OF INTEREST POLICY - DEVELOPMENT APPLICATIONS RELATED TO COUNCIL, COUNCILLORS AND COUNCIL EMPLOYEES

Category of DA where Council is both Applicant and Landowner, or where Council has an interest on the land	Assessment	Determination
<p>Major DA</p> <p>Major DAs refer to development that is large-scale, significant and/or controversial. The determination of 'major' shall be made after consideration of the following criteria, at the discretion of the Chief Executive Officer/Director Planning & Environment:</p> <ul style="list-style-type: none"> • The estimated value of the works to be undertaken; • If the DA is Regional Development (under the State Environmental Planning Policy (Planning Systems) 2021); • The potential impact on surrounding residential amenity associated with the proposed development; • The consistency of the proposed works with an existing Council Management Plan or strategy; • Whether the proposal involves any substantial variations from existing Council policy; and • Whether the proposal will lead to any financial benefit for Council. <p>Examples include: new estates, new community facilities and libraries.</p>	<ul style="list-style-type: none"> • Engage external independent town planning consultant. • A management statement to be prepared and exhibited with the DA. • For applications that do not trigger referral to the Southern Region Planning Panel, a referral may be required to the Audit & Risk Committee. 	<ul style="list-style-type: none"> • Report to Council for determination <p style="text-align: center;">OR</p> <ul style="list-style-type: none"> • Determination by the Southern Region Planning Panel if the Capital Investment Value (CIV) of the application is >\$5million in accordance with Schedule 6 of the State Environmental Planning Policy (Planning Systems) 2021. <p>Regional application must be independently assessed.</p>

Table 2 – Example Management Statement

Goulburn Mulwaree Council Conflict of Interest Management Statement	
Project Name:	
DA Number:	
Potential Conflict:	
Management Strategy:	<p>Goulburn Mulwaree Council is managing potential conflicts of interest in this project as follows:</p> <ul style="list-style-type: none"> • •
Contact:	Anyone with concerns about Council fulfilling its obligations should report their concerns to:

Version	Council Meeting Date	Resolution	Adoption Date	Effective From
1	18 July 2023	2023/148	18 July 2023	15 August 2023
2				
3				
4				
All policies can be reviewed or revoked by resolution of Council at anytime.				

DIRECTORATE: Planning & Environment

BUSINESS UNIT: Planning & Development