

# Council Policy



<b>Policy Title:</b>	<b>Managing conflicts of interest for council-related development</b>
<b>Policy Number:</b>	CPOL15.22
<b>Focus Area:</b>	11D2: Deliver consistent regulatory and compliance services
<b>Responsibility:</b>	Development & Certification
<b>Meeting Adopted:</b>	21 March 2023 – 210223/8

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## 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

The policy applies to all council-related development, as defined below.

## 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 but does not include an application for a complying development certificate.

**Council** means Richmond Valley Council.

**Council-related development** means development for which Council is:

- The applicant developer (whether lodged by or on behalf of Council)
- The 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, certification, and enforcement.

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

## POLICY

### Introduction

Richmond Valley Council is committed to ethical, transparent, and equitable management of all its development processes. In circumstances where Council must manage the preparation, assessment, and regulatory processes for its own development proposals, or where it has a commercial interest in a development, it will take particular care to identify any potential conflicts

of interest and to manage them openly and consistently. The aim is to ensure that everyone who submits a development application for assessment, whether they are a private developer, or Council, is treated in the same manner, with the same high standards.

Council undertakes development for a variety of reasons. This may be as simple as building a new bus shelter or upgrading a local playground, or as complex as a major redevelopment of community infrastructure, such as a public swimming pool or showground. Council may also, on occasion, undertake development to provide a social outcome, such as providing more housing, or to support economic stimulus through commercial investment, such as the upgrade of the Northern Rivers Livestock Exchange.

This policy covers the full range of Council development activities. It should also be applied in conjunction with the Model Code of Conduct requirements, prescribed by the *Local Government Act 1993*. Under the Model Code, councillors and council employees have responsibilities to manage personal conflicts of interest when dealing with any council-related matters.

While the policy specifically addresses the requirements of the 2022 conflicts of interest amendments to the Environmental Planning and Assessment Regulation 2021 (the Regulation), it also provides guidance on managing potential conflicts before a development application is submitted and after development consent is granted for council-related development. Additionally, it considers matters where council may not be the developer, but the application may still have potential impacts on its operations or commercial interest, for example where private development is proposed next to a Council building or asset, or in direct competition with a business operated by the Council.

## Process for identifying and managing potential conflicts of interest

### Initiating a development

Where Council proposes a new development, the manager of the business unit responsible for the project will consult with the Director of Community Service Delivery, or her delegate, to determine whether a Development Application will be required for the works.

Where a development application is required, an initial risk assessment will be undertaken to determine whether the project is considered high, medium, or low Risk for potential conflicts of interest, based on the guidance provided in this policy. The assessment will be referred to the General Manager, or his delegate, for concurrence.

### Risk categories

Council will use the following guidance in determining the risk category for a proposed development:

**Low risk:** Minor changes, alterations, or additions, with low impact, low construction risk and capital value of <\$250,000. No additional management controls will be required.

**Medium risk:** Projects up to \$5m in capital value, with moderate community impact, construction risk and complexity. Appropriate management controls will be required.

**High risk:** Complex projects, with high community impact/sensitivity, high construction risk and capital value exceeding \$5m. Multiple management controls will be required.

### Preparing a Risk Management Statement

Once the General Manager concurs with the initial risk assessment, a Risk Management Statement for the development will be prepared, using a range of strategies from the Risk Management Table (Appendix 1), as appropriate and in consultation with the Manager of Development & Certification. Where Council initiates the development, the Risk Management Statement will address the pre-application phase, as well as the development assessment, determination, and subsequent regulatory processes.

In low risk matters, it is expected that no additional management strategies will be required, and this must be noted. In high risk, complex matters, particularly where Council has a commercial interest, a third party may be engaged to prepare or review the Risk Management Statement.

The Risk Management Statement will be attached to Council's project management plan for the works.

### Submitting a development application

The Risk Management Statement will be lodged via the NSW Planning Portal with the development application. Where a council-related development is assessed as high risk, the General Manager must approve the Risk Management Statement. A sample statement is attached at Appendix B.

The Manager of Development and Certification will be responsible for ensuring that the identified conflicts of interest are recorded in the DA register, as required under the Regulation. Council will undertake regular internal audits of the DA register to ensure compliance.

### Advertising the development application

All Council-related development applications must be exhibited for a minimum of 28 days, in accordance with the requirements of the Act (Schedule 1, clause 9B). A copy of the Risk Management Statement must be included in the exhibition.

### Assessing and determining the development application

All Council-related development applications will be assessed and determined in accordance with the controls outlined in the Risk Management Statement for the development. Council will undertake regular audits of compliance with these requirements, in consultation with its Internal Audit and Risk Committee.

### Post-approval regulatory requirements and certification

If a Council-related development application is approved, the Director of Community Service Delivery and the relevant Project Manager will be responsible for ensuring post-approval processes, such as certification, inspections, and compliance matters, are carried out in accordance with the Risk Management Statement for the project.

Certification of the development will be in accordance with industry standards, including the *Building and Development Certification Act 2018*, Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021, and the Department of Fair Trading's *Practice Standard for Registered Certifiers*.

Council will undertake regular audits of compliance with requirements for medium-high risk developments, in consultation with its Internal Audit and Risk Committee.

### Managing conflicts where Council is not the applicant

There will be circumstances where Council does not initiate a development, yet still has potential conflicts of interest in the matter. Low risk examples might include circumstances where a proponent seeks to locate permanent outdoor dining facilities on a Council footpath. Higher risk examples may include instances where a private development proposal may impact Council lands, facilities, or business operations. Examples might include proposed developments adjoining Council facilities or proposed commercial activities that would compete for market share with existing Council businesses.

In circumstances where Council is the landowner, but not the applicant, the provisions of this policy will apply in accordance with the conflicts of interest amendments to the Environmental Planning and Assessment Regulation 2021. In these instances, Council will be required to provide owner's consent for lodgment of the application. In doing so, the General Manager, or his delegate, will be responsible for preparing a Risk Management Statement and supplying this to the applicant with the owner's consent.

In circumstances where Council is neither the landowner nor the applicant, yet has potential impacts from the development proposal, the General Manager, or his delegate, will be responsible for determining and implementing appropriate risk management strategies for assessment, determination, and post-assessment regulation of these proposals based on the control measures outlined in this policy.

### Exempt Development

**Exempt development** is minor development with minimal environmental impacts. This includes routine maintenance of roads and public facilities. These works are excluded from the development application process. Council must ensure that when undertaking exempt development it complies with all the predetermined requirements for that development type.

### Development Without Consent

**Development without consent** includes activities that can be undertaken without a development application. This includes infrastructure related construction and implementation of Plans of Management.

The Regulation does not required Council to prepare a Risk Management Statement for these activities. However, Part 5 of the Act requires consideration of the likely impact of an activity on the environment and preparation of a Review of Environmental Factors (REF).

Council must publish on its website those REFs it produces:

- having a capital investment value (CIV) >\$5m, or
- that require any of the following approvals/permits-
  - *Fisheries Management Act 1994* approval (sections 144, 200, 205 or 219)
  - *Heritage Act 1977* (section 57)
  - *National Parks and Wildlife Act 1974* (section 90)
  - *Protection of the Environment Operations Act 1997* (section 47-49 or 122), or
- that the determining authority consider are in the public interest.

Council will incorporate a Risk Management Statement into its REF process.

## REFERENCES

Department of Planning and Environment (Sept 2022). *Council-related Development Application Conflict Of Interest Guidelines*. <https://pp.planningportal.nsw.gov.au/news/council-related-development-application-conflict-interest-guidelines>

## REVIEW

This policy will be reviewed by Council at the time of any relevant legislative changes, compliance requirements, or at least every four years.

Version Number	Date	Reason / Comments
1	21 March 2023	New policy

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## APPENDIX A

### Table of Risk Management Strategies

Level of Risk	Low	Medium	High
Examples of Council-related development	<ul style="list-style-type: none"> <li>Outdoor dining on Council footpath – with permanent fixtures or seating</li> <li>Applications for minor development that encroaches a road reserve</li> <li>Commercial fit-outs by tenants in Council facilities – for example cafes or gyms at Council pools or other buildings</li> <li>Capital Value Investment (CIV) &lt;\$250K</li> </ul>	<ul style="list-style-type: none"> <li>Subdivision with &lt;24 lots</li> <li>Capital Investment Value (CIV) &lt;\$5M</li> </ul>	<ul style="list-style-type: none"> <li>Regionally Significant Development</li> <li>State Significant Development</li> <li>State Significant Infrastructure</li> <li>Capital Investment Value (CIV) &gt;\$5 Million</li> <li>Subdivision with &gt;24 lots</li> </ul>
Non-Council-related development	n/a	<ul style="list-style-type: none"> <li>Adjoining land with a Council interest</li> </ul>	<ul style="list-style-type: none"> <li>Potential commercial impacts on Council</li> </ul>

#### Management Strategies that may be applied

Level of Risk	Low	Medium	High
Pre-Application Planning	No additional strategies required	<ul style="list-style-type: none"> <li>Potential Conflicts of Interest is identified early to ensure appropriate strategies are employed throughout the project</li> </ul>	<ul style="list-style-type: none"> <li>Potential Conflicts of Interest is identified early to ensure appropriate strategies are employed throughout the project</li> </ul>
Application Preparation	No additional strategies required	<ul style="list-style-type: none"> <li>Council prepares the application but seeks independent consultancies to provide advice on significant constraints</li> </ul>	<ul style="list-style-type: none"> <li>Application prepared by an independent consultant</li> <li>Independent specialist consultancies used to provide advice on significant constraints</li> </ul>

<b>Management Strategies that may be applied</b>			
<b>Level of Risk</b>	<b>Low</b>	<b>Medium</b>	<b>High</b>
Assessment	No additional strategies required	<ul style="list-style-type: none"> <li>• Application is assessed by Council staff not directly involved in the project design and application preparation</li> <li>• Optional - The assessment report is peer reviewed by an independent consultant or other council</li> </ul>	<ul style="list-style-type: none"> <li>• Assessment by an independent consultant</li> </ul>
Determination	No additional strategies required	<ul style="list-style-type: none"> <li>• Development Assessment Panel (DAP) reviews the assessment report, recommendation, and conditions prior to determination under delegation</li> <li>• Determination by Council – where considered controversial, called up by at least 2 Councillors, or it exceeds the parameters for DAP</li> </ul>	<ul style="list-style-type: none"> <li>• Regionally Significant Development will be determined by the Northern Regional Planning Panel</li> <li>• State Significant Development or State Significant Infrastructure will be determined by the Minister</li> </ul>
Post Consent Certification	No additional strategies required	<ul style="list-style-type: none"> <li>• Council Certifier carries out the process in accordance with relevant legislation and guidelines</li> </ul>	<ul style="list-style-type: none"> <li>• Private Certifier, or where private certification is not available, Council certifier with pre-approved probity plan.</li> </ul>
Enforcement	No additional strategies required	<ul style="list-style-type: none"> <li>• Council-related development will be treated the same as non-Council development for regulatory enforcement</li> </ul>	<ul style="list-style-type: none"> <li>• Council-related development will be treated the same as non-Council development for regulatory enforcement</li> </ul>
Development without consent	No additional strategies required	<ul style="list-style-type: none"> <li>• Council prepares a REF but seeks independent consultancies to provide advice on significant constraints</li> </ul>	<ul style="list-style-type: none"> <li>• REF prepared by an independent consultant</li> <li>• Independent specialist consultancies used to provide advice on significant constraints</li> </ul>



## Sample Conflicts of Interest Risk Management Statement

Richmond Valley Council Conflicts of Interest Risk Management Statement	
Project Name	Regional sports stadium
DA Number	
Potential conflicts	Richmond Valley Council is the applicant for the redevelopment of the XXX Park Sports Stadium. The project has a CIV of \$20M and is therefore Regionally Significant Development. Council expects to receive revenue through the commercial lease and operation of the facility, including usage fees, events, kiosk/cafe facilities, a gymnasium, and several commercial lease spaces.
Assessed level of Risk	High
Management strategy	<p>Council is managing potential conflicts of interest in this matter as follows:</p> <ul style="list-style-type: none"> <li>• The application will be prepared by an independent consultant</li> <li>• Council will engage another independent planning consultant to assess the application</li> <li>• The development is Regionally Significant Development and will be determined by the Northern Regional Planning Panel</li> <li>• A private certifier will be engaged to undertake the certification for the development</li> <li>• Key project milestones following the development consent will be reported to public Council Meetings</li> <li>• The facility will not operate until a final occupation certificate, or appropriate interim occupation certificate, has been issued for the development</li> <li>• Council will ensure that it follows the appropriate EOI and appointment processes before entering a lease to manage the facility or to let commercial spaces.</li> </ul>
Contact	Anyone with concerns about Council fulfilling its obligations under this Statement should report their concerns to the Council or the NSW Local Government Ombudsman.

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