



Conflicts of Interest Policy

(In Dealing with Council-related Development)

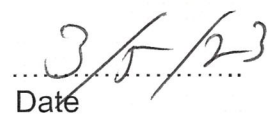
Document Authorisation

RESPONSIBLE OFFICER:		MANAGER OF GOVERNANCE RISK AND CORPORATE PLANNING (MGRCP)			
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VERSIONS:	DATE:	RESOLUTION NO:	DESCRIPTION OF AMENDMENTS:	AUTHOR / EDITOR:	APPROVED / ADOPTED BY:
6	27/04/2023	6.04/23	Amendments are significant through adapting the Policy to the new Policy Template and including significant information and management controls on conflicts of interest with Council related development based on the NSW Department of Planning and Environment <i>Council-related Development Application Conflict of Interest Guidelines</i>	MGRCP	Council
5	24/09/2020	20.09/20		Director of Development, Planning and Regulatory Services (DDPRS)	Council
4	27/07/2017	23.07/17		DDPRS	Council

Note: Document Control continued at **Appendix C**



 General Manager



 Date

Contents

Conflicts of Interest Policy 1
(In Dealing with Council-related Development)1
Document Authorisation2
Contents.....3
Part 1 Preliminary 4
1. Acknowledgement of Country4
2. Purpose4
3. Applicability.....4
4. Outcomes4
5. Roles and responsibilities5
6. Definitions.....6
7. Policy Statement.....7
Part 2 Process for Identifying and Managing Conflicts of Interest 9
8. Identifying whether a potential conflict of interest exists, assessment of level of risk
and determination of appropriate management controls9
9. Management controls9
10. Where staff and/or Councillors have a potential conflict of interest.....10
11. Declarations of conflicts of interest.....10
Part 3 Other Applications Requiring Management Controls and Supporting Matters 11
12. Applications of public interest.....11
13. Applications whereby a declaration is made by an applicant that an affiliation with a
Council Officer exists.....11
14. Legislation and Supporting Documents.....11
15. Variation and review12
Appendix A – Assessment and Determination Criteria13
Appendix B – Example Management Statement.....19
Appendix C- Document Control Continued20

Part 1 Preliminary

1. Acknowledgement of Country

Glen Innes Severn Council acknowledges and pays respect to the Ngoorabul people as the traditional custodians of this land, their elders past, present and emerging and to Torres Strait Islander people and all First Nations people.

2. Purpose

The purpose of this policy is to:

- Define how Council will manage potential and actual conflicts of interest in dealing with Council related development; and
- Limit delegated authority in dealing with development applications and complying development certificates where conflicts of interest may arise.

3. Applicability

This policy applies to:

- Council related development;
- Where a staff member, council committee member, delegate of Council, adviser of Council, or Councillor is an applicant; and
- Limits of delegation for development applications and issuing complying development certificates.

4. Outcomes

This Policy aims to:

- Manage potential and actual conflicts of interest and increase transparency at all stages of the development process for council-related development;
 - Ensure that development decisions are properly made and that parties involved in the development process are dealt with fairly to avoid impropriety; and
 - Avoid any occasion for suspicion and appearance of improper conduct.
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5. Roles and responsibilities

Responsible Officer	Responsibilities
Assessing Officers	<ul style="list-style-type: none"> • Ensure that all processes undertaken during the assessment of any development application are in accordance with Council's policies, procedures and legislative requirements. • Must not give any special, preferential treatment or discriminate against any applicant. • Assess and determine Council-related development applications in accordance with the assessment and determination criteria outlined in Appendix A to this policy.
Manex	<ul style="list-style-type: none"> • Carry out reviews as required by this policy. • Ensure that all processes undertaken during the assessment of any development application are in accordance with Council's policies, procedures and legislative requirements. • Must not give any special, preferential treatment or discriminate against any applicant. • Assess and determine Council-related development applications in accordance with the assessment and determination criteria outlined in Appendix A to this policy
Manager of Planning and Regulatory Services	<ul style="list-style-type: none"> • Ensure Assessing Officers comply with this policy. • Provide advice to the Manager of Governance, Risk and Corporate Planning on the development application process as may be required. • Refer development applications for assessment by an external independent town planning consultant as recommended by the Manager of Governance, Risk and Corporate Planning. • Refer development applications to Council as recommended by the Manager of Governance, Risk and Corporate Planning. • Refer development applications to the Regional Planning Panel as required under Schedule 6 of the State Environmental Planning Policy (Planning Systems) 2021.
Manager of Governance, Risk and Corporate Planning	<ul style="list-style-type: none"> • Identify whether a potential conflict of interest exists, assess the level of risk and determine appropriate management controls as outlined in subsections 8.1 and 8.2 of this policy. • Refer matters to the Audit Risk and Improvement Committee as may be required by this policy. • Liaise with the Manager of Planning and Regulatory Services in relation to the development application process as may be required.

Responsible Officer	Responsibilities
Manager of Governance, Risk and Corporate Planning (Continued)	<ul style="list-style-type: none"> • Complete Management Statements as required. • Monitor this policy to ensure compliance. • Review this policy in accordance with section 15 of this policy.
Records Supervisor	<ul style="list-style-type: none"> • Ensure that relevant security controls are in place on all records management registers where Council staff have an identified conflict of interest.
Council Applicants	<ul style="list-style-type: none"> • Notify the Manager of Governance, Risk and Corporate Planning of any Council-related development applications. • Arrange for Management Statements to be published on development application tracking (or Portal if mandated). • Declare and manage any conflicts of interest in accordance with this policy. • Adhere to the principles outlined in subsection 10.1 of this policy.
Audit Risk and Improvement Committee	<ul style="list-style-type: none"> • Receive reports detailing the Council Related Development Applications captured by this policy.
Internal Auditor	<ul style="list-style-type: none"> • Ensure the audit of this policy’s controls are considered in the Four-Year Strategic Audit Plan.

6. Definitions

1) In this policy:

affiliation means any relationship with a relative (as defined in clause 4.4 of the Code of Conduct for Council Staff), or other private or personal interest that amount to a pecuniary interest or significant non-pecuniary interest including those relationships defined in clause 5.1 of the Code of Conduct for Council Staff.

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.

assessing officer means the Town Planner (including any senior or junior town planning positions), Manager of Planning and Regulatory Services and any other staff member or contractor with the delegated authority to undertake the assessment of a development application.

authorised staff member means a Council officer with authority to act as an applicant for a Council-related development.

complying development certificate as described in Division 4.5 of the Act.

council means Glen Innes Severn 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.

ECM means Council's approved electronic records management system.

Manex means the Management Executive Team.

project team means any one or more Council Officers involved in managing a project that requires a development application (or complying development certificate).

senior staff member means the Director of Place and Growth and the Manager of Planning and Regulatory Services.

the Act means the *Environmental Planning and Assessment Act 1979* (NSW).

- 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.

7. Policy Statement

7.1 Pursuant to section 378(2) of the *Local Government Act 1993* the General Manager has delegated certain functions under the *Environmental Planning and Assessment Act 1979* to the Director of Place and Growth and to the development and planning staff. These functions allow the staff to determine development and complying development applications. The delegation further allows for granting consent, either conditionally or subject to conditions, or refusing applications.

7.2 Pecuniary and Non-Pecuniary Conflict of interests

A conflict of interests exists when Council or Council staff could be influenced, or a reasonable person would perceive that they could be influenced, by a personal interest when carrying out their public duty. Perceptions of a conflict of interests are as important as actual conflict of interests.

Under the provision of the Code of Conduct, a conflict of interests can be of two types:

- a) Pecuniary - An interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person or another person with whom the person is associated; and
- b) Non-pecuniary - A private or personal interest the council official has that does not amount to a pecuniary interest as defined in the *Local Government Act 1993* (for example, a friendship, membership of an association, society or trade union or involvement or interest in an activity and may include an interest of a financial nature).

7.3 Improper and Undue Influence

The policy aims to ensure that Council and individual Councillors, Council staff, delegates of Council, Council advisers and Council committee members do not take advantage of their positions to improperly influence other council officials in the performance of their public or professional duties to secure a private benefit for themselves or for somebody else.

Further, the Policy aims to ensure that Council and staff do not take advantage (or seek to take advantage) of their status or position with, or functions performed for, Council to obtain unauthorised or unfair benefit for themselves or for any other person or body.

Part 2 Process for Identifying and Managing Conflicts of Interest

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

- 8.1 Development applications lodged with Council that are Council-related development are to be referred to the Manager of Governance, Risk and Corporate Planning for a conflict-of-interest risk assessment.
- 8.2 The Manager of Governance, Risk and Corporate Planning will:
- (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 Appendix A and Appendix B of this policy and the outcome of the assessment of the level of risk involved as set out in subsection 7.2(c) of this policy.
 - (e) Document the proposed management approach for the proposal in a statement that is published on the NSW Planning Portal.

9. Management controls

- 9.1 Management controls may be applied to:
- (a) The assessment and determination of an application for Council-related development. Refer to **Appendix A** for controls.
 - (b) The regulation and enforcement of approved Council-related development. Refer to **Appendix B** for controls.
- 9.2 No management controls will be applied to:
- (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 façade over public land (such as awnings, verandas, bay windows, flagpoles, pipes and services).
 - (e) Development where the Council might receive a small fee (as established under Council's adopted Fees and Charges Schedule) for the use of their land.
 - (f) Minor development within the road reserve such as, a driveway or stormwater works for which approval under the Roads Act is required.
-

10. Where staff and/or Councillors have a potential conflict of interest

10.1 The following principles will be adhered to:

- (a) If a Council staff member is the Authorised Staff Member to act as an applicant for a Council-related development, any discussion with other Council staff in relation to the development application must be undertaken by appointment and in a public location (the same as for any other Council customer). Records of meetings must be kept and retained on the relevant application register in ECM.
- (b) If a Council staff member is the applicant and/or landowner for a personal development application, any discussion with other Council staff in relation to the development application must be undertaken in the staff member's (applicant/owner's) own time, by appointment and in a public location (the same as for any other Council customer). Records of meetings must be kept and retained on the relevant application register in ECM.
- (c) If a Councillor, Council staff member, delegate of Council, adviser of Council or Council committee member is the applicant and/or landowner, the Councillor, staff member, delegate, adviser or committee member must not use his or her position to influence the Assessing Officer in the processing of the application.
- (d) The Assessing Officer is to ensure that all processes undertaken during the assessment of any development application are in accordance with Council's policies, procedures and legislative requirements. The applicant is not to be given any special, preferential treatment nor discriminated against.
- (e) Relevant security controls will be put in place on all record management registers where Council staff have an identified conflict of interest as outlined in section 9.1.
- (f) Development applications will be assessed in accordance with usual processes and will be reported to Council for determination if required in accordance with Annexure A.

11. Declarations of conflicts of interest

11.1 Where a Council staff member or team within Council is party to a development application as applicant and/or landowner, the individual(s) must declare the conflict of interest in accordance with Part 4 of the Code of Conduct and ensure that this policy and the Code of Conduct for Council Staff are adhered to.

11.2 If the staff member is within the Development and Planning department the declaration must be made to the General Manager.

11.3 A declaration must be completed when submitting a development application via the NSW Planning Portal.

Part 3 Other Applications Requiring Management Controls and Supporting Matters

Management Controls are located at **Appendix A**.

12. Applications of public interest

12.1 Applications whereby five or more submissions, or a single petition with five or more names are received objecting to the development on valid planning grounds.

12.2 Applications recommending refusal on planning principles.

13. Applications whereby a declaration is made by an applicant that an affiliation with a Council Officer exists

13.1 Applications whereby Manex members, or staff in the Place and Growth or Infrastructure Services Directorate have an affiliation.

14. Legislation and Supporting Documents

Relevant Legislation, Regulations and Industry Standards include:

- NSW Department of Planning and Environment *Council-related Development Application Conflict of Interest Guidelines*
- *Local Government Act 1993* (NSW)
 - particularly, Chapter 14.
- *Environmental Planning & Assessment Act 1979* (NSW) (**the Act**)
 - particularly, Part 4; and
 - **Schedule 1 Community participation requirements**
9B Council-related development applications
(1) Minimum public exhibition period for a council-related development application—28 days.
(2) In this clause— council-related development application 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.
- *Environmental Planning & Assessment Regulation 2021*
 - particularly:
 - 30B Council-related development applications**
A council-related development application must be accompanied by—
(a) a statement specifying how the council will manage conflicts of interest that may arise in connection with the application because the council is the consent authority (a management strategy), or
(b) a statement that the council has no management strategy for the application.

66A Council-related development applications—the Act, ss 4.16(11)

(1) A council-related development application must not be determined by the consent authority unless—

- (a) the council has adopted a conflict of interest policy, and
- (b) the council considers the policy in determining the application.

(2) In this section—

conflict of interest policy means a policy that—

- (a) specifies how a council will manage conflicts of interest that may arise in connection with council-related development applications because the council is the consent authority, and
- (b) complies with the Council-related Development Application Conflict of Interest Guidelines published by the Department and available on the NSW planning portal.

240 Council to keep a register of development applications and development consents

240(3)(m)—

(m1) for a development consent granted in response to a council-related development application—

- (i) conflicts of interest that may arise in connection with the application because the council is the consent authority, and
- (ii) measures taken by the council to manage the conflicts of interest,

Schedule 7 Dictionary

council-related development application has the same meaning as in the Act, Schedule 1, clause 9B

Relevant Council Policies and Procedures include:

- Code of Conduct for Council Staff;
- Code of Conduct for Councillors;
- Code of Conduct for Council Committee Members, Delegates of Council and Council Advisers;
- Lobbying of Councillors Policy; and
- Related Party Disclosures Policy.

15. Variation and review

The Conflicts of Interest Policy (In Dealing with Council-Related Development) will be reviewed every three years, or earlier if deemed necessary, to ensure that it meets the requirements of legislation and the needs of Council. The term of the Policy does not expire on the review date, but will continue in force until superseded, rescinded or varied either by legislation or a new resolution of Council.

Appendix A – Assessment and Determination Criteria

Category of development application	Assessment	Determination
<p>Minor development application (where Council is both applicant and landowner, or where Council has an interest in the Land)</p> <p>Minor development application 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 Manager of Planning and Regulatory Services:</p> <ul style="list-style-type: none"> • The estimated value of the works to be undertaken (nominally less than \$50,000). • 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 or the Local Environmental Plan. • Whether the proposal will lead to any financial benefit for Council. <p>Examples include replacement of an amenities block, internal refurbishment of a building, construction of a driveway or other private development within the road reserve for which an</p>	<ul style="list-style-type: none"> • Assessment must be by Council staff not involved in the application and peer reviewed by the immediate supervisor. • A management statement is to be prepared and exhibited with the development application, unless it is of a kind referred to in subsection 9.2 of this policy. • The management statement will include: <ul style="list-style-type: none"> ○ Assessment by Council staff not involved in the application; ○ Peer review by the immediate supervisor; ○ Project Team members will be identified and noted on file; ○ The Assessing Officer will remain separated from the Project Team for the duration of the assessment until determination; ○ Where Council is appointed the Principal Certifying Authority for the development, assessment will be undertaken by staff not involved in the application; 	<ul style="list-style-type: none"> • Determination will be under delegated authority except in the following circumstances: <ul style="list-style-type: none"> ○ Development on community land under section 47E of the <i>Local Government Act 1993</i>. ○ Where this Policy requires that the application be reported to Council for determination.

Category of development application	Assessment	Determination
<p>approval under the <i>Road Act 1993</i> is required, or less than a five-lot subdivision.</p>	<ul style="list-style-type: none"> ○ The construction certificate will be reviewed by the immediate supervisor; ○ Any regulatory decisions in relation to the development will be reviewed by the manager; and ○ Key milestones following the development consent will be reported to Council in the General Manager's Update. 	
<p>Routine development application (where Council is both applicant and landowner, or where Council has an interest in the Land)</p> <p>Routine development application refers to development that takes place within Council's industrial estates or on Council reserves and complies with the zoning, land use provisions and Council policies with less than five submissions.</p> <p>Examples may include a five-lot subdivision, a new amenities block, alterations and additions to existing buildings or a new fire station.</p>	<ul style="list-style-type: none"> ● A management statement is to be prepared and exhibited with the development application, unless it is of a kind referred to in subsection 9.2 of this policy. ● The management statement will include: <ul style="list-style-type: none"> ○ Assessment by Council staff not involved in the application; and ○ Reviewed by a Senior Staff Member; or ○ Assessment by an external independent town planning consultant if determined by the Manager of Governance, Risk and Corporate Planning, in consultation with a Senior Staff Member. ○ The Assessing Officer will remain separated from the Project Team for the duration of the assessment, until determination. ○ A private certifier will be appointed to undertake the certification of the development. 	<ul style="list-style-type: none"> ● Determination will be under delegated authority except in the following circumstances: <ul style="list-style-type: none"> ○ Development on community land under section 47E of the <i>Local Government Act 1993</i>. ○ Where this Policy requires that the application be reported to Council for determination.

Category of development application	Assessment	Determination
	<ul style="list-style-type: none"> ○ Any regulatory decisions in relation to the development will be reviewed by a neighbouring council. ○ Key milestones following the development consent will be reported to Council in the General Manager's Update. ○ The Manager of Governance, Risk and Corporate Planning will determine if the matter be referred to the Audit, Risk and Improvement Committee. 	
<p>Major development application (where Council is both applicant and landowner, or where Council has an interest in the Land)</p> <p>Major development application refers 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 Manager of Governance, Risk and Corporate Planning in consultation with a Senior Staff Member:</p> <ul style="list-style-type: none"> • The estimated value of the works to be undertaken is greater than \$5M, including all funding sources for the development. • If the development application is Regional Development (under <i>State Environmental Planning Policy (Planning Systems) 2021</i>). • The consistency of the proposed works with an existing Council Management Plan or Strategy. 	<ul style="list-style-type: none"> • A management statement is to be prepared and exhibited with the development application. • The management statement will include: <ul style="list-style-type: none"> ○ Engage external, independent town planning consultant to assess the development application. <p>Refer the development to the Regional Planning Panel for determination.</p>	<ul style="list-style-type: none"> • Determination by the Regional Planning Panel if the Capital Investment Value (CIV) of the application is greater than \$5M in accordance with Schedule 6 of the <i>State Environmental Planning Policy (Planning Systems) 2021</i>. <p>Regional applications must be independently assessed.</p>

Category of development application	Assessment	Determination
<ul style="list-style-type: none"> • Whether the proposal involves any substantial variations from existing Council Policy, including any variation to Council's adopted Local Environmental Plan. • Whether the proposal will lead to any financial benefit for Council. <p>Examples may include new industrial estates, new community facilities and libraries.</p>		
<p>Development applications:</p> <ul style="list-style-type: none"> • Where Council is the owner of land and the land is subject to sale or development other than by Council, and the developer requires a consent for a sale to proceed 	<ul style="list-style-type: none"> • A management statement is to be prepared and exhibited with the development application. • The management statement will include: <ul style="list-style-type: none"> ○ Engage external, independent town planning consultant to assess the development application. 	<ul style="list-style-type: none"> • Determination by a meeting of Council.
<p>Development applications:</p> <p>Where Manex members, Place and Growth and Infrastructure Services staff are involved in a development assessment process and are applicants and / or owners (non-residential development).</p>	<ul style="list-style-type: none"> • Where development does not exceed \$60,000: <ul style="list-style-type: none"> ○ Assessed by an independent qualified member of the Place and Growth directorate. • Where development exceeds \$60,000: <ul style="list-style-type: none"> ○ Assessed by a suitably qualified Town Planner independent of Council. <p>Engineering assessments may be carried out by an independent qualified staff member in both cases.</p>	<ul style="list-style-type: none"> • Determination by a meeting of Council.

Category of development application	Assessment	Determination
<p>Development applications: Where Manex members, Place and Growth and Infrastructure Services staff are involved in a development assessment process and are applicants and / or owners (residential development).</p>	<ul style="list-style-type: none"> • Where a development application does not exceed \$200,000: <ul style="list-style-type: none"> ○ Assessed by an independent qualified member of the Place and Growth directorate and approved by the Director of Place and Growth; except ○ If the applicant is the Director of Place and Growth (or the Director of Place and Growth has a pecuniary interest or significant non-pecuniary interest arising from the application), then the application will be assessed by an independent member of the Place and Growth directorate but determined by Council. • Where a development application exceeds \$200,000: <ul style="list-style-type: none"> ○ Assessed by an independent qualified member of the Place and Growth directorate; except ○ If the applicant is the Director of Place and Growth (or the Director of Place and Growth has a pecuniary interest or significant non-pecuniary interest arising from the application) then the application will be assessed by an external, independent, qualified town planner. <p>Engineering assessments may be carried out by an independent qualified staff member in both cases.</p>	<ul style="list-style-type: none"> • < \$200,000 reported to Council at the next Ordinary Meeting of Council except if the applicant is the Director of Place and Growth (or the Director of Place and Growth has a pecuniary interest or significant non-pecuniary interest arising from the application), where the application is to be determined by a meeting of Council. • > \$200,000 determined by a meeting of Council

Category of development application	Assessment	Determination
<p>Applications of public interest</p> <ul style="list-style-type: none"> • Applications whereby five or more submissions, or a single petition with five or more names, are received objecting to the development on valid planning grounds. • Applications recommending refusal on planning principles. 	<ul style="list-style-type: none"> • Application assessed by qualified staff from the Place and Growth directorate. 	<ul style="list-style-type: none"> • Determined by a meeting of Council.
<p>Applications whereby a Declaration is made by an applicant that an affiliation with a Council Officer exists:</p> <ul style="list-style-type: none"> • Where Manex members, Place and Growth and Infrastructure Services staff are involved in development assessment. 	<ul style="list-style-type: none"> • The General Manager or his or her delegate shall: <ul style="list-style-type: none"> ○ Necessitate a risk assessment to be carried out by the Manager of Governance, Risk and Corporate Planning on whether the application requires management. 	

Appendix B – Example Management Statement

Note:

- The Management Statement must be published on development application tracking (or the Planning Portal if mandated).
- Please refer to the NSW Department of Planning and Environment *Council-related Development Application Conflict of Interest Guidelines*, p 6, for an example scenario and completed management statement.

Council Conflict of Interest Management Statement	
Project Name	
DA number	
Potential conflict	
Management strategy	
Contact	

Appendix C- Document Control Continued

PREVIOUS VERSIONS:	DATE:	RESOLUTION NO:	DESCRIPTION OF AMENDMENTS:	AUTHOR / EDITOR:	REVIEW / SIGN OFF:
3	22/07/2014	17.05/14		DDPRS	Council
2	24/03/2011	22.03/11		DDPRS	Council
1	27/06/2008	27.06/08		DDPRS	Council