



# LACHLAN SHIRE COUNCIL

## DEVELOPMENT APPLICATION CONFLICT OF INTEREST POLICY

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Further Information: Lachlan Shire Council ☎ 02 6895 1900 ✉ Email: <a href="mailto:council@lachlan.nsw.gov.au">council@lachlan.nsw.gov.au</a>					
Version: 1 22 March 2023	ADOPTED: RES: 2023/46	Commencement Date: March 2023	Last Review Date: Nil	Next Review Date: March 2025	Records Management

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## 1. BACKGROUND

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

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

This Policy has been prepared to meet the legislative requirements of Section 66A Environmental Planning and Assessment Regulation 2021.

## 2. SCOPE

This policy applies to council-related development.

## 3. OBJECTIVE

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

## 4. DEFINITION/S

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 Lachlan 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*.

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.

Notes included in this policy do not form part of the policy.

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## 5. SAVINGS

This Policy will not apply to development applications lodged prior to the date of adoption of the Policy.

## 6. PROCESS FOR IDENTIFYING AND MANAGING POTENTIAL CONFLICTS OF INTEREST

### 6.1. Conflict of Interest Risk Assessment

6.1.1. Prior to the finalisation of submission of a council-related development application, the proposal is to be referred to the Director Environment Tourism and Economic Development, or their delegate, to undertake a conflict of interest risk assessment.

6.1.2. In reviewing the development application, the Director or their delegate will:

- assess whether the application is one in which a potential exists for conflict of interest.
- identify which phases of the development process at which the identified conflict of interest arises.
- assess the level of risk involved at each phase of the development process.
- determine what (if any) management controls should be implemented to address the identified conflict of interest having regard to the controls and strategies outlined below and the level of risk identified.
- document the proposed management approach for the proposal in a statement that is published on the NSW Planning Portal with the lodgement of the DA (see Sample Statement in **Appendix 1**).

### 6.2. Management controls and strategies

6.2.1. The management control options below may be applied to:

- the assessment and determination of an application for council-related development – Refer to Table 1 (below)
- post development applications and processes such as subdivision works certificates and construction certificates.
- the regulation and enforcement of approved council-related development.

Management control options include:

- use of independent consultants and/or private certifiers,
- shared services arrangements with a neighbouring council (or Penrith City Council),

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- public reporting on key milestones, such as construction and occupation certificates.

6.2.2. No management controls need to be applied to the following kinds of development:

- commercial fit outs and minor changes to building façade
- internal alterations and additions to buildings that do not affect the heritage value of a listed heritage item.
- advertising signage
- minor building structures projecting from a building façade over public land (such as awnings, verandahs, bay windows, flagpoles, pipes, and services)
- development where the council might receive a small fee for the use of land.
- minor modifications to an existing development approval.

**Table 1: Assessment & Determination Criteria**

Category of DA/Modification	Assessment Options	Determination
<b>Minor DA / Modification</b> Refers to development that is small-scale, routine and/or non-controversial <sup>1</sup>	Assessment by staff not involved in the preparation of the application and peer review by Manager Town Planning or Director Environment, Tourism and Economic Development	Determination under delegated authority, other than for development on community land under section 47E of the Local Government Act 1993.
<b>Standard DA</b> Refers to development proposed on council-owned or managed land that substantially complies with zoning, land use provisions and council policies, with no substantial or numerous submissions <sup>2</sup>	Assessment by staff not involved in the preparation of the application and peer review by Manager Town Planning or Director Environment, Tourism and Economic Development, Or Assessment by external independent town planning consultant, or Assessment by neighbouring or Penrith City council planning staff.	Determination under delegated authority by Director Environment, Tourism and Economic Development, other than for development on community land under section 47E of the Local Government Act 1993.
<b>Major DA</b>	Assessment by staff not involved in the preparation of the application and peer	Determination by elected council, or Referral to Western Regional Planning

Category of DA/Modification	Assessment Options	Determination
Refers to large-scale, significant and/ or controversial DAs <sup>3</sup> Includes Regionally Significantly Development as defined in <i>State Environmental Planning Policy (Planning Systems) 2021</i>	review by Manager Town Planning or Director Environment, Tourism and Economic Development, or Assessment by external independent town planning consultant, or Assessment by neighbouring or Penrith City council planning staff.	Panel for determination (regionally significant development).

**Notes:**

1. Designation as Minor DA is to be made based on project-specific assessment of criteria, including, but not limited to:

- the estimated value of the works to be undertaken,
- the potential impact on surrounding residential amenity and/or environmental values of the site and locality,
- whether the proposal will lead to any financial benefit for council.

2. Examples of a Standard DA include alterations and additions to an existing building, new community infrastructure, subdivision of land. The Director Environment, Tourism and Economic Development, or delegate, shall determine which assessment option is to be pursued and whether the application is to be referred to Council's Audit, Risk and Improvement Committee.

3. For each Major DA, the Director Environment, Tourism and Economic Development, in consultation with the General Manager, shall determine which assessment and determination options are to be pursued and whether application is to be referred to Council's Audit, Risk, and Improvement Committee.

## RELATED DOCUMENTS

Related LSC policies include:

- Code of Conduct for Council Staff
- Code of Conduct for Councillors
- Gifts, Benefits and Bribes Policy
- Related Parties Disclosure Policy

Related Legislation includes:

- Environmental Planning and Assessment Act 1979
- Environmental Planning and Assessment Regulation 2021
- Local Government Act 1993

Nothing in this policy limits any applicable legislation.

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## APPENDIX 1 - EXAMPLE MANAGEMENT STATEMENT

Lachlan Shire Conflict of Interest Management Statement	
Project name	
DA number	
Potential conflict	
Management strategy	<p>Lachlan Shire Council is managing potential conflicts of interest in this matter as follows:</p> <ul style="list-style-type: none"> <li>•</li> </ul>
Contact	Anyone with concerns about council fulfilling its obligations should report their concerns to Lachlan Shire Council

Greg Tory

GENERAL MANAGER