

Conflict of Interest Management Policy for Council-Related Development

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.

1. POLICY STATEMENT

The intent of this policy is to ensure that Wentworth Shire Council complies with its legislative requirements under the *Environmental Planning & Assessment Regulation 2021* to prepare a policy that specifies how Council will manage conflicts of interest that may arise in connection with Council-related development applications because the Council is the consent authority and the enforcement authority.

2. POLICY COVERAGE

This policy applies to all Council-related development.

3. STRATEGIC PLAN LINK

Objective: 4.0 Wentworth is supported by a strong and ethical civic leadership with all activities conducted in an open, transparent and inclusive manner.

Strategy: 4.2 Provide a strong, responsible and representative government.

4. DEFINITIONS AND ABBREVIATIONS

Term/Word	Definition
application	means an application for consent under Part 4 of the <i>Environmental Planning and Assessment Act 1979</i> (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 Wentworth Shire Council
Council-related development application	<p>Is a development application, for which the council is the consent authority, that is –</p> <ul style="list-style-type: none">(a) made by or on behalf of the council, or(b) for development on land, other than a public road within the meaning of the <i>Local Government Act 1993</i> –<ul style="list-style-type: none">i. of which the council is an owner, a lessee or a licensee, orii. otherwise vested in or under the control of the council. <p>Note: land vested in or under the control of the council includes public land within the meaning of the <i>Local Government Act 1993 (NSW)</i>.</p>
development process	means application, assessment, determination and enforcement
the Act	means the <i>Environmental Planning and Assessment Act 1979 (NSW)</i>

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Note: a word or expression used in the 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.

5. POLICY CONTENT

5.1 Policy Background

Councils are development regulators. But they can also 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 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.

5.2 Provisions

5.2.1 Development Applications that are considered Council-related development as defined in the Table above must be referred to the General Manager (or a delegate) for a conflict of interest risk assessment.

5.2.2 The conflict of interest risk assessment must:

- 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 in accordance with factors identified at clause 5.2.3 of this policy;
- 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 clause 5.2.8 of this Policy and the outcome of the assessment of the General Manager (or delegate) of the level of risk involved as set out at clause 5.2.1 of this Policy.

5.2.3 Factors to be considered when determining the level of conflict of interest and resulting risks:

- a) Is Council a direct or indirect beneficiary of this application;
- b) Value of potential commercial gains resulting from the making of the application;
- c) Cost of works associated with the application;
- d) Is the application exempt from management controls/strategies as per clause 5.2.9 of this policy.

5.2.4 The conflict of interest management approach for the application is documented in a statement that is published on the NSW Planning Portal.

5.2.5 For low risk Council related development where no management controls or strategies have been identified, Council is still required to communicate this decision through a statement published on the NSW Planning Portal.

5.2.6 Council-related development applications must be exhibited for a minimum of 28 days to ensure transparency during the assessment process in accordance with the Act.

5.2.7 All notification correspondence for Council related development is to state that the conflict of interest management statement is available on the NSW Planning Portal.

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5.2.8 The following management controls may be applied to:

- a) The assessment of an application for Council-related development:
 - i) Enter into a shared service agreement with a neighbouring council for the assessment of the application;
 - ii) Use an external consultant to complete the assessment of development applications;
 - iii) Use a project officer outside of Council's Health and Planning Department;
- b) The determination of an application for Council-related development:
 - i) By a Council delegate following a risk assessment of any conflict of interest by the General Manager (or a separate delegate) and documentation of a management strategy statement for that application;
 - ii) Engage a private certifier for certification activities such as the issuing of a construction certificate and occupation certificate;
- c) The regulation and enforcement of approved Council-related development:
 - i) Enter into a shared service agreement with a neighbouring council for the compliance and enforcement of development consent;
 - ii) Privately Registered Certifier to assist in the compliance and enforcement of conditions in Construction Certificates;
 - iii) Report enforcement milestones or actions to Council.

5.2.9 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 façade over public land (such as awnings, verandas, bay windows, flagpoles, pipes and services);
- e) Development where the Council might receive a small fee for the use of their land.

5.3 Roles and Responsibilities

5.3.1. Council Officers making applications for Council-related development are required to refer the application to the General Manager (or delegate).

5.3.2. Council development assessment officers reviewing lodged development applications must refer Council-related development applications to the General Manager (or delegate).

5.3.3. Council building certifiers or Health & Planning Administrative Officers reviewing construction certificates, occupation certificates and building information certificates, or any applications for those certificates, must refer Council-related development to the General Manager (or delegate).

5.3.4. Council's General Manager (or delegate) is responsible for undertaking a conflict of interest risk assessment and documenting what management controls or strategies are to be implemented during the phases of the application in a management statement, or documenting that there is no management strategy for the application in a statement.

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5.3.5. Administration staff within the Health and Planning Department are responsible for publishing the management statement on the NSW Planning Portal.

5.3.6. Council's General Manager (or delegate) is to ensure that the management controls and strategies are adhered to during the entire development cycle.

6. RELATED DOCUMENTS & LEGISLATION

Environmental Planning and Assessment Act 1979 (NSW)

Environmental Planning and Assessment Regulation 2021

Local Government Act 1993 (NSW)

Local Government (General) Regulation 2021

GOV020 Wentworth Shire Council Code of Conduct

GOV023 Wentworth Shire Council Conflicts of Interest Policy

GOV009 Wentworth Shire Council Delegations Policy

GOV013 Wentworth Shire Council Enterprise Wide Risk Management Policy

GOV022 Wentworth Shire Council Legislative Compliance Policy

7. ATTACHMENTS

Nil.

8. DOCUMENT APPROVAL

This document is the latest version of the official policy of the Wentworth Shire Council, as adopted by Council on 28 June 2023.

This policy will be reviewed in 12 months. This policy may be amended or revoked by Council at any time.

A PDF copy of the signed document can be accessed from Council's record management system and Reliansys.

Signed: 

29 June 2023

General Manager Wentworth Shire Council

Date

Version	Date	Author	Changes
0.1	05/05/2023	D. Zorzi	-
1.0	29/06/2023		Adopted by Council 28/06/2023 – First Release