

Kyogle Council

Council-Related Development Conflict of Interest Policy



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1 PURPOSE

Under the provisions of Section 66A of the Environmental Planning and Assessment Regulation 2021, Council must adopt a policy that specifies how conflicts of interest in connection with council-related development applications lodged with Kyogle Council within the Kyogle Local Government Area will be handled.

2 VALIDITY

This policy obtains its validity from Council resolution **TBA**

3 OBJECTIVES

The objectives of this Policy are to manage potential conflicts of interest and increase transparency at all stages of the development process for Council-related development.

4 SCOPE

This policy applies to Council-related development.

5 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. It does not include an application for a complying development certificate.

Council means Kyogle 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.

6 POLICY DETAILS

6.1 Council as Regulator

Council regulates development under the *Environmental Protection and Assessment Act 1979* but it can also be the developer, landowner or hold a commercial interest in the land it regulates. Where Council has this dual role, an inherent conflict of interest can arise between Council's interests in the development and its duty as a regulator.

6.2 Management Controls

The following management controls may be applied where a matter involves Council-related development:

- (a) the assessment of a development application for council-related development

- i. undertaken by Council staff under delegation
 - ii. engagement of a private consultant
 - iii. referral to another local government authority.
- (b) the determination of a development application for council-related development
- i. undertaken by Council staff under delegation
 - ii. referral to regional planning panel.
- (c) the regulation and enforcement of approved council-related development
- i. undertaken by Council staff under delegation
 - ii. engagement of a private certifier
 - iii. undertaken by another local government authority.
- (d) the assessment of a proposed activity under Division 5.1 of the Act
- i. undertaken by Council staff under delegation
 - ii. engagement of a private consultant
- (e) the determination of an activity under Division 5.1 of the Act
- i. undertaken by Council staff under delegation
 - ii. engagement of a private consultant
 - iii. peer review by another local government entity.

Where assessment or determination of a development application is undertaken by Council staff under delegation, neither the assessing officer or the determining officer may be Council staff with direct responsibility for the work that is the subject of the application.

The assessment of the environmental impacts of a proposed activity under Division 5.1 of the Act may be undertaken by Council staff with direct responsibility for the project, however, the review of any assessment report in relation to a project or activity, and the determination of the project or activity, may not be undertaken by Council staff with direct responsibility for the project or activity.

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 facade over public land (such as awnings, verandas, bay windows, flagpoles, pipes, and services)
- (e) development where Council only receives a small fee for the use of the land.

Development applications lodged with Council that are council-related development are to be referred to the General Manager or delegate for a conflict-of-interest risk assessment. The General Manager or delegate is to:

- (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 this Policy and the outcome of the assessment of the level of risk involved. Note: The General Manager could determine that no management controls are necessary in the circumstances
- (e) document the proposed management approach for the proposal in a statement that is published on the NSW Planning Portal.

Example management statement

Council conflict of interest management statement

Project name	Blue River Civic Place
DA number	DA21/0001
Potential conflict	BlueStar Council is the applicant. Blue River Civic Place has an estimated capital investment value of \$4.9 million and the council expects to receive revenue through renting commercial office spaces.
Management strategy	<p>The council is managing potential conflicts of interest in this matter as follows:</p> <ul style="list-style-type: none">• The application will be referred to the local planning panel to determine the development application.• Council development assessment staff not involved with preparing the application will assess the DA. The staff will remain separated from the project team.• A private certifier will be engaged to undertake the certification for the development.• Green Hill Council has agreed to peer review any regulatory decisions should compliance decisions be made.• Key project milestones following the development consent will be reported at a public council meeting.
Contact	Anyone with concerns about council fulfilling its obligations should report their concerns to the council.

7 DURATION AND REVIEW

This policy is valid until revoked or replaced.

This policy will be reviewed periodically as required and in accordance with Councils Governance Policy.