



NAMBUCCA VALLEY COUNCIL MANAGING CONFLICTS OF INTEREST FOR COUNCIL RELATED DEVELOPMENT POLICY NO: DE 18

Our Vision

Nambucca Valley ~ Living at its best

Our Mission Statement

'The Nambucca Valley will value and protect its natural environment, maintain its assets and infrastructure and develop opportunities for its people.'

1.0 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 and meet the legislative requirements of Section 66A Environmental Planning and Assessment Regulation 2021.

2.0 Related legislation

Environmental Planning and Assessment Act 1979
Environmental Planning and Assessment Regulation 2021.

3.0 Definitions

A word or expression used in this policy has the same meaning as it has in the *Environmental Planning and Assessment Act 1979* (the Act), and any instruments made under the Act, unless it is otherwise defined 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 Nambucca Valley Council.

Council-related development means development for which the council (including a staff member or Councillor) is the applicant of an application (whether lodged by or on behalf of council), landowner, or has a commercial interest in the land the subject of the application, where the Council 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.

4.0 Policy Content

4.1 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 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.

4.2 Management controls and strategies

(1) The following management controls are to be applied to:

a. The **assessment** of an application for council-related development:

- The application shall not be prepared by Council's Development & Environment Section. Alternatively, applications may be prepared by another Section of Council or external consultancy.
- Unless deemed to be low risk by the General Manager, the application must be assessed by a third party (consultant or neighbouring Council).

Examples of low risk developments include minor alterations and additions to buildings, change of building use, dwelling houses and class 10 buildings (sheds, retaining walls etc.) where the proposal is compliant with all planning controls and there will be no significant impacts on the surrounding environment.

b. The **determination** of an application for council-related development:

- All development assessments must be reviewed by the Manager Development & Environment and General Manager prior to determination.
- All applications must be referred to Council for determination unless the General Manager deems the potential conflict of interest low risk.

c. The **regulation** and **enforcement** of approved council-related development:

- Dependent on the regulation and enforcement activity required, this may be undertaken by:
 - (i) A private certifier,
 - (ii) Council, under delegation for building and subdivision work where Council is nominated as the Principal Certifying Authority or required to by the Act,
 - (iii) Council staff under delegation in accordance with Council's compliance policy ensuring separation of regulation/enforcement activities and project management, or
 - (iv) Engagement of an independent third party such as a shared services arrangement with a neighbouring Council.

(2) 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 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.

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

- (1) Applications lodged with the Council that are council-related development are to be referred to the General Manager or delegate for a conflict-of-interest risk assessment.
- (2) 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 Section 4.2 of this Policy,

Note: The General Manager or delegate 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.

4.4 Management Statement Example

Conflict of interest management statement	
Project name	Blue River Civic Place
DA number	DA2023/xxx
Potential conflict	BlueStar Council is the applicant, Blue River Civic Place has estimated capital investment of \$5.1 million and the council expects to receive revenue through renting commercial office spaces.
Management strategy	<p>The Council is managing potential conflicts of interests in this matter as follows:</p> <ul style="list-style-type: none"> • The application will be referred to the regional 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. • 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.

5.0 History

Department:	Development & Environment	Last Reviewed	Resolution Number
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Endorsed By:	General Manager		
Approval Authority	Council		
Policy Owner	Manager Development & Environment		
Contact Officer	Manager Development & Environment		
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