
Cessnock City Council

Conflict of Interest Policy - Dealing with Conflicts of Interest Throughout the Development Process

Date Adopted 16/03/2023 Revision: 1

1. POLICY OBJECTIVES

The objectives of this policy are to:

- 1.1. establish an effective, accountable and transparent framework for dealing with Development Applications that are either Council-related, or those where a Council Official is the applicant and/or land owner; and set the minimum standards relating to the management of conflict of interests when dealing with Development Applications that are either Council-related, or those where a Council Official is the applicant and/or land owner.

2. POLICY SCOPE

- 2.1. This policy applies to the processing, determination, and ongoing regulation and enforcement of the following Development Applications:
 - 2.1.1. those that are Council-related, or
 - 2.1.2. those where a Council Official is the applicant and/or land owner
- 2.2. Any Development Application subject to this policy will be assessed and determined accordingly, and within the requirements of the Act and Council's Community Participation Plan (**CPP**).

3. POLICY STATEMENT

Council is committed to managing Development Applications the subject of this policy in a fair, objective, transparent and ethical manner. This policy has been prepared in accordance with the NSW Government's "Council related Development Application Conflict of Interest Guidelines" and the *Environmental Planning and Assessment Amendment (Conflict of Interest) Regulation 2021* (NSW).

4. IDENTIFYING AND MANAGING POTENTIAL CONFLICTS OF INTEREST

- 4.1. The following management controls may be applied to:
 - 4.1.1. The assessment and determination of a Council-related Development Application
 - i. refer to clause 6 and Appendix 3 for controls.
 - 4.1.2. The assessment and determination of a Development Application where a Council Official is the applicant and/or land owner
 - i. refer to clause 6 for controls.

- 4.1.3. The regulation and enforcement of approved Council-related Development Applications:
 - i. Use of independent consultants, or
 - ii. Enter into a shared services arrangement with a neighbouring council, or
 - iii. Public reporting on key milestones such as construction and occupation certificates.

4.2. The management controls applied to Council-related Development Applications are to be prescribed within a management strategy statement, which explains how Council will manage potential conflicts of interest.

4.3. Details relating to conflicts of interest in connection with Council-related Development Applications, and the measures taken to manage the conflicts, are to be published on Council's DA Tracker and/or the NSW Planning Portal (where mandated).

5. COUNCIL-RELATED DEVELOPMENT APPLICATIONS

All Council-related Development Applications are required to be publicly exhibited in accordance with the requirements of the Act to ensure transparency during the assessment process.

6. LODGEMENT AND ASSESSMENT OF DEVELOPMENT APPLICATIONS

Council-related Development Applications

6.1. When lodging a Development Application subject to this policy with Council, the Development Application is required to be lodged through the NSW Planning Portal.

6.2. A Council-related Development Application shall be accompanied by a declaration (refer to Appendix 2), confirming either that Council:

6.2.1. has a Commercial Interest in the Development Application; or

6.2.2. does not have a Commercial Interest in the Development Application.

6.3. The management controls applied to the assessment and determination of the Development Application will be dependent on the declaration referred to in clause 6.2. The management controls may include the following:

6.3.1. In the event Council has no Commercial Interest in the Development Application, the Development Application is to be referred to Council's Development Assessment Unit for consideration. Following this, the Development Application will be further reviewed and considered by a Council-manager who is independent of the Council-department who has an interest in the proposed development.

6.3.2. In the event Council has a Commercial Interest in the Development Application, the Development Application is to be referred to an independent town planning consultant to carry out the assessment. Following finalisation of the assessment, the Development Application is to be reported to the elected Council for determination.

Development Applications where a Council Official is the applicant and/or land owner

- 6.4.** When lodging a Development Application subject to this policy with Council, a Council Official will be required to lodge the Development Application through the NSW Planning Portal. Council will not accept the lodgement of Development Applications that do not include a personal email address and phone number for the purpose of corresponding with Council.
- 6.5.** The Development Application shall be accompanied by a declaration (refer to Appendix 1), confirming either that the Development Application:
- 6.5.1. relates to the Council Official's principal place of residence; or
 - 6.5.2. does not relate to the Council Official's principal place of residence.
- 6.6.** The management controls applied to the assessment and determination of the Development Application will be dependent on the declaration referred to in clause 6.5. The management controls may include the following:
- 6.6.1. In the event the Development Application relates to the Council Official's principal place of residence, the Development Application is to be referred to Council's Development Assessment Unit for consideration. Following this, the Development Application will be further reviewed and considered by a Council-manager.
 - 6.6.2. In the event the Development Application does not relate to the Council Official's principal place of residence and the estimated cost of works is less than **\$100,000**, the Development Application is to be referred to Council's Development Assessment Unit for consideration. Following this, the Development Application will be further reviewed and considered by a Council-manager.
 - 6.6.3. In the event the Development Application does not relate to the Council Official's principal place of residence and the estimated cost of works is **\$100,000 or more**, the Development Application is to be referred to an independent town planning consultant to carry out the assessment. Following finalisation of the assessment, the Development Application is to be reported to the elected Council for determination.

7. ROLES AND RESPONSIBILITIES

Assessing Officers and their delegates

- 7.1.** Assessing Officers are responsible for ensuring that Development Applications are assessed against the provisions of section 4.15 of the Act, and all other relevant legislative requirements and Council documents.
- 7.2.** Along with their recommendation, Assessing Officers are responsible for ensuring that Development Applications are referred to Council's Development Assessment Unit, where required under the provisions of this policy.

Development Assessment Unit

The Development Assessment Unit is responsible for:

- 7.3.** undertaking a preliminary assessment of Development Applications referred to them in accordance with clause 7.2 and Council's Development Practice Note.

7.4. prescribing the public exhibition requirements relating to relevant Development Applications in accordance with the Act and Council's CPP.

7.5. providing a recommendation to the Supervising Manager, following consideration of Development Applications referred to them in accordance with clause 7.2 and Council's Development Practice Note.

Supervising Manager or their delegate

7.6. The Supervising Manager or their delegate is responsible for considering and determining (where relevant), Development Applications referred to them by the DAU.

Mayor or their delegate

7.7. To lead Councillors in their understanding of, and compliance with this policy and related documents, in particular with respect to conflicts of interest.

General Manager or their delegate

7.8. To lead staff (either directly or through delegated authority) in their understanding of, and compliance with the policy, this guideline and related documents.

Council Officials

7.9. To comply with this policy and related documents.

Compliance, monitoring and review

7.10. The Supervising Manager is responsible for ensuring compliance with this policy and that it:

7.10.1. aligns with relevant legislation, government policy and/or Council's requirements/strategies/values,

7.10.2. is implemented and monitored (i.e. the policy is followed, reflects the changing policy environment, and emerging issues are identified),

7.10.3. does not contradict any other Council policies and documents, and

7.10.4. is regularly reviewed to evaluate its continuing effectiveness (e.g. achieving its purpose, remains relevant/current).

7.11. Implementation and monitoring of this policy will ensure that Council's compliance and reputational risks identified in Council's Enterprise Risk Management Framework are avoided where possible and otherwise minimised.

7.12. Implementation of this policy ensures that assessment, decision-making and ongoing regulation and enforcement of Development Applications comply with the relevant legislation and Council requirements in order to maintain Council's reputation for carrying out independent merits-based decision making.

Records Management

7.13. Staff must maintain all records relevant to administering this policy in accordance with Council's Records Management Policy.

Privacy and Personal Information handling

7.14. The personal information collected and received from applicants and Council Officials in the process of implementing this policy and its related documents, will be collected to process Council-related Development, Development Applications lodged by Council Officials and any related enquiries and services. The information collected will be used for the purpose outlined, related administrative functions, compliance and complaint handling, internal auditing, and in accordance with Council's [Privacy Management Plan](#) and [Privacy Statement](#).

- 7.15.** The intended recipients of the personal information are Council Officials using it for the purposes outlined in clause 7.14.
- 7.16.** The provision of personal information is voluntary however Council may not be able to process the Development Applications or respond to requests and enquiries made if required personal information is not provided.
- 7.17.** Some of the personal information collected may be disclosed to:
- 7.17.1. other government agencies as well, such as NSW Department of Planning and Environment, and/or other government agencies as required, for purposes outlined in clause 7.14;
 - 7.17.2. independent town planning consultants where required, for purposes outlined in clause 7.14;
 - 7.17.3. the public when complying with public exhibition requirements under the Act;
 - 7.17.4. third parties as required by law.
- 7.18.** Collected personal information will be kept in Council's Information Management System in accordance with the relevant legislation. Council's address is 62-78 Vincent Street CESSNOCK NSW 2325.
- 7.19.** The information may also be held by the NSW Department of Planning and Environment and their privacy statement can be accessed at <https://pp.planningportal.nsw.gov.au/privacy-statement>.
- 7.20.** Individuals may access, correct or update their personal information Council holds by visiting [Council's website](#), contacting Council's Privacy Contact Officer on 4993 4100 or by sending an email to council@cessnock.nsw.gov.au.
- 7.21.** Independent town planning consultants are responsible for ensuring personal information they collect or receive is protected as well as the privacy of those individuals.

8. POLICY DEFINITIONS

The Act	means the <i>Environmental Planning and Assessment Act 1979</i> (NSW).
Assessing Officer	means the Council officer responsible for assessment of the Development Application.
Commercial Interest	Council participating competitively in a commercial activity, for the express purpose of profiting from the activity.
Cost of Works	means the estimated cost of the proposed works the subject of the Development Application.
Council	means Cessnock City Council.
Council Official	means Councillors, Council staff, Council volunteers and contractors; or a spouse, de-facto or same sex partner of the Councillor or Council staff member.
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

	<p>(b) for development on land—</p> <p style="padding-left: 40px;">(i) of which the council is an owner, a lessee or a licensee, or</p> <p style="padding-left: 40px;">(ii) otherwise vested in or under the control of the council.</p> <p>other than a public road within the meaning of the <i>Local Government Act 1993</i>.</p> <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</i> (NSW).</p>
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 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.
Development Assessment Unit	means a multi-disciplinary advisory panel of experienced and industry qualified professional staff, the role/functions of which are prescribed under Council's Development Practice Note.
Development Practice Note	means the Development Practice Note – Operation of the Development Assessment Unit (DAU) and Determination of Applications under Delegated Authority.
Principal Place of Residence	means a property owned by a Council Official that is utilised as their main residence.
Supervising Manager	Means the Development Services Manager or the Compliance Services Manager.

9. POLICY ADMINISTRATION

Business Group	Planning and Environment
Responsible Officer	Development Services Manager
Associated Guideline (if any)	Conflict of Interest Guideline – Dealing with conflicts of interest throughout the development process (DOC2022/189150)
Policy Review Date	Three years from date of adoption unless legislated otherwise
File Number / Document Number	DOC2022/189148
Relevant Legislation (reference specific sections)	Part 4, Part 6 and Part 8 of the Act <i>Environmental Planning and Assessment Amendment (Conflict of Interest) Regulation 2022 (NSW)</i>
Relevant desired outcome or objectives	Civic Leadership and effective governance Objective 5.3: Making Council more responsive to the community 5.3.3 Continue to efficiently and effectively process development applications and respond to planning-related enquiries
Related Policies / Protocols / Procedures	<ul style="list-style-type: none"> ▪ Code of Conduct (DOC2018/086716) ▪ Delegations Register (16/66) ▪ Development Practice Note – Operation of the Development Assessment Unit (DAU) and Determination of Applications under Delegated Authority (DOC2022/129607) ▪ NSW Government's "Council related Development Application Conflict of Interest Guidelines (2022) ▪ Council's Community Participation Plan (DOC2019/066492) ▪ Fraud Control and Corruption Prevention Policy (DOC2020/027334) ▪ Council's Privacy Management Plan (DOC2014/005148) and Council's and Privacy Statement ▪ Procurement Policy (DOC2013/047731) ▪ Records Management Policy (DOC2019/038769)

10. POLICY AUTHORISATIONS

No.	Authorised Function	Authorised Business Unit / Role(s)
	<ul style="list-style-type: none"> ▪ Assessment of DA's ▪ Referral of DA's to DAU, inclusive of a recommendation 	Assessing Officer
	<ul style="list-style-type: none"> ▪ Allocation and preliminary assessment of DA's ▪ Prescribing public exhibition requirements in relation to DA's ▪ Retention of independent town planning consultants (where relevant) ▪ Consideration of DA's the subject of DAU reports, taking into consideration the 	Development Assessment Unit (DAU)

	<p>requirements of the Practice Note</p> <ul style="list-style-type: none"> ▪ Referral of DA's to the Supervising Manager, inclusive of a recommendation 	
	<ul style="list-style-type: none"> ▪ Determining DA's (where relevant), taking into consideration the requirements of the Practice Note ▪ Referral of DA's to Council (where relevant) 	Supervising Manager

11. POLICY HISTORY

Revision	Date Approved / Authority	Description Of Changes
1	<p>Lodgement of a Development Application, Section 96 Application, Section 82A Application and/or other Application by a Council Official (DOC2013/012262).</p> <p>Council as the applicant and/or owner in respect of a Development Application, Section 96 Application, and/or Section 82A Application (DOC2013/012263).</p>	<p><i>Documents were rescinded on 15 March 2023 and replaced by this policy.</i></p>

12. APPENDICES

APPENDIX 1 - COUNCIL OFFICIAL – PRINCIPAL PLACE OF RESIDENCE DECLARATION FORM

COUNCIL OFFICIAL – PRINCIPAL PLACE OF RESIDENCE DECLARATION FORM

This form is to be completed by each person associated with the Development Application who meets the definition of a Council Official.

I, _____,
(Name)

declare that I am a Council Official as defined within Council's 'Conflict of Interest Policy - Dealing with conflicts of interest throughout the development process' as:

Council Official means Councillors, Council staff, Council volunteers and contractors; or a spouse, de-facto or same sex partner of the Councillor or Council staff member.

Land to which the Development Application relates:

Development is proposed at the address nominated below:

Address: _____
Lot: _____ Sec: _____ DP: _____

Proposed development:

The following development is proposed at the nominated address:

Proposed development: _____

By ticking this box, I declare that the land nominated above is my Principal Place of Residence and that development works are proposed at this address.

By ticking this box, I declare that the subject land is not my Principal Place of Residence and that development works are being undertaken on land in my ownership.

By ticking this box, I declare that the above address is neither my Principal Place of Residence or land owned by me, with my interest in this development application being the nominated applicant only.

Declaration

I declare that the information provided on this form, to the best of my knowledge, is true and correct at the time of lodgement of the Development Application.

Name : _____

Signature: _____ Date: _____

PRIVACY NOTICE

Council is committed to safeguarding the privacy of individuals and handling of personal information in accordance with the [Privacy and Personal Information Act 1998](#) (NSW) and [Information Privacy Principles](#), the [Health Records and Information Privacy Act 2002](#) (NSW) and [Health Privacy Principles](#), and any subordinate legislation.

- i. The information on this form is being collected for the purpose of processing Council-related Development, Development Applications lodged by Council Officials and any related enquiries and services. The information collected will be used for the purpose outlined, related administrative functions, compliance and complaint handling, internal auditing, and in accordance with Council's [Privacy Management Plan](#) and [Privacy Statement](#).
- ii. The intended recipients of the personal information are Council Officials using it for the purposes outlined in point i above.
- iii. The provision of personal information is voluntary however Council may not be able to process the Development Applications or respond to requests and enquiries made if required personal information is not provided.
- iv. Some of the personal information collected may be disclosed, to:
 - a. other government agencies as well, such as NSW Department of Planning and Environment, and/or other government agencies as required, for purposes outlined in point i above;
 - b. independent town planning consultants where required, for purposes outlined in in point i above;
 - c. the public when complying with public exhibition requirements under the Act;
 - d. third parties as required by law.
- v. Collected personal information will be kept in Council's Information Management System in accordance with the relevant legislation. Council's address is 62-78 Vincent Street CESSNOCK NSW 2325.
- vi. Your information may also be held by the NSW Department of Planning and Environment and Council recommends you read their privacy statement <https://pp.planningportal.nsw.gov.au/privacy-statement>.
- vii. Individuals may access, correct or update their personal information Council holds by visiting [Council's website](#), contacting Council's Privacy Contact Officer on 4993 4100 or by sending an email to council@cessnock.nsw.gov.au.
- viii. Independent town planning consultants are responsible for ensuring personal information they collect or receive is protected as well as the privacy of those individuals.

APPENDIX 2 - COUNCIL - RELATED DEVELOPMENT APPLICATION: COMMERCIAL INTEREST/NO COMMERCIAL INTEREST

COUNCIL-RELATED DEVELOPMENT APPLICATION – DECLARATION FORM

This form is to be completed by an appropriately authorised Council officer.

I, _____, _____
(Name) (Position at Council)

declare that I am authorised to act on behalf of Council in respect of this Development Application.

Land to which the Development Application relates:

Development is proposed at the address nominated below:

Address: _____
Lot: _____ Sec: _____ DP: _____

Proposed development:

The following development is proposed at the nominated address:

Proposed development: _____

- By ticking this box, I declare that Council does not have a Commercial Interest in this application.
- By ticking this box, I declare that Council has a Commercial Interest in this application.

Commercial Interest is defined in Council’s ‘*Conflict of Interest Protocol - Dealing with conflicts of interest throughout the development process*’ as:

Commercial Interest means Council participating competitively in a commercial activity, for the express purpose of profiting from the activity.

Declaration

I declare that the information provided on this form to the best of my knowledge is true and correct at the time of lodgement of the Development Application.

Signature: _____ Date: _____

Name : _____

PRIVACY NOTICE

Council is committed to safeguarding the privacy of individuals and handling of personal information in accordance with the [Privacy and Personal Information Act 1998](#) (NSW) and [Information Privacy Principles](#), the [Health Records and Information Privacy Act 2002](#) (NSW) and [Health Privacy Principles](#), and any subordinate legislation.

- i. The information on this form is being collected for the purpose of processing Council-related Development, Development Applications lodged by Council Officials and any related enquiries and services. The information collected will be used for the purpose outlined, related administrative functions, compliance and complaint handling, internal auditing, and in accordance with Council's [Privacy Management Plan](#) and [Privacy Statement](#).
- ii. The intended recipients of the personal information are Council Officials using it for the purposes outlined in point i above.
- iii. The provision of personal information is voluntary however Council may not be able to process the Development Applications or respond to requests and enquiries made if required personal information is not provided.
- iv. Some of the personal information collected may be disclosed, to:
 - a. other government agencies as well, such as NSW Department of Planning and Environment, and/or other government agencies as required, for purposes outlined in point i above;
 - b. independent town planning consultants where required, for purposes outlined in in point i above;
 - c. the public when complying with public exhibition requirements under the Act;
 - d. third parties as required by law.
- v. Collected personal information will be kept in Council's Information Management System in accordance with the relevant legislation. Council's address is 62-78 Vincent Street CESSNOCK NSW 2325.
- vi. Your information may also be held by the NSW Department of Planning and Environment and Council recommends you read their privacy statement <https://pp.planningportal.nsw.gov.au/privacy-statement>.
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- viii. Independent town planning consultants are responsible for ensuring personal information they collect or receive is protected as well as the privacy of those individuals.

APPENDIX 3 - CONFLICT OF INTEREST MANAGEMENT STATEMENT

The management statement must be published on DA Tracker (or NSW Planning Portal if mandated)

Council conflict of interest management statement	
Description of Development	(eg., Torrens Title subdivision of one lot into nine lots)
Development Application No.	(eg., DA 8/2022/101/1)
Potential conflict	<p>(eg., Cessnock City Council is the owner of the land the subject of the Development Application)</p> <p>(eg., Cessnock City Council is the owner of the land the subject of the Development Application and expects to receive income as a result of the proposed development)</p> <p>(eg., Cessnock City Council is the applicant and expects to receive revenue through collecting rent)</p> <p>(eg., Cessnock City Council is the owner of the land the subject of the Development Application and has a commercial interest in the proposed development)</p>
Management strategy	<p>Council is managing potential conflicts of interest in this matter in accordance with its adopted 'Conflict of Interest Policy- Dealing with conflicts of interest throughout the development process'.</p> <p>The following management strategy is relevant to this matter:</p> <p>(Select where relevant – refer to guideline for determination pathway)</p> <ul style="list-style-type: none"> • The Development Application is to be referred to Council's Development Assessment Unit for consideration. The Development Assessment Unit is a multi-disciplinary advisory panel of experienced and industry qualified professional staff. Following this, the Development Application will be further reviewed and considered by a Council-manager who is independent of the Council-department who has an interest in the proposed development. • The Development Application is to be referred to an independent town planning consultant to carry out the assessment. Following finalisation of the assessment, the Development Application is to be reported to the elected Council for determination. • The application is to be determined by the Regional Planning Panel.
Contact	Anyone with concerns about council fulfilling its obligations should report their concerns to the council.