



**muswellbrook
shire council**

DRAFT Council Development Conflict of Interest Management Policy

MSC35E

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1. Policy Objective

This Policy aims to increase transparency, establish principles, and manage potential conflict of interest(s) with development applications and Part 5 projects relating to Council property, or where Council, Councillors or senior staff of Council are the applicant.

2. Risks being addressed

Leadership

The *Model Code of Conduct* under the *Local Government Act* contains provisions:

- Clauses 3.13 and 3.14 impose obligations on Councillors and Council staff members to ensure that development assessment decisions are properly made, that any occasion for suspicion of improper conduct in the course of exercising development assessment functions is avoided and that no action, statement or communication conveys any suggestion of willingness to improperly provide concessions, preferential or unduly unfavorable treatment;
- Clause 5.28 provides that, in dealing with Council in a personal capacity, a Councillor or Council staff member must not expect or request preferential treatment or engage in any action that could lead members of the public to believe that such treatment is being sought; and
- Clause 5.29 requires that, in dealing with council in a personal capacity, a Councillor or Council staff member must undertake those dealings in a manner consistent with the manner in which other members of the community deal with the council.

The [Environment Planning and Assessment Regulation 2021](#) contains provisions for development activities undertaken by public authorities. Development activities undertaken by public authorities typically involve road work, drainage work, development of public recreation areas and the like. Where they are not classified as Major Infrastructure Projects, these activities are still subject to an environmental assessment but do not require development consent. They are assessed under Part 5, Division 5.1 of the Act.

From 1 July 2022, the Guideline for Division 5.1 assessments became operational, with obligations for publishing certain Review of Environmental Factor (REF) documents for Division 5.1 activities on the NSW Planning Portal.

The Environmental Planning and Assessment Amendment (Conflict of Interest) Regulation 2022 was introduced to amend the Environmental Planning and Assessment Regulation 2021 in respect to approvals for development applications proposed by councils on their own land. The Regulation takes effect from 3 April 2023. Staff involved in the assessment for the application must document the proposed management approach for the proposal in a statement that is published on the NSW Planning Portal. This Policy sets out the Management Approach.

3. Scope

This policy applies to:

- Council related development;
- Council projects that will be assessed under Part 5 of the Environmental Planning and Assessment Act;
- Councillor related development;
- Senior staff related development.

3.1 Exclusions

Generally, a Management Strategy as described in Schedule 1 Section 30B of the Environmental Planning and Assessment Regulation 2021 will not be required for the following types of applications:

- Commercial fit outs and minor changes to a building façade.
- Internal alterations or additions to buildings that are not a heritage item.
- Advertising signage.
- Minor building structures projecting from a building façade over public land (such as awnings, verandas, bay windows, flagpoles, pipes, and services).
- Development where council might receive a small fee for the use of their land.

4. Definitions

Term	Definition
Council	Refers to Muswellbrook Shire Council.
Application	An application for consent under Part 4 of the Act to carry out development and includes an application for a complying development certificate and an application to modify a development consent.
Council Related Development	Development for which the council is the applicant developer (whether lodged by or on behalf of council), the landowner, or has a commercial interest in the land the subject of the application, where it will also be the regulator or consent authority.
Councillor	A current elected member of Muswellbrook Shire Council
Councillor related Development	Development for which the Councillor is the applicant developer (whether lodged by or on behalf of the Councillor), the landowner, or has a commercial interest in the land the subject of the application, where Council will be the regulator or consent authority.
Senior Staff	The General Manager, Deputy General Manager, Director of Environment and Planning, Director Community & Economy, Director Property and Place and Director Corporate Services or similar positions in the Council organisational structure.
Senior Staff Related Development	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	Application, assessment, determination, and enforcement.
Qualified External Third Party	<p>A qualified and practicing town planner, urban planner or urban designer:</p> <ul style="list-style-type: none"> • working for another council, or • who is a registered environmental assessment practitioner; or • who is registered with the Planning Institute of Australia, or • in the case of Building Certificate, a registered certifier.
The Act	The Environmental Planning and Assessment Act 1979.
Council Land	Community land, operational land and crown land under trust management of Council.

5. Policy Statement

5.1 Management Approach for Applications under Part 4 of the Act

5.1.1 When Council is the Applicant

Applications with a capital investment value of less than \$1million:

- Will be publicly notified for a minimum of 28 days;
- Will be assessed by qualified Council Staff; and
- Will be determined by Council staff with appropriate delegations unless:
 - more than two unique objections are received, then the application will be determined by Council; or
 - more than 10 unique objections are received, then assessment of the application will be peer reviewed by a qualified external third party before the application is determined by Council.

Applications with a capital investment value of more than \$1million and less than \$5million:

- Will be publicly notified for a minimum of 28 days;
- Will be assessed by qualified external third party; and
- Are to be determined by Council staff with appropriate delegations, unless:
 - more than two unique objections are received, then the application will be determined by Council; or

- more than 10 unique objections are received, then the assessment will be peer reviewed by a qualified external third party before the application is determined by Council.

Applications with a capital investment value of more than \$5million:

- Will be publicly notified for a minimum of 28 days;
- Will be assessed by qualified Council Staff or a qualified external third party; and
- Will be determined by the Regional Planning Panel.

Applications for Building Certificates.

- Will be assessed by qualified Council Staff;
- The assessment will be peer reviewed by a qualified external third party; and
- Upon receipt of the outcomes of the review by the qualified external third party, will be determined by the Director Environment and Planning.

Enforcement matters

- Non-conformances with approvals or legislation will be assessed by qualified Council Staff;
- The assessment will be peer reviewed by a qualified external third party; and
- Upon receipt of the outcomes of the review by the qualified external third party, enforcement actions will be taken by the Director Environment and Planning.

5.1.2 When Councillors or Senior Staff are the Applicant.**Applications with a capital investment value of less than \$1million:**

- Will be assessed by qualified Council Staff; and
- Will be determined by Council staff with appropriate delegations.

Applications with a capital investment value of more than \$1million and less than \$2million:

- Will be assessed by qualified Council Staff; and
- Will be determined by Council.

Planning applications with a capital investment value of more than \$2million:

- Will be assessed by a qualified external third party (the cost of the external assessment will be met by Council); and
- Will be determined by Council.

Applications for Building Certificates.

- Will be assessed by qualified Council Staff;
- Will be determined by the Director Environment and Planning, or if they are conflicted, by the General Manager.

Enforcement matters

- Non-conformances with approvals or legislation will be assessed by qualified Council Staff;
- The assessment will be peer reviewed by a qualified external third party; and
- Upon receipt of the outcomes of the review by the qualified external third party, enforcement actions will be taken by the Director Environment and Planning, or if they are conflicted, by the General Manager.

5.2 Management Approach for Applications under Part 5 of the Act where Council is the determining authority.

When the project Review of Environmental Factors (REF) identifies no significant impacts and the CIV is below \$1million

- The REF will be prepared by Council staff who are suitably skilled, qualified and experienced, or by a qualified external third party.
- The REF is to show evidence of consultation with affected stakeholders and adjoining property owners and how feedback has been addressed through design or mitigation of impacts.
- Council staff are required to document that they are satisfied that the assessment has been prepared, or reviewed and certified, by a person suitably qualified in environmental impact assessment as well as evidence that any technical studies have been prepared by suitably qualified technical specialists.
- Council staff who are suitably skilled, qualified and experienced, or a qualified external third party, who did not prepare the REF, will:
 - determine the proposal and produce a decision statement.
 - The decision statement and REF will be published on the NSW Planning Portal.

When the project Review of Environmental Factors (REF) identifies no significant impacts and the CIV is above \$1million and below \$10million

- The REF will be prepared by a qualified external third party.
- The REF is to show evidence of consultation with affected stakeholders and adjoining property owners and how feedback has been addressed through design or mitigation of impacts.
- Council staff who are suitably skilled, qualified and experienced, or a qualified external third party, who did not prepare the REF, will:
 - document that they are satisfied that the assessment has been prepared, or reviewed and certified, by a person suitably qualified in environmental impact assessment as well as evidence that any technical studies have been prepared by suitably qualified technical specialists.
 - determine the proposal and produce a decision statement.
 - The decision statement and REF will be published on the NSW Planning Portal.

When the project Review of Environmental Factors (REF) identifies no significant impacts and the CIV is over \$10million

- The REF will be prepared by a Registered Environmental assessment Practitioner (REAP) as defined in the Environmental Planning and Assessment Regulation 2021 and the Registered Environmental Assessment Practitioner Guidelines.
- Council staff who are suitably skilled, qualified and experienced, or a qualified external third party, who did not prepare the REF, will:
 - document that they are satisfied that the assessment has been prepared, or reviewed and certified, by a person suitably qualified in environmental impact assessment as well as evidence that any technical studies have been prepared by suitably qualified technical specialists.
 - determine the proposal and produce a decision statement.
 - The decision statement and REF will be published on the NSW Planning Portal.

When the project Review of Environmental Factors (REF) identifies significant impact on Biodiversity i.e. If a Species Impact Statement (SIS) or Biodiversity Assessment Report (BDAR) is required.

- The REF will be prepared by a Registered Environmental Assessment Practitioner (REAP) as defined in the Environmental Planning and Assessment Regulation 2021 and the Registered Environmental Assessment Practitioner Guidelines.
- Council staff who are suitably skilled, qualified and experienced, or a qualified external third party, who did not prepare the REF, will:
 - document that they are satisfied that the assessment has been prepared, or reviewed and certified, by a person suitably qualified in environmental impact assessment as well as evidence that any technical studies have been prepared by suitably qualified technical specialists.
 - Seek advice feedback Council's State Significant Development Committee, or Council.
 - determine the proposal and produce a decision statement.
 - The decision statement and REF will be published on the NSW Planning Portal.

Where the projects requires an Environmental Impact Statement (EIS) due to significant impacts other than, or in addition to, biodiversity

- The REF will be prepared by a Registered Environmental Assessment Practitioner (REAP) as defined in the Environmental Planning and Assessment Regulation 2021 and the Registered Environmental Assessment Practitioner Guidelines.
- Council staff who are suitably skilled, qualified and experienced, or a qualified external third party, who did not prepare the REF, will:
 - document that they are satisfied that the assessment has been prepared, or reviewed and certified, by a person suitably qualified in environmental impact assessment as well as evidence that any technical studies have been prepared by suitably qualified technical specialists.
 - Prepare a report to Council for a decision.
 - On the basis of Council's decision will produce a decision statement.

- The decision statement and REF will be published on the NSW Planning Portal.

6. Delegations, Regulation and Enforcement

The Director of Environmental and Planning and the General Manager are responsible for actions under this policy.

7. Legislation

Environmental Planning and Assessment Act 1979 and associated Regulations
Local Government Act 1993 and associated Regulations

8. Associated Council Documentation

Code of Conduct

Details History

Version No.	Date changed	Modified by	Amendments/Previous adoption details
1	8.02.2023		Document drafted