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## **Draft** Managing Conflicts of Interest for Council-Related Development Policy

|                     | Name        | Position                                   | Signature | Date |
|---------------------|-------------|--|-----------|------|
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## PART 1 – PRELIMINARY

### 1. Name of the Policy and Purpose

This policy is the *Managing Conflicts of Interest for Council Related Development Policy*. Its purpose is to manage potential conflicts of interest that may arise in conjunction with Council-related Development Applications (DA), because Council is the consent authority.

### 2. Aim of Policy

This policy aims to manage potential conflicts of interest and increase transparency at all stages of the development process for Council-related development.

### 3. Scope

This policy applies to all Council-related development, or development on Council land that requires development consent.

### 4. Definitions

#### 4.1 In this policy:

**Application** means 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** means Murrumbidgee 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*.

#### 4.2 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.

#### 4.3 Notes in this policy do not form part of the policy.

## PART 2 – PROCESS FOR IDENTIFYING AND MANAGING POTENTIAL CONFLICTS OF INTEREST

### 5. Management controls and strategies:

#### 5.1 Management controls may be applied to:

- (a) the **assessment** of an application for Council-related development.
- (b) the **determination** of an application for Council-related development.
- (c) the **regulation and enforcement** of approved Council-related development.

*Note 1: This may include the use of independent consultants and certifiers or entering into a shared services agreement with a neighbouring Council for assessment, regulatory and enforcement or establishing independent panels prior to determination of applications.*

#### 5.2 The management strategy for the following kinds of development is that no management controls need to be applied:

- (a) 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 the Council might receive a small fee for the use of their land.

*Note 2: Controls for dealing with conflict will be based on the level of risk Murrumbidgee Council will deal with the potential conflicts of interest for Council-related development based on:*

- a. risk category – low, moderate, high, very high
- b. types of development – non-controversial small-scale development, development of a certain value with/without a commercial interest, controversial development, or even
- c. capital investment value of the proposed development.

*Note 3: There are a range of management controls that could be applied in particular circumstances; such as:*

- a. Assessment and determination
  - i. The assessment and/or determination of an application are to be undertaken by Council staff under delegation – this might be appropriate if the proposal is considered to be a low-level risk or non-controversial. For more controversial projects, this might only be effective if strict role separation controls are imposed.
  - ii. The application could also be referred for external assessment and/or determination to either:
    - another Council,
    - a local planning panel if one is in place,
    - a regional planning panel (may require negotiation – RPPs are not required to accept referrals),
    - a consultant.

*The involvement of an external third party might be appropriate for development where Council has a commercial interest in the land, or the development is seen to be a political priority for the Council.*

*b. Regulation and enforcement*

- i. Engagement of a private certifier ,*
- ii. Publication of certificates issued under Part 6 of the Act on the NSW Planning Portal,*
- iii. Peer review by a neighbouring Council and/or entering into a shared services arrangement with a neighbouring Council,*
- iv. Reporting of key milestones to the full Council.*

## **6. Identifying whether a potential conflict of interest exists, assessment of level risk and determination of appropriate management controls**

6.1 Development applications lodged with the Council that are Council-related development (as defined in clause 1.4) are to be referred to the Director Planning, Community & Development (or a delegate) for a conflict-of-interest risk assessment.

6.2 The Director Planning, Community & Development or delegate 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,
- (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 of the policy and the outcome of the general manager's assessment of the level of risk involved as set out clause 6(2)(c) of the policy,

*Note 4: The Director Planning, Community and Development (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.

*Note 5: The following is an example of a statement that will be published by Council to document its proposed management approach in a particular circumstance.*

### **Scenario**

*Murrumbidgee Council seeks to develop one of its assets "Murrumbidgee Civic Place". Council is the landowner and is proposing redevelopment of the site for a mixed-use development with a total capital investment value of \$4.9 million. The development seeks approval for the construction and the use of building for the purpose of a childcare centre, a medical centre, commercial office space and Council's public administration.*

### Example management statement

| Council Conflict of Interest Management Statement |   |
|---|---|
| <b>Project Name</b>                               | Murrumbidgee Civic Place  |
| <b>DA Number</b>                                  | 100/2023  |
| <b>Potential Conflict</b>                         | Murrumbidgee Council is the applicant. Murrumbidgee Civic Place has an estimated capital investment value of \$4.9 million and Council expects to receive revenue through renting commercial office spaces.   |
| <b>Management Strategy</b>                        | <p>The Council is managing potential conflicts of interest in this matter as follows:</p> <ul style="list-style-type: none"><li>- The application will be referred to the local planning panel to determine the development application.</li><li>- Council development assessment staff not involved with preparing the application will assess the DA. The staff will remain separated from the project team.</li><li>- A private certifier will be engaged to undertake the certification for the development.</li><li>- XXXX Council has agreed to peer review any regulatory decisions should compliance decisions be made</li><li>- Key project milestones following the development consent will be reported at a public Council meeting.</li></ul> |
| <b>Contact</b>                                    | Anyone with concerns about Council fulfilling its obligations should report their concerns to the Council.  |

## PART 3 – OTHER MATTERS

### 7. Notification of Council-related development applications

All Council related development applications will be notified for a minimum period of 28 days in accordance with the Environmental Planning and Assessment Act, 1979.

### 8. Legislation and related matters

The following legislation and related matters were referenced in the drafting of the policy:

- Environmental Planning and Assessment Act, 1979
- Environmental Planning and Assessment Regulation, 2021
- Department of Planning & Environment “*Council-related Development Application Conflict of Interest Guidelines*”

### 9. Directorate

This policy was prepared by Planning, Community and Development Directorate

### 10. Policy Review

This Policy:

- To be reviewed within the first year of the new Council term;
- May be reviewed and amended at any time at Council's discretion (or if legislative or State Government policy changes occur).