

# Central Coast Council

## Council-Related Development Applications Conflict of Interest Protocol



Date Adopted: 30/05/2023

Revision: 1

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# Table of Contents

|   |    |
|---|----|
| 1. Protocol Objectives .....                                      | 3  |
| 2. Protocol Scope .....   | 3  |
| 3. Protocol Statement .....                                       | 4  |
| 4. Identifying and managing potential conflicts of interest ..... | 4  |
| 5. Responsibilities.....  | 7  |
| 6. Protocol Definitions.....                                      | 8  |
| 7. Protocol Administration .....                                  | 9  |
| 8. Protocol Authorisations.....                                   | 10 |
| 9. Protocol History .....   | 10 |
| 10. Appendices .....  | 10 |
| A. Example Management Statement .....                             | 11 |

# 1. Protocol Objectives

- 1.1. The objectives of this protocol are to:
    - 1.1.1. Establish management controls and/or a management strategy to address potential conflicts of interest at the different phases of the land and property development process for the types of Council-related development that Council could be involved in,
    - 1.1.2. Outline the process through which potential conflicts of interest will be identified, the risks assessed, and appropriate management controls determined, and
    - 1.1.3. Outline the process that will be followed to publicly communicate the management approaches for each development subject to this protocol.
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# 2. Protocol Scope

- 2.1. This protocol applies to all Council-related development, including development applications on Council-controlled land or where Council is the applicant, subject to the limitations in clause 2.2.
- 2.2. There are certain limitations on the capacity of Council staff to exercise legitimate discretion in assessing development applications. These include (but may not be limited to):
  - 2.2.1. Works under the *Roads Act 1993* and *Local Government Act 1993* to be carried out within existing road reserves, laneways and drainage reserves, e.g. vehicle access crossings, footpaths, service utility works (i.e. adjustments and relocation) and drainage works.
  - 2.2.2. Infrastructure works including water and sewer servicing ancillary to a proposed development within public reserves, community, and operational lands.
  - 2.2.3. Infrastructure/building construction works with Crown Land managed or under the care or control of Council.
  - 2.2.4. Temporary events (single or multiple) within Council road reserves, public reserves, community/operational lands and Crown Land managed or under the care and control of Council.
  - 2.2.5. Outdoor dining within Council owned land including Council road reserves, public reserves, community/operational lands and Crown Land managed or under the care and control of Council.
  - 2.2.6. Moorings, pontoons, wharfs and jetties located within Council's drainage reserves, Council road reserves, public reserves, community/operational lands and Crown Land managed or under the care and control of Council.

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### 3. Protocol Statement

- 3.1. 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.
  - 3.2. 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.
  - 3.3. This protocol aims to ensure that potential conflicts of interest are identified and managed appropriately in council-related development, underpinned by transparency and good governance principles.
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### 4. Identifying and managing potential conflicts of interest

#### Management control and strategies

- 4.1. Controls are based on the following risk levels:
  - 4.1.1. low risk – development applications not required to be determined by the Local Planning Panel (as outlined in the Minister’s Panel Direction) or another Panel will not require specific controls. For example, 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), and development where the council might receive a small fee for the use of their land;
  - 4.1.2. medium risk - Development applications outside the above parameters are required to be determined by a Local Planning Panel unless the capital investment value requires them to be determined by a Local Planning Panel (currently Council-related development exceeding \$5 million must be assessed by a Local Planning Panel). If a Council-related development application is determined by the Local Planning Panel Council staff will recuse themselves from the determination. Council assessment staff are not to be involved with preparation of the application other than with the provision of advice in that manner they would provide to any applicant. A private certifier would be engaged to undertake the certification of a development other than subdivision development.
  - 4.1.3. high risk - Some Council-related development may, by its scale or nature, be of significant community interest and be of greater risk to a be a conflict of interest. The controls that apply to medium risk applications will apply. In addition, in some circumstances the General

Manager may require that assessment reports be prepared by an external consultant rather than Council staff.

4.1.4. types of development – non-controversial small-scale development, development of a certain value with/without a commercial interest, or controversial development;

4.1.5. capital investment value of the proposed development.

**4.2.** The following management controls may be applied to:

4.2.1. The **assessment and/or determination** of a development application for Council-related development

a) The assessment of an application can be undertaken by suitably qualified Council staff under delegation for proposals considered to be a of a low risk level or non-controversial. For assessment of higher than low risk level, or more controversial projects, strict role separation controls are to be imposed or it may be more appropriate to engage an independent consultant.

b) The determination of an application considered to be of a higher than low-level risk should be referred for external determination to either:

i. The Local Planning Panel,

ii. Another council (which may or may not be a neighbouring council),

iii. A suitably qualified independent consultant.

iv. It is noted that any size or value applications may be called up to Council in accordance with Council's Code of Meeting Practice.

4.2.2. The **regulation and enforcement** of approved Council-related development

a) Council may decide to use one of the following management control strategies when regulating and enforcing council related development:

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 another council and/or entering into a shared services arrangement with another council, or

iv. Reporting of key milestones to the elected council or (if relevant) the Administrator.

**4.3.** The management strategy for the following kinds of development is that no management controls need to be applied:

4.3.1. Commercial fit-outs and minor changes to building façades

4.3.2. Internal alterations or additions to buildings that are not a heritage item

- 4.3.3. Advertising signage
- 4.3.4. Minor building structures projecting from a building façade over a road reserve or public land (such as awnings, verandas, bay windows, flagpoles, pipes and services)
- 4.3.5. Minor works/facilities at sporting grounds, storage sheds, upgrades/additions to toilets facilities
- 4.3.6. Upgrades in accordance with Plans of Management and minor works that fall outside of Part 5 (for or on behalf of Council) works and require a DA (ie if proposed and funded by an external sporting association). These works are usually minor, consistent with intended use of the land and represent minimal risk.
- 4.3.7. Development where Council may receive a small fee for the use of Council-controlled land

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

- 4.4.** Development applications lodged with Council that are Council-related development are to be referred to the Office of the Chief Executive Officer (or delegate) for a conflict-of-interest risk assessment.
- 4.5.** The Chief Executive Officer (or delegate) is to:
  - 4.5.1. Assess whether the application is one in which a potential conflict of interest exists or where a significant public perception exists as to the need for independent assessment
  - 4.5.2. Identify the phase(s) of the development process at which the identified conflict of interest arises
  - 4.5.3. Assess the level of risk involved at each phase of the development process
  - 4.5.4. Establish whether other already existing controls such as a plan of management over council community land provide suitably rigorous controls (e.g. via section 47E of the *Local Government Act 1993*) to manage any possible conflicts of interests
  - 4.5.5. 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 4.1-4.2 of this protocol and the outcome of the Chief Executive Officer's assessment of the level of risk involved as set out in clause 4.5.3 of this protocol
  - 4.5.6. Document the proposed management approach for the proposal in a statement that is published on the NSW Planning Portal

## 5. Responsibilities

### **Compliance, monitoring and review**

- 5.1. The Unit Manager Development Assessment is to ensure implementation and monitoring of this protocol and reporting of conflicts to the Executive Leadership Team (**ELT**) and Audit Risk and Improvement Committee (**ARIC**) as outlined in clause 5.4.
- 5.2. The staff are to declare conflicts of interest as they arise in accordance with this protocol and Council's [Code of Conduct](#).
- 5.3. The Chief Executive Officer has ultimate responsibility for ensuring staff comply with this protocol and that Council manages its conflicts of interest pursuant to the *Local Government Act 1993* and the *Environmental Planning and Assessment Act 1979*.

### **Reporting**

- 5.4. A report outlining the number of declared conflicts is to be provided to the ELT and the ARIC annually.

### **Records management**

- 5.5. Staff must maintain all records relevant to administering this protocol in accordance with Council's Information and Records Management Policy.

## 6. Protocol Definitions

A word or expression used in this protocol has the same meaning as it has in the Act, and any instruments made under this Act, unless it is otherwise defined in this protocol. Notes included in this protocol do not form part of the protocol.

|                                    |   |
|------------------------------------|---|
| <b>Act</b>                         | means the <i>Environmental Planning and Assessment Act 1979</i> (NSW).  |
| <b>ARIC</b>                        | means Council's Audit Risk and Improvement Committee as mandated by Section 428A of the <i>Local Government Act 1993</i> (NSW).   |
| <b>Application</b>                 | 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.   |
| <b>Council</b>                     | means Central Coast Council.  |
| <b>Council-related development</b> | 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. |
| <b>Development process</b>         | means application, assessment, determination and enforcement of applications/consents for land and property development   |
| <b>ELT</b>                         | means an internal leadership committee made up of the Chief Executive Officer and Directors of Council.   |



## 7. Protocol Administration

|   |  |
|---|--|
| <b>Business Group</b>   | Environment and Planning   |
| <b>Responsible Officer</b>  | Unit Manager Development Assessment  |
| <b>Associated Procedure</b>   |  |
| <b>Protocol Review Date</b>   | Four years from date of adoption unless legislated otherwise   |
| <b>File Number / Document Number</b>  | D15606046  |
| <b>Relevant Legislation (reference specific sections)</b>                                 | <p>This Protocol supports Council's compliance with the following legislation:</p> <ul style="list-style-type: none"> <li>▪ Part 4 and Schedule 1 <i>Environmental Planning and Assessment Act 1979</i> (NSW)</li> <li>▪ Section 66A <i>Environmental Planning and Assessment Regulation 2021</i> (NSW)</li> </ul> |
| <b>Relevant desired outcome or objectives as per Council's Delivery Program</b>           | <p>Theme 4: Responsible</p> <p><b>Goal G: Good governance and great partnerships</b></p> <p>R-G3: Provide leadership that is transparent and accountable, makes decisions in the best interest of the community, ensures Council is financially sustainable and adheres to a strong audit process.</p>             |
| <b>Related Policies / Protocols / Procedures / Documents (reference document numbers)</b> | <ul style="list-style-type: none"> <li>▪ Information and Records Management Policy (D14025241)</li> <li>▪ Code of Conduct (D15487987)</li> <li>▪ <a href="#">Council-related Development Application Conflict of Interest Guidelines</a></li> </ul>  |

## 8. Protocol Authorisations

| No.   | Authorised Function     | Authorised Business Unit / Role(s)  |
|-------|-------------------------|---|
| GE020 | Chief Executive Officer | Approve appropriate controls for managing identified conflicts of interest concerning Council-related development applications. |

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## 9. Protocol History

| Revision | Date Approved / Authority | Description Of Changes |
|----------|---------------------------|------------------------|
| 1        | 30 May 2023               | New protocol adopted   |

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## 10. Appendices

A. Example Management Statement

## A. Example Management Statement

| <b>Conflict of interest management statement</b> |  |
|--|--|
| Project name                                     | Blue River Civic Place   |
| DA Number  | DA/0000/2023   |
| 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"> <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>• Green Hill Council has agreed to peer review any regulatory decisions should compliance decisions be made.</li> </ul> <p>Key project milestones following the development consent will be reported at a public council meeting.</p> |
| Contact  | Anyone with concerns about Council fulfilling its obligations should report their concerns to the council.   |