

Policy title	Conflict of interest policy – dealing with council related development applications
Responsible manager(s)	Divisional Manager Development Services
Contact officer(s)	Development Assessment Coordinator
Directorate	Planning and Sustainability Services
Approval date	23 May 2023
Focus area	3.1 Balance development between the needs of people, place and productivity
Delivery Program link	3.1.2 Provide receptive and responsive development assessment services
Operational Plan link	3.1.2.1 Assess and determine development applications

Purpose

Eurobodalla Shire Council’s policy was developed to provide clarity as to how Eurobodalla Shire Council deals with development applications where it is both the developer and the consent authority. The policy also deals with applications lodged by Council staff and Councillors.

The *Environmental Planning and Assessment Amendment (Conflict of Interest) Regulation 2022* requires councils to manage conflicts of interest arising in relation to ‘*council-related development applications*’, and amends Schedule 1 of the EP&A Act to make provision for community participation requirements concerning such applications.

Clause 9B(2) of Schedule 1 to the EPA Act defines ‘*council-related development application*’ to mean:

‘... a development application, for which a council is the consent authority, that is—

(a) made by or on behalf of the council, or

(b) for development on land of which the council is an owner, a lessee or a licensee, or otherwise vested in or under the control of the council.’

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 and development applications lodged by Council staff or Councillors.

Policy details

1	Application This policy applies to Eurobodalla Shire Council as the applicant and/or the landowner for a development application and as the consent authority for such an application. The policy also applies to Council staff and Councillors (in their private capacity) who lodge development applications where Eurobodalla Shire Council is the consent authority.
2	Legislation

	This policy ensures Eurobodalla Shire Council's compliance with the Environmental Planning and Assessment Amendment (Conflict of Interest) Regulation 2022 and Schedule 1 of the Environmental Planning and Assessment Act 1979.
3	<p>Definitions</p> <p>(1) In this policy:</p> <p>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,</p> <p>council means Eurobodalla Shire Council</p> <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</p> <p>Council staff/Councillor related development means a development application for which a Council staff member or Councillor has a commercial interest in the land the subject of the application, where Council is also the regulator or consent authority</p> <p>development process means application, assessment, determination, and enforcement</p> <p>the Act means the Environmental Planning and Assessment Act 1979.</p> <p>Land development means a development for which Council is the applicant/ developer/ landowner and the development is for the purposes of commercial gain, i.e., a residential subdivision.</p> <p>Operational development means a development for which Council is the applicant/ developer/ landowner and the development is for the purposes of carrying out a council related function, i.e., an extension to a works depot, community facility.</p> <p>Third party development means a development for which Council is the landowner only and the development is for the purposes of a surf club, markets, golfclub, etc where Council is the landowner or Crown land manager.</p> <p>Councillor development means a development for which a Councillor of the Eurobodalla Shire is the applicant/ developer/ landowner.</p> <p>General Manager/Director development means a development for which the General Manager or a Director of the Eurobodalla Shire is the applicant/ developer/ landowner.</p> <p>Development Services staff development means a development for which a staff member of the Development Services Division of Eurobodalla Shire Council is the applicant/ developer/ landowner.</p> <p>Council staff development means a development for which a Council staff member of the Eurobodalla Shire is the applicant/ developer/ landowner and is not elsewhere defined.</p> <p>(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.</p> <p>(3) Notes included in this policy do not form part of the policy.</p>

Implementation

Management controls and strategies	Responsibility
<p>4</p> <p>a. Land development (Council related applications) The following management controls apply to the assessment of an application for council-related development</p> <ul style="list-style-type: none"> • Public exhibition of council related applications for 28 days • peer review or assessment by neighbouring council/ independent consultant • report to full council meeting • Noted on the Planning Portal (the portal provides a question if you have any relationship with staff or a Councillor). <p>b. Operational development (Council related applications) The following management controls apply to the assessment of an application for council-related development</p> <ul style="list-style-type: none"> • Public exhibition of council related applications for 28 days • peer review or assessment by neighbouring council/ independent consultant • Noted on the Planning Portal (the portal provides a question if you have any relationship with staff or a Councillor). <p>c. third party development (Council related applications) The following management controls apply to the assessment of an application for council-related development</p> <ul style="list-style-type: none"> • Public exhibition of council related applications for 28 days • peer review or assessment by neighbouring council/ independent consultant • Noted on the Planning Portal (the portal provides a question if you have any relationship with staff or a Councillor). • Note – Development consistent with an approved plan of management are excluded. <p>d. Councillor/General Manager/ Director The following management controls apply to the assessment of an application for council-related development</p> <ul style="list-style-type: none"> • peer review by neighbouring council/ independent consultant • Noted on the Planning Portal (the portal provides a question if you have any relationship with staff or a Councillor). • Note – see Part 5 – applications relating to the primary residence are excluded. <p>e. Development Services Staff The following management controls apply to the assessment of an application for council-related development</p>	<p>Divisional Manager Development Services/ Development Assessment Coordinator</p>

	<ul style="list-style-type: none"> • peer review by neighbouring council/ independent consultant • determination by Divisional Manager or Director Planning and Sustainability Services • Noted on the Planning Portal (the portal provides a question if you have any relationship with staff or a Councillor). • Note – see Part 5 – applications relating to the primary residence are excluded. <p>f. Council staff - general The following management controls apply to the assessment of an application for council-related development</p> <ul style="list-style-type: none"> • Noted on the Planning Portal (the portal provides a question if you have any relationship with staff or a Councillor). <p>g. Regulation and enforcement of approved council-related development</p> <ul style="list-style-type: none"> • Engagement of a private certifier • Shared services arrangement with a neighbouring council • Use of an independent lawyer/ legal firm <p>h. Construction/ Complying Development Certificates of approved council-related development with a capital investment value greater than \$2,000,000.00</p> <ul style="list-style-type: none"> • Engagement of a private certifier (as per the Building and Development Certifiers Regulation) <p>i. Construction / Complying Development Certificates of approved council staff/councillor related development with a capital investment value greater than \$2,000,000.00</p> <ul style="list-style-type: none"> • Engagement of a private certifier (as per the Building and Development Certifiers Regulation) 	
5	<p>Development where no management control/strategy required</p> <ul style="list-style-type: none"> • Internal alterations where no change of use • Minor additions to a residential dwelling (deck, shed) • commercial fit outs and minor changes to the building façade • advertising signage (related to an approved development) • minor building structures projecting from a building facade over public land (such as awnings, verandas, bay windows, flagpoles, pipes, and services) • staff/ councillor applications where the proposal relates to the dwelling and/or associated structures of their primary address. • Development on Council land by a third party where it is consistent with an approved Plan of Management. 	Divisional Manager Development Services/ Development Assessment Coordinator
6	Identifying whether a potential conflict of interest exists, assessment of level risk and determination of appropriate management controls	Responsibility

	<p>Development applications lodged with the council that are council-related development or council staff/councillor related development are to be assessed in accordance with this policy and a management strategy prepared. The management strategy is to be publicly exhibited with the application (if public exhibition occurs) and kept on the file/register associated with this policy.</p> <p>The management strategy must state the following:</p> <ul style="list-style-type: none"> • assess whether the application is one in which a potential conflict of interest exists, • identify the phase(s) of the development process at which the identified conflict of interest arises, • assess the level of risk involved at each phase of the development process, • apply Part 4 of this policy – Management control and strategies, • document the proposed management approach for the proposal in a statement that is publicly exhibited with the application. 	General Manager
7	<p>Concerns</p> <p>Public concerns communicated to Council in relation to this policy will be recorded on Council's records system and handled in accordance with Council's Customer Service or Complaints policy. These records will be used to determine any follow-up actions and analyse the history of reported public concerns.</p>	General Manager
8	<p>Consultation</p> <p>The draft policy is required to be publicly exhibited for a period of 28 days in accordance with Schedule 1, Community Participation of the Environmental Planning and Assessment act 1979.</p>	Divisional Manager Development Services

Review

The policy will be automatically revoked at the expiration of twelve months after the declaration of the poll for the next general NSW local government election, unless Council revokes it sooner.

Note: Automatic revocation of the policy is provided for by section 165(4) of the Local Government Act 1993. The next general local government election is expected to be held in September 2024.

This policy may also be reviewed and updated as necessary when legislation requires it; or Council's functions, structure or activities change; or when technological advances or new systems change the way that Council manages conflict of interest in the development process.

Reviews of the effectiveness of this policy could include the following:

Performance indicator	Data source(s)
Number of conflict-of-interest risk assessments versus number of council related applications	ECM
Delivery Program/ Operational Plan outcomes achieved	Council reporting
Concerns or complaints registered	Council records
Internal or external review	Audit

Governance

This policy should be read in conjunction with any related legislation, codes of practice, relevant internal policies, and guidelines.

Related legislation and policies

Name	Link
Related Council Policy or Code of Practice	Council policies Eurobodalla Council (nsw.gov.au)
Local Government Act 1993	Local Government Act 1993 No 30 - NSW Legislation
Environmental Planning and Assessment Act 1979	Environmental Planning and Assessment Act 1979 No 203 - NSW Legislation
Environmental Planning and Assessment Amendment (Conflict of Interest) Regulation 2022	sl-2022-579 (nsw.gov.au)

Related external references

Name	Link
Office of Local Government	www.olg.nsw.gov.au
Department of Planning and Environment	NSW Dept of Planning and Environment

Supporting documents

Name	Link
Risk Assessment	.

Change history

Version	Approval date	Approved by	Min No	File No	Change
1	23 May 2023	Council	23/52	S004-T00021	
2		Council			
3		Council			

Internal use

Responsible officer		Director Planning and Sustainability Services			Approved by	Council
Minute #	23/52	Report #	PSR23/019	Effective date	24 May 2023	
File	E16.0297	Review date	Sep 2025	Pages	6	