

# Wagga Wagga City Council

## PROCESSING DEVELOPMENT APPLICATIONS LODGED BY COUNCILLORS, STAFF AND INDIVIDUALS OF WHICH A CONFLICT OF INTEREST MAY ARISE, OR ON COUNCIL OWNED LAND POLICY

<b>REFERENCE NUMBER</b>	POL 046		
<b>ORIGINAL APPROVAL DATE</b>	22 November 2010		
<b>RESPONSIBLE MANAGER</b>	Manager City Development		
<b>RESPONSIBLE DIRECTORATE</b>	Commercial Development		
<p>This document is to be reviewed: every four years Or in the first twelve months of the new term of Council, Whichever is the earliest. Next Review Date: September 2020</p>			
<b>Revision number</b>	<b>Issue Date</b>	<b>Council Resolution</b>	<b>Council Meeting Date</b>
0	22/11/2010	Res.No 10/308	22 November 2010
1	30 April 2012	Res No: 12/122	30 April 2012
2	August 2013	Res No: 13/224.1	26 August 2013
3	December 2015	E Team	February 2016
4	August 2017	Res No: 17/279	28 August 2017
5	November 2017	Res No: 18/057	26 February 2018

## **PART 1: INTRODUCTION**

### **1.1 Policy Objectives**

To provide a transparent protocol for the determination of a development application(s) lodged by Councillors, Council Staff and their respective relatives, and a development application(s) lodged by Council for development on Council owned land.

### **1.2 Scope of Policy**

This policy applies to all development application(s) lodged by Councillors, Council Staff and their respective relatives and for a development application(s) lodged for development on Council owned land.

### **1.3 Legislative Context**

The Policy has been created to ensure compliance with Councils required obligations under Section 8A (1) (h) and (2) (e) of the Local Government Act 1993, that is:

*“Councils should act fairly, ethically and without bias in the interests of the local community.”*

*“Council decision-making should be transparent and decision-makers are to be accountable for decisions and omissions.”*

### **1.4 Responsibilities**

This Policy is the responsibility of Council’s Commercial Development Directorate.

### **1.5 Review procedures**

This policy will be reviewed on a four year basis.

### **1.6 Related Documents**

- Local Government Act 1993
- Code of Conduct
- POL 112 Conflicts of Interest Policy
- POL 107 Gifts & Benefits Policy
- POL 031 Related Parties Policy

## 1.7 Definitions

In this Policy:

<b>Act</b>	Shall mean the Local Government Act 1993 (as amended)
<b>Code of Conduct</b>	The Code of Conduct adopted by the City of Wagga Wagga
<b>Conflict of Interest</b>	A conflict of interest exists where a reasonable and informed person would perceive that a councillor/staff member could be influenced by a private interest when carrying out their public duty.
<b>Councillor</b>	Shall mean all elected members of the City of Wagga Wagga including the Mayor.
<b>Development Application</b>	Shall mean an application for consent under Part 4 of the <i>Environmental Planning and Assessment Act 1979</i> to carry out <a href="#">development</a> but does not include an application for a <a href="#">complying development certificate</a> .
<b>Pecuniary Interest</b>	Shall mean an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person or another person with whom the person is associated (Section 442 of the Local Government Act).
<b>Non Pecuniary Interest</b>	This is any private interest that does not relate to money. Non-pecuniary interests are private or personal interests the council official has that do not amount to a pecuniary interest as defined in the Local Government Act 1993. A non-pecuniary interest may arise out of kinship, friendship, membership of an association, society or trade union, or involvement or interest in sporting, social or cultural activities.
<b>Regulation</b>	Shall mean the Local Government (General) Regulation 2005.
<b>Relative</b>	Shall mean a relative including, but not limited to – parent, grandparent, brother, sister, uncle, aunt, son, daughter, nephew, niece or an adopted child of the person or the person’s spouse, spouse, partner.
<b>Staff</b>	Shall include persons currently employed by the City of Wagga Wagga either full-time, temporary, contract or casual basis, but shall not include persons engaged by Council as consultants or on an unpaid or voluntary basis. Staff shall also include persons employed by external organisations but who primarily work at or from a Council facility, such as trainees employed by employment agencies.

## PART 2: POLICY CONTENT

### 2.1 General Provisions

2.1.1 Councillors and staff are obliged to ensure that development decisions are properly made and that parties involved in the development process are dealt with in a transparent and equitable manner. Councillors and staff must avoid any occasion for suspicion of improper conduct in the development assessment process. In this regard, in determining development application(s), Councillors and staff must ensure that no action, statement or communication between themselves and applicants or objectors conveys any suggestion of willingness to provide improper concessions or preferential treatment.

2.1.2 Subject to the exemptions in 2.1.3 of this Policy, Development Applications received by Council where:

1. The applicant or land owner is a Councillor, Director, or the General Manager;
2. The applicant or land owner is a company where a director of the company is a Councillor, Director or the General Manager;
3. The applicant or land owner is a relative of a Councillor, Director or the General Manager;
4. The applicant or land owner is a company where a director of the company is a relative of a Councillor, Director or the General Manager;
5. The applicant is acting on behalf of a Councillor, Director, or the General Manager;
6. The applicant is acting on behalf of a company where a director of the company is a Councillor, Director or the General Manager;
7. The applicant is acting on behalf of a relative of a Councillor, Director, or the General Manager; or
8. The applicant is acting on behalf of a company where a director of the company is a relative of a Councillor, Director or the General Manager;

shall be reported to Council for consideration and determination.

2.1.3 Clause 2.1.2 does not apply to Development Applications made by or on behalf of a Councillors or Directors (or their relatives, companies, or relative's companies), or on land where a land owner is a Councillor or Director (or their relative, company, or relative's companies), for the following purposes:

1. Single dwellings and alterations and additions to single dwellings;
2. Secondary dwellings;
3. Ancillary buildings and structures to a dwelling;
4. Applications under Section 68 of the Local Government Act 1993;
5. Development with a development cost of less than \$250,000.

In the case of Development Applications made by or on behalf of Councillors (or their relatives, companies, or relative's companies) or on land where a land owner is a Councillor (or their relative, company, or relative's companies), the Development Application shall be determined by the Director of Planning.

In the case of Development Applications made by a Director (or their relatives, companies, or relative's companies) or on land where a land owner is a Director (or their relative, company, or relative's companies) the Development Application shall be determined by the General Manager.

#### 2.1.4 Any Development Application received by Council where

1. The applicant or land owner is a staff member of Council, (other than the Manager City Development, Manager City Strategy, a Director or the General Manager);
2. The applicant or land owner is a company where a director of the company is a staff member of Council, (other than the Manager of City Development, Manager City Strategy, a Director or the General Manager);
3. The applicant or land owner is relative of a staff member of Council, (other than the Manager City Development, Manager City Strategy, a Director or the General Manager);
4. The applicant or land owner is a company where a director of the company is a relative of a staff member of Council, (other than the Manager City Development, Manager City Strategy, a Director or the General Manager);
5. The applicant is acting on behalf of a staff member of Council, (other than the Manager City Development, Manager City Strategy, a Director or the General Manager);
6. The applicant is acting on behalf of a company where a director of the company is a staff member of council, (other than the Manager City Development, Manager City Strategy, a Director or the General Manager);
7. The applicant is acting on behalf of a relative of a staff member of Council, (other than the Manager City Development, Manager City Strategy, a Director or the General Manager); or

8. The applicant is acting on behalf of a company where a director of the company is a relative of a staff member of council, (other than the Manager City Development, Manager City Strategy, a Director or the General Manager);

shall be determined under delegation by the Manager City Development.

2.1.5 Any Development Application received by Council where:

1. The applicant or land owner is the Manager City Development or the Manager City Strategy;
2. The applicant or land owner is a company where a director of the company is the Manager City Development or the Manager City Strategy;
3. The applicant or land owner is relative of the Manager City Development or the Manager City Strategy;
4. The applicant or land owner is a company where a director of the company is a relative of the Manager City Development or the Manager City Strategy;
5. The applicant is acting on behalf of the Manager City Development or the Manager City Strategy;
6. The applicant is acting on behalf of a company where a director of the company is the Manager City Development or the Manager City Strategy;
7. The applicant is acting on behalf of a relative of the Manager City Development or the Manager City Strategy; or
8. The applicant is acting on behalf of a company where a director of the company is a relative of the Manager City Development or the Manager City Strategy;

shall be determined under delegation by the Director Commercial Development.

2.1.6 Despite any other provision of 2.1.4 and 2.1.5, any Development Application made by a person named under these clauses for a Development that:

1. Does not comply with the controls of any Environmental Planning Instrument or any Development Control Plan that applies to the land;
2. That has a development cost of \$250,000 or greater; or
3. That involves the Torrens Title subdivision of land and in which 2 or more additional allotments (i.e. in addition to the number of existing allotments on the land to be subdivided) are created

shall be reported to Council for determination, other than if the application is for:

1. Single dwellings and alterations and additions to single dwellings;
2. Secondary dwellings;
3. Ancillary buildings and structures to a dwelling;
4. Applications under Section 68 of the Local Government Act 1993;

2.1.7 For the purpose of determining if an individual is a person named in this Policy, Council staff shall rely on a declaration made by the applicant on the Development Application form. It shall not be the responsibility of staff to investigate the employment status or any potential relationship between applicants and persons named in this Policy.

2.1.8 In the case of applications lodged by Council, on Council owned land, to be carried out by Council, or where Council is a party to any agreement or arrangement relating to the development (other than any agreement or arrangement entered into under the Environmental Planning and Assessment Act 1979 or for the purposes of the payment of contributions by a person other than Council), the application shall be either determined under delegation or reported to the Southern Region Joint Planning Panel as per the provisions of Schedule 4a of the Environmental Planning and Assessment Act 1979.

2.1.9 Despite any of provision of this Policy, the General Manager shall have the discretion to permit any Development Application subject to this Policy to be determined under delegation (other than a Development Application to which clause 2.1.2 applies due to a relationship between the applicant and the General Manager) having regard to the following matters:

- (i) The value, scale, size and nature of the proposed development.
- (ii) The nature and number of submissions received in relation to the development.
- (iii) The potential level or degree of any conflict of interest (perceived or real) for the determining officer.

## 2.2 Legislative Context – Conflicts of Interest

- 2.2.1 Notwithstanding and in addition to the process outlined in 2.1 above, all staff not identified through the process outlined in 2.1 above, have a duty to identify, determine and declare, in writing to the General Manager, any pecuniary or non-pecuniary conflict of interest that they may have. Councillors and Council staff are bound by the provisions of Council's adopted Code of Conduct, Conflicts of Interest Policy and the Local Government Act 1993.
- 2.2.2 Accordingly, staff are required to assess whether they have a pecuniary or non-pecuniary conflict of interest in relation to a development application(s) for themselves or a relative where a conflict is identified for other reasons. The following is provided for your assistance:
- a A conflict of interest exists where a reasonable and informed person would perceive that you could be influenced by a private or personal interest when carrying out your public duty.
  - b You must avoid or appropriately manage any conflict of interests. The onus is on you to identify a conflict of interest and take the appropriate action to manage the conflict in favour of your public duty.
  - c Any conflict of interest must be managed to uphold the probity of Council decision-making. When considering whether or not you have a conflict of interest, it is always important to think about how others would view your situation.
- 2.2.3 The determination of a conflict of interest will identify those development applications of which staff members are required to remove themselves from the assessment and decision making process.