

Lessons for councils when regulating their own property

Councils will sometimes own or develop property within their own council area, which can raise an inherent conflict of interest with respect to their role as the area's consent authority or regulator.

In a recent investigation ([*Investigation into enforcement of fire safety obligations at a residential building in Lane Cove*](#)) we found a local council had engaged in maladministration by not properly managing such a conflict. The issues raised were similar to ones we saw in an earlier investigation in 2020 about a different council ([*An inherent conflict of interest: councils as developer and regulator*](#)).

The earlier investigation led to changes to the Environmental Planning and Assessment Regulation 2021 (EPA Regulation), including to require all councils to adopt and apply a policy on conflicts of interest in council-related development.

Drawing lessons from our investigations and other work, this guidance note reminds councils of those requirements and aims to provide further guidance to help council staff avoid maladministration in these situations.

Lessons

Recognise conflicts of interest

Recognise that conflicts of interest arise whenever a council's consent authority or regulatory responsibilities are applied to properties in which they have an interest as owners or developers. Clearly distinguish between these roles and establish internal accountability structures to minimise the risk of governance failures and prevent maladministration.

Ensure clarity of roles

Clearly define the responsibilities of the different roles within council that are related to property development or ownership. It is best if responsibilities are assigned to positions within the organisation, rather than named individuals. Roles related to consent authority and regulatory activities should operate independently of those connected with the development or ownership of a property. Consider engaging independent experts or a neighbouring council to perform or advise on specified roles (or at least offer peer review).

Establish robust systems and recordkeeping

Adopt strong record-keeping practices so it is clear who is responsible for what and what actions have (or have not) been taken, and why.

Processes and systems should support monitoring of compliance with requirements, enforcement and regulatory checks; and alert staff or executives when duties are not done properly or on time.

What does this look like?

As now required by the EPA Regulation, councils must have policies and procedures in place that specify how conflicts of interest in connection with council-related development applications will be handled. They should also consider and apply any relevant guidelines issued by government agencies and departments.

Specific actions of particular importance identified from our investigations include:

- In each case, ask if it is appropriate for council to develop property within its own area. Are alternative options available?
- Consider using an independent expert or body (e.g. a neighbouring council) to support decision-making in relation to council's consent authority or other regulatory functions in relation to the property
- Document all roles held by the council for each property and the responsibilities of each role
- Document procedures for managing conflicts of interest and role overlaps. Include governance, approvals and any strategies adopted (e.g. engaging external parties)
- Keep records of key decisions, including the decision-maker, considerations and reasons for the decision, and actions taken (and not taken)
- Assign responsibility for regulatory enforcement and compliance. If there is non-compliance, act quickly to address it and consistently follow any council compliance and enforcement policy
- Train staff regularly on managing conflicts and their duties and obligations
- Regularly audit governance, compliance and decision-making processes and review relevant policies.