



WAVERLEY
COUNCIL

Managing Conflicts of Interest for Council-related Development Policy

Policy owner	Executive Manager, Development Assessment
Approved by	Council
Date approved	
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Relevant legislation	<i>Environmental Planning and Assessment Act 1979</i> <i>Environmental Planning and Assessment Regulation 2021</i>
Related policies/procedures/guidelines	
Related forms	

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1. Background

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.

To mitigate this outcome, it may be appropriate to separate or minimise the role played by Council staff in the DA assessment and determination process. This might be done by the outsourcing of all or parts of the assessment process to an external expert such as a planning consultant. This is a common practice and one that has been applied at Waverley for many years.

The types of Council-related development proposals that more recently have been externally assessed and determined by independent bodies such as the Waverley and Eastern City Planning Panels include Bondi Pavilion upgrade, Bondi Surf Club, Mill Hill refurbishment and Bronte Surf Club. In some circumstances, Council may determine the risks associated with a Council-related development are sufficiently low and no specific controls are warranted. Where this is the case, Council should still publicly communicate that fact to ensure transparency.

Examples of this may include:

- Where Council is the owner of a large commercial building that has a range of shops within it, for which it receives many development applications for commercial fit outs and minor changes to the building facade.
- Development for 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.

In these types of circumstances, it would be reasonable for Council's policy to not require any additional controls for conflicts of interest so the application would be assessed in the same way as non-Council-related developments.

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.

New legislative requirements are proposed to the *Environmental Planning and Assessment Regulation 2021* in relation to the management of potential conflict of interest for council-related development. To implement the new requirements, it will be necessary for Council to have an adopted Policy in place and for this to be considered in the management of the development assessment process.

The general requirements are:

- Councils must adopt and have a policy that specifies how conflicts of interest in connection with council-related development applications will be handled. The policy must comply with the requirements in these Guidelines.
- Council-related development applications must be accompanied by either a management strategy statement, which explains how the council will manage potential conflicts of interest, or a statement that the council has no management strategy for the application.

- Councils must record conflicts of interest in connection with each council-related development application, and the measures taken to manage the conflicts, in their existing DA register.
- Council-related development applications must be exhibited for a minimum of 28 days to ensure transparency during the assessment process.

2. Purpose

The purpose of this policy is 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 Council-related development.

4. Process for identifying and managing potential conflicts of interest

4.1 Management controls and strategies

4.1.1 The following management controls may be applied to:

- (a) The assessment and determination of an application for Council-related development:
 - Refer to Table 1.
- (b) The regulation and enforcement of approved Council-related development:
 - Use of independent consultants.
 - Enter into a shared services arrangement with neighbouring councils.

4.1.2 The management strategy does not apply to the following types of development:

- (a) Commercial 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 façade over public land (such as awnings, verandah, bay windows, flagpoles, pipes and services).
- (e) Development where the council might receive a small fee for the use of their land.

4.2 Identifying whether a potential conflict of interest exists

Development applications lodged with the Council that are Council-related development (as defined in section 5) are to be referred to the General Manager (or delegate) for a conflict of interest risk assessment.

The General Manager (or delegate) is to:

- 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.
- 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 of the policy and the outcome of the General Manager's assessment of the level of risk involved as set out in the dot point above. *Note: the General Manager could determine that no management controls are necessary in the circumstances.*

- Document the proposed management approach for the proposal in a statement that is published on the NSW Planning Portal. Refer to Table 2.

Table 1. Assessment and determination criteria for an application for Council-related development.

Category of Council-related development	Assessment	Determination
<p>Minor DA</p> <p>Minor DA refers to development that is small-scale, routine operational and/or non-controversial. The determination of a minor DA shall be made after consideration of the following criteria, at the discretion of the Director Planning, Sustainability and Compliance (or delegate):</p> <ul style="list-style-type: none"> • The estimated value of the works to be undertaken; • The potential impact on surrounding residential amenity associated with the proposed development; • The consistency of the proposed works with an existing Council Management Plan or strategy; • Whether the proposal involves any substantial variations from existing Council policy; and • Whether the proposal will leave to any financial benefit for the council. <p>Examples: replacement of amenity block, internal refurbishment or renovation of a building, external painting of a building, development value of under \$5m with less than 10 objections.</p>	<ul style="list-style-type: none"> • Assessment undertaken by Council staff not involved in the Council-related development. • A management statement is to be prepared and exhibited on the NSW Planning Portal with the DA, unless it is of a kind referred to in Part 4(2) of this Policy. 	<ul style="list-style-type: none"> • Determination by Waverley Local Planning Panel
<p>Major DA</p> <p>Major DA refers to development that is large-scale, significant and/or controversial. The determination of a major DA shall be made after consideration of the following criteria, at the discretion of the Director Planning, Sustainability and Compliance (or delegate):</p> <ul style="list-style-type: none"> • The estimated value of the works to be undertaken; • If the DA is Regional Development (under the <i>State Environmental Planning Policy (Planning Systems) 2021</i>. 	<ul style="list-style-type: none"> • Assessment is to be undertaken by an external Planning Consultant. • A management statement is to be prepared and exhibited on the NSW Planning Portal with the DA. 	<ul style="list-style-type: none"> • Determination by the Regional Planning Panel if the Capital Investment Value (CIV) of the application is >\$5 million in accordance with Schedule 6 of the State Environmental Planning Policy

<ul style="list-style-type: none"> • The potential impact on surrounding residential amenity associated with the proposed development; • The consistency of the proposed works with an existing Council Management Plan or strategy; • Whether the proposal involves any substantial variations from existing Council policy; and • Whether the proposal will leave to any financial benefit for the council. <p>Examples: new community building and/or facilities, significant alterations and additions to a Council owned building, development value of more than \$5m with more than 10 objections.</p>		<p>(Planning Systems) 2021.</p> <ul style="list-style-type: none"> • Determination by Waverley Local Planning Panel if the application does not trigger referral to the Regional Planning Panel.
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Table 2. Management statement example.

Council conflict of interest management statement	
Address	
DA number	
Potential conflict	A council senior staff member is responsible for project managing and delivering major council development project that will generate income for council. The same senior staff member is responsible for reviewing and approving DA referral response from his/her directorate.
Management strategy	<p>Refer to Table 1 for guidance. The strategy could include (examples only)</p> <ul style="list-style-type: none"> • Assessment/referral response staff are not part of the project delivery team. • External consultant engaged for DA assessment. • Relevant senior staff member responsible for project managing and delivering the council development project does not review DA referral comments. • Determination by WLPP or Regional Planning Panel • Key milestones post determination reported to Council and published
Contact	Anyone with concerns about council fulfilling its obligations should report their concerns with the General Manager or delegate of Waverley Council.

5. Definitions

Term	Definition
<i>application</i>	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
<i>Council</i>	Waverley Council
<i>Council-related development</i>	Development for which 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
<i>development process</i>	Application, assessment, determination, and enforcement the Act means the <i>Environmental Planning and Assessment Act 1979</i>
<i>the Act</i>	The <i>Environmental Planning and Assessment Act 1979</i>

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.

Notes included in this policy do not form part of the policy.