

Item 8**Adoption - Council-Related Development Applications Policy****File No: X090920****Summary**

The Environmental Planning and Assessment Amendment (Conflict of Interest) Regulation 2022 (the "Regulation") will commence on 3 April 2023. This regulation amendment will have two effects:

- all "council-related development applications" are required to be notified for 28 days before they can be determined
- Council is required to have adopted a policy for managing potential conflicts of interest in relation to council-related development applications and to have conformed with the requirements of the Regulation and adopted policy prior to determining impacted applications.

By 3 April 2023, Council is required to have in place a conflict of interest policy that sets out how Council-related development applications will be managed. This policy is required to comply with the "Council-related Development Application Conflict of Interest Guidelines" published by the Department of Planning and Environment.

Council-related development applications made after 3 April 2023 cannot be determined unless the Council has a policy in place and has considered the policy in relation to that application. The definition of Council-related development application for the purposes of the Regulation is any development application that is

- (a) made by or on behalf of the Council, or
- (b) for development on land other than a public road within the meaning of the Local Government Act-
 - (i) of which the Council is an owner, lessee or a licensee, or
 - (ii) otherwise vested in or under the control of the council.

The City has prepared a draft Council-Related Development Applications Policy in order to ensure it complies with the requirements of the Regulation and can determine impacted applications after 3 April 2023.

Recommendation

It is resolved that:

- (A) Council adopt the draft Council-Related Development Applications Policy as set out at Attachment A to the subject report, to commence at the time the Environmental Planning and Assessment Amendment (Conflict of Interest) Regulation 2022 commences; and
- (B) authority be delegated to the Chief Executive Officer to make amendments to the Council-Related Development Applications Policy in order to correct any minor drafting errors and finalise design, artwork and accessible formats for publication.

Attachments

Attachment A. Draft Council-Related Development Applications Policy

Attachment B. Council-Related Development Applications Conflict of Interest Guidelines, published by the Department of Planning and Environment

Background

1. The Environmental Planning and Assessment Amendment (Conflict of Interest) Regulation 2022 (the "Regulation") will commence on 3 April 2023. At the time of the commencement of the Regulation, Council is required to have in place a policy that sets out how council related development applications will be managed. This policy is required to comply with the "Council-related Development Application Conflict of Interest Guidelines" published by the Department of Planning and Environment.
2. After 3 April 2023, a Council-related development application cannot be determined unless the Council has a policy in place and has considered the policy in relation to that application. The definition of Council-related development application for the purposes of the Regulation is any development application that is
 - (a) made by or on behalf of the Council, or
 - (b) for development on land, other than a public road within the meaning of the Local Government Act 1993 -
 - (i) of which the Council is an owner, lessee or a licensee, or
 - (ii) otherwise vested in or under the control of the council.
3. All applications lodged after 3 April 2023 which meet the above definition will be required to be publicly exhibited for a minimum of 28 days.
4. The City has prepared a draft Council-Related Development Applications Policy in order to ensure it complies with the requirements of the Regulation and can determine impacted applications after 3 April 2023.
5. The draft policy complies with the Department's Council-Related Development Application Conflict of Interest Guidelines. It sets out:
 - (a) the process the City will follow to identify whether a particular development application is a council-related development application;
 - (b) which Council-related development applications are considered to be of such minor risk that they do not require a specific management response ("excluded development");
 - (c) the risk assessment process, specific categories of application and management strategies in relation to those different categories; and
 - (d) management strategies in relation to the undertaking of enforcement and compliance activities relating to council-related development.

Key Implications

Strategic Alignment - Sustainable Sydney 2030-2050 Continuing the Vision

6. Sustainable Sydney 2030-2050 Continuing the Vision renews the communities' vision for the sustainable development of the city to 2050. It includes 10 strategic directions to guide the future of the city, as well as 10 targets against which to measure progress. This policy is aligned with the following strategic directions and objectives:
 - (a) Direction 1 - Responsible governance and stewardship - adoption of the policy is necessary under the current proposed Regulation in order to ensure that Council can lawfully determine development applications. The draft Policy as proposed largely reflects Council's current approach to dealing with conflicts of interest on development applications in which council has a significant interest, whether as landowner or for some other reason. There are additional aspects of public notification and participation which will ensure compliance with the legislative requirements.

Organisational Impact

7. The Regulation and Policy introduce additional administrative steps into the development application process for development applications that meet the definition of council related development. The impacts on development determination times will be monitored to determine if there is an impact on the time taken for determination of development applications and capacity in the planning assessments unit.

Risks

8. If the Policy is not adopted as recommended the City will not be compliant with the Regulation and Council-related development applications lodged after 3 April 2023 cannot be lawfully determined. If Council-related development applications are determined without the Policy having been adopted and considered in the determination, those consents may be subject to challenge. The existence of the Policy provides greater transparency on the City's existing processes and provides a clear statement as to a course of action that will be adopted in relation to conflicts management in relation to both development assessment and construction stages of council related development.

Economic

9. As currently proposed, the Regulation introduces further administrative steps which may impact the timeframes for determining development applications and is therefore likely to have a negative impact on the economy of the state, given its application to all council areas.

Relevant Legislation

10. Environmental Planning and Assessment Act 1979.
11. Environmental Planning and Assessment Regulation 2021.
12. Environmental Planning and Assessment Amendment (Conflict of Interest) Regulation 2022.
13. Environmental Planning and Assessment Amendment (Conflict of Interest) Regulation 2023.

Critical Dates / Time Frames

14. The City is required to have a policy in place by 3 April 2023.

Options

15. The City does not have any option other than to adopt a policy under the Regulation. If a policy is not adopted any impacted development application which is lodged and determined after 3 April 2023 may be open to challenge on the basis that it has not been determined in accordance with the requirements of the Regulation.

Public Consultation

16. There is no obligation for public consultation in relation to the making of the policy. The policy and the regulation themselves set out requirements for additional public consultation in certain circumstances.

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