

Adoption - Council-Related Development Applications Policy

File No: X112762

Summary

The *Environmental Planning and Assessment Amendment (Conflict of Interest) Regulation 2022* (the "regulation") commenced on 3 April 2023. This regulation amendment had several effects being that:

- (a) All council-related development applications are required to be notified for 28 days before they can be determined.
- (b) All council-related development applications are required to be the subject of a management strategy to address conflicts of interest, which is to be published on the Planning Portal.
- (c) Council is required to have adopted a policy for managing potential conflicts of interest in relation to council-related development applications prior to determining impacted applications.

The definition of a 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.

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 policy 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, Housing and Infrastructure (previously the Department of Planning and Environment).

Council adopted a council-related development applications policy on 13 March 2023.

The adopted policy is required to be reviewed, and an updated policy adopted, if necessary, between 13 June 2024 and 13 March 2025

Recommendation

It is resolved that:

- (A) Council adopt the updated Council-related development applications policy as set out at Attachment A to the subject report; and
- (B) authority be delegated to the Chief Executive Officer to make amendments to the Council-related development applications policy to correct any minor drafting errors and finalise design, artwork and accessible formats for publication.

Attachments

Attachment A. Updated Council-Related Development Applications Policy

Background

1. The Environmental Planning and Assessment Amendment (Conflict of Interest) Regulation 2022 (the "Regulation") commenced on 3 April 2023. The Regulation relates to council-related development applications.
2. 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 are required:
 - (a) to be publicly exhibited for a minimum of 28 days and
 - (b) be subject of a management strategy to address conflicts of interest that is to be published on the Planning Portal.
4. The Regulation provided that 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 policy 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.
5. Council adopted a Council-related development applications policy on 13 March 2023.
6. The adopted policy is required to be reviewed, and an updated policy adopted, if necessary, between 13 June 2024 and 13 March 2025.
7. The policy has been reviewed and amendments are recommended to provide clarification as to the operation of the policy and improve efficiency.
8. In particular the definition of what constitutes a council-related development application has been incorporated into the policy. The existing adopted policy refers to the relevant definition contained in the *Environmental Planning and Assessment Act*.
9. In addition, the wording of the policy has been amended to clarify the approach to dealing with other development related applications (which are not defined in the Act as council-related development applications), such as applications to modify a consent, or a development application for a development that is subject of a grant from Council, which may from time to time raise issues with regard to a conflict of interest.

10. Conflicts in these cases will be addressed having regard to the same principles as those used in relation to council-related development applications. However, any management strategy for these applications will be considered on a case-by-case basis. As the application is not a council-related development application as defined, the management strategy is not required to be published on the Portal under the regulations, and the application will be notified in accordance with the requirements of Council's Community Participation Plan.
11. The amended 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 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
 - (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

12. 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 Regulation to ensure that Council can lawfully determine council-related development applications. The updated policy as proposed reflects the adopted policy and Council's approach to dealing with conflicts of interest on development applications in which council has a significant interest, whether as applicant, landowner or for some other reason.

Organisational Impact

13. The Regulation and Policy introduced additional administrative steps into the development application process for council-related development applications, principally the need to notify applications for 28 days and the requirement that they be the subject of a management strategy to address conflicts of interest, which is to be published on the Planning Portal.
14. The requirement to notify applications for 28 days (in most cases this is greater than would otherwise have been required by Council's Community Participation Plan) may impact to some extent the determination times of affected applications. In the financial year 2023 to 2024 there were 57 council-related development applications. Of these approximately 20% were submitted by or on behalf of Council and the remainder related to Council owned property (such as the Queen Victoria Building - 29 applications, and Oxford Street properties - 10 applications).

Risks

15. A review of the existing policy is required to be undertaken, and an updated policy adopted, if necessary, by 13 March 2025 to ensure the City remains compliant with the Regulation. In the absence of an adopted policy council-related development applications cannot be determined.

Economic

16. No significant economic impacts have been identified as a result of the operation of the current policy.

Financial Implications

17. There are no financial implications arising from this review.

Relevant Legislation

18. Environmental Planning and Assessment Act 1979.
19. Environmental Planning and Assessment Regulation 2021.

Critical Dates / Time Frames

20. The existing policy is required to be reviewed and approved between 13 June 2024 and 13 March 2025.

Options

21. A policy is required to be adopted under the regulation. The existing policy has been reviewed and amendments made to improve the policy's useability and provide clarification as to the operation of the policy. The updated policy, is put forward for adoption.
22. The City may retain the existing adopted policy unchanged or adopt the updated policy.

Public Consultation

23. 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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