# Item 5.

## Adoption - Council-Related Development Applications Policy

**File No: X112762**

## Summary

Section 66A of the Environmental Planning and Assessment Regulation 2021 provides that 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, Housing and Infrastructure (previously the Department of Planning and Environment).

Council adopted the Council-related Development Applications Policy on 13 March 2023. The policy was last reviewed and amended on 16 December 2024.

The current policy is required to be reviewed prior to 16 December 2026.

## 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

(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 (changes showing)

## Background

1. Two Environmental Planning and Assessment Amendment (Conflict of Interest) Regulations 2022 and 2023 (the "Regulations") commenced on 3 April 2023. The Regulations made amendments to the Environmental Planning and Assessment Act, 1979 and the Environmental Planning and Assessment Regulation 2021, which apply to council-related development applications.

2. The definition of 'council-related development application' 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 which meet the above definition are required:

   (a) to be publicly exhibited for a minimum of 28 days

   (b) be subject of a management strategy statement to address conflicts of interest that is to be published on the Planning Portal.

4. Section 66A of the Environmental Planning and Assessment Regulation 2021 provides that, 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, Housing and Infrastructure.

5. Council adopted a Council-related development applications policy on 13 March 2023. The policy was reviewed and amended on 16 December 2024.

6. The adopted policy is required to be reviewed, and an updated policy adopted, if necessary, prior to 16 December 2026.

7. The policy has been reviewed, and amendments are recommended to improve clarity, consistency and ease of administration. The proposed amendments are primarily administrative and procedural in nature.

8. The key amendments are:

   (a) inclusion of a definition of an "objection" for the purposes of the policy;

   (b) simplification of the directions for relevant officers to assess the nature and significance of a conflict of interest and determine the appropriate risk classification;

(c) replacement of outdated references to the City's Community Participation Plan with references to the new statewide Community Participation Plan;

(d) clarification of the role of external consultants in the assessment of Council-related development applications, including requirements relating to independence and conflict management;

(e) updates to terminology to improve consistency with the legislative framework and applicable guidelines; and

(f) an increase in the policy review period from 2 years to 4 years.

9. A summary of the amendments is provided in the table below:

| **Section / Amendment** | **Change** | **Reason for Amendment** |
|---|---|---|
| Purpose | Expanded description of Council interests to include applications made on behalf of Council and refined drafting for clarity. | To more accurately describe circumstances giving rise to conflicts of interest and improve readability. |
| Scope | Updated references to the Department of Planning, Housing and Infrastructure and removed obsolete commencement provisions. | To ensure references remain current and remove provisions that are no longer required. |
| Definitions | Included a definition of an "objection", including clarification that multiple submissions from the same person are counted as a single objection.<br><br>Clarified that a petition is counted as a single submission consistent with the SEPP (Planning Systems) 2021. | To provide greater certainty and consistency when determining community interest and applying the policy's risk classification criteria. |
| Excluded Development | Minor drafting amendments to development descriptions and terminology. | To improve accuracy and readability. |
| Conflict of Interest Assessment | Simplified directions for relevant officers to assess the nature and significance of conflicts of interest and determine the appropriate risk classification. | To simplify administration of the policy, improve clarity for staff and provide a more streamlined assessment framework. |

| Section / Amendment | Change | Reason for Amendment |
|---|---|---|
| Risk Classification | Clarified assessment criteria and references to conflict management measures. | To assist in the consistent classification of applications according to their level of conflict risk. |
| Management Strategy Statements | Replaced references to "management strategies" with "management strategy statements" throughout the policy. | To align terminology with the regulatory framework and applicable conflict-of-interest guidelines. |
| Management Strategy Statements | Clarified that management strategy statements are to be reviewed, updated and republished where circumstances change or risk classifications are reconsidered. | To improve transparency and ensure conflict management measures remain current throughout the assessment process. |
| Community Participation | Replaced references to the City's Community Participation Plan with references to the statewide Community Participation Plan. | To ensure the policy reflects current legislative requirements and planning framework arrangements. |
| External Consultants | Clarified the role of external consultants, including requirements relating to independence and conflict management. | To strengthen governance arrangements, improve transparency and ensure independent assessment and review of higher-risk Council-related development applications. |
| High-Risk Applications | Strengthened requirements for independent external review and consultant declarations. | To reinforce the integrity and independence of the assessment process where significant conflicts of interest may arise. |
| Administrative Updates | Updated references, terminology and approval details throughout the document. | To ensure consistency with current legislation, agencies and policy frameworks. |

| Section / Amendment | Change | Reason for Amendment |
|---|---|---|
| Policy Review | Increased the policy review period from two years to four years. | To reduce administrative burden and align the review cycle with contemporary policy management practices while retaining flexibility for an earlier review if required. |

10. The amended policy continues to comply with the Department's Council-related Development Application Conflict of Interest Guidelines.

## Key implications

### Strategic alignment - Sustainable Sydney 2030-2050 Continuing the Vision

11. 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

12. The processes required by this Policy have been in place for 3 years and the proposed amendments do not have any significant additional organisational impact.

### Risks

13. A review of the existing policy is required to be undertaken, and an updated policy adopted, if necessary, by 16 December 2026 to ensure the City remains compliant with the legislation. In the absence of an adopted policy, council-related development applications cannot be determined.

## Financial implications

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

## Relevant legislation

15. Environmental Planning and Assessment Act 1979.

16. Environmental Planning and Assessment Regulation 2021.

## Critical dates / Time frames

17. The existing policy is required to be reviewed and approved by 16 December 2026.

## Options

18. A policy is required to be adopted under the Regulations. 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.

19. The City may retain the existing adopted policy unchanged or adopt the updated policy. Note: the proposed changes are administrative and do not substantially change the content of the policy.

## Public consultation

20. There is no obligation for public consultation in relation to the making of the policy. The policy and the legislative changes imposed by the Regulations themselves set out requirements for additional public consultation in certain circumstances.

**GRAHAM JAHN AM**

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