



**Bayside Council**

Serving Our Community

# **Draft Managing Conflicts for Council-related Development Applications Policy**





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Managing Conflicts of Interest for Council-related Development Applications Policy

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# 1 Introduction

## 1.1 Name of the Policy

This policy is the Managing Conflicts of Interest for Council-related Development Applications Policy.

## 1.2 Aim of the policy

This policy aims to manage potential conflicts of interest and increase transparency at all stages of the development process for council-related development and meet legislative requirements of Section 68A of the Environmental Planning & Assessment Regulation 2021.

## 1.3 Scope

This policy applies to council-related development applications.

## 1.4 Commitment to managing conflicts of interest

Conflict of interest occurs when a reasonable person perceives that personal interests could or have been favoured over public duty in council-related development. Bayside Council is committed to ensure all measures have been applied to significantly reduce the adverse impacts of any type of conflict of interest.

Inherently, 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 public duty as regulator.

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 the Community and build stronger trust.

Bayside Council requires all staff, consultants, outsourced third-party service providers, any other persons and entities involved in council-related development applications to:

- Prevent personal interests that may impact on carrying out duty obligations.
- Disclose all personal interests and any other factors that may give rise to conflict of interest.
- Complete conflict of interest awareness training/induction in compliance with human resources training and development policies.
- Fully cooperate with all processes and activities in place for managing conflict of interest.
- Uphold Bayside Council ethical values and continue to safeguard and protect the reputation of Bayside Council.

## 1.5 Definitions

In this policy:

### ***Application***

Means an application for development consent under Part 4 of the Act to carry out development and includes an application to modify a development consent, it does not include an application for a complying development certificate.

### ***Council***

Refers to Bayside Council

### ***Council-related development***

Is a development for which the Council is the applicant (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, other than a public road within the meaning of the Local Government Act 1993.

### ***Development process***

Means application, assessment, determination, and enforcement of a development application

### ***The Act***

Refers to the Environmental Planning & Assessment Act 1979

### ***Interpretation***

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***

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

## 2 Process for identifying and managing potential conflicts of interest

### 2.1 Management controls and strategies

#### 2.1.1 One or more of the following management controls may be applied to:

The **assessment and determination** of an application for Council-related development.

- Refer to Table 1.

The **regulation and enforcement** of approved Council-related development:

- engagement of a private-sector Registered Certifier to issue construction certificates, complying development certificates, occupation certificates and act as the Principal Certifier for development, other than minor building works or structures,
- investigation, assessment of regulatory and enforcement action in accordance with Council's Enforcement Policy and Guidelines and reporting of regulatory actions to Council's General Manager,

### **2.1.2 Pursuant to Section 30B of the Environmental Planning and Assessment Regulation 2021, a Council-related development application must be accompanied by:**

- a statement specifying how the Council will manage conflicts of interest that may arise in connection with the application because the Council is the consent authority, or
- a statement that the Council has no management strategy for the application and why it is not required.
- Refer to an example management statement in Table 2.

### **2.1.3 Management controls may not be applied to the following kinds of development which are of a minor nature:**

- Commercial fit-out and minor changes to a building façade.
- Internal alterations or additions to buildings that are not a heritage item.
- Advertising signage.
- Minor building structures or minor additions to existing buildings; and
- Other minor development or use of Council land, including applications for footway dining, community events, placement of articles in a public place or the like.

## **2.2 Identifying whether a potential conflict of interest exists, assessment of level of risk and determination of appropriate management controls**

Development applications lodged with the Council that are Council-related development (as defined in Clause 1.5) 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 2.1 of the policy and the outcome of the General Manager's assessment of the level of risk involved as set out Clause 2.2 of the Policy; and *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><b>Minor/Low Risk Development Application</b></p> <p>Minor or low risk Development Application refers to development that is small-scale, routine operational and/or non-controversial.</p>		
<p>The determination of whether or not a DA is minor or not shall be made after consideration of the following criteria, at the discretion of the Manager Development Services (or delegate):</p> <ul style="list-style-type: none"> <li>• The estimated value of the works to be undertaken;</li> <li>• The potential impact on residential amenity associated with the proposed development;</li> <li>• The consistency of the proposed works with any relevant existing Council Management Plan or strategy;</li> <li>• Whether the proposal involves any substantial variations from existing development standards, planning controls, or Council policies; and</li> <li>• Whether the proposal will generate any financial benefit for the Council.</li> </ul>	<ul style="list-style-type: none"> <li>• Assessment is to be undertaken by Council staff not otherwise involved in the Council-related development.</li> <li>• 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 2.1.3 of this Policy.</li> </ul>	<ul style="list-style-type: none"> <li>• Determination by Bayside Local Planning Panel</li> </ul>
<ul style="list-style-type: none"> <li>• Note: a minor DA generally refers to the type of developments identified in Clause 2.1.3 of the Policy.</li> <li>• Examples: internal refurbishment or renovation of a building, minor building structures or additions, structures projecting over public land and signage.</li> </ul>		

Category of Council-related development	Assessment	Determination
<p><b>Major Development Application</b></p> <p>Major Development Application refers to development that is large scale, significant and/or controversial.</p>		
<p>The determination of whether a DA is a major DA or not shall be made after consideration of the following criteria, at the discretion of the Manager Development Assessment Services (or delegate):</p> <ul style="list-style-type: none"> <li>• The estimated value of the works to be undertaken;</li> <li>• If the DA is Regional Development (under the State Environmental Planning Policy (Planning Systems) 2021.</li> <li>• A DA that requires determination by a local planning panel in accordance with the Ministers Direction under section 9.1 of the Act.</li> <li>• The potential impact on residential amenity associated with the proposed development;</li> <li>• The consistency of the proposed works with any relevant existing Council Management Plan or strategy;</li> <li>• Whether the proposal involves any substantial variations from existing development standards, planning controls, or Council policies; and</li> <li>• Whether the proposal will generate any financial benefit for the Council</li> </ul>	<ul style="list-style-type: none"> <li>• Assessment is to be undertaken by an external Planning Consultant.</li> <li>• A management statement is to be prepared and exhibited on the NSW Planning Portal with the DA.</li> </ul>	<ul style="list-style-type: none"> <li>• Determination by Bayside Local Planning Panel if the application does not trigger referral to the Regional Planning Panel under Schedule 6 of the <i>State Environmental Planning Policy (Planning Systems) 2021</i></li> </ul>
<ul style="list-style-type: none"> <li>• <i>Examples: new community building and/or facilities, significant alterations and additions to a Council owned building, development value of more than \$5m.</i></li> </ul>		

Category of Council-related development	Assessment	Determination
<p><b>Minor Modification Application - S4.55(1) &amp; (1A)</b></p> <p>Minor modification application refers to applications pursuant to Section 4.55(1) and (1A) of the Act, which involves minor error, misdescription or miscalculation and minimal environmental impact.</p>		
<p>The determination of whether a modification application is minor or not shall be made after consideration of the following criteria, at the discretion of the Manager Development Assessment Services (or delegate):</p> <ul style="list-style-type: none"> <li>• The potential impact on residential amenity associated with the proposed development.</li> <li>• The consistency of the proposed works with any relevant existing Council Management Plan or strategy.</li> <li>• Whether the proposal involves any substantial variations from existing development standards, planning controls, or Council policies; and</li> <li>• Whether the proposal will generate any financial benefit for the Council.</li> </ul>	<ul style="list-style-type: none"> <li>• Assessment is to be undertaken by Council staff not otherwise involved in the Council-related development.</li> <li>• 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 2.1(3) of this Policy.</li> </ul>	<ul style="list-style-type: none"> <li>• Determination by Bayside Local Planning Panel if the application does not trigger referral to the Regional Planning Panel under Schedule 6 of the <i>State Environmental Planning Policy (Planning Systems) 2021</i>.</li> </ul>

Category of Council-related development	Assessment	Determination
<p><b>Other Modification Application - S4.55(2)</b></p> <p>Other modification application refers to applications pursuant to Section 4.55(2) or 4.56 of the Act.</p>		
<p>Section 4.55(2) modifications applications are those determined under the Environmental Planning and Assessment Act 1979 to have more than a minimal impact on the environment. A 4.56 modification application seeks to modify a consent granted by the Land and Environment Court. As a consequence, these types of modification applications are assumed to necessitate the assessment and determination measures set out in this table to manage potential conflict of interest..</p>	<ul style="list-style-type: none"> <li>• Assessment is to be undertaken by an external Planning Consultant.</li> <li>• A management statement is to be prepared and exhibited on the NSW Planning Portal with the DA.</li> </ul>	<ul style="list-style-type: none"> <li>• Determination by Bayside Local Planning Panel if the application does not trigger referral to the Regional Planning Panel under Schedule 6 of the <i>State Environmental Planning Policy (Planning Systems) 2021</i>.</li> </ul>
<p><b>Review Application – S8.3</b></p> <p>Section 8.3 review application refers to applications pursuant to Division 8.2 of the Act.</p>		
<p>An application for review lodged under 8.3 typically requests the determining authority to reconsider its original decision and replace it with a decision that is more favourable toward the applicant. As a consequence, these types of applications are assumed to necessitate the assessment and determination measures set out in this table to manage potential conflict of interest.</p>	<ul style="list-style-type: none"> <li>• Assessment is to be undertaken as per the original Development Application, by either external consultant or Council staff not otherwise involved in the Council-related development.</li> <li>• A management statement is to be prepared and exhibited on the NSW Planning Portal with the DA.</li> </ul>	<ul style="list-style-type: none"> <li>• Determination by Bayside Local Planning Panel if the application does not trigger referral to the Regional Planning Panel under Schedule 6 of the <i>State Environmental Planning Policy (Planning Systems) 2021</i>.</li> </ul>

**TABLE 2: Management statement example**

**Bayside Council Conflict of Interest Management Statement**

<b>Address/ Project Name</b>	<i>Blue River Café Redevelopment</i>
<b>DA Number</b>	<i>DA23/0001</i>
<b>Potential Conflict</b>	<i>Bayside Council is the applicant. Blue River Café Redevelopment has an estimated capital value of \$4.9 million and the council expects to receive revenue through the renting of commercial restaurant space.</i>
<b>Management Strategy</b>	<p><i>The council is managing potential conflicts of interest in this matter as follows:</i></p> <ul style="list-style-type: none"> <li><i>• Council development assessment staff not involved with preparing the application will assess the DA. The staff will remain separated from the project delivery team.</i></li> <li><i>• The application will be referred to the Bayside Local Planning Panel to determine the development application.</i></li> <li><i>• A private certifier will be engaged to undertake the certification for the development.</i></li> <li><i>• Any regulatory decisions, should compliance action be required, will be peer reviewed.</i></li> </ul>
<b>Contact</b>	<i>Anyone with concerns about council fulfilling its obligations should report their concerns to the council.</i>

## 3 Document control

### 3.1 Review

This policy is reviewed at least every four years and when relevant legislation changes.

The Manager Governance & Risk may approve non-significant and/or minor editorial amendments that do not change the policy substance.

### 3.2 Related documents

Relevant Legislation

- Environmental Planning & Assessment Act 1979
- State Environmental Planning Policy (Planning Systems) 2021

Relevant Council Policies

- Conflicts of Interest Policy

### 3.3 Version history

Version	Release Date	Author	Reason for Change
1.0		Coordinator Governance	New document