

Policy 3.12 Council-related Development Application Conflict of Interest

Directorate	Community, Environment and Planning
Responsible Officer	Director Community, Environment and Planning

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1.1 Introduction

Councils are development regulators, however 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.

Identifying these conflicts of interest early and finding ways to address them is crucial to good governance and allows councils to strengthen their relationship with communities and build and enhance trust.

1.1.1 Scope

This policy applies to council-related development.

1.1.2 Purpose

This policy aims to manage potential conflicts of interest and increase transparency at all stages of the development process for council-related development.

1.2 Definitions

Word or Terminology	Definition
Application	An application for consent under Part 4 of the <i>Environmental Planning and Assessment Act 1979</i> 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	Bega Valley Shire Council
Council-related development	Development for which the 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

1.3 Legislation

Environmental Planning and Assessment Act 1979

1.4 Implementation

1.4.1 Policy Statement

1.4.1.1 Management controls and strategies

1. The following management controls may be applied to:
 - a) the assessment of an application for Council-related development
 - i) Assessment of applications with a low-level of risk (as determined by the Director Community, Environment and Planning) are to be assessed by Council staff
 - ii) Assessment of applications with a higher level of risk (as determined by the Director Community, Environment and Planning) are to be undertaken by a consultant or under a shared service arrangement with another council
 - b) the determination of an application for Council-related development
 - i) Determination of applications with a low-level of risk (as determined by the Director Community, Environment and Planning) are to be determined under the delegation of Manager Planning and Sustainability

- ii) Determination of applications with a higher level of risk (as determined by the Director Community, Environment and Planning) are to be reported to and determined by the Council.
- iii) Determination of applications with a capital investment value (CIV) over \$5 million are to be determined by the Joint Regional Planning Panel.
- c) the regulation and enforcement of approved council-related development
 - i) Regulation and enforcement functions for low-level risk applications (as determined by the Director Community, Environment and Planning) are to be undertaken by Council staff.
 - ii) Regulation and enforcement functions for higher level risk applications (as determined by the Director Community, Environment and Planning) are to be undertaken by a Private Certifier or under a shared service arrangement with another council.
- 2. The management strategy for the following kinds of development is that no management controls need to be applied:
 - a) commercial fit outs and minor changes to a 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 facade over public land (such as awnings, verandas, bay windows, flagpoles, pipes and services)
 - e) development where the council might receive a small fee for the use of their land.

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

- 2) Development applications lodged with council that are council-related development are to be referred to the Director Community, Environment and Planning (or a delegate) for a conflict-of-interest risk assessment.
Note: Council-related development is defined in section 1.2.
- 3) The Director Community, Environment and Planning is to:
 - a) assess whether the application is one in which a potential conflict of interest exists
 - b) identify the phase(s) of the development process at which the identified conflict of interest arises
 - c) assess the level of risk involved at each phase of the development process
 - d) 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 section 1.4.1 of the policy and the outcome of the Director Community, Environment and Planning assessment of the level of risk involved as set out in section 1.4.2.2(c) of the policy
Note: The Director Community, Environment and Planning could determine that no management controls are necessary in the circumstances.
 - e) document the proposed management approach for the proposal in a statement that is published on the NSW Planning Portal.

1.4.2 Responsibilities

1.4.2.1 Elected Council

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 the Department of Planning and Environment *Development Application Conflict of Interest Guidelines*.

1.4.2.2 Chief Executive Officer (CEO), Leadership Executive Group (LEG)

Ensure that the provisions of the policy are adhered to for Council related development

1.4.2.3 Community, Environment and Planning

Community Environment and Planning is responsible for the implementation of the policy.

1.4.2.4 Director Community, Environment and Planning

The Director Community, Environment and Planning is responsible for assessing the level of risk of Council-related development and determination appropriate management controls in accordance with section 1.4.1.2 of this policy.

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1.5 Supporting documents

1.5.1 BVSC Procedures that relate to this Policy

Procedure No.:	Procedure Name	External or Internal Procedure
	There are no Procedures under this Policy	

1.5.2 BVSC policies that relate to this policy

Policy No.:	Policy Name
3.02	Environmental Management
3.05	Environmental Sustainability for Council Operations
3.07	Climate Change
4.11	Planning Agreements

Note: Policy details may change from time to time. To ensure you are viewing the most recent version please view Council's adopted Policies and Procedures on Council website: www.begavalley.nsw.gov.au

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