



Burwood ^{Inc.1874}

Burwood . Burwood Heights . Croydon . Croydon Park . Enfield . Strathfield

CONFLICT OF INTEREST POLICY: COUNCIL-RELATED DEVELOPMENT APPLICATIONS

In accordance with the Guidelines issued under clause 66A of the Environmental Planning and Assessment Regulation 2021

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1. Purpose

It is sometimes necessary for Council to prepare and lodge an application for the replacement, upgrade or extension of existing Council buildings, facilities and other related property matters.

This policy aims to manage potential conflicts of interest and increase transparency at all stages of the development process for council-related development. It identifies the appropriate management controls for the assessment and determination of Council-related development.

This policy complies with the Guidelines issued under clause 66A of the Regulation.

2. Scope

This policy relates to all Council-related development.

This policy takes effect from 3 April 2023 when the relevant amendments to the Regulation commence.

This policy should be read in conjunction with Burwood Council's *Conflict of Interest Policy*, which assists individuals in determining if they have a conflict of interest in performing their public duties, including those duties related to the development process.

3. Definitions

1) In this policy:

application means an application for 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 means Burwood Council.

Council-related development means 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

development process means application, assessment, determination, and enforcement.

management statement means a Council-related Development Conflict of Interest Management Statement in the form approved by the General Manager.

Major Application means large scale, significant or contentious development that is likely to require complex development assessment, as determined by the Director City Strategy under part 5 of this policy.

Minor Application means small scale or routine development application for minor, small scale operational matter, building upgrades or replacements, as determined by the Director City Strategy under part 5 of this policy.

probity advisor is a person who provides guidance and advice on how conflict of interest issues should be addressed, and may also assist in anticipating problems and advising on

courses of action for the duration of the development process. Depending on the application, this may be a council officer who is independent of the City Strategy team, a legal provider on Council's legal services panel, or another third-party probity advisor who is independent of Council.

Routine Application means other development that is taking place on land within ownership or control of Council that is consistent with existing land use zoning and relevant development control plan provision, as determined by the Director City Strategy under part 5 of this policy.

the Act means the *Environmental Planning and Assessment Act 1979*.

the Regulation means the *Environmental Assessment and Planning Regulation 2021*.

- 2) 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.
- 3) Notes and examples included in this policy do not form part of the policy.

4. Process for identifying and managing potential conflicts of interest

5.1 Risk-based factors impacting management controls and strategies

The nature of management controls and strategies in relation to Council-related development will vary depending upon a number of risk-based factors, including the following:

- The scale and nature of the development and whether it would be viewed as a consistent form of development, taking into account current local environmental plan and development control plan provisions.
- The complexity of the proposal and whether the potential impacts of the proposal would likely need consideration at the local, neighbour or sub-regional scale.
- A major application that is likely to require amendment to existing planning controls or substantial variation to current planning controls.
- The likelihood that the development application will be viewed as contentious and receive a large number of submissions.

5.2 Classification of Major, Minor and Routine Applications

1. The Director City Strategy will advise on the classification of Council-related applications as major, minor or routine, taking into account the following:
 - The estimated value of the works to be carried out
 - Potential impacts upon the locality and overall planning or environmental risk of the development
 - Whether the application would trigger referral to the Sydney Eastern City Planning Panel for determination as the consent authority
 - The consistency of the project with relevant Council policies
 - Whether any substantive variation to Council policy will be required to allow the development to occur
 - Whether it would attract any financial benefit to Council
2. The classification of an application as a Minor Application should be consistent with Council policy, non-controversial and of lower capital works value.

Examples of Minor Applications: Replacement of an existing amenities block, minor modification to an existing approved development application or small scale subdivision.

- 3) An application classified as a Routine Application is one that is not likely to be contentious or attract substantial or numerous submissions.

Examples of Routine Applications: A new amenities block or extension or replacement of an existing building.

5.3 Management controls and strategies

In all instances, any Council-related application must be prepared and lodged with Burwood Council by an external consultant. Such applications must be complete and accompanied by the required supporting information.

Subject to the general manager’s (or delegate’s) assessment under part 5.4 of this policy, the following management controls may be applied to:

a) The assessment of an application for Council-related development

Minor applications	Routine applications	Major applications
<ul style="list-style-type: none"> Assessment must be by Council officers not involved in the application Assessment will be peer reviewed by the Manager City Development. A management statement is to be prepared and exhibited with the application, unless it is an exempt application as referred to in part 6 of this policy. 	<ul style="list-style-type: none"> Assessment must be by Council officers not involved in the application and peer reviewed by the Manager City Development. As determined by the Director City Strategy, assessment will be undertaken by an external independent town planning consultant. A management statement to be prepared and exhibited with the application. 	<ul style="list-style-type: none"> Assessment by an external independent town planning consultant. Appointment of a probity advisor to advise on and monitor the development process A management statement to be prepared and exhibited with the application.

b) The determination of an application for Council-related development

Under Schedule 1 of the *Local Planning Panels Direction – Development Applications and Applications to Modify Development Consents* dated 30 June 2020, matters that involve a conflict of interest must be referred to the Burwood Local Planning Panel (BLPP) for determination. This means any development application for which the applicant or land owner is Burwood Council must be referred to the BLPP. This policy does not affect that requirement and all such matters will continue to be referred to the BLPP.

In addition, any application for which Council has a lease or licence, or the land is other vested in or under the control of Council, but Council is not the applicant or owner of the land, will also be referred to the BLPP for determination.

The determination of applications for minor modifications under section 4.55 of the Act may continue to be undertaken by Council officers in accordance with the approved scheme of delegation.

c) The regulation and enforcement of approved Council-related development

Following application approval, the usual regulatory activities will need to be carried out.

This includes construction certification, demonstration of compliance with conditions of consent and issue of occupation certificate. This will be managed as follows:

- Regulation and enforcement will be undertaken by Council officers not involved with the delivery or operation of the development
- Key project milestones will be publically reported by publication on the Burwood DA Tracker and, where relevant, on the project information page on the Burwood Council website. *Examples of key milestones: the issue of construction certificates or occupancy certificates.*
- External private certifiers will be appointed, if necessary, depending on the nature and complexity of the matter.

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

Applications lodged with Council that are Council-related development, together with the Director's advice under part 5.2, are to be referred to the general manager (or a delegate) for a conflict-of-interest risk assessment. Any delegate is to be an officer who is independent of the development process.

The general manager 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 part 5.2 of the policy and the outcome of the assessment of the level of risk involved as set out in paragraph (c) above
- e) Document the proposed management approach for the proposal in a statement that is published on the NSW Planning Portal.

Note: The general manager could determine that no management controls are necessary in the circumstances.

5. Types of development exempt from this policy

Council has determined that the risks associated with the following Council-related developments are sufficiently low that no specific controls are warranted:

- commercial fit outs and minor changes to the building façade
- internal alterations or additions to buildings that are not a heritage item
- advertising signage
- minor building structures projecting from a building facade over public land (such as awnings, verandas, bay windows, flagpoles, pipes, and services)
- development where the Council might receive a small fee for the use of their land.

As a result, applications for developments of this kind are exempt from this policy.

6. Other Legislative Requirements

Other legislative requirements under the Act and the Regulation that apply to Council-related development applications include:

- Schedule 1, clause 9B of the Act provides that the minimum public exhibition period for a Council-related application is 28 days.
- Clause 30B of the Regulation provides that a Council-related application must be accompanied by a statement specifying how the Council will manage conflicts of interest, or a statement that a management strategy is not required.

7. Relevant Information

- *Environmental Planning and Assessment Act 1979*
- *Environmental Planning and Assessment Regulation 2021*
- *Local Government Act 1993*
- *Local Government (General) Regulation 1993*
- Conflict of Interest Management Statement Form CM Ref: 23/26300

8. Review

To be reviewed every 2 years or as otherwise required by changes to relevant legislation.

9. Contact

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