

Policy 3.12 Council related Development Application Conflict of Interest

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

Table of Contents

1	Introduction	2
1.1	Scope	2
1.2	Purpose	2
1.3	Definitions	2
2	Legislation	3
3	Implementation	3
3.1	Policy Statement	3
3.1.1	Management controls and strategies	3
3.1.2	Identifying whether a potential conflict of interest exists, assessment of level risk and determination of appropriate management controls	4
3.2	Responsibilities	4
3.2.1	Elected Council	4
3.2.2	Director Community, Environment and Planning	4
3.2.3	Planning and Sustainability section	5
4	Supporting documents	5
4.1.1	BVSC Procedures that relate to this Policy	5
4.1.2	BVSC Policies that relate to this Policy	5

Record of Administrative Amendments

<u>Amendment Version No.:</u>	<u>Description of Administrative Amendment</u>	<u>Date Reviewed</u>
<u>1.2</u>	<u>Version placed on public exhibition (D25/37325)</u>	<u>May 2025</u>
<u>1.1</u>	<u>Review of policy in accordance with Section 165 of the Local Government Act 1993</u> <u>Workshopped by Councillors on 9 April 2025</u>	<u>March 2025</u>
<u>1</u>	<u>Adopted by Council (D23/30759)</u>	<u>01/04/2023</u>

1 Introduction

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 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 Scope

This policy applies to development applications for council-related development that achieve lodgement status in the Planning Portal after 3 April 2023.

The policy demonstrates direct commitment to the following strategic guiding principles:

- Accountable | commitment to risk management and compliance and proactive consultation and engagement organisation wide
- Transparent | decision making processes are clearly outlined, including how a decision is made and who is involved
- Responsive | commitment to serve the needs of the entire community
- Effective and Efficient | clear connection between policy and implementation

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.

1.3 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. Note: Council-related development applications do not include development applications which include development on public roads managed by a council, such as a driveway for a dwelling house across a footpath or other minor works.

2 Legislation

Environmental Planning and Assessment Act 1979

3 Implementation

3.1 Policy Statement

3.1.1 Management controls and strategies

The following management controls ~~may~~ **will** be applied ~~as follows to:~~

1. ~~The~~ assessment of an application for Council-related development

- i) Assessment of applications with a low-level 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

2. ~~The~~ determination of an application for Council-related development

- i) Determination of applications with a low-level risk (~~as determined by the Director Community, Environment and Planning~~) are to be determined under the delegation of the Director Community, Environment and Planning.
- ii) Determination of applications with a higher-level risk (as determined by the Director Community, Environment and Planning) are to be reported to and determined by the full Council.
- iii) Determination of applications with a capital investment value (CIV) over \$5 million are to be determined by the ~~Joint Southern~~ Regional Planning Panel.

3. ~~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.

4. ~~The management strategy for the following kinds of development is that no~~ management controls need to be applied in the following circumstances:

- i) ~~C~~ommercial fit outs and minor changes to the building façade
- ii) ~~I~~nternal alterations or additions to buildings that are not a heritage item
- iii) ~~a~~dvertising signage

- iv) ~~M~~minor building structures projecting from a building facade over public land (such as awnings, verandas, bay windows, flagpoles, pipes, and services)
- v) ~~D~~evelopment where ~~the~~ Council might receive a small fee for the use of their land.

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

- 1) Development applications lodged with ~~the~~ Council that are ~~c~~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 1.32.

- 2) The Director Community, Environment and Planning ~~is to~~ will:
 - 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 as~~ necessary) having regard to any controls and strategies outlined in section 3.1.1 ~~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.

3.2 Responsibilities

3.2.1 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. Under this policy, the elected Council is responsible for determining Council-related development applications with a higher-level risk (as determined by the Director Community, Environment and Planning).

3.2.2 ~~(Director Community, Environment and Planning)~~

Under this policy, the Director Community, Environment and Planning is responsible for assessing the level of risk of a Council-related development application; determining the management controls required, if any, for that particular development application; and documenting the proposed management approach that will be published on the NSW Planning Portal.

Council-related development applications with a low-level risk are to be determined under delegation of the Director.

3.2.3 ~~(Planning and Sustainability section)~~

Under this policy, Planning and Sustainability staff are responsible for assessing development applications with a low-level risk (as determined by the Director Community, Environment and Planning).

4 Supporting documents

4.1.1 BVSC Procedures that relate to this Policy

<u>Procedure No.:</u>	<u>Procedure Name</u>	<u>External or Internal Procedure</u>
	<u>There are no Procedures that relate to this Policy</u>	

~~Nil~~

4.1.2 BVSC ~~P~~olicies that relate to this ~~P~~olicy

<u>Policy No.:</u>	<u>Policy Name</u>
3.01	Development Administration
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 the Council website: www.begavalley.nsw.gov.au