

FILE NO: PSC2013-00406/064

TITLE: COUNCIL-RELATED PLANNING MATTERS POLICY

OWNER: DEVELOPMENT & COMPLIANCE SECTION MANAGER

1. PURPOSE:

- 1.1 To ensure that Councillors are provided with the opportunity for input into the determination of development applications (DA's) prior to decisions being finalised and determinations granted.
- 1.2 To ensure that Councillors are provided with the opportunity for input into planning proposals prior to forwarding applications for Gateway determination.
- 1.3 To manage potential conflicts of interest and increase transparency in the assessment and determination of development for Council-related development.

2. CONTEXT/BACKGROUND:

- 2.1 The majority of DA's are determined by Council's assessment officers, utilising delegated authority. This policy provides Council with an understanding of the types of applications that are mandatory to report to Council for determination and the process involved in calling DA's to Council prior to determination.
- 2.2 Council's Rezoning Request Policy does not require reporting of some planning proposals prior to forwarding proposals to the Department of Planning, Infrastructure and Environment for Gateway determination. This policy provides Council with an understanding of the process involved in calling planning proposals to Council prior to seeking Gateway determination.
- 2.3 The Environmental Planning and Assessment Regulation 2021 requires all Council's to develop a conflict of interest policy for Council-related DA's. The policy is to establish the process through which potential conflicts of interest will be identified, procedures for risk assessment and the management controls to be implemented.

3. SCOPE:

- 3.1 The use of delegated authority provides an opportunity for effective and timely decision making; however, it is appropriate that Council is informed of the exercise of delegated authority.

- 3.2 Given the scope of planning decisions, it is appropriate that delegated assessment staff, are able to use their discretion and judgement for those matters which should be reported to Council.
- 3.3 The Mayor/Councillors may request the delegation be withdrawn and a DA or planning proposal be reported to Council.
- 3.4 Conflicts of interest may arise where Council is both the consent authority for development and has a commercial interest in development. This policy details the procedures to be implemented for managing conflicts of interest when assessing and determining Council-related DA's.

4. DEFINITIONS:

- 4.1 An outline of the key definitions of terms included in the policy.

DA	Development Application
DAP	Development Assessment Process
Signatories	Mayor / Councillors
Council-related Development Application	Means development for which 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: A word or expression used in this policy has the same meaning as it has within the Environmental Planning and Assessment Act 1979 and any instruments made under that Act, unless otherwise defined in this policy.

5. STATEMENT:

Planning Matters to be Reported to Council

- 5.1 Council shall be informed with regard to DA's and Section 4.55 modification applications planning matters in the following way:
 - a) All current DA's lodged are publicly available and listed on the Council website via DA Tracker.
 - b) A report is generated weekly of all new DA's lodged and this is circulated weekly via PS Newsletter to the Mayor/Councillors and other relevant internal staff.
 - c) At any time prior to determination of a DA, the Mayor/Councillors may request that the application be reported to Council for determination by completing a Call to Council Form with the support of 1 other Councillors by signature or email. If a

completed Call to Council Form is submitted to Council prior to determination of the DA, a report will be forwarded to Council at the completion of the assessment.

- d) The Mayor/Councillors may withdraw their support for calling a planning matter to Council via email at any time, prior to being included in the Council business paper. This would result in the matter being able to be determined by Council officers under delegated authority unless further support is provided to a total of 2 signatories.

Mayor/Councillors who withdraw their support for calling a planning matter to Council must inform all other signatories of their withdrawal of support.

- e) DA's with a cost of works exceeding \$250,000, with the exception of infrastructure works within Council's road reserve, and Section 4.55(2) modification applications will be reported to Council where Council is the owner of the land on which the development is to be carried out or where the development is being carried out on behalf of Council. Where not reported to Council, those Council DA's with a cost of works of less than \$250,000 or for infrastructure works within a Council road reserve or Section 4.55(1A) modification applications, will be reported in the PS Newsletter prior to determination.
- f) DA's and Section 4.55 modification applications will be reported to Council where the application relates to the carrying out of development on Community land, other than where the proposed works comprise amenity buildings and structures such as; toilet facilities, playgrounds, small refreshment kiosks and the like.
- g) Section 4.55(2) modification applications where the original DA was determined by Council, will be reported to Council for determination.
- h) Councillors will be advised via PS Newsletter prior to the determination of Section 4.55(1A) modification applications where the original DA was determined by Council. In the event a Section 4.55(1A) modification application proposes an amendment to a condition moved on the floor of Council and approved by the Council, the application will be reported to the Council for determination.
- i) DA's which would result in the removal of any trees or public assets on Council owned land, except where required for a driveway crossover, are to be reported to Council for determination.
- j) DA's which seek to vary a development standard by greater than 10%, will be reported to Council for determination.
- k) The Group Manager, Development Services and/or Section Manager, Development & Compliance, at their discretion, may report any DA to Council for determination.

5.2 Council shall be informed with regard to planning proposals in the following way:

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- a) A report is generated of all new planning proposals lodged and this is circulated via PS Newsletter to the Mayor/Councillors and other relevant internal staff.
- b) At any time prior to forwarding a planning proposals for Gateway determination, the Mayor/Councillor may request that the application be reported to Council for determination by completing a Call to Council Form with the support of 1 other Councillor by signature or email. If a completed Call to Council Form is submitted to Council prior to forwarding a planning proposals for Gateway determination, a report will be forwarded to Council.
- c) The Group Manager, Development Services and/or Section Manager, Strategy and Environment, at their discretion, may report any planning proposal to Council.

Conflicts of interest policy for Council-related development

- 5.3 Only Council development assessment staff not involved with preparing a council-related DA or modification application will assess the application. The staff will remain separated from the project team for all Council-related DA's and modification applications.
- 5.4 The management controls outlined in the following table are to be applied to the assessment and determination of Council-related DA's and modification applications:

Development Type	Management Control
Council-related DA's with a cost of works less than \$250,000.	<ul style="list-style-type: none"> • DA to be assessed by Council staff. • DA to be determined under delegated authority, unless otherwise called to Council in accordance with this policy.
Council-related DA's with a cost of works between \$250,000 and \$5 million.	<ul style="list-style-type: none"> • DA to be assessed by Council staff, unless involved in the project team or where a potential for a conflict of interest exists, where the DA will be assessed by a third party consultant. • DA to be reviewed by a third party consultant prior to determination if assessed by Council staff. • DA to be determined by Council.
Council-related DA's with a cost of works greater than \$5 million.	<ul style="list-style-type: none"> • DA to be assessed by Council staff. • DA to be determined by the Hunter and Central Coast Regional Planning Panel.
Council-related S4.55(1A) S4.55(1) Modifications.	<ul style="list-style-type: none"> • Application to be assessed by Council staff. • Application to be determined under delegated authority, unless otherwise called to Council in accordance with this policy.

<p>Council-related S4.55(2) Modifications.</p>	<ul style="list-style-type: none"> • Application to be assessed by Council staff. • Application to be determined under delegated authority, unless otherwise called to Council in accordance with this policy or except as specified under Section 275 of the Environmental Planning and Assessment Regulation 2021, where the HCCRPP will be the consent authority.
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5.5 The following types of development do not require management controls:

- a) Commercial fit outs and minor changes to building facades.
- b) Internal alterations and additions to buildings that are not a heritage item.
- c) Advertising signage.
- d) Minor building structures projecting from a building façade over public land (such as awnings, verandas, bay windows, flagpoles, pipes and services).
- e) Development where Council might receive a small fee for the use of their land.
- f) The installation of solar energy systems and small-scale battery systems in connection with an existing building.
- g) Temporary structures to be erected for a duration of 3 days or less and a cost of works less than \$10,000.
- h) DA's with a cost of works less than \$250,000.

Identifying whether a potential conflict of interest exists and assessment of risk

5.6 DA or modification application for Council-related development is to be referred to the Development Planning Coordinator following lodgement of the application to undertake the following:

- a) Assess whether the application is one in which a potential conflict of interest exists.
- b) Determine what management controls should be implemented based on the identified conflict of interest having regard to the controls and strategies outlined in section 5.3 and 5.4 above.
- c) Document the proposed management approach for the proposal in a statement that is published on the NSW Planning Portal.

6. RESPONSIBILITIES:

- 6.1 Development Services Group is responsible for implementing, complying with, monitoring, evaluating, reviewing and providing advice on the Policy.

7. RELATED DOCUMENTS:

- 7.1 Development Control Plan
- 7.2 Environmental Planning & Assessment Act 1979
- 7.3 Department Planning and Environment (DPE) – Development Assessment Best Practice Guide – March 2017
- 7.4 Rezoning Request Policy
- 7.5 Community Engagement Strategy

CONTROLLED DOCUMENT INFORMATION:

This is a controlled document. Hardcopies of this document may not be the latest version. Before using this document, check it is the latest version; refer to Council's website: www.portstephens.nsw.gov.au .			
EDRMS container No.	PSC2013-00406	EDRMS record No.	23/28029
Audience	Elected Council, Public and Development Services		
Process owner	Manager Development & Compliance		
Author	Development Planning Coordinator		
Review timeframe	3 years	Next review date	13/12/2025
Adoption date	26/02/2002		

VERSION HISTORY:

Version	Date	Author	Details	Minute No.
1	26/2/002	Group Manager Sustainable Planning	Original planning matters to be reported to Council policy.	048
2	23/6/2013	Manager Development Assessment and Compliance	Updated policy to Development applications to be reported to Council.	217
3	10/11/2015	Coordinator Planning and Developer Relations	Review and minor updates to policy.	339

4	September 2018	Manager Development Assessment and Compliance	<p>Updated to new policy template to include paragraph numbering and update version control.</p> <p>3.3: Updated number of Councillors required to call a DA to Council to reflect the DPE Development Assessment Best Practice Guide.</p> <p>5.1.2: Modified mechanism to report weekly DA list to Mayor/Councillors.</p> <p>5.1.3: Updated requirements for Call to Council form.</p> <p>5.1.4, 5.1.5, 5.1.6, 5.1.7, 5.1.8: Included additional DA types to be reported to Council for determination.</p> <p>7.5 Inclusion of Department Planning and Environment (DPE) – Development Assessment Best Practice Guide.</p>	098
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5	10/11/ 2020	Manager Developm ent Assessme nt and Complianc e	<p>Review and update template to include:</p> <p>Updated title of policy to reflect inclusion of planning proposals into the policy.</p> <p>1.2, 2.2 - Inclusion of new provisions to reflect inclusion of planning proposals into the policy.</p> <p>2.1 - Clarify background and process of the policy.</p> <p>3.3 -Amendment of existing provisions to reflect inclusion of planning proposals into the policy.</p> <p>5.1 d) - Modified mechanism to report DA's and modification applications on Council land or where the works are to be undertaken on behalf of Council.</p> <p>5.1 h) - Delete 'Clause 4.6 Variation Request' and replaced with 'Request to vary a Development'.</p> <p>5.2: a), b) and c) – Added new paragraphs to clarify how Councillors will be informed with regard to planning proposals.</p> <p>6.1 - Update responsible authority to reflect inclusion of planning proposals into the policy.</p> <p>7.1 Delete Sustainability Review – End to End Process.</p> <p>7.3 Delete Work Practice Note: Development Assessment Process.</p> <p>7.4 Added Rezoning Request Policy.</p> <p>7.5 Added Community Engagement Strategy.</p>	237
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6	13/12/2023	Manager Development & Compliance	<p>Added conflicts of interest policy for Council-related development throughout, including update to title of the policy.</p> <p>Updated position titles and section names throughout.</p> <p>2.1 – Deleted “and may require review in accordance with Council’s Development Assessment Process (DAP)”</p> <p>3.3 – deleted the explanation of the call to Council form process.</p> <p>4 – Added – definition of signatories to include Mayor/Councillors and definitions relevant to the conflicts of interest policy for Council-related development policy.</p> <p>5.1 – Added “In the event a Section 4.55(1A) modification application proposes an amendment to a condition moved on the floor of Council and approved by the Council, the application will be reported to the Council for determination.”</p> <p>5.1 – Added “The Mayor/Councillors may withdraw their support for calling a planning matter to Council via email at any time , prior to being included in the Council business paper”.</p> <p>5.1 - Updated the requirement for Councillor Call Up to be supported by 1 other Councillor and include email option throughout.</p>	332
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