

Policy

Referral of Development Applications to Council

Responsible portfolio	Built & Natural Environment	Document Register ID	250.2018.438.2
Policy owner	Chief Operating Officer	Review date	March 2027
Date of Council Meeting	21 March 2024	Resolution Number	46/24
Legislation, Australian Standards, Code of Practice	Environmental Planning & Assessment Act 1979 Environmental Planning & Assessment Regulation 2021 Local Environmental Plan (LEP) Development Control Plan (DCP) Development Engineering Specifications		

The NSW Department of Planning and Environment published the 'Development Assessment Best Practice Guide - To assist councils to improve delivery timeframes' (the Guide) document in 2017.

The Guide (p.11) states that "...councils should make every effort to maximise and standardise development assessment delegations to ensure a consistent and efficient decision making process. Delegations should:

- Facilitate decisions which reflect the nature of the DA.
- Acknowledge the judgement of their professional staff, particularly in planning and environmental management.
- Seek the continued merit assessment at the appropriate level to minimise politicisation of the decision making process".

The following is provided to clarify situations where Development Applications will be referred to Council for determination, and where applications will be determined by duly authorised Council staff in accordance with Delegations.

Development Applications will be referred to Council for determination in the following situations:

- Where there are more than ten (10) objectors by way of individual submissions from different households (note that a petition or pro-forma documents are counted as one objection).
- The development does not comply with an adopted council policy (including a development control plan), development standard in a Local Environmental Plan unless, in the assessment officer's opinion:
 - compliance with the policy is unreasonable and unnecessary in the circumstances;

- any variation of a development standard has been addressed in accordance with Clause 4.6 or any other requirements of the council's Local Environmental Plan.
- Notification in writing has been received by at least three (3) councillors that the DA is requested to be submitted to the elected council for determination. Any such notification should include reasons or policy positions for why the application requires reporting to the council for determination.
- Applications involving a variation to a Council Contributions plan.
- Applications made in accordance with Clause 4.6 of the relevant Local Environmental Plan requiring the initial decision to support or not support the application for referral to the NSW Department of Planning and Environment.
- Development Applications deemed to be of substantial public interest, whether or not significant levels of relevant public submissions have been received.
- Where the application is by or on behalf of a Councillor or a designated Senior Staff member.
- Where the application is by or on behalf of a Council staff member (other than a designated Senior Staff member) for other than a single dwelling house (Class 1 building), an outbuilding (Class 10 building), or renovations/extension/demolition of a Class 1 or Class 10 building.
- Where Council is the owner or trustee of the land. (Refer to Policy 250.2023.124.1 "Managing Conflicts of Interest for Council Related Development" Adopted 16/02/2023).

Development Applications will be determined by duly authorised staff members under delegated authority in the following situations:

- Where an application does not meet specific requirements of the relevant Local Environmental Plan (LEP) or other Legislation (i.e. where it would be illegal to approve) and therefore must be refused.
- Where NSW Department of Planning and Environment concurrence has not been granted for applications made under Clause 4.6 of the relevant Local Environmental Plan, and the application therefore must be refused.
- Where a request for variation to a Council policy and/or DCP is not considered unreasonable in the circumstances, and the Chief Executive Officer or Staff member has delegated authority to approve such amendments to the relevant policy and/or DCP.
- Applications where objections are not founded on fact and merit (for example, objections based on a personal or neighbourhood dispute) – even if a compromise position cannot be reached.
- Applications by or on behalf of a staff member (other than a designated Senior Staff member) subject to the Class of building and the provisions regarding submissions as listed above. (Note that the staff member making the application must submit a written declaration of interest to the Chief Executive Officer and must not be involved in any part of the application administration, processing or assessment).

Following a determination, an applicant has the right to request a 'Review of a Determination' under Section 8.2 of *the Environmental Planning & Assessment Act 1979** (EP&A Act); to request a modification under Section 4.55 of the EP&A Act; and/or to lodge an appeal to the Land & Environment Court under Section 8.7 of the EP&A Act.

*Note: A Review of a Determination is not available for Designated Development or Crown Development.

Related Documents

This procedure should be read in conjunction with the following documents:

Documentation

List the name and document reference number of any other document referred to in this document, including any related policies and procedures

Development Control Plan (DCP)

Local Environment Plan (LEP)

Council Contributions Plan

Variation

Council reserves the right to review, vary or revoke this policy and should be reviewed periodically to ensure it is relevant and appropriate.