

Council-related Development Applications Policy

The City of Sydney Council operates as a consent authority and development regulator for most development within our local government area. In some circumstances the Council is also the landowner of land to which an application relates, has given a grant or has a commercial interest in the land they regulate. Where councils have this dual role, a potential conflict can arise between their interests in the development and their duty as regulator.

This Policy explains how the Council will identify matters in which these potential conflicts arise and address them throughout the development process.

This Policy does not change the delegations in relation to which entity performs the role of consent authority for an application, unless a determination is made by the CEO to refer a matter to a particular consent authority following a risk assessment.

Preliminary

(1) Name of policy

This policy is the Council-related Development Applications Policy.

(2) Aim of policy

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

(3) Scope

This policy applies to council-related development as defined in the Environmental Planning and Assessment Act 1979. This policy has been prepared in accordance with the requirements of s 66A of the Environmental Planning and Assessment Regulation 2021 and the Council-related Development Application Conflict of Interest Guidelines issued by the Department of Planning and Environment.

This policy does not apply to any works carried out under Part 5 of the Environmental Planning and Assessment Act 1979.

This policy applies to development applications made on or after 3 April 2023.

(4) Definitions

In this policy:

Term	Meaning
Application	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 or any works carried out under Part 5 of the Environmental Planning and Assessment Act 1979.
Council	City of Sydney Council
Council-related development application	As defined in Sch 1 cl 9B of the Act
Development process	Application, assessment, determination, and enforcement
Excluded development	<p>Applications in which Council’s interest is related only to one of the following:</p> <ul style="list-style-type: none"> a. commercial fit outs and minor changes to the building façade b. internal alterations or additions to buildings that are not a heritage item c. advertising signage on commercial property 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 City might receive a small fee for the use of their land f. changes of use from one permitted use to another with no greater than minor impacts on the amenity of the surrounding area g. alteration or addition of minor structures in parks and other public places (such as shade structures in public playgrounds) <p>except applications which would limit existing free public access to public land (as defined in the Local Government Act 1993).</p>
The Act	Environmental Planning and Assessment Act 1979
The Regulation	Environmental Planning and Assessment Regulation 2021

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.

Notes included in this policy do not form part of the policy.

Process for identifying and managing potential conflicts of interest

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

- a) Where a preliminary meeting is held prior to the lodging of an application which may be council-related development, the matter should be referred to the Executive Manager Development (or delegate) and the issue of appropriate management controls should be an agenda item for discussion at the meeting, with the proposed approach recorded as part of the minutes of the meeting.

Preliminary meetings held prior to the lodgement of a development application are a standard service provided by the Council and any comments provided at such meetings are advisory only and do not bind the consent authority in its assessment or determination of a future application.

- b) Development applications that are for council-related development are to be referred to the Executive Manager Development (or delegate) for an initial conflict-of-interest risk assessment and preparation of a management statement in accordance with the requirements of the Regulation.
- c) At the preliminary stage, the Executive Manager Development (or delegate) is to:
- i. assess whether the application is one in which a potential conflict of interest exists,
 - ii. identify the phase(s) of the development process at which the identified conflict of interest arises,
 - iii. assess the level of risk involved at each phase of the development process, 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 clause 6 of the policy,
 - iv. document the proposed management approach for the proposal in a statement that is published on the NSW Planning Portal.
- d) Council-related development is to be assigned a level of risk in accordance with the following categories:

Low Risk

- a. Any application which would have been determined by the Local Planning Panel but for the fact that the Local Planning Panel has delegated its functions as consent authority to Council staff including:
- (i) Internal alternations and additions to heritage items,

Low Risk

- (ii) Temporary installations of public art
 - (iii) Temporary events
 - (iv) Outdoor seating (no more than one objection)
 - (v) Works in public domain, construction of driveways, landscaping and the like (no more than one objection)
 - (vi) Placement or relocation of kiosks and other minor structures within the public domain (no more than one objection)
 - (vii) Installation of shade structures and play equipment (no more than one objection)
 - (viii) Installation of solar panels (no more than one objection)
 - (ix) Small scale alternations and additions to existing facilities (no more than one objection)
 - (x) Other small-scale development with a development cost of no more than \$100,000 (no more than one objection)
- b. Development which is not excluded development as referred to below but which does not meet the Medium Risk or High Risk criteria as set out in this policy

Medium Risk

- a. Any application for which the Local Planning Panel is the consent authority
- b. Any application in relation to which the Council has resolved to provide a grant
- c. Changes of use which have the capacity to create more than minor impacts on amenity.

High Risk

- a. Any application made by or on behalf of Council, or for development substantially on land owned or leased by Council, and for which the Central Sydney Planning Committee is the consent authority
- b. Any matter which is assessed as being high risk by the CEO, on the recommendation of the Executive Manager Development, due to the particular circumstances of the application (for example, where there is a significant public interest due to the nature of the proposed development)

e) Where circumstances change throughout the assessment of an application (for example, where public submissions are received objecting to a proposal) assessment staff will raise the matter with the Executive Manager Development, who may review the management strategy in relation to the application and make adjustments as appropriate. Where a management strategy is updated in the course of assessment of an application it will be updated in the Planning Portal.

(6) Management controls and strategies

- a) For all applications which constitute council-related development, staff will ensure that written records are kept of all communications between applicant staff and applicants' representatives (whether staff or external consultants). Substantial discussions should occur only in the context of a formal meeting and written records of such meetings are kept. Directors are responsible for ensuring that staff follow strict communications protocols in relation to council-related development.
- b) In accordance with Sch 1 cl 9B of the Act and the City's Community Participation Plan, all council-related development applications will be publicly exhibited for a minimum of 28 days. The management strategy will be publicly exhibited with the application and will remain publicly available on the NSW Planning Portal.
- c) The management strategy for excluded development is that no additional management controls need to be applied.

However, an application for excluded development may be subject to additional management controls if more than one objection is received or where the CEO, on the recommendation of the Executive Manager Development, determines it is appropriate in the circumstances of the case.

For clarity, the Regulation requires that applications for excluded development must only be accompanied by a statement that the council has no management strategy for the application in accordance with this Policy.

- d) The management strategy in relation to the assessment and determination of applications for council-related development is to be in accordance with the level of risk identified under this Policy. In general, the following management strategies are to be implemented:
 - i. *Low Risk*

Application assessed and determined by council staff under existing delegations, subject to any specific matters as set out in the management statement for the application.
 - ii. *Medium risk*

Application assessed by council staff and determined by the Local Planning Panel. It is noted that in exceptional circumstances it may be considered appropriate for these matters to be assessed by external consultants and this will be specified in the management statement where applicable.
 - iii. *High risk*

Application assessed by external consultants, determined by the Central Sydney Planning Committee (or Local Planning Panel where appropriate).
- e) Where a council-related development becomes the subject of any proceeding before the Land and Environment Court (for example, Class 1 merit review proceedings or Class 4 judicial review proceedings), external legal representatives and consultants will be engaged to conduct the matter on behalf of the City.
- f) The management strategy in relation to the regulation of council-related development (other than excluded development) is that all certification related to applications where the value of works exceeds \$2 million, including the issue of construction certificates and occupation certificates, will be undertaken by a private certifier.

- g) The management strategy in relation to the undertaking of enforcement and compliance activities in relation to all council-related development and all development on council land is as follows:
- i. The Executive Manager Development will oversee all compliance and enforcement activities related to council-related development and all development on council land and will provide regular updates on these activities to the Executive.
 - ii. Where a non-compliance is identified (for example, a breach of development consent conditions or a failure to comply with the terms of a development control order), the matter will be escalated to the Director Legal and Governance for review and consideration of appropriate action. This may include engaging external consultants in order to undertake investigations and/or to peer review recommendations of council staff. Non-compliances will be recorded in the City’s Compliance Register until such time as the matter has been rectified.
 - iii. Where a matter is considered a significant breach of any law, the non-compliance will be referred by the Director Legal and Governance to the compliance staff of the Department of Planning and Environment for advice and action as appropriate.
 - iv. Any instances of deliberate non-compliance by Council staff may be investigated and dealt with in accordance with the Code of Conduct, Disciplinary Procedure and/or action under relevant legislation if appropriate. Such matters will be referred to the appropriate independent authority or the Department of Planning and Environment if it is suspected that an offence has been committed.
 - v. All legal proceedings in relation to enforcement and compliance matters for council-related development and activities on council land will be conducted by external legal providers, engaging third party consultants to provide expert advice if required.

Example template Management Strategy – Medium Risk matter

Management Strategy – Pre DA	Potential conflict of interest reviewed and identified as Medium Risk. Management strategy developed at time of DA lodgement recognising Local Planning Panel as Consent Authority
Management Strategy - Assessment	<p>The council is managing potential conflicts of interest in this matter as follows:</p> <ul style="list-style-type: none"> • The application will be referred to the Local Planning Panel to determine the development application. • Council development assessment staff not involved with preparing the application will assess the DA. The staff will remain separated from the project team.
Management strategy – Compliance / Enforcement	<ul style="list-style-type: none"> • A private certifier will be engaged to undertake the certification for the development. • Any complaints and/or compliance activity will be referred to Executive Manager Development to confirm appropriate course of action and reported to CEO.

Management Strategy – Pre DA	Potential conflict of interest reviewed and identified as Medium Risk. Management strategy developed at time of DA lodgement recognising Local Planning Panel as Consent Authority
Contact	Anyone with concerns about council fulfilling its obligations should report their concerns to the council.

References

Laws and Standards
<ul style="list-style-type: none"> • Environmental Planning and Assessment Act 1979 • Environmental Planning and Assessment Regulation 2021 • Local Government Act 1993 • Roads Act 1993 • Building and Development Certifiers Regulation 2020

Policies and Procedures
<ul style="list-style-type: none"> • Code of Conduct • Compliance Policy • Prosecution and Civil Enforcement Policy

Review period

This policy will be reviewed every two years.

Approval Status

City of Sydney Council approved this policy on 13 March 2023.

Approval History

Stage	Date	Comment	TRIM Reference
Original Policy	13 March 2023	Developed in reference to requirements of s66A, EP&A Regulation 2021 and Council-related Development Application Conflict of Interest Guidelines dated 28 Feb 2023 (Department of Planning and Environment).	2023/157016

Stage	Date	Comment	TRIM Reference
Commence Review Date	13 June 2024		
Approval Due Date	13 March 2025		

Ownership and approval

Responsibility	Role
Author	Manager Planning Assessment – Planning Assessments
Owner	Manager Planning Assessment – Planning Assessments
Endorser	City of Sydney Executive
Approver	City of Sydney Council