

Council-Related Development Policy

Responsible Department: Corporate and Commercial Services
Responsible Section: Governance and Risk
Responsible Officer: Manager Governance and Risk

Objective

This policy aims to manage potential conflicts of interest and increase transparency at all stages of the development process for Council-related development and approvals sought by Council in circumstances where Council is also the approval authority.

Introduction

This policy applies to development applications relating to Council land or where Council is the applicant.

This policy outlines Council’s position on managing conflicts of interest that may arise when Council is acting as the Authority on applications submitted by the Council.

Policy

1. Definitions

Term	Meaning
Application	Means: (a) an application for consent under Part 4 of the <i>Environment Planning and Assessment Act 1979</i> (NSW) 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 (b) an application for consent under section 138 of the <i>Roads Act 1993</i> (NSW) to carry out any works or activities in a public reserve, public road way or footpath (nature strip or verge).
Council-Related Development	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.
Development Process	Means application, assessment, determination, and enforcement

2. Identifying Potential Conflicts of Interest

- 2.1. Development applications lodged with Council that are Council-related development are to be referred to the General Manager, or their delegate, for a conflict-of-interest risk assessment.
- 2.2. The General Manager, or their delegate, 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 clause 5 of the policy and the outcome of the General Manager or their delegate's assessment of the level of risk involved as set out clause 6(2)(c) of the policy; and
- (e) document the proposed management approach for the proposal in a statement that is published on the NSW Planning Portal.

3. Process for identifying and managing potential conflicts of interest

3.1. The following management controls are applicable to:

- (a) Applications on Council land, or where Council is the applicant, are to be referred to the General Manager, or their delegate, for determination on whether external consultants should be used for the development process, to manage potential conflict of interest and increase transparency.
- (b) Where objections are received to applications on Council land, or where Council is the applicant, the General Manager, or their delegate, is to determine as to whether external consultants should be used to report on the application. Factors relevant to determining the use of external consultants include:
 - (i) The number and nature of the objections, including allegations of a conflict of interest;
 - (ii) Whether the application concerns a community use or work or a "for profit" development;
 - (iii) Whether Council has an interest in the outcome of the development application due to a potential sale of the land; and
 - (iv) The significance of any potential impacts of the development.

3.2. All applications on Council land, or where Council is the applicant, where objections have been received must be considered by Council for determination.

- (a) The exception to the above process will be development applications that are required to be determined by the NSW Minister, The Independent Planning Commission, or the Joint Regional Planning Panel.

3.3. The General Manager, or their delegate, is responsible for reporting applications to Council that are on Council Property or where Council is the applicant.

3.4. No management controls need to be applied for the following application types:

- (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;

(d) minor building structures projecting from a building facade over public land (such as awnings, verandas, bay windows, flagpoles, pipes, and services); and

(e) development where Council might receive a small fee for the use of their land.

Table 1: Risk Assessment by Assessment Type (using Council's Risk Matrix)

Application Type	Risk Category	Consequence	Likelihood	Risk Rating
Non-controversial small-scale development	Strategic: Potential minor negative impact on strategic objectives	Minor	Unlikely	Low
	Operational: Potential minor negligible impact on Council operations	Minor	Unlikely	Low
	Project: Potential insignificant impact on project or program	Insignificant	Unlikely	Low
	Environmental: Potential insignificant transient environmental release, no environmental harm	Insignificant	Unlikely	Low
	Compliance: Potential insignificant regulatory breach no warning, no penalty	Insignificant	Unlikely	Low
	Reputation: Potential local negative publicity/ short term effect	Moderate	Possible	High
Development of a certain value (at least \$500,000) without a commercial interest	Strategic: Potential moderate adjustment to resource allocation and service required to achieve strategy	Moderate	Possible	High
	Operational: Potential minor negligible impact on Council operations	Minor	Unlikely	Low
	Project: Potential minor impact on project or program	Minor	Possible	Medium
	Environment: Potential significant long term environmental harm	Major	Unlikely	Medium
	Compliance: Potential serious breach with fines and public exposure	Major	Rare	Medium
	Reputation: Potential negative publicity having long term effect on public confidence in Council	Major	Possible	High
Development of a certain value (at least \$250,000) with a commercial interest	Strategic: Potential moderate adjustment to resource allocation and service required to achieve strategy	Moderate	Possible	High
	Operational: Potential minor negligible impact on Council operations	Minor	Unlikely	Low
	Project: Potential minor impact on project or program	Minor	Possible	Medium
	Environment: Potential significant long term environmental harm	Major	Unlikely	Medium
	Compliance: Potential serious breach with fines and public exposure	Major	Rare	Medium
	Reputation: Potential local negative publicity/ short term effect	Moderate	Possible	High
Controversial development	Strategic: Potential moderate adjustment to resource allocation and service required to achieve strategy	Moderate	Likely	High

Application Type	Risk Category	Consequence	Likelihood	Risk Rating
	Operational: Potential minor negligible impact on Council operations	Minor	Unlikely	Low
	Project: Potential minor impact on project or program	Minor	Possible	Medium
	Environmental: Potential moderate short term environmental harm	Moderate	Unlikely	Medium
	Compliance: Potential serious breach with fines and public exposure	Major	Rare	Medium
	Reputation: Potential negative publicity having long term effect on public confidence in Council	Major	Unlikely	Medium

3.5. One of the management controls outlined in clauses 3.6 and 3.7 should be applied to Council-Related Development where the risk rating exceeds "Medium" to reduce the risk to within Council's Risk Appetite as per Council's Risk Management Policy.

3.6. Assessment and determination controls:

- (a) The assessment and/or determination of an application are to be undertaken by council staff under delegation – where the proposal is considered to be a low-level risk or non-controversial. For controversial projects, where submissions are received, the application will be referred to Council for determination;
- (b) The application may also be referred for external assessment and/or determination to either:
 - (i) Another council;
 - (ii) A regional planning panel (RPP) (Note: RPPs are not required to accept referrals); or
 - (iii) An external consultant who is suitably qualified to assess the application.

3.7. Regulation and enforcement controls:

- (a) Engagement of a private certifier;
- (b) Publication of certificates issued under Part 6 of the *Environment Planning and Assessment Act 1979* (NSW) on the NSW Planning Portal;
- (c) Peer review by a neighbouring council or for Council to enter into a shared services arrangement with a neighbouring council; or
- (d) Reporting of key milestones to the full council.

3.8. The involvement of an external third party might be appropriate for development where council has a commercial interest in the land, or the development is seen to be a political priority for the council.

References

- *Local Government Act 1993 (NSW)*
- *Local Government (General) Regulation 2021 (NSW).*
- *Environment Planning and Assessment Act 1979 (NSW).*
- *Environment Planning and Assessment Regulation 2021 (NSW).*
- *Roads Act 1993 (NSW).*
- *Code of Conduct*
- *Customer Service Policy*
- *Record Management Policy*
- *Privacy Management Policy*

History

Minute Number	Meeting Date	Description of Change
397/2022	December 20, 2022	Endorsed for Public Exhibition
013/2023	February 28, 2023	Adopted