Attachment A

Updated Council-related development applications policy (changes showing)

Council-related Development Applications Policy

Purpose

The Council of the City of Sydney (the Council) operates as a consent authority and development regulator for most development within the local government area. In some circumstances the Council is also the landowner of land to which an application relates, has given a grant to or has a commercial interest in the land ~~they~~ it regulates, or the application is made on behalf of Council. Where Council has this dual role, a potential conflict can arise between its ~~their~~ interests in the development and ~~their~~ its 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, Executive Director City Planning Development & Transport or Executive Manager Planning and Development to refer a matter to a particular consent authority following a risk assessment.

Scope

This policy applies to Council-related development as defined in the Environmental Planning and Assessment Act 1979 (the Act).

This policy has been prepared in accordance with the requirements of s 66A of the Environmental Planning and Assessment Regulation 2021 (the Regulation) and the Council-related Development Application Conflict of Interest Guidelines issued by the Department of Planning, Housing and Infrastructure ~~(previously 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.~~

Definitions

Term	Meaning
Council-related development application (Council-related DA)	As defined in Sch 1 cl 9B of the Act: Council-related development application means a development application, for which a council is the consent authority, that is — a) made by or on behalf of the council, or

	b) for development on land, other than a public road within the meaning of the Local Government Act 1993 — i) of which the Council is an owner, a lessee or a licensee, or ii) otherwise vested in or under the control of the Council.
Development process	Application, assessment, determination, and enforcement
Excluded development (this relates to Council-related DAs ~~development applications~~, as defined, that are not required to have a specific management strategy to deal with potential conflicts)	Applications in which Council's interest is related only to one of the following: a. commercial fit outs and minor changes to the building facade 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 Council 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. alterations or additions of minor structures in parks and other public places (such as shade structures in public playgrounds) h. subdivision in accordance with an approved development. except applications which would limit existing free public access to public land (as defined in the Local Government Act 1993).
Objection	For the purpose of this policy, an objection means a written unique submission objecting to the proposal. Multiple submissions from the same person are to be counted as a single objection. A unique submission is as defined in the Local Planning Panels Direction – Development Applications and Applications to Modify Development Consents dated 6 March 2024 as follows: *A unique submission means a submission which is in substance unique, distinctive or unlike any other submission. It does not mean a petition or any submission that contains the same or*

	substantially the same text. Separate unique submissions may be made in relation to the same issue. One individual, or one household, could potentially submit multiple unique submissions. A petition will be counted as a single submission consistent with section 2.7(6) of the SEPP (Planning Systems) 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.

Policy Statement

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

Process for identifying and managing potential conflicts of interest

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

The provision of pre-DA advice prior to the lodgement of an application is a standard service provided by the Council. This may involve the provision of detailed written advice relating to a submitted proposal and may involve a meeting with the applicant. Any comments provided in writing or at a meeting are advisory only and do not bind the consent authority in its assessment or determination of a future application.

Where pre-DA advice is given prior to the lodging of a Council-related DA ~~development application~~ the issue of appropriate management controls should be considered by the Executive Manager Planning and Development (or delegate – Manager Planning Assessments or Area Planning Manager) and the proposed approach to addressing conflicts of interest recorded.

When a Council-related DA ~~Development Application~~ is received the Executive Manager Planning and Development (or delegate – Manager Planning Assessments or Area Planning Manager) is to:

i. ~~assess whether the application is one in which a potential conflict of interest exists~~ assess the nature and significance of the conflict of interest and determine the appropriate risk classification and management controls

~~ii. 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 below,~~

ii. document the proposed management approach for the proposal in a management strategy statement that is published on the NSW Planning Portal.

Council-related DAs ~~Development Applications~~ are to be identified as either:

i. Excluded Development
ii. Low-Risk development
iii. Medium-Risk development
iv. High-Risk development

Where relevant a management strategy statement in accordance with the requirements of the Regulation is to be prepared (n.b. the management strategy statement for Excluded Development is that there are no specific management controls).

The Low, Medium and High-Risk categories for Council-related DAs ~~Development Applications~~ are defined below:

Low Risk

A low-risk Council-related DA is:

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 alter~~n~~ations and additions to heritage items
(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 alter~~n~~ations 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, but which does not meet the Medium Risk or High Risk criteria as set out in this policy

Medium Risk
A medium-risk Council-related DA is: a. Any application for which the Local Planning Panel is the consent authority b. Changes of use which have the capacity to create more than minor impacts on amenity.

High Risk
A high-risk Council-related DA is: 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, Executive Director City Planning Development & Transport or the Executive Manager Planning and 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)

Where circumstances change throughout the assessment of an application (for example, where public submissions are received objecting to a proposal) the management strategy statement in relation to the application will be reviewed by the Area Planning Manager, in consultation with the Manager Planning Assessments, the Executive Manager Planning and Development or Executive Director City Planning Development & Transport as appropriate and must make any necessary adjustments determined. Where a management strategy statement is updated in the course of assessment of an application it will be updated in the Planning Portal.

Management controls and strategies – Council-related DAs ~~Development Applications~~

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. Executive Directors are responsible for ensuring that staff follow strict communications protocols in relation to Council-related development.

In accordance with Sch 1 cl 9B of the Act and the ~~City's~~ statewide 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.

Council-related DAs ~~development applications~~ are to be accompanied by either a management strategy statement, which explains how Council will manage potential conflicts of interest, or a statement that the council has no management strategy for the application.

The management strategy statement 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 where the CEO, Executive Director City Planning Development & Transport or the Executive Manager Planning and 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.

The management strategy statement in relation to the assessment and determination of Council-related DAs 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) Excluded development.

No additional management controls need to be applied.

ii) 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.

iii) 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.

iv) High risk

Application assessed by external consultants, determined by the Central Sydney Planning Committee (or Local Planning Panel where appropriate).

External consultants engaged under this policy must have no involvement in the preparation of the proposal application and must provide a written declaration of independence.

Where a Council-related DA 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.

Other applications

Other development related applications (which are not defined as a Council-related DA ~~Development Application~~), such as applications to modify a consent, or a development application for a development that is subject of a grant from Council, may from time to time raise issues with regards to an actual or perceived conflict of interest.

Conflicts in these cases will be addressed having regard to the same principles as those used in relation to Council-related DAs ~~Development Applications~~. Any management strategy for these applications will be considered on a case-by-case basis consistent with the approach outlined in this policy.

As the application is not a Council-related DA ~~Development Application~~ as defined the management strategy is not required to be published on the Portal under the regulations, and the application will be notified in accordance with the requirements of ~~Council's~~ the statewide Community Participation Plan.

Management controls and strategies – certification and compliance

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.

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 Planning and 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 Director City Planning Development & Transport.

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 Executive 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 Executive 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, Housing and Infrastructure ~~and Environment~~ if it is suspected that an offence has been committed.

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 Statement – Medium Risk matter

Management Strategy – Pre DA	Potential conflict of interest reviewed and identified as Medium Risk. Note: Management strategy statement developed at time of DA lodgement recognising Local Planning Panel as Consent Authority
Management Strategy Statement - **Assessment**	The Council is managing potential conflicts of interest in this matter as follows: • 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. • Council development assessment staff will remain separated from the project team. • Council development assessment staff involved in the assessment of the DA and reviewing of the report to be presented to the Local Planning Panel, will complete a declaration confirming that they do not have a conflict of interest. • The management strategy statement will be amended if necessary if a change in circumstances occurs and/or where the CEO, Executive Director City Planning Development & Transport or the Executive Manager Planning and Development determines that it is appropriate to do so in the circumstances of the case.
Management Strategy Statement – **Compliance / Enforcement**	• 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 Planning and Development to confirm appropriate course of action and reported to CEO.

References

Laws and Standards
• 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
• Code of Conduct • Compliance Policy • Prosecution and Civil Enforcement Policy

Review period

This policy will be reviewed every ~~two~~ 4 years.

Approval Status

City of Sydney Council approved this policy on [insert date] ~~16 December 2024~~.

Approval History

Stage	Date	Comment	TRIM Ref
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
Review	16 December 2024	Original policy reviewed and updated to address matters that need to be clarified and to improve the operation of the policy. Updated policy developed in reference to requirements of s66A of the EP&A Regulation 2021 and Council related Development Application Conflict of Interest Guidelines dated 28 Feb 2023 (Department of Planning and Environment).	20234/157016
Review	[insert date]	Policy reviewed and updated to address matters that need to be clarified and to improve the operation of the policy. Updated policy developed in reference to requirements of s66A of the EP&A Regulation 2021 and Council-related Development Application Conflict of Interest Guidelines dated 28 Feb 2023 (Department of Planning and Environment).	2023/157016
Commence Review Date			
Approval Due Date			

Ownership and approval

Responsibility	Role
Author	Manager Planning Assessments – Planning Assessments
Owner	Executive Director City Planning Development & Transport
Endorser	City of Sydney Executive
Approver	City of Sydney Council