

Council Policy

Council-related Development Applications Policy

Policy Statement

Northern Beaches Council operates as a consent authority and development regulator for most development within the Northern Beaches local government area. In some circumstances, council is also the owner of land to which an application relates, is the applicant/developer or has a commercial interest in the land. Where council has this dual role, a potential conflict can arise between the council's interest in the development and its duty as a regulator.

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

Principles

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

Scope and application

This policy applies to council-related development. It regulates all council-related development from 3 April 2023.

This policy has been prepared in accordance with the requirements of s66A of the Regulation which is to commence on 3 April 2023 and the 'Council-related Development Application Conflict of Interest Guidelines' issued by the Department of Planning and Environment.

This policy does not apply to an activity under Part 5 of the Act.

Identifying whether a potential conflict of interest exists

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

Development applications lodged with council that are for council-related development are to be referred to the Executive Manager Development Assessment (or delegate) for an initial conflict-of-interest risk assessment and preparation of a management statement in consultation with the Executive Manager Internal Audit and Risk in accordance with the requirements of the Regulation.

The Executive Manager Development Assessment (or delegate) is to:

- i. Identify the potential conflict of interest,
- 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,
- iv. Determine what (if any) additional management controls must be implemented to address the identified conflict of interest (in each phase of the development process if necessary) having regard to any Management Controls and Strategies outlined in this policy, and
- v. Document the proposed management strategy for the proposal in a statement that is published/uploaded on the NSW Planning Portal and council's application webpage.

Assessing level of risk

Council-related development is to be assigned a level of risk in accordance with the following categories:

Low Risk

- Advertising signage on council properties.
- Internal fit outs and minor changes to the building façade.
- Internal alterations or additions to buildings that are not a heritage item.
- Council-related development in respect of which council may receive a small fee for the use of their land (such as outdoor dining areas for which fees are or may be payable under legislation).
- Alterations and additions to minor structures in parks and other public spaces (such as shade structures in playgrounds).
- Minor building structures projecting from a building façade over public land (such as awnings, verandas, bay windows, flagpoles, pipes and services).

Medium Risk

- Any council-related development for which the Northern Beaches Local Planning Panel is the consent authority.
- Any council-related development in relation to which council has resolved to provide a grant.

High Risk

- Any council-related development for which the Sydney North Planning Panel is the consent authority.
- Any council-related development which is assessed as being high risk by the CEO, due to the circumstances of the application.

Management controls and strategies

- (a) For all council-related development, other than low risk applications, council's Development Assessment staff will ensure that written records are kept of all communications with the applicant (whether or not they are Council staff) and applicant representatives (whether council staff or external consultants). Substantial discussions must occur only in the context of a formal meeting and written records of such meetings are to be kept. Directors are responsible for ensuring that staff follow strict communication protocols in relation to council-related development.
- (b) All council-related development applications will be publicly exhibited for a minimum of 28 days. The management strategy for the proposal will be publicly exhibited with the application and will remain publicly available on the NSW Planning Portal and council's website.
- (c) 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 in accordance with this policy. In general, the following management strategies are to be implemented:

- Low risk – application assessed by council staff and referred to the Northern Beaches Local Planning Panel for determination if required by Ministerial Direction.
 - Medium risk – application assessed by external independent planner and referred to the Northern Beaches Local Planning Panel for determination.
 - High risk – application assessed by external independent planner and referred to the Sydney North Planning Panel for determination.
- (d) Where a council-related development becomes the subject of any proceeding before the Land and Environment Court, external legal representatives and consultants will be engaged to conduct the matter.
- (e) The management strategy in relation to the regulation of council-related development (other than low risk) is that all certification, including the issue of construction certificates and occupation certificates, will be undertaken by a private certifier.
- (f) The management strategy in relation to the undertaking of enforcement and compliance activities in relation to all council-related development is as follows:
- (i) The Executive Manager Environmental Compliance will oversee all compliance and enforcement activities related to council-related development and will provide regular updates on these activities to the Chief Executive Officer and Chief Executive Team.
 - (ii) Where a non-compliance is identified (for example, a breach of a development consent condition or failure to comply with the terms of a development control order), the matter will be escalated to the Director Corporate & Legal for review and consideration of appropriate action. This may include engaging external consultants in order to undertake investigations and/or peer review recommendations of council staff.
 - (iii) Where a matter is considered a significant breach of any law, the non-compliance will be referred by the Director Corporate & Legal to the compliance staff of the Department of Planning and Environment for advice and action as appropriate.
 - (iv) Any legal proceedings in relation to enforcement and compliance matters for council-related development will be conducted by external legal providers, who are to engage third party consultants to provide expert advice if required.

References and related documents

- *Environmental Planning and Assessment Act 1979*
- *Environmental Planning and Assessment Regulation 2021*

Definitions and Interpretation

In this policy:

application means an application for consent under Part 4 of the Act to carry out development and includes an application to modify a development consent but it does not include an application for a complying development certificate.

council means Northern Beaches Council.

council-related development means development for which the 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.

the Act means the *Environmental Planning and Assessment Act 1979*.

the Regulation means the *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.

Responsible Officer

Executive Manager Development Assessment

Review Date

October 2027

Revision History

Revision	Date	Status	TRIM Ref
1	28 March 2023	Adopted by Council	2023/168271
2	24 October 2023	Amended policy following public consultation	2023/623595