

## 10.14. Conflict of Interest Management Policy for Council-related Development

<b>AUTHOR</b>	Leonard Vogel, Planning and Development Advisor
<b>ENDORSED BY</b>	Joseph Hill, Director City Strategy
<b>ATTACHMENTS</b>	<ol style="list-style-type: none"> <li>1. Council-related Development Conflict of Interest Policy 2023 [10.14.1 - 5 pages]</li> <li>2. Environmental Planning and Assessment Amendment Conflict of Interest Regulation 2022 [10.14.2 - 3 pages]</li> </ol>
<b>CSP LINK</b>	<ol style="list-style-type: none"> <li>3. Our Innovative City               <ol style="list-style-type: none"> <li>3.1 Our commercial centres are prosperous and vibrant</li> <li>3.2 North Sydney is smart and innovative</li> <li>3.3 Distinctive sense of place and design excellence</li> </ol> </li> </ol>

### PURPOSE:

The purpose of this report is to present the *Managing Conflict of Interest* policy to Council for adoption following its 28-day public exhibition period.

### EXECUTIVE SUMMARY:

- At its meeting held 30 January 2023, Council resolved:

*THAT Council endorse the Council-related Development Conflict of Interest Policy be endorsed for public exhibition for a minimum period of 28 days; and  
THAT a further report be provided to Council following the conclusion of the public exhibition period for the purpose of considering any submissions received and adopting the final Council-related Development Conflict of Interest Policy.*

- In accordance with the resolution, the *Council-related Development Conflict of Interest Policy* was publicly exhibited from 6 February 2023 to 6 March 2023 on Council's Yoursay website. No submissions were received.
- The final *Council-related Development Conflict of Interest Policy* is presented, unamended, for adoption.

### RECOMMENDATION:

**1. THAT** Council adopt the *Council-related Development Conflict of Interest Policy* in accordance with the *Environmental Planning and Assessment Regulation 2021* and the *Council-related Development Application Conflict of Interest Guidelines*.

## Background

In response to concerns identified by the NSW Ombudsman in its report: *An inherent conflict of interest - councils as developer and regulator (December 2020)*, changes to the Environmental Planning and Assessment Act 1979 and its Regulation 2021 have been implemented to address the issue. The changes are included in Attachment 2 to this report. The changes that councils are required to adhere to are as follows:

1. *Have a policy that sets out how they propose to manage any potential conflicts of interests that may arise in these circumstances,*
2. *Consider this policy before determining any development applications that are council-related,*
3. *Publicly communicate any management approach(es) that the council proposes to implement (if any) for each development by publishing a management statement, together with the development application when it is exhibited.*
4. *Council-related development applications need to be exhibited for at least 28 days. The draft policy attached meets the statutory requirements.*

The policy (Attachment 1) meets the statutory requirements and the *Council-related Development Application Conflict of Interest Guidelines* from the Department of Planning Infrastructure and Environment has been exhibited for 28 days.

## Report

### 1. Public Exhibition

In accordance with the Council resolution of 30 January 2023, the 28-day public exhibition period was held from 6 February to 6 March 2023 during which time effort was made to ensure widespread stakeholder awareness of the opportunity to provide feedback on the proposed amendments.

The following summary details the methods used to promote the public exhibition and their reach:

- web page - 68 page visits, with two document downloads; and
- Council's eNewsletters including:
  - Council eNews, February 2023 - 1,409 subscribers, opened by 670 subscribers, with one link-click
  - Council eNews, March 2023 - 1,409 subscribers, opened by 684 subscribers, with two link-clicks
  - Business eNews, March 2023 - 981 subscribers, opened by 356 recipients, with one link-click
  - Precincts eNews weekly during exhibition period - 160 subscribers, opened by 75 recipients (average per issue), with four link-clicks;
- Signage displayed at Customer Service Centre and Stanton Library; and
- Council Noticeboard promotion (Civic Park).

## 1.1 Submissions

No submissions were received.

## Options

Council has the following options in relation to this matter:

1. Adopt the attached *Council-related Development Conflict of Interest Policy*
2. Not adopt the Council-related Development Conflict of Interest Policy

These options are assessed in the table below.

<b>Option</b>	<b>Finance/Resourcing</b>	<b>Risk/Opportunity</b>	<b>Consultation</b>
1.	No additional financial implications	Implementation of a formal Council-related Development Conflict of Interest Policy in accordance with the requirements <i>Environmental Planning and Assessment Regulation 2021</i>	28-day exhibition period concluded, no submissions received
2.	No additional financial implications	Non-Compliance with the <i>Environmental Planning and Assessment Regulation 2021</i>	28-day exhibition period concluded, no submissions received

Option 1 is recommended for the following reasons:

- there are no additional associated financial implications;
- it formalises Council's obligation to manage conflicts of interest arising from Council-related development;
- compliance with the requirements of the *Environmental Planning and Assessment Regulation 2021*; and
- No submissions received after a 28-day exhibition period.

## Consultation requirements

Community engagement has been undertaken in accordance with Council's Community Engagement Protocol.

### **Financial/Resource Implications**

There are no financial implications associated with the adoption of this policy surplus to current Council-related development conflict of interest management measures.

### **Legislation**

Changes to the *Environmental Planning and Assessment Regulations 2021* require that Council adopt a Council-related Development Conflict of Interest Management Policy. See attachment for further legislative context.



# Council-Related Development Conflict of Interest Management Policy

[REF]

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**Policy Owner:** Director City Strategy

**Category:** Statutory

**Direction:** 3. Our Innovative City

## 1. STATEMENT OF INTENT

1.1 This Policy is in accordance with the *Environmental Planning and Assessment Regulation 2021*, that requires local councils to prepare and publicise a policy that sets out how they propose to manage potential conflicts of interest for Council-related development applications.

1.2 This Policy aims to manage potential conflicts of interest transparently at all stages of the development process for Council-related development applications.

## 2. ELIGIBILITY

2.1 This policy applies to Council-related development.

## 3. DEFINITIONS

3.1 **Application** - means an application for consent under Part 4 of the *Environmental Planning and Assessment Act 1979* (the Act), to carry out development and includes an application for a complying development certificate and an application to modify a development consent.

3.2 **Council** - means North Sydney Council.

3.3 **Council-related development** - means development for which the Council is the consent authority and is:

- a) Made by or on behalf of the Council, or
- b) For the development on land:
  - i. of which the council is an owner, a lessee, a licensee, or has commercial interest in, or
  - ii. otherwise vested in or under the control of the Council.

Adopted by Council [inset date]

**MANAGING CONFLICT OF INTEREST POLICY**

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- 3.4 **Development process** - means application, assessment, determination, and enforcement.

Note: 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.

**4. PROVISIONS**

- 4.1 Development Applications that are considered Council-related development as defined by 3.3 of this policy, must be referred to the Manager of Development Services for a conflict of interest risk assessment.
- 4.2 The conflict of interest risk assessment must:
- 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 in accordance with factors identified in clause 4.3 of this policy.
  - d) determine what (if any) management controls should be implemented to address the identified conflict of interest at each phase of the development address the risk identified in 4.2(c). Controls and strategies are outlined in clause 4.9 of this policy.
- 4.3 Factors to be considered when determining level of conflict of interest and resulting risks:
- a) Is Council a direct or indirect beneficiary of this application
  - b) Value of potential commercial gains resulting from the making of the application
  - c) Cost of works associated with the application
  - d) Is the application exempt from management controls/strategies as per 4.9 of this policy
- 4.4 The conflict of interest management approach for the application is documented in a statement that is published on the NSW Planning Portal.
- 4.5 For low risk Council related development where no management controls or strategies have been identified, Council is still required to communicate this decision through a statement published on the NSW Planning Portal.

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## MANAGING CONFLICT OF INTEREST POLICY

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- 4.6 Council-related development applications must be exhibited for a minimum of 28 days to ensure transparency during the assessment process (*Environmental Planning and Assessment Act 1979*, schedule 1, clause 9B).
- 4.7 All notification correspondence for Council-related development is to state that the conflict of interest management statement is available on both Council's Applications Tracking site and the NSW Planning Portal.
- 4.8 The following management controls may be applied to:
- a. the assessment of an application for Council-related development:
    - enter into a shared service agreement with a neighbouring council for the assessment of the application.
    - use an external consultant to complete the assessment of development applications.
    - use external certifiers to complete the assessment of complying development certificates.
  - b. the determination of an application for Council-related development:
    - local planning panel or a regional planning panel to determine development application
    - engage a private certifier for certification activities such as the issuing of complying development certificates, construction certificates and occupation certificates.
    - publish certificates issued under Part 6 of the *Environmental Planning and Assessment Act 1979* on the NSW Planning Portal.
  - c. the regulation and enforcement of approved Council-related development:
  - d.
    - enter into a shared service agreement with a neighbouring council for the compliance and enforcement of development consent.
    - Principal Certifying Authority to assist in the compliance and enforcement of conditions construction certificates and complying development certificates.
    - Report enforcement milestones or actions to Council
- 4.9 The management strategy for the following kinds of development is that no management controls need to be applied:
- a) commercial fit outs and minor changes to the building façade

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

**5. RESPONSIBILITY/ACCOUNTABILITY**

- 5.1 Council officers making applications for Council-related development are required to refer the application to the Manager Development Services.
- 5.2 Council development assessment officers reviewing lodged development applications must refer Council-related development applications to the Manager Development Services.
- 5.3 Council building certifiers reviewing lodged complying development certificates, construction certificates, occupation certificates and building information certificates must refer Council-related development to the Manager Development Services.
- 5.4 Council's Manager Development Services is responsible for undertaking conflict of interest risk assessment and documenting what management controls or strategies are to be implemented during the phases of the application in a management statement.
- 5.5 Council's administration staff is responsible for publishing the management statement on the NSW Planning Portal.
- 5.6 Council's Manager Development Services is to ensure that the management controls and strategies are adhered to during the entire development cycle.

**6. RELATED POLICIES/DOCUMENTS/LEGISLATION**

The Policy should be read in conjunction with the following Council policies and documents:

- Code of Conduct - Councillors and Staff
- Mediation Policy

The Policy should be read in conjunction with the following documents/legislation:

- Environmental Planning and Assessment Act 1979

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Adopted by Council [inset date]



**MANAGING CONFLICT OF INTEREST POLICY**

- Environmental Planning and Assessment Regulation 2021
- State Environmental Planning Policy (Exempt and Complying Development Codes) 2008
- North Sydney Local Environmental Plan 2013
- North Sydney Development Control Plan 2013

Version	Date Approved	Approved by	Resolution No.	Review Date
1	[insert date]	Council	[insert min. no.]	2024/25

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Adopted by Council [inset date]



# Environmental Planning and Assessment Amendment (Conflict of Interest) Regulation 2022

under the

Environmental Planning and Assessment Act 1979

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Environmental Planning and Assessment Act 1979*.

ANTHONY ROBERTS, MP  
Minister for Planning

## Explanatory note

The object of this Regulation is to impose requirements on councils to manage conflicts of interest that may arise in connection with council-related development applications because the council is the consent authority.

A ***council-related development application*** is a development application, for which the council is the consent authority, that is—

- (a) made by or on behalf of the council, or
- (b) for development on land—
  - (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.

Environmental Planning and Assessment Amendment (Conflict of Interest) Regulation 2022 [NSW]

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## Environmental Planning and Assessment Amendment (Conflict of Interest) Regulation 2022

under the

Environmental Planning and Assessment Act 1979

### 1 Name of Regulation

This Regulation is the *Environmental Planning and Assessment Amendment (Conflict of Interest) Regulation 2022*.

### 2 Commencement

This Regulation commences on 3 April 2023.

### 3 Amendment of Environmental Planning and Assessment Act 1979 No 203

#### Schedule 1 Community participation requirements

Insert after clause 9A—

#### 9B Council-related development applications

- (1) Minimum public exhibition period for a council-related development application—28 days.
- (2) In this clause—  
*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—
    - (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.

**Note—** Land vested in or under the control of the council includes public land within the meaning of the *Local Government Act 1993*.

## Schedule 1 Amendment of Environmental Planning and Assessment Regulation 2021

### [1] Section 30B

Insert after section 30A—

#### 30B Council-related development applications

A council-related development application must be accompanied by—

- (a) a statement specifying how the council will manage conflicts of interest that may arise in connection with the application because the council is the consent authority (a *management strategy*), or
- (b) a statement that the council has no management strategy for the application.

### [2] Section 66A

Insert after section 66—

#### 66A Council-related development applications—the Act, ss 4.16(11)

- (1) A council-related development application must not be determined by the consent authority unless—
  - (a) the council has adopted a conflict of interest policy, and
  - (b) the council considers the policy in determining the application.
- (2) In this section—
 

*conflict of interest policy* means a policy that—

  - (a) specifies how a council will manage conflicts of interest that may arise in connection with council-related development applications because the council is the consent authority, and
  - (b) complies with the *Council-related Development Application Conflict of Interest Guidelines* published by the Department and available on the NSW planning portal.

### [3] Section 240 Council to keep a register of development applications and development consents

Insert after section 240(3)(m)—

- (m1) for a development consent granted in response to a council-related development application—
  - (i) conflicts of interest that may arise in connection with the application because the council is the consent authority, and
  - (ii) measures taken by the council to manage the conflicts of interest,

### [4] Schedule 7 Dictionary

Insert in alphabetical order—

*council-related development application* has the same meaning as in the Act, Schedule 1, clause 9B.