

# COUNCIL-RELATED DEVELOPMENT APPLICATIONS POLICY

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**PREPARED BY:**

**Development Services Unit**



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SUTHERLAND SHIRE

## 1. PURPOSE

This Policy sets out how council-related development applications will be managed. This Policy explains how council will identify matters in which these potential conflicts arise and address them throughout the development process.

## 2. APPLICATION

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

Council related development is defined in Schedule 1 cl 9B of the Act. The development process includes application, assessment, determination and enforcement.

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

## 3. PRINCIPLES

### 3.1 Application of Principles

No one principle should be applied to the detriment of another. Principles must be collectively considered and applied to the extent that is reasonable and practicable in the circumstances.

### 3.2 Council-related development applications are to be managed and determined in a transparent manner commensurate with the level of risk

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

Sutherland Shire Council operates as a consent authority and development regulator for most development within its 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.

## 4. RESPONSIBILITIES

### 4.1 Responsible Officers

The Senior Manager Development Services is the Responsible Officer for this Policy and is responsible for ensuring Council-related development follows the requirements of this Policy as far as they pertain to development proposals and applications.

The Manager of Environment Health & Building will action any identified compliance and enforcement activities related to council-related development and will provide regular updates on these activities to the Chief Executive Officer and Executive Team.

## 4.2 Pre-Lodgement and lodgement of applications

### **Preliminary Development Applications:**

Appropriate management controls are to be an agenda item for discussion at any meeting, with the proposed approach recorded as part of the minutes of the meeting.

### **Development Applications:**

An initial conflict-of interest risk assessment and preparation of a management statement in accordance with the requirements of the Regulation.

The Management Statement 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,
- iv. Determine what (if any) additional 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 Management Controls and Strategies outlined 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.

## 4.3 Development Application Management Strategies

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:

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. Advertising signage on council properties;
  - ii. Internal fit outs and minor changes to the building façade;
  - iii. Internal alterations or additions to buildings that are not a heritage item.



- iv. Council-related development in respect of which council may receive a small fee for the use of their land (such as outdoor dining);
  - v. Alterations and additions to minor structures in parks and other public spaces (such as shade structures in playgrounds);
  - vi. Minor building structures projecting from a building façade over public land (such as awnings, verandas, bay windows, flagpoles, pipes and services).
- b. Development, which is not excluded development as referred to below, but which does not meet the Medium Risk or High risk criteria set out in this Policy.

## **Medium Risk**

- a. Any council-related development for which the Sutherland Shire Local Planning Panel is the consent authority.
- b. Any council-related development in relation to which 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 the development substantially on land owned or leased by Council and for which the regional Sydney South Planning Panel is the consent authority.
- b. Any council-related development which is assessed as being high risk by the CEO, due to the circumstances of the application (for example, where there is a significant public interest due to the nature of the proposed development).

## **4.4 Public consultation of council-related development applications**

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.

## **4.5 Determination of Council-related Development Applications**

The following management strategies are to be implemented:

### **Low risk**

Application assessed by council staff and determined under delegation.

### **Medium Risk**

Application assessed by an external independent planner and referred to the Sutherland Shire Local Planning Panel for determination.

## High Risk

Application assessed by external independent planner and referred to the Sydney South Planning Panel for determination (or by Local Planning Panel where appropriate).

## 4.6 Management of other Applications and Proceedings

### Land & Environment Court proceedings

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 on behalf of Sutherland Shire Council.

### Certification application

Council-related development (other than low risk) requiring certification, including the issue of construction certificates and occupation certificates, will be undertaken by a private certifier.

### Enforcement and compliance action

Enforcement and compliance activities in relation to all council-related development will be undertaken as follows:

- 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 CEO for review and consideration of appropriate action. This may include engaging external consultants to undertake investigations and/or peer review recommendations of council staff. Non-compliances will be recorded in Council's Customer Request Management System until such time as the matter has been rectified.
- Where a matter is considered a significant breach of any law, the non-compliance will be referred by the CEO to the compliance staff of the Department of Planning and Environment for advice and action as appropriate.
- 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.

## 4.7 Directors

Directors are responsible for ensuring their Directorate adheres to the requirements of this Policy and providing guidance in respect of ensuring Council-related development applications are managed and determined in a transparent manner commensurate with the level of risk within their Directorate and the Organisation.

## 4.8 Employees

Employees must adhere to the requirements of this Policy and operate within its authorities.

## 5. POLICY COMPLIANCE

Written records are kept of all communications with applicant staff and applicant representatives (whether council staff or external consultants). Substantial discussions should occur only in the context of a formal meeting and written records of such meetings are to be kept.

The required management strategy, prepared in accordance with this Policy, is to be documented and retained on the development application file.

## 6. RECORD KEEPING, CONFIDENTIALITY AND PRIVACY

Council adheres to and complies with the *NSW State Records Act 1998* and *Privacy and Personal Information Protection Act 1998* through its Access to Information Policy and Privacy Management Plan.

## 7. BREACHES OF POLICY

Breaches of this Policy will be dealt with in accordance with normal disciplinary procedures and will be advised to the Chief Executive Officer and / or Director Planning & Growth, via the Senior Manager Development Services where appropriate.

## 8. RELATED DOCUMENTS

This Policy has been prepared in accordance with the following requirements:

- Clause 66A of the Environmental Planning and Assessment Regulation 2021; and
- "Council-related Development Application Conflict of Interest Guidelines" published by the NSW Department of Planning and Environment.

## 9. RELEVANT LEGISLATION AND REGULATIONS

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

## 10. DEFINITION OF TERMS

Term	Meaning
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 Sutherland Shire Council.

# Council-Related Development Applications Policy



Term	Meaning
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 Regulations	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.

End of Document

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