



Policy for Managing Conflicts of Interest for Council-related Development

Adoption Date:	9 October 2023 by Council Resolution
Last Reviewed:	9 October 2023
Next Review Date:	2 years post adoption
Division/Department:	Planning & Place/ Development Assessment
Responsible Officer:	Manager - Development Assessment
HPE CM Record Number:	23/104190

Contents

1	Preliminary	3
1.1	Name of Policy	3
1.2	Commencement	3
1.3	Purpose	3
1.4	Community Strategic Plan, Delivery Program and Operational Plan	3
1.5	Definitions.....	3
2	Process for identifying and managing potential conflicts of interest	4
2.1	Management controls and strategies.....	4
2.2	Identifying whether a potential conflict of interest exists, assessment of level risk and determination of appropriate management controls	9
3	Acknowledgements	9
4	Documentation/References	9
5	Related Policies and Procedures.....	10
	Appendix 1 – Example management statement	11

1 Preliminary

1.1 Name of Policy

This Policy is the Woollahra Council Conflicts of Interest Policy Dealing with Council-related development.

1.2 Commencement

This Policy commences on 9 October 2023 when Council adopted the Policy.

1.3 Purpose

This Policy specifies how Council will manage conflicts of interest in a manner that promotes transparency and fairness for Council-related development and to meet the legislative requirements of section 66A of the *Environmental Planning and Assessment Regulation 2021*.

This Policy has been developed having regard to the Department of Planning and Environment's *Council-related Development Application Conflict of Interest Guidelines* as at the date of commencement of this Policy.

1.4 Community Strategic Plan, Delivery Program and Operational Plan

This Policy relates to Themes, Goals and Strategies outlined in Council's Community Strategic Plan Woollahra 2032 and Priorities outlined in Council's Delivery Program and Operational Plan, specifically:

Focus Area: Environmental

Outcome: Well-planned neighbourhoods

Strategy: Encourage and plan for sustainable, high quality planning and urban design outcomes.

Priority: Deliver high quality and timely development assessment.

1.5 Definitions

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. It does not include an application for a complying development certificate.

Council means Woollahra 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 Policy means the *Conflict of Interest Policy - Dealing with Council-related development*.

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.

Notes included in this policy do not form part of the policy.

2 Process for identifying and managing potential conflicts of interest

2.1 Management controls and strategies

- 1) The following management controls may be applied to:
 - a) The assessment and determination of an application for Council-related development (as per Table 1 below):

Table 1: Assessment and Determination Criteria for an Application for Council Related Development

Category of Council-related development	Assessment	Determination
<p>Minor (Low Risk) Development Application</p> <p>Minor or low risk Development Application (DA) refers to development that is small-scale, routine operational and/or non-controversial.</p> <p>The determination of whether a DA is minor shall be made after consideration of the following criteria, at the discretion of the Manager - Development Assessment (or delegate):</p> <ul style="list-style-type: none"> • The estimated value of the works to be undertaken; 	<ul style="list-style-type: none"> • Assessment undertaken by Council staff not involved in the Council-related development. • A management statement is to be prepared and exhibited on the NSW Planning Portal with the DA, unless it is of a kind referred to in Part 2.1(3) of this Policy. 	<ul style="list-style-type: none"> • Determination by Woollahra Local Planning Panel if the application does not trigger referral to the Sydney Eastern City Planning Panel.

Category of Council-related development	Assessment	Determination
<ul style="list-style-type: none"> • The potential impact on surrounding residential amenity associated with the proposed development; • The consistency of the proposed works with an existing Council Management Plan or strategy (if relevant); • Whether the proposal involves any substantial variations from the existing Council policy; and • Whether the proposal will lead to any financial benefit for the Council. <p>Note: a minor DA generally refers to the type of developments identified in Clause 2.1 (3) of the policy.</p> <p>Examples: internal refurbishment or renovation of a building, minor building structures or additions, structures projecting over public land and signage.</p>		
<p>Major (Medium to High Risk) Development Application</p> <p>Major Development Application (DA) refers to development that is large scale, significant and/or controversial.</p> <p>The determination of a major DA shall be made after consideration of the following criteria, at the discretion of the Manager - Development Assessment (or delegate)</p> <ul style="list-style-type: none"> • The estimated value of the works to be undertaken; • If the DA is Regional Development (under the State Environmental Planning Policy (Planning Systems) 2021. 	<ul style="list-style-type: none"> • Assessment undertaken by Council staff not involved in the Council-related development or assessment to be undertaken by an external planning consultant. • If the assessment is undertaken by Council staff, a peer review of Council assessment report is undertaken by an external planning consultant. • A management statement is to be prepared and exhibited on the NSW Planning Portal with the DA 	<ul style="list-style-type: none"> • Determination by Woollahra Local Planning Panel if the application does not trigger referral to the Sydney Eastern City Planning Panel.

Category of Council-related development	Assessment	Determination
<ul style="list-style-type: none"> • The potential impact on surrounding residential amenity associated with the proposed development; • The consistency of the proposed works with an existing Council Management Plan or strategy; • Whether the proposal involves any substantial variations from existing Council policy; and • Whether the proposal will leave to lead to any financial benefit for the Council. <p><i>Examples: new community building and/or facilities, significant alterations and additions to a Council owned building, development with more than 10 objections, and development value of more than \$5m</i></p>		
<p>Minor Modification Application-S4.55(1) & (1A)</p> <p>Minor modification application refers to applications pursuant to Section 4.55(1) and (1A) of the Act, which involves minor error, misdescription or miscalculation and minimal environmental impact.</p> <p>The determination of a minor modification application shall be made after consideration of the following criteria, at the discretion of the Manager - Development Assessment (or delegate):</p> <ul style="list-style-type: none"> • The potential impact on surrounding residential amenity associated with the proposed development; • The consistency of the proposed works with an existing Council 	<ul style="list-style-type: none"> • Assessment undertaken by Council staff not involved in the Council-related development. • A peer review of Council's assessment report is undertaken by an external planning consultant. • A management statement is to be prepared and exhibited on the NSW Planning Portal with the DA, unless it is of a kind referred to in Part 2.1(3) of this Policy. 	<ul style="list-style-type: none"> • Determination by Woollahra Local Planning Panel if the application does not trigger referral to the Sydney Eastern City Planning Panel.

Category of Council-related development	Assessment	Determination
<p>Management Plan or strategy;</p> <ul style="list-style-type: none"> • Whether the proposal involves any substantial variations from existing Council policy; and • Whether the proposal will lead to any financial benefit for the Council. 		
<p>Other Modification Application –S4.55(2) & S4.56</p> <p>Other modification application refers to applications pursuant to Section 4.55(2) or 4.56 of the Act.</p> <p>The determination of a Section 4.55(2) or 4.56 modification application shall be made after consideration of the following criteria, at the discretion of the Manager - Development Assessment (or delegate):</p> <ul style="list-style-type: none"> • The potential impact on surrounding residential amenity associated with the proposed development; • The consistency of the proposed works with an existing Council Management Plan or strategy: • Whether the proposed al involves any substantial variations from existing Council policy: and • Whether the proposal will lead to any financial benefit for the Council. 	<ul style="list-style-type: none"> • Assessment undertaken by Council staff not involved in the Council-related development or assessment to be undertaken by an external planning consultant. • If the assessment is undertaken by Council staff, a peer review of Council assessment report is undertaken by an external planning consultant. • A management statement is to be prepared and exhibited on the NSW Planning Portal with the DA 	<ul style="list-style-type: none"> • Determination by Woollahra Local Panning Panel if the application does not trigger referral to the Sydney Eastern City Planning Panel.
<p>Review Application-S8.2</p> <p>Section 8.2 Review application refers to applications pursuant to Division 8.2 of the Act.</p> <p>The determination of a review application shall be made after consideration of the following criteria, at the discretion of the Manager - Development Assessment (or delegate):</p>	<ul style="list-style-type: none"> • Assessment undertaken by Council staff not involved in the Council-related development or assessment to be undertaken by an external planning consultant. 	<ul style="list-style-type: none"> • Determination by Woollahra Local Panning Panel if the application does not trigger referral to the Sydney Eastern City Planning Panel.

Category of Council-related development	Assessment	Determination
<ul style="list-style-type: none"> • The potential impact on surrounding residential amenity associated with the proposed development: • The consistency of the proposed works with an existing Council Management Plan or strategy: • Whether the proposal involves any substantial variations from the existing Council policy: and • Whether the proposal will lead to any financial benefit for the Council. 	<ul style="list-style-type: none"> • If the assessment is undertaken by Council staff, a peer review of Council assessment report is undertaken by an external planning consultant. • A management statement is to be prepared and exhibited on the NSW Planning Portal with the DA. 	

- b) The regulation and enforcement of approved Council-related development:
- Engagement of a private certifier for all post consent certification.
 - Publish certificates issued under Part 6 of the Act on the NSW Planning Portal.
 - Peer review by a neighbouring council and/or entering into a shared services arrangement with a neighbouring council.
 - Reporting of key milestones to Council.
- 2) Pursuant to Section 30B of the Environmental Planning and Assessment Regulation 2021, 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; or
 - b) a statement that the Council has no management strategy for the application. Refer to example management statement in Appendix 1.
- 3) 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.
 - 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.

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

- 1) Development applications lodged with Council that are council-related development (as defined in the clause 1.5) are to be referred to the General Manager (or delegate) for a conflict-of-interest risk assessment.
- 2) The General Manager 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 2.1 of the Policy and the outcome of the General Manager’s assessment of the level of risk involved as set out in clause 2.2(c) of the Policy, and

Note: The General Manager could determine that no management controls are necessary in the circumstances and publish a management statement on DA Tracking to this effect outlining the reasons for this decision.

- e) Document the proposed management approach for the proposal in a statement that is published on the NSW Planning Portal.

3 Acknowledgements

This Policy is based on the *Sample policy for managing conflicts of interest for council-related development* published in the Department of Planning and Environment *Council-related Development Application Conflict of Interest Guidelines* (2022).

4 Documentation/References

	HPECM Reference

5 Related Policies and Procedures

	HPECM Reference

This Policy will be reviewed every two years or in accordance with legislative requirements. This Policy may also be changed as a result of other amendments that do not disadvantage Council and in the spirit of this Policy.

Any amendment to this Policy must be by way of a Council Resolution.

Policy Amendments

Date	Responsible Officer	Description

Appendix 1 – Example management statement

Note: The management statement must be published on DA Tracking (or Portal if mandated).

Council Conflict of Interest Management Statement	
Project name	
DA number	
Potential conflict	Woollahra Council is the applicant.
Management strategy	<p>The strategy could include:</p> <ul style="list-style-type: none"> • The applicant will be referred to the Woollahra Local Planning Panel • The DA to be peer reviewed. • Assessment staff are not project team staff. • Independent assessment by a consultant is required. • Determination by the Regional Planning Panel is required. • Key milestones post determination reported to Council and published. • A private certifier will be engaged to undertake the certification for the development.
Contact	