

Managing conflicts of interest for City of Newcastle-related development - Policy

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City of
Newcastle

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Part A

Preliminary

1 Purpose

- 1.1 This policy aims to manage potential conflicts of interest and increase transparency of the development assessment process for City of Newcastle (CN) related development applications, modification applications and review applications, and to meet the requirements of Sections 30B and 66A of the *Environmental Planning and Assessment Regulation 2021*.
- 1.2 This policy needs to be read and understood in its entirety, to ensure accurate interpretation.

2 Scope

- 2.1 This policy applies to CN-related applications, as follows:
 - 2.1.1 Development Applications for which CN is the consent authority and CN:
 - 2.1.1.1 is the applicant or the developer (i.e., applications made by or on behalf of CN); or
 - 2.1.1.2 is an owner of the land, or the land is otherwise vested in or under the control of CN; or
 - 2.1.1.3 has a commercial interest in the land that is the subject of the application, as a lessee or licensee.
 - 2.1.2 Development Applications that identify a CN Councillor or staff member as having an affiliation or pecuniary interest in respect of the application.
 - 2.1.3 Applications seeking to modify a development consent or to review a determination, in respect of an application of a type identified in subclauses 2.1.1 and 2.1.2.
- 2.2 This policy specifies how CN will manage conflicts of interest that may arise in connection with CN-related applications. With respect to applications identified in subclause 2.1.1 (above), the policy also constitutes a '*management strategy*' and a '*conflict of interest policy*', as referenced in Sections 30B and 66A of the *Environmental Planning and Assessment Regulation 2021*.

Note 1: Subclause 2.1.1 (above) identifies 'council-related development applications', as defined under the Environmental Planning and Assessment Act 1979.

Note 2: This policy does not apply to CN-related development that is declared to be Regionally Significant Development under the Environmental Planning and Assessment Act 1979.

Note 3: Land vested in or under the control of CN includes public land within the meaning of the Local Government Act 1993.

Note 4: Potential conflicts of interest that may arise in connection with a Construction Certificate, a Complying Development Certificate and/or works certification processes are addressed in the Building and Development Certifiers Act 2018.

3 Principles

3.1 CN is committed to the following principles:

- 3.1.1 **Integrity** - managing financial or other obligations that might reasonably be thought to influence a CN officer in the course of their duties.
- 3.1.2 **Impartiality** - decision making based on merit and in accordance with statutory obligations.
- 3.1.3 **Accountability** - being accountable to the public for decisions and actions.
- 3.1.4 **Openness** - open decision making and transparency in actions undertaken.

Part B

Process for identifying and managing potential conflicts of interest

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

- 4.1 The characterisation of applications as being CN-related should be identified in the initial triaging of applications, principally on the basis of information contained in application forms, or as otherwise detailed in related documents, as lodged on the NSW Planning Portal.
- 4.2 CN-related applications of a type that is identified in Subclause 2.1.1 are to be reviewed to determine whether the applicant has submitted a conflict of interest management strategy statement, other than a reference to this policy. If no other conflict of interest management strategy statement has been submitted with a CN-related application, then the contents of this policy are to be recognised as the relevant conflict of interest management strategy statement.
- 4.3 For CN-related applications of a type that is identified in Subclause 2.1.2, a determination is to be made by the Director Planning, Transport & Regulation (PTR) as to whether the actual or perceived conflict of interest cannot be sufficiently managed if the application is routinely assessed and determined. In the case of an application that cannot be sufficiently managed if the application is routinely assessed and determined, the Director PTR may direct that the application be assessed and determined in accordance with a relevant management strategy, as detailed in this policy, or according to an alternate management strategy.
- 4.4 For CN-related applications of a type that is identified in Subclause 2.1.3, modification applications lodged under Subsections 4.55(1) & (1A) of the *Environmental Planning and Assessment Act 1979*, may be routinely assessed and determined, unless an alternate direction is made by the Director PTR.

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- 4.5 For CN-related applications of a type that is identified in Subclause 2.1.3, modification or review of determination applications lodged under Subsection 4.55(2) or Section 8.3 of the *Environmental Planning and Assessment Act 1979*, are to be assessed and determined in accordance with a relevant management strategy, as detailed in this policy, or according to an alternate management strategy as directed by the Director PTR.
- 4.6 The processing pathway, through to determination of a CN-related application, is subject to the outcome of any public exhibition process and/or relevant delegated authority.

5 Management controls and strategies

- 5.1. The management controls to be applied to the assessment and determination of CN-related applications of a type that is identified in Subclause 2.1.1 are detailed in Table 1, except for such applications that are for the kinds of development identified in Subclause 5.2.
- 5.2 For CN-related applications of a type that is identified in Subclause 2.1.1, the management strategy for the following kinds of development is that no management controls need to be applied:
- commercial fit outs and minor changes to a building façade.
 - internal alterations or additions to buildings that are not a heritage item.
 - advertising signage, including the installation of temporary promotional banners to an electricity pole, another pole or lighting column that is owned by CN or an electricity supply authority on land outside the Newcastle City Centre.
 - minor building structures projecting from a building facade over public land (such as awnings, verandas, bay windows, flagpoles, pipes, and services).
 - development where CN might receive a nominal fee for the use of land vested in or under the control of CN.
- 5.3 For CN-related applications of a type that is identified in Subclause 2.1.1 that are accompanied by a statement specifying an alternate management strategy to that contained in this policy (including specifying that no management controls need to be applied), the Director PTR is to determine the management controls that are to be applied to the assessment and determination of the application, prior to public exhibition of the application.
- 5.4 For CN-related applications of a type that is identified in Subclauses 2.1.2 and 2.1.3 and that are not to be routinely assessed and determined, the management controls to be applied to the assessment and determination of those applications is detailed in Table 1.
- 5.5 Notwithstanding any specific management controls and strategies specified by this policy, the Director PTR may specify alternative management controls and strategies that are to be applied to the assessment and determination of a CN-related application. The outcome of such discretion could involve lesser or greater management controls and strategies than are otherwise specified by this policy, as considered appropriate to the circumstances of a particular application.

6 Additional notification and register publication requirements

- 6.1 CN-related applications of a type that is identified in Subclause 2.1.1 are to be publicly exhibited for 28 days and the relevant conflict of interest management strategy statement is to be publicly viewable on CN's online Application Tracker.

Public exhibition requirements for all other CN-related applications is to be determined according to CN's Community Participation Plan and relevant legislation.

7 Disclosure of individual affiliations and interests

- 7.1 CN staff and Councillors are to disclose any affiliation, pecuniary interest or non-pecuniary interest that they are aware of that relates to an application, as required by relevant legislation and any relevant CN Code of Conduct.

Table 1- Assessment & Determination Criteria			
Subclause 2.1.1	<p>Development application for which CN is the consent authority and CN:</p> <ul style="list-style-type: none"> • is the applicant; or • is the developer (whether lodged by or on behalf of CN); or • is the land owner or the land is otherwise vested in or under the control of CN; or • has a commercial interest in the land, as a lessee or licensee. 	Assessment	Determination
1a	<p>Development Applications that meet any of the following criteria:</p> <ul style="list-style-type: none"> • an estimated cost of development exceeding \$15 million, or the application has received 25 or more written unresolved objections. • the proposal involves a variation to a development standard of an environmental planning instrument of greater than 10% and the application is recommended for approval. • two or more councillors submit a request in writing that the development application is to be determined by the DAC. 	<p>A delegated officer will be responsible for assessing the application and making recommendations about the determination of the application to the Development Applications Committee (DAC), as per the instrument of delegation to the DAC.</p> <p>Alternatively, it may be necessary for the officer's assessment report to be presented at an Ordinary Council meeting for determination, including in respect of a determination that cannot be delegated by the Council.</p>	<p>Determination by the DAC, subject to the limitations of the instrument of delegation to the DAC.</p> <p>Determination may also be made by the Council at an Ordinary Council meeting, including in circumstances that are prescribed in Section 47E (development of community land) of the Local Government Act 1993.</p>

1b	<p>Development Applications that meet any of the following criteria:</p> <ul style="list-style-type: none"> • an estimated cost of development of \$15 million or less. • the application has received 24 written unresolved objections or less (including nil). • the proposal involves a variation to the development standard of an environmental planning instrument of 10% or less. • the proposal involves a variation to a development standard of an environmental planning instrument of greater than 10% and the application is recommended for refusal. 	<p>A delegated officer will be responsible for assessing the application and making recommendations about the determination of the application and the PTR Development Assessment Panel (DAP) will be responsible for peer reviewing the assessment and determination recommendation.</p>	<ul style="list-style-type: none"> • The Director PTR is responsible for providing a written endorsement (or otherwise) of the delegated officer's proposed determination after considering the recommendation of the DAP. • The delegated officer is responsible for determining the application after receiving the endorsement of the Director PTR.
Clause 2.1.2	Development application lodged by CN staff member or Councillor	Assessment	Determination
2a	<p>Development applications that meet any of the following criteria:</p> <ul style="list-style-type: none"> • an estimated cost of development exceeding \$15 million, or the application has received 25 or more written unresolved objections. • the application involves a variation to a development standard of an environmental planning instrument of greater than 10% and the application is recommended for approval. • two or more councillors submit a request in writing that the application is to be determined by the DAC. 	<p>A delegated officer will be responsible for assessing the application and making recommendations about the determination of the application to the DAC, as per the instrument of delegation to the DAC.</p>	<p>Determination by the DAC.</p>

2b	<p>Development applications that meet any of the following criteria:</p> <ul style="list-style-type: none"> • an estimated cost of development of \$15 million or less. • the application has received 24 written unresolved objections or less (including nil). • the proposal involves a variation to a development standard of an environmental planning instrument of 10% or less. • the proposal involves a variation to a development standard of an environmental planning instrument of greater than 10% and the application is recommended for refusal. 	<p>A delegated officer will be responsible for assessing the application and making recommendations about the determination of the application and the DAP will be responsible for peer reviewing the assessment and determination recommendation.</p>	<ul style="list-style-type: none"> • The Director PTR is responsible for providing a written endorsement (or otherwise) of the delegated officer's proposed determination after considering the recommendation of the DAP, other than an application lodged by the Director PTR. • The Executive Director Planning and Environment is responsible for providing a written endorsement (or otherwise) of the delegated officer's proposed determination of an application lodged by the Director PTR, after considering the recommendation of the DAP. • The delegated officer is responsible for determining the application after receiving the endorsement of the Director PTR or Executive Director Planning and Environment.
<p>Clause 2.1.3</p>	<p>Modification application or review of determination application that is associated with the type of application that is identified in Clause 2.1.1 or 2.1.2</p> <p>(i.e., for modification applications, only relevant to applications that are not identified for routine assessment and determination)</p>	<p>Assessment</p>	<p>Determination</p>

<p>3a</p>	<p>Applications that meet the following criteria:</p> <ul style="list-style-type: none"> • Applications for which a CN officer is delegated to assess and determine the application (and is otherwise lawfully entitled to determine the application). 	<ul style="list-style-type: none"> • A delegated officer will be responsible for assessing the application and making recommendations about the determination of the application and the DAP will be responsible for peer reviewing the assessment and determination recommendation. 	<ul style="list-style-type: none"> • Determination by a delegated officer after considering the recommendation of the DAP.
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ANNEXURE A - DEFINITIONS

(1) In this policy:

Chief Executive Officer (CEO) means the Chief Executive Officer of the City of Newcastle and includes their delegate or authorised representative.

References to the Chief Executive Officer are references to the General Manager appointed under the *Local Government Act 1993* (NSW).

City of Newcastle (CN) means Newcastle City Council.

Council means the elected Council.

City of Newcastle related application means a development application, a modification application or a review of determination application of a type that is identified in Clause 2.

Councillor means a person elected to civic office as a member of the governing body including the Lord Mayor.

Clause or Subclause means a clause or subclause of this policy, unless stated otherwise.

Delegated officer means a CN staff member who has delegated authority to carry out functions described in this policy.

Development application, modification application and review of determination application means a development application, a modification application and review of determination application as referenced in the *Environmental Planning and Assessment Act 1979*.

Development Applications Committee (DAC) is a committee established by Council under the *Local Government Act 1993* (NSW), which has delegated authority to determine development applications under the *Environmental Planning and Assessment Act 1979* (NSW), to the extent defined in the relevant instrument of delegation and subject to relevant legislation.

Development Assessment Panel (DAP) means a panel comprising senior PTR officers, subject to formal operating procedures, which provides a peer review of the assessment and recommended determination of an application by a delegated officer and confirms whether it agrees with the assessment and recommended determination.

Estimated cost of development has the meaning described in the *Environmental Planning and Assessment Act 1979* (refer Section 208 of the *Environmental Planning and Assessment Regulation 2021*).

Executive Director Planning & Environment (Executive Director P&E) means the Executive Director Planning & Environment of the City of Newcastle.

Director Planning, Transport & Regulation (Director PTR) means the Director of Planning, Transport and Regulation of the City of Newcastle. A reference in this policy to the Director PTR is also to be read as a reference to that person's nominated representative or to a person in a higher CN management position than the Director PTR.

Planning and Transport & Regulation (PTR) means a service unit of CN that is involved with the assessment and determination of development applications, modification applications and review of determination applications.

Routinely assessed and determined means an assessment and determination of an application that can be made by a CN officer under their delegated authority, without being subject to any additional or alternate management controls that might otherwise be generated by this Policy.

Unresolved objection means a written objection emanating from an individual household during the formal notification period of the CN related application, in which the matters raised in the submission have not been able to be resolved by discussions with the

objector/s, or an amendment to the proposed development or by a recommended condition of consent.

- (2) A word or expression used in this policy has the same meaning as it has in the *Environmental Planning and Assessment Act 1979*, and any instruments made under that Act, unless otherwise defined in this policy.
- (3) Notes included in this policy do not form part of the policy.

ANNEXURE B - POLICY AUTHORISATIONS

In accordance with Section 378 of the *Local Government Act 1993*, CN's Chief Executive Officer delegates the following functions to the positions listed:

Title of authorisation	Description of authorisation	Position Number and Title
Management strategy assessment and determination	Authority to assess and determine management strategies, as per Sections 4 and 5 of this policy	P60632 - Executive Director Planning and Environment P60641 - Director Planning, Transport & Regulation

DOCUMENT CONTROL

Policy title	Managing conflicts of interest for City of Newcastle-related development
Policy owner	Director Planning Transport & Regulation
Policy expert/writer	City Wide Development Assessment Manager
Associated Guideline or Procedure Title	Newcastle City Council Procedure - Development Assessment Panel
Guideline or Procedure owner	Director Planning Transport & Regulation
Prepared by	Development Assessment
Approved by	CEO
Date approved	28/07/2023
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Termination date	30/06/2027
Version #	Version number 2
Category	Planning, Development and Local Approvals
Details of previous versions	Review and update of version number 1
Keywords	*Assessment, development application, conflict of interest, independent, transparency in decision making
Relevant Newcastle 2040 Theme/s	Achieving Together
Relevant legislation/codes (reference specific sections)	<p>This Policy supports CN's compliance with the following legislation:</p> <ul style="list-style-type: none"> • <i>Environmental Planning and Assessment Act 1979 (NSW)</i> • <i>Environmental Planning and Assessment Amendment (Conflict of Interest) Regulation 2022 (NSW)</i> • <i>Building and Development Certifiers Act 2018 (NSW)</i> • <i>Local Government Act 1993 (NSW)</i> • <i>Roads Act 1993 (NSW)</i> • <i>State Environmental Planning Policy (Planning Systems) 2021</i> • <i>Codes of Conduct for Staff and Councillors</i> • <i>Community Participation Plan 2019</i>
Other related documents	<ul style="list-style-type: none"> • NSW Department of Planning and Environment - <i>Sydney District & Regional Planning Panels</i>

	<p><i>Operational Procedures (September 2022)</i></p> <ul style="list-style-type: none"> <i>Instruction on Functions Exercisable by Council on Behalf of Sydney District or Regional Planning Panels—Applications to Modify Development Consents (30 June 2020)</i>
Related forms	As per NSW Planning Portal
Required on website	Yes
Authorisations	Functions authorised under this Policy at Annexure B