

Policy

Assessment of CN Related Development Applications Policy

November 2021

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Part A Preliminary

1 Purpose

- 1.1 The purpose of the Policy is to outline the process for the assessment and determination of City of Newcastle (CN) related Development Applications (DAs).

2 Scope

- 2.1 This Policy applies to CN related DAs, including Modification Applications (MAs and Review of Determination Applications (REs), which include:
 - 2.1.1 DAs where CN is the owner of the land, or applicant, or shall carry out the development or holds a commercial interest in the land.
 - 2.1.2 DAs lodged by a CN Official (including relevant CN staff and Regulatory, Planning and Assessment (RPA) officer and CN Councillor), or a Federal or State Member of Parliament.
 - 2.1.3 DAs to be determined by the Regional Planning Panel (RPP) where the Council has resolved to make a written submission to the RPP.

3 Principles

- 3.1 CN commits itself 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 Procedures

4 Assessment and determination of City of Newcastle related development applications

4.1 City of Newcastle related DAs with a capital investment value (CIV) over \$5 million

4.1.1 If a CN related DA which has a CIV over \$5 million is lodged:

- (a) by CN as the applicant of the development, or
- (b) by CN as the owner of the land on which the development is to be carried out, or
- (c) where development is to be carried out by CN, or
- (d) where CN is a party to any agreement or arrangement relating to the development (other than any agreement or arrangement entered into under the *Environmental Planning & Assessment Act, 1979* or for the purposes of payment of contributions by a person other than CN).

An RPA officer will be responsible for assessing the application and making recommendations about the approval, refusal, or deferral of the application to the Regional Planning Panel (RPP).

4.1.2. The RPP is responsible for determining CN related DAs provided for in subclause 4.1.1.

4.2 City of Newcastle related DAs, not meeting Clauses 4.1, or 4.3 and with 25 or more written unresolved objections, and/or which proposes a variation to a development standard of greater than 10% and/or two or more councillors request the DA be determined by the Development Application Committee (DAC)

4.2.1 If a CN related DA is lodged by:

- (a) CN as the owner of the land, or applicant, or shall carry out the development, or where CN holds a commercial interest in the land and the development has a CIV of \$5 million or less, and the application has received 25 or more written unresolved objections, and/or the development involves a variation to a development standard of an environmental planning instrument of greater than 10%, and /or two or more councillors submit a request in writing that the DA is to be determined by the DAC, or
- (b) a Federal or State Member of Parliament or by a CN Official has received 25 or more written unresolved objections, and/or the development involves a variation to a development standard of an environmental planning instrument of greater than 10%, and /or two or more councillors submit a request in writing that the DA is to be determined by the DAC

an RPA officer will be responsible for assessing the application and making recommendations about the approval, refusal, or deferral of the application to the DAC.

4.2.2 CN's DAC is responsible for determining CN related DAs provided for in subclause 4.2.1.

4.3 City of Newcastle related DAs, not meeting Clauses 4.1, or 4.2 with 24 or less written unresolved objections, and/or which proposes a variation to a development standard of 10% or less

4.3.1 If a CN related DA is lodged by:

- (a) CN as the owner of the land, or applicant, or shall carry out the development, or where CN holds a commercial interest in the land and the development has a CIV of \$5 million or less, and/or the application has 24 written unresolved objections or less (including nil), and/or the development involves a variation to the development standard of an environmental planning instrument of 10% or less; or
- (b) A Federal or State member of Parliament, or by a CN Official has received 24 written unresolved objections or less (including nil), and/or the development involves variation to a development standard of an environmental planning instrument of 10% or less.

An RPA officer will be responsible for assessing the application and making recommendations about the approval, refusal, or deferral of the application and RPA's Development Assessment Panel (DAP) will be responsible for peer reviewing the assessment and determination recommendation.

4.3.2 The Manager RPA (or delegate) is responsible for providing a written endorsement of the RPA officer's proposed determination of CN related DAs provided for in subclause 4.3.1. after considering the recommendation of the DAP, other than an application lodged by the Manager RPA.

4.3.3 The Director Governance (or delegate) is responsible for providing a written endorsement of the RPA officer's proposed determination of CN Related DAs provided for in subclause 4.3.1 lodged by the Manager RPA, after considering the recommendation of the DAP.

4.3.4 The RPA officer is responsible for determining CN related DAs provided for in subclause 4.3.1. after receiving the endorsement required by either subclause 4.3.2. or 4.3.3.

4.4 Any City of Newcastle related DAs

4.4.1 If any CN related DA, including MAs or REs, is lodged by:

- (a) CN as the owner of the land, or applicant, or shall carry out the development or where CN holds a commercial interest in the land, or
- (b) a Federal or State Member of Parliament or by a CN Official,

the Manger RPA (or delegate) will decide the relevant assessment or review process in accordance with this Policy, or whether a greater level of assessment or review process is considered necessary.

4.5 Independent Planning Consultant

4.5.1 Notwithstanding the above clauses, any CN Related DA, including MAs and REs may be subject to:

- (a) a peer review of the assessment and determination recommendation, or
- (b) assessment and preparation of a determination recommendation by an Independent Planning Consultant ('IPC').

- 4.5.2 The Manager RPA (or delegate) is responsible for identifying when a CN related DA requires peer review or assessment by an IPC.
- 4.5.3 CN related DAs that have been peer reviewed or assessed by an IPC will be determined in accordance with the relevant subclauses of this Policy, after consideration of the recommendation of the IPC.

4.6 Submission to Regional Planning Panel

- 4.6.1 If a CN related DA is to be determined by the Regional Planning Panel (RPP) and Council has resolved to make a submission to the Panel as provided for in the current version of the 'Planning Panels Operational Procedures', an IPC will be engaged to assist Council's nominated representative to prepare the submission.

5 Conflict of Interests

5.1. Conflict of Interests Disclosure of pecuniary or non-pecuniary interests

- 5.1.1 A CN Official who has lodged or is responsible for the assessment or peer review of a CN related DA, must disclose any pecuniary or non-pecuniary interest they have prior to the determination of the application, in accordance with the requirements of the Code of Conduct for Staff and/or Code of Conduct for Councillors.

6 Selection of Independent Planning Consultant

6.1 Selection criteria

- 6.1.1 The IPC must be selected by the Manager RPA (or delegate):
 - (a) on the basis that they have relevant skills and expertise to assess the development application, and
 - (b) having regard to any conflicts of interest or potential conflicts of interest: and
 - (c) having regard to the IPC's quote for the works.
- 6.1.2 CN must ensure it uses a range of IPCs, where practical.
- 6.1.3 The Manager RPA (or delegate) will appoint a Council nominated representative to be the contact person for communication with the IPC.

Annexure A - Definitions

For the purposes of this Policy and Procedures:

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).

Capital Investment Value (CIV) means the capital investment value of the development calculated in accordance with Clause 3 of the *Environmental Planning and Assessment Regulation 2000*

Council nominated representative means a CN officer nominated by Manager RPA (or delegate), as a contact point for communication with the Independent Planning Consultant. The nominated representative will be appointed on the basis that he or she does not have a conflict of interest with the CN related DA.

City of Newcastle (CN) means Newcastle City Council.

Cost of the development means the cost of the development calculated in accordance with Clause 255 of the *Environmental Planning and Assessment Regulation 2000*

Council means the elected Council of the City of Newcastle.

City of Newcastle related development application means a development application, including Modification Applications and Review of Determination Applications which meets the criteria in clause 2.

Commercial Interest means where CN is a party to any agreement or arrangement relating to the development (other than any agreement or arrangement entered into under the *Environmental Planning & Assessment Act, 1979* or for the purposes of payment of contributions by a person other than CN).

Councillor means a member of the Elected Council of the City of Newcastle.

DA means development application, including Modification Applications and Review of Determination Applications.

CN Official means an officer of CN, including CN staff, Councillors and RPA officer, who has an actual or perceived conflict of interest in the determination of a CN related DA and that conflict of interest cannot be sufficiently managed if the application is routinely assessed and determined.

Development Applications Committee (DAC) is a committee established by Council under section 260 of the *Local Government (General) Regulation 2005* (NSW) which has the delegated authority to determine development applications under the *Environmental Planning and Assessment Act 1979* (NSW) (subject to limitations in Schedule 1) and certain conditions.

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

Director Governance means the Director of Governance of the City of Newcastle and includes their delegate or authorised representative.

Independent Planning Consultant (IPC) means a qualified town/urban planning consultant recognised by the Planning Institute of Australia.

Manager Regulatory, Planning & Assessment (Manager RPA) means the Manager of Regulatory Planning and Assessment of the City of Newcastle and includes their delegate or authorised representative.

Regulatory Planning & Assessment (RPA) officer means any officer of RPA who has authority to exercise and/or perform on behalf of Council, the Council's delegable functions under the *Environmental Planning and Assessment Act 1979* and Regulations in force and as amended from time to time.

Regional Planning Panel (RPP) means a panel established by the NSW Government to determine regionally significant developments.

Unresolved objection means a written objection emanating from individual households during the formal notification period of the CN related DA in which the matters raised in the submission have not been able to be resolved by discussions with the objectors, or an amendment to the proposed development or by a recommended condition of consent.

Appendix B-Policy Authorisations

In accordance with section 378 of the Local Government Act 1993, the Chief Executive Officer delegates the following functions to the positions listed:

Title of authorisation	Description of authorisation	Position Number and Title
Submission of CN related DA	Authority to submit a Development Application on behalf of Newcastle City Council. In accordance with the Assessment of City of Newcastle Related Development Applications Policy.	P60629 - Executive Director Corporate Services P60631 - Executive Director Creative and Community Services P60630 - Executive Director City Infrastructure
Land owner's consent - DA	Authority to provide land owner's consent for a Development Application on land owned by Newcastle City Council or where Newcastle City Council otherwise has authority to grant such consent. In accordance with the Assessment of City of Newcastle Related Development Applications Policy.	P60629 - Executive Director Corporate Services P60631 - Executive Director Creative and Community Services P60630 - Executive Director City Infrastructure

Document Control

Policy title	Assessment of City of Newcastle related development applications
Policy owner	Manager Regulatory Planning & Assessment
Policy expert/writer	Development Assessment Section Manager
Associated Procedure Title (if applicable)	Newcastle City Council Procedure -Development Assessment Panel (April 2016)
Procedure owner (if applicable)	Manager Regulatory Planning & Assessment
Prepared by	Regulatory Planning & Assessment
Approved by	CEO
Date approved	9/11/2021
Policy approval form reference	ECM# 7183178
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Category	Development and Building
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Details of previous versions	Assessment of Council Related Development Applications (May 2016) ECM 4892055.
Legislative amendments	Nil.
Relevant strategic direction	Open and Collaborative Leadership
Relevant strategy	Nil.
Relevant legislation/codes (reference specific sections)	This policy supports CN's compliance with the following legislation: <i>Environmental Planning and Assessment Act 1979 (NSW)</i> <i>Local Government Act 1993 (NSW)</i> <i>State Environmental Planning Policy (State and Regional Development) 2011</i>

Other related policies/ documents/ strategies	<ul style="list-style-type: none"> • CN's Codes of Conduct • Newcastle Local Environmental Plan(s) • Newcastle Development Control Plan(s) • Instrument of delegation and authorisation to the Chief Executive Officer • Delegations and Authorisations Policy and Register • An inherent conflict of interest: councils as developer and regulator. NSW Ombudsman (Dec 2020) • NSW Department of Planning and Environment - Planning Panels Operational Procedures (Sept 2016)
Related forms	<ul style="list-style-type: none"> • Pecuniary Interest Declaration Form • Non-Pecuniary Interest Declaration Form • Conflict of Interest Declaration Form-Independent Planning consultants
Required on website	Yes
Authorisations	NIL