

# Conflict of Interest Policy - Dealing with Council-related development

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# 1. Preliminary

## 1.1. Name of Policy

This policy is the Randwick City Council's (RCC) Conflicts of Interest Policy for dealing with Council-related development throughout the development process.

## 1.2. Aim of Policy

This policy provides RCC's baseline guidance on how to manage conflicts of interest in a manner that promotes transparency and fairness in all the stages of the development process for Council-related development applications and meet the legislative requirements of Section 66A of the *Environmental Planning and Assessment Regulation 2021*.

## 1.3. Scope

This policy applies to Council-related development. This policy applies, but not limited to all staff, consultants, outsourced third-party service providers, and any other persons and entities involved in Council-related development.

## 1.4. Commitment to Managing Conflict of Interest

Conflict of interest occurs when a reasonable person perceives that personal interests could or have been favoured over public duty in Council-related development. RCC is committed to ensure all preventive and detective measures have been applied to significantly reduce the adverse impacts of any type of conflict of interest.

Inherently, Councils are development regulators, but they also can be the developer, landowner or hold a commercial interest in the land they regulate. Where Councils have this dual role, an inherent conflict can arise between their personal interests in the development and their public duty as regulator.

Identifying these conflicts of interest early and finding ways to address them is crucial to good governance and allows Council to strengthen its relationship with communities and build stronger trust.

RCC requires all staff, consultants, outsourced third-party service providers, any other persons and entities involved in Council-related development to:

1. Prevent personal interests that may impact on carrying out duty obligations.
2. Disclose all personal interests and any other factors that may give rise to conflict of interest.
3. Complete conflict of interest awareness training/induction in compliance with human resources training and development policies.
4. Fully cooperate with all processes and activities in place for managing conflict of interest.
5. Uphold RCC ethical values and continue to safeguard and protect the reputation of RCC.

## 1.5. Definitions

- (1) In this policy:

**application** means an application for consent under Part 4 of the Act to carry out development and includes an application for a complying development certificate and an application to modify a development consent.

**Council** means Randwick City 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*.

- (2) 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.
- (3) Notes included in this policy do not form part of the policy.

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## 2. Process for identifying and managing potential conflicts of interest

### 2.1. Management controls and strategies

- (1) One or more of the following management controls may be applied to:
  - a. The **assessment and determination** of an application for Council-related development.
    - Refer to Table 1.
  - b. The **regulation and enforcement** of approved Council-related development:
    - Engagement of a private-sector Registered Certifier to issue construction certificates, complying development certificates, occupation certificates and act as the Principal Certifier for development, other than minor building works or structures,
    - Investigation, assessment of regulatory and enforcement action in accordance with Council's Enforcement Policy and Guidelines and reporting of regulatory actions to Council's General Manager,
    - Assessment or peer review by an independent consultant, legal advisor or neighbouring 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 an example management statement in **Table 2**.
- (3) Management controls may not be applied to the following kinds of development which are of a minor nature:
  - a. Commercial fit-out 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 or minor additions to existing buildings; and
  - e. Other minor development or use of Council land, including applications for footway dining, community events, placement of articles in a public place or the like.

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

- (1) Development applications lodged with the Council that are Council-related development (as defined in Clause 1.5) are to be referred to the General Manager (or delegate) for a conflict of interest risk assessment.
- (2) The General Manager (or delegate) 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 Clause 2.2(2)(c) of the Policy; and  
*Note: the General Manager could determine that no management controls are necessary in the circumstances.*
- e. document the proposed management approach for the proposal in a statement that is published on the NSW Planning Portal. Refer to Table 2.

**Table 1: Assessment and determination criteria for an application for Council-related development.**

Category of Council-related development	Assessment	Determination
<p><b><u>Minor/Low Risk Development Application</u></b></p> <p>Minor or low risk Development Application refers to development that is small-scale, routine operational and/or non-controversial.</p> <p>The determination of a minor 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"> <li>• The estimated value of the works to be undertaken;</li> <li>• The potential impact on surrounding residential amenity associated with the proposed development;</li> <li>• The consistency of the proposed works with an existing Council Management Plan or strategy (if relevant);</li> <li>• Whether the proposal involves any substantial variations from existing Council policy; and</li> <li>• Whether the proposal will lead to any financial benefit for the Council.</li> </ul> <p><i>Note: a minor DA generally refers to the type of developments identified in Clause 2.1(3) of the Policy.</i></p> <p><i>Examples: internal refurbishment or renovation of a building, minor building structures or additions, structures projecting over public land and signage.</i></p>	<ul style="list-style-type: none"> <li>• Assessment undertaken by Council staff not involved in the Council-related development.</li> <li>• 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.</li> </ul>	<ul style="list-style-type: none"> <li>• Determination by Council staff under delegated authority.</li> </ul>
<p><b><u>Major Development Application</u></b></p> <p>Major Development Application 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"> <li>• The estimated value of the works to be undertaken;</li> <li>• If the DA is Regional Development (under the State Environmental Planning Policy (Planning Systems) 2021).</li> <li>• A DA that requires determination by a local planning panel in accordance with the Ministers Direction under section 9.1</li> </ul>	<ul style="list-style-type: none"> <li>• Assessment is to be undertaken by an external Planning Consultant.</li> <li>• A management statement is to be prepared and exhibited on the NSW Planning Portal with the DA.</li> </ul>	<ul style="list-style-type: none"> <li>• Determination by the Regional Planning Panel if the Capital Investment Value (CIV) of the application is more than \$5 million in accordance with Schedule 6 of the <i>State Environmental Planning Policy (Planning</i></li> </ul>

Category of Council-related development	Assessment	Determination
<p>of the Act.</p> <ul style="list-style-type: none"> <li>The potential impact on surrounding residential amenity associated with the proposed development;</li> <li>The consistency of the proposed works with an existing Council Management Plan or strategy;</li> <li>Whether the proposal involves any substantial variations from existing Council policy; and</li> <li>Whether the proposal will leave to any financial benefit for the Council.</li> </ul> <p><i>Examples: new community building and/or facilities, significant alterations and additions to a Council owned building, development with more than 10 objections, development value of more than \$5m.</i></p>		<p>Systems) 2021.</p> <ul style="list-style-type: none"> <li>Determination by Randwick Local Planning Panel if the application does not trigger referral to the Regional Planning Panel.</li> </ul>
<p><b><u>Minor Modification Application - S4.55(1) &amp; (1A)</u></b></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"> <li>The potential impact on surrounding residential amenity associated with the proposed development;</li> <li>The consistency of the proposed works with an existing Council Management Plan or strategy;</li> <li>Whether the proposal involves any substantial variations from existing Council policy; and</li> <li>Whether the proposal will leave to any financial benefit for the Council.</li> </ul>	<ul style="list-style-type: none"> <li>Assessment undertaken by Council staff not involved in the Council-related development.</li> <li>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.</li> </ul>	<ul style="list-style-type: none"> <li>Determination by Council staff under delegated authority.</li> </ul>
<p><b><u>Other Modification Application – S4.55(2)</u></b></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</p>	<ul style="list-style-type: none"> <li>Assessment is to be undertaken by an external Planning Consultant.</li> <li>A management statement is to be</li> </ul>	<ul style="list-style-type: none"> <li>Determination by the Regional Planning Panel, or Local Planning Panel if the</li> </ul>



Category of Council-related development	Assessment	Determination
<p>consideration of the following criteria, at the discretion of the Manager Development Assessment (or delegate):</p> <ul style="list-style-type: none"> <li>• The potential impact on surrounding residential amenity associated with the proposed development;</li> <li>• The consistency of the proposed works with an existing Council Management Plan or strategy;</li> <li>• Whether the proposal involves any substantial variations from existing Council policy; and</li> <li>• Whether the proposal will leave to any financial benefit for the Council.</li> </ul>	<p>prepared and exhibited on the NSW Planning Portal with the DA.</p>	<p>original application was not determined by the relevant panel.</p>
<p><b><u>Review Application – S8.3</u></b></p> <p>Section 8.3 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"> <li>• The potential impact on surrounding residential amenity associated with the proposed development;</li> <li>• The consistency of the proposed works with an existing Council Management Plan or strategy;</li> <li>• Whether the proposal involves any substantial variations from existing Council policy; and</li> <li>• Whether the proposal will leave to any financial benefit for the Council.</li> </ul>	<ul style="list-style-type: none"> <li>• Assessment undertaken as per the original Development Application, by either external consultant or Council staff not involved in the Council-related development.</li> <li>• A management statement is to be prepared and exhibited on the NSW Planning Portal with the DA.</li> </ul>	<ul style="list-style-type: none"> <li>• Determination is to be conducted by the relevant Regional Planning Panel or Local Planning Panel who made the original determination.</li> </ul>

**Table 2: Management Statement Example**

<b>Randwick City Council's Conflict of Interest Management Statement</b>	
<b>Address</b>	
<b>DA number</b>	
<b>Potential conflict</b>	
<b>Management Strategy</b>	

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