

# **CONFLICT OF INTEREST**

**NSW Planning Assessment Commission**

**October 2017**



**Planning  
Assessment  
Commission**

## The Role of the Planning Assessment Commission

The NSW Planning Assessment Commission was established in November 2008 as an independent statutory body operating separately to Department of Planning and Environment. The Commission plays an important role in strengthening transparency and independence in the decision-making processes for major development and land use planning in NSW. It provides an additional level of scrutiny in the review or determination of major development proposals, particularly those where:

- there is a high level of community interest;
- a political donation has been made;
- a potential or perceived conflict of interest exists; or
- complex environmental issues arise.

The key functions of the Commission include:

- determination of applications for major developments under delegation from the Minister;
- review of major developments, including conducting public hearings; and
- providing independent expert advice on planning and development matters.

## Purpose of the Conflict of Interest Policy

The purpose of the Policy is to articulate and record how the Commission identifies the personal interests of members and resolves conflicts of interest. Commission members are public officials appointed by the Minister for Planning under the *Environmental Planning and Assessment Act 1979* (EP&A Act). Members are appointed because they have knowledge of or background in one or more of the areas listed in Schedule 3 of the EP&A Act.

The Policy:

- provides an outline of the role and functions of the Commission;
- defines and explains the different types of interests and conflicts; and
- provides a framework to ensure the Commission deals with any conflict of interest in a transparent, timely and consistent manner.

The Policy is reviewed and updated annually to incorporate new and emerging issues as appropriate. The Policy should be read alongside the Commission's *Code of Conduct* and *A Guide to Managing Conflict of Interest* (the Policy Guide). The Policy Guide provides a practical interpretation of how the Commission manages conflict of interest on a case by case basis for each project.

## Conflict of interest

Everyone has interests that are personal to them or someone close to them, and sometimes these interests may conflict with the decisions they make or the actions they take at work. Conflict of interest is not wrong in itself – often it is unavoidable – however, to reduce the potential for corruption and misconduct, members must ensure that they identify, disclose and actively manage any conflict of interest quickly and effectively.

A conflict of interest involves a conflict between a member's private interests and the performance of their duties in the public interest. A conflict of interest should be disclosed and managed in situations where members are expected to participate in a discussion or decision about the matter.

Conflict of interest issues are well documented and explored in a range of public documentation produced by the NSW Government, including from the Public Service Commissioner, the Ombudsman and the Independent Commission Against Corruption (ICAC).

Given the Commission's role in the most sensitive of planning and development matters, it is appropriate that there is a set of definitions specific to the work of Commission members. The definition of pecuniary interests for Commission members is contained in Clause 11 of Schedule 3 of the EP&A Act. The relevant definitions are provided below.

## Types of conflict of interest

### Actual conflict

An actual conflict of interest is where there is a direct conflict between the private interests of a person and the performance of their official duties and responsibilities.

- an example of this would be shares in a coal mining company.

### Perceived conflict

A reasonably perceived conflict of interest is where it might appear to others that a person's private interests could improperly influence the performance of their official duties and responsibilities, whether or not this is in fact the case. A situation that looks like a conflict of interest may be enough to undermine public confidence in the Commission, even if there is no conflict or if it has already been resolved.

- an example of this would be a member's relationship with a former business associate who is employed by the applicant or has substantial shareholdings in the applicant's company.

### Potential conflict

A potential conflict of interest is where a person has private interests that could interfere with the performance of their official duties and responsibilities in the future.

- an example of this would be the member's firm that has, and may again, represent environmental lobby groups or a mining company unbeknown to the member.

## Types of private interest

### Pecuniary interest

Pecuniary interests involve actual or potential financial gain or loss, or other material benefits, as defined in the EP&A Act. They may result from the person owning a property (either as a home or as an investment), owning or controlling shares, holding a position in a company bidding for government work, accepting gifts or hospitality, or having other sources of income.

### Non-pecuniary interest

Non-pecuniary interests do not have a financial component. They may arise from personal or family relationships or involvement in sporting, social or cultural activities, and can include any tendency towards favour resulting from friendship, animosity or other personal involvement that could influence a person's judgement, duties or decisions.

### Direct interest

A direct interest is where a person has an interest personally.

### Indirect interest

An indirect interest is where a public official does not personally have an interest, but their immediate family or a person with whom they are closely associated does, and the interest is known to the member (immediate family members normally include a spouse or de facto spouse, or a dependent child).

## Reporting requirements

The assessment of a conflict of interest and any decisions made (including a decision that there is no conflict) must be documented and retained as a record in the Conflict of Interest Register. The Register includes:

- the declaration of conflict of interest;
- directions relating to the management of the conflict of interest; and
- decisions made regarding resolving the conflict of interest.

The Conflict of Interest Register is maintained by the Director. Any new records should be immediately provided to the Director for inclusion in the register.

Commission members are required to confirm whether they have a conflict of interest upon nomination to the determination or review panel. A conflict of interest register form is completed for every project and posted to the project webpage. The form may be updated if actual, potential or perceived conflicts arise during the determination or review process.

## How the Commission identifies and resolves conflict of interests

The Commission has long established procedures around declaration, recording and handling of conflict of interests. These have been further refined in the development of the Policy.

### At the commencement of appointment

When a new member is appointed, they must:

- submit a full curriculum vitae and complete and submit a Member's Declaration of Interest Form in which they declare their personal interests (see Appendix 1) which seeks information about:
  - sources of income, including shares, property and superannuation;
  - membership of boards and committees;
  - interests and positions in corporations;
  - interests and positions in trade unions and professional or business associations; and
  - close business and other relationships otherwise pertinent to the work of the Commission.

### Throughout the term of appointment

Members are required to resubmit this information on an annual basis. Where changes occur across the year, they should advise the Secretariat within 20 working days. In the event that a member is involved in a protracted negotiation in a business endeavour, the Chair should be advised of the nature of the opportunity as soon as practicable. Within 20 days of it being realised, the Secretariat should be advised and personal interest's statement should be updated accordingly.

### Public access to this information

Clause 11(5) of the EP&A Act states that:

*Particulars of any disclosure made under this clause must be recorded by the Commission in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee determined by the Commission.*

This is addressed in the Commission's Code of Conduct, which states that the register of declarations of interest is available for inspection at the Commission Secretariat during normal office hours.

### Appointment of members to a determination or review

When the Chair of the Commission is considering which members to appoint to carry out a function, the Chair must consider the skills and background of each member relevant to the matter that is before the Commission, balanced against the member's personal interests. The full curriculum vitae submitted by each member at the time of their appointment is used by the Chair as the initial screening tool. However, it is the responsibility of the individual member to alert the Chair, and the Director of the Commission, of any conflict of interest.

If there is a real conflict of interest, the Chair will appoint a different member. If the conflict is potential or perceived, the Chair will decide whether the person will be appointed. The Chair's questions of members and their replies will be documented in accordance with the *State Records Act 1998*.

### Management of conflict of interests during determination or a review

In the normal course of events the process undertaken at the time of appointment of a member to a determination or review would mean that members who are conflicted would exclude themselves before a panel is formed. However, should a conflict emerge during the course of a determination, advice or review, the member will immediately notify the panel chair of the conflict, and then raise the issue with the Chair for resolution. This applies whether the conflict is actual, potential or perceived.

This exchange will be documented in accordance with the *State Records Act 1998*. Where panel membership has changed due to conflict of interest concerns, the panel chair will advise at the opening of a public meeting/hearing.

## General enquiries and suggestions

The Commission is interested in hearing from you. If you would like to:

- provide constructive comments on the procedures of the Commission;
- request for information relating to the Commission's functions; or
- seek more information about the Commission's operations and procedural matters,

Please contact the Commission Secretariat at:

Postal/street address: Level 3, 201 Elizabeth Street Sydney NSW 2000

Phone: 02 9383 2100, Fax: 02 9383 2133

Email: [pac@pac.nsw.gov.au](mailto:pac@pac.nsw.gov.au)

## APPENDIX 1

### MEMBER'S PERSONAL INTERESTS

I, \_\_\_\_\_ give the following undertaking:  
(Member's Name)

1. There is no matter I am aware of concerning my interests\*, or any activity in which I am or have been engaged, that may call into question the probity of the Planning Assessment Commission (the Commission), or give rise to any conflict with my responsibilities as a member of the Commission.
2. I am aware that I must exercise my responsibilities as a member of the Commission in accordance with the Conduct Guidelines for Members of NSW Government Boards and Committees, including in relation to the confidentiality requirements set out in those Guidelines, as well as any applicable Code of Conduct for the Commission.
3. Attached in Annex A is my declaration of personal interests.
4. I will formally advise the Commission Secretariat of any significant change in circumstances that affects the accuracy of this undertaking and the attached declaration.

**Name:**

**Signature:**

**Date:**

**\*A member's interests include the interests of the member, immediate family (where these interests are known), business partners or associates.**

Note: Notwithstanding the interests disclosed in this form, members are at all times required to comply with Clause 11, Schedule 3 of the *Environmental Planning and Assessment Act 1979* and the Planning Assessment Commission's Code of Conduct and disclose interests as soon as possible after the relevant facts have come to the member's knowledge.

**Annex A**

**MEMBER'S DECLARATION OF INTERESTS**

Please list all private financial and business interests; as well as any other interests or relationships which could influence, or be perceived to influence, decisions made or advice given by you, covering the following areas:

1. Sources of income, shareholdings, trusts or nominee companies, superannuation, other significant sources of income, significant liabilities
  
2. Property holdings
  
3. Memberships of Boards and Committees
  
4. Interests and positions in corporations
  
5. Interests and positions in trade unions and professional or business associations
  
6. Voluntary organisations, membership or association with
  
7. Immediate family, or business relationships that would, or could be perceived, to have an impact on my duties and responsibilities as a member

**Name:**

**Signature:**

**Date:**