



May 2015

POLICY ON PERSONAL INTERESTS OF MEMBERS

Planning Assessment Commission members declare their private interests. Personal interests are reviewed prior to and during the course of carrying out a review or determination and provision of expert advice.

1. BACKGROUND

Planning Assessment Commission members are public officials appointed by the Minister for Planning under the *Environmental Planning and Assessment Act 1979* (the Act). They are appointed to the Commission because they have knowledge of or a background in one or more the areas listed in the Act. This can lead to a perception by some that members may be conflicted in carrying out their duties. While the Commission has a Code of Conduct which clearly articulates Conflict of Interests issues, it is important that the process for handling these issues is seen to be transparent and accountable.

2. PURPOSE

The purpose of this policy paper is to articulate and record how the Commission identifies personal interests of members and resolves conflicts of interests.

3. WHAT IS MEANT BY CONFLICT OF INTERESTS

Conflict of interests includes any situation where it could reasonably be concluded that a member's capacity to make a decision or give advice on a matter is influenced by the fact that they hold other interests.

Conflict of interests can involve pecuniary interests (eg financial interests or other material benefits or costs) or non-pecuniary interests. They can involve the interests of the member, or immediate family, or business partners or associates. Enmity as well as friendship can give rise to an actual or perceived conflict of interests.

Conflict of interests include:

- **Actual** conflict of interests, where duties and responsibilities required as a member of the Commission conflict with duties, responsibilities or interests external to the Commission.
 - An example of this would be shares in a coal mining company.
- **Potential** conflict of interests, where the duties and responsibilities of the member may lead to an actual conflict of interest 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.
- **Perceived** conflict of interests, where a person could "reasonably perceive" that the member's private interests are likely to improperly influence the performance of the member's official duties, whether or not this is the case.
 - 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.

Conflict of interests 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.

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 PAC members is contained in the *Environmental Planning and Assessment Act 1979*, Clause 11 of Schedule 3 (the Act). The Code of Conduct incorporates these and also specifies non-pecuniary interests for PAC members. The relevant section from the Code of Conduct is quoted directly below.

3. CONFLICTS OF INTERESTS

General

3.1 *A conflict of interests exists when it is likely that a PAC member could be influenced, or perceived to be influenced, by a private interest when carrying out their functions. Private interests can be pecuniary or non-pecuniary.*

To uphold the probity of PAC decision making, PAC members should avoid conflicts of interests. If an actual or potential conflict does arise, it is the member's responsibility to identify and disclose the conflict as soon as possible.

When identifying whether or not a conflict exists, members should consider how others would view their situation. If a member is unsure whether a conflict exists, they should discuss it with the PAC Chair.

Identifying Pecuniary Interests

3.2 *A pecuniary interest is an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person.*

3.3 *A person does not have a pecuniary interest in a matter if the interest is so remote or insignificant that it could not reasonably be regarded as likely to influence any decision of that person might make.*

3.4 *A member has a pecuniary interest in a matter if the pecuniary interest is the interest of:*

- *the member;*
- *the member's spouse or de facto partner or a relative of the member;*
- *a partner or employer of the member;*
- *a company or other body of which the PAC member, or their nominee, partner or employer, is a member.*

Disclosure of Pecuniary Interests

3.5 *PAC members must comply with the disclosure requirements set out in clause 11 of Schedule 3 of the EP&A Act (attached at Appendix A). In particular, if:*

- a) *a member has a pecuniary interest in a matter being considered or about to be considered at a PAC meeting; and*
- b) *the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter, the member must, as soon as possible after the relevant facts have come to their attention, disclose the nature of the interest at a meeting of the PAC.*

c) *After a member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the PAC otherwise determines:*

- *be present during any deliberation of the panel with respect to the matter, or*
- *take part in any decision of the PAC with respect to the matter.*

Disclosure of corporate or business interests

3.6 PAC members must disclose interests in corporations, partnerships or other businesses that may be relevant to the activities of the PAC. A member's interests include those of an associate or close relative.

Disclosure of non pecuniary interests

3.7 A non pecuniary interest is a private or personal interest which does not relate to money, for example, an interest based on a family or personal relationship, membership of an association, society or trade union or involvement or interest in an activity which may include an interest of a financial nature.

3.8 PAC members should consider possible non pecuniary interests that may arise while carrying out your duties as a PAC member. Where possible, the source of potential conflict should be removed.

3.9 However, where this is not possible, if a member has a non pecuniary interest in a matter and the interest appears to raise a conflict with the proper performance of the member's duties, the member must follow the procedures set out in clause 11 of Schedule 3 of the EP&A Act in the same manner as if the interest was a pecuniary interest.

Register of Declarations of Interest

3.10 The Panel Secretariat will record in a register all disclosures of interest made by a PAC member. The register will be available for inspection at the Panel Secretariat during normal office hours.

Other business or employment

3.11 PAC members must ensure that any outside employment or business they engage in will not:

- *conflict with their functions as a PAC member;*
- *involve using confidential information or resources obtained through their role as a PAC member; or*
- *discredit or disadvantage the PAC.*

5. HOW THE COMMISSION IDENTIFIES AND RESOLVES CONFLICTS OF INTERESTS

The Commission has long established procedures, some of which are laid out in the Act, around declaration, recording and handling of conflict of interests. These are covered in Sections 3.5 – 3.10 of the Code of Conduct. These have been further refined in the development of this policy.

5.1 At appointment

When a new member is appointed, he/she must:

1. Submit a full curriculum vitae
2. Complete and submit a form in which they declare their personal interests (see Attachment A) 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
 - Close business and other relationships otherwise pertinent to the work of the Commission

5.2 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 interests statement should be updated accordingly.

5.3 Public access to this information

Clause 11(5) of the 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.

This is picked up in Section 3.10 of the Code of Conduct with the Register to be open for inspection during normal business hours. There is no charge to access this information.

5.4 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 (for example, a determination or review), the Chair must take into account 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 (see above) 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 Secretariat, of any conflicts of interest.

If there is a real conflict of interests, the Chair will appoint a different member. If the conflicts are 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*.

5.5 Management of conflict of interests during a determination or 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 the meeting/hearing at the opening of the meeting/hearing.



ATTACHMENT A

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.
4. Attached in Annex A is my declaration of personal interests.
5. I will formally advise the Commission Secretariat of any significant change in circumstances that affects the accuracy of this undertaking and the attached declaration.

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 cl 11 of Sch 3 of the *Environmental Planning and Assessment Act 1979* and the PAC Code of Conduct and disclose interests as soon as possible after the relevant facts have come to the member's knowledge.



MEMBER'S DECLARATION OF INTERESTS

Please list any private financial, business and 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, including real estate investments, shareholdings, trusts or nominee companies, superannuation, other significant sources of income, significant liabilities

2. Memberships of Boards and Committees

3. Interests and positions in corporations

4. Interests and positions in trade unions and professional or business associations

5. Voluntary organisations, membership or association with

6. 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: