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Policy Document

Conflict of Interest

This Conflict of Interest Policy establishes guiding principles to identify personal interests of Commissioners and staff and resolve any conflicts of interest.

PURPOSE OF THE CONFLICT OF INTEREST POLICY

To set out how the Commission identifies and records personal interests of Commissioners and Office of the Independent Planning Commission (OIPC) staff and manages any conflicts of interest.

For the purposes of this policy, OIPC staff includes any secondees, contractors and contingent labour who are directly involved in supporting and advising Commission members in the exercise of their public duties.

OVERVIEW

Commissioners are public officials appointed by the Minister for Planning and Public Spaces, under the Environmental Planning and Assessment Act 1979 (EP&A Act).

Staff of the OIPC are employees of the Public Service under the Government Sector Employment Act 2013.

This policy:

- defines and explains different types of conflicts and interest, and
- provides a framework to ensure conflicts of interest are managed transparently, timely and consistently.

WHAT IS A CONFLICT OF INTEREST?

A conflict of interest exists in any situation where a Commissioner or staff member's independent decision-making capacity and/or impartiality in the performance of their public duties is likely to be influenced – or perceived to be influenced – by their private or personal interests.

Everyone has interests which are personal to them or someone close to them. A conflict of interest isn't wrong in itself and is often unavoidable.

Sometimes, however, personal interests can clash with public duties exercised by Commissioners or staff. Conflicts of interest can raise the potential for potential corruption and misconduct.

To manage this risk, Commissioners and staff must ensure they identify, disclose and actively manage any conflicts of interest quickly and effectively.

When identifying whether a conflict exists, Commissioners and staff are required to consider how others would view their situation. If a Commissioner is still unsure, they are required to speak with the Commission Chair, and staff are required to speak with the OIPC Executive Director

Ways of managing conflicts of interest are well documented in a range of NSW government public documents, including from the Public Service Commission, the Ombudsman, and the Independent Commission Against Corruption (ICAC).

Given the Commission's role in highly sensitive planning and development matters, it has developed this policy to cover matters specific to Commission work.

Types of conflict

Actual conflict - a direct conflict between the private interests of a Commissioner or staff member, and the performance of official duties and responsibilities.

> *For example:* a Commissioner holds shares in the applicant's company.

Perceived Conflict - a Commissioner or staff member's private interest could be seen to influence the performance of official duties and responsibilities, whether or not this is true. A perceived conflict of interest may be enough to undermine public confidence in the Commission.

> *For example*: a Commissioner has a relationship with a close associate, employed by the applicant or with substantial shareholdings in the applicant's company.

Perceived conflicts of interest frequently arise in the exercise of the Commission's statutory functions.

Given the depth of experience of Commissioners and staff in their respective fields, some previous or current acquaintance with an applicant's consultants is expected. The OIPC advises the Chair carefully on such matters to ensure that mere acquaintanceship does not preclude an otherwise qualified Commissioner or staff member from exercising their duties.

Potential Conflict – a Commissioner or staff member's private interests have potential to interfere with the performance of official duties and future responsibilities.

> *For example:* a Commissioner's firm has represented lobbyists (unknown to the Commissioner), and may again.

PRIVATE INTERESTS

Private interests can be pecuniary or non-pecuniary, and direct or indirect.

Pecuniary interests

A pecuniary interest is a personal interest linked to the likelihood or expectation of actual or potential financial gain or loss, and other material benefits or losses.

A conflicting pecuniary interest may arise from, for example, owning property, controlling shares, accepting gifts, or having other sources of income.

A Commissioner or staff member does not have a pecuniary interest if the interest is so remote or insignificant it could not possibly influence their decision-making.

A Commissioner or staff member has a pecuniary interest even when the interest is held by:

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

Disclosure of pecuniary interests by Commissioners is specifically legislated for in Clause 27, Schedule 2 of the EP&A Act (attached at Appendix 1).

Commissioners must comply with these requirements

Non-pecuniary interests

A non-pecuniary interest is a private or personal interest that does not have a financial or material aspect.

A conflicting non-pecuniary interest may arise, for example, from an interest based on personal or familial relationships, association membership, involvement in social, cultural or sporting activities, and society or trade union involvement. It might also include an interest arising out of any friendly or unfriendly relationship (with resulting potential to favour or disfavour).

Commissioners and staff members are expected to consider potential non-pecuniary interests that may develop while carrying out their duties. Where possible, the source of probable conflict should be removed. When this is impossible, and a Commissioner has a non-pecuniary interest that appears to raise conflict with proper performance of their duties, the Commissioner must follow the requirements of section 27, Schedule 2 of the EP&A Act (attached at Appendix 1) in the same way as a pecuniary interest.

Direct interest

The interest is directly related to the Commissioner or staff member personally.

Indirect interest

The Commissioner or staff member does not personally have an interest, but an immediate family member or close associate does, and the Commissioner or staff member knows this.

Immediate family members include a spouse, de facto partner or dependent child.

Other members of the Commission

In circumstances where a member of the Commission has an interest described above that precludes their nomination and appointment to a Panel, another member of the Commission will be appointed in his or her place.

The fact that the appointed Commissioner has a professional association with the conflicted Commissioner through their membership of the Commission is not, in and of itself, a private interest.

The Commission maintains information barriers that prevent Commission members not appointed to Panels having any access to the Panel's deliberations or documents that are not otherwise publicly available.

DECLARING AND MANAGING INTERESTS

Commencement of appointment

On appointment to the Commission, a Commissioner must submit a full curriculum vitae and a Commissioner's Declaration of Interest Form. In this, they must declare personal interests and information on:

- income sources, including shares, property and superannuation
- board and committee membership
- corporation interests and positions
- trade union, professional and business association interests and positions
- personal and business relationships relevant to Commission work.

Throughout appointment

Commissioners must resubmit this information:

- annually
- when requested to do so by the Chair or the OIPC

- as soon as is practicable after any material changes to their private interests occur throughout the year.

Throughout appointment Commissioner appointments

When the Chair considers which Commissioners to appoint to each function, it is the responsibility of each Commissioner to alert the Chair and the OIPC of interests which are capable of leading to conflicts of interest.

Commissioners are required to disclose any personal interests which may lead to conflicts of interest upon nomination to exercise any of the Commission's functions. A Conflict of Interest Register form will be completed for the matter and posted to the Commission's web page for the matter. If an actual conflict exists, the Chair must not appoint that Commissioner. If the conflict is potential or perceived, the Chair will decide, based on the advice of the OIPC and the Chair's own judgment, whether to appoint the Commissioner and whether to require any other management of the conflict.

Staff declarations

Staff are required to declare personal interests annually and when they are allocated a role directly supporting a Panel regarding the exercise of its functions. Advice on the management of any staff conflict will be provided to the Executive Director of the OIPC and the Chair of the relevant Panel. Decisions on the management of staff conflicts will be made by a member of the executive of the OIPC.

As OIPC staff exercise no direct decision-making role in respect of Commissioner matters, the management of a personal interest declared by a Commissioner may be different to the management of a similar personal interest declared by a staff member.

REGISTER OF DECLARATIONS OF INTEREST

The OIPC maintains a Conflict of Interest Register for Commissioners and staff members.

This Register includes:

- all Declaration of Interest Forms
- any other declarations of interest, or conflicts of interest, made by Commissioners or staff

All new records must be provided to the OIPC immediately, for inclusion in the Register.

Other information related to conflicts of interest are proactively published by the Commission, including:

- Conflict of Interest Register Forms
- all directions to Commissioners to manage a conflict of interest

Public access to register

As required by clause 27(5) of Schedule 2 of the EP&A Act, the part of register relating to Commissioners is available for inspection by any person at the offices of the Independent Planning Commission during office hours.

GUIDE TO COMMON CONFLICTS OF INTEREST

The table at Appendix 2 outlines some of the more frequently arising conflicts of interest for Commissioners with three columns detailing:

- The general area of conflict
- The nature or description of conflict
- Indicative timeframe or other exclusion criteria for decision-makers

The table does not provide a full list of all possible conflicts of interest and it is not binding on the

Chair in determining whether a conflict exists and how it should be dealt with. The table provides guidance for the Chair deciding whether a perceived or potential conflict of interest will lead to non-appointment. The Chair's final decision is always dependent on the specific circumstances of the conflict.

The table can also be used as a guide by the Executive Director and a Panel Chair in managing staff conflicts of interest, noting that the management of staff conflicts of interest may differ to the approach to Commissioner conflicts of interests, given their different roles and decision-making functions.

ADDITIONAL OBLIGATIONS

Members and staff of the Office of the Independent Planning Commission must comply with the relevant laws governing the use and disclosure of information obtained in the course of their duties, including but not limited to section 10.5 of the EP&A Act and the prohibition against insider trading in s. 1043A of the Corporations Act 2001 (Cth).

GENERAL ENQUIRIES AND SUGGESTIONS

We're interested in feedback from the community. If you'd like to provide constructive comments on our procedures, request information related to our functions, or seek more information about our operations and procedural matters, please contact the Office of the Independent Planning Commission.

Appendix 1

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 Clause 27, Schedule

1) If:
    a) a member has a pecuniary interest in a matter being considered or about to be considered at a meeting of the planning body, 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 the member's knowledge, disclose the nature of the interest at a meeting of the planning body.
2) A member has a pecuniary interest in a matter if the pecuniary interest is the interest of:
    a) the member, or
    b) the member's spouse or de facto partner or a relative of the member, or a partner or employer of the member, or
    c) a company or other body of which the member, or a nominee, partner or employer of the member, is a member.
3) However, a member is not taken to have a pecuniary interest in a matter as referred to in subclause (2) (b) or (c):
    a) if the member is unaware of the relevant pecuniary interest of the spouse, de facto partner, relative, partner, employer or company or other body, or
    b) just because the member is a member of, or is employed by, a council or a statutory body or is employed by the Crown, or
    c) just because the member is a member of, or a delegate of a council to, a company or other body that has a pecuniary interest in the matter, so long as the member has no beneficial interest in any shares of the company or body.
4) A disclosure by a member at a meeting of the planning body that the member, or a spouse, de facto partner, relative, partner or employer of the member:
    a) is a member, or is in the employment, of a specified company or other body, or
    b) is a partner, or is in the employment, of a specified person, or
    c) has some other specified interest relating to a specified company or other body or to a specified person, is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).
5) Particulars of any disclosure made under this clause must be recorded by the planning body and that record must be open at all reasonable hours to inspection by any person on payment of the fee determined by the planning body.
6) After a member has disclosed the nature of an interest in any matter, the member must not:
    a) be present during any deliberation of the planning body with respect to the matter, or
    b) take part in any decision of the planning body with respect to the matter.
7) For the purposes of the making of a determination by the planning body under subclause (6), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:
    a) be present during any deliberation of the planning body for the purpose of making the determination, or
    b) take part in the making by the planning body of the determination.
8) A contravention of this clause does not invalidate any decision of the planning body.
9) This clause extends to a council nominee of a Sydney district or regional planning panel, and the provisions of Part 2 (Duties of Disclosure) of Chapter 14 of the Local Government Act 1993 do not apply to any such nominee when exercising functions as a member of the panel.

Appendix 2

TYPES OF CONFLICTS OF INTEREST

CONFLICT	CONFLICT NATURE	EXCLUSION
Shareholdings Shares held by a partner, spouse, or in the family trust of a member Equivalent interests, excluding blind trusts and licenced investment arrangements (where the member has no control)	Currently held in applicant/proponent or consultancy that has worked on the matter	Total exclusion
	Previously held in applicant/proponent or consultancy that has worked on the matter	No exclusion
Ownership Role in a Private Company Partial or joint ownership or partnership Any ownership held by a partner, spouse or in the family trust of a member	Currently or previously held in applicant proponent or currently held in consultancy that has worked on the matter	Total exclusion
	Previously held in consultancy that has worked on the matter	Commission Chair to take into account period of time elapsed since the conflict
Employee of the Applicant/Proponent	Position currently held	Total exclusion
	Position previously held	Commission Chair to take into account period of time elapsed since the conflict
Board Membership Position held by partner or spouse of member	Currently held in applicant/proponent or consultancy that has worked on the matter	Total exclusion
	Previously held in applicant/proponent or consultancy that has worked on the matter	Commission Chair to take into account period of time elapsed since the conflict
Elected Position Member of Parliament, Mayor or Councillor at local, state or federal level	State or federal government position, currently held in the same electorate as the matter	Total exclusion
	State or federal level position, previously held in the same electorate as the matter	Commission Chair to take into account period of time elapsed since the conflict
	Local government position, currently held in the same local government area as the matter	Total exclusion
	Local government position, previously held in the same local government area as the matter	Commission Chair to take into account period of time elapsed since the conflict
Government Position Local, state or federal government position	Decision-making role on the matter	Total exclusion
	Decision-making role on a matter owned by the same applicant/company, or involving the same consultancy/site	Commission Chair to take into account period of time elapsed since the conflict
	Worked directly on the matter, but not as a decision-maker	Commission Chair to take into account period of time elapsed since the conflict
	Worked on a matter owned by the same applicant/company, or involving the same consultancy/site	No exclusion

Other Planning Panel Membership Joint Regional Planning Panel Independent Hearing and Assessment Panel (for example)	Currently holds position, and has worked on the matter	Total exclusion
	Previously held panel position, and has worked on the matter	Commission Chair to take into account period of time elapsed since the conflict
	Currently holds or previously held position, and has worked on other matters involving the same applicant/proponent or site	Commission Chair to take into account period of time elapsed since the conflict
Other Government Appointed Boards and Committees Including local water boards	Membership currently held, and group interest relates to the matter	Total exclusion
	Membership previously held, and group interest relates to the matter	Commission Chair to take into account period of time elapsed since the conflict
Non-Government Appointed Boards and Committees Including mine consultative committees	Membership currently held	Total exclusion
	Membership previously held	Commission Chair to take into account period of time elapsed since the conflict
Consultancy Work Full-time or part-time employment at the consultancy Casual or contract work	Worked directly on the matter	Total exclusion
	Worked indirectly on the matter (e.g. provided technical advice)	Commission Chair to take into account period of time elapsed since the conflict
	Worked at consultancy during matter period, but had no direct or indirect involvement	Commission Chair to take into account period of time elapsed since the conflict
	Worked on another matter owned by the same applicant/proponent	Commission Chair to take into account period of time elapsed since the conflict
	Worked on another matter involving the same site	Commission Chair to take into account period of time elapsed since the conflict
Special Interest Group Involvement Membership of environmental or industry advocacy groups Relationship with registered lobbyists	Membership currently held, and group interest relates to the matter	Total exclusion
	Membership previously held, and group interest relates to the matter	Commission Chair to take into account period of time elapsed since the conflict
Legal Involvement Work as a Commissioner of the Court, Barrister, Solicitor, or expert witness	Decision-making role on the matter, or worked directly on the matter	Total exclusion
	Worked on a matter owned by the same applicant/company, or on the same site	Commission Chair to take into account period of time elapsed since the conflict
	Worked on a matter involving the same consultancy	No exclusion
Decision on a Matter Submitted by the Same Group or Company As made by a member while on the Commission	Decision taken on a different project	No exclusion
	Work/decision taken on the same project	No exclusion

Training and Development Activity Information Gathering Provided by a company, group or other government, before a project is submitted to the Commission	Work on project by the same company or body, including a university	No exclusion
Family Interests Immediate family (partner, spouse, mother, father, sibling and/or child/trusts) Non-immediate family	Immediate family member currently works for or holds Board membership or an ownership role in applicant/proponent	Total exclusion
	Immediate family member previously worked for or held Board membership or an ownership role in applicant/proponent	Commission Chair to take into account period of time elapsed since the conflict
	Immediate family member has other interests in the matter (e.g. previous employment or consultancy work for the applicant/proponent)	No exclusion
	Non-immediate family member has any interest in the matter	No exclusion
Family Trustee Interests	Member has a decision-making role in family trust, superannuation, or other activity with an interest involving the applicant/ proponent (e.g. shares)	Total exclusion
Other Personal Interests Close friend, colleague or other acquaintance (i.e. person that a member has regular, ongoing communications with)	Close friend or colleague currently works for or holds Board membership or an ownership role in applicant/proponent	Total exclusion
	Close friend or colleague has any other interest in the matter	No exclusion
	Other acquaintance has any interest in the matter	No exclusion