



## 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.**

### Our role as the Commission

The Independent Planning Commission of NSW was established by the NSW Government on 1 March 2018 as an independent statutory body operating separately to the Department of Planning and Environment.

The Independent Planning Commission (IPC) is supported by the Office of the Independent Planning Commission (OIPC), which on 1 July 2020 became a separate government agency. Except where indicated otherwise, a reference to the Commission in this Policy includes a reference to the OIPC.

The Commission plays an important role in strengthening and maintaining transparency and independence in the decision-making processes for major development and land use planning in NSW.

The key functions of the Commission include to:

- determine state significant development applications
- conduct public hearings for development applications and other matters
- provide independent advice on any other planning and development matter, when requested by the Minister for Planning or Planning Secretary.

The Commission is an independent consent authority for state significant development applications and provides an additional level of scrutiny where there are:

- at least 50 'unique' public objections
- reportable political donations
- objections by the relevant local council(s).

### Purpose of the Conflict of Interest Policy

To enhance public trust in the Commission and support high quality decision-making and service delivery by articulating and recording how the Commission identifies personal interests of Commissioners and OIPC staff and resolves conflicts of interest involving Commissioners. 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, 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.

This policy supports the Commission's Ethical Conduct Policy and Code of Conduct and is reviewed and updated annually to include new and emerging issues where appropriate.

## 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. Conflict of interest isn't wrong in itself and is often unavoidable.

But sometimes personal interests can clash with public duties exercised by Commissioners or staff. And conflicts of interest can raise the potential for potential corruption and misconduct.

To reduce 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 should speak with the Commission Chair, and staff should 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 Commissioner, 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 interest

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 Clause 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.

## **Declaring and managing interests**

The Commission has long established procedures on declaring, recording and handling conflicts of interest, which are regularly reviewed and refined.

## **Commencement of appointment**

On appointment, 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.

## **Commissioner appointment to determinations and public hearings**

When the Chair considers which Commissioners to appoint to each function, the Chair must also consider each Commissioner's skills and background in relation to the matter, and balance this against the Commissioner's personal interests. However, 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 confirm any personal interests which may lead to conflicts of interest upon nomination to exercise any of the Commission's functions. When a conflict of interest arises, 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 appoint another Commissioner. If the conflict is potential or perceived, the Chair will decide, based on the advice of the OIPC, whether to appoint the Commissioner.

## **Staff declarations**

Staff are required to declare personal interests annually and when they are allocated a role directly supporting a Panel with advice 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 the Executive Director 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 the same 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 and Conflict of Interest Register Forms
- any other declarations of interest, or conflicts of interest, made by Commissioners or staff

- all directions to manage a conflict of interest
- all assessments of conflicts of interest and decisions made to resolve the conflict of interest – including the decision of ‘no conflict’.

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

### **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 Office 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.

### **Complaints about conflicts of interest**

Complaints can be made in accordance with the Commission’s Ethical Conduct Policy.

### **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.



### **For more information**

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# APPENDIX 1

## **ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979** **Clause 27, Schedule 2**

### **Disclosure of Pecuniary Interests**

(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 TIMEFRAME
<b>Shareholdings</b> 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
<b>Ownership Role in a Private Company</b> 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	2 years
<b>Employee of the Applicant/Proponent</b>	Position currently held	Total exclusion
	Position previously held	2 years
<b>Board Membership</b> 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	2 years
<b>Elected Position</b> 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	2 years
	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	2 years
<b>Government Position</b> 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	2 years
	Worked directly on the matter, but not as a decision-maker	2 years
	Worked on a matter owned by the same applicant/company, or involving the same consultancy/site	No exclusion

<b>CONFLICT</b>	<b>CONFLICT NATURE</b>	<b>EXCLUSION TIMEFRAME</b>
<b>Other Planning Panel Membership</b> 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	2 years
	Currently holds or previously held position, and has worked on other matters involving the same applicant/proponent or site	2 years
<b>Other Government Appointed Boards and Committees</b> 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	2 years
<b>Non-Government Appointed Boards and Committees</b> Including mine consultative committees	Membership currently held	Total exclusion
	Membership previously held	2 years
<b>Consultancy Work</b> 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)	2 years
	Worked at consultancy during matter period, but had no direct or indirect involvement	2 years
	Worked on another matter owned by the same applicant/proponent	2 years
	Worked on another matter involving the same site	2 years
<b>Special Interest Group Involvement</b> 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	2 years
<b>Legal Involvement</b> 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	2 years
	Worked on a matter involving the same consultancy	No exclusion
<b>Decision on a Matter Submitted by the Same Group or Company</b> 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
<b>Training and Development Activity</b> <b>Information Gathering</b> 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

<b>CONFLICT</b>	<b>CONFLICT NATURE</b>	<b>EXCLUSION TIMEFRAME</b>
<b>Family Interests</b> 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	2 years
	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
<b>Family Trustee Interests</b>	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
<b>Other Personal Interests</b> 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