

A Guide to Managing Conflict of Interest

Introduction

The NSW Planning Assessment Commission was established to bring both expertise and independence to the decision-making process of the NSW planning system. The Commission plays a significant part in building and maintaining confidence in the NSW planning system through providing transparency and certainty, and delivering sound, consistent and robust planning decisions.

The Commission's members are highly experienced professionals who bring significant knowledge and expertise to the planning and development matters that come before the Commission. They have worked on a wide range of planning, development and infrastructure related matters throughout their careers in the private and public sector, and are selected as members on the basis of their expertise. Their role requires a high level of ethical behaviour and personal and professional integrity.

Because the Commission works on some of the most sensitive and controversial planning matters and development project applications in NSW, its work is subject to a high level of community interest and there is intense public scrutiny of its processes. This means that the community is increasingly raising perceived or potential conflict of interest matters.

The Commission takes conflict of interest matters very seriously. However, it does not want to see a situation arise where the Commission members that have the most relevant expertise in an area are unnecessarily excluded from working on matters within that area.

A Guide to Managing Conflict of Interest (the Policy Guide) has been prepared to assist the Chair of the Commission manage conflict of interest.

Purpose of the Policy Guide

The Policy Guide provides a working arrangement that enables the Commission to provide the highest level of relevant expertise on all of its matters, while ensuring that its decisions are made in an independent manner that maintains community trust.

Accordingly, the Policy Guide:

- provides an outline of the role of the Commission;
- defines and explains different types of interests and conflicts; and
- provides a framework for how the Commission deals with any conflict of interest.

The Policy Guide is reviewed annually and updated to incorporate new and emerging issues as appropriate.

The Policy Guide relates to the Commissions' *Conflict of Interest* policy and *Code of Conduct* and provides a practical interpretation of how these procedures are applied by the Commission. The policy guide should be read alongside the other relevant policy documents (see Section 4).

Role of the Commission

The Commission is an independent statutory body established under the *Environmental Planning and Assessment Act 1979* (EP&A Act). The Commission provides an additional level of expert scrutiny and advice on some of the State's key planning and development matters.

The key functions of the Commission provided for in the EP&A Act are:

- to determine State-significant development and infrastructure applications and transitional Part 3A applications where Ministerial delegation applies;
- to carry out a review of any aspect of a State-significant development, including the holding of public hearings, as requested by the Minister or Secretary;
- to provide independent expert advice on a range of planning and development matters when requested; and
- where appropriate, to hold public meetings to hear submissions from affected stakeholders and the public.

Matters are referred to the Commission for a variety of reasons, including where:

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

The EP&A Act requires that Commission members are appointed by the Minister for Planning and Environment, and are selected from a specific range of disciplines including planning, architecture, heritage, the environment, urban design, land economics, traffic and transport, law, engineering, tourism, or government and public administration.

Paradoxically, Commission members' knowledge or background in these areas can lead to a perception by some that members may be conflicted in carrying out their duties.

Importantly, and unlike judicial decision-makers who must take account only of the admissible evidence as presented, Commission members who are non-judicial decision-makers may take into account wider considerations from other sources. Indeed, in technical and non-judicial decision-making, expertise can be a hallmark of sound decision-making.

Conflict of interest

As defined in the Commission's *Conflict of Interest* policy, a conflict of interest is any situation where it could reasonably be concluded that a Commission member's capacity to make a decision or give impartial advice on a matter is influenced or undermined by the fact that they hold or have had other interests that might affect their decision or advice, thereby compromising their impartiality and independence. Refer to Commission's *Conflict of Interest* policy for further information.

Types of conflict

Three types of conflict of interest may arise:

1. An **actual** conflict of interest—where there is a direct conflict between the private interests of a Commission member and the performance of their official duties and responsibilities.
2. A **perceived** conflict of interest—where it might appear to others that a Commission member’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.
3. A **potential** conflict of interest—where a Commission member has private interests that could interfere with the performance of their official duties and responsibilities in the future.

Types of private interest

There are two types of private interest:

1. **Pecuniary interests** involve actual or potential financial gain or loss, or other material benefits or losses. Such interests 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. The conflict arises where such pecuniary interests potentially or actually affect decisions or advice on matters referred to the Commission.
2. **Non-pecuniary interests** do not have a financial or material 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.

Internal policies on conflict of interest

The Commission has a *Conflict of Interest* policy and *Code of Conduct* that applies to all Commission members. The *Code of Conduct* outlines the standards of conduct expected of Commission members and contains a section on conflict of interest. Both the Policy and the Code are publicly available on the Commission’s website.

The key aspects of the existing policy, include:

- Commission members must declare their personal interests when appointed;
- Commission members must resubmit this information on an annual basis or as their situation changes;
- a Register of Commission members’ declarations is kept at the Commission’s office and is available for public inspection during normal business hours; and
- the Chair of the Commission must consider any conflicts of interest when appointing Commission members to a determination or review.

The Chair is required to:

- appoint a different member if there is an actual conflict of interest; or
- decide whether a member is appointed if there is a potential or perceived conflict of interest.

The process of appointment of Commission members to particular panels is clear in relation to actual conflict of interest. However, the process involves an element of discretion on the part of the Chair in relation to potential or perceived conflict of interest because it does not, and possibly cannot, provide certainty about the criteria for not appointing certain Commission members in all such circumstances.

The Commission takes all reasonable steps to identify any known conflict of interest before the appointment of members to a determination or review. However, there is always a possibility of conflicts arising that have not been previously identified. If a conflict of interest is identified after a Commission member has been appointed, the Commission will disclose the conflict and promptly take appropriate action to manage the conflict, which may include removing the Commission member from the determination or review.

Proposed framework

In practice, the uncertainty around potential or perceived conflicts can lead to non-appointment of Commission members even where the conflict may only be minor or remote. Unfortunately, this is more common in circumstances where a Commission member has the most relevant knowledge, background and expertise in the area.

The Policy Guide aims to provide a broad collection of possible conflict of interest scenarios that a Commission member may face and outline the consequence of those conflicts. The matrix in Table 1 contains three columns covering:

- the general area of conflict;
- the nature or further description of the conflict; and
- the timeframe or other criteria for exclusion.

The matrix (**Table 1**) cannot be an exhaustive list of all possible conflict of interest. It can only provide a basis for determining whether a perceived or potential conflict of interest will lead to non-appointment of a Commission member. The final decision of the Chair will always be dependent on the circumstances of each proposal.

It is also most important to understand that the Chair and Commission members are bound by statutory provisions and common law. In practice, they may take the *Conflict of Interest* policy, the *Code of Conduct*, the Policy Guide including the matrix exclusion times and reasons into account, but are not bound to do so. They will in all cases and at all times endeavour to take a flexible and unfettered approach to each matter before the Commission on its own merits and subject to the law.

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 maybe updated if actual, potential or perceived conflicts arise during the determination or review process.

For further information on responsibilities of Commission members, reporting requirements and an example of a Member's Declaration of Interest, please refer to the *Conflict of Interest* policy.

Table 1: MATRIX OF POSSIBLE CONFLICTS OF INTEREST

CONFLICT	NATURE OF CONFLICT	EXCLUSION TIMEFRAME
Shareholdings , including shares held by partner/spouse/family trust of Commission member, or equivalent interests (excluding blind trusts and licensed investment type arrangements where the Commission member has no control over investment arrangements)	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 , including partial or joint ownership, or partnership, or any ownership role held by partner/spouse/family trust of Commission 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
Employee of the applicant/proponent	Position currently held	Total exclusion
	Position previously held	2 years
Board membership , including position held by partner/spouse of Commission 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
Property ownership (either as a home or an investment), including property owned by partner/spouse of Commission member	Currently owns property in the same suburb as the matter	Total exclusion
	Previously owned property in the same suburb as the matter	No exclusion
Elected position at local, state or federal level, including Member of Parliament, Mayor or Councillor	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



CONFLICT	NATURE OF CONFLICT	EXCLUSION TIMEFRAME
Government position including 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 or the same site	2 years
	Worked directly on the matter, but no decision-making role	2 years
	Worked on a matter owned by the same applicant/company, or involving the same consultancy or the same site	No exclusion
Other planning panel membership , for example a Joint Regional Planning Panel or an Independent Hearing and Assessment Panel	Currently holds position and worked on the matter	Total exclusion
	Previously held panel position and worked on the matter	2 years
	Currently holds, or previously held, position and worked on other matters involving the same applicant/proponent or the same site	2 years
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	2 years
Non-government appointed boards and committees , such as a mine consultative committee	Membership currently held	Total exclusion
	Membership previously held	2 years
Consultancy work , including full-time or part-time employment at the consultancy, or casual or contract work	Worked directly on the matter	Total exclusion
	Worked indirectly on the matter (e.g. provided only technical advice on certain aspects)	2 years
	Worked at consultancy during period of the matter, but 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
Special interest group involvement, including membership of environmental or industry advocacy groups, or 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

CONFLICT	NATURE OF CONFLICT	EXCLUSION TIMEFRAME
Legal involvement , including work as 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
Member took a decision on a matter submitted by the same company or group while on the Commission	Decision taken on a different project	No exclusion
	Work on/decision taken on the same project	No exclusion
Training and development activity visit or information gathering for Commission provided by company or 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 , including immediate family (i.e. partner/spouse, mother, father, sibling or child/trusts) and non-immediate family	Immediate family member currently works for, or holds Board membership or ownership role in, applicant/ proponent	Total exclusion
	Immediate family member previously worked for, or held Board membership or ownership role in, applicant/ proponent	2 years
	Immediate family member has other interests in the matter (e.g. previously employed by, or undertook 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 or superannuation or other activity with an interest involving the applicant/ proponent (eg shares)	Total exclusion
Other personal interests , including close friend or colleague (i.e. person that Commission member has regular and ongoing communications with) and other acquaintances	Close friend or colleague currently works for, or holds Board membership or 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