

CODE OF CONDUCT

NSW Planning Assessment Commission

October 2017



Planning
Assessment
Commission

1 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 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.

2 Purpose of the Code

The Code of Conduct (Code) was first introduced in 2008 and has regularly been reviewed and updated. The Code applies to all members of the Commission including casual members and outlines standards of conduct expected of Commission members. It is the personal responsibility of each member to comply with the Code. The Code sets out the minimum requirements of behaviour of Commission members in carrying out their functions and has been developed to assist Commission members to:

- understand the standards of conduct that are expected of them;
- act honestly, ethically and responsibly;
- exercise a reasonable degree of care and diligence; and
- act in a way that enhances public confidence in the integrity of role of the Commission in the planning system.

The Code will continue to be reviewed regularly and amended to reflect the Commission's operations and experience.

3 Key principles of conduct for Commission members

Commission members need to adhere to the following key principles when carrying out their functions:

3.1 Honesty, integrity and public interest

Commission members have a duty to act honestly and in good faith for a proper purpose. They should act in the public interest, rather than in their private interest.

Commission members must not place themselves under any financial or other obligation to any individual or organisation that might reasonably be thought to influence them in the exercise of their functions.

Commission members must not make a decision or take action that is motivated by obtaining:

- a. a financial benefit (including avoiding a financial loss); or
- b. other benefits for the member, their family, friends or business interests.

3.2 Leadership

Commission members have a duty to promote and support the key principles of the Code by demonstrating leadership and maintaining and strengthening the public's trust and confidence in the Commission and its role in the planning system.

3.3 Responsibility and impartiality

Commission members should carry out their functions in an impartial manner and make decisions based on merit.

Commission members should understand their role and statutory obligations and act in accordance with those obligations.

3.4 Accountability and openness

Commission members are accountable to the public for their decisions and actions. Members should perform their functions with transparency and fairness and consider issues on their merits, taking into account the views of others.

Commission members must ensure the efficient and responsible expenditure of public funds in accordance with government legislation, policy and guidelines (see NSW Treasury website www.treasury.nsw.gov.au).

3.5 Respect for others

Commission members are to treat members of the public and colleagues with respect at all times. People are to be treated fairly and consistently and in a non-discriminatory manner.

3.6 Responsive service

Commission members should understand their role and the role of the Minister for Planning and the Department of Planning and Environment in relation to the Commission.

Commission members are to provide a relevant and responsive service providing all necessary and appropriate assistance.

3.7 Economy and efficiency

Commission members should look for ways to improve organisational performance and achieve high standards of public administration. They should use their authority and available resources and information only for the work-related purpose intended.

4 Personal and professional behaviour

4.1 General conduct

In carrying out their functions, Commission members must not conduct themselves in a manner that is likely to bring the Commission into disrepute. Specifically, they must not act in a way that:

- a. contravenes the *Environmental Planning and Assessment Act 1979* (EP&A Act);
- b. is improper or unethical;
- c. is an abuse of power;
- d. causes, comprises or involves intimidation, harassment or verbal abuse; or
- e. causes, comprises or involves discrimination, disadvantage or adverse treatment.

Commission members must act lawfully, honestly and exercise a reasonable degree of care and diligence in carrying out their functions, having regard to the statutory obligations under the EP&A Act.

4.2 Fairness and equity

Commission members must perform their duties consistently, promptly, conscientiously and fairly.

Commission members must take into consideration all relevant facts known to them (or that should reasonably be known to them) when performing their duties. They should have regard to the particular merits of each case and not take irrelevant matters or circumstances into consideration when making decisions.

4.3 Decision making and taking actions

Commission members must ensure that decisions and actions are reasonable, fair and appropriate having regard to the relevant facts. They must deal with parties involved in the expert review/advice or public hearing process in a fair and impartial manner.

Commission members must not take any action or make any statement or communication with others (such as proponents/applicants, submitters and the public) which conveys any suggestion of willingness to provide improper concessions or preferential treatment.

5 Conflicts of interest

5.1 General

A conflict of interest exists when it is likely that a Commission 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 (see further detail below).

To uphold the probity of Commission decision making, Commission members should avoid conflicts of interest. 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 Commission Chair.

5.2 Identifying pecuniary interests

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.

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 that person might make.

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

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

5.3 Disclosure of pecuniary interests

Commission members must comply with the disclosure requirements set out in Clause 11 of Schedule 3 of the EP&A Act (attached at Appendix A).

5.4 Disclosure of corporate or business interests

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

5.5 Disclosure of non-pecuniary interests

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.

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

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.

5.6 Register of declarations of interest

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

5.7 Other business or employment

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

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

6 Personal benefit

6.1 Gifts and benefits

Commission members must not accept a gift or benefit that is intended to, or is likely to, cause them to act in a partial manner in the course of their duties.

Commission members must not:

- a. seek or accept a bribe or other improper inducement;
- b. seek gifts or benefits of any kind;
- c. accept any gift or benefit that may create a sense of obligation on their part or which might be, or appear to be, intended to influence them in carrying out your public duty;
- d. accept any gift or benefit of more than token value; or
- e. accept an offer of money, regardless of the amount.

Generally speaking, token gifts and benefits include:

- a. free or subsidised meals, beverages or refreshments provided in conjunction with:
 - i. the discussion of matters before the Commission;
 - ii. conferences; or
 - iii. social functions organised by groups;
- b. invitations to and attendance at local social, cultural and sporting events;
- c. gifts of single bottles or reasonably priced alcohol at end of year functions and public occasions; or
- d. ties, scarves, coasters, tie pins, diaries, chocolates or flowers.

Gifts and benefits that have more than a token value include, but are not limited to, tickets to major sporting events, corporate hospitality at a corporate facility at major sporting events, discounted products for personal use, the frequent use of facilities such as gyms, use of holiday homes, free or discounted travel.

As a general rule, any gift from an applicant, objector or associate of a proponent in relation to a matter to be determined by a Commission would fall into a category referred to above and therefore should not be accepted.

6.2 Register of gifts

The Commission is to maintain a Register of Gifts to ensure the receipt and disposal of gifts is conducted in an open and transparent manner. When offered a gift or benefit, Commission members must inform the Commission Secretariat of the following information for the purposes of making a recording on the Register of Gifts:

- a. the person who made the offer and the date on which the offer was made;
- b. whether or not you accepted the gift/benefit;
- c. whether the gift or benefit was allocated to another person or body; and
- d. the value of the gift or benefit.

7 Protecting and using information

Commission members must comply with Section 148 of the EP&A Act which governs the use and disclosure of information obtained in their duties.

In addition to the obligations under Section 148 of the EP&A Act, Commission members must:

- a. protect confidential information;
- b. only release confidential information if you have authority to do so;
- c. only use confidential information for the purpose it is intended to be used;
- d. not use confidential information gained through their position as a Commission member for the purpose of securing a private benefit for themselves or for any other person;
- e. not use confidential information with the intention to cause harm or detriment to the Commission or any other person or body; and
- f. not disclose any information discussed during a confidential session of the Commission.

When dealing with personal information, Commission members must comply with the *Privacy and Personal Information Protection Act 1998*.

8 Use of public resources

Commission members may be provided with equipment and other resources to perform Commission functions. All such resources are to be used only for Commission purposes and in accordance with any guidelines or rules about the use of those resources.

9 Public comment and media

The Commission Chair is responsible for speaking to the media on behalf of the Commission. The Chair can authorise another Commission member or Director of the Secretariat to speak to the media on behalf of the Commission at any time. The Chair of each Commission Panel for a review/public hearing has the authority to speak to the media about that particular matter.

10 Reporting suspect corrupt conduct

Commission members are subject to the *Independent Commission Against Corruption Act 1988* and the *Ombudsman Act 1974*.

Commission members are urged to report suspected corrupt conduct, as well as maladministration and serious and substantial waste of public resources.

The *Protected Disclosures Act 1994* provides protection to public officials who voluntarily report suspected corrupt conduct. Commission members can make reports concerning suspected corrupt conduct to the Commission Chair. The Commission Chair is under a duty to report to the Independent Commission Against Corruption (ICAC) any matter that she/he suspects, on reasonable grounds, may concern corrupt conduct.

Commission members can also report directly to the following investigative bodies:

- a. the NSW Ombudsman for any maladministration concerns;
- b. the NSW Auditor General for concerns regarding serious and substantial waste of public money.

11 Lobbying

All Commission members must comply with the [Premier's memorandum M2014-13 – NSW Government Lobbyist Code of Conduct](#) published on the Department of Premier and Cabinet's website, as amended from time to time.

12 Removal from office

The Minister may remove Commission members from office at any time and without notice.

The Minister may remove any member if ICAC recommends that consideration be given to the removal of the member because of corrupt conduct by the Member.

13 Complaint management

Complaints against Commission members are to be handled in accordance with the Commission's [Complaints Management Policy](#).

14 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

APPENDIX 1

Environmental Planning and Assessment Act 1979

Clause 11, Schedule 3 - 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 Commission, 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 Commission.

- (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 Commission 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 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.
- (6) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the Commission otherwise determines:
- (a) be present during any deliberation of the Commission with respect to the matter, or
 - (b) take part in any decision of the Commission with respect to the matter.
- (7) For the purposes of the making of a determination by the Commission 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 Commission for the purpose of making the determination, or
 - (b) take part in the making by the Commission of the determination.
- (8) A contravention of this clause does not invalidate any decision of the Commission.