



INDEPENDENT PLANNING COMMISSION NSW

CODE OF CONDUCT

1. 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 Commission plays an important role in strengthening 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 expert 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:

- More than 25 public objections
- Reportable political donations
- Objections by the relevant local council

2. THE PURPOSE OF OUR CODE

Our *Code of Conduct* (Code) has been appraised and updated regularly since 2008. The *Code* applies to all Commission members, including casual members. It outlines the standards of conduct expected of members, and sets out minimum behaviour requirements for members to carry out their functions.

As *Code* compliance is the personal responsibility of each member, the *Code* assists with:

- Understanding expected standards of conduct
- Honest, ethical and responsible behaviour
- Exercising reasonable degrees of care and diligence
- Enhancing public confidence in the Commission's integrity, through appropriate behaviour

The *Code* continues to be reviewed and amended regularly, to reflect our ongoing operations and experience.

3. KEY COMMISSION MEMBER CONDUCT PRINCIPLES

Commission members must adhere to the following key principles when carrying out their duties:

3.1 Honesty, Integrity and Public Interest

Commission members are bound to act honest and in good faith, for a proper purpose. They should always act in the public interest, and not the private.

Members must not place themselves under financial or obligatory contract to any person or organisation that could reasonably influence them in their professional duty.

Members must not make decisions or actions motivated by:

- Financial benefit
Including avoiding financial loss
- Personal benefit
- Familial benefit
- Acquaintance benefit
- Business benefit

3.2 Leadership

Commission members must promote and support the *Code* by demonstrating leadership, and maintaining the public's trust and confidence in our Commission and its planning system role.

3.3 Responsibility and Impartiality

Commission members should be impartial in their duties, and make decisions based on merit. They should also understand their role and statutory obligations, and act accordingly.

3.4 Accountability and Openness

Commission members are publicly accountable for decisions and actions. Members should perform functions with transparency, fairness, and consideration of issue merit – taking other points of view into account.

Members must also ensure the efficient, responsible expenditure of public funds in accordance with government legislation, policies and guidelines. See NSW Treasury for more details: www.treasury.nsw.gov.au.

3.5 Respect for Others

Commission members must treat colleagues and the public with respect at all times. People are to be addressed fairly, consistently and without discrimination.

3.6 Responsive Service

Commission members should understand their role, the Minister for Planning's role, and the role of the Department of Planning and Environment in relation to our Commission. Members should provide relevant, responsive service and offer all necessary, appropriate assistance.

3.7 Economy and Efficiency

Commission members should seek ways to improve the organisation's performance, and achieve high public administration standards. Members should use authority, available resources and information only for intended, work-related purposes.

4. OUR PERSONAL AND PROFESSIONAL BEHAVIOUR

4.1 General Conduct

When carrying out duties, members must not behave in a manner likely to bring our Commission into disrepute. Specifically, they cannot act in a way that:

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

Members must be lawful, honest and display a reasonable degree of care and diligence when performing functions, with regard to *EP&A Act* statutory obligations.

4.2 Fairness and Equity

Commission members must complete duties consistently, promptly, conscientiously and fairly. Members must take all relevant facts into consideration, especially those known or reasonably known to them. They should display regard to the particular merits of each case, and not include irrelevant matters or circumstances in the decision-making process.

4.3 Decision-Making and Taking Action

Commission members must ensure all decisions are fair, appropriate and reasonable with regard to relevant facts. They should interact with involved parties in the expert review, advice or public hearing process in a just, impartial manner.

Members must not take any action, statement or communication (with proponents, applicants, submitters, or the public) that conveys any suggestion of willingness to provide improper or preferential concessions and treatment.

5. CONFLICTS OF INTEREST

5.1 General

A conflict of interest exists when a Commission member is likely to be influenced – or perceived to be influenced – by a private interest. Private interests can be pecuniary and non-pecuniary (more details below).

To uphold Commission decision-making standards, members should avoid conflicts of interest. If an actual or potential conflict does arise, the member is responsible for identifying and disclosing the issue as soon as possible.

When identifying whether a conflict exists, members should consider how others would view their situation. If a member is still unsure, they should speak with the Commission Chair.

5.2 Identifying Pecuniary Interests

A pecuniary interest describes a personal interest linked to the likelihood or expectation of significant financial gain or loss. A member does not have a pecuniary interest if the matter is so remote or insignificant it could not possibly influence their decision-making.

A member does have a pecuniary interest, if in the interest of:

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

5.3 Disclosure of Pecuniary Interests

Commission members must comply with the disclosure requirements established in Clause 27, Schedule 2 of the *EP&A Act* (attached at Appendix A).

5.4 Disclosure of Corporate or Business Interests

Commission members must declare interests in corporations, partnerships or other businesses that may be relevant to our activities. 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 that does not relate to money. For example, an interest based on a personal relationship, association membership, or society or trade union involvement.

Commission members should consider potential non-pecuniary interests that may develop while carrying out duties. Where possible, the source of probable conflict should be removed. When this is impossible, and a member has a non-pecuniary interest that appears to raise conflict with proper duty performance, the member must follow the Clause 11, Schedule 3 *EP&A Act* procedures, in the same way as a pecuniary interest.

5.6 Register of Declarations Interest

The Commission Secretariat will record all disclosures of interest made by members in a register. This register is available for inspection at the Commission Secretariat during office hours.

5.7 Other Business or Employment

Commission members must ensure outside employment and business will not:

- a. Conflict with their functions as a Commission member
- b. Use confidential information or resources obtained as a Commission member
- c. Discredit or disadvantage the Commission

6. PERSONAL BENEFITS

6.1 Gifts and Benefits

Commission members must not accept gifts or benefits intended to sway partiality in the course of their duties. Members cannot:

- a. Seek or accept bribes or improper incentives
- b. Seek gifts or benefits of any kind
- c. Accept gifts or benefits that create a sense of obligation
Which might be intended to influence the member's public duty
- d. Accept any gift or benefit of more than token value
- e. Accept money, regardless of the amount

Generally, token gifts and benefits include:

- a. Free or subsidised meals, beverages or refreshments in conjunction with:
 - i. Discussion of matters before the Commission
 - ii. Conferences
 - iii. Social functions organised by groups
- b. Invitations 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
- d. Ties, scarves, coasters, tie pins, diaries, chocolates or flowers

Gifts and benefits that exceed token value, but are not limited to, include:

- a. Tickets to major sporting events
- b. Corporate hospitality at a corporate facility, at major sporting events
- c. Discounted products for personal use
- d. Frequent use of facilities like gyms
- e. Use of holiday homes
- f. Free or discounted travel

As a general rule, any gift from an applicant, objector or associate of a proponent in relation to a matter still to be determined by the Commission falls into one of the above categories, and should not be accepted.

6.2 Register of Gifts

The Commission maintains a register of gifts to ensure the receipt and disposal of gifts is open and transparent. When offered a gift or benefit, members must inform the Commission Secretariat of the following information, so a record can be made:

- a. The person who made the offer and the date the offer was made
- b. Whether the gift or benefit was accepted
- c. Whether the gift or benefit was allocated to another person or body
- d. The value of the gift or benefit

7. HOW WE PROTECT AND USE INFORMATION

Commission members must comply with Section 148 of the *EP&A Act*, governing the use and disclosure of information obtained in duties.

In addition to these obligations, members must:

- a. Protect confidential information
- b. Only release confidential information if authorised
- c. Only use confidential information for the purpose intended
- d. Not use confidential information for the purpose of securing a private benefit
- e. Not use confidential information with the intention to cause harm or detriment to any person, body or the Commission
- f. Not disclose information discussed during a confidential Commission session

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 resources to perform required functions. These resources are to be used for Commission purposes only, along with guidelines and rules on appropriate resource use.

9. PUBLIC COMMENT AND THE MEDIA

The Commission Chair speaks to the media on our behalf. The Chair can authorise another Commission member, Director, or Secretariat to speak to the media in their place, at any time. The Chair of each review and public hearing Commission panel also has the authority to speak to the media, though only on that particular matter.

10. REPORTING SUSPECTED CORRUPT CONDUCT

Commission members are subject to the *Independent Commission Against Corruption Act* (1988) and the *Ombudsman Act* (1974). To uphold our high standards of integrity, members are urged to report suspected corrupt conduct, maladministration, and serious, substantial waste of public resources.

The *Protected Disclosures Act* (1994) protects public officials who voluntarily report suspected corrupt conduct. Commission members can make suspected corrupt conduct reports to the Commission Chair. The Commission Chair is under duty to report to the Independent Commission Against Corruption (ICAC) on any matters he/she reasonably suspects 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 serious, substantial waste of public money concerns

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.

www.arp.nsw.gov.au/m2014-13-nsw-lobbyists-code-conduct

12. REMOVAL FROM OFFICE

The Minister may remove Commission members from office at any time, without notice. Members may be removed if the ICAC recommends consideration of member removal, due to corrupt conduct.

13. HANDLING COMPLAINTS

Complaints against Commission members must be handled in accordance with our *Complaints Management Policy*.

www.pac.nsw.gov.au/resources/pac/media/files/pac/general/pac-complaints-management-policy_sep-17.pdf?la=en

14. GENERAL ENQUIRIES AND SUGGESTIONS

We're interested in what you have to say. If you'd like to provide constructive feedback on our procedures, request information related to our functions, or seek more information about our operations and procedural matters, please contact the Commission Secretariat.

Contact:

Commission Secretariat
Phone (02) 9383 2100 | Fax (02) 9383 2133
Email: ipcn@ipcn.nsw.gov.au

Independent Planning Commission NSW

Level 3, 201 Elizabeth Street
Sydney, NSW 2000

Last updated: 1 March 2018
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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.