Independent Planning Commission NSW GOVERNMENT

INDEPENDENT PLANNING COMMISSION NSW

CONFLICT 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 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

THE PURPOSE OF OUR CONFLICT OF INTEREST POLICY

Our *Conflict of Interest Policy* (Policy) articulates and records how we identify personal member interests and resolve conflicts of interest.

Commission members are public officials appointed by the Minister for Planning, under the *Environmental Planning and Assessment Act* (EP&A Act, 1979). Members are chosen for their knowledge and background in one or more of the *EP&A Act* listed areas.

Our *Policy*:

- Outlines the Commission's role and functions
- Defines and explains different types of conflicts and interest
- Provides a framework to ensure conflicts of interest are managed transparently, timely and consistently

This *Policy* is reviewed and updated annually, to include new and emerging issues where appropriate. The *Policy* should be read alongside our *Code of Conduct* (Code) and *Managing Conflicts of Interest* (Policy Guide). The *Policy Guide* practically interprets how we manage conflicts of interest, on a case-by-case basis.

WHAT'S A 'CONFLICT OF INTEREST'?

Everyone has interests personal to them or someone close to them. Sometimes these interests clash with decisions they make or take at work. Conflict of interest isn't wrong in itself and is often unavoidable. To reduce the risk of potential corruption and misconduct, members must ensure they identify, disclose and actively manage any conflicts of interest quickly and effectively.

A conflict of interest involves conflict between a member's private interests and their performance of public duties. Conflicts of interest should be disclosed and managed in situations where members are expected to contribute to discussions and decisions on the matter.

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 our role in highly sensitive planning and development matters, we have a set of definitions specific to Commission member work. The pecuniary interests definition is contained in Clause 27, Schedule 2 of the *EP&A Act*. Relevant definitions are listed below.

TYPES OF CONFLICT OF INTEREST

Actual Conflict

This is a direct conflict between the private interests of a member, and the performance of official duties and responsibilities.

For example: a member holds shares in a coal mining company.

Perceived Conflict

It appears a member's private interest could 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 member has a relationship with a former business associate, employed by the applicant or with substantial shareholdings in the applicant's company.

Potential Conflict

A member has private interests that could interfere with the performance of official duties and future responsibilities.

For example: the member's firm has represented environmental lobby groups unknown to the member, and may again.

TYPES OF PRIVATE INTEREST

Pecuniary Interests

Involve actual or potential financial gain or loss, and other material benefits or losses. Conflict arises when pecuniary interests affect decisions or advice on Commission matters. Interests may result from: owning property, controlling shares, accepting gifts, or other sources of income.

Non-Pecuniary Interests

Do not have a financial or material aspect. They may rise from personal or familial relationships, or involvement in social, cultural or sporting activities, and include tendency towards favour from friendship, animosity or other personal involvement.

Direct Interest

This describes a person's personal interest.

Indirect Interest

A public official does not personally have an interest, but an immediate family member or close associate does, and the member is aware. Immediate family members include a spouse, de facto partner or dependent child.

REPORTING REQUIREMENTS

Assessment of conflicts of interest and decisions made – including the decision of 'no conflict' – must be documented, retained and recorded in the conflict of interest register. This register includes:

- Declaration of the conflict of interest
- Directions to manage the conflict of interest
- Decisions made to resolve the conflict of interest

Our Director maintains the conflict of interest register. All new records should be provided to the Director immediately, for register inclusion.

Commission members are required to confirm any conflicts of interest upon nomination to a determination or hearing panel. A conflict of interest register form is completed for every project and posted to the project web page. The form may be updated if actual, potential, or perceived conflicts surface during the process.

HOW WE IDENTIFY AND RESOLVE CONFLICTS OF INTEREST

IPCN has long established procedures on declaring, recording and handling conflicts of interest. These have been refined in the *Policy* development.

Commencement of Appointment

When a new member is appointed, they must submit a full curriculum vitae and a Member's Declaration of Interest Form. In this, they declare personal interests (Appendix 1) 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

Members must resubmit this information on an annual basis. If changes occur throughout the year, they must tell the Secretariat within twenty working days. If the member becomes involved in an extended business negotiation, the Chair should be notified of the opportunity as soon as possible. Within twenty days of this date, the Secretariat should be informed, and the member's personal interest statement should be updated accordingly.

Public Access to Information

Clause 27(5) of Schedule 2 of the *EP&A Act* says:

> *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.*

This is addressed in our Code of Conduct, which states the register of declarations of interest is available for inspection during office hours at the Commission Secretariat.

Member Appointment to Determinations and Public Hearings

When the Chair considers which members to appoint to each function, they must also consider each member's skills and background in relation to the matter, and balance this against the member's personal interests. The full curriculum vitae submitted by each member is used as an initial screening tool. However, it is the responsibility of each member to alert the Chair and Director of conflicts of interest.

If an actual conflict exists, the Chair will appoint another member. If the conflict is potential or perceived, the Chair will decide whether to appoint the member. Questions and answers are documented in accordance with the *State Records Act* (1998).

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
Due for review: 1 March 2019

APPENDIX 1

MEMBER'S PERSONAL INTERESTS

I, _____ give the following undertaking:
(Member's Name)

1. There is no matter I am aware of concerning my interests*, or any activity in which I am or have been engaged, that may call the probity of the Independent Planning Commission NSW into question, or give rise to any conflict with my responsibilities as a Commission member.
2. I am aware I must fulfil my responsibilities as a Commission member in accordance with the Conduct Guidelines for members of NSW government Boards and Committees, including in relation to the confidentiality requirements set out in those guidelines, as well as any applicable Code of Conduct.
3. My declaration of personal interests is attached in Annex A.
4. I will formally advise the Commission Secretariat of any significant change in circumstances that affects the accuracy of this undertaking and the attached declaration.

Name:

Signature:

Date:

A member's interests include the interests of the member, immediate family (where interests are known), and business partners or associates.

Note: Notwithstanding the interests disclosed in this form, members are required to comply with Clause 27, Schedule 2 of the *Environmental Planning and Assessment Act* (1979) and the Independent Planning Commission NSW *Code of Conduct* at all times, and disclose interests as soon as possible after the relevant facts have come to the member's knowledge.

ANNEX A

MEMBER'S DECLARATION OF INTERESTS

Please list all private financial and business interests, as well as any other interests or relationships that could influence – or seem to influence – decisions or advice given by you, covering the following areas:

1. Sources of income, shareholdings, trusts or nominee companies, superannuation, other significant sources of income, and significant liabilities:

2. Property holdings:

3. Memberships of Boards and Committees:

4. Interests and positions in corporations:

5. Interests and positions in trade unions and professional or business associations:

6. Voluntary organisations, membership or association with:

7. Immediate family or business relationships that would – or could be perceived to – have an impact on my duties and responsibilities as a member:

Name:

Signature:

Date: