



INDEPENDENT PLANNING COMMISSION NSW

MANAGING CONFLICTS OF INTEREST

Our Commission was established to bring skill and independence to the decision-making process. We play a significant part in building and maintaining community confidence in the state's planning system, by demonstrating transparency and certainty while delivering consistently sound, robust decisions.

Our members are highly experienced professionals who bring their own significant knowledge to all planning and development matters before us. They've worked on a wide range of relevant matters throughout their careers in the public and private sectors, and have been carefully selected for this expertise. As members, they continue to meet the high ethical standards and professional integrity demanded of the position.

Because we work on some of the most sensitive, controversial planning matters and development applications in NSW, we're often the focus of intense community interest and scrutiny.

The Independent Planning Commission NSW takes conflicts of interest very seriously; however we do not ever want to unfairly exclude Commission members from working on areas within their specialty.

This *Managing Conflicts of Interest Policy Guide* will assist the Chair of our Commission in instances of conflict.

THE PURPOSE OF OUR POLICY

This *Policy Guide* outlines a working arrangement that enables us to provide the highest level of expertise on all Commission matters, while ensuring decisions are made independently and community trust is maintained. The *Guide* relates to our *Code of Conduct* and *Conflict of Interest Policy* (COI Policy) to provide a practical example of procedural applications. It should be read alongside other relevant documents.

This *Policy Guide*:

- Outlines the Commission's role
- Defines and explains different interests and conflicts
- Provides a framework for managing conflicts of interest

This *Guide* is reviewed each year, and updated to include new and emerging issues as needed.

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

WHAT'S A 'CONFLICT OF INTEREST'?

Sometimes, our members' knowledge and background can lead to the incorrect assumption that members are conflicted in carrying out their duties. Unlike judicial decision makers, non-judicial Commission members may take wider considerations from other sources into account. In technical decision-making, this expertise is often a sign of sound management.

As defined in our *COI Policy*, a conflict of interest means any situation where a member's decision-making capacity and/or impartiality has been undermined by other interests, thereby compromising their neutrality and independence.

Please refer to our *COI Policy* for more information.

Types of Conflict

1. **Actual** Conflict of Interest

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

2. **Perceived** Conflict of Interest

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.

3. **Potential** Conflict of Interest

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

Types of Private Interest

1. **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.

2. **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.

Internal Policies on Conflict of Interest

Our *COI Policy* and *Code of Conduct* apply to all Commission members. *The Code of Conduct* outlines expected standards of conduct, and contains a section on conflict of interest. You can find both the *Policy* and *Code* on our website.

Key aspects of the *COI Policy* include:

- Members must declare personal interests when appointed
- Members must resubmit information annually, or as their situation changes
- A register of declarations is kept at our office, and is available for public inspection during normal business hours
- The Chair of the Commission must consider any conflicts of interest when appointing members to a determination or hearing

The Chair is required to:

- Appoint a different member if an actual conflict of interest arises
- Decide whether a member is appointed, in the case of potential and perceived conflicts of interest

The Commission member appointment process is clear in relation to actual conflicts of interest. However, the process involves discretion from the Chair in instances of potential and perceived conflicts, as it does not and cannot provide certainty on the criteria for member appointment in these circumstances.

We take all reasonable steps to identify known conflicts of interest before member appointment – though there is always a possibility of previously unidentified conflicts arising. If a conflict of interest is identified after a member has been appointed, we will disclose the conflict and take prompt, appropriate action. This may include removing the member from the determination or hearing.

OUR FRAMEWORK

The uncertainty around potential and perceived conflicts can lead to non-appointment of members, even when the conflict is only minor. Unfortunately, this is more common in situations where a member has the most relevant knowledge, background and/or expertise in this area.

This *Policy Guide* aims to provide a broad range of conflicts of interest that members may face. The Table 1 matrix outlines the consequences of these conflicts, and contains three columns detailing:

- The general area of conflict
- The nature or description of conflict
- The timeframe or other exclusion criteria

The matrix cannot provide a full list of all possible conflicts of interest. It provides only a basis for deciding whether a perceived or potential conflict of interest will lead to non-appointment. The Chair's final decision is always dependent on proposal circumstances.

It's also important to understand that members and the Chair are bound by statutory provisions and common law. In practice, they may take the *COI Policy*, *Code of Conduct* and *Policy Guide* into account – but are not obliged to do so. In all cases, they will endeavour to apply a flexible approach to each matter, on its own merits and subject to the law.

Commission members must confirm whether they have a conflict of interest upon nomination to the panel. A conflict of interest register form is completed for every project, and posted to the project web page. If actual, potential, or perceived conflicts arise during the process, the form may be updated.

For more information on Commission member responsibilities, reporting requirements and an example of a Declaration of Interest, please see our *COI Policy*.

POSSIBLE CONFLICTS OF INTEREST

| CONFLICT | CONFLICT NATURE | EXCLUSION TIMEFRAME |
|---|---|---------------------|
| Shareholdings 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 |
| Ownership Role in a Private Company 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 |
| Employee of the Applicant/Proponent | Position currently held | Total exclusion |
| | Position previously held | 2 years |
| Board Membership 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 |
| Elected Position 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 |
| Government Position 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 |
| Other Planning Panel Membership 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 |

| CONFLICT | CONFLICT NATURE | EXCLUSION TIMEFRAME |
|---|---|---------------------|
| 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 Including mine consultative committees | Membership currently held | Total exclusion |
| | Membership previously held | 2 years |
| Consultancy Work 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 |
| Special Interest Group Involvement 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 |
| Legal Involvement 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 |
| Decision on a Matter Submitted by the Same Group or Company 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 |
| Training and Development Activity Information Gathering 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 |

| CONFLICT | CONFLICT NATURE | EXCLUSION TIMEFRAME |
|--|---|---------------------|
| <p>Family Interests</p> <p>Immediate family (partner, spouse, mother, father, sibling and/or child/trusts)</p> <p>Non-immediate family</p> | 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 |
| <p>Family Trustee Interests</p> | 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 |
| <p>Other Personal Interests</p> <p>Close friend, colleague or other acquaintance (i.e. person that a member has regular, ongoing communications with)</p> | 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 |