



Agenda Report for Decision

Meeting Date: 30 November 2023

Item Name	SPC Conflict of Interest Policy Update
Presenters	Tyler Johns and Kate Southcott
Purpose of Report	Decision
Item Number	5.3
Strategic Plan Reference	4.3 Ensure the Commission Operates in line with governance best practice
Work Plan Reference	N/A
Confidentiality	Not Confidential (Release Immediately) – Agenda Report and Attachment 1 Confidential (Draft Advice or Documents) – Attachment 2
Conflicts Declared	Nil
Related Decisions	N/A

Recommendation

It is recommended that the State Planning Commission (the Commission) resolves to:

1. Approve the designation of this item as Not Confidential (Release Immediately) with **Attachment 2** designated as Confidential (Draft Advice or Documents)
2. Approve the marked-up version of the Commission's Conflict of Interest Policy (the Policy) at **Attachment 1**.
3. Approve the Commission Interest Advice Template at **Attachment 2** for internal use.
4. Authorise the Chair to make any minor or editorial changes to the policy and/or attachments as required to finalise.
5. Authorise Planning and Land Use Services (PLUS) to publish the final Policy (**Attachment 1**) on the Commission's website.
6. Note PLUS will review the SPC Conflict of Interest Policy as part of the governance and legislative compliance audit which is undertaken on an annual basis in the second quarter of each year.

Background

When the Commission was established, a suite of policies and procedures, meeting arrangements, operating and complaint handling procedures were developed to promote and emphasise good conduct, good judgment, proper oversight, and accountability.

This suite of documents, known as the Commission's Governance Manual, was first approved by the Commission on 17 August 2017 to provide a governance framework for the Commission's operations. The documents are reviewed and updated (if required) on an annual basis (unless required sooner) and public facing policies are available on the Commission's website.

PLUS joined the Department for Trade and Investment (DTI) following a machinery of government change in March 2022.

DTI established a Policy and Procedure Management Policy (**Appendix A**) in March 2023 to ensure DTI corporate policies, procedures and guidelines are properly documented, reviewed and made available to employees.

Discussion

The Commission's Governance Manual includes the following policies:

- Transparency;
- Conflict of Interest;
- Deputation, External Meeting and Events; and
- Gifts and Benefits.

These policies provide a system of risk oversight and control as part of the Commission's effective governance framework.

Section 27(9) of the Act provides that subject to the requirements of the Act, the Commission may determine its own procedures.

It is recommended that the Commission approve the Policy at **Attachment 1** with updates to include:

- sections of the Act (to acknowledge the statutory obligations imposed on the Commission in relation to conflicts of interest);
- reasonable apprehension of bias; and
- procedures to identify, disclose, record, and manage conflict of interest.

The Commission is committed to high standards of ethical conduct and places great importance on managing conflicts of interest and reasonable apprehension of bias. The Commission has a conservative approach to the identification, disclosure, recording and management of conflicts of interest and bias. The Commission's approach is to maintain the honesty and integrity of the decision-making process and ensure the public has confidence that the Commission's decisions are made impartially and without prejudice.

It is also recommended that the Commission approve the Interest Advice Template at **Attachment 2**. The template will be provided to Commission members for ongoing management of conflict of interest declarations. The information provided in the template will be added to the Commission's Conflict Register which is maintained by the Department.

For the purposes of the Policy, *Commission* includes all Committees established by the Commission under section 29 of the *Planning, Development and Infrastructure Act 2016* (the Act).

Next Steps

PLUS will continue to undertake internal governance audit on an annual basis, or earlier (if appropriate or required in response to legislative change or other urgent operational matters).

Attachments:

1. SPC Conflict of Interest Policy (clean and marked up) (#20857511)
2. SPC Interest Advice Template (#20857527)

Appendices:

- A. Department for Trade and Investment Policy and Procedure Management Policy (#20857538)

Prepared by: Kate Southcott

Endorsed by: Tyler Johns and Jane Trotter

Date: 22 November 2023



Conflict of Interest Policy

Purpose

The State Planning Commission (the Commission) is committed to high standards of ethical conduct. The Commission places great importance on managing direct, indirect or perceived conflicts of interest, and any reasonable apprehension of bias (an interest). An interest must be identified, disclosed, recorded, and managed in the public interest of the Commission, not in the interests of the individual member.

Policy Statement

This policy is aimed at ensuring all Members of the Commission understand:

- their obligations under the *Planning, Development and Infrastructure Act 2016* (the Act) and the State Planning Commission Members Code of Conduct;
- how to identify any direct, indirect, or perceived conflict of interest for themselves and their associates;
- how to identify a reasonable apprehension of bias; and
- the process to disclose, record and manage a conflict of interest.

Obligations

Under section 27(6) of the Act, a Member of the Commission who has a direct or indirect personal or pecuniary interest in a matter before the Commission (other than an indirect interest that exists in common with a substantial class of persons) –

- (a) must, as soon as he or she becomes aware of his or her interest, disclose the nature and extent of the interest to the Commission; and
- (b) must not take part in any hearings conducted by the Commission, or in any deliberations or decisions of the Commission, on the matter and must be absent from the meeting when any deliberations are taking place or decision is being made.

Section 27(7) of the Act states for the purposes of section 27(6), a member of the Commission will be taken to have an interest in a matter if an associate of the member has an interest in the matter.

Substantial Class of Persons

Section 26(7) of the Act requires a Member of the Commission undertake certain action if they have a direct or indirect personal, or pecuniary interest in a matter before the Commission. Where a Commission Member identifies an indirect conflict of interest and that interest is shared with a substantial class of persons, the Member of the Commission is exempt from section 26(7) of the Act. A Member of the Commission should declare all conflicts of interest, and must leave the meeting unless the declared conflict is an indirect conflict that is shared with a substantial class of persons. Consideration of a 'substantial class of persons' is an assessment of whether an interest is shared with a significant portion of other community members. The assessment of 'substantial class of persons' in a smaller community may result in an interest being shared with a significant proportion of other community members although the total number of persons is small. A Member of the Commission should exercise caution in determining whether their interest is shared with a substantial class of persons, with a larger proportion of persons providing greater certainty that a conflict of interest does not exist.

It is prudent for Members of the Commission to take a conservative approach to the assessment of whether the conflict of interest is shared with a substantial class of persons and if unsure, the Member of the Commission should seek advice from the Chair of the Commission and from the Department for Trade and Investment (the Department), as required.

Associate

For the purposes of section 3(7) of the Act, an associate includes any of the following:

- A relative;
- A spouse or domestic partner;
- A body corporate in which the person, or their associate, has an interest exceeding 10% of its capital; and/or
- A trustee of a trust to which the person, or their associate, is a beneficiary.

Conflict of Interest

A conflict of interest may occur if an interest or activity influences or appears to influence a Commission member's ability to be objective. The term covers direct, indirect or perceived conflicts.

Members of the Commission should actively consider and monitor their interests and where there is a direct, indirect or perceived conflict, a Member of the Commission must disclose and manage that interest as required under the Act. Members of the Commission are bound by the State Planning Commission Member's Code of Conduct (**Appendix A**) with supporting Codes of Conduct – Guidance Material (**Appendix B**).

There are three categories of Conflict of Interest:

- *Direct Conflict of Interest*: where a Commission Member or associate has an **actual** financial or other personal interest that conflicts with their duties.
- *Indirect Conflict of Interest*: where a Commission Member or associate could **potentially** be influenced by a financial or other interest that conflicts with their duties.
- *Perceived Conflict of Interest*: where a Commission Member or associate could be **perceived** as being influenced by a financial or other interests that conflict with their duties.

In determining whether an indirect or perceived conflict may be present, a Member of the Commission should consider whether a 'reasonable person' would consider a conflict could exist. If unsure, the Member of the Commission should seek advice from the Chair of the Commission and from the Department, as required.

Reasonable Apprehension of Bias

Although not a requirement of the Act, it is important for Members of the Commission to also be aware of whether they hold a reasonable apprehension of bias.

The test for reasonable apprehension of bias is whether, in all the circumstances, the public might entertain a reasonable apprehension that a Member of the Commission might not bring an impartial and unprejudiced mind to the matter before the Commission.

A reasonable apprehension of bias will exist if the Member of the Commission could be considered to have prejudged a matter and they have already formed a conclusion which is incapable of alteration whatever evidence or arguments may be presented.

Appropriately managing reasonable apprehension of bias maintains the honesty and integrity of the decision-making process to ensure the public has confidence that the Commission's decision was made impartially and without prejudice.

It is prudent for Members of the Commission to take a conservative approach to a reasonable apprehension of bias and if unsure, the Member of the Commission should seek advice from the Chair of the Commission and from the Department, as required.

Identify

Identification of a conflict of interest does not mean that a Member of the Commission has acted improperly or is likely to act improperly but it is essential that any direct, indirect or potential conflict of interest be declared and managed in the public interest of the Commission.

Where a Commission Member identifies an indirect conflict of interest and that interest is shared with a substantial class of persons, the Member of the Commission does not need to take further action.

Appropriately managing conflicts of interest maintains the honesty and integrity of the decision-making process to ensure the public has confidence that the Commission's decision was made impartially and without prejudice.

Examples include:

- where a Commission member or their associate could gain financially from business dealings, programs or services associated with the Department or the Commission;
- where a Commission member or their associate has had previous business dealings or provided advice in relation to a matter which may come before the Commission;
- where the Commission member or their immediate family or business connections are to be appointed to an employment position with the Department;
- where a Commission member has a role on the governing body of another organisation, where the activities of that other organisation may conflict or compete with the activities of the Commission; or
- where a Commission Member accepts gifts, invitations or other benefits.

Commission Members are not prevented from having business dealings with the Department, provided it can be shown that these have been negotiated at arm's length and the conflicted Commission Member follows the required procedures.

Similarly, Commission Members are not prevented from having personal or business dealings on matters which may come before the Commission, provided the Member of the Commission declares a conflict of interest as required by the Act.

Disclose

The Act specifies that as soon as a member of the Commission becomes aware of their interest, they must disclose the nature and extent of the interest to the Commission.

It is recommended that Members of the Commission regularly declare their conflict of interest or bias to ensure that the Conflict of Interest Register maintained by the Department is current.

Record

To assist Members of the Commission in recording their ongoing interests, an interest advice template is provided at **Attachment 1**. This template should be completed by a Member of the Commission as soon as an interest arises or when the Member becomes aware of the conflict or bias. This may occur on receipt of an Agenda for a meeting, at the start of a Commission meeting, or when the conflict arises.

A declared interest will be recorded in the meeting minutes and the Conflict of Interest Register, which is maintained by the Department.

Manage

The Act specifies that as soon as a member of the Commission declares a conflict of interest, they must not take part of in any hearings conducted by the Commission, or in any deliberations or decision of the Commission on the matter.

Once a conflict is declared the Member of the Commission must be absent from the meeting during Commission deliberations on the matter or when a decision is being made and this action will be noted in the Commission meeting minutes.

If the Member of the Commission could be considered to hold a reasonable apprehension of bias, the Member of the Commission must not take part in any hearings conducted by the Commission, or in any deliberations or decision of the Commission on the matter.

It is prudent for Members of the Commission to take a conservative approach to a reasonable apprehension of bias and if unsure, the Member of the Commission should seek advice from the Chair of the Commission and from the Department, as required.

Register of Interests

Immediately on joining the Commission, a Member of the Commission must complete the Register of Interests (Primary Return) in the form prescribed under clause 2(1)(a) of Schedule 1 of the Act. The Register records the Member of the Commission's main business activities, involvement with other business organisations, vendors, business interests and other associations that might produce a conflict of interest.

On an annual basis, and for the period of 12 months expiring on 30 June each year, Members of the Commission must update and submit the Register of Interests (Ordinary Return) in the form prescribed under clause 2(1)(b) of Schedule 1 of the Act.

Reputation of the Commission

On occasion, a conflict of interest can be handled correctly from a legal perspective but may still have the potential to damage the reputation of the Commission because of appearances.

The Commission has the ultimate authority to manage reputation risk and proper and orderly management of the Commission's practices and procedures. If the Commission determines that a conflict, although managed properly in a legal sense, may damage the reputation of the:

- Commission;
- Minister;
- Department; and/or
- integrity of the Commission,

if it proceeds, the Commission may decide not to proceed or to take action to address the perceived conflict.

A Member of the Commission who believes another Member of the Commission has an undeclared conflict of interest must specify in writing, to the Chair of the Commission (or to the ex officio Member where the matter relates to an interest of the Chair of the Commission), the circumstances of the conflict. The Chair of the Commission (or the ex officio Member, if relevant) must raise the issue with the Member of the Commission concerned, and seek advice from the Department as required. If the Member of the Commission does not agree they have a conflict of interest, the Commission will decide the matter by majority vote.

Confidentiality

When complying with this policy, the confidentiality of Commission members will be respected, subject to the disclosure requirements under the Act.

Review

The Commission will review this Conflict of Interest Policy at least annually and update where necessary.

Appendices

- A. State Planning Commission Member Code of Conduct (#20859110)
- B. Codes of Conduct – Guidance Material (#20858694)

Version	Produced By	Endorsed By	Approved by	Review Due
1.0	R Bolingbroke 18 July 2017	A Allen 10 August 2017	Commission 17 August 2017	August 2018
1.1	Chelsea Lucas 22 April 2021	S Smith 6 May 2021	Commission 13 May 2021	May 2022
1.2	Kate Southcott 17 November 2023	S Smith 22 November 2023	Commission 30 November 2023	June 2024

Document #: 20857511