



# ***Code of Conduct for Local Planning Panel Members***

***August 2018***



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## Part 1 – Introduction

This code of conduct has been approved by the Minister for Planning (the Minister) for members of Local Planning Panels (panels) under clause 28 of Schedule 2 of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

This code is based on the *Model Code of Conduct for Local Councils in NSW* where it would apply to panel members.

Panels are independent panels appointed by councils. Their main functions are to determine development applications and to provide advice on planning proposals. Panels are not subject to the direction or control of the council, except on matters relating to procedures of the panel or the time within which it is to deal with a matter (unless these directions are inconsistent with a direction of the Minister). Panels are subject to any directions made by the Minister under section 9.1 of the EP&A Act.

Failure by a panel member to comply with this code is the responsibility of councils to address. In cases of serious breaches council has the option to remove a panel member from office (clause 16 of schedule 2 of the EP&A Act).

## Part 2 – Definitions

In the Code the following definitions apply:

EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
LG Act	<i>Local Government Act 1993</i>
code	means the Code of Conduct for Local Planning Panels
conflict of interest	a conflict of interest exists where a reasonable and informed person would perceive that you could be influenced by a private interest when carrying out your public duty
councillor	any person elected or appointed to civic office, including the mayor
conduct	includes acts and omissions
Panel	Local Planning Panel
Panel Member	member of a local planning panel, including the chair, independent expert members, community representatives and alternates
personal information	information or an opinion about a person whose identity is apparent, or can be ascertained from the information or opinion

## Part 3 – General Conduct Obligations

### General conduct

- 3.1 You must not conduct yourself in carrying out your functions in a manner that:
- is likely to bring the council, the panel or other council officials into disrepute
  - is contrary to statutory requirements or the council's administrative requirements or applicable policies
  - is improper or unethical
  - is an abuse of power
  - causes, comprises or involves intimidation or verbal abuse
  - involves the misuse of your position to obtain a personal benefit
  - constitutes harassment or bullying behaviour under this code, or is improperly discriminatory.
- 3.2 You must act lawfully and honestly, and exercise a reasonable degree of care and diligence in carrying out your functions under the EP&A Act, LG ACT, or any other Act.
- 3.3 You should attend all meetings of the panels, which require your attendance, as far as possible, and allow necessary time to prepare for meetings. Where possible you should provide a three-day notice for non-attendance.

### Fairness and equity

- 3.4 You must consider issues consistently, promptly and fairly. You must deal with matters in accordance with established procedures, in a non-discriminatory manner.
- 3.5 You must take all relevant facts known to you, or that you should be reasonably aware of, into consideration and have regard to the particular merits of each case. You must not take irrelevant matters or circumstances into consideration when making decisions.
- 3.6 An act or omission in good faith, whether or not it involves error, will not constitute a breach of clause 3.4 or 3.5.

### Harassment and discrimination

- 3.7 You must not harass or improperly discriminate against others, and you must not support anyone who harasses or improperly discriminates against others. This includes, but is not limited to, harassment or discrimination on the grounds of sex, pregnancy, age, race, marital status, disability, sexuality, political or other affiliation. It also includes discrimination against those who are carers, those who identify as transgender persons, and those who have infectious diseases.
- 3.8 For the purposes of this code, "harassment" is any form of behaviour towards a person that is:
- not wanted by the person
  - offends, humiliates or intimidates the person, and
  - creates a hostile environment.

## Bullying

- 3.9 You must not engage in bullying behaviour.
- 3.10 For the purposes of this code, “bullying behaviour” is any behaviour in which:
- a) a person or a group of people repeatedly behaves unreasonably and
  - b) the behaviour creates a risk to health and safety.
- 3.11 Bullying behaviour may involve, but is not limited to, any of the following types of behaviour:
- a) aggressive or intimidating conduct
  - b) belittling or humiliating comments
  - c) spreading malicious rumours
  - d) teasing, practical jokes or ‘initiation ceremonies’
  - e) exclusion from work-related events
  - f) unreasonable work expectations, including too much or too little work, or work below or beyond a worker’s skill level
  - g) displaying offensive material
  - h) pressure to behave in an inappropriate manner.
- 3.12 Reasonable management action carried out in a reasonable manner does not constitute bullying behaviour for the purposes of this code. Examples of reasonable management action may include, but are not limited to:
- a) performance management processes
  - b) disciplinary action for misconduct
  - c) informing a worker about unsatisfactory work performance or inappropriate work behaviour
  - d) directing a worker to perform duties in keeping with their job
  - e) maintaining reasonable workplace goals and standards.

## Work health and safety

- 3.13 You have statutory duties under the *Work Health and Safety Act 2011* (WH&S Act). You must comply with your duties under the WH&S Act and your responsibilities under any policies or procedures adopted by the council to ensure workplace health and safety. Specifically, you must:
- a) take reasonable care for your own health and safety
  - b) take reasonable care that your acts or omissions do not adversely affect the health and safety of other persons
  - c) comply, so far as you are reasonably able, with any reasonable instruction that is given to ensure compliance with the WH&S Act and any policies or procedures adopted by the council, or panel to ensure workplace health and safety

- d) cooperate with any reasonable policy or procedure of the council, or panel relating to workplace health or safety that you have been notified of
- e) report accidents, incidents and near misses to the panel chair and take part in any incident investigations.

#### Land use planning, development assessment and other regulatory functions

- 3.14 You must ensure that land use planning, development assessment and other regulatory decisions are properly made, and that all parties are dealt with fairly. You must avoid any occasion for suspicion of improper conduct in the exercise of land use planning, development assessment and other regulatory functions.
- 3.15 In exercising land use planning, development assessment and other regulatory functions, you must ensure that no action, statement or communication between yourself and others conveys any suggestion of willingness to improperly provide concessions or preferential or unduly unfavourable treatment.
- 3.16 You must not approach an applicant or proponent, a consultant representing an applicant or a proponent or an objector.
- 3.17 If you are approached by an applicant or proponent, their consultant or an objector, you must not discuss any application which is either before the panel or will come before the panel at some future time, except during a panel meeting where the application forms part of the agenda and the applicant or proponent, their consultant or an objector has a right to be heard by the panel.
- 3.18 You must disclose in writing to the panel chair any efforts made to lobby you by any persons, including councillors, property developers or real estate agents.
- 3.19 The chair must report these disclosures to the council's general manager. If the approach has been made by the general manager the chair must report these disclosures to the Office of Local Government.
- 3.20 If you are the chair of the panel and you have been approached, then you must disclose this to the general manager. If the approach has been made by the general manager you must report this disclosures to the Office of Local Government.

Note: Reporting of these disclosures must be included in the regular activity reports provided by the council to the Department of Planning and Environment (Planning Panels Secretariat).

#### Obligations in relation to meetings

- 3.21 You must comply with rulings by the panel chair at panel meetings, or site inspections.
- 3.22 You must not harass the panel chair, council officials or any members of the public present during panel meetings or other proceedings of the council.
- 3.23 You must not engage in conduct that disrupts panel meetings, or that would otherwise be inconsistent with the orderly conduct of meetings.

## Part 4 – Conflicts of Interest

### What is a conflict of interest

- 4.1 A conflict of interests includes:
- a) an 'actual' conflict of interests, which is where there is a direct conflict between your duties and responsibilities as a panel member and your private interests or other duties
  - b) a 'potential' conflict of interests, is where your duties and responsibilities as a panel member could conflict in the future with your private interest or other duties
  - c) a 'reasonably perceived' conflict of interests, is where a person could reasonably perceive that your private interests or other duties are likely to improperly influence the performance of your duties as a panel member, whether or not this is in fact the case
  - d) Private interests can be of two types: pecuniary or non-pecuniary.
- 4.2 Panel members must avoid or appropriately manage any conflicts of interests. The onus is on the individual panel member to identify a conflict of interests and take appropriate action.
- 4.3 Any conflicts of interests must be managed to uphold the probity of panel decision making. When considering whether or not a conflict of interests exists, panel members should consider how others would view their situation.
- 4.4 The following situations are considered to represent a conflict of interest for panel members (however this list is not exhaustive):
- a) members who have current or previous involvement in a specific project, or site, that is subject of a DA or a planning proposal that is subsequently reviewed by a panel, for example as a consultant.
  - b) Members, who are ex-councillors, where they have deliberated or voted on, or otherwise considered, a matter, and/or been present when such consideration is undertaken, in their previous role at council and that matter, or a related matter, subsequently comes before the panel. Matters which are considered to be related to a panel matter include, but are not limited to:
    - a planning proposal for the site
    - a voluntary planning agreement for the development or planning proposal
    - a Masterplan for the development or planning proposal
    - a Plan of Management for the development
    - property matters related to the site, including leases, licences, purchase of land, disposal of land and management of lands
    - legal matters related to the site, development or proposal
    - consideration on whether to make a submission to the panel on a DA
  - c) Members, who are ex-council staff, that have:
    - presented, or been present at a council meeting, that considered an assessment report that is to come before the panel, or a related matter as per section 3.19(b)
    - been directly or indirectly involved in the preparation of an assessment report that is to come before the panel
    - approved agenda items for reporting to council meetings, or have been a signatory to correspondence in relation to matters that may come before a panel.

4.5

#### *Management of conflicts*

- 4.6 Where possible, the source of the conflict of interest should be removed. For example, by way of divestment of the interest/issue that is creating the conflict such as the sale of shares, or by severing the connection, for example resignation from a position in another organisation giving rise to the conflict, or ceasing to provide services.
- 4.7 The overriding principle for managing conflicts of interests is early and complete disclosure to the chair. The onus for this disclosure lies with individual panel members.
- 4.8 Where the panel chair considers that an actual, potential or reasonably perceived conflict of interests has not been disclosed or appropriately managed by a panel member, the conflict may be considered by the chair, and wider panel if considered necessary after hearing submissions from the panel member. The chair will make a decision as to how to manage the situation, which can include determining that the panel member should step aside from the panel for that matter, and record reasons for that decision. In making the decision, the chair is to have regard to upholding the reputation of the planning panel. If a panel member fails to step aside where requested their comments or vote is not to be considered in the determination of the matter.
- 4.9 When the conflict of interest arises as a result of an interest of the chair, an alternate chair or the panel is to assume the chair's leadership role in the management of the conflict process.
- 4.10 All panel members must sign a declaration of interest in relation to each matter on the agenda before or at the beginning of each meeting. These declarations and any management measures put in place are to be published on the relevant council's website as soon as practicable.

#### What is a pecuniary interest?

- 4.11 A pecuniary interest is an interest that you have in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to you or a person.
- 4.12 You have a pecuniary interest if the interest is:
- a) yours,
  - b) your spouse's, your de facto partner's or your relative's, or
  - c) your partner's or employer's, or is the interest of a company or other body of which you, or your nominee, your partner or your employer, is a member.
- 4.13 You do not have a pecuniary interest:
- a) if you are unaware of the relevant pecuniary interest of your spouse, de facto partner, relative, partner, employer or company or other body,
  - b) just because you are employed by a council, statutory body or employed by the Crown, or
  - c) just because you are a member of or a delegate of a council, company or other body that has a pecuniary interest in the matter, so long as you do not have any beneficial interest in shares of the company or body (clause 27, schedule 2 of the EP&A Act).

4.14 For the purposes of this:

Your “relative” is any of the following:

- a) your parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child
- b) your spouse’s or de facto partner’s parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child
- c) the spouse or de facto partner of a person referred to in paragraphs (i) and (ii).

“de facto partner” has the same meaning as defined in section 21C of the *Interpretation Act 1987*.

4.15 If you have a pecuniary interest, you:

- a) must prepare and submit written returns of interests in accordance with clause 4.15, and
- b) must disclose pecuniary interests in accordance with clause 4.22.

4.16 You must as soon as practicable disclose in writing to the panel chair (or if you are the panel chair, to the general manager) the nature of any pecuniary interest you have in any panel matter with which the panel chair is dealing.

4.17 The panel chair, or the general manager must, on receiving a disclosure from a designated person, deal with the matter to which the disclosure relates or refer it to another person to deal with.

#### Disclosure of interests in written returns

4.18 You must make and lodge with the panel chair a return in the form set out in schedule 2 to this code, disclosing your interests as specified in schedule 1 to this code within one month or prior to your first panel meeting, whichever occurs earlier after:

- a) becoming a panel member, or
- b) 30 June of each year, and
- c) if you become aware of an interest you are required to disclose under schedule 1 that has not been previously disclosed in a return lodged under paragraphs (a) or (b).

4.19 You need not make and lodge a return under clause 4.15, paragraphs (a) and (b) if:

- a) you have made and lodged a return under that clause in the preceding 3 months, or
- b) you have ceased to be a panel member in the preceding 3 months.

4.20 You must not make and lodge a return that you know or ought reasonably to know is false or misleading in a material particular.

4.21 The panel chair must provide returns to the general manager who must keep a register of returns.

4.22 Returns required to be lodged with the panel chair under clause 4.15(a) and (b) must be tabled at the first meeting of the panel after the last day the return is required to be lodged.

4.23 Returns required to be lodged with the panel chair under clause 4.15(c) must be tabled at a panel meeting as soon as practicable after the return is lodged.

4.24 The general manager must cause the information contained in returns made and lodged by panel members and the panel chair under clause 4.15, other than information disclosing the address of the panel member's principal place of residence, to be published on the website used by the panel as soon as practicable after the returns are lodged, and the information must be kept up to date.

Disclosure of pecuniary interests at meetings

4.25 If you have a pecuniary interest in any matter with which the panel is concerned, and you are present at a meeting of the panel at which the matter is being considered, you must disclose the nature of the interest to the meeting as soon as practicable.

4.26 You must not be present at, or in sight of, the meeting of the panel:

- a) at any time during which the matter is being considered or discussed by the panel, or
- b) at any time during which the panel the matter, or making a recommendation on a planning proposal.

4.27 A disclosure made at a meeting of a panel must be recorded in the meeting record.

4.28 A general notice may be given to the panel chair in writing by a panel member to the effect that the panel member, or the member's spouse, de facto partner or relative, is:

- a) a member of, or in the employment of, a specified company or other body, or
- b) a partner of, or in the employment of, a specified person.

4.29 Such a notice is, unless and until the notice is withdrawn, sufficient disclosure of the panel member's interest in a matter relating to the specified company, body or person that may be the subject of consideration by the panel after the date of the notice.

4.30 You do not breach clause 4.22 or 4.23 if you did not know, and could not reasonably be expected to have known, that the matter under consideration at the meeting was a matter in which he or she had a pecuniary interest.

## Part 5 – Non-Pecuniary Conflicts of Interest

### What is a non-pecuniary conflict of interest?

- 5.1 Non-pecuniary interests are private or personal interests you have that do not amount to a pecuniary interest as defined in clause 4.8 of this code. These commonly arise out of family or personal relationships, or out of involvement in sporting, social or other cultural groups and associations, and may include an interest of a financial nature.
- 5.2 A non-pecuniary conflict of interest exists where a reasonable and informed person would perceive that you could be influenced by a private interest when carrying out your public duty.
- 5.3 Non-pecuniary conflicts of interest must be identified and appropriately managed to uphold community confidence in the probity of the panel decision-making. The onus is on you to identify any non-pecuniary conflict of interest you may have in matters that you deal with, to disclose the interest fully and in writing, and to take appropriate action to manage the conflict in favour of your public duty.
- 5.4 When considering whether or not you have a non-pecuniary conflict of interest, it is always important to think about how others would view your situation.

### Managing non-pecuniary conflicts of interest

- 5.5 Where you have a non-pecuniary conflict of interest for the purposes of clause 5.2, you must disclose the relevant private interest fully and in writing as soon as practicable.
- 5.6 If a disclosure is made at a panel meeting, both the disclosure and the nature of the interest must be recorded in the meeting record. This disclosure constitutes disclosure in writing for the purposes of clause 5.5.
- 5.7 How you manage a non-pecuniary conflict of interest will depend on whether or not it is significant.
- 5.8 As a general rule, a non-pecuniary conflict of interest will be significant where it does not involve a pecuniary interest for the purposes of clause 4.8, but it involves:
  - a) a relationship between a panel member and another person that is particularly close, for example, a current or former spouse or de facto partner, a relative for the purposes of clause 4.11 or another person from the panel member's extended family that the panel member has a close personal relationship with, or another person living in the same household
  - b) other relationships that are particularly close, such as friendships and business relationships. Closeness is defined by the nature of the friendship or business relationship, the frequency of contact and the duration of the friendship or relationship
  - c) an affiliation between the panel member and an organisation, sporting body, club, corporation or association that is particularly strong, including, but not limited to, active participation in its management or administration and other activities
  - d) a financial interest that is not a pecuniary interest for the purposes of clause 4.8
  - e) the conferral or loss of a personal benefit other than one conferred or lost as a member of the community or a broader class of people affected by a decision.

- 5.9 If you have a significant non-pecuniary conflict of interest, you must manage it by managing the conflict of interest as if you had a pecuniary interest in the matter by complying with clause 4.15-4.17 and 4.22-23.
- 5.10 If you determine that you have a non-pecuniary conflict of interest in a matter that is not significant and does not require further action, when disclosing the interest, you must also explain why you consider that the non-pecuniary conflict of interest is not significant and does not require further action in the circumstances.

Note: Loss of quorum as a result of compliance with this Part

- 5.11 A quorum for a determination meeting of a panel is a majority of its members, including the chair, i.e. a total of three members.
- 5.12 In accordance with the operational procedures for panels a determination meeting is to be deferred if a quorum is not present.
- 5.13 These procedures also provide that where conflicts of interest are known before the meeting, alternate members will be used to ensure there is a quorum.
- 5.14 You must ensure that any employment or business, or other roles or activities you engage in will not:
- a) conflict with, impair or otherwise prevent the full exercise of your official duties
  - b) involve using confidential information or resources obtained through your work with the panel
  - c) require you to work while on panel duty
  - d) discredit or disadvantage the panel or the council
  - e) pose, due to fatigue, a risk to your health or safety, or to the health and safety of others.

Personal dealings with council to which you have been appointed as a panel member

- 5.15 You may have reason to deal with your council in your professional capacity (for example, acting as a consultant on behalf of a developer) or personal capacity (for example, as a ratepayer, recipient of a council service or applicant for a development consent granted by council). You must not expect or request preferential treatment in relation to any matter in which you have a private interest because of your position. You must avoid any action that could lead members of the public to believe that you are seeking preferential treatment.
- 5.16 You must undertake any professional or personal dealings you have with the council in a manner that is consistent with the way other members of the community deal with the council. In particular, you must not:
- a) access council information for professional or personal purposes
  - b) undertake professional or personal dealings with the council during work time, or
  - c) approach council staff in staff only areas to discuss your professional or personal dealings with the council.
- 5.17 You must also ensure that you disclose and appropriately manage any conflict of interest you may have in any matter in accordance with the requirements of this code.

## Part 6 – Personal Benefit

### Gifts and benefits

- 6.1 You must avoid situations giving rise to the appearance that a person or body, through the provision of gifts, benefits or hospitality of any kind, is attempting to secure favourable treatment from you.
- 6.2 You must take all reasonable steps to ensure that your immediate family members do not receive gifts or benefits that give rise to the appearance of being an attempt to secure favourable treatment. Immediate family members include parents, spouses or de facto partners, children and siblings.

### How are offers of gifts and benefits to be dealt with?

- 6.3 You 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 of any kind.
- 6.4 Where you are offered or receive a gift or benefit, you must disclose this promptly to the panel chair and the general manager in writing. If you are the chair of the panel you must make the disclosure to the general manager. The recipient and general manager must ensure that, at a minimum, the following details are recorded in the panel's gift register:
- a) whether the gift was accepted or refused
  - b) the nature of the gift
  - c) the estimated monetary value of the gift
  - d) the name of the person who offered the gift, and
  - e) the date on which the gift was offered or received.
- 6.5 Where you receive a gift or benefit of value that cannot reasonably be refused or returned, the gift or benefit must be surrendered to the general manager.

### Improper and undue influence

- 6.6 You must not use your position to influence other panel members or council officials in the performance of their public or professional duties to obtain a private benefit for yourself or for somebody else.
- 6.7 You must not take advantage (or seek to take advantage) of your status or position, or of functions you perform, in order to obtain a private benefit for yourself or for any other person or body.

## Part 7 – Relationships and Interactions

### Interactions with councillors and council staff

- 7.1 You may only approach and liaise with council staff nominated by the general manager to assist the panel to obtain information and clarify matters relating to its duties, responsibilities and functions and matters before it.
- 7.2 You may not direct or pressure council staff in the performance of their work, or recommendations they should make. Any direction to staff can only be given by the general manager.
- 7.3 You must not approach a councillor, or if approached by a councillor must not discuss any application that is either before the panel or will come before the panel at some future time, except during a panel meeting where the application forms part of the agenda and the councillor has a right to be heard by the panel at the meeting.
- 7.4 Panel members must:
  - a) give their attention to the business of the panel while on duty
  - b) ensure that their work is carried out efficiently, economically and effectively
  - c) carry out lawful directions given by any person having authority to give such directions.

## Part 8 – Access to Information and Council Resources

- 8.1 The general manager is responsible for ensuring that panel members can access information necessary for the performance of their official functions, including the reporting of development applications to the panel in a timely manner or as requested by the panel.

### Panel members to properly examine and consider information

- 8.2 Panel members must ensure that they to act honestly and exercise a reasonable degree of care and diligence by properly examining and considering all the information provided to them relating to matters that they are required to make a decision on.

### Use of certain council information

- 8.3 In regard to information obtained in your capacity as a panel member, you must:
- a) only access council information needed for panel business
  - b) not use that council information for private purposes
  - c) not seek or obtain, either directly or indirectly, any financial benefit or other improper advantage for yourself, or any other person or body, from any information to which you have access by virtue of your panel membership
  - d) only release council information in accordance with established council policies and procedures and in compliance with relevant legislation.

### Use and security of confidential information

- 8.4 You must maintain the integrity and security of confidential documents or information in your possession, or for which you are responsible.
- 8.5 In addition to your general obligations relating to the use of council information, you must:
- a) only access confidential information that you have been authorised to access and only do so for the purposes of exercising your official functions
  - b) protect confidential information
  - c) only release confidential information if you have authority to do so
  - d) only use confidential information for the purpose for which it is intended to be used
  - e) not use confidential information gained through your official position for the purpose of securing a private benefit for yourself or for any other person
  - f) not use confidential information with the intention to cause harm or detriment to the council or any other person or body
  - g) not disclose any information discussed during a confidential forum.

### Personal information

- 8.6 When dealing with personal information you must comply with:
- a) the *Privacy and Personal Information Protection Act 1998*
  - b) the *Health Records and Information Privacy Act 2002*
  - c) the Information Protection Principles and Health Privacy Principles
  - d) the council's privacy management plan
  - e) the Privacy Code of Practice for Local Government.

### Use of council resources

- 8.7 You must use council resources ethically, effectively, efficiently and carefully in the course of your official duties, and must not use them for private purposes unless this use is lawfully authorised and proper payment is made where appropriate.
- 8.8 You must be scrupulous in your use of council property, including intellectual property, official services and facilities, and must not permit their misuse by any other person or body.
- 8.9 You must avoid any action or situation that could create the appearance that council property, official services or public facilities are being improperly used for your benefit or the benefit of any other person or body.
- 8.10 You must not use the council letterhead, council crests or other information that could give the appearance it is official council material for.
- 8.11 You must not convert any property of the council to your own use unless properly authorised.

### Internet access and use of social media

- 8.12 You must not use council's computer resources or other mobile devices to search for, access, download or communicate any material of an offensive, obscene, pornographic, threatening, abusive or defamatory nature, or that could otherwise lead to criminal penalty or civil liability and/or damage the council's reputation.
- 8.13 You must not use social media to post comments, photos, sound recordings or other information that:
- a) compromises your capacity to perform your official duties in an unbiased manner
  - b) has the potential to have a negative impact on your working relationships within the council or with external parties
  - c) is offensive, humiliating, threatening or intimidating to anyone
  - d) has the capacity to damage the council's reputation or contains content about the council that may be misleading or deceptive
  - e) divulges confidential council information
  - f) breaches the privacy of other panel members
  - g) contains allegations of suspected breaches of this code or information about the consideration of a matter under this code or the council's code of conduct, or

- h) could be perceived to be an official comment on behalf of the panel or council where you have not been authorised to make such comment.

Council record keeping

- 8.14 All information received in your official capacity is a council record and must be managed in accordance with the council's approved record management practices and policies.
- 8.15 All information stored in either soft or hard copy on council supplied resources is deemed to be related to the business of the council and can be used by the council as a council record regardless of whether the original intention was to create the information for personal purposes.

Panel member access to council buildings

- 8.16 Panel members are entitled to have access to any room designated by the general manager for the use of the panel and public areas of the council's buildings during normal business hours and for meetings.

## Part 9 – Maintaining the Integrity of this Code

9.1 You must not conduct yourself in a manner that is likely to undermine confidence in the integrity of this code or its administration.

### Complaints made for an improper purpose

9.2 You must not make a complaint or cause a complaint to be made under this code for an improper purpose.

9.3 For the purposes of clause 9.2, a complaint is made for an improper purpose where it is trivial, frivolous, vexatious or not made in good faith, or where it otherwise lacks merit and has been made substantially for one or more of the following purposes:

- a) to intimidate or harass another council official
- b) to damage another's reputation
- c) to obtain a political advantage
- d) to influence a panel member or council official in the exercise of their official functions or to prevent or disrupt the exercise of those functions
- e) to influence the council in the exercise of its functions or to prevent or disrupt the exercise of those functions
- f) to avoid disciplinary action under this code
- g) to take reprisal action against a person for making a complaint under this code
- h) to take reprisal action against a person for exercising a function prescribed under Part 10 of this code
- i) to prevent or disrupt the effective administration of this code.

### Detrimental action

9.4 You must not take detrimental action or cause detrimental action to be taken against a person substantially in reprisal for a complaint they have made under this code.

9.5 You must not take detrimental action or cause detrimental action to be taken against a person substantially in reprisal for any function they have exercised under this code.

9.6 For the purposes of clause 9.4 and 9.5, a detrimental action is an action causing, comprising or involving any of the following:

- a) injury, damage or loss
- b) intimidation or harassment
- c) discrimination, disadvantage or adverse treatment in relation to employment
- d) dismissal from, or prejudice in, employment
- e) disciplinary proceedings.

Compliance with requirements under this code

- 9.7 You must not engage in conduct that is calculated to impede or disrupt the consideration of a matter under this code.
- 9.8 You must comply with a reasonable and lawful request made by a person exercising a function under Part 10. A failure to make a written or oral submission invited under Part 10 will not constitute a breach of this clause.

Disclosure of information about the consideration of a matter under this code

- 9.9 All allegations of breaches of this code must be dealt with under and in accordance with Part 10.
- 9.10 You must not allege breaches of this code other than by way of a complaint made or initiated under Part 10.
- 9.11 You must not make allegations about, or disclose information about, suspected breaches of this code panel meetings, whether open to the public or not, or in any other forum, whether public or not.
- 9.12 You must not disclose information about a complaint you have made under this code or a matter being considered under this code except for the purposes of seeking legal advice, unless the disclosure is otherwise permitted under Part 10.

## Part 10 – Breaches of this Code

### What is a code of conduct complaint?

- 10.1 For the purpose of this code, a code of conduct complaint is a complaint that alleges conduct on the part of a panel member in connection with their role as a panel member or the exercise of their functions as a panel member that would constitute a breach of the standards of conduct prescribed under this code of conduct.
- 10.2 The following are not “code of conduct complaints” for the purposes of this code:
- a) complaints about the standard or level of service provided by the panel or a panel member
  - b) complaints about the merits of a decision made by the panel or a panel member or the exercise of a discretion by the panel or a panel member
  - c) complaints about the policies or procedures governing the operations of the panel or of the council
  - d) complaints about the exercise in good faith by the panel or a panel member of their functions, whether or not involving error.
- 10.3 Only code of conduct complaints are to be dealt with under this code. Complaints that are not a code of conduct complaint for the purposes of clause 10.1, are to be dealt with under the council’s routine complaints management processes.

### When must a code of conduct complaint be made?

- 10.4 A code of conduct complaint must be made within 3 months of the alleged conduct occurring or within 3 months of the complainant becoming aware of the alleged conduct.
- 10.5 A complaint made after 3 months may only be accepted if the general manager or their delegate is satisfied that there are compelling grounds for the matter to be dealt with under this code.

### How may a code of conduct complaint about a panel member be made?

- 10.6 All code of conduct complaints about panel members are to be made to the general manager in writing. This clause does not operate to prevent a person from making a complaint to an external agency.
- 10.7 Where a code of conduct complaint about a panel member cannot be made in writing, the complaint must be confirmed with the complainant in writing as soon as possible after the receipt of the complaint.
- 10.8 Notwithstanding clause 10.6 and 10.7, where the general manager becomes aware of a possible breach by a panel member of this code, he or she may initiate the process for the consideration of the matter without a written complaint.

### Delegation by general managers of their functions under this Part

- 10.9 A general manager may delegate his or her functions under this Part to a member of staff of the council or to a person or persons external to the council other than a state government agency. References in this Part to the general manager are also to be taken to be references to their delegates.

What complaints may be declined at the outset?

10.10 Without limiting any other provision in this code, the general manager may decline to deal with a complaint under this code where he or she is satisfied that the complaint:

- a) is not a code of conduct complaint for the purposes of clause 10.1, or
- b) subject to clause 10.5, is not made within 3 months of the alleged conduct occurring or the complainant becoming aware of the alleged conduct, or
- c) is trivial, frivolous, vexatious or not made in good faith, or
- d) relates to a matter the substance of which has previously been considered and addressed by the council and does not warrant further action, or
- e) is not made in a way that would allow the alleged conduct and any alleged breaches of this code to be readily identified.

How are code of conduct complaints about panel members to be dealt with?

10.11 The general manager is responsible for the management of code of conduct complaints about panel members and for determining the outcome of such complaints.

10.12 The general manager may decide to take no action in relation to a code of conduct complaint about a panel member on the grounds that he or she considers that no action is warranted in relation to the complaint.

10.13 Where the general manager decides to take no action in relation to a code of conduct complaint about a panel member, the general manager must give the complainant reasons in writing for their decision and this shall finalise the consideration of the matter.

10.14 Where the general manager considers it to be practicable and appropriate to do so, the general manager may seek to resolve code of conduct complaints about panel members, by alternative means such as, but not limited to, explanation, counselling, training, mediation, informal discussion, negotiation or a voluntary apology. The resolution of a code of conduct complaint under this clause is not to be taken as a determination that there has been a breach of this code.

10.15 Where the general manager resolves a code of conduct complaint under clause 10.14 to the general manager's satisfaction, the general manager must notify the complainant in writing of the steps taken to resolve the complaint and this shall finalise the consideration of the matter under this code of conduct.

10.16 Sanctions for breaches of the code of conduct by panel members depend on the severity, scale and importance of the breach and may include one or more of the following:

- a) censure
- b) requiring the person to apologise to any person or organisation adversely affected by the breach in such a time and form specified by the general manager
- c) prosecution for any breach of the law
- d) removing the person from membership of the panel.

10.17 Prior to imposing a sanction against a panel member under clause 10.16, the general manager or any person making enquiries on behalf of the general manager must comply with the requirements of procedural fairness. In particular:

- a) the substance of the allegation (including the relevant provision/s of this code that the alleged conduct is in breach of) must be put to the person who is the subject of the allegation, and
- b) the person must be given an opportunity to respond to the allegation, and
- c) the general manager or their delegate must consider the person's response in deciding whether to impose a sanction under clause 10.16.

Complaints about the consideration of matters under this Part

10.18 Complaints about the consideration of a code of conduct complaint by the general manager or his or her delegate under this Part, may be made in writing to the Office of Local Government or the Department of Planning and Environment.

## Schedule 1: Disclosures of Interest

### Part 1: Preliminary

#### Definitions

1. For the purposes of the schedules to this code, the following definitions apply:

*address* means:

- a) in relation to a person other than a corporation, the last residential or business address of the person known to the panel member disclosing the address, or
- b) in relation to a corporation, the address of the registered office of the corporation in New South Wales or, if there is no such office, the address of the principal office of the corporation in the place where it is registered, or
- c) in relation to any real property, the street address of the property.

*de facto partner* has the same meaning as defined in section 21C of the *Interpretation Act 1987*.

*disposition of property* means a conveyance, transfer, assignment, settlement, delivery, payment or other alienation of property, including the following:

- a) the allotment of shares in a company
- b) the creation of a trust in respect of property
- c) the grant or creation of a lease, mortgage, charge, easement, licence, power, partnership or interest in respect of property
- d) the release, discharge, surrender, forfeiture or abandonment, at law or in equity, of a debt, contract or chose in action, or of an interest in respect of property
- e) the exercise by a person of a general power of appointment over property in favour of another person
- f) a transaction entered into by a person who intends by the transaction to diminish, directly or indirectly, the value of the person's own property and to increase the value of the property of another person.

*gift* means a disposition of property made otherwise than by will (whether or not by instrument in writing) without consideration, or with inadequate consideration, in money or money's worth passing from the person to whom the disposition was made to the person who made the disposition, but does not include a financial or other contribution to travel.

*interest* means:

- a) in relation to property, an estate, interest, right or power, at law or in equity, in or over the property, or
- b) in relation to a corporation, a relevant interest (within the meaning of section 9 of the *Corporations Act 2001* of the Commonwealth) in securities issued or made available by the corporation.

*listed company* means a company that is listed within the meaning of section 9 of the *Corporations Act 2001* of the Commonwealth.

*occupation* includes trade, profession and vocation.

*professional or business association* means an incorporated or unincorporated body or organisation having as one of its objects or activities the promotion of the economic interests of its members in any occupation.

*property* includes money.

*return date* means:

- a) in the case of a return made under clause 4.15(a), the date on which a person became a panel member
- b) in the case of a return made under clause 4.15(b), 30 June of the year in which the return is made
- c) in the case of a return made under clause 4.15(c), the date on which the panel member became aware of the interest to be disclosed.

*relative* includes any of the following:

- a) a person's spouse or de facto partner
- b) a person's parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child
- c) a person's spouse's or de facto partner's parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child
- d) the spouse or de facto partner of a person referred to in paragraphs (b) and (c).

*travel* includes accommodation incidental to a journey.

#### Matters relating to the interests that must be included in returns

2. Interests etc. outside New South Wales: A reference in this schedule or in schedule 2 to a disclosure concerning a corporation or other thing includes any reference to a disclosure concerning a corporation registered, or other thing arising or received, outside New South Wales.
3. References to interests in real property: A reference in this schedule or in schedule 2 to real property in which a panel member has an interest includes a reference to any real property situated in Australia in which the panel member person has an interest.
4. Gifts, loans etc. from related corporations: For the purposes of this schedule and schedule 2, gifts or contributions to travel given, loans made, or goods or services supplied, to a panel member by two or more corporations that are related to each other for the purposes of section 50 of the *Corporations Act 2001* of the Commonwealth are all given, made or supplied by a single corporation.

## **Part 2: Pecuniary interests to be disclosed in returns**

### Real property

5. When making a return under clause 4.15 of this code you must disclose:
  - a) the street address of each parcel of real property in which you had an interest on the return date, and
  - b) the street address of each parcel of real property in which you had an interest in the period since 30 June of the previous financial year, and
  - c) the nature of the interest.
6. An interest in a parcel of real property need not be disclosed in a return if the person making the return had the interest only:
  - a) as executor of the will, or administrator of the estate, of a deceased person and not as a beneficiary under the will or intestacy, or
  - b) as a trustee, if the interest was acquired in the ordinary course of an occupation not related to your duties as the holder of a position required to make a return.
7. An interest in a parcel of real property need not be disclosed in a return if you ceased to hold the interest prior to becoming a panel member.
8. For the purposes of clause 5 of this schedule, "interest" includes an option to purchase.

### Gifts

9. When making a return under clause 4.15 of this code you must disclose:
  - a) a description of each gift received in the period since 30 June of the previous financial year, and
  - b) the name and address of the donor of each of the gifts.

### Contributions to travel

10. When making a return under clause 4.15 of this code you must disclose:
  - a) the name and address of each person who made any financial or other contribution to the expenses of any travel undertaken by you in the period since 30 June of the previous financial year, and
  - b) the dates on which the travel was undertaken, and
  - c) the names of the states and territories, and of the overseas countries, in which the travel was undertaken.
11. A financial or other contribution to any travel need not be disclosed under this clause if it:
  - a) was made from public funds (including a contribution arising from travel on free passes issued under an Act or from travel in government or council vehicles), or
  - b) was made by a relative of the traveller, or
  - c) was made in the ordinary course of an occupation of the traveller that is not related to his or her functions as the holder of a position requiring the making of a return, or

- d) did not exceed \$500, unless it was among gifts totalling more than \$500 made by the same person during a 12-month period or less, or
  - e) was a political donation disclosed, or required to be disclosed, under Part 6 of the *Election Funding Expenditure and Disclosures Act 1981*, or
  - f) was made by a political party of which the traveller was a member and the travel was undertaken for the purpose of political activity of the party in New South Wales, or to enable the traveller to represent the party within Australia, or
  - g) subject to paragraph (d) it was received prior to the person becoming a panel member.
12. For the purposes of clause 13 of this schedule, the amount of a contribution (other than a financial contribution) is an amount equal to the value of the contribution.

#### Interests and positions in corporations

13. When making a return under clause 4.15 of this code you must disclose:
- a) the name and address of each corporation in which you had an interest or held a position (whether remunerated or not) on the return date, and
  - b) the name and address of each corporation in which you had an interest or held a position in the period since 30 June of the previous financial year, and
  - c) the nature of the interest, or the position held, in each of the corporations, and
  - d) a description of the principal objects (if any) of each of the corporations, except in the case of a listed company.
14. An interest in, or a position held in, a corporation need not be disclosed if the corporation is:
- a) formed for the purpose of providing recreation or amusement, or for promoting commerce, industry, art, science, religion or charity, or for any other community purpose, and
  - b) required to apply its profits or other income in promoting its objects, and
  - c) prohibited from paying any dividend to its members.
15. An interest in a corporation need not be disclosed if the interest is a beneficial interest in shares in a company that does not exceed 10 per cent of the voting rights in the company.
16. An interest or a position in a corporation need not be disclosed if the person ceased to hold the interest or position prior to becoming a panel member.

#### Positions in trade unions and professional or business associations

17. When making a return under clause 4.15 of the code you must disclose:
- a) the name of each trade union, and of each professional or business association, in which you held any position (whether remunerated or not) on the return date, and
  - b) the name of each trade union, and of each professional or business association, in which you held any position (whether remunerated or not) in the period since 30 June of the previous financial year, and

- c) a description of the position held in each of the unions and associations.
18. A position held in a trade union or a professional or business association need not be disclosed if the person ceased to hold the position prior to becoming a panel member.

Dispositions of real property

19. When making a return under clause 4.15 of this code you must disclose particulars of each disposition of real property by you (including the street address of the affected property) in the period since 30 June of the previous financial year, under which he or she wholly or partly retained the use and benefit of the property or the right to re-acquire the property.
20. When making a return under clause 4.15 of this code you must disclose particulars of each disposition of real property to another person (including the street address of the affected property) in the period since 30 June of the previous financial year, that is made under arrangements with, but is not made by, the person making the return, being a disposition under which the person making the return obtained wholly or partly the use of the property.
21. A disposition of real property need not be disclosed if it was made prior to you becoming a panel member.

Sources of income

22. When making a return under clause 4.15 of this code you must disclose:
- a) each source of income that the you reasonably expect to receive in the period commencing on the first day after the return date and ending on the following 30 June, and
  - b) each source of income received by you in the period since 30 June of the previous financial year.
23. A reference in clause 26 of this schedule to each source of income received, or reasonably expected to be received, by you is a reference to:
- a) in relation to income from an occupation of the person:
    - (i) a description of the occupation, and
    - (ii) if the person is employed or the holder of an office, the name and address of his or her employer, or a description of the office, and
    - (iii) if the person has entered into a partnership with other persons, the name (if any) under which the partnership is conducted, or
  - b) in relation to income from a trust, the name and address of the settlor and the trustee, or
  - c) in relation to any other income, a description sufficient to identify the person from whom, or the circumstances in which, the income was, or is reasonably expected to be, received.
24. The source of any income need not be disclosed by you in a return if the amount of the income received, or reasonably expected to be received, by the person from that source did not exceed \$1000, or is not reasonably expected to exceed \$1000, as the case may be.
25. The source of any income received by the person that they ceased to receive prior to becoming a panel member need not be disclosed.

## Debts

26. When making a return under clause 4.15 of this code you must disclose the name and address of each person to whom you were liable to pay any debt:
- a) on the return date, and
  - b) at any time in the period since 30 June of the previous financial year.
27. A liability to pay a debt must be disclosed by you in a return made under clause 4.15 whether or not the amount, or any part of the amount, to be paid was due and payable on the return date or at any time in the period since 30 June of the previous financial year, as the case may be.
28. A liability to pay a debt need not be disclosed by you in a return if:
- a) the amount to be paid did not exceed \$1000 on the return date or in the period since 30 June of the previous financial year, as the case may be, unless:
    - (i) the debt was one of two or more debts that you were liable to pay to one person on the return date, or at any time in the period since 30 June of the previous financial year, as the case may be, and
    - (ii) the amounts to be paid exceeded, in the aggregate, \$1000, or
  - b) you were liable to pay the debt to a relative, or
  - c) in the case of a debt arising from a loan of money you were liable to pay the debt to an authorised deposit-taking institution or other person whose ordinary business includes the lending of money, and the loan was made in the ordinary course of business of the lender, or
  - d) in the case of a debt arising from the supply of goods or services:
    - (i) the goods or services were supplied in the period of 12 months immediately preceding the return date, or were supplied in the period since 30 June of the previous financial year, as the case may be, or
    - (ii) the goods or services were supplied in the ordinary course of any occupation of you that is not related to your duties as the holder of a position required to make a return, or
  - e) subject to paragraph (a), the debt was discharged prior to you becoming a panel member.

## Discretionary disclosures

29. You may voluntarily disclose in a return any interest, benefit, advantage or liability, whether pecuniary or not, that is not required to be disclosed under another provision of this Schedule.

## Schedule 2: Form of Return

### Disclosures return

1. The pecuniary interests and other matters to be disclosed in this return are prescribed by Schedule 1 of the Code of Conduct for Local Planning Panels in NSW (the Code).
2. If this is the first return you have been required to lodge do not complete Parts C, D of the return. All other parts of the return should be completed with appropriate information based on your circumstances at the return date, that is, the date on which you became a panel member.
3. If you have previously lodged a return with the general manager and you are completing this return for the purposes of disclosing a new interest that was not disclosed in the last return you lodged with the general manager, you must complete all parts of the return with appropriate information for the period from 30 June of the previous financial year to the return date which is the date you became aware of the new interest to be disclosed in your updated return.
4. If you have previously lodged a return with the general manager and are submitting a new return for the new financial year, you must complete all parts of the return with appropriate information for the 12-month period commencing on 30 June of the previous year to 30 June this year.
5. This form must be completed using block letters or typed.
6. If there is insufficient space for all the information you are required to disclose, you must attach an appendix which is to be properly identified and signed by you.
7. If there are no pecuniary interests or other matters of the kind required to be disclosed under a heading in this form, the word "NIL" is to be placed in an appropriate space under that heading.
8. "\*" means delete whichever is inapplicable.

### Important information

This information is being collected for the purpose of complying with clause 4.15 of the Code.

You must not lodge a return that you know or ought reasonably to know is false or misleading in a material particular (see clause 4.17 of the Code). Complaints about breaches of these requirements are to be referred to the general manager and may result in disciplinary action by the council.

The information collected on this form will be kept by the general manager in a register of returns. The general manager is required to table all returns at a council meeting.

Information in this return other than information about your principal place of residence will be published on the council's website.

You have an obligation to keep the information contained in this return up to date. If you become aware of a new interest that must be disclosed in this return, or an interest that you have previously failed to disclose, you must submit an updated return within three months of becoming aware of the previously undisclosed interest.

Disclosure of pecuniary interests and other matters by [full name]

\*as at [return date]

\*in respect of the period from [date] to [date]

[person's signature]

[date]

A. Real Property

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Street address of each parcel of real property in which I had an interest *at the return date/*at any time since 30 June	Nature of interest
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B. Sources of income

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1 \*Sources of income I reasonably expect to receive from an occupation in the period commencing on the first day after the return date and ending on the following 30 June:

\*Sources of income I received from an occupation at any time since 30 June:

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Description of occupation	Name and address of employer or description of office held (if applicable)	Name under which partnership conducted (if applicable)
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2 \*Sources of income I reasonably expect to receive from a trust in the period commencing on the first day after the return date and ending on the following 30 June:

\*Sources of income I received from a trust since 30 June:

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Name and address of settlor	Name and address of trustee
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3 \*Sources of other income I reasonably expect to receive in the period commencing on the first day after the return date and ending on the following 30 June:

\*Sources of other income I received at any time since 30 June:

[Include description sufficient to identify the person from whom, or the circumstances in which, that income was received]

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C. Gifts

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Description of each gift I received at any time since 30 June	Name and address of donor
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D. Contributions to travel

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Name and address of each person who made any financial or other contribution to any travel undertaken by me at any time since 30 June	Dates on which travel was undertaken	Name of States, Territories of the Commonwealth and overseas countries in which travel was undertaken
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E. Interests and positions in corporations

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Name and address of each corporation in which I had an interest or held a position *at the return date/*at any time since 30 June	Nature of interest (if any)	Description of position (if any)	Description of principal objects (if any) of corporation (except in case of listed company)
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F. Positions in trade unions and professional or business associations

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Name of each trade union and each professional or business association in which I held any position (whether remunerated or not) *at the return date/*at any time since 30 June	Description of position
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G. Debts

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Name and address of each person to whom I was liable to pay any debt \*at the return date/\*at any time since 30 June

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H. Dispositions of property

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1 Particulars of each disposition of real property by me (including the street address of the affected property) at any time since 30 June as a result of which I retained, either wholly or in part, the use and benefit of the property or the right to re-acquire the property at a later time

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2 Particulars of each disposition of property to a person by any other person under arrangements made by me (including the street address of the affected property), being dispositions made at any time since 30 June, as a result of which I obtained, either wholly or in part, the use and benefit of the property

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I. Discretionary disclosures

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