

Expert Panel for the Implementation Review

Agenda Report

Meeting No. 2

Date	5 September 2022
Item Name	Draft Conflict of Interest Policy
Presenters	Tyler Johns (DTI)
Item Number	3.1
Related Items	Nil

Recommendation

It is recommended that the Expert Panel (the Panel) resolves to:

1. Approve the designation of the Agenda Report as Not Confidential (Release Immediately);
2. Approve and adopt the draft Conflict of Interest Policy (**Attachment 1**).

Background

1. The government's planning and heritage policy platform documents released prior to the March 2022 State Election provide for the commissioning of an implementation review of the *Planning, Development and Infrastructure Act 2016* (the Act) and the Planning and Design Code (the Code). The election commitment documents provide for the review to be undertaken with the aid of an Expert Panel (Panel), and will address the following policy objectives:
 - 1.1. protecting the character and heritage of our local communities;
 - 1.2. ensuring greater tree canopy coverage and green open space;
 - 1.3. providing certainty to business, industry and communities by implementing appropriate design standards; and
 - 1.4. considering improvements to the e-planning system and processes.
2. On 21 July 2022, the Minister for Planning (the Minister) approved the Terms of Reference (ToR) for the work of the Panel, which identified, amongst other things, an expectation on the Panel members to appropriately manage conflicts of interest if they arose throughout the Implementation Review Project.
3. The purpose of this report is to seek the Panel's approval and adoption of the draft Conflict of Interest Policy in line with the expectations set out in the ToR.

Discussion

4. Pursuant to clause 8 of the Panel's ToR, Panel members must declare any conflicts of interest at the start of each meeting or before discussion of a relevant agenda item or topic.
5. The ToR also require that details of potential or actual conflicts of interest are appropriately minuted and, in circumstances where a Panel member has a real or perceived conflict of interest, states that it may be appropriate for the Member to be excused from deliberations on the matter.
6. To ensure there is no ambiguity around when a conflict of interest may arise, and the manner in which the Panel proposes to deal with conflicts of interest, a draft Conflict of Interest Policy (the Policy) has been prepared for the Panel's consideration and adoption (**Attachment 1**).
7. The Policy is based on the State Planning Commission's policy on conflicts of interest.

Attachments

1. Draft Conflict of Interest Policy (KNet #19169376)

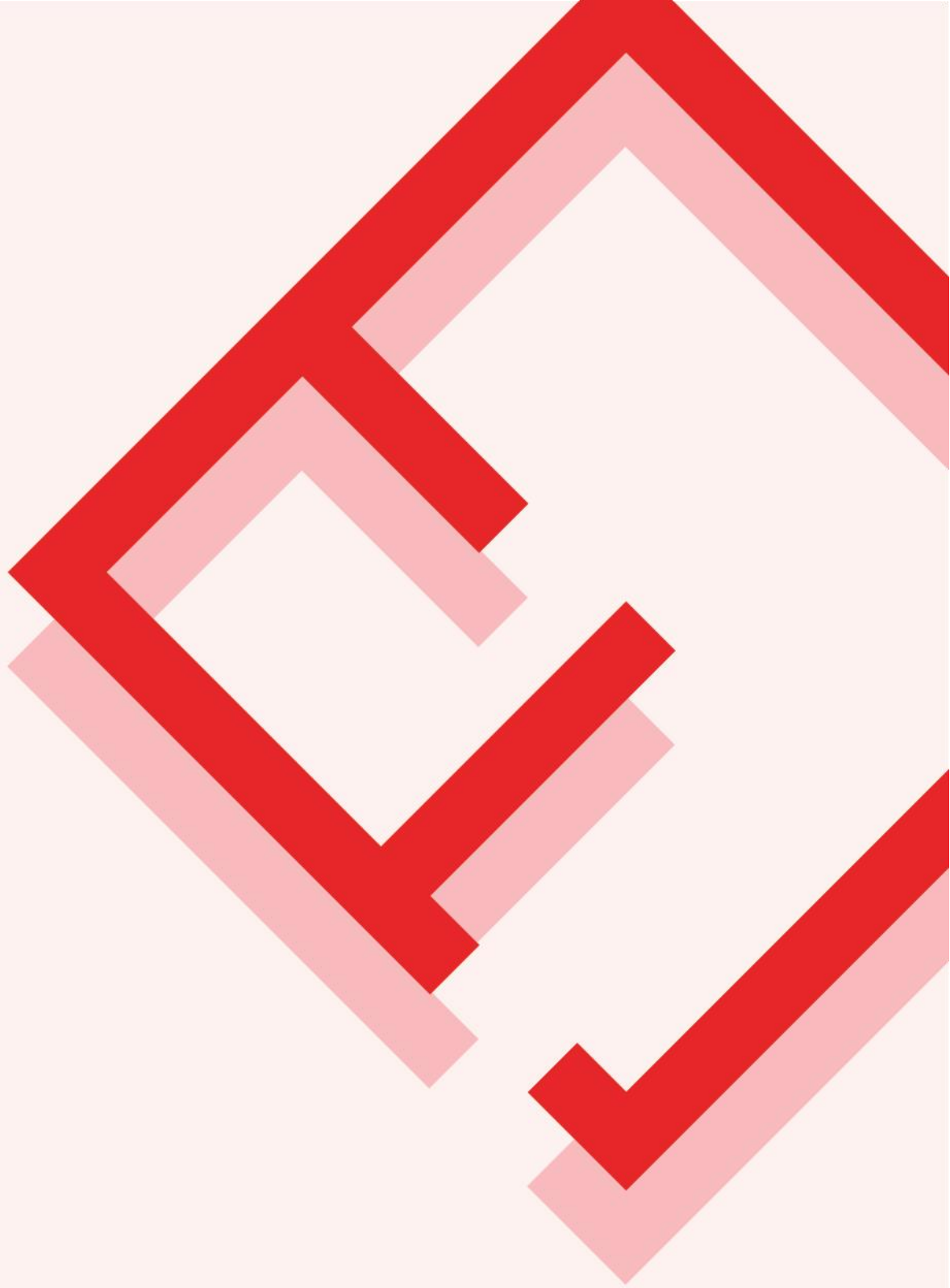
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Date: 26/08/2022

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Draft Conflict of Interest Policy

Expert Panel for the Implementation Review

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Draft Conflict of Interest Policy

1. Policy Position

- 1.1 The Expert Panel for the Implementation Review (the Panel) is committed to high standards of ethical conduct. It places great importance on managing actual, potential, or perceived conflicts of interest.
- 1.2 The Panel is established by Terms of Reference (ToR) approved by the Minister for Planning (the Minister) on 21 July 2022 and pursuant to clause 8, the Panel members must declare any conflicts of interest at the start of each meeting or before discussion of a relevant agenda item or topic.
- 1.3 The ToR require that details of potential or actual conflicts of interest are appropriately minuted and, in circumstances where a Panel member has a real or perceived conflict of interest, states that it may be appropriate for the member to be excused from deliberations on the matter.
- 1.4 This Policy details:
 - 1.4.1 examples of conflicts of interest;
 - 1.4.2 the process Panel members should use when declaring and managing conflicts of interest; and
 - 1.4.3 how the Panel, itself, should manage conflicts of interest.

2. Meaning of Conflict of Interest

- 2.1 In accordance with clause 8 of the Panel's ToR, a member of the Panel who has a conflict of interest in a matter before the Panel, must declare and manage that conflict.
- 2.2 A conflict of interest may occur if an interest or activity influences or appears to influence a Panel member's ability to be objective. The term covers actual, potential or perceived conflicts.
- 2.3 Examples include:
 - 2.3.1 where a Panel member could gain financially from business dealings, programs or services associated with the Department of Trade and Investment (the Department) or the Panel;
 - 2.3.2 where the immediate family or business connections of a Panel member could gain financially from business dealings, programs or services of the Department or the Panel;
 - 2.3.3 whether the Panel member or their immediate family or business connections are to be appointed to an employment position with the Department; or

2.3.4 where a Panel member has a role on the governing body of another organisation, whether the activities of that other organisation may conflict or compete with the activities of the Panel.

3. Are Conflicts Prohibited?

- 3.1 Conflicts of interest are contemplated by the Panel's ToR.
- 3.2 Panel members should actively consider and monitor their interests and where there is an actual, potential, or perceived conflict, a Panel member must disclose and manage that interest appropriately and as required under the ToR and the Code of Ethics for the South Australian Public Sector.
- 3.3 As a consequence, Panel members are not prevented from having business dealings with the Department, provided it can be proven that these have been negotiated at arm's length and the conflicted Panel member has followed the required procedures.
- 3.4 Similarly, Panel members are not prevented from having personal or business dealings on matters which may come before the Panel, provided the appropriate procedures are followed by that member.

4. On Joining the Panel

- 4.1 Immediately on joining the Panel, a Panel member must complete the Register of Interests (Primary Return) in the form prescribed for the State Planning Commission under clause 2(1)(a) of Schedule 1 of the *Planning, Development and Infrastructure Act 2016*.
- 4.2 The Register records the Panel member's main business activities, involvement with other business organisations, vendors, business interests and other associations that might produce a conflict of interest.
- 4.3 Whilst there is no statutory obligation on the Panel to complete the Register, the Panel has determined to do so as a matter of good governance, transparency and accountability.

5. When Serving on the Panel

- 5.1 On an ongoing basis, Panel members must declare any conflict of interest when the conflict arises or when the member becomes aware of the conflict. This may occur on receipt of an Agenda for a meeting, or at the start of the first Panel meeting after, or when, the conflict emerges.
- 5.2 In the event of a declaration of a conflict of interest by a member:
 - 5.2.1 the nature of this conflict of interest will be detailed in the meeting minutes. The interest will also be recorded in the Conflict of Interest Register, which is maintained by the Department;
 - 5.2.2 the Panel member must decide how a particular conflict will be handled. Depending on the magnitude of the conflict, various solutions will be appropriate, which may include:

- 5.2.2.1 resignation of the conflicted Panel member from the Panel meeting;
 - 5.2.2.2 leave of absence by the Panel member from the Panel meeting for a period of time while the matter is resolved;
 - 5.2.2.3 non-disclosure or quarantining of Panel papers from the conflicted Panel member and absence from the part of the Panel meetings when the matter is being discussed or resolved.
- 5.2.3 Where a conflict of interest is identified and/or recorded, and the Panel determines that resignation or leave of absence of the conflicted Panel member is required, the conflicted Panel member must not initiate or take part in any Panel discussion on the matter (either in the meeting or with the other Panel members before or after the Panel meeting). The conflicted Panel member must not vote on the matter, and this should be recorded in the minutes of the meeting.
- 5.2.4 A Panel member who believes another Panel member has an undeclared conflict of interest must specify in writing, to the Chair (or to the Principal Advisor where the matter relates to an interest of the Chair), the circumstances of the conflict. The Chair (or the Principal Advisor, if relevant) must raise the issue with the Panel member concerned and seek advice from the Department as required. If the Panel member does not agree, the Panel will decide the matter by majority vote.

6. Reputation of the Panel

- 6.1 On occasion, a conflict can be handled correctly from a legal perspective but may still have the potential to damage the reputation of the Panel because of appearances.
- 6.2 The Panel has the ultimate authority to manage reputational risk and the proper and orderly management the Panel's practices and procedures. If the Panel determines that a conflict, although managed properly in a legal sense, may damage the reputation of the:
- 6.2.1 Panel;
 - 6.2.2 Minister;
 - 6.2.3 Department; and/or
 - 6.2.4 integrity of the Implementation Review,
- if it proceeds, the Panel may decide not to proceed or to take action to address the perceived conflict.

7. Confidentiality

- 7.1 When complying with this Policy, the confidentiality of the Panel members will be respected, subject to the disclosure requirements under the ToR.

John Stimson

Chair