



Assessment Panel Members - Code of Conduct Guidance Material

Introduction

Under Schedule 3 of the *Planning, Development and Infrastructure Act 2016* (the Act), the Minister has adopted the following codes of conduct:

- Accredited Professionals Scheme – Code of Conduct
- Assessment Panel Members – Code of Conduct
- State Planning Commission Members – Code of Conduct
- Infrastructure Scheme Coordinators – Code of Conduct
- Joint Planning Board Members – Code of Conduct.

The guidance material below provides explanatory notes and examples of how the Assessment Panel Members - Code of Conduct (the Code) can be interpreted and applied. It is intended that the notes be used to clarify the meaning and scope of the code's requirements and is not an exhaustive list of all situations that may give rise to a breach.

Contravention of the Code

The Assessment Panel Members - Code of Conduct applies to all assessment panel members, including:

- Council Assessment Panel (CAP) members, including independent and elected members
- Regional Assessment Panel (RAP) members
- State Commission Assessment Panel (SCAP) members
- Land Division Assessment Panel (LDAP) members

If a person believes an Assessment Panel Member has acted in contravention of the Code, they may make a complaint to the State Planning Commission under regulation 11 of the *Planning, Development and Infrastructure (General) Regulations 2017* (the Regulations) which may lead to disciplinary action.

General Duties (Requirement 1)

Section 15 of the Act outlines expectations for a person or body that seeks to obtain authorisation under the Act, performs, exercises or discharges a function, power or duty under the Act, or takes benefit of the Act or is otherwise involved in a process provided by the Act. These expectations include:

- Acting in a cooperative and constructive way.
- Being honest and open in interacting with other entities under the Act.
- Being prepared to find reasonable solutions to issues that affect other interested parties.
- Exercising professional care and diligence.
- Acting honestly and in an impartial manner.
- Being responsible and accountable.
- Complying with any code of conduct, service benchmark or other requirement that applies to the person or body.

Professionalism (Requirements 2-4)

Members of the public, as well as other panel members, are entitled to respect and courtesy. These requirements outline the minimum service standards expected of panel members.

They specifically prohibit discrimination, undue influence, bullying, harassment, or any conduct that would bring the public's perception of the industry into disrepute.

Examples of conduct that may constitute a breach of this clause include –

- The use of profanity in written or verbal dealings with any person.
- A presiding member exerting undue influence on other panel members in an attempt to sway their vote.

Act in the public interest (Requirement 5)

Acting in the public interest means that the outcome of any decision-making process, as well as the processes followed in reaching that outcome, are in the public interest and seen to be in the public interest.

This means that assessment panel members must prioritise their public duty and compliance with the legislation and relevant instruments, standards and codes over their business or personal interests, preferences, a specific individual's interests or political influence.

It is expected that panel members consider the greater public when making a decision on a development application as distinct from the interest of an individual or individuals.

An assessment panel member acting in the public interest will:

- put their statutory public duty first.
- understand, declare and appropriately manage their conflicts of interest.
- adhere to the applicable legislation.
- comply with this Code.
- ensure the principles of procedural fairness are followed.
- make decisions fairly and impartially.

Procedures (Requirements 6 & 7)

Assessment panel members are required to comply with all the procedures specified in the Act and Regulations, as well as acting in compliance with the established panel procedures in relation to public comments and communication with the media. The panel procedures will be specific to each panel. If a panel member seeks further information about the procedures or requirements they set out, it is recommended they speak with their assessment manager.

Regard for honesty (Requirements 8-10)

Assessment panel members are required to act with strong ethical and moral principles, and to explicitly “do the right thing”. This requirement includes expectations that panel members must –

- Act with integrity, good faith and equity.
- Not engage in any misleading or deceptive conduct.
- Notify the assessment manager and State Planning Commission immediately if they:
 - are subject to a formal investigation, or
 - have been found guilty of breaching any other code of conduct, ethical standards or similar, or
 - have been found guilty of breaching any legislation relating to a planning, building or development related matter.

Examples of conduct that may constitute a breach of this clause includes –

- Failing to advise the State Planning Commission and Assessment Manager that you are subject to a formal investigation.

Conflict of interest (Requirements 11-14)

The Code requires assessment panel members to take all reasonable steps to avoid direct or indirect conflicts of interest, either actual or perceived.

In the event a panel member identifies a conflict of interest, they are required to disclose the nature and extent of the interest to the presiding member and Assessment Manager.

The key terms that are used when considering conflicts of interest include:

- A direct interest – this is an interest where the panel member will be directly affected by the outcome, either positively or negatively.
- An indirect interest – an interest where the panel member does not stand to benefit directly, but a person or other entity connected to them will gain a benefit (or suffer a loss).
- An associate – includes a relative, spouse or domestic partner, body corporate in which the member, relative or spouse, have an interest exceeding 10% of its capital or trustee of a trust to which the member, relative or spouse are a beneficiary.
- Financial conflict of interest – also known as a *pecuniary interest*, this is where the panel member or their associate stands to gain a financial or monetary benefit.
- Non-financial conflict of interest – also known as a *non-pecuniary interest*, this is where a panel member receives a benefit such as enhancement of personal reputation or advancement (or loss) of some other personal interest. It can include involvement or affiliation with a community, social or other cultural organisation.

- Actual conflict of interest – arises when a panel member has a direct personal or pecuniary interest in the matter being considered.
- Potential conflict of interest – this is when a conflict of interest may arise in the future.
- Perceived conflict of interest – where a reasonable and fair-minded person would perceive that a panel member’s interests may influence or impact the performance of their statutory functions and duties.
- Substantial class of persons – where a panel member’s interest is shared with a significant proportion of other community members, a conflict of interest may not arise.

It is recommended that panel members exercise caution in determining whether their interest is shared with a ‘significant proportion’ of other community members. If there is any doubt, the matter should be dealt with as if there is a perceived conflict.

Questions to consider in determining whether a conflict exists:

1. Have I been involved in the planning and design of the development? If so, was my involvement more than the provision of general advice?
2. Was/is the company I work for associated with any aspect of the development?
3. Do I, or an associate, have a direct or indirect personal or pecuniary interest in the matter?
4. Does someone I have a close personal relationship with have a direct or indirect personal or pecuniary interest in the matter?
5. Is my (or my associate’s) interest greater than a significant proportion of other community members?
6. Will my involvement negatively affect the community’s trust in the decision?

7. Will the decision have a big impact on me, an associate or someone I have a close personal relationship with?

If the panel member answered “yes” to one or more of the questions above, a conflict of interest may exist.

Examples of conduct that may constitute a breach of this clause include –

- A panel member failing to disclose a conflict of interest where a development application the member designed is coming before the panel for consideration.
- A panel member accepting work as a consultant on a development they know is likely to go before a panel for which they are a member of, even if they intend to declare the conflict and remove themselves from deliberations.

Bias
(Requirement 15)

Assessment panel members must have regard to any affiliation, disposition or any material, pecuniary or other interest that would lead to a reasonable apprehension of bias.

Bias is a tendency or prejudice toward or against something or someone that may result in a lack of objectivity when considering a matter and can include –

- Explicit bias – beliefs or attitudes that a person may have towards another person or group on a conscious level; or
- Implicit bias – an automatic and unintentional bias which still impacts decisions and judgements; and
- Actual bias – where someone has a personal interest in the outcome of a matter; or

- **Apparent bias** – where conduct of a person raises suspicion that their decision will not be impartial.

The test to determine whether there is an apparent bias is whether a reasonable and fair-minded person would perceive the panel member's action to not be impartial.

Examples of conduct that may constitute a breach of this clause include –

- A panel member voting for a sporting club's proposed development on the basis that they are a club member.

- giving advice on a development application outside of a panel meeting after the development application has been lodged.
- speaking at a public meeting for or against a proposal unless required by the Act.
- expressing an opinion on a development application (that is before, or likely to come before the panel) outside of a panel meeting.
- engaging in any other act or omission which may give rise to a reasonable presumption that they have prejudged a proposal for which the panel is the relevant authority.

Examples of conduct that may constitute a breach of this clause include –

- A panel member entering a site that is subject to a development application that has been scheduled for an upcoming Assessment Panel, for which they are a member, whilst in the area for personal errands.

Making decisions and taking action
(Requirements 16-20)

These Code requirements include a broad range of conduct and actions that link to the obligations and procedures set by the Act and Regulations.

To summarise, assessment panel members must:

- Take all reasonable steps to obtain relevant facts and information;
- Ensure their decisions and actions are reasonable, fair and appropriate;
- Not approach or discuss with an applicant, or representor, any application where the panel is the relevant authority, or likely to become the relevant authority; and
- Not enter the site of a proposed development before the panel (unless required as part of the assessment by way of a formal panel viewing).

These sections also prohibit panel members from:

- engaging in consultation outside of the panel process for an application that is likely to be heard by the panel.

Public comment
(Requirement 21)

The Code specifies that only the presiding member is allowed to speak publicly in relation to a matter before the panel, or where a decision has been made by the panel.

The only exception to this is where the panel has determined to provide authority for another member to do so.

Examples of conduct that may constitute a breach of this clause include –

- A member of an assessment panel making a social media post outlining their personal views on a development proposal before the panel.

- A panel member, who is not the presiding member, agrees to provide comments relating to a recent decision of the panel with a media outlet representative.

Proper exercise of power
(Requirement 22)

Assessment panel members must not take advantage of their position, power or duties to obtain preferential treatment or improper advantage for themselves or any other person.

Examples of conduct that may constitute a breach of this clause include –

- A council assessment panel member approaching council staff and requesting they fast track their friend’s development application.

Gifts and benefits
(Requirements 23-26)

Seeking or accepting gifts and benefits that are likely to cause, or could be perceived as likely to cause, a panel member to act impartially is prohibited.

It is also expected that panel members take all reasonable steps to ensure their relatives do not receive any gifts or benefits that could appear to be an attempt to influence the panel member.

Gifts or benefits can include anything that is offered above a panel member’s usual salary, sitting fee or other amount allowed by law and can include things such as:

- Free or discounted event tickets
- Gift vouchers
- Free accommodation

- Bottles of wine and Christmas hampers, or
- Favors conducted by another party.

Where possible, any offer of a gift or benefit should be politely declined. Accepting gifts or benefits, no matter how small or trivial, could be seen as an attempt to influence a public decision-maker in the performance of their duties.

Examples of conduct that may constitute a breach of this clause include –

- Voting to grant consent to a business for the construction of new gym after accepting an offer for a free gym membership at the proposed premises.
- Accepting tickets to a big sporting event from a company that has an application before the panel.
- A member failing to declare and surrender a small gift that was delivered to their office from a person who was a party to a proposed development that had come before the panel.

Annual Disclosure of Interests
(Requirement 27)

The Code and Act (clause 2 of Schedule 1) require assessment panel members to formally disclose any potential conflicts upon appointment with the panel, and on an annual basis.

The disclosure must be made to the relevant official. As defined by the Act and Regulations, a relevant official means –

- in relation to a regional assessment panel - the Minister.
- in relation to a member of an assessment panel appointed by the Council – the Chief Executive Officer of the Council.

***Protection and use of
information***
(Requirement 28-29)

Assessment panel members must maintain the integrity and security of confidential information and must not disclose any information acquired in the course of their work, unless they have the consent of the relevant person, or where there is a legal or professional duty to disclose such information.

For the purposes of requirement 29, the relevant person will be the person who has provided the information. This will generally be the applicant.

Examples of conduct that may constitute a breach of this section include –

- An assessment panel member disclosing information obtained during confidential CAP proceedings to a member of the public, or any other person.

Assessment Panel Complaints:

saplanningcommission@sa.gov.au