

## TITLE

## DECLARATION OF INTEREST POLICY

### DOCUMENT CONTROL

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For review	July 2019
Officer responsible	Assistant Director General Heritage Services

#### 1. Overarching Principle

It isn't wrong or unethical to have a conflict of interest; what is important is that it is identified and appropriately managed.<sup>1</sup>

Appropriate management of a conflict of interest is to ask, would an informed person, having thought the situation through, think it possible that a Member might be adversely influenced in the performance of their duties under the Act by their other interests? If so, a Declaration of Interest making a full disclosure of the nature and extent of that interest should be made at the earliest opportunity.

#### 2. Related Documents

This policy should be read in conjunction with:

- *Heritage of Western Australia Act 1990* (Section 26)
- Heritage Council Charter (2012)
- Heritage Council Code of Conduct (2009)

#### 3. Definitions

**“business relationship”** includes any person or company (public or private) that employs, subcontracts on a permanent or temporary basis or is in a partnership arrangement with a member or employee of HCWA.

**“direct pecuniary interest”** means a Member's interest in a matter where it is reasonable to expect that the matter, if dealt with by the HCWA or an employee in a particular way, will result in a financial gain, loss, benefit or detriment for the person.

**“family relationship”** includes a parent, spouse or partner including same-sex spouses or partners, child, sibling, uncle, aunt, niece or nephew, parents-in-law, sister or brother-in-law, and includes a

<sup>1</sup> Conflicts of Interest – Guidelines for the WA Public Sector, Integrity Coordinating Group, Public Sector Commission, Version 18.1

step relative of any of the foregoing.

**“HCWA”** means the Heritage Council of Western Australia or any committee or subcommittee as may be established by HCWA.

**“indirect pecuniary interest”** means a Member’s interest in a matter where a financial relationship exists between that person and another person who requires an HCWA decision or resolution in relation to the matter.

**“Members”** includes any Councilor, Director, officer, employee, partner, agent or volunteer of HCWA, any member appointed or co-opted to any committee or subcommittee, and any member of an advisory or review team established by HCWA for the purpose of assisting with any of its programs.

**“proximity interest”** means a relevant person’s interest in a matter if the matter concerns -

- (i) a proposed change affecting land or building that adjoins the Member’s land or building;
- (iii) a proposed development, maintenance or management of land, buildings or of services or facilities on the land or buildings that adjoins the Member’s land or buildings.

**“impartiality interest”** means an interest that could, or could reasonably be perceived to, adversely affect the impartiality of the Member having the interest and includes an interest arising from:

- kinship, friendship, partnership or membership of an association or an association with any decision making process relating to a matter for discussion before the Council or a Committee
- a previous body of work, professionally commissioned or completed in a volunteer capacity that is associated with a matter for discussion before the Council or a Committee
- a public or private declaration of a position on a matter if it relates to a matter that requires an HCWA decision or resolution .

#### **4. What is a Conflict of Interest?**

A conflict of interest is a situation arising from conflict between the performance of public duty and private or personal interests.<sup>2</sup>

##### **What is a Perceived Conflict of Interest?**

While a Member may not be in an actual conflict of interest, the public perception that a conflict of interest exists or may exist can be equally harmful to the integrity of the programs and their administration. The test question for determining whether or not a perceived conflict of interest exists is as follows:

*Would an informed person, having thought the situation through, think it possible that a Member might be adversely influenced in the performance of their duties under the Act by their other interests?*

#### **5. Purpose of a Conflict of Interest Declaration?**

It is important for the public to have confidence that HCWA is making decisions, advising and making recommendations to the Minister for Heritage, spending public funds, and delivering and administering devolved programs in an honest, reasonable and prudent manner. Sometimes situations may occur where a Member may have a conflict of interest that could damage public and stakeholder confidence in HCWA’s undertaking of its responsibilities.

The purpose of this Policy is to enhance public confidence in the integrity of HCWA and in the decision-making and advisory process by:

1. setting clear rules of conduct for conflict of interest that applies to HCWA; and

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<sup>2</sup> Conflicts of Interest – Guidelines for the WA Public Sector, Integrity Coordinating Group, Public Sector Commission Version 18.1

2. reducing the possibility of conflicts between the private interests of Members and their obligations under the Act.

## 6. Identifying Conflicts of Interest

Relevant questions to ask when considering whether or not a conflict of interest exists are:

- *Public duty versus private interest* – do I have personal or private interests that may conflict or be perceived to conflict with my public duty?
- *Potentialities* – could there be benefits for me now or in the future that could cast doubt on my objectivity?
- *Perception* – how will my involvement in the decision / action be viewed by others? Are there risks associated for me / my organisation?
- *Proportionality* – does my involvement in the decision / action appear fair and reasonable in all the circumstances?
- *Presence of mind* – What are the consequences if I ignore a conflict of interest? What if my involvement was questioned publicly?
- *Promises* – have I made any promises or commitments in relation to the matter? Do I stand to gain or lose from the proposed decision / action?<sup>3</sup>

## 7. Managing Conflicts of Interest

There are many ways to effectively manage conflicts of interest depending on the operating environment, legislative requirements and practical solutions. The major options are:<sup>2</sup>

- *Record /Register* – Recording the disclosure of a conflict of interest in a register is an important first step, however this does not necessarily resolve the conflict. It may be necessary to assess the situation and determine whether one or more of the following strategies is also required:
- *Restrict* – It may be appropriate to restrict involvement in the matter, for example, refrain from taking part in debate about a specific issue, abstain from voting on decisions or resolutions, and/ or restrict access to information relating to the conflict of interest. If this situation occurs frequently, and an ongoing conflict of interest is likely, other options may need to be considered.
- *Recruit* – If it is not practical to restrict involvement, an independent third party may need to be engaged to participate in, oversee, or review the integrity of the decision-making process.
- *Remove* – Removal from involvement in the matter altogether is the best option when ad hoc or recruitment strategies are not feasible, or appropriate.
- *Relinquish* – Relinquishing the personal or private interests may be a valid strategy for ensuring there is no conflict with your public duty. This may be the relinquishment of shares, or membership of a club or association.
- *Resign* – Resignation may be an option if the conflict of interest cannot be resolved in any other way, particularly where conflicting private interests cannot be relinquished.<sup>4</sup>

The following sections cover meeting procedures and the ways in which disclosures of conflicts of interest are managed.

## 8. Meeting Preparation Procedures

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<sup>3</sup> Conflicts of Interest – Guidelines for the WA Public Sector, Integrity Coordinating Group, Public Sector Commission  
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In order to protect the interests of HCWA and its Members, draft agendas will be circulated prior to finalisation to allow Members to make a declaration of any pecuniary interests in relation to any agenda item by the following steps:

Step 1: Draft Council or Committee agendas (list of items) are prepared by the Department of Planning, Lands and Heritage and approved by the relevant Chair a minimum of four days prior to the agenda being finalised and circulated to Members.

Step 2: Draft agenda (list of items) is circulated to Members to review and provide feedback on any items in which they have a pecuniary interest within two working days.

Step 3: Agenda is finalised, and those items that Members have flagged with a pecuniary interest are blanked out of their agenda papers.

Step 4: Agenda papers are disseminated via individual Members' DropBox.

Step 5: Draft minutes are approved by the Council or Committee Chair.

Step 6: Draft minutes are circulated to members, with items relating to any pecuniary interests blanked out for the members concerned.

Step 7: Draft minutes (complete) are approved at the next Council or Committee meeting.

## 9. Meeting Procedures

The Conflict of Interest Policy and Declarations of Interest templates are to be included in the agenda papers for all HCWA Meetings.

Declarations of conflict of interest will be a standing agenda item for all HCWA meetings. The meeting Chair will ask the members present to declare any interests prior to the business of the meeting commencing.

Any member declaring an interest is to complete a Declaration of Interest form which is to be handed to the meeting secretariat for recording and filing.

The secretariat will record any declaration made in the minutes of the meeting, including the form of the declaration, any deliberation on the disclosure by HCWA, and whether the member leaves or remains in the room or votes in relation to the relevant item.

## 10. Procedures for a Member or Employee for declaring an Interest during the course of a meeting of the HCWA

Members are to consider carefully all the items included in a meeting agenda and identify any matter in which they have, may have, or may be perceived to have a conflict of interest. Members are encouraged to declare any interest to the meeting Chair, no matter how minor they consider the interest to be, so that their involvement in the consideration of the agenda item can be determined openly and transparently.

Where a Member participating in a meeting has a **direct or indirect pecuniary interest** in a matter, the Member:

(a) as soon as possible after the relevant facts have come to the Member's knowledge, must declare that the member has such an interest to the other Members participating in the meeting; and

(b) after disclosure of the interest is not to:

(i) be present during any consideration or discussion of the matter; or

- (ii) vote on the matter.

Where a Member or employee participating in a meeting has a **proximity interest** in a matter, the Member or employee:

- (a) as soon as possible after the relevant facts have come to the Member or employee's knowledge, must declare that the Member or employee has such an interest to the other Members participating in the meeting; and
- (b) in the case of a Member, after disclosure of the interest is not to:
  - (i) be present during any consideration or discussion of the matter; or
  - (ii) vote on the matter.

Where a Member participating in a meeting has an **impartiality interest** in a matter, the Member:

- (a) as soon as possible after the relevant facts have come to the Member or employee's knowledge, must declare the nature of the impartiality to the other Members participating in the meeting; and
- (b) if the Member is not able to set the interest aside and make a decision based on the merits of the matter being considered, is not to:
  - (i) be present during any consideration or discussion of the matter; or
  - (ii) vote on the matter.

## **11. Minor or Unclear Declarations**

Where a Member discloses an interest and the nature of the interest has the appearance of being minor or is unclear, the Chair may put to the meeting the question as to whether or not the member making the disclosure should be present during the consideration of the matter in relation to which the interest exists or may arise.

The meeting may determine that the member that has made the disclosure:<sup>5</sup>

- (a) should not be present during the consideration of the relevant matter; or
- (b) should be permitted to remain present and:
  - (i) take part in the consideration and vote; or
  - (ii) take part in the consideration, but not vote.

Unless the meeting otherwise agrees, the member making the disclosure shall not be present during the deliberation on the question of whether the member should participate or not in the consideration of the matter for which they have made the disclosure and, in any event, is not eligible to participate in such deliberation.<sup>6</sup>

## **12. Disclosures at Other Times**

Members may, from time to time, be requested to consider matters outside regular or specially convened meetings. This may be via electronic circular resolution, teleconference or such other means of seeking member's considerations to a matter.

Upon receiving notice of the item for consideration, members are to disclose any interests in relation to the item in accordance with this policy.

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<sup>5</sup> Heritage of Western Australia Act 1990, Section 26 (4)

<sup>6</sup> Heritage of Western Australia Act 1990, Section 26 (5)  
Version 18.1

Where a member has previously made a disclosure in relation to a matter to be considered and has been excluded from participating and voting, such disclosure will be recorded in the item and the member will not be included in the considerations.

Where the matter disclosed has the appearance of being minor, the Chair is to undertake the process outlined in section 11. In the event it is not possible or appropriate for the Chair and/or the other members to undertake that process (e.g., for an out of session item) , the Chair is to determine whether the member should take part in consideration of the matter and be able to vote.

### **13. On-going Disclosure**

The obligation to disclose an interest under this Policy applies in regard to each meeting at which the matter of the subject of the interest arises. A member may elect to make a standing declaration for a Declaration of Perception of Impartiality as a consequence of employment arrangements, memberships of organisations, boards or other situations that the member considers may give rise to a perception of impartiality. A standing declaration will remain active and minuted at each subsequent meeting until rescinded by the member.

### **14. Majority or quorum**

For the purposes of determining the existence of a majority or quorum in accordance with section 54 of the *Interpretation Act 1984*, a member who is precluded under this Policy from taking part in any deliberation or decision at a meeting with respect to a matter shall be deemed to be absent from the meeting while that matter is being deliberated or decided.

## 15. Format for Declaration of Interest Disclosures

### Declaration of Pecuniary Interest

I declare that I have a direct pecuniary interest in the matter under consideration in that I derive a direct financial benefit from (*state circumstance*), and as a consequence of that interest will not participate in the discussion of or vote on this item and will leave the meeting for the duration of this item.

### Declaration of Indirect Pecuniary Interest

I declare that I have an indirect pecuniary interest in the matter under consideration in that I am aware of a person with whom I have a family relationship or business relationship who derives a financial benefit from (*state circumstance*), and as a consequence of that interest I will not participate in the discussion of or vote on this item and will leave the meeting for the duration of the item.

### Declaration of a Proximity Interest

I declare that I have a proximity interest in the matter under consideration in that I own a property, a share or financial interest in a property that is in close proximity to the matter under consideration which may result in a financial gain or loss in value to that property and as a consequence of that interest I will not participate in the discussion of this item or vote and will leave the meeting for the duration of the item.

### Declaration of a Perception of Impartiality

I declare that I am a member of (*name of organisation*) or I have a family relationship or business relationship with (*name of person and relationship*) in that (*describe the nature of the relationship*) or I have completed prior work in a professional or volunteer capacity (*describe the prior work*) or I have declared a position on (*describe the matter*) and as a consequence, there may be a perception that I may not be impartial on the matter before us. I declare (***delete as applicable***):

- I will consider the matter on its merits and vote accordingly; or
- HCWA has considered the disclosure and determined that I should participate in the discussion and vote on the matter for consideration; or
- HCWA has considered the disclosure and determined that I should participate in the discussion but not vote on the matter for consideration; or
- HCWA has considered the disclosure and determined that I should participate in neither the discussion nor the vote.

*Note: A Declaration of a Perception of Impartiality is a very personal declaration in that there is no apparent financial interest, but there may be a perception from an external observer point of view that the member may be influenced in the way he/she may vote by reason of the nature of relationship the member may have or prior work associated with the item under discussion.*