

TITLE

DECLARATION OF INTEREST POLICY

DOCUMENT CONTROL

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1. Overarching Principle

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 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

"HCWA" means Heritage Council of Western Australia.

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

"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 step relative of any of the foregoing.

"Business relationship" includes any person or company (public or private) that employs, sub contracts on permanent or temporary basis or is in a partnership arrangement with a member or employee of HCWA.

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

“indirect pecuniary interest” means a relevant person’s interest in a matter where a financial relationship exists between that person and another person who requires a Council or Committee decision in relation to the matter.

“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 person’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 person’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 a Council or Committee decision.

4. What is the Purpose of a Conflict of Interest Declaration?

It is important for the public to have confidence that HCWA is 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 administration of its programs.

The purpose of this Guideline is to enhance public confidence in the integrity of HCWA and in the decision-making process as it relates to the delivery of the programs and the dispensation of public monies by:

1. setting clear rules of conduct for conflict of interest that applies to HCWA; and
2. reducing the possibility of conflicts between the private interests of Members and its obligations under the Act.

5. What is a Conflict of Interest?

Any situation where HCWA’s interests are in conflict with Member’s responsibilities as defined in the Act.

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?

6. Identifying Conflicts of Interest

There are some important questions to ask when considering whether or not a conflict of interest exists:¹

- *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* – remember, perception is important. 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 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 action / decision?

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:²

- *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, 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

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

¹ Source: Conflicts of Interest – Guidelines for the WA Public Sector, Integrity Coordinating Group, Public Sector Commission

² Source: Conflicts of Interest – Guidelines for the WA Public Sector, Integrity Coordinating Group, Public Sector Commission

8. Meeting Preparation Procedures

In order to protect the interests of the Council, its committees and 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 State Heritage Office 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 member's 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 Heritage Council and Committee Meetings.

Declarations of conflict of interest will be a standing agenda item for all Heritage Council and Committee meetings. The meeting Chair will ask the members present to declare any interests once the agenda has been confirmed and prior to the business of the meeting commencing.

Any member declaring an interest is to complete a Declaration of Interest form, which will 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 the Heritage Council or Committee, 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 Council or Committee 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 their involvement in the consideration of the agenda item can be determined openly and transparently.

Where a matter is before a meeting for consideration and a member participating in the meeting has a **direct or indirect pecuniary interest** in the matter, the member:

- (a) as soon as possible after the relevant facts have come to the member's knowledge is to disclose 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.

A member or employee who has a **proximity interest** in any matter to be discussed at a Council or Committee meeting that will be attended by the member must disclose the nature of the interest:

- (a) as soon as possible after the relevant facts have come to the member's knowledge is to disclose 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.

A member who makes an **impartiality interest** disclosure must declare the nature of the impartiality and, *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 Inadequately Made Declarations

Where a member discloses an interest, but the nature of the interest has the appearance of being minor or is not adequately made³, the Chair may put to the meeting the question as to whether or not the member making the disclosure, or requested to make the disclosure, should be present during the consideration of the matter in relation to which the interest exists or may arise.

⁴The meeting may determine that the member that has made the disclosure:

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

⁵Unless the meeting otherwise agrees, the member making the disclosure shall not remain present in the room 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.

³ Heritage of Western Australia Act 1990, Section 26 (3)

⁴ Heritage of Western Australia Act 1990, Section 26 (4)

⁵ Heritage of Western Australia Act 1990, Section 26 (5)

12. Disclosures at Other Times

Members of the Heritage Council and its Committees 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.

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.

13. On-going Disclosure

The obligation to disclose an interest under this Guideline 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. Format for Declaration of Interest Disclosures

Declaration of Pecuniary Interest

I disclose 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 disclose that I have an indirect pecuniary interest in the matter under consideration in that I am aware of a member of family 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 leave the meeting for the duration of the item.

Declaration of a Proximity Interest

I disclose 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 leave the meeting for the duration of the item.

Declaration of a Perception of Impartiality

I disclose that I am a member of (*name of organisation*) or I have a 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):**

1. **I will consider the matter on its merits and vote accordingly;** or
2. The Heritage Council has considered the disclosure and determined that I should participate in the discussion and vote on the matter for consideration;
or
3. The Heritage Council has considered the disclosure and determined that I should participate in the discussion but not vote on the matter for consideration.

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.