

**Heritage Council of NSW and
Heritage Office, Department of Planning**

Heritage Council



of New South Wales

**CODE OF
CONDUCT
AND
GUIDELINES**

Table of Contents

HERITAGE OFFICE CODE OF CONDUCT	2
1. INTRODUCTION	2
2. PRINCIPLES	3
3. HERITAGE COUNCIL POLICIES	3
4. CONFLICTS OF INTEREST	4
5. PRINCIPLES OF PROCEDURAL FAIRNESS	4
6 GIFTS AND BENEFITS	4
7 PUBLIC COMMENT AND THE USE OF OFFICIAL INFORMATION	5
8 SECURITY AND CONFIDENTIALITY OF OFFICIAL INFORMATION	6
9 REPORTING CORRUPT CONDUCT	7
10 CONCLUDING STATEMENT	8
HERITAGE OFFICE CODE OF CONDUCT GUIDELINES	9
1. WHAT ARE THE PURPOSES OF THIS CODE?	9
2 CONFLICT OF INTEREST	9
2.1 What is the special duty of a Heritage Council member, a committee member and a Heritage Office staff member?	9
2.2 When does a conflict of interest arise?	9
2.3 How should a conflict of interest be dealt with?	10
3 OTHER RESPONSIBILITIES OF COUNCILLORS, MEMBERS OF STAFF AND DELEGATES	11
3.1 Equitable treatment of people and situations	11
3.2 Bribes, Gifts or Benefits	12
3.3 Use of Heritage Council and Heritage Office resources	12
3.4 Use of information	12
4. PARTICULAR OBLIGATIONS OF STAFF	13
5. WHAT ARE THE LEGITIMATE EXPECTATIONS OF A MEMBER OF THE HERITAGE COUNCIL OR MEMBER OF STAFF?	13
6. REPORTING OF CORRUPT CONDUCT	14
7. PROTECTED DISCLOSURES	14
8. BREACHES OF THIS CODE	14

HERITAGE COUNCIL CODE OF CONDUCT

1. INTRODUCTION

The Heritage Council, under the Heritage Act 1977, is responsible for providing advice to the Minister for Planning.

Part 2 sections 6 - 23 of the Act, relate to the constitution, membership and role of the Council. The functions of the Council are specified in section 21 of the Act.

The Council directly and through the Heritage Office of the Department of Planning seeks to provide excellence in its advice to government, in its partnership with local government and the public in general, and to provide leadership to the heritage community in those areas for which the Council has responsibility.

This Heritage Council Code of Conduct establishes standards of professional behaviour expected of members of the Council¹ and its committees² and working parties. The code has been developed to assist Council members and Heritage Office staff in clarifying their professional and ethical responsibilities, thereby encouraging public confidence in the work of the Heritage Council and the Heritage Office.

An important purpose of the Heritage Council Code of Conduct is to foster among Council committee members a spirit of cooperation. The code seeks to promote the highest standards and a commitment to equity in carrying out the Council's responsibilities. The code is not intended to be read as a series of rules, but as a set of broad guidelines to appropriate and ethical behaviour.

Members of the Heritage Council, its committees and staff of the Heritage Office, Department of Planning, need to familiarise themselves with this code of conduct and should ensure they follow its intent.

¹ Some members of the Heritage Council have alternates or deputies.

² The Heritage Council Code of Meeting Practice overrides the Heritage Council Committees Structure. The Heritage Council also has a number of Advisory Panels. All statements in this code which apply to the Advisory Panels.

2. PRINCIPLES

The community is entitled to expect the business of the State to be conducted with efficiency, economy, fairness, impartiality and integrity.

The following principles apply to members of the Heritage Council, its committees and Heritage Office staff:

- being familiar with the Heritage Act and their responsibilities under the Act;
- being familiar with relevant policies and decisions of the government of the day;
- promoting confidence in the integrity of the Council and its decisions;
- being honest and fair in the conduct of official duties and in dealings with the public;
- making decisions and carrying out actions that are reasonable, fair and appropriate to the circumstances;
- acting in the public interest;
- observing confidentiality of information;
- providing accurate and unbiased advice;
- ensuring effective and efficient use of public resources, with due care for the environment;
- ensuring non-discriminatory behaviour towards colleagues and clients.

3. HERITAGE COUNCIL POLICIES

In carrying out their responsibilities, members of the Heritage Council, its committees and Heritage Office staff should be aware of Government policies and the implications of relevant specific sections of legislation where these affect their role. Such legislation may include the Heritage Act 1977, the Independent Commission Against Corruption Act 1988, the Freedom Of Information Act 1989, the Anti-Discrimination Act 1977, the Public Finance and Audit Act 1983, the Protected Disclosures Act 1994 and the Public Sector Management Act 1988.

Members of the Council, its committees and Heritage Office staff are required to carry out their roles in accordance with Council policies, procedures and

principles which are to be applied during the development of all Council materials and to all areas of Council activities.

4. CONFLICTS OF INTEREST

Conflicts of interest occur where there is a likelihood that a Council or committee member possessing a particular interest could be influenced or might appear to be influenced in the performance of their role or duties on a particular matter.

For example, conflicts of interest may occur in the following situations:

- financial interests in a matter the Council or its committees deal with, or having friends or relatives with such interest;
- personal beliefs or attitudes that influence the impartiality of advice given;
- personal relationships with the people the Council or its committees are dealing with or investigating;
- party political activities or making adverse political comments that relate to and may compromise the integrity of the Council.

In all circumstances where a member has an actual or possible conflict of interest, he or she must inform the Chairperson of the Council and seek discussions in an attempt to resolve any conflicts of interest that may exist.

Council members operate within the principles established in *Bennetts v The Board of Fire Commissioners (1967)* viz where a body is composed of different interest groups albeit as the nominees of such groups as opposed to their elected representatives, the responsibility of the body is to promote the public purpose for which it was established rather than the interests of the groups which its members represent. Advice from the Crown Solicitor on this matter is at Attachment 1.

5. PRINCIPLES OF PROCEDURAL FAIRNESS

The principles of procedural fairness (or natural justice) require that decision-makers be unbiased.

These principles are outlined in the advice from the Crown Solicitor at Attachment 1.

6 GIFTS AND BENEFITS

If the Council or committee members are offered a gift or benefit which is intended to influence them in carrying out their Council duties, or if other people could reasonably think that the gift or benefit is meant to influence them, they must not accept it. The timing and size of the value of the gift or benefit are crucial.

Council or committee members may accept token gifts or benefits offered to them in their capacity of Council member, where it is evident that the donor will not receive any unfair advantage. It would be advisable for the member to inform the Chairperson of the Council or of the relevant committee if he/she accepts such a gift or benefit and the gift or benefit will be recorded in a Register kept at the Heritage Office.

7 PUBLIC COMMENT AND THE USE OF OFFICIAL INFORMATION

Effective communication is a key objective of the Heritage Council. Relevant State and Commonwealth Agencies, Local Government, heritage practitioners, property owners, the development community and the general public should be kept informed of matters concerning the role, function and operation of the Council.

The Chairperson has the responsibility to act as the spokesperson for the Council.

Throughout the term of their appointment, members of the Council and its committees may be invited by the Chairperson to make public comment on heritage matters, especially those relating to the core responsibilities of the Council.

Public comment may include public speaking engagements, comments on radio and television or in letters to newspapers, and expressing views in books, journals or notices where it is expected that the comments will be spread to the community at large.

When speaking or writing in an official capacity, members of the Council and its committees should be familiar with the policies, rules and procedures of the Council. In these circumstances, members should only make comments which enhance the image of the Council and protect its integrity.

A Council member who is a nominated spokesperson for an organisation represented on the Council is entitled to make public comments as long as it is made clear that the comments represent the organisation's views and not those of the Council.

As members of the community, Council and committee members have the right to make public comment and to enter into public debate on issues. There are however, some types of comment which are inappropriate. These include:

- the implication that the public comment, although made in a private capacity, is in some way an official comment of the Council;
- public comment which creates the impression that the Council or committee member is not prepared to accept a majority decision of the Council;
- public comment that reveals the opinion of another Council member or committee member.

As a general rule, members of the Council, its committees and Heritage Office staff can disclose official information that is normally given to members of the public seeking that information, but should only disclose other official information or documents:

- in the course of their duties;
- when proper authority has been given;
- when required to, or authorised to do so by law; or
- when called to give evidence in court.

8 SECURITY AND CONFIDENTIALITY OF OFFICIAL INFORMATION

Security of information is critical to ensure fairness to individuals.

Council and committee members and Heritage Office staff should take care to keep Council working papers, confidential documents and sensitive information secure. The deliberate release of documents or information to unauthorised persons constitutes a serious breach of Council confidentiality requirements.

Members of the Council and its committees should balance the need to observe confidentiality of information and working drafts with their need to be informed and where relevant, their responsibility to inform and consult with their nominating organisations. Where a document is identified as confidential, it must stay with the person to whom it is issued. Where members consult with their nominating organisations to seek feedback on a confidential matter, the Council expects members to take full responsibility for the confidentiality of the consultations.

The Freedom of Information legislation provides a formal mechanism for the disclosure of certain official information and documents. Therefore, under the provisions of that legislation and in accordance with Council policies and procedures members of the Council and its committees, acting as agents of the Council and not as individuals, are able to disclose information related to official business.

Former committee and Council members should take care to maintain the integrity of sensitive and confidential information and documents to which they have access.

9 REPORTING CORRUPT CONDUCT

The Independent Commission Against Corruption Act 1988 defines corrupt conduct and requires the principal officer of a government department or agency to report suspected cases of corrupt conduct to the Commission.

The Independent Commission Against Corruption has defined corrupt conduct as happening when:

- a public official carries out public duties dishonestly or unfairly;
- anyone (including a public official) does something that has a detrimental effect on official functions, and which involves any of a wide range of matters, including (for example) fraud, bribery, official misconduct or violence;
- a public official (or former public official) misuses information or material obtained in the course of duty.

Council and committee members and Heritage Office Staff have a duty to report any instance of corrupt conduct they observe in the course of carrying out their role with the Council. Such cases may be reported to the Office's Director or Assistant Director.

Council and committee members should be aware of the following key points:

- a complaint regarding corrupt conduct may be made directly to the Independent Commission Against Corruption if the person concerned does not wish to report the matter internally;
- the identity of the person reporting suspect conduct will be kept strictly confidential;
- measures will be taken to prevent victimisation from within the Council;
- feedback about the outcomes of reports of corrupt conduct will be provided.

Council members, as public officials, also have access to the provisions of the Protected Disclosures Act 1994. The Heritage Office Procedures Document Internal Reporting System for Protected Disclosures, July 1998, provides further information on the avenues for disclosure of corrupt conduct, maladministration and serious and substantial waste of public money. This document can be obtained from the Director of the Heritage Office and serves as the Council's internal reporting system for the purpose of the Act.

10 CONCLUDING STATEMENT

The Heritage Council Code of Conduct is consistent with the Model Code of Conduct for NSW Public Agencies and the current principles and practices relating to the professional behaviour of members of other portfolio agencies.

From time to time the Heritage Council Code of Conduct will be reviewed and amended to take account of new or changed circumstances and to ensure its ongoing validity and value.

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HERITAGE COUNCIL CODE OF CONDUCT GUIDELINES

1. WHAT ARE THE PURPOSES OF THIS CODE?

To assist members of the Heritage Council and its committees, and members of staff of the Heritage Office:

- to fulfil their statutory duty to act honestly and exercise a reasonable degree of care and diligence;
- to provide a practical means of identifying and resolving situations which involve conflict of interest or improper use of their positions; and
- to act in a way which enhances public confidence in the work of the Heritage Council and the Heritage Office.

2 CONFLICT OF INTEREST

2.1 What is the special duty of a Heritage Council member, a committee member and a Heritage Office staff member?

A Council member, committee member or member of the Heritage Office staff must avoid and appropriately resolve any conflict or incompatibility between his or her private or personal interests and the impartial performance of his or her public or professional duties.

The mere fact that a person has both a public or professional duty and a private or personal interest in relation to a particular matter does not necessarily mean that the two must be in conflict. What is important is how any conflict, if it exists, is dealt with. What is also important is the public perception of the way the person deals with any such conflict.

2.2 When does a conflict of interest arise?

A conflict of interest arises if it is likely that the person with the private or personal interest could be prejudicially influenced in the performance of his or her public or professional duties by that interest, or that a reasonable person would believe that the person could be so influenced.

2.3 How should a conflict of interest be dealt with?

Where the interest in question is a pecuniary one, the person with the interest must declare that interest and withdraw from discussion of or voting on the matter in question in the context of a Heritage Council meeting or in a meeting of one of its committees.

A *pecuniary interest* is an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person or another person with whom the person is associated. An associated person would include a spouse, de facto partner, relative, partner and employer. A person is also taken to have a pecuniary interest if a nominee, partner or employer is a member of a company or other body that has a pecuniary interest in the matter .

Members of the Heritage Council and its committees, and members of staff of the Heritage Office must disclose pecuniary interests.

In most cases any apparent or possible breach of the pecuniary interest provisions should, in the first instance, be reported to the Director. The Director should then review all the relevant information regarding the apparent breach. If, having reviewed this information, the Director is of the view that the information discloses evidence consistent with a breach, he or she should immediately notify the Minister and refer any relevant material.

Where the interest in question is a non-pecuniary one, the person with the interest should not do anything which he or she could not justify to the public and should avoid any occasion for reasonable suspicion or the appearance of improper conduct or the partial performance of his or her public or professional duties.

A *non-pecuniary interest* is any private or personal interest which does not pertain or relate to money (eg kinship, friendship, membership of an association, society or trade union or involvement or interest in an activity).

The onus is on the individual to declare an interest, whether perceived or real. Such disclosure should be made promptly and in writing (or in cases of urgency made orally and confirmed in writing) to the Council, or Director as appropriate.

Where a member of the Heritage Council or its committees, or a member of staff of the Heritage Office has any doubt as to whether he or she has a conflict of interest in a particular matter, the person should, whenever possible, seek expert legal or other appropriate advice and act accordingly.

3 OTHER RESPONSIBILITIES OF COUNCILLORS, MEMBERS OF STAFF AND DELEGATES

3.1 Equitable treatment of people and situations

A Council member, committee member or member of the Heritage Office staff must:

- not act contrary to law;
- not act unreasonably, unjustly or oppressively or in a discriminatory manner;
- deal with like situations in a like manner, but treating each matter on its merits;
- take all relevant information into consideration and must not take any irrelevant information or opinions into consideration;
- take all reasonable steps to ensure that the information upon which decisions or actions are based is factually correct and that all relevant information has been obtained;
- treat members of the public fairly and equitably and with respect, courtesy, compassion and sensitivity;
- refrain from any form of conduct, in the performance of his or her public or professional duties, which may cause any reasonable person unwarranted offence or embarrassment or give rise to the reasonable suspicion or appearance of improper conduct or partial performance of his or her public or professional duties;
- not act for an improper or ulterior purpose or on irrelevant grounds; and
- not bring to any decision of the Council a bias or predetermination.

Members of the Heritage Council and its committees, and members of staff of the Heritage Office must act honestly and exercise a reasonable degree of care and diligence in carrying out his or her functions.

A member of staff is not subject to direction by the Council as to the content of any advice or recommendation made by the member. However, the

Council may direct a member of staff to provide advice or a recommendation.

3.2 Bribes, Gifts or Benefits

A Council member, committee member or member of the Heritage Office staff must not:

- seek or accept a bribe, or other improper inducement;
- take advantage of his or her official position to improperly influence a Council member, committee member or member of the Heritage Office staff in the performance of their public or professional duties for the purpose of securing a private benefit for himself or herself or for some other person;
- by virtue of his or her official position, accept or acquire a personal profit or advantage of a pecuniary value (other than of a token kind) other than as described above.

3.3 Use of Heritage Council and Heritage Office resources

A Council member, committee member or member of the Heritage Office staff must:

- use resources effectively and economically in the course of his or her public or professional duties, and must not use them for private purposes (except when supplied as part of a contract of employment) unless such use is lawfully authorised and proper payment is made where appropriate; and
- not convert to his or her own use any property of the Council or Heritage Office.

3.4 Use of information

A Council member, committee member or member of the Heritage Office staff must:

- conduct their duties in a manner which allows the public to remain informed about Heritage Council activity and practices;
- not use confidential information gained by virtue of his or her official position for the purpose of securing a private benefit for himself or herself or for any other person; and

- not without lawful authority, disclose otherwise than to the Council, or a member of staff entitled to know, information concerning any matter referred to as confidential in meeting papers.

Even where the information in question does not relate to proceedings at closed meetings, certain types of information should not be released without authorisation including:

- information with respect to particular individuals;
- commercial information supplied to the Heritage Council including proposals for the sale, purchase or rezoning of property or information related to development applications;
- legal advice or information on legal obligations;
- matters affecting the security of the Council, members, Heritage Office staff or property.

4. PARTICULAR OBLIGATIONS OF STAFF

A member of staff must:

- while on duty give the whole of his or her time and attention to the business of the Heritage Office and Heritage Council and ensure that his or her work is carried out efficiently, economically and effectively;
- carry out lawful directions given by any person having authority to give such directions; and
- give effect to the lawful policies, decisions and practices of the Heritage Council, whether or not the staff member agrees with or approves of them.

A member of staff must not engage, for remuneration, in private employment or contract work outside the service of the Office that relates to the business of the Heritage Council or that might conflict with the member's Heritage Council or Heritage Office duties unless he or she has notified the Director in writing of the employment or work and received permission to undertake it.

5. WHAT ARE THE LEGITIMATE EXPECTATIONS OF A MEMBER OF THE HERITAGE COUNCIL OR MEMBER OF STAFF?

A Council member, committee member or member of the Heritage Office staff who honestly and faithfully observes the requirements of this code and any relevant law is entitled to expect the publicly expressed support of the Heritage Council and colleagues against unfair allegations of dishonesty or partial performance of his or her public or professional duties.

6. REPORTING OF CORRUPT CONDUCT

A Council member, committee member or member of the Heritage Office staff who knows or has good reasons to suspect any fraudulent, corrupt, criminal or unethical conduct must report it immediately to the Director or Assistant Director.

7. PROTECTED DISCLOSURES

A Council member, committee member or member of the Heritage Office staff who makes a disclosure under the provisions of the Protected Disclosures Act 1994 shall be afforded the full protection (required under this Act) by the Heritage Council.

8. BREACHES OF THIS CODE

Sanctions may be applied if this code or any relevant law is breached. Depending on the nature of the breach, sanctions may include counselling, disciplinary action (including termination of employment), the laying of criminal charges and the taking of civil action.

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