



TITLE

CONFLICT OF INTEREST POLICY

DOCUMENT CONTROL

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Officer responsible	Executive Director Heritage Services

1. Policy Statement

Pursuant to the *Heritage Regulations 2019*, Members of the Heritage Council of Western Australia (HCWA) are required to identify and manage conflicts of interests that may arise in the performance of their public duty, to ensure the integrity of HCWA and its decision-making process is maintained. All conflicts of interests will be recorded in a Conflicts of Interest Register.

1.1 Scope

This policy applies to members of HCWA and its committees and/or sub-committees, including co-opted and alternate members. The policy applies to matters being considered at a meeting of HCWA or out of session.

1.2 Overarching Principle

It is not wrong to have a conflict of interest. What is important is that it is identified and appropriately managed.¹

1.3 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.

Conflict of interest under the *Heritage Regulations 2019* is where a member has a material personal interest in a matter being considered or about to be considered by HCWA.

Department means the Department of Planning, Lands and Heritage.

¹ Board essentials: Good governance guide – Conflicts of Interest, Public Sector Commission

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

HCWA means the Heritage Council of Western Australia or any committee or sub-committee as may be established by HCWA.

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 HCWA
- a previous body of work professionally commissioned or completed in a volunteer capacity that is associated with a matter for discussion before HCWA
- a public or private declaration of a position on a matter if it relates to a matter that requires a HCWA decision or resolution.

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.

Indirect pecuniary interest means a Member's interest in a matter where a financial relationship exists between that person and another person who requires a HCWA decision or resolution in relation to the matter.

Material personal interest includes direct pecuniary interests, indirect pecuniary interests, proximity interests and impartiality interests.

Members includes any Councilor, Director, officer, employee, partner, agent or volunteer of HCWA, any member appointed (including alternate members) or co-opted to HCWA, 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;
- (ii) 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.

Secretariat means the employee of the Department appointed to provide secretariat support to HCWA.

2. What is a Conflict of Interest

Conflicts of interest arise where there is a conflict between the performance of public duty and private, or personal interests. Conflicts of interest may be actual, or be perceived to exist, or potentially exist at some time in the future.²

- An **actual conflict of interest** involves a direct conflict between your public duty as a member of HCWA and a competing interest or obligation, whether personal or involving a third-party.

² Board essentials: Good governance guide – Conflicts of Interest, Public Sector Commission

- A **perceived conflict of interest** occurs where it could reasonably be perceived, or give the appearance, that a competing interest could improperly influence the performance of your public duty.
- A **potential conflict of interest** arises where you have an interest or obligation, whether personal or involving a third-party, that could conflict with your public duty in the future.

3. 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 process as it relates to the delivery of the programs and the dispensation of public monies by:

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

4. Identifying Conflicts of Interest

Relevant questions to ask when considering whether 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 or my organisation?
- *Proportionality* – does my involvement in the decision or 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?³

5. 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:

- *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:

³ Board essentials: Good governance guide – Conflicts of Interest, Public Sector Commission

- *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.⁴

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

6. Meeting Preparation Procedures

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 interests in relation to any agenda item by the following steps:

- Step 1: Draft Council or Committee/Sub-committee agendas (list of items) are prepared by the Department 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 an interest within two working days.
- Step 3: Agenda is finalised and those items that Members have flagged with an interest are blanked out of their agenda papers.
- Step 4: Agenda papers are disseminated to individual Members.
- Step 5: Draft minutes are approved by the Council or Committee/Sub-committee Chair.
- Step 6: Draft minutes are circulated to members, with items relating to any interests blanked out for the members concerned.
- Step 7: Draft minutes (complete) are approved at the next Council or Committee/Sub-committee meeting.

⁴ Board essentials: Good governance guide – Conflicts of Interest, Public Sector Commission

7. Meeting Procedures

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

8. Procedures for a Member declaring an interest during a meeting of 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 of HCWA has a material personal interest in a matter being considered or about to be considered, the Member:

- a) as soon as possible after the relevant facts have come to the Member's knowledge, must disclose the nature and extent of the interest at the meeting. Members are required to disclose the nature at Committee/Sub-Committee meetings even if they have disclosed the interest at a meeting of the full Heritage Council.⁵
- b) after disclosure of the interest:
 - (i) must not vote on the matter, whether at the meeting or otherwise; or
 - (ii) be present during any consideration or discussion of the matter.⁶

If a Member has, in the opinion of the person presiding at a meeting of HCWA, a material personal interest in a matter being considered or about to be considered, the person presiding may call on the member to disclose the nature and extent of the interest and, in default of any such disclosure, may determine that the member has the interest.⁷

9. Insignificant or trivial disclosures

Where a Member has disclosed an interest in a matter, the Council or committee/sub-committee may pass a resolution that:

- (i) specifies the member, the interest and the matter; and
- (ii) states that the members are satisfied that the interest is so trivial or insignificant as to be unlikely to influence the disclosing member's conduct and should not disqualify the disclosing member's conduct and should not disqualify the member from considering or voting on the matter.⁸

⁵ *Heritage Regulations 2019* Regulation 13(1),(2) & (3)

⁶ *Heritage Regulations 2019* Regulation 14(1)

⁷ *Heritage Regulations 2019* Regulation 13(5)

⁸ *Heritage Regulations 2019* Regulation 15(b)

The meeting may determine that the member that has made the disclosure 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.

The outcome of the deliberation must be recorded as a resolution in the minutes of the meeting. 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.⁹

10. Disclosures at Other Times

Members may 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.

Where the matter disclosed has the appearance of being insignificant or trivial, the Chair is to undertake the process outlined in **section 9 of this Policy**. 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.

11. Ongoing Disclosure

The obligation to disclose an interest under this Policy applies with respect 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* because 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 be included in the minutes of each subsequent meeting until rescinded by the member.

12. Quorum

If a Member is disqualified from voting on a matter, a quorum is present during the consideration of the matter if at least half the number of members who are entitled to vote on any motion that may be moved at the meeting in relation to the matter are present. For example, should two of the nine Members have a material personal interest in a matter and are disqualified from voting, then only seven of the nine Members would be eligible to vote. In this instance a quorum is established if at least half of the seven eligible members are present during the consideration of the matter.¹⁰

⁹ *Heritage Regulations 2019* Regulation 14(2)

¹⁰ *Heritage Regulations 2019* – Regulation 16

13. 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.