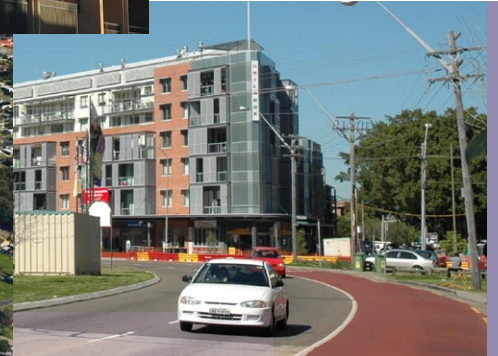




Joint Regional Planning Panels Code of Conduct



JOINT REGIONAL PLANNING PANELS

Code of Conduct

Introduction

This Code of Conduct (Code) applies to all members of Joint Regional Planning Panels (JRPPs), including:

- State appointed members
- council nominees
- alternates acting for JRPP members.

The Code outlines the standards of conduct expected of JRPP members. It is the personal responsibility of each JRPP member to comply with this Code.

The Code will be kept under review and will be subject to changes that may be required to reflect the experience of the implementation and operation of the JRPPs.

Purpose of the Code

This Code sets out the minimum requirements of behaviour for JRPP members in carrying out their functions. The Code has been developed to assist JRPP members:

- a) understand the standards of conduct that are expected of you
- b) enable you to act honestly, ethically and responsibly
- c) enable you to exercise a reasonable degree of care and diligence; and
- d) act in a way that enhances public confidence in the integrity of role of the JRPPs in the planning system.

Application of the Model Code of Conduct for Local Councils in NSW (Model Code)

Councils are required under the *Local Government Act 1993* to adopt a Code of Conduct. Such Codes must incorporate the provisions of the 'Model Code' prescribed under the *Local Government (General) Regulation 2005*.

The Council's adopted Code applies to, amongst others, councillors, the General Manager and Council staff. The Model Code does not apply to JRPP members. However parts of the Model Code have been used to assist in the development of this Code, along with other relevant Codes of Conduct applying to members of State Boards and other statutory bodies.

It is recognised that councillors and council staff may undertake functions as a member of a JRPP separate to their ordinary functions as a councillor or member of council staff. When exercising functions as a JRPP member councillors and council staff must ensure that they comply with this Code.

Council staff responsible for dealing with development matters under the *Environmental Planning and Assessment Act 1979* (EP&A Act), preparing assessment reports and/or otherwise assisting a JRPP in the exercise of its functions are not subject to this Code.

Other obligations

JRPP members are subject to the *Independent Commission Against Corruption Act 1988* and the *Ombudsman Act 1974*.

Code of Conduct

1. Key principles

Integrity

- 1.1 You must not place yourself under any financial or other obligation to any individual or organisation that might be reasonably thought to influence you in the exercise of your functions as a JRPP member.

Leadership

- 1.2 You have a duty to promote and support the key principles of this Code by demonstrating leadership and maintaining and strengthening the public's trust and confidence in JRPPs and their role in the planning system.

Selflessness

- 1.3 You have a duty to make decisions in the public interest. You must not make a decision or take action that causes or results in you obtaining:
- a financial benefit (including avoiding a financial loss)
 - other benefits for yourself, your family, friends or business interests.

Impartiality

- 1.4 You should make decisions on merit and in accordance with your statutory obligations when carrying out your functions as a JRPP member.

Accountability

- 1.5 You are accountable to the public for your decisions and actions and should consider issues on their merits, taking into account the views of others.

Openness

- 1.6 You have a duty to be open as possible about your decisions and actions.

Honesty

- 1.7 You have a duty to act honestly and in good faith for the proper purpose.

Respect

- 1.8 You must treat others with respect at all times.

2. General conduct obligations

General conduct

- 2.1 You must not conduct yourself in carrying out your functions as a JRPP member in a manner that is likely to bring the JRPP into disrepute. Specifically, you must not act in a way that:
- a) contravenes the EP&A Act¹
 - b) is improper or unethical
 - c) is an abuse of power
 - d) causes, comprises or involves intimidation, harassment or verbal abuse
 - e) causes, comprises or involves discrimination, disadvantage or adverse treatment.

¹ A reference to the *Environmental Planning and Assessment Act 1979* (EP&A Act) includes a reference to the *Environmental Planning and Assessment Regulation 2000*.

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- 2.2 You must act lawfully, honestly and exercise a reasonable degree of care and diligence in carrying out your functions as a JRPP member, having regard to the statutory obligations under the EP&A Act.

Fairness and equity

- 2.3 You must consider issues consistently, promptly, conscientiously and fairly.
- 2.4 You must take all relevant facts known to you, or that you should be reasonably aware of, into consideration and have regard to the particular merits of each case. You must not take irrelevant matters or circumstances into consideration when making decisions.

Making decisions and taking actions

- 2.5 You must ensure that decisions and actions are reasonable, fair and for the proper purpose and that parties involved in the development process are dealt with fairly.
- 2.6 You must ensure that no action, statement or communication between yourself and others (such as applicants, objectors and councillors) conveys any suggestion of willingness to provide improper concessions or preferential treatment.
- 2.7 You should attend all meetings of the JRPP as far as is possible, and allow the necessary time to prepare for meetings.

3. Conflicts of interests

General

- 3.1 A conflict of interests exists where a reasonable and informed person would perceive that you could be influenced by a private interest when carrying out your functions as a JRPP member.
- 3.2 You must avoid or appropriately manage any conflicts of interests. The onus is on you to identify a conflict of interests and take appropriate action.
- 3.3 Any conflicts of interests must be managed to up-hold the probity of JRPP decision making. When considering whether or not you have a conflict of interests you should consider how others would view your situation.
- 3.4 Private interests can be of two types: pecuniary or non-pecuniary.

Disclosure of pecuniary interests

- 3.5 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 person².
- 3.6 A person does not have a pecuniary interest in a matter if the interest is so remote or insignificant that it could not reasonably be regarded as likely to influence any decision of that person might make³.

² The term 'pecuniary interests' adopted by this Code is based on the definition of that term in s.442(1) of the *Local Government Act 1993*.

³ See s.442(2) *Local Government Act 1993* or if it is an interest referred to in s.448(a), (b), (e) or (g) of the *Local Government Act 1993*.

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- 3.7 A member has a pecuniary interest in a matter if the pecuniary interest is the interest of the member, the member's spouse or de facto partner or a relative⁴ of the member, or a partner or employer of the member, or a company or other body of which the member, or a nominee, partner or employer of the member, is a member.
- 3.8 The obligation on JRPP members with respect to pecuniary interests are set out in clause 12 of Schedule 4 of the EP&A Act (attached at **Appendix A**). All JRPP members must comply with the requirements set out in this provision. In particular:
- (a) If a member has a pecuniary interest in a matter being considered or about to be considered at a meeting of a JRPP and the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter the member must, as soon as possible after the relevant facts have come to the member's attention disclose the nature of the interest at a meeting of the regional panel.
- (b) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the regional panel otherwise determines:
- be present during any deliberation of the panel with respect to the matter, or
 - take part in any decision of the panel with respect to the matter.

Disclosure of non pecuniary interests

- 3.9 A non pecuniary interest is a private or personal interest that a person has that may, for example, be based on a family or personal relationship, membership of an association, society or trade union or involvement or interest in an activity which may include an interest of a financial nature⁵.
- 3.10 You should consider possible non pecuniary interests that may arise while carrying out your duties as a JRPP member. Where possible, the source of potential conflict should be removed.
- 3.11 However, where this is not possible, if a member has a non pecuniary interest in a matter and the interest appears to raise a conflict with the proper performance of the member's duties, the member must follow the procedures set out in clause 12 of Schedule 4 of the EP&A Act in the same manner as if the interest was a pecuniary interest.

Political Donations

- 3.12 JRPP members should be aware that political contributions or donations may give rise to a pecuniary or non-pecuniary interest. It is the responsibility of JRPP members to determine in each instance whether such an interest arises and whether the provisions of this Code and clause 12 of Schedule 4 of the EP&A Act applies.
- 3.13 Where a JRPP member makes a disclosure under cl.12(1)(b) of Schedule 4 to the EP&A Act with respect to an interest which arises because of a political donation,

⁴ The term 'relative' adopted by this Code is the definition of that term under s 3 of the *Local Government Act 1993*.

⁵ The term 'non-pecuniary interest' as adopted by this Code is based on the meaning of that term under the Local Government Model Code of Conduct.

the regional panel is required to take this into consideration in determining under cl.12(6) whether it is appropriate for the member to be present during any deliberations or take part in any decision with respect to the matter.

Other business or employment

3.14 You must ensure that any outside employment or business you engage in will not:

- a) conflict with your functions as a JRPP member
- b) involve using confidential information or resources obtained through your role as a JRPP member
- c) discredit or disadvantage the JRPP.

Personal dealings with council

3.15 You may have reason to have private dealings with a council that is within the JRPP region where you are a JRPP member (for example as a ratepayer). You must not expect or request preferential treatment in relation to any matter in which you have a private interest because of your role as a JRPP member. You must avoid any action that could lead members of the public to believe that you are seeking preferential treatment.

4. Personal benefit

Gifts and benefits

4.1 You must not:

- a) seek or accept a bribe or other improper inducement
- b) seek gifts or benefits of any kind
- c) accept any gift or benefit that may create a sense of obligation on your part or may be perceived to be intended or likely to influence you in carrying out your public duty
- d) accept any gift or benefit of more than token value
- e) accept an offer of money, regardless of the amount.

4.2 Generally speaking token gifts and benefits include:

- a) free or subsidised meals, beverages or refreshments provided in conjunction with:
 - i. the discussion of matters before the JRPP
 - ii. conferences
 - iii. social functions organised by groups.
- b) invitations to and attendance at local social, cultural and sporting events.
- c) gifts of single bottles or reasonably priced alcohol at end of year functions and public occasions.
- d) ties, scarves, coasters, tie pins, diaries, chocolates or flowers.

4.3 Gifts and tokens that have more than a token value include, but are not limited to, tickets to major sporting events, corporate hospitality at a corporate facility at major sporting events, discounted products for personal use, the frequent use of facilities such as gyms, use of holiday homes, free or discounted travel.

4.4 As a general rule, any gift from an applicant, objector or associate of an applicant or objector in relation to a matter to be determined by a JRPP would fall into a category referred to in paragraph 4.1(c) and therefore should not be accepted.

4.5 The Panel Secretariat is to maintain a Register of Gifts for each JRPP to ensure the receipt and disposal of gifts is conducted in an open and transparent manner. When offered a gift or benefit JRPP members must inform the Panel Secretariat of the following information for the purposes of making a recording on the Register of Gifts:

- the person who made the offer and the date on which the offer was made
- whether or not you accepted the gift/benefit
- whether the gift or benefit was allocated to another person or body, and
- the value of the gift or benefit.

You should also advise the JRPP Chair of any such notification to the Panel Secretariat.

5. Relationship between JRPP members, council and council staff

Obligations of JRPP members

5.1 Section 23N of the EP&A Act provides that a JRPP is entitled to:

- a) to have access to, and to make copies of and take extracts from records of a council relevant to the exercise of the JRPPs' functions, and
- b) to the use of staff and facilities of a relevant council in order to exercise the JRPP's functions.

All such requests for assistance will be made by the JRPP Chair to General Manager (or such other staff member as be nominated by the General Manager).

5.2 You have a responsibility to promote and support an effective and co-operative working relationship with the council, general manager and council staff and contractors.

Inappropriate interactions

5.3 You must not engage in inappropriate interactions when exercising your functions as a JRPP member.

5.4 In relation to council staff⁶ you must not:

- a) approach, make requests of, make enquiries or issue instructions to council staff other than through official channels and in accordance with this Code
- b) be overbearing or threatening to council staff
- c) make personal attacks on council staff in a public forum
- d) direct or pressure council staff in the performance of their work or recommendations they make
- e) influence or attempt to influence staff in the preparation of assessment reports or other information to be submitted to the JRPP.

5.5 The '*Procedures for the Operation of Joint Regional Planning Panels*' recognises that there may be circumstances where it is appropriate for JRPP members to attend meetings/briefings with applicants, objectors or other third parties with an interest in proposed development. However, you:

⁶ A reference in this clause to council 'staff' includes a reference to council contractors or consultants.

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- a) must not hold private meetings, briefings or discussions in respect of the matter in the absence of other JRPP members or without council staff being in attendance; and
 - b) must not attend site visits unless they have been formally arranged by council staff and you are accompanied by other JRPP members and/or council staff.

Where such meetings, briefings or site visits occur:

- (a) you should not express any preliminary views in relation to the JRPP's ultimate determination of the matter; and
- (b) a written record of the discussions should be made.

Council staff - avoiding the potential for a conflict of duties

- 5.6 As a general rule it is not appropriate for council staff to be members of a JRPP, as it would be difficult for them to appropriately manage the conflicts of duties between being a council staff member and fulfilling the obligations of a JRPP member.
- 5.7 Council employees (including general managers and other senior staff) who are nominated to sit as a member of the JRPP should carefully consider what measures must be put in place to ensure they will be able to comply with the requirements of this Code.⁷
- 5.8 A conflict of duties may arise for Council employees (including general managers and other senior staff) who are nominated to sit as a member of the JRPP. A conflict of duties is a conflict between competing and incompatible public duties. For example, a conflict of duties arises where public officials hold more than one official position which requires them to address competing objectives or interests. Conflicts of duties should be avoided in most circumstances. Therefore Council employees who are nominated to sit on a JRPP must ensure that appropriate measures are in place to ensure potential conflicts are appropriately managed.
- 5.9 Council employees who are nominated to sit as JRPP members must also seek to avoid situations in which their interests as a Council employee might reasonably be perceived by members of the community to conflict with the impartial fulfilment of their functions as a JRPP member either because:
 - a) they have been directly or indirectly involved in the preparation of the assessment report for the JRPP, or
 - b) they adopt a view, without providing independent reasoning, that is perceived to be consistent with the view of the elected council in its submission to the JRPP.

6. Relationship between JRPP members and others

- 6.1 You must adhere to the Key Principles and General Conduct Obligations contained in this Code when dealing with others, including council staff, councillors, Department of Planning staff and the Panel Secretariat.

7. Protecting and using information

- 7.1 Information must be handled in accordance with section 148 of the EP&A Act.
- 7.2 In addition to the obligations under section 148 of the EP&A Act you must:

⁷ In particular Part 5 of the Code.

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- a) protect confidential information
 - b) only release confidential information if you have authority to do so
 - c) only use confidential information for the purpose it is intended to be used
 - d) not use confidential information gained through your position as a JRPP member for the purpose of securing a private benefit for yourself or for any other person
 - e) not use confidential information with the intention to cause harm or detriment to the JRPP or any other person or body
 - f) not disclose any information discussed during a confidential session of a JRPP.

7.3 When dealing with personal information you must comply with the *Privacy and Personal Information Protection Act 1998*.

8. Use of public resources

8.1 You may be provided with equipment and other resources to perform JRPP functions. All such resources are to be used only for JRPP purposes and in accordance with any guidelines or rules about the use of those resources.

9. Public Comment/Media

9.1 The JRPP Chair is responsible for speaking to the media on behalf of the JRPP, to allow its decisions to be properly represented and communicated. The Chair can authorise another JRPP member to speak to the media on behalf of the JRPP at any time. Other non-authorised members can speak to the media about JRPP matters however, in doing so, this does not represent the views of the JRPP.

10. Reporting breaches

10.1 JRPP members are required to report suspected breaches of the Code to the JRPP Chair. If the suspected breach is by the JRPP Chair, you should report the suspected breach to the member of the Planning Assessment Commission (PAC) nominated for this purpose. If the JRPP Chair suspects a breach of the Code s/he should report the suspected breach to the nominated PAC member.

10.2 The JRPP Chair or nominated PAC member, as the case may be, may take such steps as s/he thinks appropriate to investigate and take action in respect of the alleged breach.

10.3 A person who is alleged to have breached the Code must be given:

- a) the full particulars of the alleged breach⁸;
- b) an opportunity to respond to the allegations; and
- c) the right to have a legal or other representative present during any meetings/discussions in respect of the matter.

10.4 Serious breaches of the Code may be referred to the Minister in respect of State Members or the relevant council with respect to council nominees. Proven breaches of the Code may warrant removal from office (see item 12 below)

11. Reporting possible corrupt conduct

⁸ These particulars should not include the details of the person who made the allegation.

11.1 The *Protected Disclosures Act 1994* provides protection to public officials who voluntarily report suspected corrupt conduct. JRPP members can make reports concerning suspected corrupt conduct⁹ to the JRPP Chair¹⁰. The JRPP Chair is under a duty to report to the Independent Commission Against Corruption any matter that they suspect on reasonable grounds concerns or may concern corrupt conduct¹¹.

11.2 JRPP members can also report directly to the following investigative bodies.

Disclosures concerning:

- Corrupt conduct should be made to the Independent Commission Against Corruption¹²
- Maladministration¹³ should be made to the NSW Ombudsman
- Serious and substantial waste of public money should be made to the NSW Auditor General.

12. Removal from office

12.1 The Minister may remove State members from office at any time and without notice.

12.2 The relevant council may remove its nominee/s from office at any time and without notice. If so, the Council must notify the Panel Secretariat.

12.3 The Minister may remove any member if the Independent Commission Against Corruption recommends that consideration be given to the removal of the member because of corrupt conduct by the Member.

13. Complaint handling

13.1 Complaints against JRPP members are to be handled in accordance with the JRPP Complaints Handling Policy.

⁹ Corrupt conduct has the meaning given to that term under the *Independent Commission Against Corruption Act 1988* ('ICAC Act').

¹⁰ or nominated PAC member if the suspected conduct is by the JRPP Chair or the Chair is reporting suspected corrupt conduct.

¹¹ Section 11, ICAC Act.

¹² Section 10 of the ICAC Act allows any person to make a complaint to the Independent Commission Against Corruption about a matter that concerns or may concern corrupt conduct.

¹³ Maladministration is defined in s 11(2) of the *Protected Disclosures Act 1994*

Appendix A

Extract from Schedule 4 of the *Environmental Planning and Assessment Act 1979*

12 Disclosure of pecuniary interests

- (1) If:
- (a) a member has a pecuniary interest in a matter being considered or about to be considered at a meeting of the regional panel, and
 - (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter, the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the regional panel.
- (2) A member has a pecuniary interest in a matter if the pecuniary interest is the interest of:
- (a) the member, or
 - (b) the member's spouse or de facto partner or a relative of the member, or a partner or employer of the member, or
 - (c) a company or other body of which the member, or a nominee, partner or employer of the member, is a member.
- (3) However, a member is not taken to have a pecuniary interest in a matter as referred to in subclause (2) (b) or (c):
- (a) if the member is unaware of the relevant pecuniary interest of the spouse, de facto partner, relative, partner, employer or company or other body, or
 - (b) just because the member is a member of, or is employed by, a council or a statutory body or is employed by the Crown, or
 - (c) just because the member is a member of, or a delegate of a council to, a company or other body that has a pecuniary interest in the matter, so long as the member has no beneficial interest in any shares of the company or body.
- (4) A disclosure by a member at a meeting of the regional panel that the member, or a spouse, de facto partner, relative, partner or employer of the member:
- (a) is a member, or is in the employment, of a specified company or other body, or
 - (b) is a partner, or is in the employment, of a specified person, or
 - (c) has some other specified interest relating to a specified company or other body or to a specified person,
- is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).
- (5) Particulars of any disclosure made under this clause must be recorded by the regional panel in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee determined by the regional panel.
- (6) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the regional panel otherwise determines:
- (a) be present during any deliberation of the panel with respect to the matter, or
 - (b) take part in any decision of the panel with respect to the matter.

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- (7) For the purposes of the making of a determination by the regional panel under subclause (6), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:
- (a) be present during any deliberation of the panel for the purpose of making the determination, or
 - (b) take part in the making by the panel of the determination.
- (8) A contravention of this clause does not invalidate any decision of the regional panel.