



Code of conduct – Heritage Council of NSW

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Introduction and application of the Code

As public officials, all members of boards and committees have obligations to act in the public interest. Board and committee members are required to demonstrate standards of professional behaviour that will preserve public trust and deliver the best possible outcomes for the people of NSW.

Members of boards and committees must comply with a broad range of whole of Government regulations and policies including those stipulated in legislation, regulations, Ministerial Memoranda, Department of Premier and Cabinet circulars, Treasury publications and Public Service Commission policy documents.

This Code of Conduct provides an easy to understand summary of these responsibilities and sets out the standards of behaviour expected.

The Heritage Council of NSW Code of Conduct should be read in conjunction with the Heritage Council of NSW Terms of Reference, which provide information on compliance obligations of the Council and its members.

In this document, reference to a Heritage Council member should also be construed as a reference to a member of a Heritage Council committee or advisory panel.

Values

The NSW Government core values set out in the *Government Sector Employment Act 2013* are:

- Integrity
- Trust
- Service
- Accountability

These values are the heart of how we work and, if applied consistently, they also help us to maintain the trust of the public.

1 Standards of conduct

This Code outlines the standards of conduct expected of Heritage Council members in exercising their functions. It is the personal responsibility of each member of the Heritage Council to comply with this Code.

The Code has been developed to ensure Heritage Council members:

- commit to upholding a high degree of professional service and ethical leadership
- act in a way that promotes public confidence in the Heritage Council's conduct
- have a clear understanding of their public duty and legal responsibilities
- act for proper purposes without exceeding their powers
- exercise due diligence in all their functions.

1.1 General conduct

A Heritage Council member must:

- act honestly and exercise a reasonable degree of care and diligence in carrying out their functions
- act for a proper purpose in carrying out their functions
- not use their membership for personal advantage
- not use their membership to the detriment of public confidence in the Heritage Council
- disclose any interest (whether pecuniary or otherwise) that could conflict with the proper performance of their functions and avoid performing any function that could involve such a conflict of interest.

1.2 Work health and safety

Ensuring people working for the Department have a safe place to work is a top priority; as is public safety. Heritage Council members are considered 'workers' for the purposes of the Work Health and Safety (WHS) Act and Regulation 2011. The Department is committed to eliminating and minimising work, health and safety (WHS) risks as far as reasonably practicable. Heritage Council members are responsible for:

- being aware of the safety systems and practices that help keep everyone safe and well

- looking for hazards and taking action if a safety risk is identified and it is safe to do so
- reporting all WHS incidents, including near misses, to the Secretariat, Heritage NSW, who will liaise with the Department's WHS team.

1.3 Respect and inclusion

Respect and inclusion are fundamental to a harmonious, productive and psychologically safe workplace where people feel safe to speak up about concerns. The Department is committed to ensuring a safe environment in which everyone feels they can achieve their potential.

The Department has no tolerance for harassment or victimisation.

Heritage Council members are responsible for:

- treating people with dignity and respect, and contributing to a positive and productive working environment
- making sure people feel valued and are able to fully participate
- not discriminating against, harassing or victimising anyone on any grounds including:
 - sex, gender identity or sexual orientation
 - marital status
 - pregnancy
 - age
 - race or ethnicity
 - physical or intellectual disability
 - political or religious conviction
- demonstrating inclusive behaviours and using inclusive language
- creating a workplace that is safe and offers protection from sexual, physical and psychological harassment and neglect
- preventing bullying.

1.4 Conflict of interests

A conflict of interest exists when a reasonable person might perceive that a public official's personal interest(s) could be favoured over their public duties.

There are 4 elements to consider when determining whether a conflict of interest exists:

- Does the official have a personal interest?

- Does the official have a public duty?
- Is there a connection between the personal interest and the public duty?
- Could a reasonable person perceive that the personal interest might be favoured?

Conflicts of interest do not, in themselves, usually constitute corrupt conduct. Corrupt conduct can, however, arise when a conflict of interest is concealed, understated, mismanaged or abused.

Examples of when conflicts of interest can arise include where a member has:

- other directorships or employment
- professional and business interests and associations
- investment interests or the investment interests of friends or relatives
- family relationships
- participation in party political activities
- personal beliefs or attitudes that affect impartiality

related to the subject matter of their work with the Heritage Council.

The above list and the examples below are indicative only. There may be other situations that can lead to a real or perceived conflict of interest.

1.4.1 Examples of conflicts that may arise for Heritage Council members

An example of a pecuniary conflict is where a member is engaged by a proponent as a consultant or advisor and if a decision was to not list an item or to approve the carrying out of works to an item, the project may continue and thus benefit the person financially by way of ongoing fees.

A conflict can arise in a non-pecuniary way. For example, a person may personally know or be related to an owner of a State Heritage Register listed property. While there may not be any financial benefit from a particular decision on a matter affecting the property, there may be other benefits for the member such as the continuation of the relationship.

Some conflicts of interest are unavoidable. For example, a relative or friend may propose a development in relation to State listed property. Another example is where a person was previously a consultant for, or employee of, the owner of a listed item and the owner now proposes works in relation to that item.

Sometimes, a position taken by the employer of a person on the Heritage Council or Committee may give rise to an actual, potential or perceived conflict with the duties of member. As the primary duty of the member is to act in the best interests of the Heritage Council or its Committee (and not a representative of the employer), this can give rise to actual, potential or perceived conflicts.

The above examples are indicative only.

1.4.2 Duty of members to declare conflicts of interest

A member has a duty to declare any private interest that may impinge on a Heritage Council decision. When an issue arises, the member must as soon as practicable disclose full and accurate details of the interest or issue to the Chair of the Heritage Council.

A member must disclose interests to the Heritage Council (which include positions and pecuniary interests) in corporations, partnerships or other businesses or organisations that may be relevant to the activities of the Council. A member's interests include those of an associate or close relative.

General disclosures must be made at the beginning of a member's term. Members must make specific disclosures as soon as possible after the relevant facts come to the member's knowledge, and they must be recorded by the Heritage Council in minutes of the meeting.

Disclosures must give sufficient detail for the conflict of interest to be understood. When a member believes a notified conflict of interest no longer applies, they must give sufficient detail for the change to be understood.

A register of such interests must be maintained by the Heritage Council and must also be reported to the Minister.

1.4.3 Process for conflict identification

1. All Heritage Council and Committee members should aim to ensure that any conflicts of interest, whether actual, potential or perceived, between their personal, professional and employer interests and their obligations to the Heritage Council and committees, are declared and appropriately managed.
2. Prior to any meeting, Heritage NSW will circulate the proposed meeting agenda and request members to advise of any conflicts of interest related to the proposed agenda.
3. Each member is to consider the proposed agenda and confirm in writing to the Secretariat and the Chair if the member believes he or she has any actual, potential or perceived conflict of interest in respect of a particular matter.
4. This advice to the Secretariat must give full and accurate details of the conflict so an appropriate management decision can be made.
5. If a member advises of an actual conflict, the papers for that particular item will not be made available to the member until the matter is resolved in accordance with the process below.
6. All advice of a conflict of interest will be provided to the Chair of the Heritage Council or Committee prior to the meeting.

7. At the meeting, the person must confirm their declaration of any conflict of interest and whether the conflict is pecuniary or non-pecuniary. If members have become aware of a conflict they should declare it at the beginning of the meeting.
8. The Council will discuss the reported conflict of interest and make a decision on a management action. The decision must be recorded in the meeting minutes.

1.4.4 Management of conflicts

The conflict should be resolved in a way that ensures the integrity of the Council's decision-making and advisory functions is not compromised. The reasons for not excluding a member from a decision where the member has a conflict must be able to be explained in public if questioned.

Management actions could include:

- excluding a member from any discussion on the relevant matter
- excluding a member from a decision or voting on the relevant matter
- withholding meeting papers and requiring the member to leave the meeting while the relevant matter is discussed.

1.5 Gifts, benefits and hospitality

Members must not seek, offer or receive money or gifts in order to obtain a benefit or favour. Members must not accept gifts or benefits that could place them under an actual or perceived financial or moral obligation to another organisation or individual.

All offers of a gift, benefit or hospitality that are offered to members must be declared.

When a gift or benefit is offered, the member must, within 10 working days, disclose full and accurate details of the gift or benefit to the Chair for approval using the declaration form available from the Secretariat.

Gifts, benefits or hospitality that are valued:

- below \$25 may be accepted without the approval of the Chair
- above \$100 must be declined or, where this is not practicable – accepted, registered and then donated to charity.

A register is to be maintained by the Secretariat. Boards and committees are encouraged to publish their gifts, benefits, and hospitality register.

2 Departmental resources

2.1 Appropriate use of resources

Departmental resources should only be used for Departmental purposes. Furniture, equipment, staff and other resources may be provided to the Heritage Council to perform its functions and should be used only in relation to those functions.

2.2 Public expenditure

Members must ensure the efficient and responsible expenditure of public monies in accordance with legislation and Government policies and guidelines including the following:

- *Government Sector Finance Act 2018*
- *Public Works and Procurement Act 1912* and the associated Board Directions.

Members must comply with relevant government financial, asset management and procurement requirements.

2.3 Intellectual property and copyright

All intellectual property created by members in the course of their role as members of the Heritage Council is the intellectual property of the Department. Members cannot sell or give away intellectual property created during or in connection with their appointment to a board or committee.

Members should provide Heritage NSW with complete copies of any reports, documents or other materials that demonstrate significant decisions, discussions, reasons or actions or contain significant information not contained in final versions of documents created during the course of their appointment as a Heritage Council member.

Intellectual property includes rights relating to scientific discoveries, industrial designs, trademarks, service marks, commercial names and designations, inventions and activity in the industrial, scientific, literary or artistic fields.

2.4 Confidential and private information

During the course of their duties, members might have access to sensitive, personal and or commercially confidential information. This information could relate to members of the community, the NSW Government or government employees. Such information is varied in form including written information, stored information, e-documents and verbal information.

Such information may only be used for the purposes of the work of the Heritage Council. Members are expected to protect the integrity and security of information and documents for which they are responsible and to adhere to the principles of the *Privacy and Personal Information Protection Act 1998* and the Departmental Privacy Management Plan.

Members have an ongoing duty to protect confidential and private information even if they are no longer members of the Heritage Council.

Examples of misuse of official information or documents include:

- speculating on shares, commodities or property on the basis of confidential information about the affairs of a business or of proposed Government actions
- seeking to take advantage of another person, for personal reasons, on the basis of information held in official records
- disclosing sensitive information to members of the public, political parties, clients, lobby groups, other public servants, other government organisations or members of Parliament, without proper authority
- providing or trading confidential information for use by private investigators, banks and credit agencies.

Members must:

- use confidential or official information only in relation to their Heritage Council role and consistent with their obligation to act impartially
- be cautious and use sound judgement when discussing sensitive information with others
- disclose information that is normally available to members of the public
- safely and securely store any Heritage Council records, including emails and electronic information
- treat email and electronic records as carefully as hard copy information.

Members must not:

- use information for any unofficial purpose outside the Heritage Council
- use information gained in their capacity as a Heritage Council member for personal gain

- improperly collect, use or disclose the personal information of individuals including community and staff members
- use information gained in the course of their Heritage Council role to cause harm or detriment to government or any person or organisation
- remove official information from government premises unless needed for Heritage Council purposes.

2.5 Release of information

The *Government Information (Public Access) Act 2009* (GIPA Act) applies to public sector agencies including the boards and committees that meet the definition of public sector agency in the GIPA Act. The Heritage Council is declared an agency in Schedule 3 of the *Government Information (Public Access) Regulation 2018*.

Business of the Heritage Council, including business conducted by electronic means such as email, is captured by the GIPA Act. Requests for information from the Information Access and Privacy Unit should be responded to promptly. All documents should be provided and any sensitivities clearly articulated to the Information Access Officer handling the case.

The Heritage Council is encouraged to proactively release decisions of its meetings in accordance with the NSW Government's Open Government policy unless there is an overriding public interest against disclosure. Under the Schedule 2, cl. 17 of the *Heritage Act 1977*, minutes of Heritage Council meetings and decisions made at each meeting must be made publicly available.

2.6 Communicating with the media and third parties

Views that are publicly expressed by a member may be perceived or construed by the broader community as views of the Heritage Council or the Department.

Members should ensure that any public comments made in a private capacity are not attributed as official comments. In this respect, members should not use official stationery for private correspondence or for purposes not related to their official duties.

The Chair of the Heritage Council may make public comment on behalf of the Heritage Council, where appropriate, but must not share any Heritage Council records not publicly available with the media or on social media.

Members must not:

- initiate contact with the media on matters or issues that have been subject to discussion by the Heritage Council
- make public comment on behalf of the Heritage Council or the Department
- make public comment on (including to the media or on social media) any matter or issue that has been subject to discussion by the Heritage Council
- share any Heritage Council records with the media or on social media.

2.7 Lobbying

Decisions of the Heritage Council must be made in an open and transparent manner, without any undue influence, or the perception of undue influence.

Lobbying occurs when a party or an individual communicates with a council member for the purpose of representing the interests of themselves or a third-party with the express intention to influence a legislative, policy or administrative decision.

Parties may include industry groups, peak bodies, other professional advisors and consultants, government relations officers, or community and not for profit organisations.

When dealing with lobbyists or those who seek to influence decisions, or legislative and policy outcomes, members must adhere to the following:

- Ensure they receive a written request to meet at least one week before the proposed meeting and that request expressly includes the purpose of the meeting and the proposed participants.
- Inform the Chair that a request to meet with a lobbyist has been received and have the request recorded in the minutes of the next meeting.
- Where a lobbying contact is not pre-arranged, details of the contact are recorded and shared with the Chair as soon as possible and noted in the minutes of the next meeting.
- Keep accurate records that include the names and positions of all attendees, the time, date, and location of the meeting, and a summary of discussion points and outcomes.
- Keep records in accordance with the *Records and Information Management Policy and the State Records Act 1998*.
- Conduct face to face meetings on government premises, or the business premises of the relevant organisation, and ensure that meetings held virtually are recorded.
- Ensure that two members of the Council are present or one Council member and one staff member from Heritage NSW are present.
- Not exercise any functions of Council or purport to exercise any functions during a lobbying meeting.
- Provide the written record of the meeting to the Chair for tabling at the next meeting.

3 Speaking up and reporting matters

The Department can only resolve problems and put improvements in place if people speak up and make the Department aware of the situation.

The Department will support people who speak up by listening and providing feedback on the actions they have taken and the reasons for these actions. Speaking up is more likely to be effective if it takes place early and in a constructive, courteous way.

3.1 Reporting allegations of impropriety and corrupt conduct

It is important that the conduct of Heritage Council members reflects the principles and ethical requirements set out in this code at all times. If allegations about inappropriate conduct are made or aired in the public domain which, if true, would constitute a breach of this code, the member concerned may be removed from the Heritage Council.

Corrupt conduct is the dishonest or partial exercise of official functions by a public official including the improper use of power or position as a board or committee member for personal gain or the advantage of others.

Maladministration is conduct that involves action or inaction of a serious nature that is contrary to law, unreasonable, unjust, oppressive or improperly discriminatory or based wholly or partly on improper motives. It is more serious than a technical breach of policy or procedures.

Fraud is dishonestly obtaining a benefit, or causing a loss, by deception or other means including the unlawful use of information obtained as a board or committee member or equipment provide by the Department for personal use.

The *Public Interest Disclosures Act 1994* provides protection to Heritage Council members who voluntarily report suspected corrupt conduct. Members can make reports to the Chairperson or to the principal officer of the relevant public authority (usually the Secretary, Chief Executive Officer, General Manager) in accordance with the agency's internal reporting guidelines. Members can also report directly to the following investigative bodies:

- Disclosures concerning corrupt conduct should be made to the ICAC.
- Disclosures concerning maladministration should be made to the NSW Ombudsman.

- Disclosures concerning serious and substantial waste of public money should be made to the NSW Auditor General.

4 Breach of the Code

It is important to remember that Heritage Council members are representatives of the NSW Government and are conducting work on behalf of the NSW Government. If a member does not comply with the Code, the Chair may direct the member to take a specified action to rectify his or her conduct or determine that further work not be allocated to the member until the breach is rectified. If the Chair is in breach of the code, members of the Heritage Council may raise their concerns with the Secretariat for consideration by the Executive Director, Heritage NSW.

If members of the Heritage Council do not adhere to the code of conduct or are seen to display inappropriate ethical standards of behaviour, the Department may take applicable action. Where suspected breaches are related to the conduct of a member or the entire Heritage Council, the Council must consult with the Department.

In the case of a serious breach, the Chair may need to refer to the appropriate Minister and consider appropriate action. Any action taken will consider the seriousness of the breach, whether there is a pattern of such conduct, the intent of the member concerned and the effect it is having on the work of the Heritage Council.