



CODE OF CONDUCT – CDAP

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Code of Conduct Section 21A of the *Development Act 1993*

This Code has been adopted pursuant to the provisions of the *Development Act 1993* as a Code of Conduct to be observed by Members of the Development Assessment Commission, Members of Regional Development Assessment Panels, Members of Council Development Assessment Panels and delegates.

In order to foster the respect of applicants, representors and the community, panel members and delegates must uphold the highest standards of behaviour and ensure that they act in accordance with the provisions of the Act at all times.

This Code is binding on all panel members and delegates exercising their powers and functions as members of a panel or as a delegate.

This Code must be read in conjunction with the Act.

1. Interpretation

Act means the Development Act 1993.

closed meeting means a panel meeting, or a part of a panel meeting where the public is excluded in accordance with the Act :

Code means a code of conduct established under section 21A of the Act.

confidential information includes but is not limited to:

- (a) information derived from a document marked by the presiding member to clearly show that the information in the document is confidential or not to be disclosed;
- (b) information you acquired in a closed meeting ; and
- (c) any other information which would be considered confidential and not generally available to members of the public

delegate means a person who is authorised to act as a delegate under sections 20 or 34(23) of the Act but does not include a panel member.

disclosure of financial interest means disclosing a pecuniary interest as set out in Schedule 2 of the Act.

interest has the same meaning as in Section 56A (7)&(8) of the Act

Minister means the Minister responsible for the administration, from time to time, of the Act.

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panel means an assessment panel as defined in Schedule 2 of the Act.

panel information means information that is disclosed at a panel meeting or in the course of a panel member's duties.

panel member means a person who is a member of a panel under the Act.

presiding member means a panel member appointed as presiding member under the Act.

public officer means a person appointed as a public officer under the Act .

2. Panel Member Behaviour

Panel information

2.1 As a panel member, you hold a position of trust and must not misuse or derive undue benefit from your position. As such, you must treat panel information appropriately by:

- (a) Not using information gained by virtue of your membership of the panel for any purpose than to exercise your role as a panel member;
- (b) Respecting the panel's procedures in relation to public comments and communications with the media;
- (c) Not releasing confidential information;
- (d) Ensuring that you take care and maintain the integrity and security of confidential documents or information in your possession, or for which you are responsible; and
- (e) Recognising that information may be subject to the requirements of the Privacy Act 2000 and abiding by the principles of that legislation.

However, nothing in this Code prevents you from disclosing information:

2.2 At a closed meeting;

- (a) To the extent specified by the panel and subject to such other conditions as the panel determines;
- (b) That is already in the public domain; or
- (c) If the disclosure is required by law.

Conflict of Interest

- 2.3 You must make all decisions impartially and in accordance with the requirements of the Act. You must recognise the importance of fully observing the requirements of the Act in regard to disclosure of financial interests and disclosure of any other interest which may affect your ability to fulfil your duties on a panel.
- 2.4 If you consider that you have, or might reasonably be perceived to have an interest in the matter before the panel, you must clearly state the nature of that interest in writing to the presiding member before the matter is considered.
- 2.5 If you consider that you have a personal interest which may be in conflict with your public duty to act impartially and in accordance with the principles of the Act, you must declare a conflict of interest as above.
- 2.6 If you have an interest in a matter, you must not partake in any of the assessment processes involving the matter. You must leave the room at any time in which the matter is discussed by the panel including during the hearing of any representations or during any vote on the matter. You must not vote on the matter and you must not move or second any motion or participate in any discussion through the consensus process.
- 2.7 If an interest has been declared by any member of the panel, the presiding member must record the nature of the interest in the minutes of meeting.

Relations with State/local government employees and applicants/representors

- 2.8 In your role as panel member, you must not (other than in accordance with the provisions of the Act):
 - (a) Direct a person who is a local government employee to do or not to do anything in the person's capacity as a local government employee;
 - (b) In the case of members of the Development Assessment Commission, direct a person who is a State government employee to do or not do anything in the person's capacity as a State government employee;
 - (c) Attempt to influence the conduct of a person who is a local government employee in the person's capacity as a local government employee;
 - (d) Approach or discuss with an applicant or representor any application which is either before the panel or will come before the panel at some future time, except during the course of a panel meeting where the application forms part of the agenda and the applicant or representor has a right to be heard by the panel; and
 - (e) Except where required as part of the assessment of a particular decision such as a formal panel viewing of a development site, you should not enter a development site, even if invited by the land owner or a neighbouring property owner or any other person.

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Development Assessment Conduct

- 2.9 You acknowledge that the assessment of development by the panel requires that you act impartially and limit yourself to assessing an application strictly in accordance with the Act. Panel members must determine whether or not to grant development plan consent by assessing the development against the provisions of the appropriate Development Plan without reference to extraneous matters but with due regard to relevant matters such as representations made in accordance with the provisions of the Act.
- 2.10 You must not:
- (a) Engage in consultation outside of the panel process with any party on a proposed development application that is likely to be heard by the panel;
 - (b) Give advice to an applicant or other third party on a development application after it has been lodged outside of a panel meeting;
 - (c) Speak at a public meeting for or against a proposal where the purpose of the meeting is to discuss either a proposed development or a development application unless required by the Act;
 - (d) Express an opinion on a development application or a proposed development outside of a panel meeting; and
 - (e) Engage in any other act or omission which may give rise to a reasonable presumption that you have prejudged a development proposal or application.
- 2.11 In regard to attendance of a public meeting as set out in point 2.10 (c) above, you must inform the panel that you have attended such a meeting and confirmed that you have not made representations to the meeting, discussed the matters raised at the meeting with any person or given an indication as to the merits of a particular development application or proposed development application outside of a panel meeting.

Note that nothing in this Code prevents you from properly seeking clarification or comment from staff members prior to or during the discussion of any matter in a panel meeting.

Public Comment

- 2.12 Only the presiding member or another person determined by the panel is permitted to speak publicly to the media and address the public on behalf of the panel. No other panel member may make comment to the media or the public in relation to any matter before the panel or any decision of the panel.

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3. Breaches of the Code, Complaints and Sanctions (Panel Members)

3.1 You have an obligation to act honestly and diligently as a panel member. You should report any instances of suspected breach of the Act, this Code or any other misconduct by other panel members immediately to the public officer in writing and refrain from discussing those matters at future panel meetings.

3.2 Upon receipt of this information the public officer may:

- (a) Seek legal advice; and/or
- (b) Require an investigation into the allegations by an appropriate person; and/or
- (c) Refer the matter to the police; and/or
- (d) Take any other action which the public officer deems appropriate and which accords with the Act.

Note that nothing in this Code prevents you, or any other person from making a complaint under the Ombudsman Act 1972.

3.3 Where an investigation is undertaken in accordance with this Code, the person to whom the allegation of misconduct relates must be given by the public officer:

- (a) Full particulars of the alleged misconduct in advance of the investigation (at least 7 days prior to the date of the meeting at which the complaint will be investigated);
- (b) An opportunity to respond to the allegations; and
- (c) The right to have a representative attend any hearing with them (including legal counsel).

3.4 Where an allegation of misconduct is made out, the Minister (in regard to the Development Assessment Commission), the relevant Councils (in regard to a Regional Development Assessment Panel) and the relevant Council (in regard to a Council Development Assessment Panel or a Regional Development Assessment Panel) may:

- (a) Remove the person from the panel;
- (b) Suspend the person from the panel for a period of time; or
- (c) Take any other reasonable action deemed appropriate.

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4. Delegate Behaviour

- 4.1 In order to foster the respect of applicants, representors and the community, delegates must uphold the highest standards of behaviour and ensure that they act in accordance with the provisions of the Act at all times.

Development application information

- 4.2 As a delegate, you hold a position of trust and must not misuse or derive undue benefit from your position. As such, you must treat development application information appropriately by:
- (a) Not using information gained by virtue of your role as delegate for any purpose than to exercise that role;
 - (b) Not releasing confidential information;
 - (c) Ensuring that you take care and maintain the integrity and security of confidential documents or information in your possession, or for which you are responsible; and
 - (d) Recognising that information may be subject to the requirements of the *Privacy Act 2000* and abiding by the principles of that legislation.

Conflict of Interest

- 4.3 You must make all decisions impartially and in accordance with the requirements of the Act. You must recognise the importance of fully observing the requirements of the Act in regard to disclosure of any interest which may affect your ability to fulfil your duties as a delegate:
- (a) If you consider that you have, or might reasonably be perceived to have an interest in the matter before you as delegate, you must clearly state the nature of that interest in writing and must not proceed to exercise your delegation; and
 - (b) If you consider that you have a personal interest which may be in conflict with your public duty to act impartially and in accordance with the principles of the Act, you must declare a conflict of interest as above and must not proceed to exercise your delegation.

Development Assessment Conduct

- 4.4 You acknowledge that the exercising of a delegation by you in relation to the assessment of development requires that you act impartially and limit yourself to assessing an application strictly in accordance with the Act. Delegates must determine whether or not to grant development plan consent by assessing the development against the provisions of the appropriate Development Plan without reference to extraneous matters but with due regard to relevant matters such as representations made in accordance with the provisions of the Act.

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4.5 You must not:

- (a) Exercise a delegation to make a decision on an application for development plan consent, or issue an instruction in relation to the exercise of a delegation held by another person, where you have assisted the applicant in the preparation of the application, to the extent that it leads to an expectation that if the applicant followed this advice you would grant delegated consent to the application;
- (b) Speak at a public meeting for or against a proposal where the purpose of the meeting is to discuss either a proposed development or a development application where you hold a delegation other than to outline process and/or requirements of the Act or Regulations or, unless required by the Act; and
- (c) Engage in any other act or omission which may give rise to a reasonable presumption that you have prejudged a development proposal or application.

5. Breaches of the Code (Delegates)

- 5.1 Breaches of this code by a delegate are to be reported to either the chief executive of the relevant council or the chief executive of the relevant government department. The responsible chief executive will take the appropriate action as required.

Hon. Paul Holloway M.L.C
Minister for Urban Development and Planning

Dated: / /

Reviewed by Council 8/3/16 – Motion 8c/032016

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