



Policy document

Public Hearing Guidelines

This Policy sets out the considerations that guide the Independent Planning Commission in relation to the conduct of a public hearing.

1. PURPOSE OF THIS DOCUMENT

The purpose of this document is to set out the considerations that will guide the Commission in relation to the conduct of a public hearing, primarily for public hearings that are held before determining an application. It should be noted these guidelines relate only to public hearings. The Commission has separate guidelines for its conduct of public meetings, which are available on the Commission's website.

2. PUBLIC HEARING

A public hearing provides the Commission an opportunity to hear the community's views, especially on the Department of Planning, Housing and Infrastructure's whole-of-government Assessment Report (and any recommended conditions of consent) before determining an application.

A public hearing is only held if a formal request is made by the Minister for Planning and Public Spaces. If such a request is made, the Commission must hold the public hearing. The Commission has powers to require certain people to attend the public hearing and to give evidence.

When will a public hearing be held?

Unlike a public meeting, the Commission has no power to decide to conduct a public hearing under the EP&A Act, even when it is the consent authority.

A public hearing only takes place if it is requested by the Minister.

Merit appeal rights

When the Commission holds a public hearing in relation to a development application for which it is the consent authority, the merit appeal rights for both the applicant and objectors are extinguished.

After a public hearing, no merit appeal may be brought under Division 8.3 of the EP&A Act, in respect of any future determination made by the Commission as consent authority under the EP&A Act in relation to the carrying out of any development that is the subject of the public hearing. See Division 8.3 of the EP&A Act for more details.

3. WHAT IS THE DIFFERENCE BETWEEN A PUBLIC HEARING AND A PUBLIC MEETING?

Public hearings have a lot of similarities to public meetings but when the Commission is directed to hold a public hearing in relation to a development application for which it is the consent authority:

- the merit appeal rights for both the applicant and objectors are extinguished
- the Commission must hold a public hearing and does not have any discretion to proceed to determination without a public hearing
- the Commission can require people to attend the public hearing and/or give evidence.

4. WHEN A REQUEST TO HOLD A PUBLIC HEARING HAS BEEN RECEIVED

When and where a public hearing will be held

Public hearings will generally be held as soon as

practicable after the Minister has made a request to hold a public hearing and the Department's Assessment Report is received by the Commission.

The Commission may choose to conduct public hearings wholly in person, wholly remotely by electronic means (i.e. via telephone and/or videoconference), or some combination of the two.

Matters that the Commission may consider in deciding this may include:

- the likely numbers of participants at the public hearing
- the availability of a suitable site for the in-person component of the public hearing
- the availability of reliable telecommunications for the remote component of the public hearing
- other factors such as safety, security, or any public health orders

Timing of the public hearing

The length of a public hearing will be at the discretion of the Commission. Hearings will generally be held during the day but may include an evening or weekend session. Once speakers have registered, the length of the hearing may be amended in line with the final number of speakers.

Notification of the public hearing

The Commission will give a minimum of two weeks (14 days) notice of a public hearing.

The Commission will advertise notice of the public hearing via a post published on its website and social media channel/s. It will also issue a media release to news outlets in the local area where the development is proposed.

The Commission will notify via direct email all persons (including public authorities) who had previously made a submission to the Department during its consultation period/s, the local council, and state and federal MPs in the area.

The advertised notice of the public hearing will include:

- the subject matter of the hearing
- details of the hearing, including time, date and format
- the place at which the public hearing is to be held, or if the hearing is to be held remotely, information on how you may hear or view the hearing
- information on how to make written submissions to the Commission in relation to the subject-matter of the hearing, together with the date before which such submissions must be received

- details of how to apply to speak at the hearing, together with the last day on which it is possible to apply to speak at the hearing;
- details of how proceedings can be viewed – i.e. in person or via a livestream
- the availability on the Commission's website of the Assessment Report and any other relevant case material.

Where do I find the documents and information about the proposed development?

The Assessment Report and any recommended conditions of consent will be published on the Commission's website, which will also provide a link to the Department's website where the application and other relevant documents, including public submissions previously made to the Department, are published.

The public hearing schedule, listing the names and organisations of registered speakers, will be posted on the Commission's website after registrations close.

Attendance

Where a public hearing is conducted wholly in person, it will generally be open to the public to attend to observe (subject to any capacity constraints at the venue).

Attendance of witnesses and production of documents at public hearings

In some cases, the Chair of a Panel may formally require a person to give evidence (either in person at the public hearing or via a written statement), or to produce to the Commission a document that is relevant to the public hearing.

A person must not, without reasonable excuse, fail to comply with a requirement to attend a public hearing, or to produce a document.

Confidential public hearings

The Commission may direct that part of any public hearing is to take place in private if the Commission is satisfied that it is desirable to do so in the public interest because of the confidential nature of any evidence or matter or for any other reason. The Commission will give directions as to the persons who may be present.

The Commission has never exercised this power. Should it do so, the Commission will, in the interest of transparency, notify the public that part of the public hearing will be conducted in private and publish any appropriate details of why that part of the public

hearing will be conducted in private. The exercise of this power would likely have consequential impacts on the publication of affected transcripts or recordings, details of which will be notified if and when the power is exercised.

If you wish to speak at a public hearing

If you wish to speak at a public hearing, you must complete the speaker registration form on the Commission's website prior to the advertised closing date. The Applicant and representatives of the Department may also speak at the hearing.

It is important that all applications to speak are received by the closing date, as the Commission will require time to schedule speakers and – if there is not enough time in the advertised public hearing dates for all to speak – prioritise the applications in accordance with the principles set out in this policy.

In the interest of fairness and to accommodate opportunities for registered speakers, the Commission allocates a set period of time for each registered speaker to make their submission at the public hearing.

The speaker registration form for the public hearing will set out the allocated period of time for speakers, however, should you wish to speak for the more than the allocated time, you can make a request for additional time at any time before the closing date for registrations.

Any such request must be made by email to submissions@ipcn.nsw.gov.au and must:

- be made directly by the speaker requesting additional time,
- identify the speaker seeking the additional time including any group or organisation that the speaker will represent in giving their submission,
- indicate the length of additional time sought, and
- give detailed reasons justifying the request for additional time.

All such requests will be put to the Panel Chair for determination. The Panel Chair, in his or her discretion, may agree to your request (in full or in part) or decline your request. You may be notified of the Panel Chair's decision either by direct communication or in the speaker schedule published by the Commission.

Although the Commission will try to hear from as many people as possible at the public hearing, it may not be possible for everyone who wishes to speak to have the opportunity to do so, or for everyone to be allocated the time they have requested.

The Commission may therefore use information provided by you in the speaker registration form to prioritise speakers or group speakers by the nature of

their interest in the proposed development or according to a common issue or theme. Those people wishing to speak with a direct and immediate interest in the proposed development are likely to be given priority (for example, an owner or a tenant of a neighbouring property or any person whose consent is required for the application to proceed).

The Commission may also use the information provided in the application form to help it allocate speaking time to individuals and groups.

5. AT THE PUBLIC HEARING

The Commission does not present information at a public hearing. The hearing is instead an opportunity for the Commission Panel to hear directly from interested individuals and groups about the issues of concern to them. As part of these formal proceedings Commissioners may ask a question or seek clarification from speakers.

The Commission may engage the use of Counsel Assisting to assist the Commission Panel in the conduct of the public hearing. Counsel Assisting may ask questions or seek clarification from speakers. No questions or cross-examination will be permitted from others in attendance.

What happens at a public hearing

When a public hearing relates to a development application for which the Commission is the consent authority, the public hearing process may involve:

- the **Panel Chair** giving a brief opening statement that describes the process and the Commission's role in determining the development application
- the **Applicant** responding to matters raised in the assessment of its application and to matters raised by the Panel
- the **Department** responding to matters raised in the assessment of the application and to matters raised by the Panel
- **members of the public** presenting to the Panel in accordance with the times set out in the speaker schedule prepared by the Commission

Once all registered speakers have presented to the Panel, the Panel Chair may close the public hearing or adjourn the public hearing for a short period of time to allow the Commission members (with the assistance of Counsel Assisting where they have been engaged) to consider what they have heard.

After the adjournment, the Panel may ask follow-up questions of the Applicant or Department.

Participating in a public hearing

The Commission will either conduct a public hearing wholly in person, wholly remotely by electronic means or some combination of the two.

In circumstances where a public hearing is conducted wholly in person, the Panel will hear presentations from registered speakers in a face-to-face public setting. When a public hearing is conducted wholly electronically, registered speakers will present to the Panel via videoconference and/or telephone.

The Commission might also conduct a public hearing using a 'hybrid' format with registered speakers presenting either in person at a local venue or by electronic means.

Registered speakers are legally responsible for the content of what they say at a public hearing and are not immune from any legal requirement that would apply to what they say – including but not limited to laws relating to defamation, breach of confidence and criminal laws relating to threatening conduct.

Where possible, registered speakers should provide a copy of their speech/presentation to the Commission for record keeping purposes.

The Commission provides guidance about appropriate conduct at public hearings to all registered speakers and attendees, who are expected to be familiar with that guidance and comply with it. A copy of that Guidance for Registered Speakers and Attendees is at Annexure A to this Policy.

The general running of the public hearing is within the discretion of the Panel Chair, including:

- ensuring compliance with the Guidance for Registered Speakers and Attendees at Annexure A to this Policy
- stopping a person from speaking, including if he or she is making offensive, threatening or defamatory statements. This includes where a speaker names or singles out a person or group's view
- permitting the substitution of speakers
- granting additional time for a speaker at the public hearing
- granting a late application to speak.

During in-person public hearings, registered speakers are not permitted to interact with the audience during their presentation – for example, asking for a 'show of hands' or otherwise requesting the audience indicate their views.

Alcohol is also not permitted to be taken into a public hearing and anyone who is intoxicated and/or acting in a disorderly manner will be asked to leave.

6. WRITTEN SUBMISSIONS

The Commission will accept written submissions, including speaking notes, comments or any audio-visual material received up to the relevant date advertised by the Commission for the matter. The closing date for submissions may vary from case to case and could range from 5pm on the next business day after the close of the public hearing to seven days after the close of the public hearing.

The time for written submissions may be extended on a case by case basis by the Chair of the Panel conducting the public hearing.

The making of submissions in writing includes:

- where a person chose not to, or was not able to, speak at the public hearing
- where individual circumstances prevented a registered speaker from attending the hearing
- where a person made an application to speak at the public hearing, but that application was unsuccessful
- where a person finds public speaking to be a difficult experience and therefore prefers to express their views in writing to the Commission

Written submissions are submitted via the Commission's online 'Make a Submission' portal: <https://www.ipcn.nsw.gov.au/make-a-submission>

If you are unable to use the 'Make a submission' portal, the Commission may accept email submissions sent to submissions@ipcn.nsw.gov.au prior to the deadline for written submissions.

If you are unable to use either the 'Make a submission' portal or email your submission to the Commission, the Commission may also accept postal submissions provided that they are received by the Commission prior to the deadline for written submissions

For more information about making a submission see the *Public Submission Guidelines* available on the Commission's website.

Whether a submission is made in writing or verbally at a public hearing will not affect the weight it is given by a Panel in making its determination.

7. TRANSPARENCY

Hearing transcript

In the interests of openness and transparency, the public hearing proceedings will be recorded with a transcript published on the Commission's website within a reasonable time.

Media

Unless otherwise directed by the Panel Chair (at the Panel Chair's discretion), media representatives are not prohibited from recording or broadcasting live, livestreamed or recorded proceedings, however any media representative must satisfy themselves that they have any consent required from people (other than Panel members) who are proposed to be recorded or broadcast.

Records and documents

Presentations, submissions and any other notes provided to the Commission on a proposed development will be made publicly available on the Commission's website. The Commission's Privacy Statement explains the way we obtain, use and manage your personal information. This Statement covers everyone who submits information to the Commission.

8. AFTER THE PUBLIC HEARING

Making a final determination

The Commission will determine the development application after it is satisfied that it has sufficient information to make an informed determination.

Under the Minister's Statement of Expectations, the Commission is expected to determine state significant development applications that are the subject of a public hearing within an average of 12 weeks (84 calendar days), as calculated on a 12-month rolling basis.

The Commission is required to publish a Statement of Reasons that explains how it took the community's views into account in making its determination.

The Department will then give notice of the determination in accordance with its notification policy.

9. DEFINITIONS

Term	Definition
Application/proposed development	an application submitted to the Department where the application is to be determined by the Commission as the decision-making authority
Applicant	the entity that made an application
EP&A Act	the <i>Environmental Planning & Assessment Act 1979</i>
Assessment Report	the Department's Assessment Report on an application
Commission	the Independent Planning Commission NSW
Council	the council for the local government area in which the development is located, and any other council those area is potentially impacted by the proposal
Department	the NSW Department of Planning, Housing and Infrastructure
Minister	the NSW Minister for Planning and Public Spaces
Planning Secretary	the Secretary of the Department of Planning, Housing and Infrastructure

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For more information

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GUIDANCE FOR REGISTERED SPEAKERS AND ATTENDEES

Public hearings are held at the direction of the NSW Minister for Planning and Public Spaces.

Please review the [Public Hearing Guidelines](#) before attending.

When speaking at a public hearing, please:

- present submissions that are factually accurate or contain opinions which you honestly hold
- limit your submission to matters relevant to the Commission's functions (please see page four of the Commission's [Public Submissions Guideline](#) for more information)
- do not share any confidential or personal information without the consent of the person whose information you intend to share
- do not use your submission to make complaints or allegations about individuals or the Commission's processes – there are separate processes for this (please see the Commission's [Complaints Management Policy](#))
- do not engage in any threatening, abusive, defamatory or disrespectful conduct – the Commission is a statutory body exercising significant powers that affect people's lives and does not tolerate unacceptable conduct
- follow all directions from the Panel or Commission staff.

Please note that:

- your submission will be recorded, transcribed and broadcast along with your name and any group you may be representing
- any visual material you would like to be displayed during your submission should be provided at least 5 days prior to the public hearing in a single PDF or MS PowerPoint file. The Commission may decide not to broadcast any visual material – if that happens, you can still provide it as a submission before the relevant deadline. Please do not include any confidential or personal information in any visual material provided to the Commission
- if you reach the time limit for your submission you may ask for additional time. If the Panel Chair declines to give more time, or if the Panel Chair directs you to stop before the time limit, you must end your submission: if this happens, you can provide the rest of your submission in writing
- public hearings are not intended to be opportunities to make complaints about an applicant or a government department. The Panel may, at any time, stop a person's verbal submission and request the speaker instead provide their submission in writing
- speakers at public hearings do not have any additional legal protections and speakers are responsible for the content of their submissions.