



THE ROLE OF THE INDEPENDENT PLANNING COMMISSION

The Independent Planning Commission was established on 1 March 2018 as a NSW Government Agency.

The key functions of the Commission include:

- Determination of applications for state significant development as a consent authority, or under delegation from the Minister; and
- Holding a public hearing, if requested by the Minister.

The Commission plays an important role in strengthening transparency and independence in the decision-making processes for major development and land-use planning in NSW. It provides an additional level of scrutiny in the determination of major development applications, particularly where:

- There is a high level of community interest;
- A political donation has been made;
- A potential or perceived conflict of interest exists; or
- Complex environmental issues arise.

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 before making a decision on an application.

It should be noted these guidelines relate only to public hearings and should not be confused with public meetings conducted by the Commission.

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

Public hearing

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 a public hearing, it is not discretionary. The Commission has powers to require certain people to attend the public hearing and to give evidence. When the Commission, at the request of the Minister, holds a public hearing in relation to a

state significant development application for which it is the consent authority, merit appeal rights in respect of any future decision on that application are extinguished. See *'Merit appeal rights'* below.

Public meeting

A public meeting is a meeting, like a "town hall" meeting (or other such meetings), to enable the Commission to hear the community's views on the Assessment Report and recommendations (including recommended consent conditions) before determining an application. The Commission cannot require anyone to attend or give evidence. The Commission can decide whether to hold a public meeting as it is not mandatory to do so before making a decision. If a public meeting is held, it does not affect people's merit appeal rights. For further information about public meetings please see the Commission's policy entitled *'Public Meeting Guidelines'*.

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 for Planning and Public Spaces.

Merit Appeal Rights

A public hearing held by the Commission affects merit appeal rights for both the applicant and objectors.

After a public hearing, no merit appeal may be brought under Division 8.3 of the EP&A Act, in respect of any future decision 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 this public hearing. See Division 8.3 of the EP&A Act for more details.

WHEN THE COMMISSION HAS RECEIVED A REQUEST TO HOLD A PUBLIC HEARING

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.

Hearings will generally be held in the area in which the subject-land is located, unless a suitable venue is not available, or persons with particular interests in the project are located across a range of locations.

Timing of the public hearing

The Commission will select a day, or days, that it believes will accommodate the greatest number of interested parties. The length of a public hearing will be at the discretion of the Commission. Hearings will generally be held during the day but may sometimes include an evening session.

Notification of the public hearing

The Commission will give a minimum of **two weeks' (14 days)** notice of a public hearing. Notification will occur by an advertisement published in such newspaper/s as the Commission considers appropriate (likely to be a newspaper circulating in the local area in which the development is proposed). The Commission will also give notice to any public authority that the Commission thinks is likely to have an interest in the subject matter of the hearing.

The notice of the public hearing will include:

- The subject matter of the hearing;
- Details of the hearing, including time, date and venue;
- A statement that written submissions may be made to the Commission in relation to the subject-matter of the hearing, together with the date before which such submissions must be received, and details as to how such submissions may be submitted;
- 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;
- The Commission's contact details;
- The availability on the Commission's website of the Assessment Report, written submissions and the application form to speak at the hearing.

The Commission will also publicise the public hearing via a notice on the Commission's website (www.ipcn.nsw.gov.au) and, if appropriate, on its social media channels. The Commission may also choose to publicise the public hearing by direct means of communication to certain persons such as the applicant, the relevant council or to people who made public submissions in response to the Department's public exhibition of the application.

Where do I find the documents and information about the project/application?

The Commission's website will provide a link to the Department's website where the application and other relevant documents, including public submissions, are published.

The hearing schedule will be posted on the Commission's website after registrations close and before the public hearing.

Attendance

Public hearings are open to the public to attend (subject to capacity constraints at the venue) unless the Commission determines it is public interest for the public hearing to take place in private due to the confidential nature of any evidence or matter or for any other reason (see below).

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 (Maximum penalty: \$11,000 as prescribed by the EP&A Act).

Confidential public hearings

The Commission may direct that all or part of any public hearing is to take place in private and give directions as to the person/s who may be present if it is satisfied that, due to the confidential nature of any evidence or matter or for any other reason, it is in the public interest to do so. The Commission is authorised to do this under the EP&A Act.

If you wish to speak at a public hearing

If you wish to speak at a public hearing, you must complete the application form on the Commission's website and return it via email to the Commission (ipcn@ipcn.nsw.gov.au) prior to the advertised closing date.

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.

The following information will be requested from you when completing the application form:

- Would you describe yourself as being in favour of the development application, opposed to it or neither;
- Is your interest in the proposed development application a direct interest or an indirect interest (see explanation in the application form);
- Do you wish to speak as an interested individual or as a representative of a group;
- Have you previously made a submission regarding the development application;
- Was that submission in the form of a petition or form letter;
- Are you a member of an organisation that is also

seeking to speak at the public hearing;

- How long do you wish to speak for.

While 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 the information provided by you in the application to prioritise speakers or group speakers by the nature of their interest in the project or 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 to the proposed development 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.

I cannot attend the public hearing in person, can I send in written comments or submissions?

If you wish to speak or otherwise participate but are not available to attend the public hearing, you may provide your speaking notes, comments or submissions in writing to the Commission before or on the day of the hearing, or up to **one week (seven days)** after the public hearing, addressed to: Office of the Independent Planning Commission NSW: Level 3, 201 Elizabeth Street, Sydney, NSW 2000, Phone: (02) 9383 2100, Email: ipcn@ipcn.nsw.gov.au

Please see the Commission's *Privacy Statement* regarding how personal information included as part of a written submission will be treated.

I cannot attend the public hearing in person, can I participate by other means?

There may be special circumstances where you are not able to attend the public hearing in person but still wish to participate in the public hearing.

If so, you should make a written request to the Commission staff setting out the special circumstances, within a reasonable timeframe prior to the public hearing, so that the Commission can decide whether it is acceptable, or possible. Once a decision is made, the Commission staff will use reasonable endeavours to arrange a phone, skype camera or other video link up to the hearing. Whether this is possible will depend on the location of the public hearing, the technology available, and may vary from case to case.

As set out above, you may also provide your submissions or comments in *writing* to the Commission if you cannot attend in person.

AT THE PUBLIC HEARING

The Commission does not provide information at the hearing. However, Commission members may actively engage in asking questions or seeking clarification from speakers/presenters on the subject matter of their oral submissions.

The Commission may engage the use of a Counsel Assisting to assist the Commission Panel in the conduct of the public hearing. The Counsel Assisting may ask questions or seek clarification from speakers/presenters. 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, describing the Commission's role in determining the development application;
- the **Applicant** providing a description of the proposed development;
- the **Department of Planning, Industry & Environment** presenting its Assessment Report and the rationale for its recommendation to the Commission;
- **members of the public** presenting to the Panel in accordance with the times set out in the register prepared by the Commission.

In preparing the register, the Commission will seek to:

- ensure that oral submissions are responsive to the Department's Assessment Report rather than submissions on the development application (given that the public would have already had an opportunity to provide submissions during the public exhibition period);
- prioritise directly impacted parties and groups representing large numbers of people;
- also facilitate a diversity of viewpoints (including those in favour of and opposed to the development application, those making comments neither in support or opposition and those with local concerns and with state and regional level concerns);
- group speakers by theme or topic;
- once all registered speakers have presented to the Panel, the Panel Chair may 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 Chair will give a **closing statement**, which:

- may include, at the Panel’s discretion:
 - follow-up questions being put to the Applicant or Department, which can either be answered immediately at the hearing or taken on notice;
 - clarifying questions being put to scheduled speakers that are present – including in regard to their views on the Department’s assessment and/or recommended conditions; and
 - a description of the next stages of the Panel’s deliberation process, including any meetings planned with stakeholders.

In the case of a public hearing held over more than one day, the Panel Chair may provide a **daily summary** at the beginning or the end of each day’s proceedings.

If you speak at a public hearing

Anyone who is registered to speak at the public hearing must ensure that any statements and presentations made by them during the hearing are factually accurate and otherwise contain expressions of opinion which they honestly hold. They must refrain from making offensive, threatening or defamatory statements.

Anyone who is registered to speak at the public hearing should note that Commissioners will have read written submissions made to the Department prior to the hearing.

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

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

Stopping a person from speaking if he or she is making offensive, threatening or defamatory statements. This includes where a speaker names or singles out a particular 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.

Interactions with the audience – for example, where a speaker asks for a ‘show of hands’ and requests the audience indicate their views – are not permitted.

Alcohol is not permitted at the public hearing and anyone who is intoxicated and/or acting in a disorderly manner will be asked to leave

If you did not speak at the public hearing but wish to make comments in writing

The Commission will accept written speaking notes, submissions or comments received up to:

- if no questions are taken on notice as part of the Panel

Chair’s closing statement, 5pm on the date one week (seven days) after the public hearing; or

- if any questions are taken on notice as part of the Panel Chair’s daily summary or closing statement, 5pm on the date one week (seven days) after the Commission publishes the responses to those questions on notice.

If a submission is sent by post, the submitter is responsible for ensuring it is received by the Commission before the relevant deadline.

The making of comments in writing includes:

- 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;
- Where a person chose, or was not able to, speak at the public hearing for any other reason.

Any such document should be addressed to: Office of the Independent Planning Commission NSW: Level 3, 201 Elizabeth Street, Sydney, NSW 2000, Phone: (02) 9383 2100, Email: ipcn@ipcn.nsw.gov.au.

Audio recording

The Commission will make an audio recording of what is said at the public hearing. The audio recording will be transcribed and published on the Commission’s website within a reasonable time in accordance with Schedule 2 (25) of the EP&A Act.

Media

Representatives from the media may be present at the public meeting. Media may record proceedings (both audio and video recording is allowed, as well as the taking of photographs) - unless otherwise directed by the Panel Chair - as long as this is done in a respectful manner and does not disrupt proceedings.

Records and documents

Presentations, submissions, comments and notes provided to the Commission may be made publicly available on the Commission’s website. As outlined in the Commission’s Privacy Statement, the Commission will use reasonable endeavours to protect the privacy of individuals by removing any personal contact details (other than names) from documents published on its website.

Written material of a confidential nature will also be withheld from the website, where this has been requested.

Appeal Rights

As noted above, a public hearing held by the Commission does affect appeal rights.

After a public hearing, no appeal may be brought under Division 8.3 of the EP&A Act, in respect of any future decision 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 this public hearing. See Division 8.3 of the EP&A Act for more details.

Questions

If you have any questions about the public hearing, you should contact the Office of the Independent Planning Commission NSW on (02) 9383 2100 or email to ipcn@ipcn.nsw.gov.au.

AFTER THE PUBLIC HEARING

Receipt of written material after a public hearing

As noted above, the Commission will accept written submissions or comments up to one week (seven days) after the public hearing. Anyone can send written submissions or comments to the Commission during this time.

In certain circumstances, the Commission will accept written submissions or comments later than one week (seven days) after the public hearing. Where the Commission proposes to accept late submissions or comments, the Commission will advertise this opportunity, and the revised deadline, on its website.

Providing a report of findings and recommendations when the Commission is not determining the development application

After holding a public hearing into a matter which is not being determined by the Commission, the Commission will provide a copy of its findings and recommendations in the form of a "Final Report" to the Minister (or to such other person or body as the Minister may direct), and, in the case of a proposed development the subject of an application for development consent, to the consent authority and to any public authority whose concurrence is required to the development. The Commission will also provide its Final Report to such other persons as the Commission thinks fit.

The Commission's Final Report will contain a summary of any submissions received by the Commission in relation to the subject matter of the public hearing.

The Commission's Final Report will be made publicly available on the Commission's website within a reasonable time after it has been provided to the Minister (or to a person or body directed by the Minister).

DEFINITIONS

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| Application | an application submitted to the Department where the application is to be determined by Commission as decision-making authority. |
| Applicant/proponent | the entity who made an application. |
| the EP&A Act | the <i>Environmental Planning & Assessment Act 1979</i> . |
| Assessment Report | the Secretary of 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 whose area is potentially impacted by the proposal. |
| Department | the Department of Planning, Industry & Environment |
| Minister | the Minister for Planning and Public Spaces. |
| Planning Secretary | the Secretary of the Department of Planning, Industry & Environment. |

Words and expressions used in these procedures have the same meaning as they have in the EP&A Act and the *Environmental Planning and Assessment Regulation 2000*.

FEEDBACK ON THIS POLICY

The Commission is committed to continuous process improvement. We will engage with key stakeholders about our policies and procedures to seek their feedback on how we can do things better. If you have a suggestion on how the Commission might improve this policy, please contact the Office of the Independent Planning Commission NSW on (02) 9383 2100 or ipcn@ipcn.nsw.gov.au.

General enquiries and suggestions

The Commission is interested in hearing from you. If you would like to:

- ask a question about a public hearing;
- provide comments on the procedures of the Commission;
- request information relating to the Commission's functions; or
- seek more information about the Commission's operations and procedural matters,

Please contact the Office of the Independent Planning Commission:

Phone (02) 9383 2100 | Fax (02) 9383 2133

Email: ipcn@ipcn.nsw.gov.au

Independent Planning Commission NSW

Level 3, 201 Elizabeth Street
Sydney, NSW 2000

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