

MEMORANDUM OF UNDERSTANDING

Between the Department of Planning and Environment Planning Group and the Independent Planning Commission NSW in relation to planning and assessment matters under the *Environmental Planning & Assessment 1979*



Signed 2 MARCH 2023

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Signed by:

.....
For the Department of Planning and Environment – Planning Group

Mary O'Kane, Chair

.....
For the Independent Planning Commission

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1. Purpose

The Environmental Planning & Assessment Act 1979 (the Act) is the relevant legislation governing the NSW planning system. Both the Planning Group within the Department of Planning and Environment (DPE Planning Group) and the Independent Planning Commission (the Commission) are responsible for functions under the Act.

This Memorandum of Understanding (MOU) has been prepared to clarify how the DPE Planning Group and the Commission will work together in order to exercise their respective responsibilities under the Act with an emphasis on quality, probity, timeliness and transparency.

This MOU is subject to the responsibilities of the DPE Planning Group and the Commission under the Act and any other NSW legislation.

This MOU does not cover other shared services provided by the DPE Cluster to the Commission.

2. Background

Both parties are committed to working together to achieve the objects of the Act including interacting effectively in the exercise of their respective responsibilities.

Both parties are committed to strengthening public trust in the NSW planning system.

This MOU aims to:

- respect the independence of the Commission;
- optimise the use of planning and assessment expertise within the DPE Planning Group and the Commission; and
- assist both the DPE Planning Group and the Commission to meet government priorities for timeliness and quality in the planning system

The parties will use their best endeavours to implement the commitments in this MOU, acting in the spirit of cooperation and consultation to achieve efficient, timely and effective processes with high quality outcomes.

The parties acknowledge that from time to time circumstances may arise which require actions that may vary from the commitments made within this MOU, and the parties commit to jointly developing and agreeing to any such variations as they arise.

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3. Roles and Responsibilities

3.1 Department of Planning and Environment Planning Group

The DPE Planning Group has the primary role of administering the planning system under the Act.

This includes:

- providing advice to the Minister on a range of planning matters;
- engaging with key stakeholders on planning matters, including other Government agencies and the general public;
- overseeing the making of environmental planning instruments;
- assessing the merits of major development proposals;
- making determinations under the Act under delegation of the Minister; and
- monitoring and enforcing compliance with conditions of approval.

Under the Act, decision-making on some development proposals (Part 4 Division 4.7 of the Act) affects decision-making under a range of other legislation. The DPE Planning Group is responsible for leading a whole-of-government approach to assessment and applicable delegated decision-making under the Act.

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3.2 Independent Planning Commission (the Commission)

The Commission is a NSW Government agency established under Part 2 Division 2.3 of the Act. It is the consent authority for some State significant developments that have at least 50 public objections and/or where the local council objects and/or the applicant has made a political donation.

The Commission also:

- determines a number of other planning matters under specific delegation of the Minister, delegated under the instrument of delegation;
- provides advice and conducts public hearings when requested; and
- is responsible for fulfilling the functions of the Mining and Petroleum Gateway Panel.

In fulfilling its planning function, the Commission engages with the community through public meetings and hearings, as well as inviting written submissions.

The Commission brings a high level of independence and transparency to the assessment and determination of State significant developments. While the Minister appoints the members of the Commission, these members are not subject to the direction or control of the Minister, except in relation to procedural matters.

The Commission is also independent of DPE and other government agencies, and plays an important role in strengthening public confidence in the planning system for these processes.

The Commission's objectives are to meet the objectives of the Act and build and maintain trust in the NSW planning system by:

- being independent and objective in its decision-making;
- being fair, open and transparent in its operations;
- delivering robust and timely determinations within the legislative and Government policy framework to best serve the people of NSW; and
- encouraging effective community and other stakeholder participation to inform Commission determinations.

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3.3 Interaction between the DPE Planning Group and the Commission

The DPE Planning Group and the Commission will interact in the following instances in order to effectively exercise their respective responsibilities under the Act:

- When the DPE Planning Group is undertaking its assessment for development applications where the Commission is the consent authority (delivering 'assessment as a service').
- When the Commission is determining a development proposal (including conducting public meetings as part of the determination).
- When the Commission is undertaking a public hearing into a matter at the request of the Minister.
- When the Commission is undertaking a function of the Mining and Petroleum Gateway Panel.
- When the Commission is undertaking a Gateway Review of a planning proposal at the request of the Minister.
- When the Commission is preparing advice at the request of the Minister or the Planning Secretary's delegates within the DPE Planning Group.
- When the Commission is named as a party to, or otherwise involved in proceedings relating to an application¹, assessed by the DPE Planning Group.

¹For bilateral assessments, the Australian Government will make their approval decision based on the NSW assessment <https://www.dcceew.gov.au/environment/epbc/bilateral-agreements/nsw>

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4. Values

The government sector's four core values which underpin expected behaviours are established under the ethical framework in Part 2 of the *Government Sector Employment Act 2013*. These core values are recognised as important to effective delivery of this MOU:

4.1 Integrity

- consider people equally without prejudice or favour;
- act professionally with honesty, consistency and impartiality;
- take responsibility for situations, showing leadership and courage;
- place the public interest over personal interest; and
- maintain the independence of Commission advice and decisions.

4.2 Service

- provide services fairly with a focus on customer needs;
- be flexible, innovative and reliable in service delivery;
- focus on quality while maximising service delivery; and
- encourage and promote greater community participation in the planning assessment process.

4.3 Accountability

- take responsibility for decisions and actions;
- provide openness and transparency to enable public scrutiny;
- be fiscally responsible and focus on efficient, effective and prudent use of resources; and
- draw on the expertise and knowledge of the DPE Planning Group and the Commission.

4.4 Trust

- appreciate differences and welcome learning from others;
- build relationships based on mutual respect;
- uphold the law, institutions of government and democratic principles;
- communicate intentions clearly and invite teamwork and collaboration; and
- provide apolitical and non-partisan advice.

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5. Commitments

5.1 The DPE Planning Group and the Commission will undertake their respective functions with honesty and impartiality, to strengthen public trust in the planning system

- 5.1.1 The Commission will provide advice and make decisions independently and transparently, to strengthen public trust in the planning system.
- 5.1.2 The DPE Planning Group will ensure that its assessment and advice is sufficient and appropriate to support the Commission in exercising its functions under the Act.
- 5.1.3 The DPE Planning Group and the Commission will achieve administrative consistency and avoid duplication wherever possible.

5.2 The DPE Planning Group and the Commission will work together to administer efficient, timely and effective processes under the Act

- 5.2.1 The DPE Planning Group will administer the receipt and public exhibition of development and modification proposals, and the statutory notification of decisions.
- 5.2.2 The DPE Planning Group will lead the whole-of-government assessment process.
- 5.2.3 The DPE Planning Group and the Commission will provide each other **with adequate and reliable advance notice** of matters to be passed between each Agency to support the efficient allocation of resources. Of particular importance is **adequate and reliable advance notice** of the referral of projects to the Commission.
- 5.2.4 The DPE Planning Group will support direct Commission engagement with NSW Government agencies involved in the whole-of-government assessment process.
- 5.2.5 The Commission will provide the DPE Planning Group with adequate prior notice of meetings and public hearings.
- 5.2.6 The DPE Planning Group and the Commission will work together to identify and resolve issues as early as possible.
- 5.2.7 At the Commission's request, the DPE Planning Group will assist the Commission by providing advice on the workability, enforceability and any unintended consequences of the Commission's proposed conditions of approval or consent.

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5.3 The DPE Planning Group and the Commission will work together to optimise public access to all information used in decision-making

5.3.1 The DPE Planning Group will maintain the public register of development proposals, including matters determined by the Commission.

5.3.2 The Commission will ensure that the public register is complete for matters determined by the Commission.

5.3.3 The Commission will make case-related information publicly available on its website, in line with its policies.

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5.4 The DPE Planning Group and the Commission will communicate clearly and in a manner that invites cooperation and strengthens public trust in the planning system.

5.4.1 The DPE Planning Group will present its whole-of-government evaluation of issues within its assessment report, including those raised by the community and NSW government agencies and how they have been addressed.

5.4.2 Recognising that DPE's assessment report has been prepared on behalf of the Commission (as 'assessment as a service'), the Commission uses the DPE assessment report as the starting point for its determination.

5.4.3 The Commission will undertake activities and may seek additional assessment to inform its determination (including holding public hearings and public meetings).

5.4.4 The DPE Planning Group will support, where necessary, the Commission to undertake those activities and any additional assessment.

5.4.5 The DPE Planning Group and the Commission will communicate promptly in relation to any process matter that arises in the assessment or determination processes.

5.4.6 Where appropriate, the Commission and the DPE Planning Group will work together in proceedings where the Commission is named as a party or where the Commission is the delegate of the Minister.

6. Operation and Governance

6.1 Administrative Arrangements

The DPE Planning Group and the Commission will jointly maintain administrative and legal arrangements as required to implement this MOU and allow them to be administered cooperatively and efficiently.

The DPE Planning Group and the Commission will work together to ensure standard operating procedures are consistent unless otherwise required to ensure the independence of the Commission.

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6.2 Governance

The DPE Planning Group EDs and the Office of the Commission's ED will regularly discuss upcoming projects and resolve any issues regarding implementation of the MOU.

DPE Planning Group's Deputy Secretary and the Chair of the Commission (or their delegates) will meet monthly to discuss performance of the MOU and resolve any issues regarding implementation of the MOU.

6.3 Monitoring implementation

The DPE Planning Group and the Commission will establish monitoring arrangements that encourage continuous improvement.

6.4 Performance Reporting

The Minister for Planning is responsible for administering the Act, and both the DPE Planning Group and the Commission report on performance of their respective functions to the Minister and to the NSW public through their Annual Reports and websites.

6.5 Review

This MOU, and related administrative arrangements, will be reviewed once every 24 months.