

MEMORANDUM OF UNDERSTANDING

Between

Department of Planning, Industry and Environment and
Independent Planning Commission NSW in relation to planning and assessment matters
under the *Environmental Planning & Assessment Act 1979*
on 5 May 2020

Contents of this MOU

1. Purpose -----2

2. Background -----2

3. Roles and Responsibilities -----3

4. Values -----4

5. Commitments -----5

6. Operation and governance -----7

Signed by:



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For the Department of Planning, Industry and Environment



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For the Independent Planning Commission

1 Purpose

The *Environmental Planning & Assessment Act 1979* (the Act) is the relevant legislation governing the NSW planning system. Both the Planning and Assessments Group within the Department of Planning, Industry and Environment (DPIE) 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 DPIE 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 DPIE and the Commission under the Act and any other NSW legislation.

This MOU does not cover other shared services provided by the DPIE 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 DPIE and the Commission; and
- assist both DPIE 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.

The parties are satisfied that the commitments in this MOU consider and respond to the recommendations made by the NSW Productivity Commissioner's 2019 Review of the Commission.

3 Roles and Responsibilities

3.1 Department of Planning and Environment (DPIE)

DPIE 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. DPIE is responsible for leading a whole-of-government approach to assessment and applicable delegated decision-making under the Act.

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 State significant developments that have over 50 public objections and/or where the local council objects and/or the applicant has made a political donation.

The Commission also:

- determines a small number of other planning matters under specific delegation of the Minister;
- 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 public and other stakeholders through public hearings and public meetings, as well as inviting written submissions from the community.

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 DPIE 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 build public 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.

3.3 Interaction between DPIE and the Commission

DPIE and the Commission will interact in the following instances in order to effectively exercise their respective responsibilities under the Act:

- When DPIE 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 DPIE.
- When the Commission is named as a party to, or otherwise involved in proceedings relating to an application assessed by DPIE.

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
- ensure 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 DPIE 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.

5 Commitments

5.1 **DPIE 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 DPIE 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 DPIE and the Commission will achieve administrative consistency and avoid duplication wherever possible.

5.2 **DPIE and the Commission will work together to administer efficient, timely and effective processes under the Act**

- 5.2.1 DPIE will administer the receipt and public exhibition of development and modification proposals, and the statutory notification of decisions.

5.2.2 DPIE will lead the whole-of-government assessment process.

5.2.3 DPIE and the Commission will provide each other with adequate prior notice of matters to be passed between each Agency to support the efficient allocation of resources.

5.2.4 DPIE will support direct Commission engagement with NSW Government agencies involved in the whole-of-government assessment process.

5.2.5 The Commission will provide DPIE with adequate prior notice of meetings and public hearings, to support efficient use of resources.

5.2.6 DPIE and the Commission will work together to identify and resolve issues as early as possible.

5.2.7 DPIE and the Commission will work together to amend or supplement proposed conditions of approval or consent where needed.

5.3 DPIE and the Commission will work together to optimise public access to all information used in decision-making

5.3.1 DPIE 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 use its website to make all case-related information that is before the Commission publicly available.

5.4 DPIE and the Commission will communicate clearly and in a manner that invites cooperation and strengthens public trust in the planning system.

5.4.1 DPIE will present its whole-of-government evaluation of issues, including those raised by the community and how they have been addressed, within its assessment report.

5.4.2 The Commission will use the DPIE 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 DPIE will support, where necessary, the Commission to undertake those activities and any additional assessment.

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

5.4.6 The Commission and DPIE 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

DPIE and the Commission will jointly develop administrative arrangements as required to implement this MOU and allow them to be administered cooperatively and efficiently.

DPIE and the Commission will work together to ensure standard operating procedures are consistent unless otherwise required to ensure the independence of the Commission.

6.2 Governance

DPIE EDs and the Office of the Commission's ED will regularly discuss upcoming projects and the performance of the MOU and to resolve any issues regarding implementation of the MOU.

Senior Officers from DPIE (including the Secretary where appropriate) and the Chair of the Commission (or their delegates) will meet quarterly to discuss performance of the MOU and resolve any issues regarding implementation of the MOU.

6.3 Monitoring implementation

DPIE and the Commission will establish monitoring arrangements that encourage continuous improvement.

6.4 Performance reporting

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

6.5 Review

This MOU will be reviewed within the first 6 months of operation and once every 24 months thereafter.