



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. OUR ROLE AS THE COMMISSION

The Independent Planning Commission of NSW was established by the NSW Government on 1 March 2018 as an independent statutory body operating separately to the Department of Planning and Environment.

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.

The key functions of the Commission include to:

- Determine state significant development applications
- Conduct public hearings for development applications and other matters
- Provide independent expert advice on any other planning and development matter, when requested by the Minister for Planning or Planning Secretary

The Commission is an independent consent authority for state significant development applications where there are:

- At least 50 'unique' public objections
- Reportable political donations
- Objections by the relevant local Council and Council has not rescinded that objection following exhibition

For more information on our functions, please visit the 'About us' section on our website:

www.ipcn.nsw.gov.au.

2. 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.

3. PUBLIC HEARING

A public hearing provides the Commission an opportunity to hear the community's views, especially on the Department'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. 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.

3.1 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.

3.2 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.

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

4.1 PUBLIC MEETING

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

When the Commission is considering a case and the Minister has not directed the Commission to hold a public hearing, it may choose to hold a public meeting.

The Commission can decide whether or not to hold a public meeting as it is not mandatory to do so before it makes a determination.

If a public meeting is held, it does not affect people's merit appeal rights. For further information please see the Commission's *'Public Meeting Guidelines'*.

The Commission cannot require anyone to attend a public meeting or give evidence.

4.2 IN SUMMARY

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.

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

5.1 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 of Planning and Environment'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.

The Commission will generally aim to have both in person and remote options for participation but may elect to conduct a hearing wholly in person or wholly electronically. 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
- external factors such as any public health orders or related guidance.

5.2 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 or weekend session. Once speakers have registered, the length of the hearing may be amended in line with the final number of speakers.

5.3 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 of Planning and Environment during its consultation period/s, the local council (both elected representatives and council management), 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.

5.4 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 of Planning and Environment'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.

5.5 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) unless the Commission determines it is in the 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).

5.6 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).

5.7 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.

5.8 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 of Planning and Environment will also have an opportunity to 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.

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.

6. 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 – or may not – 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.

6.1 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** providing a description of the proposed development
- the **Department of Planning and Environment** presenting the findings of its Assessment Report on the application
- **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 of Planning and Environment, which can either be answered immediately at the hearing or taken on notice.

6.2 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 must ensure their presentations are factually accurate and otherwise contain expressions of opinion which they honestly hold. They must also refrain from making offensive, threatening or defamatory statements. Registered speakers must read and comply with the terms and conditions of their registration and – in particular – must not disclose the personal information of any other person without their consent.

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

- stopping a person from speaking at the Panel's discretion, 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.

7. 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, typically being:

- if no questions are taken on notice, 5pm on the date one week (seven days) after the conclusion of the public hearing; or
- if any questions are taken on notice, 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 for submissions.

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>

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.

8. TRANSPARENCY

8.1 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.

8.2 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.

8.3 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.

9. AFTER THE PUBLIC HEARING

9.1 RECEIPT OF WRITTEN MATERIAL AFTER A PUBLIC HEARING

The Commission will accept typically written submissions up to one week (seven days) after the public hearing. Anyone can send written submissions to the Commission during this time.

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

9.2 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 of Planning and Environment will then give notice of the determination in accordance with their notification policy.

10. 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 and Environment
Minister	the NSW Minister for Planning
Planning Secretary	the Secretary of the Department of Planning & Environment

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

DOCUMENT GOVERNANCE

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