



PUBLIC HEARING GUIDELINES

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 major developments as a consent authority, or under delegation from the Minister;
- Providing independent expert advice on planning and development matters; and
- Holding a public hearing, if requested by the Minister or by the Greater Sydney Commission.

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 provision of independent expert advice or 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 or the Greater Sydney Commission (s 3.34(2)(e) of the *Environmental Planning and Assessment Act 1979* (EP&A Act)). 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 (including a multi-stage 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, similar to a "town hall" meeting (or other such meetings), to enable the Commission to hear public 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 or not 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 or, in limited circumstances, the Greater Sydney Commission.

Merit Appeal Rights

A public hearing held by the Commission affects merit appeal rights.

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 or Greater Sydney Commission 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'** notice of a public hearing. Notification will occur by an advertisement published in such newspaper/s as the Commission thinks fit (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 social media. 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 of Planning and Environment'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 utilise power in the EP&A Act to 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 (usually four working days prior to the hearing).

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

- Is your interest in the proposed development application a direct interest or an indirect interest (see explanation in the application to speak form);
- Do you wish to speak in your personal capacity or as a representative;
- 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.

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, such as the applicant (or a representative) and those directly affected by the proposed development (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 form to help the Commission to 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** after the public hearing, addressed to: Independent Planning Commission: Level 3, 201 Elizabeth Street, Sydney, NSW 2000, Phone: (02) 9383 2100, Email: ipcn@ipcn.nsw.gov.au.

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 make a decision whether it is acceptable, or possible. Once a decision is made, the Commission staff can 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.

Multi-stage public hearing

The Minister may request the Commission to conduct a public hearing across more than one stage. For more information, please see the Commission's '*Guidelines for a Public Hearing held in multiple stages*', available on the Commission's website.

AT THE PUBLIC HEARING

The Commission does not provide information at the hearing. However, Commission members may actively engage in asking questions or seek clarification from the speaker/presenter on the subject matter of their oral submission. No questions or cross-examination will be permitted from other people attending the hearing.

The Commission may engage the use of a Counsel Assisting to assist the Commission in the conduct of the public hearing. As part of assisting in the conduct of the public hearing, Counsel Assisting may ask questions or seek clarification from speakers/presenters.

If you speak at a public hearing

Members of the public who speak at the public hearing must ensure that any statements and presentations made during the hearing are factually accurate and otherwise contain expressions of opinion which the person honestly holds. They must refrain from making offensive, threatening or defamatory statements.

People who speak at the hearing should note that Commissioners will have read the submissions made to the Department in writing before the hearing.

Where possible, a copy of the speech/presentation made by a speaker at the public hearing should be provided to the Commission staff after the hearing, for record purposes.

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

- Stop 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;
- Permit the substitution of speakers;
- Grant additional time for a speaker at the public hearing;
- Grant 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 up to **one week** after the public hearing. This 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:

Independent Planning Commission: 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 Commission staff 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** 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** 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

After holding a public hearing, 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).

WHERE THE COMMISSION IS ALSO THE CONSENT AUTHORITY

In certain circumstances, the Commission may also be the consent authority in respect of a development application that forms the subject matter of a public hearing. In such circumstances, the Commission will still issue a Final Report after the conclusion of the public hearing as set out above.

DEFINITIONS

Application	An application submitted to the Department where the application is to be determined by Commission as decision-making authority.
Applicant/Proponent	The person who made an application.
the EP&A Act	The Environmental Planning & Assessment Act 1979.
Assessment Report	The Secretary of the Department's Assessment Report on an application.
Commission	The NSW Independent Planning Commission.
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 & Environment.
Minister	The Minister for Planning.

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*.

GENERAL ENQUIRIES AND SUGGESTIONS

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

- Provide constructive comments on the procedures of the Commission;
- Request for information relating to the Commission's functions; or
- Seek more information about the Commission's operations and procedural matters.

Contact:

Commission Secretariat
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

Last updated: 03 December 2018
Due for review: 03 December 2019