



New South Wales Government
Independent Planning Commission

GUIDELINES FOR A PUBLIC HEARING HELD IN MULTIPLE STAGES (MULTI-STAGE PUBLIC HEARING)

THE ROLE OF THE INDEPENDENT PLANNING COMMISSION

The Independent Planning Commission NSW 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 (SSD) 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 land-use planning and development in NSW. It provides an additional level of scrutiny in the provision of independent expert advice or the determination of SSD 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 [multi-stage public hearing](#).

For the avoidance of doubt, where the Minister requests the Commission to hold a multi-stage public hearing, these guidelines, rather than the *'Public Hearing Guidelines'*, will apply to the multi-stage public hearing.

The Commission will advise which guidelines apply to an application on its website.

What is the difference between a public hearing, a multi-stage public hearing, and a public meeting?

Public hearing

Under the *Environmental Planning and Assessment Act 1979* (the EP&A Act), the Minister for Planning or (in limited

circumstances) the Greater Sydney Commission may formally request the Commission to hold a public hearing in relation to a development application or any other planning matter at any time. 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.

The Commission will give advance notice of the date, time and location of the public hearing and offer interested people the opportunity to apply to speak at the public hearing.

When the Commission, at the request of the Minister, holds a public hearing (including a multi-stage public hearing) in relation to an SSD 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.

For more information about public hearings, please see the Commission's *'Public Hearing Guidelines'*, available on the Commission's website.

Multi-stage public hearing

A multi-stage public hearing is a type of public hearing that is held in more than one stage. Each 'stage' involves a 'town hall' style forum, which is directed to particular aspects of the application under consideration. Together, these stages form one public hearing. A multi-stage public hearing will only be held if the Commission is requested to do so by the Minister.

The Commission will give advance notice of the date, time and location of each stage of the public hearing and offer interested people the opportunity to apply to speak at each stage of the public hearing.

Public meeting

A public meeting provides an opportunity for the Commission to listen to the community's views on the development application (including the Environmental Impact Statement (EIS)) and the Department's assessment report for a development application.

The Commission regularly holds this 'town hall' style meeting as part of its determination of SSD applications.

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

decision. The Commission cannot require anyone to attend or give evidence. If a public meeting is held, it does not affect people's merit appeal rights.

For further information about public meetings, including the considerations that will guide the Commission in relation to the holding of a public meeting before making a decision on an application, please see the Commission's *'Public Meeting Guidelines'*, which are available on the Commission's website.

Other activities undertaken by Commission as part of assessment

Meetings with the applicant, Department and/or other stakeholders

The Commission may decide to meet with the applicant, Department and/or other stakeholders to discuss an application at any point in its assessment process (which are activities separate to the public hearing). Records of these meetings will be kept in accordance with the Commission's *'Meeting Record Policy'*, which is available on the Commission's website.

Site inspections and locality tours

At any time, the Commission may choose to undertake a site inspection/s and/or locality tour/s (which are also activities separate to the public hearing). There is no statutory requirement for the Commission to do so. For further information, please see the Commission's *'Site Inspection and Locality Tour Guidelines'*.

A MULTI-STAGE PUBLIC HEARING

Where the Commission is the consent authority for a development application in respect of SSD, the Minister may request the Commission to hold a public hearing in multiple stages, a 'multi-stage public hearing'. Under the EP&A Act, the Commission is the consent authority for SSD applications in circumstances where:

- there have been 25 or more public objections to the application, or
- the local council has objected, or
- a reportable political donation has been made

The Minister may also delegate the consent authority function to the Commission for other SSD applications.

The Minister's request for a multi-stage public hearing may be made at any time during the assessment of an application.

Refer to Flow Chart; attached to the back of the Guidelines showing procedural steps.

The stages of a multi-stage hearing

The multi-stage public hearing will comprise at least two stages: a 'preliminary stage' and a 'final stage'. However,

additional stages between the preliminary stage and the final stage may be held as required. Each 'stage' involves a 'town hall' style forum, which is directed to particular aspects of the application under consideration. Together, these stages form one public hearing.

The holding of a public hearing, including a multi-stage public hearing, affects merit appeal rights. This is explained under the heading *'Appeal rights'* below.

Preliminary stage

The 'preliminary stage' will be held soon after the development application comes off exhibition, the Department publishes all public submissions, and provides a 'Preliminary Issues Report' to the Commission. It will comprise a 'town hall' style forum and will generally be directed towards establishing the key issues of the application.

The Department's Preliminary Issues Report will outline the strategic context for the proposal and key issues for assessment based on its preliminary review of the EIS and submissions. It is not a final assessment report. The Commission is not bound by the Department's identification of issues in its Preliminary Issues Report.

The preliminary stage will generally involve:

- the applicant providing a description of the development proposal
- the Department outlining the findings of its Preliminary Issues Report
- the community expressing views on the proposal, and
- the Commission asking questions of all stakeholders to clarify issues which may require further assessment

Commission's Issues Report

Following the preliminary stage of a multi-stage public hearing, the Commission will prepare a report known as an 'Issues Report', which will, as far as possible, identify the key issues that have been raised at the preliminary stage of the multi-stage public hearing.

The Issues Report may also include recommendations for the applicant and/or the Department on:

- the project (e.g. the disturbance area, layout and design, key uses and activities, and timing)
- the assessment of particular issues (e.g. carry out further assessment, seek expert advice, hold joint expert conferences), and
- procedural matters (e.g. carry out further consultation).

The report will also aim to identify any gaps or anomalies in relation to the issues associated with the assessment.

The Commission may also produce a further Issues Report/s after any additional stage/s (held after the preliminary stage and prior to the final stage), of the multi-stage public hearing, if the Commission considers such a report to be necessary.

Final stage

The 'final stage' of the multi-stage public hearing will occur after the Department has coordinated a whole-of-government assessment and submitted its final assessment report to the Commission. This stage involves a further 'town hall' style forum, and will generally be directed towards providing the Commission with another opportunity to hear from the applicant, the Department's assessment officers and members of the community on the issues identified during the preliminary stage, before determining the SSD application.

The final stage hearing will generally involve:

- the Department explaining the findings in its final assessment report and any draft conditions;
- the community expressing views on the Department's final assessment report, including how any issues raised at the preliminary stage were or were not addressed, as well as any draft conditions;
- the applicant responding to the Department's final assessment report and commenting on any draft conditions; and
- the Commission asking questions of all stakeholders to clarify issues.

Following the final stage

Commission's Statement of Reasons for Decision

After holding a multi-stage public hearing, the Commission will determine the application and provide a copy of its 'Statement of Reasons for Decision' to the Minister and Planning Secretary.

The Statement of Reasons for Decision will also be made publicly available on the Commission's website at that time.

The Commission will also provide a copy of its final report in accordance with the requirements of Schedule 2 of the EP&A Act.

Merit Appeal Rights

A public hearing (including a multi-stage public hearing) held by the Commission affects merits appeal rights.

No merit appeal may be brought under Division 8.3 of the EP&A Act in respect of any decision by the Commission as consent authority in relation to the carrying out of any development that is made after a public hearing held by the Commission about that development.

CONDUCT OF THE MULTI-STAGE PUBLIC HEARING

When and where a stage of the multi-stage public hearing will be held

The preliminary stage of a multi-stage public hearing will generally be held as soon as practicable after the Minister

makes a request to hold a multi-stage public hearing, and the EIS and the Department's Preliminary Issues Report has been received by the Commission.

The final stage of a multi-stage public hearing will generally be held as soon as practicable after the Department's final assessment report is received by the Commission. Other stages may be held as deemed necessary by the Commission, following consultation with the Minister and/or Planning Secretary.

A multi-stage public hearing will usually be held in the suburb or town where the proposed SSD is located, unless a suitable venue is not available or people with interests in the project are located across a range of locations.

Timing of the multi-stage public hearing

The Commission will select a day/s for each stage of a multi-stage public hearing that it believes will accommodate the greatest number of interested parties. The length of each stage of a multi-stage 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 multi-stage public hearing

The Commission will give notice of the multi-stage public hearing in accordance with the requirements of Schedule 2 of the EP&A Act.

Attendance

Each stage of a multi-stage public hearing is open to the public to attend (subject to capacity constraints at the venue) unless the Commission determines it is in the public interest for any stage of the multi-stage 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 a multi-stage public hearing

In some cases, the Chair of the Commission may utilise power in the EP&A Act to formally require a person to give evidence (either in person at one or more stages of the multi-stage public hearing or via a written statement) or to produce to the Commission a document that is relevant to the multi-stage 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 multi-stage public hearings

The Commission may direct that all or part of any stage of a multi-stage 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 multi-stage hearing

If you wish to speak at a multi-stage 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 (4) working days prior to the stage of the multi-stage public hearing at which you wish to register to speak).

In special circumstances, the Commission may receive applications to speak at the multi-stage public hearing by phone.

The following information will be requested from you when applying to speak (in the registration 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 each stage of a multi-stage 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 form 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.

Registered speakers will be notified in advance of the hearing how much time they have been allocated to speak.

The Commission will publish on its website the full list of registered speakers at least 24 hours prior to the multi-stage public hearing.

If you speak at a multi-stage public hearing

All those who speak at the multi-stage public hearing must ensure that any statements and presentations made during the hearing are factually accurate or 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 multi-stage public hearing should note that Commissioners will have reviewed the EIS and

public submissions made to the Department in writing before the multi-stage public hearing.

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

The general running of the multi-stage 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 any stage of a multi-stage public hearing and anyone who is intoxicated and/or acting in a disorderly manner will be asked to leave.

Questioning of presenters/speakers by the Commission

Commissioners may ask questions of anyone at each stage of a multi-stage public hearing. These questions, where possible, should be answered on the spot. If this is not possible, questions may be taken on notice, and should be answered in writing **within seven (7) days**.

Counsel Assisting

The Commission may use a Counsel Assisting to assist in the conduct of any stage of a multi-stage public hearing. In facilitating the conduct of the hearing, Counsel Assisting may, on behalf of the Commissioners, ask questions or seek clarification from speakers/presenters.

No questioning by attendees

No questions or cross-examination will be permitted from anyone attending the hearing other than the Commissioners or Counsel Assisting.

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

The Commission will accept written comments or submissions **up to seven (7) days** after each stage in a multi-stage 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, and

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

You can send your written comments or submissions to us via post or email:

Independent Planning Commission NSW
Level 3, 201 Elizabeth Street
Sydney, NSW 2000

Phone: (02) 9383 2100 | Email: ipcn@ipcn.nsw.gov.au

In certain circumstances, the Commission may accept written submissions or comments **more than seven (7) days after** each stage of a multi-stage 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.

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

There may be special circumstances where you are not able to attend a stage of the multi-stage public hearing in person but still wish to participate in the 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 multi-stage public hearing, so that the Commission can decide 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 multi-stage public 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.

Audio recording

The Commission will make an audio recording of what is said at each stage of a multi-stage 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 multi-stage public hearing. 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.

Review of process

The Commission will undertake a formal review of the multi-stage public hearing process set out in these guidelines by the end of 2019 and provide the Minister with any recommendations for change and further improvements at that time.

Definitions

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 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.
Planning Secretary	Secretary of the Department of Planning & 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*.

General enquiries and suggestions

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

- ask a question about a multi-stage 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 Commission Secretariat at:

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

Email: ipcn@ipcn.nsw.gov.au

Independent Planning Commission NSW

Level 3, 201 Elizabeth Street

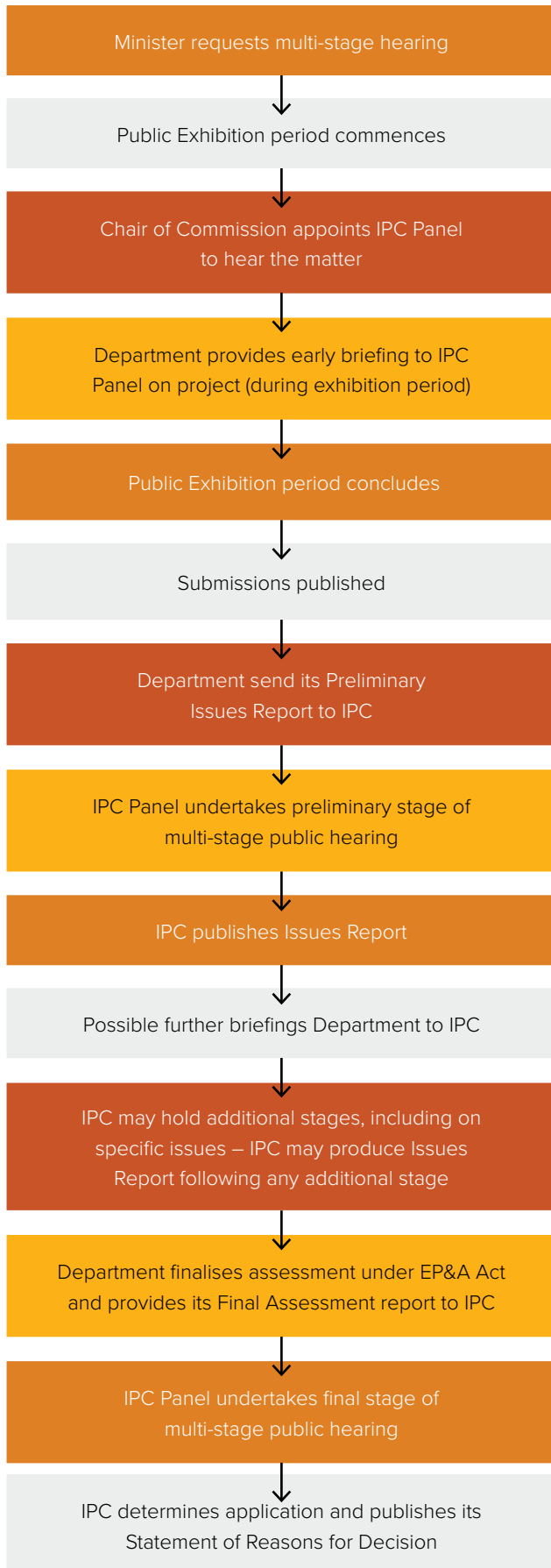
Sydney, NSW 2000

Last updated: 28 November 2018

Date for review: 28 November 2019

Possible procedural steps for a multi-stage public hearing

Possible procedural steps to achieve the purpose of the multi-stage public hearing if request is made by Minister before public exhibition of EIS:



Possible procedural steps to achieve purpose if request is made by Minister after public exhibition of EIS:

