

**Submission  
No 10**

**EXAMINATION OF THE AUDITOR-GENERAL'S PERFORMANCE  
AUDIT REPORTS OCTOBER 2016 – MAY 2017**

**Organisation:** Planning Assessment Commission

**Date Received:** 6 February 2018



Bruce Notley-Smith MP  
Chair  
Legislative Assembly Public Accounts Committee

By email: [pac@parliament.nsw.gov.au](mailto:pac@parliament.nsw.gov.au)

Dear Mr Notley-Smith

**Auditor-General's performance audit report – Assessing major development applications**

Thank you for your letter of 19 January 2018 requesting a submission outlining a response to the Auditor-General's recommendations, including any action to date.

The Commission is pleased to advise that it has implemented the Auditor-General's recommendations in all respects, except 3a and 5b, which remain contingent on the commencement of legislative changes that were approved by parliament in the last quarter of last year.

I have attached a completed implementation summary table at appendix 1, and further details of the Commission's particular actions at appendix 2.

Please feel welcome to telephone the Mr David McNamara, Director, on 02 9383 2101 if you need further information.

Yours sincerely

Mary O'Kane  
Chair  
Planning Assessment Commission

6/2/18

**APPENDIX 1**  
**PERFORMANCE AUDIT – Assessing major development applications**  
**IMPLEMENTATION OF RECOMMENDATIONS SUMMARY TABLE**

	Recommendation	Accepted or Rejected	Actions to be taken	Due Date	Status (done, on-track, delayed) Comment	Responsibility
1	We recommend that the Planning Assessment Commission should, by July 2017, improve transparency by publishing on its website a summary of the Commissioners' conflict of interest declarations for each development application referred to the Commission for determination, and how any conflicts were handled	Accepted	<p>a) Summary of conflicts to be published on website for all projects received since January 2017.</p> <p>b) Template to be developed by Secretariat and will note exclusions, perceived conflicts and conflict arising during the course of a project.</p>	Ongoing  March	Done  Template and procedure deployed (View Figure 1 – Appendix 2)	Secretariat (DMo)
2	We recommend that the Planning Assessment Commission should, by July 2017, keep better records of how it considers each matter under section 79C of the EP&A Act for all decisions it makes on major development applications.	Accepted	a) All determination reports and letters are to explicitly outline how 79C has been considered with templates to be updated with text and guidance for Commissioners and staff.	March	Done  Templates and procedures deployed (View Figures 2 and 3 – Appendix 2)	Secretariat (DMo)
3.a	We recommend that the Planning Assessment Commission should, by July public meetings by: a) identifying and implementing additional mechanisms to notify the community of public meetings to ensure as many interested parties are advised as possible	Accepted	a) Consider options to inform the community of our meetings including Social Media and/or radio. This work will occur as part of broader re-positioning of the Commission on the back of the planning reforms	June	On track  Consultant brief issued but is tied to and requires ongoing discussion with Department regarding legislative reforms.	Secretariat (DMc)

	Recommendation	Accepted or Rejected	Actions to be taken	Due Date	Status (done, on-track, delayed) Comment	Responsibility
3.b	We recommend that the Planning Assessment Commission should, by July 2017, improve the public's involvement in public meetings by: b) allowing the chair of decision-making panels discretion to extend the time allowed for individual speakers beyond five minutes	Accepted	b) Chair to have discretion to allow individual to speak for more than 5 minutes and chairs introductory notes to be updated accordingly.	March	Done Templates deployed (View Figures 4 and 5 Appendix 2)	Secretariat (DMo)
4.a	We recommend that the Planning Assessment Commission should, by July 2017, continue to improve how it communicates the reasons for its decisions to the public by: c) including a summary in its reports of the issues raised during the consultation process and how they were considered by the Commission	Accepted	a) The Secretariat to consider options for how consultation issues (both relevant and irrelevant) can be addressed in reports.	May	Done Templates and procedures deployed (View Figure 6 – Appendix 2)	Secretariat (DMo)
4.b	We recommend that the Planning Assessment Commission should, by July 2017, continue to improve how it communicates the reasons for its decisions to the public by: d) clearly outlining in its reports how any conditions placed on a development will address the issues raised	Accepted	b) Reports to address the reasons why condition(s) required / materially changed to address the relevant issues raised.	Ongoing	Done Templates and procedures deployed (View Figure 7 – Appendix 2)	Secretariat and Commissioners
4.c	We recommend that the Planning Assessment Commission should, by July 2017, continue to improve how it communicates the reasons for its decisions to the public by: e) detailing in its reports how section 79C of the EP&A Act has been addressed	Accepted	c) All determination reports and letters are to explicitly outline how 79C has been considered with templates to be updated with text and guidance for Commissioners and staff	March	Done Templates and procedures deployed (View Figure 8 – Appendix 2)	Secretariat (DMo)

	Recommendation	Accepted or Rejected	Actions to be taken	Due Date	Status (done, on-track, delayed) Comment	Responsibility
4.d	We recommend that the Planning Assessment Commission should, by July 2017, continue to improve how it communicates the reasons for its decisions to the public by: f) issuing fact sheets to accompany its reports for all decisions where public meetings were held	Accepted	d) Fact sheets are to be prepared for all Reviews and all Determinations with public meetings outlining: a. decision b. reasons c. major issues	February	Done Template and procedures deployed (View Figure 9 – Appendix 2)	Secretariat and Chair of panel
5.a	We recommend that the Planning Assessment Commission should, by July 2017, work with the Department of Planning and Environment to: g) develop an agreed approach to presenting the Department's views in its assessment reports on whether the project meets relevant legislative and policy requirements, reflecting the Commission's status as an independent decision-maker	Accepted	a) The Department have agreed to refine their approach to reports and not make an explicit recommendation	February	Done Department's recommendations have revised wording (View Figure 10 – Appendix 2)	Chairperson / Director Secretariat
5.b	We recommend that the Planning Assessment Commission should, by July 2017, work with the Department of Planning and Environment to: h) refer applications to the Commission earlier in the process to ensure the Department's assessment report covers matters that Commissioners consider important when assessing projects under section 79C of the EP&A Act	Accepted	b) The Chairperson and Director Secretariat to have ongoing discussions around options for earlier involvement in projects, whilst not fettering the Commissions determination role under the act.	July 2017	On track – initial discussions have occurred and regular meetings have been committed to by DPE and Commission. Quarterly meetings are in place.	Chairperson / Director Secretariat

## APPENDIX 2

### Particulars of the Commission's actions in response to the audit recommendations

#### Audit Recommendation 1

We recommend that the Planning Assessment Commission should, by July 2017, improve transparency by publishing on its website a summary of the Commissioners' conflict of interest declarations for each development application referred to the Commission for determination, and how any conflicts were handled.

#### Commission's action taken

Summary of conflicts has been published on website for projects from January 2017. Conflict register template deployed for all new projects (Figure 1).

**Project-conflict-of-interest-register¶**

¶

This register of conflicts is specific to the project nominated below

Date: <XX Month 20XX>

Project: <Insert project name and number>

Nominees ¶	Actual, potential or perceived conflict ¶	Action ¶
Jane Smith¶	Nil¶	Proceed to nomination¶
George Brown¶	Previously board member for the applicant. Less than two years ¶	Exclusion¶
Harriet Green¶	Previously worked for consulting firm, but more than two years ago and did not work on this project¶	Proceed to nomination¶
Hamish McDonald¶	Nil¶	Proceed to nomination¶
¶	¶	¶
¶	¶	¶

Updates: <¶>

*Advisory note: This register must be uploaded to the website. If conflicts are identified after the nomination has occurred, describe here in the updates section, and identify the alternate member. This section must include the date the conflict was identified, and the date the alternate member was nominated. The revised register must be uploaded to the website alongside the original register. ¶*

This register is made upon the nomination of Commissioners to the determination or review panel. It may be updated if actual, potential or perceived conflicts arise during the determination or review process. ¶

¶

For further information about conflicts, please consult the Planning Assessment Commission Policy on Personal Interests of Members, which is available to download on the Commission website. ¶

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<http://www.pac.nsw.gov.au/resources/pac/media/files/pac/general/> ¶

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**Figure 1 - Conflict of interest register template**

## Audit Recommendation 2

We recommend that the Planning Assessment Commission should, by July 2017, keep better records of how it considers each matter under section 79C of the EP&A Act for all decisions it makes on major development applications.

### Commission's action taken

Template deployed for 'coffee shop catch up' to capture Commission's deliberative processes around section 79C (Figure 2). Report template also shows where section 79C is addressed (Figure 3).

Coffee Shop Catch-up Identifying Key Issues	
This meeting is part of the determination process.	
Date:	Time:
Project:	
Meeting place:	
Attendees:	
The purpose of the meeting: To scope key issues under section 79C of the EP&A Act 1979	
<i>Advisory note: This space should be filled in with a short and high level record of the preliminary issues scoping that occurs immediately following a public meeting. Subjects should be recorded by topic only, and with the agreement of the Commissioners. If the Commission requests further information, either from the Secretariat or the Department, it should be mentioned as an action below. This report must not be uploaded to the website as it may reflect deliberative and not final views.</i>	

Figure 2 –Commission's Coffee Shop Catch-up template

**5. COMMISSION'S CONSIDERATION**

In this determination, the Commission has considered carefully:

- all information provided by the applicant/proponent including additional information;
- the Department's assessment report;
- advice and recommendations from government agencies;
- relevant matters for consideration specified in section 79C of the *Environmental Planning and Assessment Act 1979* (EP&A Act), including:
  - relevant environmental planning instruments (including drafts if relevant);
  - the *Environmental Planning and Assessment Regulation 2000*;
  - any voluntary planning agreements (if relevant);
  - any coastal zone management plan (if relevant);
  - the likely impacts of the development on both the natural and built environments;
  - social and economic impacts in the locality;
  - the suitability of the site for the development;
  - written and verbal submissions from the public; and
  - the public interest, including the objects of the EP&A Act.

*Advisory note: Issues scoping should be carried out in consultation with the Commissioners. For State significant development, ensure the Commission has canvassed all aspects of section 79C of the EP&A Act. In the case of modification applications/requests, ensure sections 96 or 75W are considered, as appropriate. For the purposes of this section of the determination report, present issues only by exception (e.g. where significant community concerns remain or where the Commission has identified a new issue or determines an issue differently to the Department's recommendation).*

Figure 3 – Extract from report template for section 79C

**Audit Recommendation 3a**

We recommend that the Planning Assessment Commission should, by July 2017, improve the public's involvement in public meetings by identifying and implementing additional mechanisms to notify the community of public meetings to ensure as many interested parties are advised as possible.

**Agreed action taken**

Brief issued for consultant engagement on additional mechanisms, including consideration of social media and other avenues of communication. This work will continue beyond July 2017 as part of broader re-positioning of the Commission as part of the planning legislation reforms.

**Audit Recommendation 3b**

We recommend that the Planning Assessment Commission should, by July 2017, improve the public's involvement in public meetings by allowing the chair of decision-making panels discretion to extend the time allowed for individual speakers beyond five minutes.

**Agreed action taken**

Chair's opening statement template and the speakers registration template indicates that the chair has discretion to allow individual to speak for more than five minutes (Figures 4 and 5).

As Chair, I reserve the right to allow additional time if further technical material needs to be provided but as a general rule, 5 and 15 minute limits will be applied.

**Figure 4 – Extract from the Chair's opening statement template**

Date & Time:	Time and Date
Place:	Venue and Address
<b>Meeting Schedule</b>	
2 pm	Opening Statement from the Chair –
Registered Speakers:	_____
	_____
	_____
	_____

Please note  
Speakers are allocated 5 minutes for an individual, or 15 minutes for groups. The meeting is open to the public, and as such not all parties present will speak. The Chair reserves the right to allow additional time if further technical material need to be provided.

**Figure 5 – Extract from the public meeting/hearing speakers register template**



#### Audit Recommendation 4a

We recommend that the Planning Assessment Commission should, by July 2017, continue to improve how it communicates the reasons for its decisions to the public by including a summary in its reports of the issues raised during the consultation process and how they were considered by the Commission.

#### Agreed action taken

All reports now show a summary of issues raised during consultation and indicates how these have been addressed. Template indicates text and instructions for reports (Figure 6).

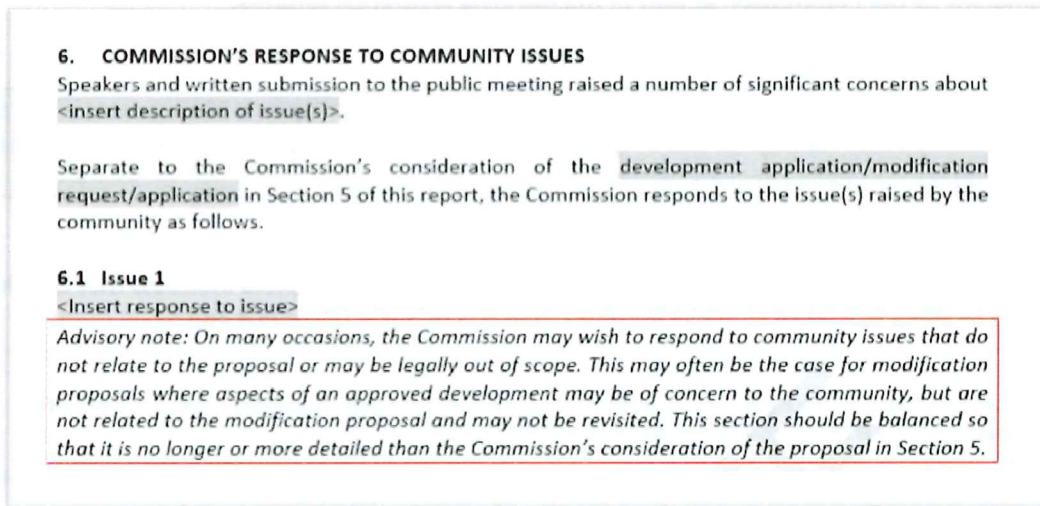


Figure 6 – Extract from report template summarising community issues

#### Audit Recommendation 4b

We recommend that the Planning Assessment Commission should, by July 2017, continue to improve how it communicates the reasons for its decisions to the public by clearly outlining in its reports how any conditions placed on a development will address the issues raised.

#### Agreed action taken

All reports now explain the role of consent conditions. Template indicates text and instructions for reports (Figure 7).

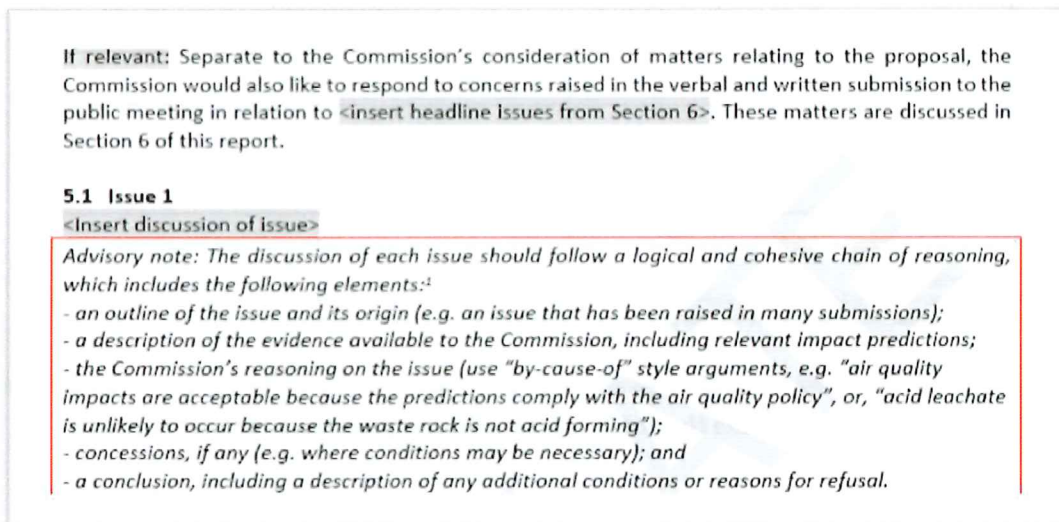


Figure 7 – Extract from report template about describing consent conditions

#### Audit Recommendation 4c

We recommend that the Planning Assessment Commission should, by July 2017, continue to improve how it communicates the reasons for its decisions to the public by detailing in its reports how section 79C of the EP&A Act has been addressed.

#### Agreed action taken

All reports now explain consideration of section 79C. Template indicates text and instructions for reports (Figure 8).

**5. COMMISSION'S CONSIDERATION**

In this determination, the Commission has considered carefully:

- all information provided by the applicant/proponent including additional information;
- the Department's assessment report;
- advice and recommendations from government agencies;
- relevant matters for consideration specified in section 79C of the *Environmental Planning and Assessment Act 1979* (EP&A Act), including:
  - relevant environmental planning instruments (including drafts if relevant);
  - the *Environmental Planning and Assessment Regulation 2000*;
  - any voluntary planning agreements (if relevant);
  - any coastal zone management plan (if relevant);
  - the likely impacts of the development on both the natural and built environments;
  - social and economic impacts in the locality;
  - the suitability of the site for the development;
  - written and verbal submissions from the public; and
  - the public interest, including the objects of the EP&A Act.

*Advisory note: Issues scoping should be carried out in consultation with the Commissioners. For State significant development, ensure the Commission has canvassed all aspects of section 79C of the EP&A Act. In the case of modification applications/requests, ensure sections 96 or 75W are considered, as appropriate. For the purposes of this section of the determination report, present issues only by exception (e.g. where significant community concerns remain or where the Commission has identified a new issue or determines an issue differently to the Department's recommendation).*

Figure 8 – Extract from report template for section 79C

#### Audit Recommendation 4d

We recommend that the Planning Assessment Commission should, by July 2017, continue to improve how it communicates the reasons for its decisions to the public by issuing fact sheets to accompany its reports for all decisions where public meetings were held

#### Agreed action taken

All reports where a public meeting was held now include a summary fact sheet, which explains reasons for the decisions. Template indicates text and instructions for fact sheets (Figure 9).

*Advisory note: This fact sheet should be drafted as a plain language summary of the Commission's determination. It should focus on the decision and the Commission's reasons for the decision, which could include explaining how issues raised at the public meeting particular have been addressed. Additional or amended conditions (or refusal reasons) should also be explained in a way that the public can understand the Commission's intentions. This summary should not usually be longer than a page and should be published on the website alongside the determination report.*

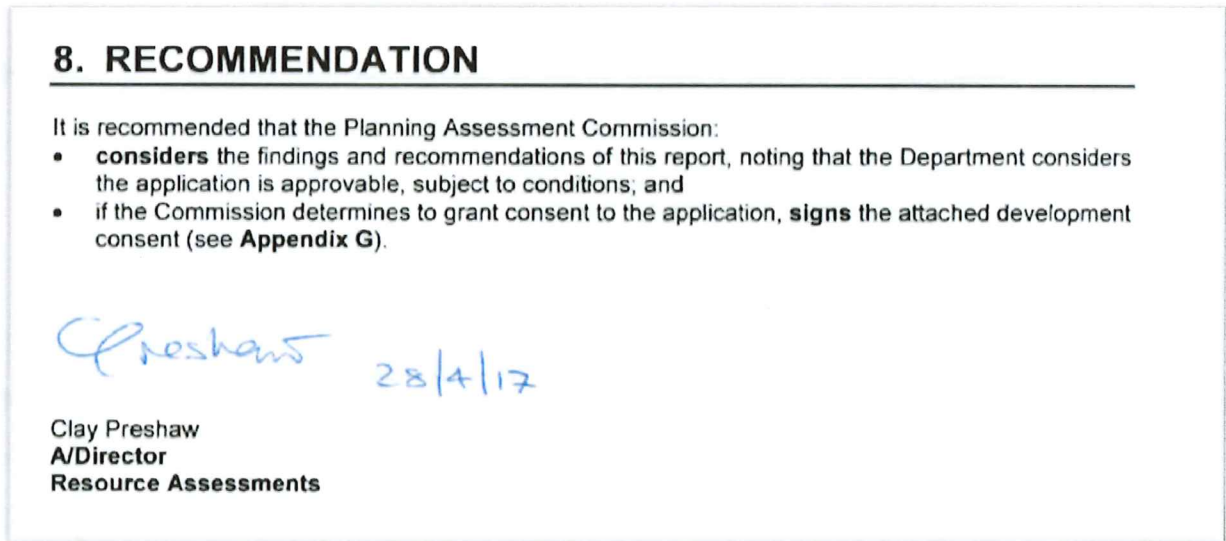
Figure 9 – Extract from fact sheet template showing instructions to explain reasons

#### Audit Recommendation 5a

We recommend that the Planning Assessment Commission should, by July 2017, work with the Department of Planning and Environment to develop an agreed approach to presenting the Department's views in its assessment reports on whether the project meets relevant legislative and policy requirements, reflecting the Commission's status as an independent decision-maker.

#### Agreed action taken

The Department has agreed to refine their approach to report recommendations and no longer makes an explicit recommendation for approval. See extract from Department's report showing example wording in Figure 10.



*Figure 10 – Example wording of Department recommendation*

#### Audit Recommendation 5b

We recommend that the Planning Assessment Commission should, by July 2017, work with the Department of Planning and Environment to refer applications to the Commission earlier in the process to ensure the Department's assessment report covers matters that Commissioners consider important when assessing projects under section 79C of the EP&A Act

#### Agreed action taken

The Chairperson and Director Secretariat continue to discuss options for earlier referral to the Commission as part of the legislative reforms around the Commission's responsibilities and processes.