

Answers to questions on notice

Independent Planning Commission

Public hearing – 27 October 2023

Current and potential impacts of gold, silver, lead and zinc mining on human health, land, air and water quality in New South Wales.

Dear Tina,

I am writing to provide a consolidated response from the Independent Planning Commission to the requests put to Professor Mary O’Kane, Dr Peter Williams and Mr James Innes with respect to transcript review and questions on notice.

Questions on notice

For Mary O’Kane on page 21 of the uncorrected transcript

I attach the [Statement of Expectations](#) to the Commission from the Minister which sets out the key performance indicators with respect to timing of decisions and advice.

In public hearing cases, the timeframe is also prescribed in a letter from the Minister to the Commission requesting that the Commission hold the hearing. These letters can be found on the relevant case page on the Commission’s website.

For Mr James Innes at the top of page 24 of the uncorrected transcript

The practice referred to by Mr Innes whereby the Commission will first go to the Department for any additional assessment before commissioning its own experts is an administrative arrangement under 6.1 of the [Memorandum of Understanding](#) between the Commission and the Department (attached).

This arrangement is contemplated by 5.4.4 of the MoU, under which the Department supports, where necessary, the Commission to undertake additional assessment. The rationale of the arrangement is to facilitate the Department’s provision of “assessment as a service” to the Commission (see 3.3 of the MoU and section 4.6(b) of the *Environmental Planning and Assessment Act 1979*) and the Department’s leadership of the “whole-of-government” assessment process (see 5.2.2 of the MoU).

MEMORANDUM OF UNDERSTANDING

Between the Department of Planning and Environment Planning Group and the Independent Planning Commission NSW in relation to planning and assessment matters under the *Environmental Planning & Assessment 1979*

Signed 2 MARCH 2023



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Signed by:

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For the Department of Planning and Environment – Planning Group

Mary O’Kane, Chair

.....
For the Independent Planning Commission

MEMORANDUM OF UNDERSTANDING

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1. Purpose

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

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

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3. Roles and Responsibilities

3.1 Department of Planning and Environment Planning Group

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

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

The Commission also:

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

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 DPE 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 meet the objectives of the Act and build and maintain 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.

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3.3 Interaction between the DPE Planning Group and the Commission

The DPE Planning Group and the Commission will interact in the following instances in order to effectively exercise their respective responsibilities under the Act:

- When the DPE Planning Group 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 the DPE Planning Group.
- When the Commission is named as a party to, or otherwise involved in proceedings relating to an application¹, assessed by the DPE Planning Group.

¹For bilateral assessments, the Australian Government will make their approval decision based on the NSW assessment <https://www.dcceew.gov.au/environment/epbc/bilateral-agreements/nsw>

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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
- maintain 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 the DPE Planning Group 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.

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5. Commitments

5.1 The DPE Planning Group 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 The DPE Planning Group 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 The DPE Planning Group and the Commission will achieve administrative consistency and avoid duplication wherever possible.

5.2 The DPE Planning Group and the Commission will work together to administer efficient, timely and effective processes under the Act

- 5.2.1 The DPE Planning Group will administer the receipt and public exhibition of development and modification proposals, and the statutory notification of decisions.
- 5.2.2 The DPE Planning Group will lead the whole-of-government assessment process.
- 5.2.3 The DPE Planning Group and the Commission will provide each other **with adequate and reliable advance notice** of matters to be passed between each Agency to support the efficient allocation of resources. Of particular importance is **adequate and reliable advance notice** of the referral of projects to the Commission.
- 5.2.4 The DPE Planning Group will support direct Commission engagement with NSW Government agencies involved in the whole-of-government assessment process.
- 5.2.5 The Commission will provide the DPE Planning Group with adequate prior notice of meetings and public hearings.
- 5.2.6 The DPE Planning Group and the Commission will work together to identify and resolve issues as early as possible.
- 5.2.7 At the Commission's request, the DPE Planning Group will assist the Commission by providing advice on the workability, enforceability and any unintended consequences of the Commission's proposed conditions of approval or consent.

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5.3 The DPE Planning Group and the Commission will work together to optimise public access to all information used in decision-making

5.3.1 The DPE Planning Group 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 make case-related information publicly available on its website, in line with its policies.

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5.4 The DPE Planning Group and the Commission will communicate clearly and in a manner that invites cooperation and strengthens public trust in the planning system.

5.4.1 The DPE Planning Group will present its whole-of-government evaluation of issues within its assessment report, including those raised by the community and NSW government agencies and how they have been addressed.

5.4.2 Recognising that DPE's assessment report has been prepared on behalf of the Commission (as 'assessment as a service'), the Commission uses the DPE 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 The DPE Planning Group will support, where necessary, the Commission to undertake those activities and any additional assessment.

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

5.4.6 Where appropriate, the Commission and the DPE Planning Group 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

The DPE Planning Group and the Commission will jointly maintain administrative and legal arrangements as required to implement this MOU and allow them to be administered cooperatively and efficiently.

The DPE Planning Group and the Commission will work together to ensure standard operating procedures are consistent unless otherwise required to ensure the independence of the Commission.

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6.2 Governance

The DPE Planning Group EDs and the Office of the Commission's ED will regularly discuss upcoming projects and resolve any issues regarding implementation of the MOU.

DPE Planning Group's Deputy Secretary and the Chair of the Commission (or their delegates) will meet monthly to discuss performance of the MOU and resolve any issues regarding implementation of the MOU.

6.3 Monitoring implementation

The DPE Planning Group and the Commission will establish monitoring arrangements that encourage continuous improvement.

6.4 Performance Reporting

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

6.5 Review

This MOU, and related administrative arrangements, will be reviewed once every 24 months.

The Honourable Anthony Roberts MP

Minister for Planning
Minister for Homes



Minister's office reference

Professor Mary O'Kane
Chair
NSW Independent Planning Commission
Suite 15.02, Level 15
135 King Street
SYDNEY NSW 2000

Dear Professor O'Kane 

STATEMENT OF EXPECTATIONS FOR THE INDEPENDENT PLANNING COMMISSION

I am pleased to provide you with this Statement of Expectations (SoE) for the Independent Planning Commission (the Commission). This SoE applies for the period from 1 July 2022 to 30 June 2024, or until otherwise amended.

As Minister for Planning, I am responsible for administering the *Environmental Planning and Assessment Act 1979* (the Act) which includes provisions for planning administration (including for the Commission), land use plan making and implementation, development assessment and consent, and infrastructure and environmental impact assessment. This SoE should be read within the context of those provisions and the objects of the Act.

This letter describes my expectations in relation to the purpose, functions and roles of the Commission, as well as key governance and performance objectives to improve the effectiveness of the Commission in determining contentious State significant development applications and providing independent expert advice, when required.

Providing independent decision-making and advice

The Commission plays an integral role in upholding the integrity of the NSW planning system, by fulfilling its primary purpose of providing independent decision making on contentious State significant development applications and providing advice on other planning matters as requested.

Objectives

I expect the Commission to undertake its functions and roles in such a way that builds trust in the NSW planning system. The approach taken should be based on the following objectives:

- independent and objective decision making
- openness and transparency in the operations of the Commission
- delivering robust and timely determinations within the legislative and Government policy framework to best serve the people of NSW
- encouraging effective community and other stakeholder participation to inform Commission determinations and advice.

Functions of the Commission

My expectations for the main functions of the Independent Planning Commission are that it:

- determine State significant development and modification applications for which it is the consent authority
- conduct public hearings for development applications and other planning and development matters, when requested
- provide independent expert advice on any planning matters, when requested.

Undertaking Functions and Roles

Of principal importance to the successful undertaking of these functions are the interactions between myself as the Minister and the Government as the entity responsible for determining policy for the State; the Planning Secretary, who I expect to coordinate whole-of-government planning assessments prior to matters being provided to the Commission; and the Commission who I expect to make decisions based on the legislation and policy frameworks and informed by the Planning Secretary's assessment. I expect these roles to be respected so that duplication of functions is avoided.

I encourage the Commission to seek guidance from the Planning Secretary to clarify policies or identify policy issues that may have implications for State significant development determinations. I also understand that the necessary working arrangements have been established through a Memorandum of Understanding between the Commission and the Planning Secretary that supports administrative consistency and clarifies roles and responsibilities. I expect both the Commission and Planning Secretary to adhere to the terms of this Memorandum of Understanding.

Role of Chair

I recognise the role of the Commission's Chair as essential to the success of delivering the matters set out in this SOE. As the agency head, I expect leadership from you that enables fulfilment of the Commission's functions as well as instilling a culture of excellence and continuous improvement across the organisation.

I recognise the legal and administrative responsibilities for the Chair set out in Part 2 of the Act and also encompassing the selection of Panels and being a member of the Commission, oversight of Panel decisions, and conducting performance evaluation of Commissioners.

I expect the Chair to be responsible for the Commission in:

- establishing and maintaining a strong governance framework, consistent with the NSW Audit Office's guidelines
- maintaining a workplace culture of high performance and integrity
- operating effectively and efficiently
- advising individual Panel chairs and members on the implementation of this SOE
- being accountable for its actions and performance.

Key Performance Indicators and Reporting

Based on consultation between Department and Commission, I have identified key performance indicators to ensure ongoing timeliness and quality of decisions. The Commission is expected to monitor and report on these indicators in its Annual Report to Parliament (and quarterly on the Commission's website for State significant determinations).

Timeframes for Decision-Making

State Significant Development Determinations

I expect the following timeframes to be met (as an annual rolling average) for time from the date of the provision of the Assessment Report by the Department of Planning and Environment (the Department) to determination by the Commission. The timeframes exclude:

- any time where the Commission has requested further information from the Department or the Applicant
- the period from 20 December to 26 January every year
- any time the Department is considering, as the Commission's delegate, an application to amend a development application or modification application before the Commission for

determination (including any time needed to publicly exhibit any amendments to a development application or modification application).

Determination within:

- 32 calendar days for *routine* determinations (no public meeting or hearing) and modifications with political donations
- 50 calendar days for determinations subject to a *public meeting*
- 12 weeks (84 calendar days) for determinations subject to a *public hearing*.

Gateway and Rezoning Reviews

Advice to be provided to the Planning Secretary within:

- 5 weeks (35 calendar days) including any meetings and preparation of the advice (unless otherwise agreed with the Planning Secretary and excluding any time where the Commission has requested further information from the Department, Council or the Applicant).

Mining and Petroleum Gateway Certificates

Timeframes specified in *State Environmental Planning Policy (Resources and Energy) 2021*.

In meeting these timeframes, I acknowledge that the Department also has an obligation to ensure the Commission is made aware of upcoming matters, provide adequate assessment documentation and respond to information requests in a timely manner, in accordance with the Memorandum of Understanding between the Department and the Commission.

Qualitative Indicators

I also expect the Commission to provide ongoing monitoring of performance from a qualitative perspective, including consideration of stakeholder feedback about the Commission's transparency, accessibility and independence as a decision-making body; and examination of the legal robustness of determinations.

I look forward to seeing the Commission continuously working towards achieving best practice in the determination of State significant development projects and its other roles as required.

Yours sincerely

The Hon Anthony Roberts MP
Minister for Planning

cc: Mr Michael Cassel, Secretary, Department of Planning and Environment