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# New South Wales Auditor-General's Report

## Performance Audit

### **Assessing major development applications**

Planning Assessment Commission

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The roles and responsibilities of the Auditor-General, and hence the Audit Office, are set out in the *Public Finance and Audit Act 1983*.

Our major responsibility is to conduct financial or 'attest' audits of State public sector agencies' financial statements. We also audit the Total State Sector Accounts, a consolidation of all agencies' accounts.

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In accordance with section 38E of the *Public Finance and Audit Act 1983*, I present a report titled **Assessing major development applications: Planning Assessment Commission**.

A handwritten signature in dark ink, appearing to read 'Margaret Crawford'.

**Margaret Crawford**

Auditor-General  
19 January 2017

# Contents

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<b>Contents</b>	<b>1</b>
<b>Executive summary</b>	<b>2</b>
Conclusion	2
Recommendations	4
<b>Introduction</b>	<b>5</b>
<b>Key findings</b>	<b>7</b>
1. Assigning Commissioners to applications	7
2. Gathering relevant information	10
3. Making the decision	16
<b>Appendices</b>	<b>20</b>
Appendix 1: Response from the Planning Assessment Commission	20
Appendix 2: Other jurisdictions' approaches to assessing major development applications	22
Appendix 3: About the audit	23
<b>Performance auditing</b>	<b>25</b>

# Executive Summary

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The Planning Assessment Commission (the Commission) is an independent body established in 2008 under the *Environmental Planning and Assessment Act 1979* (the EP&A Act). It makes decisions on major development applications in New South Wales. Along with the Department of Planning and Environment (the Department) and the Land and Environment Court, it is one of three bodies that have a role in making decisions on these applications.

The Department refers development applications to the Commission where 25 or more objections have been received from the community, a local council objects to the proposal, or the applicant has donated to a political party.

These applications are often complex and controversial, and can attract a high level of public interest. This may mean that, regardless of the process, not all stakeholders are satisfied with the outcome.

The Commission is required to take into account section 79C of the EP&A Act when making decisions. Section 79C includes consideration of the likely environmental, social and economic impacts of the development.

This audit assessed the extent to which the Commission's decisions on major development applications are made in a consistent and transparent manner. To assist us in making this assessment, we asked whether the Commission:

- has sound processes in place to help it make decisions on major development applications that are informed and made in a consistent manner
- ensures its decisions are free from bias and transparent to stakeholders and the public.

## Conclusion

Over the last two years, the Commission has improved its decision-making process. It has improved how it consults the public and manages conflicts of interest, and now also publishes records of its meetings with applicants and stakeholders.

However, there are still some vital issues to be addressed to ensure it makes decisions in a consistent and transparent manner. Most importantly, the Commission was not able to show in every decision we reviewed how it met its statutory obligation to consider the matters in section 79C of the EP&A Act.

Despite improved probity measures put in place by the Commission, there is a perception among some stakeholders that it is not independent of the Department. The reasons for some of these concerns are outside of the Commission's control. For example, the Commission becomes involved after the Department has prepared an assessment report which recommends whether a development should proceed. This creates the perception that the Commission is acting on the recommendation of the Department. The Department's assessment report should state whether an application meets relevant legislative and policy requirements, but not recommend whether a development should be approved or not.

More can also be done to improve transparency in decision-making and the public's perception of the independence of Commissioners. The Commission should continue to improve how it communicates the reasons for its decisions and also publish on its website a summary of Commissioners' conflict of interest declarations for each development application.

### Decision-making processes have improved but some key aspects need to be addressed

Although not articulated in one document, there is a framework in place to assist Commissioners make decisions on major development applications. This includes setting out the information to be considered, who to consult, and that a report is to be prepared. The Commission has recently improved how it conducts public meetings and the level of support

provided to Commissioners to ensure they understand the decision-making process. The Commissioners we interviewed all showed a good understanding of their role.

As a consent authority, the Commission is required to consider the matters in section 79C of the EP&A Act when making a decision. However, it was not able to show how it met this requirement in every decision we reviewed. We found some evidence of these considerations in six of the nine cases we reviewed, for example in meeting notes or in its report on a decision. Of these six cases, the degree to which the Commission considered all matters under section 79C varied considerably. The larger, more complex applications were more likely to address these considerations. To demonstrate compliance with the EP&A Act, the Commission must be able to show how it considers all matters in section 79C for each decision it makes.

We found that the Commission has access to relevant information to make a decision and consults stakeholders for their views of the development. The level of consultation depends on the size and complexity of an application. If Commissioners decide they need more information to make a decision, they consult local councils, the community, other government agencies and experts as needed.

The Commission's public meetings are a valuable part of the decision-making process, where new perspectives or issues are often raised. However, some aspects could be improved. For example, many stakeholders thought the five minutes allowed for individual speakers was insufficient. The Commission could be more flexible with this timeframe. Identifying new ways to notify the public of its meetings, other than advertisements on its website and in newspapers, would also ensure it reaches as many interested parties as possible.

### **Improved transparency and probity but the Commission is not seen by some as impartial**

The Commission has sound processes in place to ensure that its decisions are impartial and transparent to the community. It has improved its probity measures over the last two years, following a review by the NSW Ombudsman in 2014. We found that the Commission:

- has probity policies and procedures which are available on its website
- has improved its record keeping of some processes, such as meetings with applicants and stakeholders
- publishes its decision and supporting documentation, such as meeting notes, on its website.

Conflicts of interest are a significant risk for the Commission because they could lead to corruption, abuse of public office, and affect the public's view of its independence. The Commission manages this risk well. It has a policy in place to address potential, perceived or actual conflicts. Commissioners update their conflicts of interest records annually, and declare any conflicts when the Commission assigns them to a development application. Unlike the Commission's probity policies, Commissioners' conflict of interest declarations are not available on its website. Providing a summary of this information on its website when Commissioners are allocated to a development application would further improve transparency around conflicts of interest.

The Commission has been improving how it communicates its decisions to the public. It now produces fact sheets for its decisions on matters that attract a high level of public interest. Its reports on decisions for complex applications also discuss issues raised by the community. However, the level of detail varied in the decisions we reviewed, and it was not always clear how conditions placed on a development would resolve identified issues. Similarly, the reports did not clearly address the matters under section 79C of the EP&A Act. Reporting this would further improve the transparency of its decisions, and clearly demonstrate compliance with the EP&A Act.

While we did not find any issues that would make us question the integrity or independence of Commissioners, there remains a perception among some stakeholders that the Commission is not impartial. Some of these concerns are within the Commission's control to fix, such as allowing individual speakers at public meetings extra time to discuss their issues, therefore avoiding perceptions of bias.

Other perceptions, such as the Commission being part of the Department and not an independent decision making authority, are outside the Commission's immediate control. For example, the Commission receives applications at the end of the assessment process, after the Department has prepared an assessment report recommending whether the application should be approved. This means there are effectively two reports on an application; the Department's assessment report and the Commission's report on its decision. However, there is only one decision-maker: the Commission. This may cause community confusion about the roles of the Department and the Commission in the decision-making process. Clearer separation of their roles in assessing applications and preparing reports is needed.

To minimise the perception that the Commission is simply 'rubber stamping' the Department's recommendations, assessment reports should not recommend whether or not a project be approved. Instead, they should provide the Department's views on whether a project meets relevant legislative and policy requirements. The Commission should also be involved earlier in the process, so it can establish key facts and identify relevant issues sooner. It should request that the Department's assessment report covers matters Commissioners consider particularly important when assessing projects under section 79C. Earlier referral of applications should also help the Commission to plan its work in assessing applications, and may reduce the time taken to reach a decision.

Unless these issues are addressed, stakeholders will continue to believe the Commission does not act in a transparent and impartial manner, which could erode public confidence in the Commission.

## Recommendations

The Planning Assessment Commission should:

By July 2017:

1. 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
2. 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
3. improve the public's involvement in 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
  - b) allowing the chair of decision-making panels discretion to extend the time allowed for individual speakers beyond five minutes
4. continue to improve how it communicates the reasons for its decisions to the public by:
  - a) including a summary in its reports of the issues raised during the consultation process and how they were considered by the Commission
  - b) clearly outlining in its reports how any conditions placed on a development will address the issues raised
  - c) detailing in its reports how section 79C of the EP&A Act has been addressed
  - d) issuing fact sheets to accompany its reports for all decisions where public meetings were held
5. work with the Department of Planning and Environment to:
  - a) 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
  - b) 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.

# Introduction

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## The Planning Assessment Commission

The Planning Assessment Commission (the Commission) is a planning authority established in 2008 under the *Environmental Planning and Assessment Act 1979* (the EP&A Act). One of its functions is to make decisions on major development applications.

The Commission is independent of the Department of Planning and Environment (the Department) and the Minister for Planning. This means its decisions are not subject to the direction or control of the Department or the Minister.

The Department refers applications for major development to the Commission, including state significant development and infrastructure applications. These projects are generally initiated by the private sector. Applications are referred to the Commission when one or more of the following criteria are met:

- more than 25 objections are received about the proposal
- the local council objects to the proposal
- the applicant has donated \$1,000 or more to a political party or member of parliament.

These applications are often controversial and may attract a high level of public interest. Of the 29 development applications the Commission received in 2015–16, almost 40 per cent were in the mining and energy sectors, and another 40 per cent related to urban development.

Section 79C of the EP&A Act outlines the matters the Commission must consider when making decisions about major development applications. These include:

- any relevant environmental and planning instruments
- likely environmental, social and economic impacts of the development
- suitability of the site for the development
- submissions received about the application
- the public interest.

In addition to making decisions about major development applications, the Commission also reviews major developments as part of the planning process, and provides independent expert advice to the government on planning and development matters. Since the Commission's inception, it has provided advice on 76 matters, conducted 39 reviews, and made 444 decisions on development applications.

## Process for approving major development applications

The Commission is one of three bodies that have a role in the planning and approval process for major development applications in New South Wales, as seen in Exhibit 1. The other two bodies are the Department of Planning and Environment, and the Land and Environment Court.

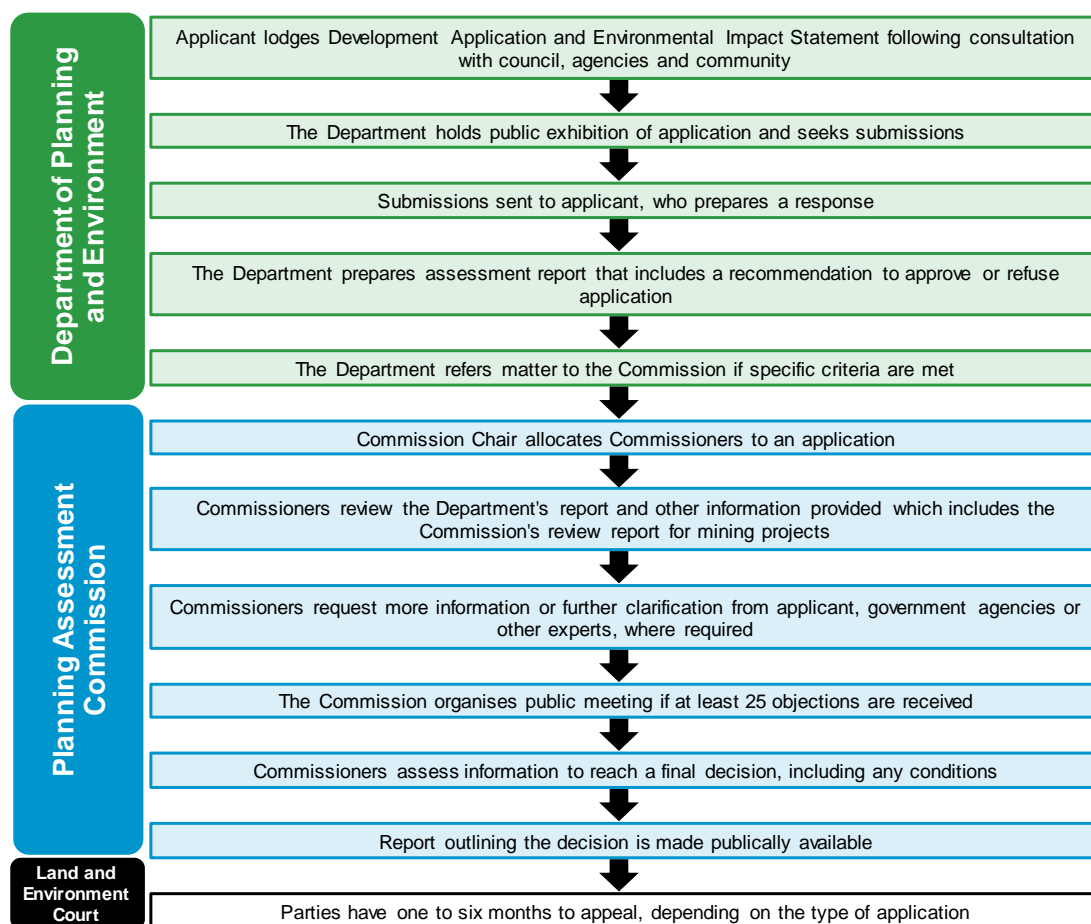
The Department determines the outcomes of major development applications. When an application meets one of the criteria listed above, it refers these to the Commission to make the decision. In certain circumstances, the Land and Environment Court hears appeals against decisions made by either the Department or the Commission.

A Memorandum of Understanding between the Commission and the Department sets out timeframes the Commission must meet when making a decision, specifically:

- two weeks where no stakeholder meetings are required
- three weeks where stakeholder meetings are required
- six weeks when a public meeting is required.



## Exhibit 1: Approving major development applications



Source: NSW Audit Office research 2016.

## About the audit

This audit assessed the extent to which the Planning Assessment Commission's decisions on major development applications are made in a consistent and transparent manner.

As part of the audit, we:

- reviewed relevant Commission policies and procedures
- interviewed Commission staff
- interviewed 13 of the 22 Commissioners
- reviewed nine recent decisions on major development applications
- attended two public hearings
- interviewed a range of stakeholders, including NSW Government agencies, local councils, peak industry associations, environmental groups, and community action groups
- undertook a jurisdictional comparison of the major development application approval processes in Australian states and territories (Appendix 2 details the results of this research).

See Appendix 3 for further information on the audit scope and criteria.

For the purpose of this report, we have divided the decision-making process into three phases:

- assigning Commissioners to applications
- gathering relevant information
- making the decision.



# Key Findings

## 1. Assigning Commissioners to applications

We found that Commissioners had a good understanding of the decision-making process and of the probity requirements of the Commission. They receive guidance and training on key decision-making steps when appointed and throughout their term.

The Commission also ensures decisions are made by people with appropriate expertise and are free from bias. Commissioners are excluded from matters where there is a conflict of interest. While probity policies and procedures are on the Commission's website for the public to view, the Commissioners' conflict of interest declarations are not. Providing a summary of this information on its website for each development application would further improve transparency around conflicts of interest.

### Recommendation

The 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.

### 1.1 Supporting new Commissioners

#### Guidance on the decision-making process is available for new Commissioners

The Commission provides training and guidance to newly appointed Commissioners, which continues throughout a Commissioner's term of appointment. This includes:

- a starter pack at induction for new Commissioners
- new Commissioners being buddied with more experienced Commissioners
- quarterly meetings or information sessions for Commissioners.

This process appears to function well, as the Commissioners we interviewed had a sound knowledge of the decision-making process and what was required of the role.

At induction, the Commission Chair, together with some of the more experienced Commissioners, speak to newly appointed Commissioners on what is expected of them and key steps in the process. This includes applying the EP&A Act, timeframes set by government, and the importance of their independent status.

New Commissioners also receive a starter pack from the Commission at induction. This provides mostly administrative information and guidance on key probity requirements such as the code of conduct. New Commissioners are also assigned to work on applications with experienced Commissioners for the first few months of their appointment. This mentoring role is important training for newly appointed Commissioners on the decision-making process.

The Commission also holds quarterly meetings for all Commissioners. At these meetings, Commissioners share knowledge in their areas of expertise and information on new practices. Senior Departmental staff are also invited to speak on new government policies and guidelines to keep Commissioners up-to-date.

#### Probity policies and procedures are in place

The Commission has improved its probity measures over the last two years, and these continue to be refined. These changes followed complaints to the NSW Ombudsman in 2014 about the Commission's lack of transparency regarding its meetings with applicants, and perceived conflicts of interest.

The Commission has probity policies and procedures in place for Commissioners and its staff, which are available on the Commission's website. These include:

- a Code of Conduct that covers conflicts of interest, gifts and benefits, confidentiality of information and secondary employment
- a conflict of interest policy
- a policy on personal interests
- a pecuniary interest register.

Commissioners we spoke to identified conflicts of interest as the greatest probity risk. The conflict of interest policy includes a decision matrix to help Commissioners determine if they should be involved in a decision should a conflict arise.

#### Exhibit 2: Extract of the Commission's Matrix of Possible Conflicts of Interest

Conflict	Nature of conflict	Exclusion timeframe
<b>Ownership in a company,</b> including partial or joint, or any ownership held by partner/spouse/family trust	Currently or previously held in an applicant, or currently held in a consultancy, that has worked on the matter	Total
	Previously held in a consultancy that has worked on the matter	Two years
<b>Government-appointed boards and committees,</b> including mine community consultative committees	Membership currently held and group interest relates to the matter	Total
	Membership previously held and group interest relates to the matter	Two years
<b>Consultancy work,</b> including full-time or part-time employment, or casual or contract work	Worked directly on the matter	Total
	Worked indirectly on the matter (e.g. gave technical advice on certain aspects)	Two years
	Worked at a consultancy during period of the matter, but no involvement	Two years
	Worked on another matter owned by the same applicant, or involving the same site	Two years

Source: Policy Guide for Conflict of Interest, Planning Assessment Commission, 2016.

The Commission requires all Commissioners to declare potential, perceived and actual conflicts of interest. When Commissioners are appointed, they must also declare all business interests, sources of income, memberships and personal or business relationships that have, or could be perceived as having, an effect on their duties and responsibilities.

Commissioners update their conflict of interest status annually, and must declare any changes in circumstances as they arise. This is good practice which minimises the risk of a conflict of interest occurring when Commissioners are working on an application.

Even though the policies are on the Commission's website for the public to view, the Commissioner's declarations are not. The Commission has advised that the public can ask to view these at any time at the Commission's Sydney office. To improve transparency, the Commission should publish a summary of Commissioners' conflict of interest declarations for each development application referred to it for determination, together with information on how any conflicts were handled.

## 1.2 Assigning Commissioners to decisions

### Commissioners have a broad range of skills and expertise

The Minister for Planning appoints Commissioners following a recruitment process managed by the Department. The Commission advised that, in the most recent round of appointments, the Department consulted it for advice on the skills required for incoming Commissioners. This ensures that the pool of Commissioners has a suitable mix of skills.

The Commission Chairperson assigns Commissioners to an application after considering the nature of the application, expertise required, Commissioners' availability and skills, and whether they have perceived, potential or actual conflicts of interest.

When assigning a Commissioner, the Commission advised that it aims to ensure that the chair of a decision-making panel has expertise in the subject area. We reviewed nine recent decisions and found that the chair's background and experience broadly matched the experience needed. We interviewed stakeholders for two decisions including the applicant, the local council, and community groups. All were of the view that the Commissioners had the skills and expertise to make decisions.

### Conflicts of interest exclude Commissioners from decisions

As discussed previously, one of the key challenges for the Commission is ensuring conflicts of interest are properly managed. This is even more important in an environment where Commissioners tasked with decision-making roles may have previously worked in the industry being reviewed.

All Commissioners we interviewed advised that the Commission contacted them to ask if they were involved in, knew of, or had contact with, any of the key parties in an application, before they were allocated to a panel. Similarly, when potential conflicts arise during the decision-making process, Commissioners are required to advise the Commission Chair. The Commission Chair decides whether they remain on a panel or are replaced.

In our review of nine cases, we did not identify any actual conflicts of interest. For two cases, there was a perceived conflict of interest. We found that the Commission managed these conflicts appropriately. In both cases, the Commissioner remained on the panel.

#### Exhibit 3: Management of conflicts of interest

In one case, a perceived conflict arose during a public meeting. A speaker had approached the Commissioner before the public meeting. He introduced himself as a former husband of someone who had worked with the Commissioner more than 20 years earlier. The Commissioner had not socialised with this person since that time. The Commissioner wrote to the Commission Chair immediately after the meeting to avoid any perception of conflict of interest. A check against the matrix in Exhibit 2 shows that it was appropriate for the Commissioner to remain on the panel.

In the other case, a Commissioner assigned to a coal mining application was the chair of a Community Consultative Committee for another coal mining project. A perceived conflict could arise if stakeholders think the Commissioner is for or against coal mining. The conflict of interest matrix does not refer to this specific situation. However, the coal mines were located in different areas of New South Wales and owned by different companies. Therefore, the Commission Chair decided that the Commissioner could remain on the panel.

Source: Audit Office file review.

### Documenting how Commissioners are assigned to applications could be improved

The Commission could improve its record keeping of the allocation process. This would reduce the reputational risk to the Commission, especially around conflicts of interest. For example, we found that the conflict of interest discussion at the start of each project is not consistently documented for each application. During the audit, we spoke with the Commission about addressing this issue. It advised that it will start capturing this information in the letter confirming a Commissioner's allocation to an application.

## 2. Gathering relevant information

We found that the Commission accesses all information needed to make a decision, and consults relevant parties as required, for each matter. The Commission receives the Department's assessment report, the application and public submissions. It also collects additional information during the process from the community, applicants, government agencies, local councils and independent experts as needed.

The main way the Commission consults the public is through public meetings, where new issues or perspectives are often raised. Although viewed by stakeholders and Commissioners as a valuable part of the process, there are some aspects that could be improved. Many stakeholders we spoke to thought the five minutes allowed for individual speakers was insufficient. Also, although the Commission writes to each person who made a submission on an application, it relies on its website and newspaper advertisements to notify the general public of its meetings. This could limit community access to this important consultation opportunity.

Community stakeholders we spoke to also raised concerns about a lack of equity of access to the Commission. Many believe the decision-making process favours the applicant and that public consultation is not genuine. Our review of cases did not find evidence that Commissioners spent more time with the applicants than with other stakeholders.

The Commission alone does not have the ability to address some community concerns. For example, one issue we identified is that the Commission becomes involved towards the end of the process, after the Department has prepared an assessment report with a recommendation about whether to approve the application. This means there are effectively two reports on an application; the Department's assessment report and the Commission's report on its decision. Having both reports may cause community confusion about the roles of the Department and the Commission in the decision-making process. The Department's assessment report should state whether an application meets relevant legislative and policy requirements, but not recommend whether or not a development should be approved.

The Commission should also be involved earlier in the process, so it can establish key facts and identify relevant issues sooner. This would help minimise the perception that the Department has already made the decision and that the Commission is only involved at the end of the process. It should also help the Commission to plan its work in assessing applications, and may reduce the time taken to reach a decision.

### Recommendations

The 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
  - allowing the chair of decision-making panels discretion to extend the time allowed for individual speakers beyond five minutes.
- work with the Department to:
  - develop an agreed approach to presenting the Department's views in its assessment reports on whether the project meets the relevant legislative and policy requirements, reflecting the Commission's status as an independent decision-maker
  - 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.

## 2.1 Information from the Department

### The Department's material is the initial source of information for review

The Department provides the initial information on an application. This includes:

- the applicant's submission
- the environmental impact statement
- public submissions received during the public exhibition stage
- other relevant documentation, such as expert assessments
- the Department's assessment report.

Each Commissioner is required to review the documentation provided and identify any issues relevant to their assessment of the application under section 79C of the EP&A Act. Commissioners regularly request additional information from the Department. Commissioners advised that Departmental staff always provide information and respond to further questions when needed. This is supported by our review of nine cases where we found evidence of the Commission liaising with the Department during the decision-making process.

## 2.2 Information from stakeholders and experts

### Commissioners draw on a range of information sources to make a decision

Commissioners have the discretion to seek additional information if they believe the initial information provided by the Department is not sufficient or comprehensive. Where further information is required, the Commission seeks this from a range of sources including:

- the applicant
- government agencies
- local councils
- community groups
- subject matter experts or specialist consultants.

We found many examples of Commissioners' consulting applicants, local councils, affected people (e.g. community groups) and relevant government agencies. Additional information was requested in six of the nine cases we reviewed. These were larger, more controversial applications, which also included public consultation.

The Commission also draws on external experts to provide further information or clarify issues. Often these experts are from other government agencies, for example the Department, the Environment Protection Authority or the Office of Environment and Heritage.

The Commission engages consultants when needed. Commission staff advised that there were no impediments to engaging consultants other than time pressures. The Commission has engaged consultants more frequently in recent years. This has included subject matter experts and legal advisors.

Commissioners may also conduct site visits on larger projects. They view the site and surrounding area, with or without the applicant, to gain a better understanding of the issues relevant to the proposed development.

### Commissioners can be required to make decisions where policy is unclear

Overall, Commissioners stated that they were able to access information when needed. The only information gap they identified was a lack of policy in some areas, such as voids left by open cut mines, or the cumulative impacts of developments. When this occurs, there is a risk that Commissioners may reach different conclusions on an issue. The Commission aims to address this risk by undertaking more research or consulting experts to gain an understanding of an issue. In one of the cases we reviewed, Commissioners researched voids left by open cut mines. The Commission's report on this case noted that there was not yet a government position on mine voids. The Commission also included a condition requiring the applicant to review its rehabilitation plans to reflect any future policy on this issue.

Ultimately, Commissioners are required to make judgements within existing laws, policies and guidelines. The Commission advises that, in addition to noting any policy gaps in its reports, it also raises these issues in correspondence to the Department and Minister for Planning.

### Timeframes for reviewing information and making a decision are tight

Commissioners reported that the timeframes for making a decision were tight, particularly for more complex applications involving a public meeting and significant consultation. In 2015–16, the Commission met the target for one third of its decisions that required a public meeting. In our case review, none of the more complex cases met the six-week target timeframe.

There were valid reasons for delays in some cases that were outside the Commission's control, for example:

- there was a change in government policy
- the public meeting was pushed back due to the Christmas period
- there were two applicants for a project, and approval of one application depended on settling issues for the other
- more information from the applicant or government agencies was required.

The Commission advised that it takes up to four weeks to hold a public meeting, as it gives the public two to three weeks' notice of a meeting. This is consistent with its public meeting guidelines and comments made in Land and Environment Court decisions about the Commission notifying the public of meetings.

This means that Commissioners may have only up to two weeks to consider a matter and prepare a report. The Commission advised that it must give due consideration to a project and public comments which means that meeting the timeframe is not always possible. To overcome this, the Commission is allowed to 'stop-the-clock' during its assessment process where additional information or further technical advice is required.

The table below shows a breakdown of time spent on decisions in the cases we reviewed. It includes 'stop the clock' days which refers to the time spent waiting for information or advice from the applicant, Department, or other government agencies.

#### Exhibit 4: Timeframe targets and breakdown of days taken in cases reviewed

Case number	1	2	3	4	5	6	7	8	9
Target days	42	42	42	42	42	42	14	14	14
Total elapsed days	190	162	113	108	67	45	19	3	2
• 'stop-the-clock' days	131	71	40	42	--	1	--	--	--
• days spent by the PAC to make a decision (net days)	59	91	73	66	67	44	19	3	2

Source: Audit Office file review.

Our analysis shows that, even with the 'stop the clock' provision, the Commission did not meet the target timeframe in seven out of the nine matters we reviewed. Earlier notification of matters to the Commission may help it to better plan its work and give it more time to organise public meetings. We discuss this further in section 2.3.

## 2.3 Public consultation

### Public meetings are used to consult the community

The Commission's main means of consulting the public is through public meetings. These allow the community to raise concerns with Commissioners about the development before the Commission makes a decision. This includes any concerns about the Department's assessment report and recommended consent conditions.



Public meetings are generally held if 25 or more public submissions are received. They take place in the local community where the project is proposed. Commissioners consider public meetings to be a valuable part of the decision-making process. They provide an opportunity for additional issues to be identified or seen from different perspectives, and it is common for new information and issues to arise.

We found that if circumstances change during the decision-making process, the Commission will consult the public again to seek further input. The case study below demonstrates the extent of consultation undertaken by the Commission in one case we reviewed.

#### **Exhibit 5: Consultation with stakeholders and the community**

We reviewed a case that involved an extension of a mining operation. We found that the Commission consulted extensively with stakeholders and the community throughout the decision-making process. This included meetings or discussions with:

- the applicant
- the local council
- a community organisation representing a nearby town
- the Environment Protection Authority
- NSW Trade and Investment (now called the NSW Department of Industry, Skills and Regional Development)
- Roads and Maritime Services.

It also held a public meeting in a community venue near the development site at which over 100 people spoke about their views on the development. The Commission also sought additional written submissions from members of the community who had spoken at the public meeting when a policy changed during the process.

Source: Audit Office review of PAC files.

#### **Standard documentation and processes are in place for public meetings**

The Commission advises the public that a meeting will be held by putting a notice on its website. It also advises the local community by placing a notice in the local newspaper. We found that the Commission has good processes in place to document and conduct public meetings:

- it notifies people who make submissions during the public exhibition stage
- there is a standard format for agendas
- there is a standard opening delivered by the panel chair covering the Commission's role, the purpose of the meeting, and the ground rules for attendees
- speakers and Commissioners have defined roles and timeframes
- a summary of issues raised at public meetings is publicly available.

At public meetings, organisations are allowed 15 minutes to speak and individuals are allowed five minutes. These timeframes were put in place to address concerns raised by some stakeholders that some people had more time to speak than others. It aims to address concerns about fairness and equity by allocating standard times for all speakers.

#### **Time allowed for individual speakers viewed as too short**

Stakeholders we spoke to considered 15 minutes to be adequate for organisations. However, many did not think that the five minutes allocated for individual speakers was long enough.

We observed two public meetings and found that many individual presenters struggled to meet the allocated timeframe. Speakers with technical presentations that included complex information were sometimes unable to finish their presentation. Others spent some of their allocated time responding to earlier speakers or previous decisions, and ran over time.



Commissioners advised that all speakers have the opportunity to provide additional information in writing to supplement their presentation, for up to a week after the meeting.

We believe more can be done in this area to improve the information obtained from public meetings and also ensure that the public feels it is being heard. This includes giving Commissioners the flexibility to extend the timeframe for individuals, where they think it is appropriate.

## **2.4 Stakeholder views of consultation**

### **Stakeholders value public meetings but notification processes could be improved**

Stakeholders we interviewed were supportive of public meetings, but thought some aspects could be improved. Some criticisms of the process were:

- not being notified of meetings
- meetings being held at times that were inaccessible for some members of the public
- meetings being held outside the relevant local government area.

The Commission advises that it has investigated these criticisms when they have been brought to its attention and has put in place measures to address community concerns. For example, it ensures meetings are held close to the affected community and it accepts written submissions from the public who cannot attend the meetings.

The one area where the Commission could improve is its notification processes to ensure it reaches as many interested parties as possible. The Commission advised that newspaper advertisements, particularly in metropolitan areas, are not always the most effective way to advise the community of public meetings. Likewise, notifying all parties who made previous submissions about a development can be difficult. The Commission should identify additional methods, beyond advertising in newspapers and on its website, to notify the community of public meetings. This may include regional radio, social media or the local council's website.

### **Stakeholders feel the consultation process favours the applicant**

Many stakeholders, particularly those who disagree with the Commission's decisions, said that public meetings made no difference to the decision and were held by the Commission to give the impression of consultation. That is, it is a tick-a-box exercise held too late in the planning process.

Some community members felt that the consultation process favours applicants. In particular, they believed that applicants had more time with the Commission than they were granted. This includes Commissioners attending the site with the applicant.

Our review of cases did not find any evidence that the Commission spent more time with applicants than with other stakeholders. The Commission advised that meetings with applicants are generally for half a day and rarely longer, except in the most complex of proposals to ensure it gathers sufficient information about a development.

### **Stakeholders perceive the Commission to lack independence**

While we did not find any issues that would make us question the integrity of the PAC, many stakeholders we interviewed perceived the Commission to be part of the Department, and not an independent decision-making authority. This was highlighted in a few of our interviews and in the public meetings we attended, where people regularly referred to the Commission as 'the Department'. We identified a number of factors that could reinforce this view including:

- the Department's role in managing the recruitment process for Commissioners
- that applications are referred to the Commission by the Department
- that the Commission becomes involved at the end of a lengthy process managed by the Department.

Some of these factors are beyond the Commission's control because they are required by planning legislation or Ministerial delegation. However, there may still be things it can do to improve stakeholder's perceptions about its role as an independent decision-making authority.

One key issue is that the Commission receives an application at the final stage of the development process, after the Department has prepared its assessment report recommending whether the application should be approved and any conditions to be imposed. This means there are effectively two reports on an application; the Department's assessment report and the Commission's report on its decision. However, there is only one decision-maker: the Commission. Having two reports may cause community confusion about the roles of the Department and the Commission in the decision-making process. It also reinforces perceptions that the Commission 'rubber-stamps' the Department's recommendations.

There is no legislative requirement for the Department to prepare an assessment report. However, the model whereby an expert body prepares an assessment for the decision-maker is common in NSW and other jurisdictions (see Appendix 2). When the Commission was established, the government envisaged that the Department would continue to undertake assessments of projects. The Commission also advised that the Department's assessment reports help it to perform its role efficiently, especially given the tight timeframes it is required to meet.

To minimise the perception that the Commission is acting on the Department's recommendations, the assessment reports should not recommend whether or not a project be approved. Instead, they should provide the Department's views on whether the project meets relevant legislative and policy requirements.

The Commission should also be involved at an earlier stage in the process to ensure that the Department's assessment report covers matters Commissioners consider particularly important when assessing projects under section 79C of the EP&A Act. In practice, this would mean earlier referral of applications to the Commission once one of the referral criteria has been met. Giving the Commission earlier access to the application and any submissions, would help it establish key facts and identify relevant issues sooner in the process. This would help minimise the perception that the Department has already made the decision and that the Commission is only involved at the end of the process. It would also help the Commission to better organise and plan its work in assessing applications, and may reduce the time taken to reach a decision.

### 3. Making the decision

We found that there is a standard approach taken by Commissioners to make decisions on major development applications. This includes gathering and reviewing relevant information, consulting the public, the Department or other experts, and making a decision on an application. As the consent authority, the Commission is also required to consider the matters in section 79C of the EP&A Act. However, it was not able to show how it met this requirement in every decision we reviewed.

The Commission communicates every decision it makes to the public and stakeholders through its report. In the more complex matters we reviewed, the Commission addressed issues raised by the community. However, the level of detail varied and it was not always clear how conditions placed on a development would resolve these issues or how it addressed section 79C of the EP&A Act. An encouraging practice has been the recent use of fact sheets for some of the more complex or high public-interest matters, which more clearly explain the Commission's decision to the public.

#### Recommendations

The 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
- 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
  - clearly outlining in its reports how any conditions placed on a development will address the issues raised
  - detailing in its reports how section 79C of the EP&A Act has been addressed
  - issuing fact sheets to accompany its reports for all decisions where public meetings were held.

#### 3.1 Decision-making framework

##### A framework to assist Commissioners make decisions is in place

Although not clearly outlined in one document, the Commission has a framework in place to assist Commissioners make decisions. It is based on the EP&A Act, which identifies what they are to consider, together with various policies and procedures. Commissioners undertake the following key steps:

- review information provided by the Department
- request more information/further clarification as needed
- conduct a public meeting to obtain community perspectives where required
- collect further information from government agencies or other experts as needed
- debrief, assess and debate all information gathered to reach a decision
- discuss any conditions with the Department to ensure they are workable
- reach a consensus opinion and issue a public report outlining the decision.

Because each project is different in size, scope and complexity, Commissioners modify the steps to suit each individual project. For example, for an application involving a small modification to a car park that received no objections, there may be less need to request information from the Department or hold a public meeting.

It was clear from our meetings with Commissioners and our case review, that Commissioners followed the same steps to make a decision. Commissioners described the process as straight forward and advised that the Commission staff provided excellent support.

### Documentation on how section 79C is considered is unclear

Section 79C of the EP&A Act outlines the matters the Commission must consider when making decisions about a development application. The Commission needs to be able to show that it considered these matters for each decision. It may give each matter a different emphasis or weighting, depending on its relevance to the proposed development.

The NSW Ombudsman has issued Good Conduct and Administrative Practice guidelines. These provide guidance on the principles of administrative decision-making. Some of these principles are:

- considering the relevant factors only
- giving affected parties the right to be heard
- not having a personal interest in the outcome
- acting only on the basis of sound evidence
- giving reasons for decisions
- considering relevant material and information.

Although the Commission applies these principles, in our review of cases it was unclear how it routinely considered the relevant factors, that is, the matters in section 79C of the EP&A Act. We found evidence in six of the nine cases we reviewed that some elements of section 79C were considered. These were discussed in the Commission's reports or were recorded in meeting notes. Of these six cases, the degree to which the Commission considered all matters under section 79C varied considerably. The larger, more complex applications were more likely to address these considerations. For example, for a large mining project, it was clear in the report how environmental, social and economic impacts were considered as well as other planning instruments.

On the other hand, for a less complex urban development application we reviewed, it was unclear how most of the matters in section 79C were considered by the Commission.

The Commission advised that the Department's assessment report covers section 79C including environmental, economic and social impacts of the development. However, as the Commission is the consent authority, it cannot rely on another agency to show how an application addresses this provision. It must demonstrate this itself, including its views on others' considerations of section 79C.

The Commission needs to keep better records of how it considers the relevant aspects of section 79C, and include these in its reports on decisions. Section 3.2 discusses this further.

### Documentation of the decision-making process has improved

Although there was limited documentation of how section 79C is considered, we found that record keeping has improved in other areas. The Commission staff and stakeholders we interviewed agreed that documentation of the process has improved in the last two years, especially following the review by the NSW Ombudsman. For example, there is now a template to ensure consistency in recording meetings with applicants and stakeholders.

As part our case review, we found documented evidence of:

- correspondence (letters, emails) to/from the applicant and stakeholders
- arrangements to set up the public meetings
- comments received via public meetings or other submissions
- meetings with applicants and other stakeholders
- emails between Commissioners and Commission staff recording changes to the report
- the report and draft iterations.

## 3.2 Preparing the report

### Report is drafted by Commission staff with input from Commissioners

The Commission prepares a report for all development applications. The report outlines the Commission's decision on the development application. It is the main means by which it communicates its decision to the public.

Commission staff draft the report based on Commissioners' guidance on the issues to include. Commissioners review the report to make sure these issues are appropriately covered.

### It is sometimes unclear how issues raised through consultation are addressed

In many of the case files we reviewed, the Commission addressed key issues identified by stakeholders. This was particularly the case for larger applications that involved public meetings, where we found evidence that the key issues raised were discussed in the report.

However, the level of detail provided varied. For example, some issues were discussed at length, whereas others noted only that the Commissioners agreed with another agency's assessment. Similarly, it was not always clear how issues raised as part of the assessment process would be resolved by the development conditions.

The Commission advised that its reports vary according to the complexity of the application and any prior decisions. They are not stand-alone documents, but draw on the material already in the public domain.

We believe the Commission should address, or at least acknowledge, issues raised by the public. This includes explaining why concerns that were raised may not have been addressed as they are not relevant to the application being assessed.

### Reasons for decisions generally provided but more detail on section 79C is needed

In our case review we found that the Commission generally provided reasons for its decisions, especially for the more complex applications. This included outlining any environmental or economic reasons that underpin a decision. However, none of the reports we reviewed clearly addressed each matter under section 79C of the EP&A Act. More clearly outlining this would further improve the transparency of the Commission's decisions.

The Commission advised that it is standardising the report format, for example, one report structure for decisions with public meetings, and another for less complex applications. This may help address the issues above.

## 3.3 Publishing the report

### The report is publicly available

Given the high level of public interest in applications referred to the Commission, it is important that its decisions are available to the public.

We found that all reports outlining the Commission's decisions are available on its website. It also provides a link to the Department's website, which includes other relevant planning documentation about an application.

The Commission's website also includes up-to-date information on the status of all applications it has received for assessment. Publishing this information, along with its final decisions, improves the transparency of the Commission's decision-making processes.

### **New fact sheets help communicate the Commission's decision to the public**

Fact sheets are now prepared for some decisions. Fact sheets distil the contents of the reports. They are easy to understand and are generally prepared for larger, more complex applications that are subject to a higher degree of public interest.

Fact sheets have improved the communication and transparency of the Commission's decision-making process. There is currently no trigger for using fact sheets and these are prepared at the Commission's discretion. As a minimum, the Commission should prepare these for all decisions where public meetings are held.

# Appendices

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## Appendix 1: Response from the Planning Assessment Commission



Margaret Crawford  
Auditor-General of NSW  
Audit Office of NSW  
GPO Box 12  
SYDNEY NSW 2001

17 January 2017

Dear Ms Crawford

### RESPONSE FROM THE PLANNING ASSESSMENT COMMISSION

The Planning Assessment Commission welcomes the audit report and the thorough and professional way the NSW Auditor-General's audit team conducted themselves during the audit process.

The audit finds that the Commission is made up of expert and well trained members who have the capabilities and commitment to take good quality, high level planning decisions on complex and challenging proposals, and who do so independently, irrespective of the level of influence and external pressure from the many interested parties involved.

The Commission appreciates the audit's recognition that it has sound processes in place to ensure its decisions are impartial and transparent to the community, and that it has in place best practice probity and conflict of interest arrangements, which are subject to continuing improvement initiatives. The Commission agrees to recommendation 1 to publish on its website summary conflict of interest declarations specific to development applications and how any conflicts have been handled.

The audit found that the Commission accesses all relevant information necessary to make its decisions and that it consults with relevant parties as required.

As the consent authority, the Commission is required to consider the matters raised in section 79C of the Environmental Planning and Assessment Act 1979, and it does so. The Commission agrees that it could document this practice more explicitly in its reports, and supports recommendation 2.

The Commission values public consultation enormously. It actively pursues the public interest and areas of community concern. However, the Commission accepts that it is not always possible to satisfy everyone through its public consultation arrangements, and that its decisions may not be welcomed by some members of the public or development proponents. The Commission agrees to the recommendation 3 (a) and (b) enhancements to its consultation processes, although it notes that standard speaking times have been put in place by the Commission in response to concerns from members of the public and the Ombudsman that it was unfair to allow some speakers more speaking time than others.

The Commission has a simple and effective standard process that the audit agrees is applied in making its decisions.

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The Commission's determination reports can range in length from 2 pages to well over 100 pages and are commonly 30-60 pages long, reflecting the level of complexity and controversy associated with individual development applications. The Commission makes no apology for this because its decisions must cover all the relevant considerations, while also telling a clear story about why a particular decision is taken. However, it acknowledges that this can be challenging where several Departmental assessment reports and Commission review and determination reports are involved, which mean that the relevant considerations may be covered in different reports and changes to conditions may not always be explicitly written into all reports.

The audit points to the success of the Commission's Fact Sheets in presenting to the public the reasoning behind the Commission's more complex and controversial decisions, and makes a number of suggestions for enhancements to its reports. The Commission trialled a new standard report format in 2016 and agrees to the further enhancements proposed in recommendation 4.

The Commission also agrees to recommendation 5, which could relieve public concerns about the Commission's independence and provide another mechanism to improve the timeliness of Commission decisions over more complex matters.

The Government has announced its intention to make a number of changes to Planning Assessment Commission arrangements as part of its proposed amendments to the Environmental Planning and Assessment Act 1979. These proposed changes include:

- renaming it as the "Independent Planning Commission";
- increasing community engagement and involving the Commission earlier in the planning process for mining proposals; and
- providing a statement of reasons as part of the Commission's determination reports.

If passed through the Parliament, these amendments will involve the Commission consulting members of the public before the Department's final mining assessment report is prepared and enable them to question development proponents and the Department either directly or through the Commission at its public hearings, consistent with recommendation 5. They will also reinforce the Commission's independence, consistent with recommendation 5; improve the level of community involvement in public meetings, consistent with recommendation 3; and increase the clarity of the Commission's determination reports, consistent with recommendation 4.

Kind regards,



Lynelle Briggs AO  
Chair  
Planning Assessment Commission

## Appendix 2: Other jurisdictions' approaches to assessing major development applications

State	New South Wales	Victoria	Queensland	South Australia	Western Australia	Tasmania	Northern Territory	Australian Capital Territory
Relevant Act	<i>Environmental Planning and Assessment Act 1979</i>	<i>Planning and Environment Act 1987</i>	<i>The Planning Act 2016</i> and the <i>Sustainable Planning Act 2009</i>	<i>The South Australian Development Act 1993</i>	<i>Planning and Development Act 2005</i>	<i>State Policies and Projects Act 1993, Land use Planning and Approvals Act 1993</i>	<i>The Planning Act</i>	<i>The Planning and Development Act 2007</i>
1. How are development proposals/applications declared to be 'state significant' or similar and 'called in' by the relevant planning minister?	By the making of a State Environmental Planning Policy under the <i>Environmental Planning and Assessment Act 1979</i> or the making of an order by the Planning Minister.	The Planning Minister can direct that applications involving a major issue of policy be referred to him for determination under the <i>Planning and Environment Act 1987</i> . Also if requested by a local council.	The Planning Minister can call in such applications having identified state interests as defined in the legislation that warrant their involvement.	The Planning Minister can gazette a development of major significance if the proposal is of major economic, social or environmental importance and the declaration is appropriate or necessary for the proper assessment of the proposal.	The Governor can declare certain development applications to be decided by a Development Assessment Panel. Minister may call in matters of 'State or regional importance' subject to review by State Administrative Tribunal (SAT).	The Planning Minister can declare applications to be of regional significance. The State Governor can declare applications to be of state significance.	Development applications for land uses of significance to strategic planning or the natural environment.	The Planning Minister can call in applications that raise issues of major policy or involve significant public benefit.
2. Who is the consent authority, taking into account any delegations, for significant or major development applications ('the applications')?	The Planning Minister for state significant development, or can be delegated to the NSW Planning Assessment Commission or the Secretary of the NSW Department of Planning and Environment or to a public authority.	The Planning Minister	The Planning Minister	The South Australian Governor for developments of major importance. The Development Assessment Commission for less significant developments.	The Development Assessment Panel (DAP). In cases where development is called in under s.246 of the Planning and Development Act, the Minister determines the application for review.	The Development Assessment Panel or the State Governor	The Planning Minister or the Development Consent Authority	The Planning Minister
3. Which authority are the applications lodged with?	The Planning Minister/the Department	The local planning authority (referred to as 'responsible authority'). This could be a Council or the Minister.	Applications must already have been lodged with the local planning authority prior to consideration for being called in.	Once declared, an application is lodged with the Minister, through the Department of Planning, Transport and Infrastructure, who then refers it to the Development Assessment Commission.	The local planning authority - the council	The Development Assessment Panel or the Tasmanian Planning Commission	Department of Infrastructure, Planning and Logistics	The Planning and Land Authority
4. Are the development applications referred to other authorities and placed on public exhibition?	Yes	Yes	Applications usually go through referral and public notification during the local planning authority's assessment, prior to being 'called in'. The Minister then determines which stage of the development assessment process their assessment commences from (typically at the decision stage).	Yes	Development applications are referred to other authorities when, those authorities are likely to be affected by the application. Not all development applications need to be advertised.	Yes	Yes	Yes
5. Who is responsible for preparing the reports (initial reports) that examine the applications in accordance with any statutory requirements and taking into account the outcomes of the consultation and advertising processes?	The Department	The responsible authority or a panel	Development Assessment Projects Team, Development Assessment Division, Planning Group	The Development Assessment Commission	The council. If the development falls within a region planning scheme reserve, it is exempt from local government approval. WA Planning Commission would be the authority that is responsible for providing a report to the DAP.	The Development Assessment Panel or the Tasmanian Planning Commission	Department of Infrastructure, Planning and Logistics and Planning Commission (if significant development report is requested)	The ACT Planning and Land Authority
6. Are the initial reports together with all associated reports placed	Yes, by the Department	No	No	Yes, for the applicant	All DAP reports are published on the DAP Secretariat's website.	No	N/A	Yes
7. Can the determining authority meet with stakeholders and/or hold public hearings?	Yes	Yes	No	No	The DAP does not meet stakeholders. Stakeholders are able to provide a presentation to the DAP at the meeting. All DAP meetings to determine a development application are open to the public.	Yes	Yes	The Minister for Planning may choose to request the Planning and Land Authority to engage with stakeholders or the public prior to making a decision.
8. Who determines the applications?	The Planning Minister, the Commission and the Department	The Planning Minister	The Planning Minister	The State Governor or the Development Assessment Commission	The Development Assessment Panel	The Development Assessment Panel or the State Governor	The Planning Minister or the Development Consent Authority	The Planning Minister
9. Are merit appeal rights available?	Yes, on the merits if no public hearing held. No, if there was a public hearing.	No	No	Not for decisions of the Governor. Yes for decisions of the Development Assessment Commission. (No merit appeal rights available for s46 proposals).	Yes. Merits review only available to an applicant who is aggrieved by the decision.	No	No	No

\* 'Calling-in' of a planning application refers to the power of a Minister to make decisions on development applications.

Source: Consultant and Audit Office research.

## Appendix 3: About the audit

### Audit objective

To assess the extent to which the Planning Assessment Commission's decisions on major development applications are made in a consistent and transparent manner.

### Audit scope and focus

We addressed the audit objective by answering the following questions:

1. Does the Commission have sound processes in place to help it make decisions on major development applications that are informed and made in a consistent manner?
2. Does the Commission ensure that its decisions are free from bias and transparent to stakeholders and the public?

By 'making decisions on major development applications' we mean planning decisions made under the EP&A Act on behalf of the Minister for Planning.

By making decisions 'in a consistent manner' we mean that the Commission is consistent in its approach, not that outcomes are consistent. We acknowledge that the Commission's decisions are ultimately judgments on individual cases.

### Audit criteria

For Question 1 we assessed the extent to which the Commission:

- has developed and applies a methodology to help it make decisions on major applications and which is based on the key considerations outlined in the EP&A Act
- has access to relevant information needed to make decisions on major applications, including expert advice where needed
- consults relevant parties where necessary, including the applicant, stakeholders, and the community, and takes their views into account as part of their decision-making process
- has processes in place for allocating panel members to matters which relate to their area of expertise and ensure consistency in decisions.

For Question 2 we assessed the extent to which the Commission:

- has probity measures in place to ensure that decision-making processes are transparent and impartial
- documents the work it undertakes to make decisions, including any meetings with applicants and stakeholders
- ensures that its decision-making processes and the reasons for decisions are clearly communicated to stakeholders and the public.

### Audit exclusions

The audit did not specifically assess:

- the appropriateness of individual decisions
- the Commission's advice and review functions
- the Department of Planning and Environment's role in the planning process.

### Audit approach

The audit team conducted the audit in accordance with 'ASAE 3500 Performance Engagements and ASAE 3000 Assurance Engagements Other than Audits or Reviews of Historical Financial Information'.

We collected evidence by:

- interviewing staff within the Commission that are responsible for carrying out decisions on applications including:
  - committee members who make decisions on applications
  - the Commission secretariat staff who assist Commissioners make decisions
- interviewing staff within Department of Planning and Environment that are responsible for producing assessment reports
- reviewing policies and procedures relating to the key functions of the Commission
- analysing data from the Commission on planning decisions
- reviewing a sample of case studies
- meeting key stakeholders where necessary as part of our case study review.

We also examined approaches in other Australian states and territories.

### **Case study file review**

We reviewed nine decisions to test our criteria. We selected decisions based on the following factors:

- the date of the decision – must be made in the last two years
- the nature of development application – included a mix of mines/resource applications and urban development
- the referral trigger – our sample of cases covered the three triggers (i.e. at least one each of the following - 25 or more public submissions, local council objection, an applicant donated over \$1,000 to a political party or member of parliament )
- status – matters were finalised and not subject to review by the Land and Environment Court or any other court
- whether the application had been seen by the Commission previously – we selected an application that had been reviewed by the Commission.

### **Audit methodology**

Our performance audit methodology is designed to satisfy Australian Audit Standards ASAE 3500 on performance auditing. The Standard requires the audit team to comply with relevant ethical requirements and plan and perform the audit to obtain reasonable assurance and draw a conclusion on the audit objective. Our processes have also been designed to comply with the auditing requirements specified in the *Public Finance and Audit Act 1983*.

### **Acknowledgements**

We gratefully acknowledge the co-operation and assistance provided by the Planning Assessment Commission. In particular, we would like to thank the Chair, the Secretariat Director, and the Commissioners and staff who participated in interviews and provided material relevant to the audit.

We would also like to thank our consultant, Mr Terry Byrnes of Terry Byrnes and Associates Pty Ltd, who provided technical guidance during the audit.

### **Audit team**

Sandra Tomasi and Andrew Gill conducted the performance audit. Tiffany Blackett provided direction and quality assurance.

### **Audit cost**

Including staff costs, printing costs and overheads, the estimated cost of the audit is \$291,700.

# Performance auditing

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## **What are performance audits?**

Performance audits determine whether an agency is carrying out its activities effectively, and doing so economically and efficiently and in compliance with all relevant laws.

The activities examined by a performance audit may include a government program, all or part of a government agency or consider particular issues which affect the whole public sector. They cannot question the merits of government policy objectives.

The Auditor-General's mandate to undertake performance audits is set out in the *Public Finance and Audit Act 1983*.

## **Why do we conduct performance audits?**

Performance audits provide independent assurance to parliament and the public.

Through their recommendations, performance audits seek to improve the efficiency and effectiveness of government agencies so that the community receives value for money from government services.

Performance audits also focus on assisting accountability processes by holding managers to account for agency performance.

Performance audits are selected at the discretion of the Auditor-General who seeks input from parliamentarians, the public, agencies and Audit Office research.

## **What happens during the phases of a performance audit?**

Performance audits have three key phases: planning, fieldwork and report writing. They can take up to nine months to complete, depending on the audit's scope.

During the planning phase the audit team develops an understanding of agency activities and defines the objective and scope of the audit.

The planning phase also identifies the audit criteria. These are standards of performance against which the agency or program activities are assessed. Criteria may be based on best practice, government targets, benchmarks or published guidelines.

At the completion of fieldwork the audit team meets with agency management to discuss all significant matters arising out of the audit. Following this, a draft performance audit report is prepared.

The audit team then meets with agency management to check that facts presented in the draft report are accurate and that recommendations are practical and appropriate.

A final report is then provided to the CEO for comment. The relevant minister and the Treasurer are also provided with a copy of the final report. The report tabled in parliament includes a response from the CEO on the report's conclusion and recommendations. In multiple agency performance audits there may be responses from more than one agency or from a nominated coordinating agency.

## **Do we check to see if recommendations have been implemented?**

Following the tabling of the report in parliament, agencies are requested to advise the Audit Office on action taken, or proposed, against each of the report's recommendations. It is usual for agency audit committees to monitor progress with the implementation of recommendations.

In addition, it is the practice of Parliament's Public Accounts Committee to conduct reviews or hold inquiries into matters raised in performance audit reports. The reviews and inquiries are usually held 12 months after the report is tabled. These reports are available on the parliamentary website.

## **Who audits the auditors?**

Our performance audits are subject to internal and external quality reviews against relevant Australian and international standards.

Internal quality control review of each audit ensures compliance with Australian assurance standards. Periodic review by other Audit Offices tests our activities against best practice.

The Public Accounts Committee is also responsible for overseeing the performance of the Audit Office and conducts a review of our operations every four years. The review's report is tabled in parliament and available on its website.

## **Who pays for performance audits?**

No fee is charged for performance audits. Our performance audit services are funded by the NSW Parliament.

## **Further information and copies of reports**

For further information, including copies of performance audit reports and a list of audits currently in progress, please see our website [www.audit.nsw.gov.au](http://www.audit.nsw.gov.au) or contact us on 02 9275 7100.

## Our vision

Making a difference through audit excellence.

## Our mission

To help parliament hold government accountable for its use of public resources.

## Our values

**Purpose** – we have an impact, are accountable, and work as a team.

**People** – we trust and respect others and have a balanced approach to work.

**Professionalism** – we are recognised for our independence and integrity and the value we deliver.