

STATEMENT OF PROFESSOR MARY O'KANE AC FOR ICAC OPERATION ECLIPSE

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1. INTRODUCTION

I am the Chair of the Independent Planning Commission (the Commission).

I have held this position since February 2018. It is a 3 day/week position.

In Section 3 I provide an overview of the policies and procedures introduced by the Independent Planning Commission in 2018-19 to improve transparency, openness and procedural fairness.

When I was appointed Chair of the Commission, the former Minister for Planning, the Hon Anthony Roberts MP, gave me instructions to ensure the decisions of the Commission were legally robust and its processes trusted by all stakeholders including the community at large.

The determinations the Commission makes may be unfavourable to some, but its processes must be fair and transparent to be able to be trusted by the community.

I have an extensive background in introducing transparency and robust processes into systems to build stakeholder trust. Some examples follow:

- I have been involved in designing, operating in, and reviewing many research granting schemes in Australia and overseas dating back to my time as Chair of the Research Grants Committee (RGC) of the Australian Research Council (1994-6). The RGC was responsible for the major research grants to Australian university researchers (then called the ARC Large Grants)
- I was on the board of the Development Gateway (see <https://www.developmentgateway.org/>) from 2002-15 and its Chair from 2009-15. The Development Gateway is an organisation that was spun off the World Bank and established to provide free, open-source software and data solutions to governments and NGOs in the developing world to increase transparency in governmental operations
- I was a member of the Commonwealth Government's Review of the National Innovation System in 2008 which examined, among other things, the importance of open government processes in boosting national productivity. Since that time, I have given several speeches on this issue, mainly when I was NSW Chief Scientist & Engineer (2008-18).

2. ESTABLISHMENT AND FUNCTIONS¹

2.1 Establishment and background

The Independent Planning Commission (the Commission) was established as a corporation and a NSW Government Agency on 1 March 2018 under changes to the *Environmental Planning and Assessment Act 1979* (the Act). In general terms it replaced the Planning Assessment Commission (PAC) which was established in 2008 and which itself replaced the Commissioners of Inquiry for Environment and Planning set up in 1980.

The establishment of the Commission was part of a parcel of reforms intended to 'improve the planning system through faster, simpler processes, enhanced strategic planning, improved community confidence and participation, and more balanced and transparent decision-making'².

The Commission operates independently of other NSW government agencies, including the Department of Planning, Industry and Environment (DPIE aka 'the Department'), although its Secretariat is supplied by DPIE (see s. 2.11(3)(a) of the Act), i.e. all staff in the Commission's Secretariat are DPIE employees. Its wider support services are also supplied by DPIE (ICT, Finance, HR, etc.).

As stated in s.2.7 of the Act, 'the Commission is not subject to the direction or control of the Minister' (except in certain circumstances³).

Key differences between the PAC and the current Commission are:

- unlike the PAC which acted under the Minister's delegation, the Commission is the standalone consent authority for particular State significant developments
- the review function that the PAC undertook has been removed. As stated in the Second Reading Speech for the 2018 amendments to the Act, removing the PAC's review function was intended "to reinforce the commission's key function of independently determining projects"⁴ so that it does not review and then later determine the same proposals
- the requirement that decision-makers provide reasons for their decisions and include how the community's views were taken into account (by the Commission and by other bodies such as the Joint Planning Panels) (see clause 20(2) of Schedule 1 to the Act). The PAC did not prepare a Statement of Reasons, rather it produced a determination report. Note: a Statement of Reasons was and is required if requested under the *Uniform Civil Procedure Rules 2005* in judicial review proceedings involving a public authority
- a planning body (including the Commission) is now required to record a meeting in public and the records are to be made publicly available. It is important to note the Commission is not required to conduct its meetings in public, unlike other planning bodies (see Clause 25 of Schedule 2 of the Act)
- the way Commissioners are classified has been changed. There is no longer the classification of a casual member. The Minister may appoint a member on either a full-time or part-time basis. The Commission currently has 30 Commissioners.
- the Mining and Petroleum Gateway Panel has been incorporated as a subcommittee into the Commission, see Clause 17N Division 5 of the *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007*

¹ All underlined sections taken from Annual Report 2017-18, pp. 4-5.

² Legislative Council Hansard – 18 October 2017 – Proof.

³ Namely, 'in relation to the procedure of the Commission and any directions authorised to be given to the Commission under section 9.1 or other provision of the EP&A Act'.

⁴ Legislative Council Hansard – 18 October 2017 – Proof.

At the request of the Minister, the IPC Chair, in consultation with the Planning Secretary, commissioned a review in March 2018. It commented that:

'The Commission will deal with some of the most complex and contentious development proposals in the state, and as such has a significant role in the integrity of the planning system. ... These projects, e.g., new mines and windfarms, typically cost \$100m+, are expected to have economic impact exceeding this scale, and often may have significant non-financial ramifications. ...

[They] necessarily involve input from a range of organisations across the private and public sectors, from individuals to interest groups (both business and community) to agencies to large corporates. These organisations have both direct interests and representative or indirect interests in the proposed developments. Typical involvement of these types of actors includes input via:

- *Proposals from multinational mining and property development corporations, supported by their expert advisors (e.g., technical, legal)*
- *Perspectives from across Government (e.g., Planning, Health, Transport) considered in assessment by the Department)*
- *Concerns raised by a spectrum of prominent groups and peak bodies groups (e.g., NSW Minerals Council, Clean Energy Council, NSW Farmers Association, Lock the Gate)*
- *Community concerns as raised in submissions and noted in public forums.'*

(Boston Consulting Group: Perspectives on the Independent Planning Commission – Prepared for the Chair of the NSW Independent Planning Commission, March 2018, p.4.)

3. STATUTORY FUNCTIONS AND PROCESSES

3.1 Functions

In the period July 2018 to October 2019, the Commission has dealt with or is dealing with 98 matters.

Broken down by its key statutory functions as set out in s.2.9(1) of the Act, the Commission's formal activities are set out below:

a. Determination: 'The functions of the consent authority under Part 4 of the Act for State significant or other development' as conferred by the Act.

When read with s.4(5) of the Act and Clause 8A of the *State Environmental Planning Policy (State and Regional Development) 2011*, the effect of this provision is that the Commission determines State significant development applications (including modification applications) where:

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

In other words, the Commission is the consent authority only for State significant development applications where there is significant public or council objection or where there is potential for political corruption or perceived corruption. For all other State significant development applications, the Minister of Planning is the consent authority, or his delegate DPIE. For other types of development applications, the consent authorities are as set out in the Act, including Sydney district or regional planning panels. The arrangements for State significant infrastructure determination arrangements are set out in Division 5.2 of the Act.

As the consent authority, the Commission is the decision maker for the applications before it. However, under the Act⁵, the DPIE is required to exercise a range of functions that would

⁵ Section 4.6, Environmental, Planning and Assessment Act 1979.

ordinarily be exercised by a consent authority. These arrangements are a mixture of administrative and more substantive functions, such as receiving applications and determining and receiving application fees, carrying out some of the community participation requirements, obtaining any required concurrences and undertaking any required consultations to undertaking assessments and providing them to the Commission (but 'without limiting the assessments that the Commission may undertake'). The Department's assessment reports are not binding on the Commission.

There have been 73 applications before the Commission as a consent authority during the period July 2018 to October 2019, with 56 consents, four refusals and 13 applications still in progress. Of the 60 cases which have been determined, two were not consistent with the DPIE's assessment recommendations (i.e. 96.7% were consistent). The two that were not consistent were the refusals of the Bylong Coal Project and the partial approval of the Dartbrook Coal Mine. Of the 56 consents, 30 involved the Commission amending the Conditions of Consent recommended by the DPIE in its assessments. The 73 applications are of the following project types:

Industrial	14	Resources	15
Commercial	2	Urban Regional	11
Urban Metro	20	Educational	2
Infrastructure	7	Other	2

c. Advice: 'To advise the Minister or the Planning Secretary on any matter on which the Minister or the Planning Secretary requests advice from the Commission.'

During the period July 2018 to October 2019, the Commission has completed 22 advices, and has none in progress. These advices can be on 'any general or particular planning or development matter, the administration of the Act or any related matter'⁶. A common request is the review into a planning proposal under section 3.34(5) of the Act.

d. Public hearing: 'To hold a public hearing into any matter into which the Minister for Planning requests the Commission to hold a public hearing'. The matters into which a public hearing may be held under the Act include 'any general or particular planning or development matter, the administration of the Act or any related matter'⁷.

During the period July 2018 to October 2019 the Commission has completed one Review with Public Hearing (*Rix's Creek*), one Public Hearing (*Hume Coal and Berrima Rail Project*) and 1 Multi-Stage Public Hearing (*Vickery Extension Project*), and has referred one Multi-stage Public Hearing matter back to the DPIE (*Tahmoor South Coal Project*)

e. & f. Planning panels: 'Any function of a Sydney district or regional planning panel or a local planning panel in respect of a particular matter that the Minister requests the Commission to exercise (to the exclusion of the panel). If a Sydney district or regional planning panel has not been appointed for any part of the State, any function that is conferred on any such panel under an environmental planning instrument applicable to that part or that is otherwise conferred on any such panel under the Act',

On 4 June 2018, the former Minister for Planning, pursuant to section 2.4 of the Act delegated to the Commission his functions under Division 4.6 of the Act including, but not limited to, his functions under sections 4.33 and 4.34, regarding a Crown development application for a cemetery at Wallacia made by the Catholic Metropolitan Cemeteries Trust to Penrith Council on 3 November 2017, as well as a Crown development application for a cemetery at Varroville made by the Catholic Metropolitan Cemeteries Trust to Campbelltown City Council on 17 October 2017.

On 12 July 2019, the Commission directed the Sydney Western City Planning Panel to refuse the Wallacia proposal.

⁶ Section 2.9(2), Act.

⁷ Section 2.9(2), Act.

On 15 July 2019, the Commission directed the Sydney Western City Planning Panel to approve the Varroville proposal.

b. and g. Delegated functions: 'Any functions under the Act that are delegated to the Commission', and 'Any other function conferred or imposed on it under this or any other Act'.

During the period July 2018 to October 2018, no matters have been referred under this function.

The Commission also has functions under the *Heritage Act 1977*: see sections 34, 36, 71-74 and 78-79B.

Note: The Commission has no functions under the *Greater Sydney Commission Act 2015*, although it can be (but has not yet been) delegated any of the Greater Sydney Commission's functions which include the preparation of reports in sections 10, 21 and 26.

4. NEW AND REVISED POLICIES POST CHANGES TO THE ACT AND ARRIVAL OF NEW CHAIR

On 1 March 2018, the Act was amended, with those amendments involving several important changes to the Commission as described above.

In line with the Minister's instructions to build trust and in order to meet various requirements with changes of the Act, we were specifically guided by the principles of open government as articulated on the Information and Privacy Commission's website:

"Achieving Open Government requires legislation to enshrine a citizen's right to access information and authorise decision-makers to release information. Citizens expect government decision-making to be open, transparent and accountable and the Government Information (Public Access) Act 2009 (GIPA Act) represents NSW Parliament's commitment to realising that expectation."

The object of the GIPA Act is to open government information to the public in order to "... maintain and advance a system of responsible and representative democratic Government that is open, accountable, fair and effective".⁸

One of the techniques to achieve this has been the use of and publishing of transcripts of the Commission's public and private meetings.

Under the Act, the Commission is required to record and publish the transcripts of its public meetings. In the interests of greater transparency, the Commission chose to record and publish its transcripts of private meetings under its new Meeting Records Policy as well (further discussed below).

Another major technique has been to emphasise procedural fairness, especially with the requirement to provide reasons for decision and taking into account the community's views (a major requirement of the 2018 amendments to the Act), which we have done in a formal way in our new Statement of Reasons template and in policies providing opportunities for all stakeholders to comment on new information received while an application is being considered. Also a period of seven days to comment on material raised at any public hearing or public meeting is given.

We have also emphasised consultation with stakeholder groups and in the media to ensure the stakeholders and community are informed about the Commission and its processes and to have an opportunity to critique its processes.

⁸ <https://www.ipc.nsw.gov.au/information-access/open-government-open-data-public-participation>

A consequence of commitment to open government principles and, in particular, transparency is that one's mistakes are on full display. Accordingly, we welcome feedback and people pointing out mistakes because this results in a more robust process and outcomes. When mistakes are pointed out, we work quickly to rectify and address them.

4.1 Meeting Record Policy was updated on various occasions but transcript introduced mid-2018

4.1.1 Intent of the Policy Change

The Commission sought contemporaneous, true and accurate records of the Commission's meetings that could be made publicly available on the website.

Using a transcription service has been found to be an efficient and cost-effective use of Commissioners' and Secretariat's time, instead of reviewing and preparing drafts of meeting records.

4.1.2 What it replaced

The previous meeting record policy included that a meeting would be recorded in a "meeting note" that included basic information and was prepared by the relevant Secretariat staff and approved by the Commissioner. It was then attached to the determination when it was made public. The meeting notes needed only be drafted by the time of determination so there was no assurance that the meeting note would be contemporaneous and there was no chance for stakeholders to comment.

4.1.3 How the Policy operates

The Commission introduced a new policy (<https://www.ipcn.nsw.gov.au/policies>) whereby all meetings are recorded by transcript and the transcript is made available on the website contemporaneously, except internal meetings between Commissioners and the Commission Secretariat or meetings between Commissioners and third parties who are providing independent expert professional or technical advice to the Commissioners as part of their decision-making process. The Chair of the Commission can, on request, decide to redact transcripts for limited reasons such as if there is commercial-in-confidence or cabinet-in-confidence material. However, at the very least the Commission will record and publish information about the meeting.

The Act allows the Commission to hold meetings in private. This would mean that the Commission's private meetings, as opposed to public meetings, would not need to be recorded. However, the Commission decided that, in the interests of transparency (with a view to building trust), all meetings (public and private) should be transcribed.

See Clause 25(2) of Schedule 2 of the Act which reads: "(2) A planning body (other than the Independent Planning Commission) is required to conduct its meetings in public."

See Clause 25(3) of Schedule 2 of the Act which reads: "(3) A planning body is required to record meetings conducted in public (whether an audio/video record, an audio record or a transcription record). The record is required to be made publicly available on the website of or used by the planning body."

Note, for the sight impaired the Commission will, on request, make the audio recording available.

4.1.4 Exceptions

The Planning and Assessment Division of DPIE has repeatedly expressed its unhappiness with the transcribing of all meetings. Accordingly, a trial of not recording meetings between the Department and the Commission in relation to the preparation of the instruments of consent or refusal was held between 20 June 2019-1 August 2019.

The trial was stopped by the Commission on 1 August 2019 (following a specific incident), and the Meeting Record Policy was amended. The following words (which were added on or about 20 June 2019) were **deleted**:

"This Policy does not apply to meetings between Commissioners, Commission Secretariat and the Department of Planning and Environment in the discussion and preparation of an instrument of consent or refusal (including any conditions), where disclosure may reveal the outcome of a determination prior to a Statement of Reasons being published."

4.1.5 Responses/ feedback on process/challenges

Challenges with the process have included:

- invitees (particularly from government agencies) to meetings with Commission panels:
 - declining the opportunity to meet and preferring a written response
 - agencies reading from a statement and not being comfortable answering questions from Commissioners, rather taking them on notice.
- To address agency concerns the Commission has invited the Department to talk to the Commission in general terms at its quarterly Commissioners' meetings on cases that are likely to come to the Commission in the next few months. The Commission has also initiated a process of writing to government agencies in specific cases outlining the issues it wishes to discuss at the meetings for the case. These letters and any response are, of course, published on its website under the relevant case name
- the Department was reluctant to allow the Commission to contact agencies directly to invite them to attend the meetings. It said it was its role to manage this process to achieve whole-of-government consensus on issues before the Commission. It said therefore that it was the its role to contact the agency on behalf of the Commission as had occurred in the past
- some Commissioners were reluctant to be recorded. There was a worry of predetermination and that the Applicant/Proponent/Department would not be frank in conversations. The Commission addressed this by an opening statement at all meetings acknowledging this was the Commission's consideration at this point of time to avoid claims of predetermination.
- The risk of defamation proceedings as a result of not being to control what is said at public meetings, public hearings or meetings. The Commission sought an amendment to the *Defamation Act 2005* to ensure an exemption applied to the Commission when publishing transcripts. This occurred on 26 September 2019, see clause 34 of Schedule 1 of the *Defamation Act 2005*.

4.2 Commission contacting agencies directly (on or around September 2019)

4.2.1 Intent of the Policy Change

To give agencies a chance to explain their views on cases before the Commission.

4.2.2 What it replaced

See end of previous section.

4.2.3 How the Policy operates

The Commission writes directly to the agency and asks whether the agency would meet with the Commission. The Commission also checks with the agency whether they agree to the Department attending the meeting. If so, then the Commission invites the Department and copies the relevant officer into the correspondence.

4.3 Public Meeting Guidelines (created 26 July 2018)

4.3.1 Intent of the Policy Change

To give clear guidance to members of the community as to what a public meeting is and to encourage participation but also to set out the guidelines for acceptable behaviour at a public meeting.

4.3.2 What it replaced

The previous public meeting guidelines set out the procedures for holding a public meeting. They contained requirements and guidance such as:

- speaking/presentation time is 5 minutes for individuals and 15 minutes for councils or registered groups
- the Commission may agree to accept additional information from interested parties after the public meeting. The timeframe within which post meeting submissions are to be accepted will be notified at the conclusion of the meeting and/or on the Commission's website.
- the Commission will publish its decision on the Commission website within five working days of the determination
- the Commission does not provide information at the meeting and will not usually ask questions, but may sometimes seek clarification from a speaker.

4.3.3 How the Policy operates

- Public meetings allow the Commission to hear the community's view, as well as allowing the applicant to explain the benefits of the project.
- Members of the public wishing to speak must fill in an application form nominating how long they wish to speak. Previously it was the 5 mins for individual and 15 min for an organisation. This was changed to allow an individual to nominate how long they wish to speak.
- The Commission may use the information to prioritise speakers. Priority is given to those with a direct and immediate interest, such as the applicant, owner or tenant of neighbouring property
- Importantly the public has **seven days** after the public meeting to lodge written comments.
- The Commission may engage "Counsel assisting" to assist in the conduct of the public meeting.
- The Commission may ask questions.
- Written material of a confidential nature will also be withheld from the website, where this has been requested.
- The Chair has discretion in relation to the running of the public meeting to:
 - stop a speaker who is making defamatory statement;
 - permit substitution; and
 - grant additional time and late application.

4.3.4 Responses/ feedback on process

On occasion, the Department has declined the opportunity to present at the public meeting.

The *Public Meeting Guidelines* have been updated to address issues as they arise. For example the guidelines have been updated to deal with:

- refraining from encouraging the audience to raise hands by the insertion of *"interactions with the audience - for example, where a speaker asks for a 'show of hands' and requests the audience indicate their views is not permitted"*
- no public meetings at licenced venues: *"Alcohol is not permitted at the public hearing and anyone who is intoxicated and/or acting disorderly manner will be asked to leave"*. The Commission also consulted the Local Government Association about

using local Council premises for public meetings and hearings where possible. This issue has been strongly enabled by councils and now Commission meetings and hearings are increasingly held in these premises, with the added bonus that parking for those attending is generally reasonably easy.

4.4 Public Hearing Guidelines (created 26 July 2018)

4.4.1 Intent of the Policy Change

To give clear guidance to members of the community as to what a public hearing is and to encourage participation, but also to set out the guidelines.

4.4.2 How the Policy operates

Key features

- Public hearings allow the Commission to hear the community's view, as well as allowing the applicant to explain the benefits of the project
- The public hearing extinguishes merit appeal rights to the Land and Environment Court
- The Minister requests the hearing and can also specify its terms, including process
- Members of the public wishing to speak must fill in an application form
- The Commission may use the information to prioritise speakers. Priority is given to those with a direct and immediate interest
- The Commission may engage "Counsel assisting" to assist in the conduct of the public hearing
- The Commission may ask questions
- Written material of a confidential nature will also be withheld from the website, where this has been requested.
- Importantly the public have **seven days** after the public meeting to lodge written submissions
- Hearing is recorded and a transcript placed on the Commission's website

4.4.3 Responses/ feedback on process

Use of Counsel assisting at the public hearing: during an informal feedback session from the Department following a hearing the following comments/concerns were raised:

- that the use of counsel assisting would result in the process becoming legalised, proponents/applicants will send their legal representative to present,
- an observation that the barrister acting as Counsel assisting did not understand the mining terminology.

4.5 Site Inspection & Locality Tour Guidelines (new - created 12 June 2018)

4.5.1 Intent of the Policy Change

This policy was introduced due to feedback from stakeholders (Environmental Defender's Office) that the Commissioners and the Applicant/Proponent (and consultants) were on site inspections together with no visibility from any other stakeholder. At the time of determination was made, a record of the site inspection notes was attached to the decision, before that time there was no public knowledge of who attended and what was seen or done on a site inspection.

The Commission wanted a contemporaneous record of the site inspection. Observers were invited to attend and observe to ensure transparency.

4.5.2 What it replaced

There were no site inspection and locality tour guidelines. The Commissioners could go on a site inspection, the secretariat would prepare notes that would be attached to the

determination report. The attendees were usually the proponent/applicant and the Commissioners. These notes were not published contemporaneously.

4.5.3 How the Policy operates

Key features

- There is no statutory requirement to have a site inspection, it does not form part of the public hearing or public meeting
- The purpose of a site inspection is for the Commission to view the project site including its physical attributes and locality
- This is a private, not a public meeting
- It is at the discretion of the Chair of the Panel to invite observers to attend the site inspection such as: Departmental officers, experts, or to write to a local community group who lodged a submission in the EIS exhibition to nominate a representative to attend
- It is not a forum for oral submissions, the Commission can ask questions and seek clarification in relation to physical attributes of the site and locality
- Any written material referred to at a site inspection and notes of the site inspection, including questions asked and answers will be summarised and placed on the Commission's website within a reasonable time
- The Commission cannot force the applicant or associated landowners to allow third parties on their land. When access is denied, the Commission need to consider public vantage points
- Work health and safety is the responsibility of the applicant or associated landowners
- Any decision to visit other sites, including private properties is at the discretion of the Commission Panel's Chair
- Any questions and answers, or documents received will go up on the Commission's website, along with notes on the site visit
- Attendees must avoid approaching or speaking to the Commission unless asked a question
- The Chair of the Commission Panel may cancel or refuse to attend a site inspection including if the site is unsafe, there is adverse weather or attendees acting inappropriately.

4.5.4 Responses/ feedback on process

- Commissioners find the site inspection very worthwhile, and feedback from independent community observers has been positive
- Where there are multiple community representatives and limited spots to attend, a preference is given to local community members and often the invite is on a "first in best dressed" acceptance
- The owner of the land can refuse to allow people on their land, in this case it is within the discretion of the Panel to view from public vantage points.

4.6 Constitution of the Commission for each matter (new- introduction on 15 August 2018)

4.6.1 Intent of the Policy Change

This policy was introduced due to feedback from David Shoebridge MP in relation to how the Commission Chair chooses a Panel.

The Commission sought transparency to give an understanding to its stakeholders on the ordinary basis for a selection of a Panel.

4.6.2 What it replaced

There was no formal policy, it was at the discretion of the Chair.

4.6.3 How the Policy operates

A policy which describes what the Chair will ordinarily take into account when choosing a panel.

4.6.4 Responses/ feedback on process

Difficulties in Panel availability.

Stringent Conflict of interest policy applies which can limit availability of Commissioners.

4.7 The development of a new template called Statement of Reasons

4.7.1 Intent of the Policy Change

Changes in 1 March 2018 required the decision maker to publish reasons for a decision and how community views were taken into account. There was an existing requirement under the UCPR rules that a statement of reasons could be requested by an applicant to legal proceedings.

4.7.2 What it replaced

A determination report was prepared by the PAC, it did contain some reasons but was not a Statement of Reasons.

4.7.3 How the Policy operates

The Commission introduced a new template for its decision known as a "Statement of Reasons" in about May 2018.

The Statement included a chronology of events, a list of material before the Commission when it made its decision, and reasons for its decision based on evidence of facts and findings.

4.7.4 Responses/ feedback on process

Feedback from some saying that the Statement is too complex and not in plain English, and is difficult to write. Other feedback is that it provides a good guide to producing a comprehensive report.

4.8 New Additional Information policy

The Commission may receive material (Additional Material) after the deadline for public comment has elapsed (for example, the deadline for public comment following a public meeting). Where the Commission determines that Additional Material contains substantive new information upon which the Commission would be assisted by public comment, the Commission will (1) publish the Additional Material on the Commission's website and (2) indicate the period for which public written submissions or comments will be accepted in respect of that Additional Material. The period for comment on the Additional Material will usually be one week (seven days) following the publication of the Additional Material on the website.

It is important to note that just because material is published on the Commission's website, it does not mean that the Commission will receive or take into account submissions about that material. Comments will only be considered where the Commission has indicated that comments are invited in respect of particular material, and has provided a time within which such material will be received. Comments received after the expiration of the stated deadline will generally not be considered.

4.9 Increase stakeholder consultation and use consultation for process improvement

This takes the form of:

- regular consultation approximately every 6 months with a range of stakeholders featuring discussion of process
- brief (with Ministerial approval) the Opposition
- Chair presenting at various engagements in relation to policy, for example presenting at Mining Conference in September 2019
- consultation with relevant stakeholders on multi-stage public hearing.
- at the request of the Local Government Association, the Commission panels when meeting with the relevant local Councils, now offer to meet with elected members of Councils as well as management. As noted above, they also use Council-owned venues (where possible)
- all correspondence between stakeholders on a case is made publicly available, including to and from the Department, agencies and Applicant/Proponent.

4.10 Processes the Commission would like to do in the future

- A record or register on each project of phone calls in relation to a case, who they are from and reason for the call, subject to privacy policy.

4.11 Other changes implemented to date

The following changes have been implemented at the Commission to increase independence, robustness and transparency:

- Appointment of Commission's own legal counsel (previous Director supported). She was appointed and began work immediately on improving the Commission's processes to ensure transparency, which were not of the standard required by the Act. A Senior Counsel was engaged to draft a Statement of Reasons template. Both the Secretariat staff and Commissioners required education and development in use of the template, and some were resistant.
- Briefing and education for Commissioners on specialist topics at the Commissioners' quarterly meetings while retaining the lessons learned from PAC days.
- There was a change with Government approval from using the NSW Government's Waratah logo to using the State's crest in the Commission's branding. This change symbolises the Commission's independence from the NSW Government.
- A stronger media presence, which included the appointment of a media advisor, proactively contacting media and stakeholders. Previously the media was implemented by the Department, or not at all.
- Arranging for the then Director of the Commission who reported to the Deputy Secretary of Department, to be moved to report to the Chief Financial Officer of the Department. This was so that the reporting line was within the assessment team of the Department rather a separate branch to avoid any conflicts.
- Recruitment of an Executive Director to head the Secretariat.
- Stress-tested a number of already existing policies, for example conflict of interest policy.
- The process of legally reviewing every statement of reasons, and utilising barristers when required to ensure legally sound decisions and process.
- A restructure of the Commission Secretariat to seek a professionally orientated Secretariat within the allocated budget, including the creation of a senior position with planning experience to increase expertise when discussions were held with the Department's counterpart on conditions and other issues.

- Commissioned NICTA to build a tool to search social media automatically on what people are saying about particular cases. They delivered in prototype but the cost to provide a full service were too high, and the project is currently stalled.