



IHAPs Evaluation

Appendix C

Quarter 1 Data (April – June 2018)

Institute for Public Policy and Governance

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1 Introduction

This appendix presents the data collected during quarter 1 (April - June 2018) for the monitoring and evaluation of Independent Hearing and Assessment Panels (IHAPs). This supports the Report for the Local Planning Panels (IHAPs) Evaluation and provides more detail and other monitoring information.

In summary, this appendix consists of additional information about:

- research approach, methods and qualifications and key considerations for quarter 1 (Section 1)
- establishment of IHAPs (Section 2)
- operation of IHAPs (Section 3)
- conflicts of interest, complaints, reviews and appeals (Section 4), and
- stakeholder perceptions (Section 5).

1.1 Methods

This section outlines the methods employed to collect data in quarter 1, along with key qualifications related to the interpretation of findings. See the Report for detail on the overall monitoring and evaluation approach across quarters.

In quarter 1 the following methods were employed.

1.1.1 Analysis of secondary data

1.1.1.1 Implementation and training materials

IPPG obtained from DPE a range of implementation and training materials, including:

- calls for chairs and experts
- role statement: chairs and members for the IHAPs
- guidelines for the selection of IHAP community representatives, and
- agendas and PowerPoint presentations for panel member briefings.

This provided an indication across all councils of:

- the recruitment and/or selection processes for chairs, experts and community members, and
- inception processes.

1.1.1.2 Expertise data

A range of material regarding chairs' and experts' expertise was obtained from DPE, including:

- IHAP expert member appointment guide: for councils and approved independent experts
- lists of appointed chairs with biographies and expertise
- DPE approved list of experts with their expertise and preferred LGAs, and
- the list of experts and community representatives chosen by councils.

These materials provided an indication of:

- the types of chairs' expertise
- distribution of chairs on one or more panel
- the carryover of chairs from existing IHAPs
- range of expertise in the DPE approved members' list

- the types of expertise available for councils to choose from
- the types of expertise councils selected, and
- the distribution of panel members sitting on the more than one panel.

1.1.1.3 Council quarterly reports

IPPG analysed the available data from councils on the operation of panels, provided by DPE from data entered by councils in the IHAP webform. The IHAP webform is designed to obtain ongoing feedback on the operation of panels (including the constitution of panel membership, the nature of development assessment considerations referred to panels, and decisions made by panels).

The data covers panel meetings held between 07 March 2018 and 18 July 2018¹, planning proposals, complaints and appeals. In total, data was available for 460 development applications (DAs) across 30 councils and a total of 136 public meetings.

The data was compiled for analysis with councils clustered to DPE-defined districts (Sydney Central, Sydney North, Sydney South, Sydney South West, Sydney West, and Sydney West Central). This approach was used to be consistent with other DPE-supplied data sources. For referral criteria analysis, council data was also clustered by Schedule number.² Outliers were excluded from this analysis.

1.1.1.4 Complaints and other data

Issues, enquiries and complaints received by the Department are recorded in an issues register. Complaints about IHAPs can be made directly to councils.³

Complaints can also be made to the NSW Office of Local Government (OLG), NSW Ombudsman and the Independent Commission Against Corruption (ICAC). To obtain this data, DPE requests the following information from these agencies on a quarterly basis:

- How many complaints (if any) have been referred concerning IHAPs during the quarter,
- If complaints have been received, what they are about (e.g. panel members, complaints handling, decisions, review or procedures).

In line with agencies' requests, all complaints data received has been aggregated.

IPPG's analysis of this aggregate data was descriptive and thematic, identifying common issues that are raised in complaints.

1.1.1.5 Media content

Online media coverage from approximately 170 newspaper sources was analysed from 8 August 2017 (following the passing of amendments to the *Environmental Planning and Assessment Act 1979* (the Act)) to 30 June 2018. The purpose of analysing media content was to ascertain the perceptions of various stakeholders, including the community and to determine any trends or changes in these perceptions over time.

Monthly reports were run using the services of Meltwater, a media intelligence company that provides media and social media monitoring.

Search terms included:

- IHAP
- Independent Hearing and Assessment Panel, and
- local planning panel.

Reports were analysed according to themes.

¹ This reflects that councils were provided with a one month 'grace period'.

² Schedule 1: Bayside, Blue Mountains, Burwood, Camden, Campbelltown, Canada Bay, Georges River, Hawkesbury, Hornsby, Hunters Hill, Ku-ring-gai, Lane Cove, Mosman, North Sydney, Randwick, Ryde, Strathfield, Waverley, Willoughby, Wollondilly, Woollahra, and any other council that constitutes a Local Planning Panel constituted under the EP&A Act. Schedule 2: Blacktown, Canterbury-Bankstown, Cumberland, Fairfield, Inner West, Liverpool, Northern Beaches, Parramatta, Penrith, Sutherland, The Hills, Wollongong. Schedule 3: City of Sydney.

³ These complaints are captured in the DPE issues register if the Department is copied into the correspondence by the complainant or the council.

1.1.2 Collection and analysis of primary data

1.1.2.1 Case studies

IPPG conducted three case studies for quarter 1. The purpose of these case studies was to develop an in-depth understanding of how some councils have established and implemented their panels.

The case studies were selected in consultation with DPE, with a view to getting a cross-section of different councils largely based on the following factors:

- number of DAs (high versus low)
- had a determinative / advisory IHAP prior to reforms, and
- position on IHAPs (opposed to the panels versus in support of them).

Letters of invitation were sent by IPPG to general managers, all of whom gave informed consent to participate in the case study.

As part of each case study IPPG:

- conducted interviews with key stakeholders (e.g. chairs, experts and community representatives and council staff)
- observed panel site visits, briefings by council and the panel meetings, and
- analysed key council documents and other internal data collection sources.

The themes and findings from the three case studies are analysed in this report.

1.1.2.2 Survey of chairs

IPPG administered an online survey to primary and alternate chairs using Qualtrics, to canvass their experiences with and perspectives on IHAPs. All chairs (41) were invited to participate.

The survey was open from 13 June 2018 to 3 July 2018. Two reminders were sent to non-respondents and partial respondents.

Thirty-one chairs completed the survey. Not all respondents offered answers to every question. The number of responses for each question is identified with N.

1.2 Qualifications and considerations

IPPG is confident with the conclusions that are drawn in this report based on the available data and with the following considerations noted.

- **Council quarterly reports:** There are some limitations and gaps in the completeness of council data in quarter 1 which mean that the analysis is likely to under-represent the total number of panel meetings and other activity. Specifically, data was available on 30 of the 34 panels, with DA-level data available for 29 panels. There was missing data for 35 panel meetings (29 per cent of meetings) and the referral criteria is unclear for 54 DAs due to errors when some councils filled out the online form. This means it is not possible to clearly identify the referral criteria for about 10 per cent of the DAs.

As this was the first reporting period, there were some delays in data provision for the evaluation. Data was used from the time it became available (as at 18/07/2018). This means seven meetings that occurred between 02/07/2018 and 18/07/2018 are included in the quarter 1 analysis.

Councils explained to DPE that missing data and delays in its provision were due to technical, logistical, and other issues.⁴

DPE sent reminder emails and took steps to assist councils to meet their reporting requirements. The IHAP Online Reporting User Guide was available, and DPE staff provided additional guidance (and troubleshooting) via telephone and email. DPE has also maintained an issue

⁴ A risk identified in the Preliminary Model Review was that councils do not deliver adequate reporting due to inadequate resourcing or other pressure.

register for any questions or concerns raised by council staff in relation to the webform to be resolved for future quarters.⁵

- **Surveys:** Survey data is presented descriptively, and the number of respondents to each question is reported.
- **Complaints and issues data:** The level of data shared by some agencies means it is not possible to establish if there is overlap between these matters.

In addition to the data provided by other agencies DPE tracks issues, and enquiries and complaints (formal and informal) it receives in relation to panel implementation.

- **Media content:** There may be some reports that have been excluded due to the search parameters used by Meltwater. For example, reports in national newspapers such as The Australian are not accessible via the subscription.

⁵ As this was the first reporting period, DPE has indicated that it was also a learning curve for the DPE team in terms of finessing the online reporting tool and identifying the best ways to support councils. For instance, several user input issues were identified in the online reporting tool including data fields with optional and mandatory fields that are inappropriate, as well as open text fields where a range of options for respondents would have more suitable. IPPG has provided ongoing advice and support to DPE staff to ensure that all identified matters are resolved prior to quarter 2.

2 Establishment of IHAPs

This section provides additional information in relation to key findings on the establishment of the IHAPS outlined in the Report. This section draws primarily on data from DPE implementation and training documents, survey of chairs and the council case studies (see Section 1.1).

2.1 Selection of panel members

Various stakeholders, including the Minister for Planning, DPE and councils, had roles in the selection of panel members. The roles are summarised below (Table 1).

Table 1. Summary of panel member selection

Panel Members	Role			
	DPE	Minister for Planning	Council	Chairs
Chairs (primary and two alternates)	Managed the application process and involved in advisory panel which recommended suitable applicants	Appointed	No role	-
Experts	Managed applications and approved pool of experts	Approved suitable applicants put forward by advisory panel	Selected experts from approved list	Some surveyed chairs had a limited role
Community representatives	Provided guidelines for selection	No role	Advertised and selected representatives	Relatively few surveyed chairs reported being involved

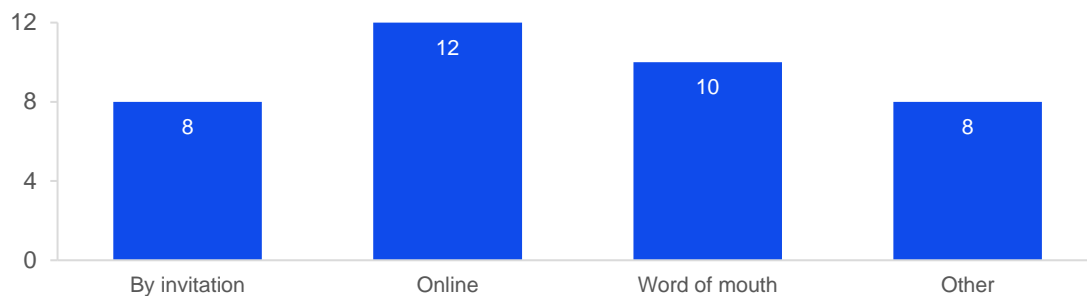
2.1.1 Chairs

DPE issued a call for candidates for chairs, with an accompanying role statement which outlined the key professional and personal competencies required of the chair. Applicants were required to provide their CVs and demonstrate their capabilities outlined in the role statement. Applications closed on Sunday 17 September 2017.

2.1.1.1 Awareness of the available positions

Surveyed chairs reported a range of means by which they became aware of available positions (Figure 1). Online was the most popular means (32 per cent), though word of mouth (26 per cent) and by invitation (21 per cent) were also common. Newspaper advertisement – namely the *Sydney Morning Herald* – was also reported by some chairs.

Figure 1. Most common ways that chairs became aware of position



Survey question: How did you find out about the chair position?
Sample: N=31 chairs (Note: respondents could select more than one option, total response count is 38).

Appointment process

DPE engaged an executive recruitment agency to assist in processing the chair applications. IPPG was provided with access to the applicant records for 41 appointees to chair and alternate chair positions. IHAP applications from chairs were reviewed by an advisory panel, which comprised people from the Law Society NSW, the Planning Institute of Australia, the Government Architect and the Deputy Secretary, Planning Services, DPE (the advisory panel).

The advisory panel recommended, for approval by the Minister for Planning, persons suitable for chair roles. All proposed chairs were subject to probity and political donation checks. The Minister approved a primary chair and two alternate chairs for each IHAP.

Forty-one chair or alternate chairs appointees were awarded at least one appointment, of which 14 were or had previously held at least one panel position on a pre-existing IHAP (most had experience across several pre-reform IHAPs).

2.1.1.2 Chairs involved in more than one panel

There is a high degree of crossover of chairs across IHAPs. All but five chairs also sit as alternate chairs. The maximum number of IHAPs for any one person is four as primary chairs, alternates or a combination of both.

Among each of the available primary 34 chair appointments (one per council):

- the majority (14) are primary chair for one council (64 per cent)
- a minority (six) are primary chair for two panels (27 per cent), and
- two chairs are primary chair for four panels (9 per cent).

Most chairs also have at least one alternate chair appointment (77 per cent).

Most alternate chairs hold one (33 per cent) or two (47 per cent) alternate chair appointments. Around half of the appointees who are alternate chairs also hold at least one primary chair appointment (47 per cent). Alternate chairs without primary chair appointments hold, on average, more alternate chair appointments.

A majority (84 per cent) of surveyed chairs reported being involved in other planning panels or related committees. Among the reported current and previous involvement (up to the last five years) with other planning panels or related committees include many chairs who sit on other IHAPs, or had in the past sat on pre-reform IHAPs. In addition, some chairs reported their involvement in Joint Regional Planning Panels (JRPPs), design review panels, Planning Commission, Land and Environment Court, and NSW Planning and Development Committee. During the case studies it was apparent that experts tended to sit on or have experience working with other planning panels (e.g. JRPPs).

2.1.2 Experts

DPE engaged an executive recruitment agency to assist in processing expert applications. Applicants for the expert role were shortlisted by the advisory panel if they met one or more of the expertise requirements (in planning, architecture, heritage, the environment, urban design, economics, traffic and transport, law, or

engineering), and based on their professional standing, experience, technical ability and broad understanding of the development assessment process.

This list of experts, which included their expertise areas and the council areas in which they preferred to work, was provided to councils with applicants' CVs.

Experts with known or potential conflicts of interest within particular council areas were required to disclose these conflicts. Experts were also required to disclose any relationships with developers or planning consultants that would require them to declare an interest.

Probity checks (including criminal and financials) and merit checks (regarding qualifications) were conducted after the initial expert pool was approved. This was due to timing constraints. However, no councils were affected by this timing. No experts in the pool for whom checks had not been completed were appointed to a panel.

Councils were required to select a minimum of two experts and a sufficient number of experts to act as alternate experts if the chair rotates panel members between meetings or an expert is unavailable. According to interviews with council staff in Phase 1, the quality of the information provided in the DPE and the timing presented some challenges for councils, particularly with the Christmas break.

Councils were able to discuss the potential experts with their chair. Around two-thirds of surveyed chairs (67 per cent) reported not being involved in selection of expert panel members. For those involved in the selection of expert panel members (33 per cent) the range of chair activities included: consultation, discussion, and advising Council on shortlisting and/or selection of applicants.

Councils were required to advise the Department by 14 February 2018 of their selected experts.

Of the 41 chair and/or alternative chair positions, a majority (59 per cent) also took up positions as independent experts.

A total of 215 appointments were made by councils. This indicates an average of 6.3 available experts per council and that councils offered a range of expert appointments. Many experts hold appointments at multiple councils.

With regard to each council's pool of experts, a majority (53 per cent) of councils have between five and eight experts, while a minority have four or fewer experts (26 per cent).

This varies significantly by region in which councils are based. IHAPs in Sydney Central, Sydney West Central, and Sydney South West, on average, appointed a larger pool of experts than Sydney West and Sydney South, and, to a lesser extent, Sydney North.

Experts' expertise and knowledge is discussed in Section 2.2.1.2.

Case studies

The three council case studies found that councils approached the selection process in different ways. One council studied had an existing IHAP and rolled over the experts from their existing panel, as all existing panellists were on the approved experts list.

In another case, the director of planning and manager of planning selected the experts and put forward the list to the general Manager. The mayor and deputy mayor were invited to be involved but did not accept the invitation. A report was put to council so councillors had final sign off. The council staff member indicated that as their chairs and community representatives were all male, this council sought to select all female experts to ensure there was gender diversity on the panel.

The other case study took a multi-staged approach. First, council examined the approved list and focused on applicants who indicated they wanted to work in the area. Council staff then reviewed applications and selected experts who had expertise in town planning, architecture and public administration, being the council's focus expertise areas. The council staff member indicated that this was because the council wanted experts who could provide a holistic approach. The list was then circulated to managers and planners at council to provide feedback. The resulting longlist was provided to the manager, who assessed which applicants were a good fit for the council, including their ability to work with other people. Through this process of elimination, the council ended up with a shortlist of 10 panellists known by someone and who had good ability and technical skill.

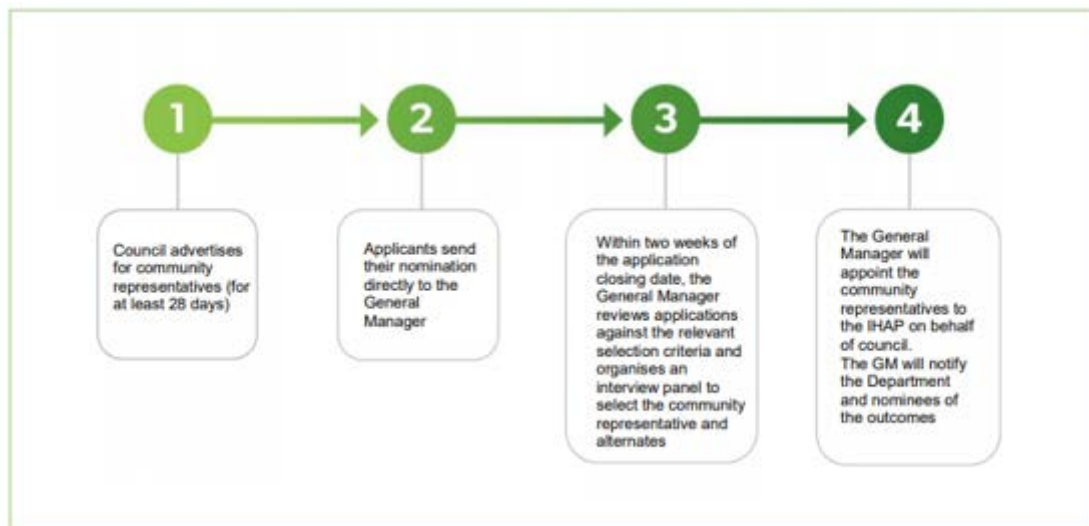
2.1.3 Community representatives

The recruitment, selection and appointment process for community representatives was a matter for councils. DPE provided guidelines to councils to assist with this process. Councils were advised to place at least two advertisements in newspapers and advertise through one or more of the following:

- councils' websites, newsletters and social media (e.g. councils' Facebook, LinkedIn and Twitter)
- relevant community forums
- local/community magazines and radio, and
- council offices, libraries, community or sports centres, schools, residents and community groups.

The guidelines included a sample advertisement that councils could tailor and use on their websites or for advertisements in their local papers. The advertising period was to be no less than 28 days. Applications were to be mailed or emailed to the general manager. The suggested selection process for community representatives is summarised in Figure 2.

Figure 2. Selection processes for community representatives



Councils were required to advise the Department by 14 February 2018 of their community representatives. For councils that had an existing IHAP with a community representative, if the representative met the new legislative requirements, the council was able to choose to continue their appointment as a community representative.

Case studies

One council, which did not previously have an IHAP, took a multi-staged approach to selecting its representatives. The council advertised in multiple papers. It received 21 applications, which it divided into wards and then examined each applicant's skills and attributes. This council was focused on obtaining diversity, a mix of skills and people who could represent all aspects of community. The council staff member explained that their pool of community representatives was a cross section of the community, representing as much as possible the different people of the area.

Another council studied indicated that the general manager and manager of planning were involved in the selection process. The council received 24 applications, including from former councillors. The council chose applicants with experience in the planning industry so they could understand the IHAP process. The main question applicants were asked during the interviews was whether they understood

that 20 angry residents could be in the room and a panel recommendation might be unpopular, but it was important to be objective and not to side with community.

The other council case study with an existing IHAP carried over their community representatives. These community representatives all had qualifications in planning. The council staff member indicated that the requirement for qualified community representatives might be revisited and that there is a desire to try to get a bigger and more diverse range of representatives from the community.

Note on alternative appointment processes

Three councils did not constitute an IHAP by 1 March 2018 as required under the Act. All three councils requested an exemption to constitute an IHAP, however, this was refused. DPE issued an expression of interest to identify community representatives for one council.

The other two councils provided DPE with a list of expert members and community representatives they sought to have appointed to the respective IHAPs when the Minister constituted their panels. The IHAP appointments for both councils were based on these council recommendations.

2.2 Expertise and knowledge

This section examines panel members' expertise and knowledge. A comparison of the approved DPE list of experts compared to the experts selected by councils reveals that selected experts were more likely to possess a wider range of expertise than unsuccessful experts.

2.2.1 Expertise areas

2.2.1.1 Chairs' expertise

All chairs have the required expertise in law and/or government and public administration. Chairs also have expertise in other expertise areas (although this was not a DPE requirement). Chairs tend to have expertise in planning.⁶ The expertise fields of environment, urban design, architecture and traffic and transport are represented to a large extent while the expertise fields of tourism, engineering and economics are less represented. No chairs have expertise in heritage.

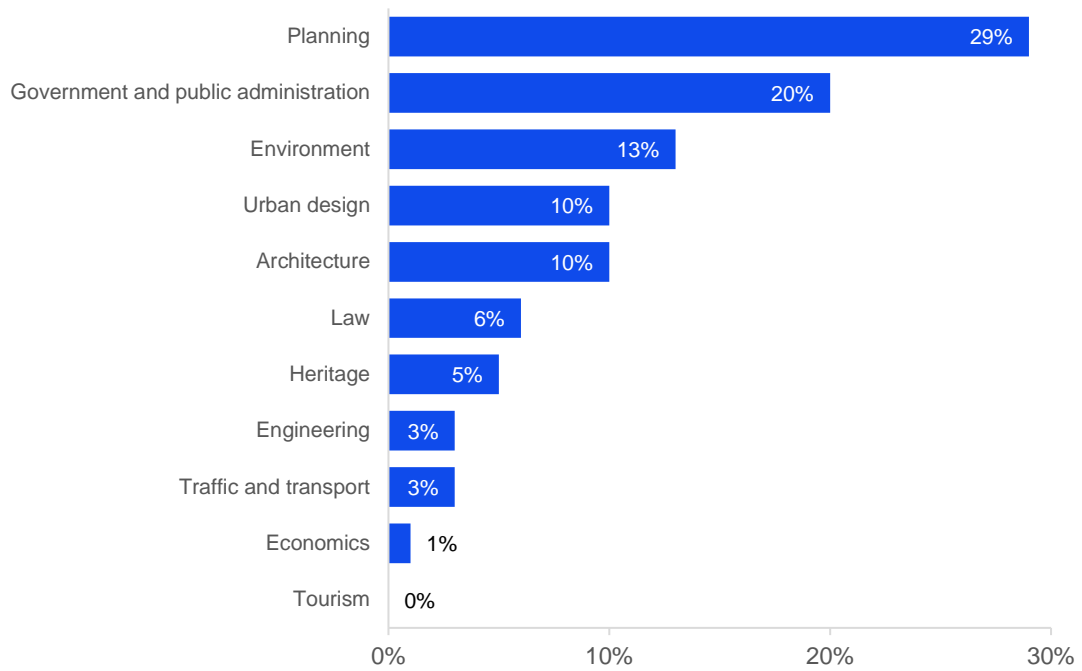
2.2.1.2 Experts' expertise

DPE required panel members to have one of the 11 categories of expertise. Accordingly, while the spread of expertise is beneficial, it is not required. In summary, with regard to expert's expertise (Figure 3 and Figure 4):

- Most expertise is in planning, government and public administration.
- None of the IHAPs has experts in each of the 11 expertise areas.
- The breadth of expertise fields across councils for experts was lowest in Campbelltown and Blacktown, and highest in Woollahra and Hunters Hill. Appointed experts in Woollahra and Hunters Hill held between four and five times the breadth of expertise (range of fields of expertise).
- Tourism, engineering, economics, traffic and transport expertise fields are less represented (in common with chairs).
- Only two councils have experts in tourism, only eight have experts in engineering, seven have experts in economics, and nine in traffic and transport.
- The greatest breadth of expertise recorded for any individual was seven relevant fields.

⁶ Chairs' skills were pooled, and then weighted according to their number of appointments.

Figure 3. Summary of experts' expertise, according to expertise areas⁷

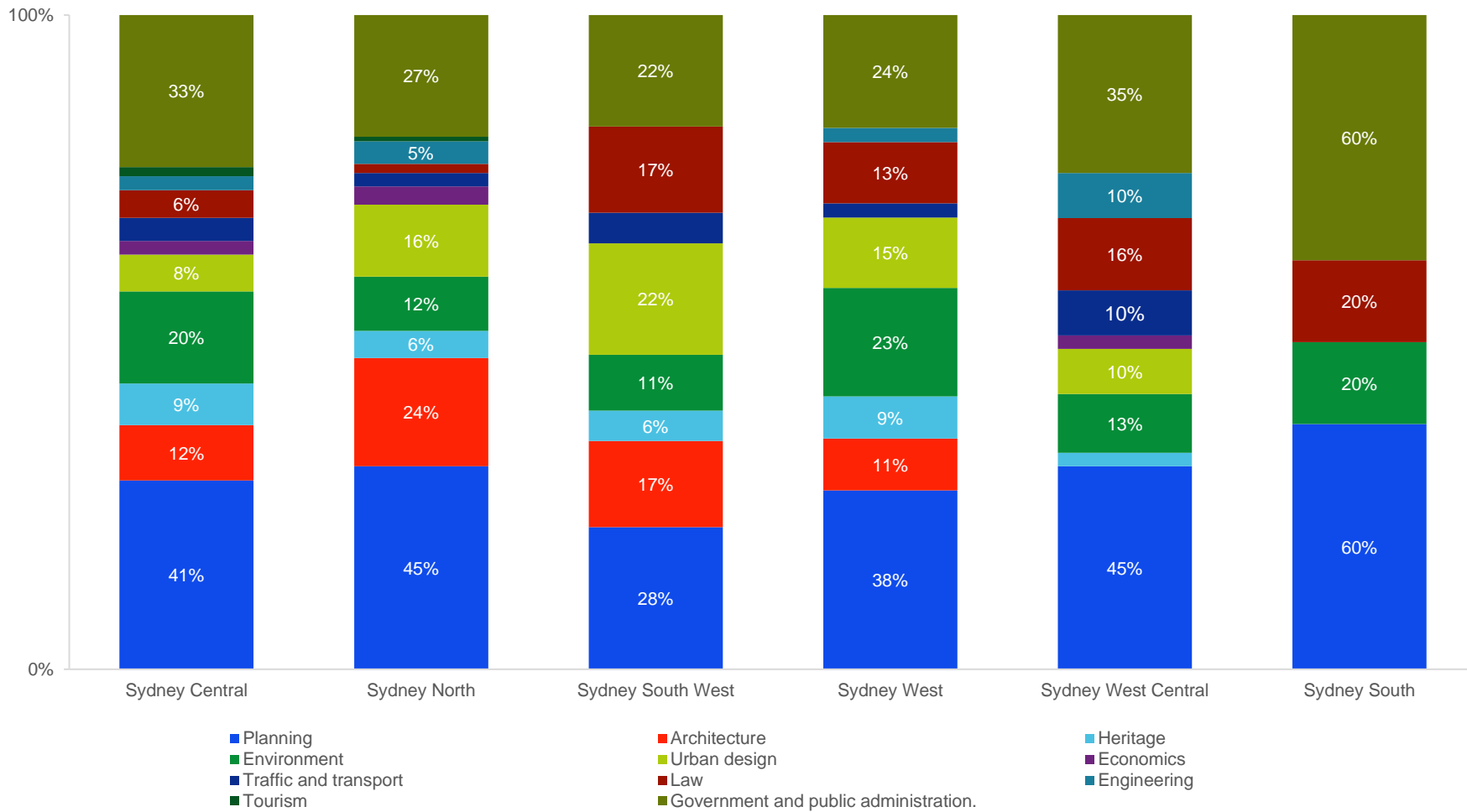


Based on IPPG coding of documents supplied the executive recruitment agency engaged by DPE.
Sample: N=215 expert appointments (105 individuals).

Experts were also asked how they use their expertise on the panels. One landscape planning expert said they were sometimes asked to provide their planning opinion by other panel members. However, this did not happen as frequently when they sat on the panel with the community representative who possesses planning expertise. They stated that they had almost 40 years of skills including analysis of good design and could advise on good solutions to address neighbours' concerns. For this expert, their expertise allowed them to stand back from the detail and consider the application.

⁷ This figure relates to number of fields of expertise counted, rather than the number of individuals.

Figure 4. Summary of experts' expertise, according to expertise areas, by region



Based on IPPG coding of documents supplied by the executive recruitment agency engaged by DPE
 N=215 expert appointments (105 individuals).

2.2.2 Knowledge of statutory and strategic planning instruments

In the survey, chairs were asked about their familiarity with council statutory and strategic planning instruments: the Local Environmental Plans (LEPs), Development Control Plans (DCPs) and Community Strategic Plans (CSPs) for the panel on which they most presided from March to June 2018.

To become familiar with council statutory and strategic planning instruments, most responses from surveyed chairs reported reviewing at least one of the following:

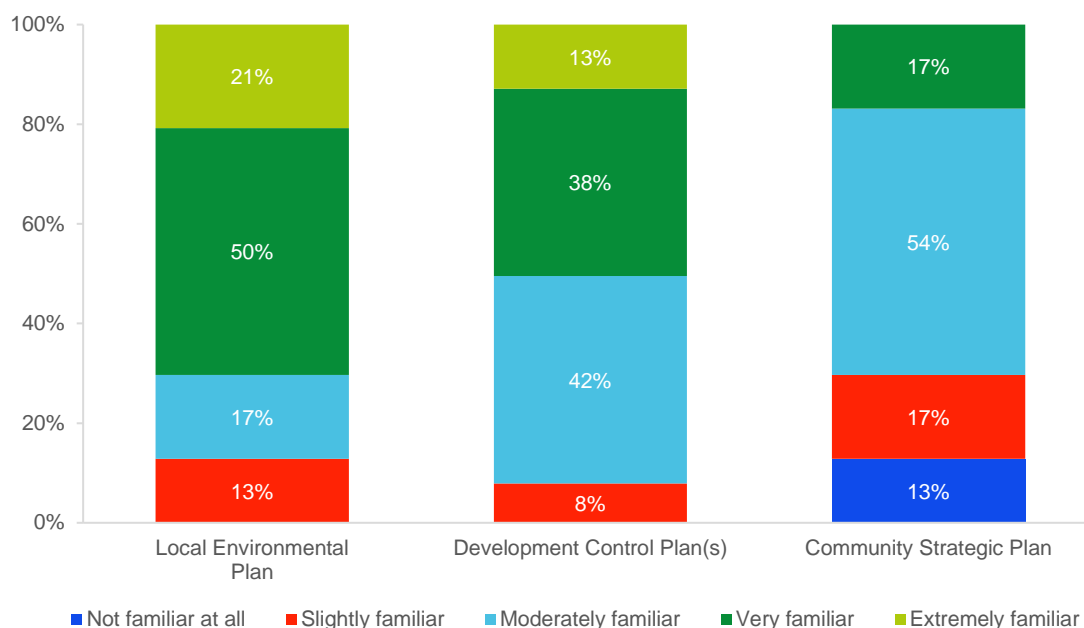
- council statutory and strategic planning documents (45 per cent)
- a council briefing (43 per cent).⁸

Surveyed chairs reported being:

- relatively familiar with council LEPs
- slightly less familiar with council's DCPs compared to LEPs, and

relatively mixed familiarity with council's CSP.

Figure 5. Familiarity of chairs with local statutory and strategic planning instruments



Survey question: How familiar are you with council's plans?
Sample: N=31 chairs.

As part of the case studies, experts and community representatives were also asked how familiar they were with these statutory and strategic planning instruments. One expert explained that they were extremely familiar with the instruments as they had worked as a planning lawyer in the local area for many years. Another expert had a former client in the area so they were familiar with LEPs and DCPs. However, this expert stated that the CSP was a higher level document and that councils were not sufficiently referring to their CSPs in their DA reporting.

Community representatives were also asked about their knowledge of these instruments. The community representative with planning expertise indicated they were familiar with relevant LEPs, and they refer to the DCP at home when preparing for the meeting but were less familiar with the DCP. They also indicated they would not familiarise themselves as much with the CSP as they did not consider it a planning document. Another community representative with planning expertise indicated they were more familiar

⁸ The briefing from councils refers to the briefing during the inception process briefings whereas briefings from relevant staff relates to other briefings/trainings sessions.

with the plans than the average resident because of their professional background. The third representative was not familiar with the instruments.

2.2.3 Knowledge of local area, history and community concerns

Through the case studies, community representatives were asked how they rated their knowledge of the local area and its history and understanding of community concerns. One community representative explained they had worked for the council, lived in the area for a long time, read the local paper, and kept up to date with local issues. Another representative spoke about living in the area and keeping up to date with the local newspaper and council website as well as radio and other newspapers as a means of understanding local issues. The third community representative pointed to living in the area for approximately 30 years as the key contributors to understanding the locality.

Representatives were also asked how they used their local knowledge when they sat on the panel. For one representative, it was about looking at the big picture. Another representative raised their local knowledge in the panel meetings in a range of ways. For example, identifying if council officers overlooked an issue, indicating where problems exist in the area (e.g. issues with parking) or giving practical advice during the site visit such as telling the driver if there is a better way to get to a site. Another representative explained they considered the wider community impacts. They ask themselves 'what is important to the community? What would they consider to be a good outcome? Is the DA in character with the place or are residents going to complain and ask why the DA was approved?'

However, two of the three community representatives interviewed noted that the community representative role was unclear. The council staff echoed these views. For example, one council staff member stated that community representatives did not initially understand their roles. For one community representative who had planning expertise, and was also an expert on another panel, the role of community representative was not well defined and suggested this could be addressed by DPE. The community representative interviewed stated they were unsure whether they were supposed to be giving their expert opinion or their opinion on behalf of the community. During our site visit and interviews it was apparent that this community representative acted like a third expert on the panel and sought to heavily engage speakers at the panel meeting.

2.3 Inception processes

Councils and DPE conducted a range of inception briefings and training sessions for panel members.

2.3.1 Councils

The councils who participated in the case studies conducted introductory sessions for panel members to meet each other and/or briefing sessions that covered basic LEP, DCP training and planning framework documents.⁹ For example, one council provided development assessment guidelines, conducted a face-to-face briefing and then another briefing for community representatives (PowerPoint slides were shared with those who were unable to attend).

Despite this guidance, two of the three community representatives raised that they required more information about the potential determinations possible for each DA (e.g. approve, reject, deferred commencements) and the implications of this decision. One representative suggested it would be helpful for council to meet with the representative before the meeting to explain the application and what options are available.

One council case study established public meeting procedures to ensure consistency between meetings. They also provide a run sheet for the presiding chair to follow. These procedures provide standard wording that may be used by the chair to:

- declare the meeting open and introduce panel members
- explain the public meeting procedures
- ask if there are any pecuniary or non-pecuniary interests to be declared

⁹ Seventy-one per cent surveyed chairs indicated that they were not involved in community information activities about the new IHAP reforms. For those who were involved, respondents indicated that activities were relatively informal and appear to have been organised or facilitated by respective councils. An example included a 'meet and greet' information session.

- introduce speakers
- adjourn the meeting
- declare the meeting reconvened
- explain how the voting and determination will occur
- vote and determine each application, and
- close the meeting.

A primary chair of another council drafted a mini introductory script for all chairs to use to open the meeting.

2.3.2 Departmental

DPE conducted three sessions for panel members.

2.3.2.1 Chairs and experts

Briefing session

A briefing was held for chairs and experts on 21 February 2018. Thirty-one chairs and 161 experts attended.

The session was facilitated by Lucy Cole-Edelstein, Director of Straight Talk. Presenters included: Anthony Roberts, Minister for Planning; Nathan Laird, Director Policy, DPE; Antony Pedroza, ICAC; and, Marcus Ray, Deputy Secretary Planning Services, DPE. The briefing covered:

- how will IHAPs work?
- what makes a great panel?
- working as a team, and
- ICAC and conflicts of interest.

The question and answer discussion was led by Lucy Cole Edelstein, Nathan Laird, Peter Biscoe, Sue Francis, Garry West and Heather Warton.

A chairs-only session from 2:45 to 4pm was facilitated by Marcus Ray, Nathan Laird and Stuart Withington, Manager, Planning Panels Secretariat, DPE.

Chair roundtable

On 23 May 2018 a chair roundtable was held at Fraser Suites, 488 Kent St, Sydney from 3.30pm to 5.30pm. Twenty-three chairs attended.

The facilitator was Lucy Cole-Edelstein, Director of Straight Talk. DPE presenters included: Marcus Ray, Deputy Secretary; Steve Murray, Executive Director Regions; Cassandra Cosgrove, Director, Regulation Review. Other DPE invitees included: Stuart Withington, Manager, Planning Panels Secretariat, and Phillipa Kermeen, Principal Planning Officer, Regulation Review.

The session primarily focused on discussion and obtaining feedback regarding:

- the current IHAP statutory framework (criteria, operating procedure and code of conduct), including areas of improvement, and
- the level of support and guidance provided by councils to ensure an effective and efficient relationship with the panels.

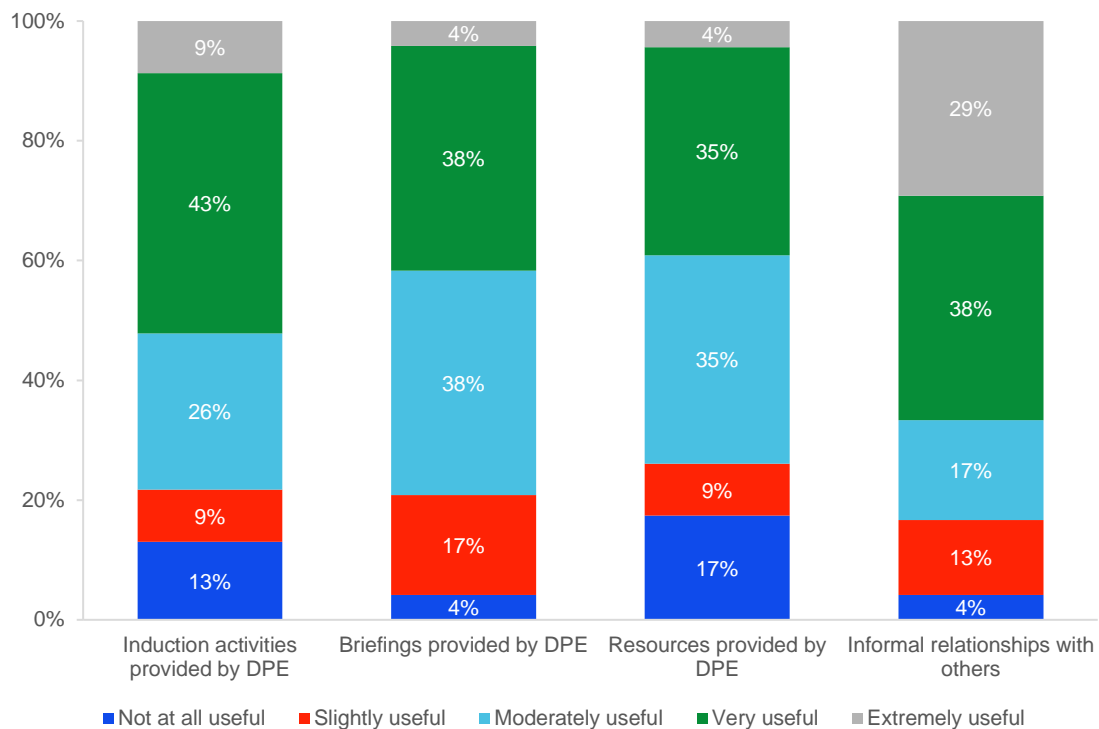
The session also included information regarding the monitoring and evaluation framework for the panels.

During this session, it was apparent panels were working slightly differently – both in response to the chairs' style and background and the local conditions of the council. Most of the action points from the roundtable were for DPE to provide best practice notes.

2.3.2.2 Usefulness of inception processes

Surveyed chairs were asked to indicate the usefulness of the DPE induction activities and resources (Figure 6). The most useful activity/resource in their role as chair was informal relationships with others (such as former or current chairs and other council contacts).

Figure 6. Chairs' views on the usefulness of DPE induction activities and resources



Survey question: Please rate the following in terms of how useful they have been to you in your role as chair.
Sample: N=31 chairs.

There was some variation among respondents as to the usefulness of the activities and resources provided by DPE. For instance, relatively more respondents reported induction activities to be very useful (44 per cent) or extremely useful (9 per cent), though a relatively higher proportion of respondents recorded that induction activities were not useful at all (13 per cent). By contrast, surveyed chairs were more centrally placed in their responses to briefings provided by DPE – with comparably more responses as moderately useful (38 per cent) and very useful (38 per cent).

Surveyed chairs reported a range of other resources or processes as being useful. Among these responses included: the facilitation of informal networking with other chairs (particularly with a suggestion this could be conducted several times per year). Respondents indicated that such networks may offer the opportunity to exchange ideas and experiences of IHAP operations. In addition, some respondents indicate that informal meetings with council staff were also useful.

Several surveyed chairs indicated opportunities for resources that might be useful, for instance:

- templates (e.g. meetings minutes template, 'template for adoption of operational procedures - a toolkit that a report can be prepared from')
- guidance and further information (e.g. 'guidance to councils on information requirements for referring planning proposals to LPPs', 'Q & A fact sheets of how to handle various scenarios', 'Guidance on delegating modifications and appeals to council staff'), and
- best practice examples.

Requests for (further) guidance to ensure consistency across panels was also raised at the chair roundtable.

2.3.2.3 Community representatives

In total, 121 community representatives attended DPE training sessions. Community representatives were invited to attend one of the following training sessions:

- in Sydney on 10 April 2018 (51 attendees)
- in Chatswood on 12 April (23 attendees), and
- in Parramatta on 30 April 2018 (47 attendees).

These training sessions followed a similar format. However, the question and answer sessions included different chairs and community representatives.

The following provides details of the training session held in Chatswood on 12 April 2018.

At this session the following topics were covered:

- how will IHAPs work?
- code of conduct, and
- ICAC and conflicts of interest.

Attendees were provided with a take-home pack that included:

- fact sheet on IHAPs legislation
- referral criteria for DAs
- referral criteria for planning proposals
- operational procedures
- code of conduct
- remuneration direction, and
- planning for non-planners' training dates.

Community representatives were invited to attend a free training session, 'Planning for non-planners', run by the Planning Institute of Australia (PIA). Ninety seven out of the 161 community representatives attended sessions throughout May 2018 (Table 2).

The training session included the following modules:

- the two main tasks of planning
- planning issues in more detail
- DAs and planning proposals
- the GSC and ePlanning
- a planning exercise, and
- practising cases: Georges River Council IHAP.

In the case studies, two of the three community representatives reported that they attended this training (one of whom was a retired town planner).

Table 2. Number of community representatives who attended PIA training

PIA training session date (2018)	Number of community representatives registered
9 May	24
15 May	20
17 May	12
18 May	18

21 May	23
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3 Operation of IHAPs

This section provides a more detailed information on key findings in relation to the operation of the IHAPs in quarter 1, with a focus on rotation, referral criteria, decision-making, deliberation and determinations.

3.1 Panel member rotation

3.1.1 Criteria for rotation

Surveyed chairs were asked about their criteria for rotation for experts and community representatives. The most common criteria for experts was the turn in rotation cycle (32 per cent) and the availability of the expert (21 per cent). The specific focus of the DA was the least commonly reported criteria for selecting experts (18 per cent). One respondent explained that this could be related to limited advanced knowledge of agendas ahead of meetings. This means that availability becomes relatively important for chairs when constituting the panel rather than attempting to match to specific skillsets. However, there was no indication from the responses offered by chairs that there was a lack of skill or expertise in the pool of panellists they were to choose from. One respondent also indicated that experts were selected in part to increase gender diversity on panels.

A case study council staff member noted that with traffic or engineering expertise, expert advice was included in the council assessment report. This meant it was not necessary to have an expert in those areas sitting on the panel as the advice is included in report and it is up to the panel to decide if they are satisfied.

Surveyed chairs reported that the selection of community members to largely be determined by the respective turn in the rotation cycle (32 per cent) and the availability of community representatives (27 per cent). Only a minority of responses indicated that ensuring the representative belonged to a specific ward (9 per cent) as being among the criteria in selecting community representatives. It should be noted that not all councils have ward structures, which may account for this. The other responses offered by chairs related more so to the recruiting of community representatives to the panel in general rather than for each DA/meeting.

3.1.1.1 Involvement of council staff in panel member selection for each DA

Chairs reported little involvement of the general managers in the selection of expert and community representatives for meetings. Sixty-five per cent of council general managers were not involved and 25 per cent had little involvement. Directors of planning reportedly had variable levels of involvement: 25 per cent reportedly took a great deal, 25 per cent took a lot of involvement, and 25 per cent a moderate amount.

3.1.1.2 Lead time for selection of panel members

Responses varied significantly among respondents as to the lead time in selection of panel members. Several respondents indicated that experts were scheduled for six to 12-months in advance to ensure availability, while several reported that experts were scheduled one to three months in advance. The remaining responded that panel members were selected between seven and 21 days in advance. It was not clear from all respondents when discussing lead time for selection of panel members to what extent it varied between experts and community representatives. For those respondents that did specify between panel members, it appears that community representatives were selected one to two weeks in advance.

All three council case studies had fixed rosters for chair and experts (some included community representatives). Two had a 12-month roster while the other council had a six-month roster. For the council with a six-month roster the chairs and experts were rostered, and community representatives were selected once the meeting agenda was finalised.¹⁰

¹⁰ The Council IHAP guidelines state the following with regard to panel member rotation: the 'members for each meeting will be selected by the chair from the pool of members appointed' to the panel; the 'chair is to decide which panel members (or alternates) are to hear a matter prior to the meeting commencing'; the chair is required to 'approve the agenda and nominate which panel members (or alternates) are to sit on the panel' for the upcoming meeting; community representatives 'have been appointed on the basis that their skills and attributes could be equally applied to any of the wards. Consequently, whilst the choice of community representative for a meeting will consider the number of items on the agenda for each ward, other factors

Chairs and experts tended to prefer rosters. According to the chairs and experts interviewed, rosters enabled them to effectively plan their work (including with other panels) and leave schedules. Also, according to a council staff member, 'we try to have fixed rosters because they [chairs and experts] are on other panels. We have a fixed roster for the 12 months but if we need a particular expert then we suggest to the chair we can get the expert on traffic, heritage, or contamination, for instance'. For one expert the 12-month roster was fair. Another expert was also in favour of the 12-month roster because they sit on several boards, so their diary is set 12 months in advance. However, this expert noted that it was also important to have some flexibility in getting the right skill set on the panel.

3.1.2 Rate of rotation

3.1.2.1 Chairs

In 87 per cent of councils, chair positions were rotated at least once. In half of all councils, there was one rotation, and in more than one third of councils there were two rotations (37 per cent). In four councils there was no rotation of chair. In contrast, there were four councils with a different chair for each of their meetings; Canada Bay Council, Hawkesbury Council, and Inner West Council had a unique chair for each of their three meetings, and Lane Cove had a different chair for its two meetings.

During the case studies, the council with the six-month roster had designed it to rotate so that experts are appointed on a panel an equal number of times and each chair is rostered to be with each expert. The chair endorses the roster and the actual appointment of panel members by chair is not finalised until the agenda is released to check for declarations of conflicts of interest. For one council with a 12-month roster, the panel rotation was designed in collaboration with the primary chair.

For one case study the primary chair sits on double the number of meetings compared to two alternate chairs, whereas for another council case study, the primary chair sat four times and each alternate chair sat for one meeting each. Notably, for the latter IHAP all three chairs were also experts so in effect at each meeting there was a presiding chair and another chair who was sitting on the panel in the capacity as an expert.

At the chair roundtable some chairs requested more prescription around rotation requirements. This included arriving at consensus on what constitutes adequate rotation.

3.1.2.2 Experts

Experts rotated more than chairs, but less than community representatives. On average, the rotation rate across councils for experts on panels was 61 per cent. Around two thirds of councils rotated at least 50 per cent of expert panel positions.

Three councils (Campbelltown, Mosman and Northern Beaches) had limited panel member rotation

For the panel meetings in quarter 1, 70 per cent of councils used between four and six independent experts on their panels. A minority (13 per cent) either did not rotate or only rotated one role. For Mosman Council, for instance, in its five meetings the same two experts sat on the panel on each occasion. At the other end, five councils fully rotated their expert positions on panels – Parramatta Council, Hawkesbury Council, North Sydney, and Wollongong for its each of three meetings, and Lane Cove Council for its two meetings.

3.1.2.3 Community representatives

Community representatives rotated more than chairs (average of 69 per cent rotation of community representatives). Accordingly, 60 per cent of councils rotated community representatives three or more times, 37 per cent rotated twice

Overall, around one in four councils rotated their community representative 50 per cent or less, though 63 per cent rotated their community representative for two-thirds or more of their meetings. For eight councils, community representatives were rotated for each of their meetings.

such as availability and rotation may also be considered; 'After the agenda has been set, the chair shall select the community representative for the meeting'; and, the chair may appoint a different community representative as a voting member on a particular item (e.g. a planning proposal in a different ward).

Councils divided into wards

DPE found that councils divided into wards are currently operating in different ways, including:

- designating a different community representative for each matter according to the ward the matter relates to, and/or
- designating only one community representative to vote on all matters before the panel at a given meeting (in this scenario, chairs may be selecting the representative from the ward with most matters being decided, or designating community representatives for each meeting according to a roster/availability of the individual representatives).

This interpretation issue was raised in an interview with a council staff member during Phase 1. They noted that during the referral criteria consultations¹¹, they had sought guidance about the role of community representatives and were given different information: that the community representative should be selected to best represent to the meeting agenda versus community representative should be selected who best represents the DA.

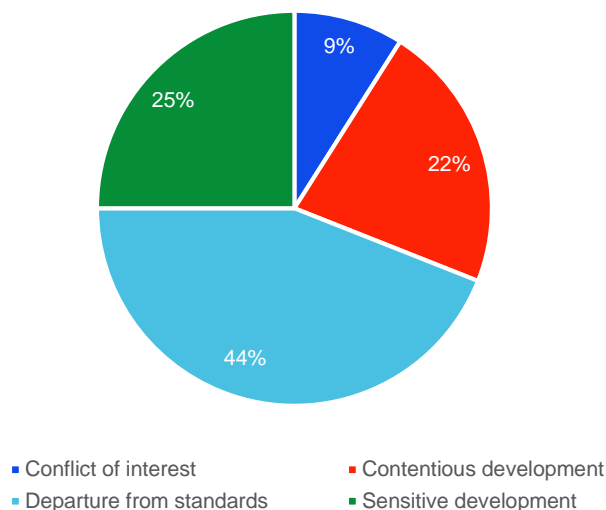
This interpretation issue was also raised in Phase 1 by another council, which also adopted the approach whereby the community representative is selected to best represent to the meeting agenda. This council sought DPE clarification when completing the council IHAP meeting reports (as the form did not provide the option to select different community representatives in attendance). DPE advised that this council can operate under its current approach, and that an amendment could be pursued through the Statute Law Revision program to clarify that there is no requirement for chairs to designate a different community representative for each matter according to the ward the matter relates to.

3.2 Referral criteria

3.2.1 Overall referral criteria triggered

Overall, the bulk of referrals to IHAPs was related to departure from development standards (Figure 7).

Figure 7. Proportion of DAs assessed by panels, according to the referral criteria



Source: Council online IHAP reporting data.
Sample: N=485 referral criteria.

The departure from standards referral criterion has the largest number of DAs, followed by the contentious development criterion, the Residential Flat Building (RFB) sensitive development criterion, the conflict of interest criterion (43 DAs) then the non-RFB sensitive development criterion (Table 3).

¹¹ On the 10 November 2017, the Minister approved targeted consultation with councils and other key stakeholders on the draft referral criteria and procedural requirements for IHAPs.

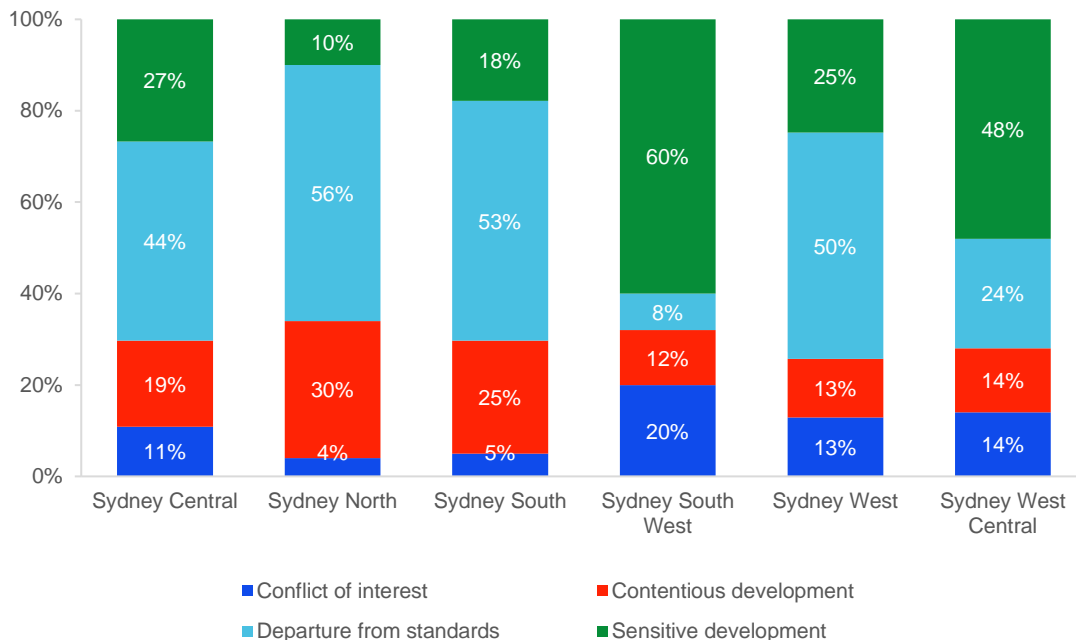
Table 2. Breakdown of DAs by referral criteria, by Schedule

	Schedule 1	Schedule 2	Schedule 3	Total
Conflict of Interest	20	12	11	43
Contentious development	71	33	1	105
Sensitive development				
RFB	52	35	7	94
Non-RFB	18	7	3	28
Departures from standards	123	80	12	215

The composition of referral criteria triggered varies by region (Figure 8). In summary:

- Sensitive developments make up large proportions of DAs considered in Sydney South West and Sydney West Central, and relatively few for Sydney North and Sydney South.
- Departure from standards make up a small proportion of DAs considered in Sydney South West and Sydney West Central.
- Contentious developments make up a large proportion of DAs considered for Sydney North and Sydney South, while the number of developments triggered due to conflicts of interest was relatively low for these same councils.

Figure 8. Comparison of DA referral criteria, by region



Source: Council online IHAP reporting data.
 Sample: N=485 referral criteria.

3.2.2 Breakdown of criteria triggering a referral

Most DAs considered by IHAPs triggered only one referral criterion.¹² However, for 60 DAs, two referral criteria were triggered and, for ten DAs, three criteria were triggered.

The criterion most commonly triggered in combination with other referral criteria was the, departure from standards (building height) criterion (Table 4). In summary, the departure from standards criterion (building height) was triggered with:

- the RFB sensitive development criterion for 25 DAs
- the floor space ratio, departure from development standard criterion for 21 DAs
- the 'other', departure from development standards criterion for 15 DAs, and
- the contentious development criterion for 14 DAs.

The contentious development criterion was triggered with RFB sensitive development for 18 DAs.

Table 3. Breakdown of DAs by referral criteria¹³

		Conflict of Interest	Contentious development	Sensitive development		Departures from standards			
				RFB	Non-RFBs	Lot size	Building height	Floor space ratio	Other
Conflict of Interest		36	3	-	1	-	2	-	1
Contentious development		3	58	18		1	14	5	6
Sensitive development	RFB	-	18	33	-	-	25	9	9
	Non-RFB	1			20	1	1	4	1
Departures from standards	Lot size	-	1	-	1	12	-	2	1
	Building height	2	14	25	1		22	21	15
	Floor space ratio	-	5	9	4	2	21	34	6
	Other	1	6	9	1	1	15	6	22

3.2.2.1 Conflict of interest

Nearly one in ten DAs considered by IHAPs resulted from a reported conflict of interest. In most cases, the conflict of interest resulted from council being an interested party. A conflict of interest as the reason for

¹² At the time of analysis, it was not possible to verify which referral criteria had been triggered for around 10 per cent of DAs, due to data limitations (see Section 1.2).

¹³ Note the total number of referrals in this table as it is greater than the total of all referral criteria counted in other sources. This is because the departures from standards are typically counted as 1 referral rather than being counted separately for each departure.

referral was relatively common across IHAPs, particularly for City of Sydney, where it accounted for one in three cases referred to the IHAP.

For DAs referred to IHAPs by the conflict of interest criterion reported, most were approved (93 per cent).

3.2.2.2 Contentious development

Nearly one in four DAs were referred to IHAPs under the contentious development criteria. The proportion of referrals based on these criteria varied across the schedules. For Schedule 1 IHAPs, 27 per cent of DAs triggered the complaints threshold, compared to 21 per cent of DAs for Schedule 2 IHAPs.

Hornsby Shire recorded the highest proportion of contentious developments (10 of 13 DAs considered by IHAPs), followed by Woollahra Council, which recorded 11 out of 24 DAs considered by IHAPs as contentious developments.

Contentious DAs heard by IHAPs were much less likely (54 per cent) to be approved compared to conflict of interest cases. Of the applications that were not approved, 40 per cent of non-approvals were deferred, and the rest were refused (56 per cent of non-approvals).

3.2.2.3 Sensitive development

Around one in four DAs met the sensitive development referral criteria. The *State Environmental Planning Policy No 65 – Design and Quality of Residential Apartment Development* applied to most of these DAs (77 per cent). Schedule 1 IHAPs were a little less likely (74 per cent of Schedule 1 sensitive developments) than Schedule 2 IHAPs (83 per cent of sensitive developments) to trigger this sub-criterion.

The approval rate for residential flat building sub-criterion sensitive development considerations did vary between Schedule 1 (77 per cent approval) and Schedule 2 IHAPs (51 per cent approval). In addition, non-approved determinations for Schedule 2 IHAPs were much more likely to be refused (65 per cent of non-approved determinations) compared to Schedule 1 IHAPs (50 per cent of non-approved determinations).

The remaining sensitive developments included: planning agreements with developers (14 per cent); four applicants for demolition of heritage; four designated developments; one sex premises; and two licenced premises (one hotel and one club). For these non-residential sensitive developments, the approval rate was higher (86 per cent) than for residential sensitive development. Of the four considerations for which the determination was not approved, two were deferred and two were refused.

3.2.2.4 Departure from development standards

Forty-seven per cent of all DAs considered by IHAPs triggered at least one of the relevant thresholds for departure from development standards. The threshold is any contravention of a non-numeral development standard, or contravention of a numerical development standard by more than 10 per cent for DAs considered by Schedule 1 and 2 IHAPs, or more than 25 per cent (in most cases) for Schedule 3. Fifty-seven per cent of the DAs considered by IHAPs for departure from standards were for Schedule 1 councils, in part due to the relatively large number of Schedule 1 councils.

The proportion of DAs considered by IHAPs for departure from standards was slightly higher for Schedule 2 councils (50 per cent of cases considered) compared to Schedule 1 (47 per cent). A relatively lower proportion of DAs was recorded for Schedule 3 (35 per cent).

Eighty per cent of DAs considered by IHAPs due to this referral trigger departed from one standard. The remaining 20 per cent of cases recorded departures from two nominated standards (excluding one DA with three departures from a development standard). Most of these DAs included a departure for building height (39 per cent), or floor space ratio (31 per cent).

The percentage of departure from standards was highest for lot size (on average departure of 66 per cent), compared to building height (44 per cent average departure), and floor space ratio (31 per cent average departure).

In summary, the reported departures from standards are significantly higher than the referral thresholds:

- Lot size modifications: only seven were between 10 and 19 per cent and the other 10 were greater than 21 per cent, with most modifications well over 30 per cent.
- Building height modifications: less than one in four modifications were for DAs between 10 to 15 per cent modification.
- Floor space modifications: less than one in five DAs were between 10 to 15 per cent.

Responses for the 'other' category (40) mostly included landscape variations (16), wall height (5) and height generally (7).¹⁴

Most DAs considered by IHAPs for departure from standards were approved (80 per cent). Of the remainder, 16 per cent were refused and 4 per cent were deferred.

3.2.3 Appropriateness of DAs referred

Seventy-three per cent of surveyed chairs reported that the DAs being referred to the IHAP were appropriate. Few surveyed chairs reported that council requested that DAs be referred back to council staff (9 per cent).

Several respondents noted that their some matters were referred to IHAPs because of the referral criteria was set by the Minister, rather than the appropriateness of the matters for the consideration by a panel.

Several respondents indicated they believed some relatively trivial matters and/or matters that could have been addressed by council staff that were referred to the panel. For instance, some referrals related to 'technicalities' rather than substantive matters. In some instances, chairs reported delegating minor matters back to council staff and suggested that some matters potentially could be decided by electronic determination.

During the case study interviews, panel members and council staff were also asked about the appropriateness of the referral criteria. Their views echoed the issues raised by surveyed chairs. One council staff member raised the conflict of interest referral criteria, explaining that it relates to applicant or landowner but not the objector, which required clarification. This council had sought legal advice on this issue.

The chair of one panel mentioned that many DAs were referred because of pre-existing contravention of a landscape development standard (these DAs often did not have any objections). This chair preferred that the council staff liaise with DPE to arrange delegation rather than delegate these items to council staff. This chair indicated that removing these DAs from the panel referral criteria would be the best way to reduce panel costs. The staff member at this council also attributed their high panel costs to this landscaping requirement trigger. They raised the issue of the 10 objections trigger but noted that they can prepare a submissions policy. It is noted that councils can update their LEPs or to write to the DPE Secretary to seek a concurrence for a particular development standard.

3.2.4 Other DA characteristics

Cost of works for development applications

The council meeting reports included data about the cost of DAs considered by IHAPs. The average cost of works in the period examined was just under \$3 million (\$2,982,222). However, the average amount is influenced by a range of factors and some data used to calculate this average figure was incomplete. For example, 47 DA entries (around 10 per cent) had no cost of works entered (\$0). There was also a small number of very high value DAs.

Number of dwellings

Forty-six per cent of DAs considered by IHAPs reported either zero applicable dwellings or did not report. It was not possible to determine whether zero was entered by respondents because it was 'not applicable' or because the application was not a dwelling, or if it was simply omitted. Forty-five per cent related to single dwelling assessments.

Around one in four of all DAs considered by IHAPs did not report the applicable number of storeys for assessments. It was not possible in the analysis to identify if this was due to data limitations.

Of the remaining 341 DAs, 18 per cent reported applying to developments of five or more storeys – though three DAs considered by IHAPs referred to developments of 20 or more storeys. Many assessments were related to two and three storey DAs (accounting for 44 per cent combined).

¹⁴ This was an open text field in the survey for chairs.

3.3 Decision-making

All three council case studies structured the panel meeting day differently (Table 5). This is examined below.

Table 4. Comparative summary of a typical panel meeting day

Council 1	Council 2	Council 3
<ul style="list-style-type: none"> • Morning site visit (1 council staff + 1 driver) • Lunch and extensive panel discussion with one council staff present. Reasoning and resolution text discussed • Public meeting at 2pm (two sessions), with occasional adjournments. Different panel members assigned by chair to (draft and) read resolutions. 	<ul style="list-style-type: none"> • Morning site visit (1 council staff/driver) • Lunch and panel discussion with two council staff and necessary council officers • Public meeting at 1pm • Meeting adjourned • Closed panel discussions and determination • Public meeting reconvened, chair reads resolutions and takes vote • Reasoning and resolutions approved by the chair at the end of the meeting. 	<ul style="list-style-type: none"> • Afternoon briefing with 2 council staff and most council officers who wrote reports • Afternoon site visits (2 council staff + 1 driver) • Dinner and preliminary panel discussions, with two council staff present • Public meeting at 6pm • Chair provides plain English reasoning and takes vote after each item. Except for closed deliberations for final item, public meeting reconvened and chair delivered decision • Chair writes up reasoning and electronically circulates to panel members for amendment and approval.

3.3.1 Council information

Surveyed chairs were asked to rate the quality of the information provided for assessment to the panel. This included the assessment reports, details of plans, addenda and council briefings. Surveyed chairs reported that, overall, the quality of information provided for assessment to the panel was good (55 per cent). Many reported that the quality of information was excellent (36 per cent) while a minority reported that the quality of information was of average standard (9 per cent).

Some respondents indicated that the quality of information may improve as the experience with IHAPs increases, with a number of responses reinforcing that quality has been improving and that panels were already working with council staff on refining information.

Several respondents commented on the variation in quality of information across councils, and potentially between council officers. These respondents indicated they received either 'too much information for a very small matter' or, 'you do not get something you think is crucial'.

These views were echoed by case study panel members, who agreed that they were provided with sufficient level and quality of information in the council assessment reports. Although they noted that this varied slightly from council officer to council officer and from council to council.

In terms of decision-making, one community representative indicated that they are guided by the council officers' report. The community representative indicated that they review all the files and plans that are available and make their own judgment based on whether it looks right or feels right for the area. They explained they keep an open mind until they go on site. They suggested having access to the council intranet, so they could view all documents that the council officers have access to online. Another community representative felt that the reports were comprehensive but indicated that they would like to see a full version of the objections, not just the submitted A4 summaries. They suggested that panel members should be provided with a link to where the objections are saved on the council system to ensure that the decision makers have access to the full-version of the objections.

3.3.1.1 Briefings with council staff

During the case studies, council staff members agreed that the types and quality of questions asked by panel members during the briefing (and the public meetings) were good, sensible and well founded.

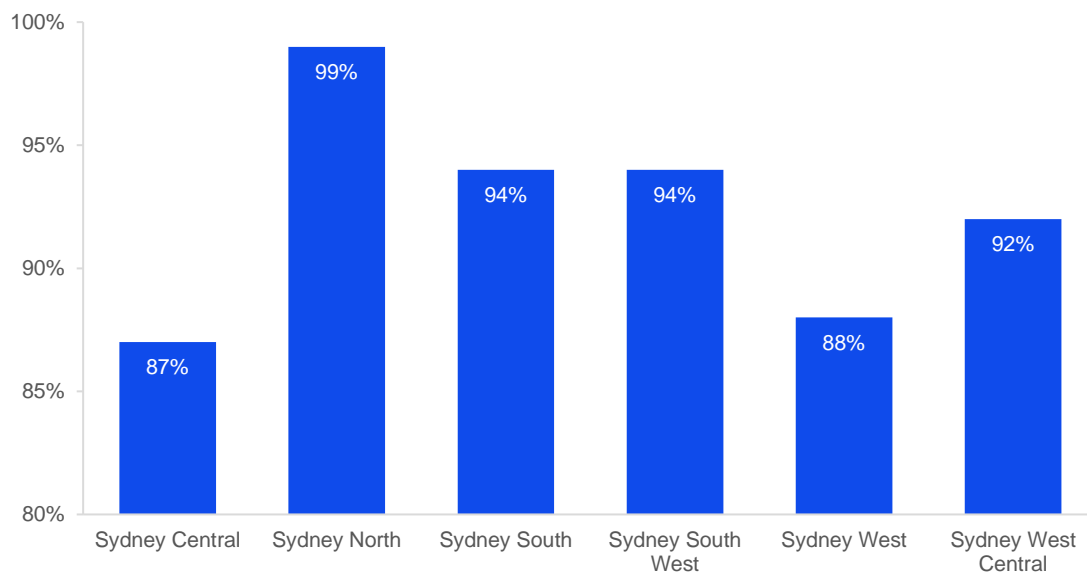
For two of the case studies, the briefing occurred during lunch, whereas the other case study started the meeting day with a briefing by council staff (see Table 5). For most panel members, this was an opportunity to clarify issues, to seek particular expertise from council officers (e.g. landscaping or engineering), or generally to hear their views on the application.

The nature of these briefings varied. At one council case study, most of the council officers who wrote the report attended (briefly), so that the panel members could ask them any specific questions. For another panel, the presence of the council staff and the ability to bring up information from the DCP and other planning instruments on the screen, as well as an interactive plan, greatly assisted the decision-making.

3.3.2 Site visits

According to the council meeting data, site visits were conducted for most DAs (88 per cent). Some variation was recorded among the regions (Figure 9). Site visits were conducted for 99 per cent of DAs in Sydney North, but this figure was slightly lower for Sydney West and Sydney Central. The results for Sydney Central were strongly influenced by the City of Sydney recording zero site visits for the 34 DAs on which data were supplied. In addition, other outlying observations include Woollahra Council (which recorded site visits for 75 per cent of its 24 DAs), Liverpool Council (which recorded site visits for 78 per cent of its nine DAs), and Blue Mountains Council (which recorded site visits for 75 per cent of its four DAs).

Figure 9. Average percentage of site visits conducted for each DA per panel, by region



Source: Council online IHAP reporting data.
 Sample: N=30 panels (from 459 DAs).¹⁵

While the time taken for individual site visits was not recorded in meeting data, the total time for site visits conducted for each IHAP was recorded. This allowed for an average of total time taken for each meeting to be divided by the number of site visits conducted, notwithstanding the difficulty in accounting for differences in complexity of cases, detail of inspection, and, the relatively small number of observations. Sydney West and Sydney South West undertook relatively longer site visits than other regions. This is the result of, for instance, Ryde Council recording an average of 16.8 minutes per site visit for its three site visits. At the other end of the spectrum, several councils recorded less than 5 minutes per site visit. In the main, councils with a higher number of site visits recorded less time per site visit.

¹⁵ One DA was excluded due to data limitations.

3.3.2.1 Usefulness of site visits

Surveyed chairs reported that site visits were beneficial in informing panel decision-making processes, with 82 per cent reporting that site visits were extremely useful and 14 per cent reporting that site visits were very useful.

During the case studies, most panel members agreed that site visits were crucial to their decision-making. During the site visits, the different panels spoke about the DAs to varying extents on the bus. A council staff member stated that the in-depth discussions on the bus works well, particularly while the issues are fresh in the panellists' minds. One chair stated that the site visits were imperative and an integral part of the decision-making process. A community representative said the site visits were essential and that their confidence level would drop if they did not attend. Another community representative explained that the site visits were very important as it is always different when you go to the site and see the impact for yourself.

An expert explained that site visits are not always needed. A chair echoed these views saying that some DAs are so minor that they do not need site visits, provided there is a good report with adequate photos.

3.3.2.2 Interactions with registered people at the site

During the site visits, panel members engaged with applicants and objectors to varying extents. For one council case study, the council's IHAP guidelines state that: 'Site visits are not to be used as a forum for applicants or objectors to address the panel; however, the panel may ask questions to clarify issues whilst visiting a site'. This was echoed by the council staff member who said that the purpose of the site visit is to observe and gather information.

In the case studies, it was apparent that some applicants/objectors were unaware of the purpose of the visit and extent to which they should present their positions to panel members. At times, some chairs initiated conversation with applicants/objectors to indicate the purpose of the visit and explain that, while the panel members may ask a few questions during the visit, the public meeting was their opportunity to be heard.

When applicants and objectors raised issues in the public meeting as instructed, it appeared that they left feeling 'unheard' (or that their concerns were not given due consideration) if this process was immediately followed by a panel determination (see Section 3.3.3.4). This highlights the need for chairs to carefully manage the panel meetings and the importance of their role in informing expectations and processes.

3.3.3 Public meetings

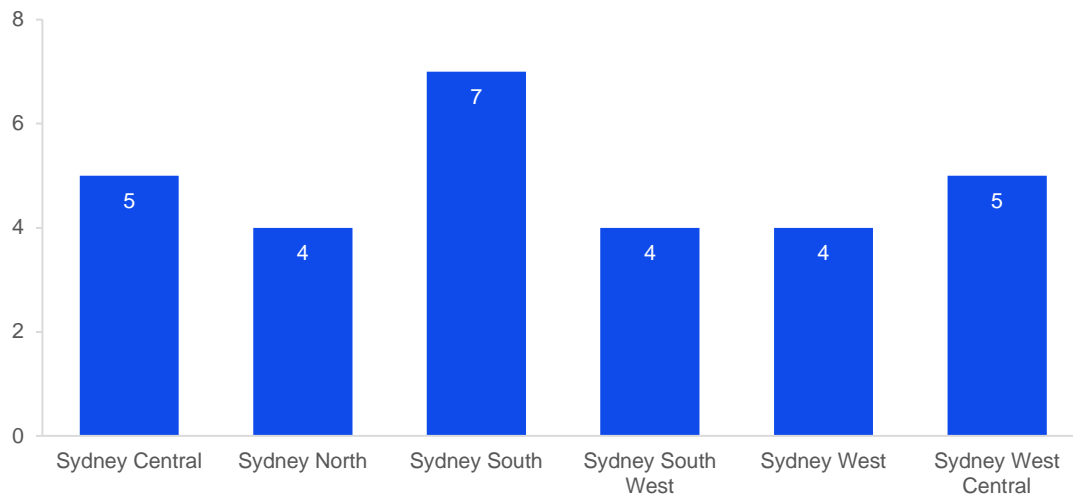
3.3.3.1 Overview for all councils

At the time that council meeting data were made available, IHAPs reported a range in the number of public meetings that they had conducted. In total, across the 30 councils that supplied at least partial data, 136 meetings had been conducted – with an overall average of 4.5 meetings per IHAP.

Sixty per cent had conducted four or fewer public meetings, with the fewest meetings recorded by Lane Cove Council (two). However, it is difficult to ascertain whether data is accurate for councils with relatively few meetings. At the other end of the spectrum, one council recorded nine public meetings between early March and mid-June. Specifically, Northern Beaches Council held nine meetings in a period of 15 weeks (that is, less than two weeks between meetings). Other councils also recorded relatively frequent meetings – such as Georges River Council (eight meetings) and Sutherland Council (seven meetings).

In addition, the average number of meetings per council varied by region (Figure 10).

Figure 10. Average number of meetings recorded per panel, by region



Source: Council online IHAP reporting data.
 Sample: N=30 panels (from 136 meetings).

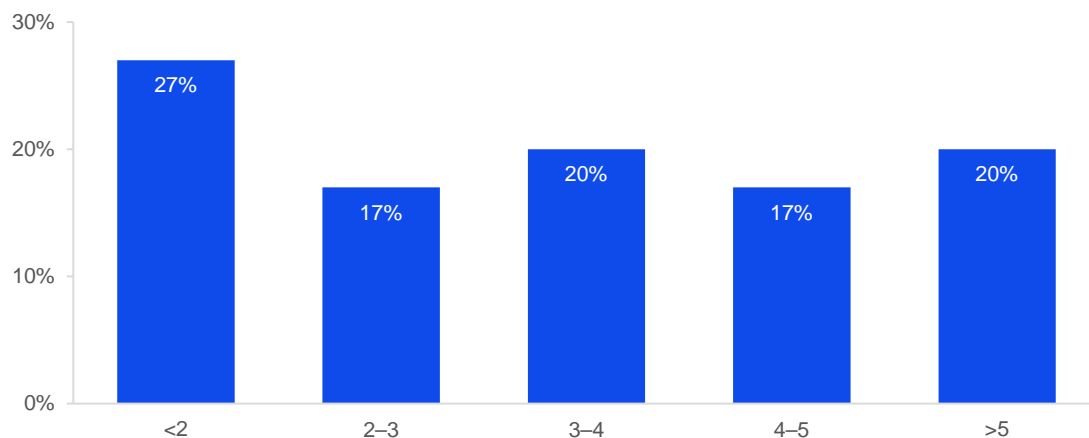
Total number of DAs considered

In total, data was available for 460 DAs being considered at public meetings, across 30 councils, and a total of 136 public meetings. Based on this high level, approximately 3.4 DAs were considered on average at public meetings in the first quarter of IHAPs (Figure 11).

Sixty-four per cent of IHAPs considered fewer than four DAs per meeting, on average. At the other end of the spectrum, one in five IHAPs considered five or more DAs per meeting. This was highest for Waverley Council (8.8 DAs per meeting on average) and Inner West Council (6 DAs per meeting on average).

Close to one third (eight) of the councils with available data considered over 20 DAs and one third (ten) considered less than ten DAs.

Figure 11. Proportion of DAs considered per meeting, per panel



Source: Council online IHAP reporting data.
 Sample: N=30 panels (from 459 DAs).¹⁶

¹⁶ One DA was excluded due to data limitations.

Number of registered speakers

For each DA considered at meetings, the number of speakers registered was recorded. This data indicated that for around one in three (34 per cent) DAs there were no registered speakers. Many DAs involved one (23 per cent) or two registered speakers (18 per cent). For a small number of DAs (eight) there were ten or more registered speakers, with three cases in which there were 12 registered speakers.

Duration of the meeting

The total time for proceedings of public meetings was recorded. This time was not broken down according to the respective time allocated to, for instance: hearings, deliberations and adjournments etc. On average, the duration of public meetings was 100 minutes. For ten of the meetings, the duration was recorded as zero minutes. This may be due an administrative error, or that the DAs were determined by circulation of papers. Nine public meetings recorded were conducted for four hours or more, with the longest meeting recorded as five hours. Overall, there was a relatively balanced distribution for the duration for public meetings.

Meetings on average were longest at Mosman Council (210 minutes on average), Hawkesbury Council (213 minutes on average), and Canada Bay Council (220 minutes on average). Nine IHAPs recorded average meeting durations of less than one hour, including meetings as short as 19 minutes on average for Blue Mountains Council (based on four meetings). Around half of councils recorded less than nine minutes per DA per public meeting. Over one third of councils recorded 11 minutes or more per DA per meeting.

After accounting for the number of DAs considered per meeting, an average of 13 minutes per DA was recorded per council. However, there is significant variation across regions.

3.3.3.2 Impact of panel members' professional backgrounds

The ways in which the meetings were conducted seemed to differ according to each chair's approach and professional background (e.g. court and commission experience compared to council or private sector experience). This was echoed by a number of experts interviewed. For example, according to one expert who sits on four panels, the chair sets the tone and the way the meeting runs. Other experts noted that, despite each chair having a different style, there is very little difference in the actual process and procedures followed. It was noted that the same code of conduct applies to each panel and this provides good guidance.

3.3.3.3 Process of submissions

Applicants

Responses of surveyed chairs indicated that applicants and their representatives are generally offered the opportunity to present during meetings after community members/objectors. However, there appeared to be some variation in practice among chairs if an applicant may nominate more than one speaker.

In some cases, applicants were invited to present their proposal in its entirety (such as allowing consultants or architects to make brief presentations in the case of larger or more complex matters). In other cases, applicants were asked to respond specifically to the objections raised by objectors.

Respondents generally reported that time limits (which varied from three minutes to 15 minutes) were provided in advance for applicants and announced by the chair at the commencement of proceedings. Some chairs reported that they offer flexibility in time limits. This is at the chair's discretion and allows applicants the opportunity to address and respond to questions of panellists.

Objectors

Responses of surveyed chairs indicated that the process for allowing objectors to speak is clearer than it is for applicants, though variation is evident across the procedures and processes of the different panels.

Generally, objectors are required to make a written submission and register in advance (e.g. 24 hours ahead of the panel meeting or by midday the day before the meeting). A written summary (no longer than one A4 page) and where relevant, any PowerPoint presentations, were also required to be provided at this time. Some respondents also indicated that they check, at the commencement of panel meetings, whether there are any audience members who have not registered but do wish to address the panel.

Objectors tended to be offered three or five minutes to speak, with some offered up to ten minutes (particularly when a speaker is representing a group). All council case studies carried over similar practices

from their council meetings/existing IHAPs. All panels provided speakers with extensions subject to the chairs' discretion. The consensus among most of the experts and chairs was that it made sense for councils to follow the same procedures at each meeting for the sake of consistency.

For one panel, a councillor was able to address the panel on items within their ward, followed by one objector and one speaker for the applicant. An expert on this panel was not aware of any other panels that had adopted this structure. They indicated that their adoption of this approach was in response to the needs of the individual council and the way that meetings were run.

3.3.3.4 Interaction with applicants and objectors

During the council case studies, panel members tended to ask applicants and objectors a range of questions during the meeting. For one panel, when disputes occurred between the applicant and the council staff about facts or information missing from the application, the tone of the meetings usually became more of a dialogue and these interactions continued for extended periods. An expert on this panel stated that there is an ongoing process of decision-making until determination time and the public meeting provides a mediation-style forum for objectors and applicants.

A council staff member felt the types and quality of panel members were good and better than councillors, because they are experts and ask tougher questions. However, at another council, a council staff member felt the panel's conversations with applicants/objectors were too lengthy and detailed. At the same time, they were mindful that the panel was trying to resolve an issue. They felt the panel needed to strike a balance.

For the community representatives, the public meetings seemed to be important. One community representative noted that it is useful to have both an applicant and an objector speaking. They highlighted that their final decision was not made until the chair asks: 'All in favour or not?' Although another community representative explained: 'We're there to assess based on advice. Public submissions are only one of the elements in consideration... The conclusion is not fully focused on public submissions'.

3.3.3.5 Deliberation approaches

Surveyed chairs reported a range of approaches in relation to the deliberation processes, both in terms of the process to reach determinations as well as how determinations are communicated.

Chairs generally preferred deliberations to be undertaken publicly to advance the transparency of the process, and noted that this is possible for a majority of applications. However, the need to balance transparent decision-making with frank and open discussion among panel members was acknowledged. In this regard, a number of chairs reported that closed deliberation¹⁷ is often necessary to:

- discuss more complex technical matters
- facilitate more candid discussion among panellists and 'full and frank discussion'
- tease out disagreements
- seek or clarify technical advice
- allow sufficient time for discussion (i.e. not rushed by the limitations of a public deliberation)
- formulate resolutions.

Some respondents indicated that the opportunity for closed deliberation is important to reach reasoned conclusions. For example, to:

- ensure that determinations are appropriately 'legally worded'
- 'carefully formulate the decision and the reasons for that decision'.

Some respondents are divided on whether deliberations should be open or closed. For example, one respondent commented that preferred open deliberations but acknowledged the need to allow for 'a candid discussion of the issues'. Another respondent suggested that 'adjournment should be the exception rather than the norm'. In some instances, chairs have indicated a willingness to make deliberation processes more open in future.

¹⁷ One respondent indicated that these 'private' deliberations were also recorded on camera for public view.

3.4 Decisions

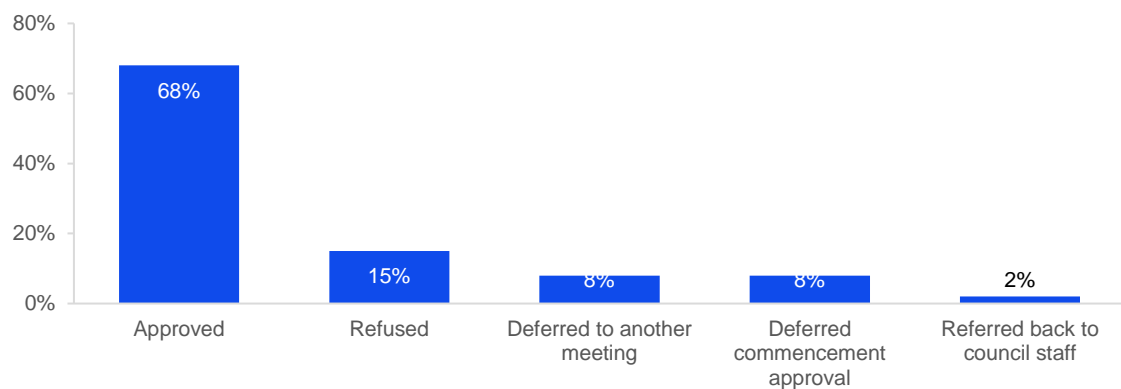
Three in four of the 459 DAs considered at public meetings were approved (Figure 12). The approval rates were highest on average for councils in Sydney Central and Sydney North and lower on average for councils in Sydney West and Sydney West Central (Figure 13).

Overall, the refusal rate across all DAs considered was 15 per cent.

While overall the rate of referrals back to council staff was only 2 per cent, but this was somewhat higher for Sydney South West (10 per cent).

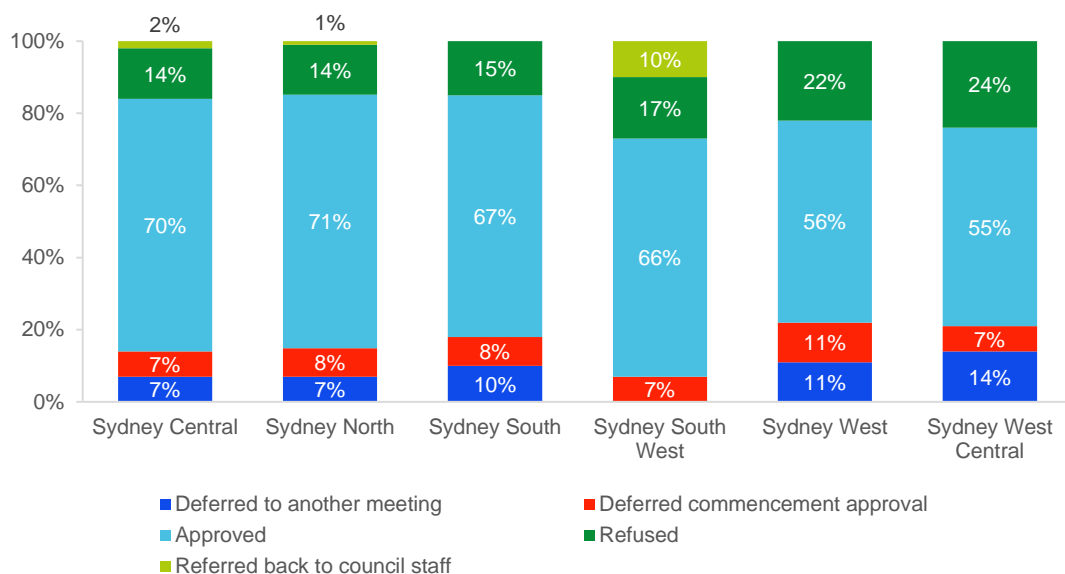
Overall, deferral rates were 8 per cent across all councils.

Figure 12. Breakdown of decisions



Source: Council online IHAP reporting data.
Sample: N=459 decisions.¹⁸

Figure 13. Breakdown of decisions, by region



Source: Council online IHAP reporting data.
Sample: N=30 panels (from 459 DAs).¹⁹

¹⁸ One decision was excluded due to data limitations.

¹⁹ One DA was excluded due to data limitations.

Case studies

Council case studies adopted different approaches to deliberation and the communication of their decisions. This seemed to be based on a range of factors, primarily the chair's preference, the council's previous approach for council meetings/existing IHAPs and/or the complexity of the DAs.

Council 1 – lengthy deliberation prior to meeting, most determinations made immediately after submissions: The chair assigned items to each panel member and they were responsible for drafting the reasoning and making the determination in the public meeting. Prior to the public meeting, this panel had lengthy discussions during lunch/the council briefing - this approach made some people feel less confident about the decision-making process.

The tone was relatively formal and this panel made determinations after most submissions (but briefly adjourned for two items). The community member explained this approach may lead to misunderstandings about the determination process. They suggested that a better approach might be to adjourn to discuss the submissions before the determination. An expert on this panel indicated they initially felt the panel should adjourn for all DAs, but for some DAs adjourning was inefficient.

One expert noted there is nothing wrong with differences of opinion between panel members. In contrast, another expert who sat on this panel (and three others) indicated that panels should present 'as a team'.

Council 2 – all matters heard (with detailed interaction with applicants and submitters), lengthy closed deliberation prior to meeting being reconvened: This panel went through the agenda items and engaged extensively with applicants and objectors. The tone was relatively informal. There was a greater level of interaction between panellists and the public, with applicants approaching the panel to clarify inaccuracies within the documentation/supplementary material.

The meeting was adjourned for closed deliberation. This focussed on which decision to make (e.g. deferral or deferred commencement or approval with conditions). While council staff said that they were comfortable with procedures overall, they wanted the panel to focus on key issues and not get bogged down in protracted discussions.

This panel focussed on the wording for the reasons and resolutions. The community representative for this panel said that the chair had done a great job and that it felt like the panel was operating well and effectively as a team.

Council 3 – all matters heard (moderate level of engagement), decision made in public, closed deliberation for one complex DA: This panel went through the agenda items and engaged with applicants and objectors to moderate extent. The tone was quite informal.

There was a level of flexibility regarding the degree of engagement. This was particularly the case for a complex application when the presentation evolved into a discussion of approximately 25 minutes between the applicant's team and the panel. Council staff were also involved in this discussion and were asked to explain their rationale on different elements of the proposal.

At the end of each item, most decisions were made on the floor. The panel went into closed deliberations for the last item that was more complex.

As the meeting was in the evening, the chair provided plain English verbal reasoning to explain each decision (after each item and when the meeting reconvened for the last item). The chair wrote up the minutes the following morning and sent them to members for comments and approval before they were published on council's website.

Deferrals to obtain more information to address an issue that was not covered by the assessment report

Among surveyed chairs, most respondents indicated few matters requiring deferral to obtain more information and address an issue that was not covered by the assessment report. Only 18 per cent of respondents indicated that there were three or more matters, 36 per cent indicated one to two matters, and 46 per cent of respondents reported zero matters.

The reported reasons for deferrals related to: insufficient or inadequate information provided by the council assessment and by the applicants, the inability for an applicant to attend the meeting or late notice of new issues.

Chairs reported suggestions for reducing the number of deferrals in future, including:

- the provision of better information to panels (from council staff)
- council officers and applicants ensuring they do not raise new issues at short notice
- providing panellists with sufficient opportunity to request additional (or more relevant) information prior to the meetings.

There were different perspectives on the use of deferrals among chairs, for example whether deferrals should be the last resort or whether a deferral is the best option in some cases to achieve a better outcome.

During the case studies, it was evident that some panel members and council staff preferred to avoid deferring matters.

Through the case studies, there was also a preference for the same panel to consider the deferred matter, even if this was done electronically. An expert who sat on two of panels indicated that the council operational procedures provided for this option.

Referred back to council staff

At the time that chairs were surveyed, 68 per cent had not referred any DAs back to council (though 23 per cent reported referring one or two DAs back to council, and 9 per cent reported referring three or more development applications back to council).

Some of the reasons surveyed chairs provided for panels referring DAs to council included allowing applicants to make design amendments, though in some cases this was to delegate minor modification matters.

At the chair roundtable, it was suggested that if a panel made the original determination, then any subsequent modifications should be referred back to the panel. It was also noted that there is no express power for the Minister to delegate modifications to councils, but the ministerial direction allows councils to make arrangements for modifications to be determined by panels if they wish.

Requests for further information

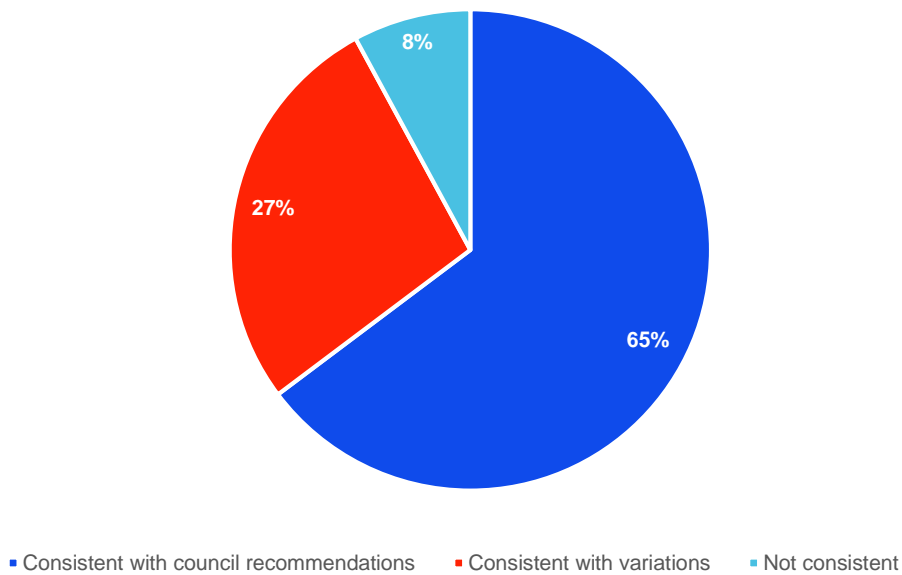
The council meeting report data indicates that 91 per cent of DAs considered at public meetings included sufficient information to reach a determination.

Geographically, the highest rates of referral for more information were recorded, on average, for IHAPs in Sydney West Central (24 per cent) and lowest in Sydney South, on average (6 per cent). Four of the six regions recorded 10 per cent or lower average rates of referral for more information.

3.4.1 Consistency with council assessment

For around two thirds of DAs considered, panel determinations were entirely consistent with the recommendations made in council assessment reports (Figure 14). A further 27% of determinations were consistent with some variations (e.g. additional conditions). 14 councils reported that IHAP determinations were consistent (including consistent with some variations) 100 per cent of the time.

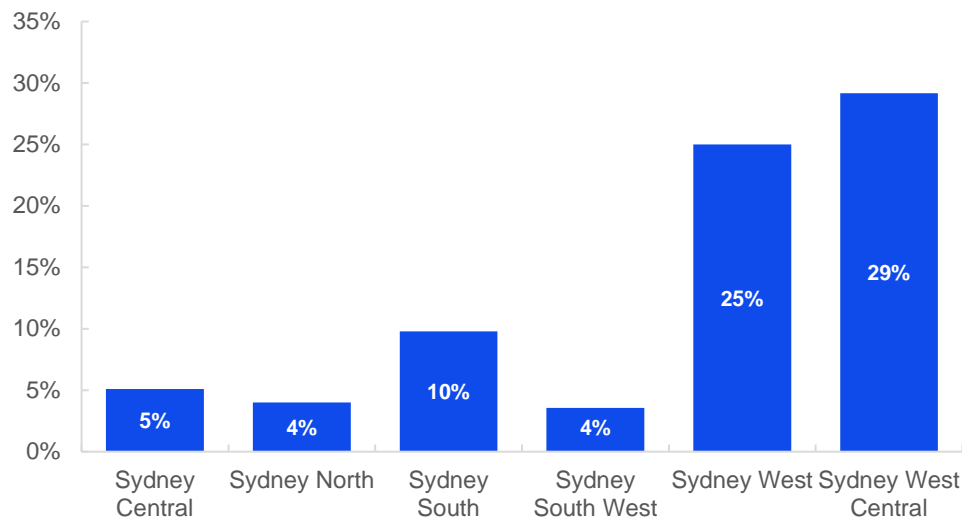
Figure 14. Proportion of determinations that were consistent with council recommendations



Source: Council online IHAP reporting data.
 Sample: N=417 determinations.

Determinations that were inconsistent with council recommendations were comparatively higher for Sydney West (29 per cent on average) and Sydney West Central (25 per cent on average).

Figure 15. Proportion of determinations that were not consistent with council recommendations, by region



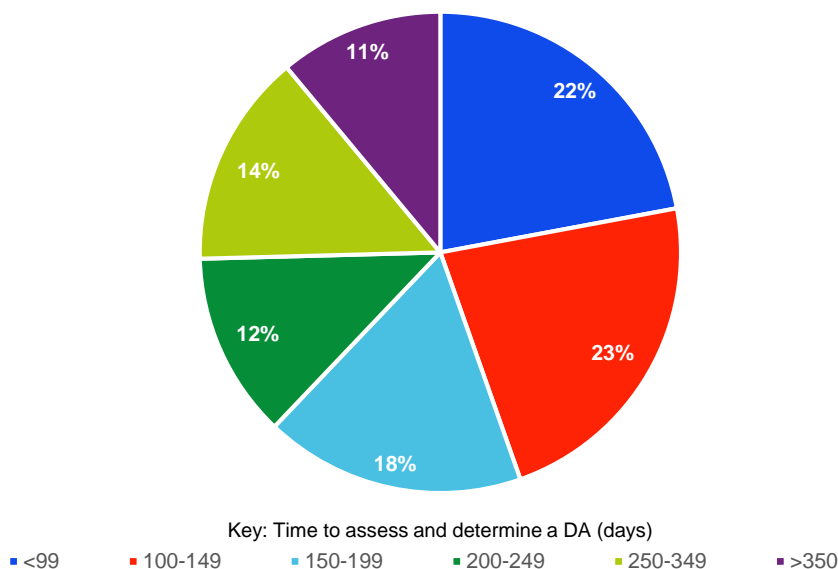
Source: Council online IHAP reporting data.
 Sample: N=417 decisions.

3.4.2 Determination time

Of the DAs considered by IHAPs, the average number of days for assessment and determination, measured from lodgement, was 203 days, though the distribution of timing of approvals varies somewhat

across the breadth of applications (Figure 16).²⁰ As the figures analysed in this section include DAs that were lodged before IHAPs commenced, it is too soon to compare average determination timeframes under IHAPs to determination timeframes before IHAPs were established.

Figure 16. Proportion of DAs, according to the determination time



Source: Council online IHAP reporting data.

Sample: N=417 determinations

Note: These figures include DAs that were lodged before IHAPs commenced, it is too soon to compare average determination timeframes under IHAPs to determination timeframes before IHAPs were established.

The average council recorded the average determination time for DAs considered by IHAPs was 229 days.

3.4.3 Communication of decision

In surveying chairs, a general tension appeared between presenting an immediate decision to the public, and ensuring that decisions (including determinations and resolutions of the panel) are appropriately worded, clear and technically understood.

Many chairs reported that verbal decisions were often announced at the end of the public meeting. Some reported that the verbal decision would not be identical to the written determination, and that the written decision would take precedence. This is because the verbal decision is intended to offer a plain English explanation to the parties publicly, along with the 'basics of the reasoning' for decisions.

Some respondents indicated that not all parties are informed as to when the decision will be communicated. For instance, some chairs reported that it is 'not a matter of course' that a decision is to be communicated at the meeting, but that decisions were communicated 'as soon as possible after the meeting', such as on the council's website.

In most cases, respondents indicated that decisions were communicated online on council websites, though the timing for this communication appears to vary. Some responses indicated that decisions were available online the following day, 'at the first opportunity', or within seven days following the meeting.

Several means for distribution of proceedings and/or decisions were reported by respondents, including televised recordings, audio recordings and website publication of minutes.

In two of the council case studies, a number of experts and community representatives were moderately concerned about how clearly the decision was communicated at the meetings. An expert explained that, for one panel they sat on, people often did not know when proceedings for a particular matter had ended

²⁰ Further data (e.g. LDPM data) is required to compare the determination time for IHAPs compared with general DAs determined by councils.

and the panel was moving on to the next matter (although this was no worse than during council meetings). For this expert, this was due to the poor acoustics in the room and/or chairs'/panel members' styles.

3.5 Planning proposals

Councils are required to refer all planning proposals to panels for advice, except for planning proposals relating to minor, machinery or consequential amendments, or matters that will not have significant adverse impact on the environment or adjoining land. The decision as to whether one of the exceptions applies is made by the council's general manager.

A total of 48 planning proposals were referred to IHAPs for advice, across nine councils. Across these proposals, 53 recommendations were made (average of 1.18 per proposal).

A question regarding whether council agreed to the panel's recommendations was not included in the IHAP web form.

3.6 Cost and resources

Based on survey responses, chairs reported that they are remunerated by a fixed flat rate of either \$2000 or \$3500 per meeting. They identified a range of time commitments that applied between meetings and among councils, including travel, site visits, pre-meeting, meeting proceedings, and post-meeting finalisation. The time commitment reported varies from four to 16 hours per meeting.²¹

Among the case studies:

- A council that previously did not have an IHAP paid \$2000 to the chair, and \$1500 for each expert and community representative.
- A council that previously had an IHAP continued paying the remuneration levels paid to existing IHAP members: \$3200 to the chair, and \$2200 for each expert and community representative. The council staff member indicated that, once all resourcing, food, travel and other costs are taken into account, each meeting cost approximately \$10,000. In terms of resources, two council staff members indicated that from the perspective of the council the panels were relatively labour intensive. For example, applicants and objectors were contacting the council about the DAs and that this was a time-consuming component of the process.

3.7 Overall perceptions of operation

Surveyed chairs and case study respondents (council staff members and panel members) agreed that the panels were generally operating well.

3.7.1 Key elements functioning well

Surveyed chairs indicated the following elements are functioning well:

- the professionalism, coordination, expertise and working relationship of panels and council
- provision of quality pre-meeting arrangements and reports
- quality, constructiveness and transparency of meetings and the subsequent decision-making, and
- the interest and involvement of community.

3.7.2 Key challenges

Survey chairs indicated the following key challenges:

²¹ Given this variation, it is difficult to determine how closely this corresponds to market rates for chairs, or comparable decision makers at council, though one respondent indicated that per hour they were remunerated at a lower than their market rate.

- rotational requirements and availability of panel members, which potentially challenge the consistency of decision-making
- the tension between balancing consistency and flexibility about operational procedures
- time and workload management (including late submissions which limits the capacity for panellists to consider these prior to the meetings)
- variable quality of information from councils and applicants
- arriving at a decision regarding the deliberation process (either public or closed-door deliberations), and
- addressing the referral criteria and public meeting agendas (namely 'refining some minor matters that don't need to be reported to public meetings').

Through the case studies, two key issues were also raised:

- the lack of clarity about the role of community representatives, and
- the lack of understanding by community representative about determination options.

One council staff member flagged the potential for political pressure by councillors. They explained that, in the future, there may be situations where councillors try to get involved in the DAs that are referred to the IHAP. No complaints of this nature were made in quarter 1. The Department is in the process of implementing 21 recommendations aimed at further strengthening the IHAP model and reducing corruption risk.²²

3.7.3 Suggested areas of clarification and improvement

During the chair roundtable, the following areas of clarification were sought about panel operational procedures:

- how to deal with different operational procedures between councils
- how to ensure equity between applicants/objectors across panels in terms of time limits for speaking, right of rebuttal etc.
- whether delegations should be approved formally and made publicly available, and
- the time of the day should IHAPs meet.

Surveyed chairs suggested the following areas that could be improved:

- the quality and timeliness of council assessment reports (even though some listed this among the elements functioning well)
- greater consistency in approaches across councils and chairs (such as in meeting operations)
- better awareness and consideration by council of the demands on agenda as well as lead time for preparations for the panel
- better selection of community representatives (including those with some planning process knowledge and more clarity regarding their conflicts of interests)
- potentially relaxing rotational requirements, and
- (greater) liaison between chair and alternate chairs.

One respondent also indicated the potential for applicants to misuse the referral criteria. This may be a matter for further consideration during any future review of the referral criteria.

Surveyed chairs also offered a range of additional comments to assist with the effective future operations of the panels. These responses included both reflections, potential options and general comments.

Some reflections include:

- the rotation requirement for chairs - was introduced later leading to a few logistical issues, and this requirement may reduce consistency of decision-making, and

²² *Minimising and Monitoring Risk in the IHAP framework*, DPE, April 2018.

- the late change and notification of the final development application referral criteria led to some issues for councils and panellists, because processes had been put in place in alignment with draft criteria.

Some potential options include to:

- offer a best practice model to bring about a consistent approach to the determination and presentation of decision-making
- (in contrast) avoid trying to 'fit each panel into the same mould', to ensure sufficient flexibility, especially where a panel is already operating effectively.
- ensure systematic monitoring of cost (financial) and efforts (such as staff time, deliberation time) to facilitate assessment of effectiveness
- reconsider the appointment of community representatives on the basis of planning knowledge
- consider standardising the rotation systems
- assess the effectiveness of closed door deliberations, and
- consider auditing meeting proceedings.

Some general comments by surveyed chairs include:

- concern that the cost of panels may be prohibitive for some councils
- to be mindful not to unduly limit the role of council staff' in decision-making, and
- to consider the appropriateness of the split between JRPPs and IHAPs.

Through the case studies, a council staff member indicated that there needed to be guidance to ensure the panels operate consistently. They suggested DPE provide direction about payment for deferred matters and what constitutes 'panel business'. They also suggested that DPE provide a standard reporting template to make the process more efficient.

4 Conflicts of interest, complaints, reviews and appeals

This section provides more detailed information on key findings in the Report about conflicts of interest, complaints, reviews and appeals. Data was obtained via DPE from OLG, the NSW Ombudsman and ICAC, as well as case studies and council reports (see Section 1.1).

4.1 Conflicts of interest

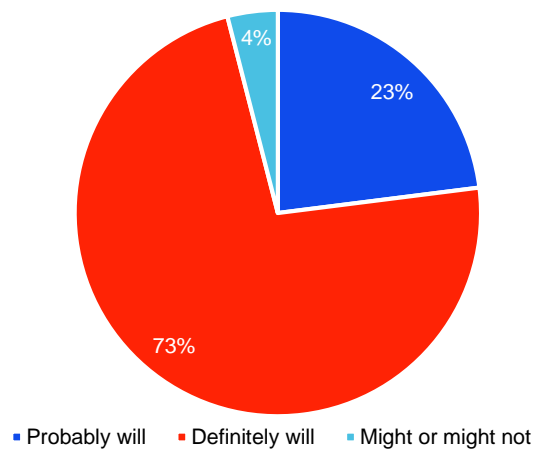
The IHAP web form does not currently capture information in relation to conflicts of interest.²³

4.1.1 Disclosure requirements

Surveyed chairs indicated a strong belief that disclosure requirements for conflicts of interest will increase probity (Figure 17).²⁴

Some respondents indicated that code of conduct and conflict of interest provisions were clearly stated and well understood by panellists.

Figure 17. Chairs' views on the probability that conflict of interest disclosure requirements will increase probity



Survey question: Do you think the disclosure requirements for conflicts of interest will increase probity?
Sample: N=31 chairs.

4.1.1.1 Management of disclosures

At the chair roundtable, clarification was sought on the disclosure obligations under the Act. At this meeting it was also noted that chairs could impose requirements for disclosure via operational directions.

Ten per cent of surveyed chairs reported that they are aware of actual, potential or reasonably perceived conflicts of interest that they believed were not disclosed or appropriately managed by a panel member (Figure 18).

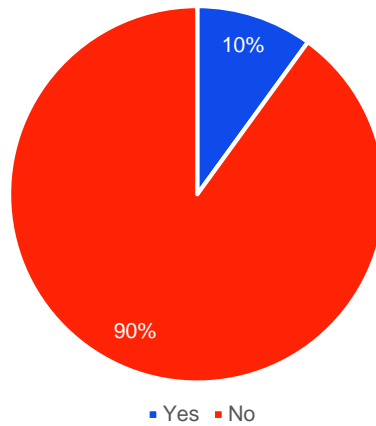
Through the case studies, some experts indicated that community members were more likely to have a conflict of interest due to living in the area. Some panel members indicated that it was sometimes difficult to know if there is a conflict because not all the speakers are listed as registered speakers. DPE has

²³ However, this information is included in the panel meeting reports (and audio recordings), available on the councils' websites.

²⁴ This survey was conducted prior to amendments to the code of conduct which included new disclosure requirements for panel members.

provided training about conflicts of interest and has advised will continue to work with all panels to build this capability.

Figure 18. Awareness of actual, potential or reasonably perceived conflicts of interest that were not disclosed or appropriately managed



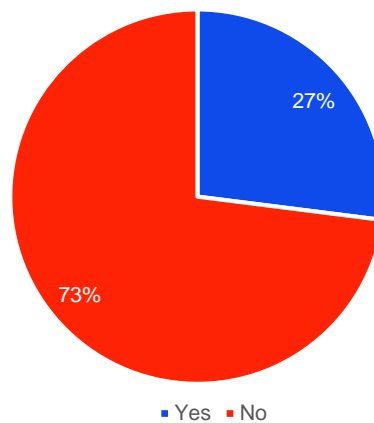
Survey question: Are you aware of any actual, potential or reasonably perceived conflicts of interest which you believed were not disclosed or appropriately managed by a panel member?
Sample: N=31 chairs.

4.1.1.2 Professional and personal dealings with councils

Twenty seven per cent of surveyed chairs reported that they had previously had professional dealings with councils (including prior to appointment), for which they have been appointed in a professional capacity (for example, acting as a consultant on behalf of a developer in the LGA (Figure 19).

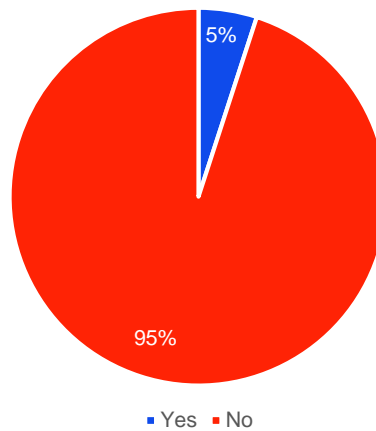
Few respondents had previous personal dealings (including prior to appointment) with councils to which they have been appointed (e.g. as a ratepayer, recipient of a council service or applicant for a development consent granted by council (Figure 20).

Figure 19. Reported current or prior dealings of chairs in a professional capacity with council



Survey question: Please indicate if you have had any dealings (including those prior to your appointment) with the council to which you have been appointed in: - a professional capacity (for example, acting as a consultant on behalf of a developer).
Sample: N=31 chairs.

Figure 20. Reported current or prior dealings of chairs in personal capacity with council



Survey question: Please indicate if you have had any dealings (including those prior to your appointment) with the council to which you have been appointed in: - a personal capacity (for example, as a ratepayer, recipient of a council service or applicant for a development consent granted by council).
Sample: N=31 chairs.

4.2 Complaints and issues

The preliminary model review²⁵ recommended that the complaint pathways be posted on the DPE website. At the time of writing, the DPE IHAP website has been updated to include this information.

Data regarding complaints and issues raised were reviewed from the council reporting data,²⁶ requested agency data (OLG, NSW Ombudsman and ICAC), case studies and the DPE issues register.²⁷ In total, there were 14 matters (see Section 1.2).

The matters were raised by a range of stakeholders including panel members, objectors, applicant's solicitor and/or consultant and the general manager of the relevant council. There are also four instances where the individual raising the concern was not provided or disclosed.²⁸

The matters typically relate to more than one of the following key areas:

- code of conduct
- panel operation and panel decision-making
- the mandatory IHAP model and panel establishment, and
- council's role with IHAPs.

Due to the small number of concerns raised, it is not possible to identify a specific trend or pattern for complaints and issues raised. However, panel operation and code of conduct are areas which frequently arise. Across the 14 matters, two relate to planning proposals, three concern specific DAs and the remaining matters are general in nature.

4.2.1 Code of conduct

Six matters related to the code of conduct. The individuals raising the matter varied and included: panel members, action groups and the applicant's solicitor. For most of these matters, concerns were raised that a panel member had a conflict of interest which remained undeclared or there was a concern about pecuniary and non-pecuniary interests of a panel member. Where appropriate, these matters were dealt with under the code of conduct.

²⁵ See Section 1.2 of the report.

²⁶ In the council reporting data, one code of conduct complaint was received that was resolved without any further action.

²⁷ For this reporting period DPE provided details regarding ten matters. One of the matters concerns a point of legal advice about the definition of a meeting. This was included in the register because of its relevance.

²⁸ These matters related to general concerns including: the length of time and ability to speak at panel meetings, appointment of panel members and matters concerning notification to speak at panel meetings or of the existence of a development application.

The remaining matters related to:

- An applicant's solicitor raised concerns that community representative who sat on the panel when a DA was heard, had previously objected to a re-zoning proposal for the site when the representative was a councillor.²⁹ At the meeting the chair noted that there was not a substantial non-pecuniary interest (or apprehended bias) and the applicant's solicitor objected, on record. The matter was ultimately dealt with under sections 3.4, 3.5, 4.2, 10.9, 10.11 and 10.12 of the code of conduct. The general manager referred the complaint to an independent mediator for investigation. Regarding both complaints, the mediator found that there was no breach of the code and as such, which warranted no further action.
- A panel member raised a concern that the public disclosure of panel members' pecuniary interests³⁰ would provide unrestricted access to the panel members' (financial and other) information and could lead to corruption. DPE indicated that the process was closely examined in the development of the key transparency measures for IHAPs and was based on OLG's draft new model code of conduct. All member declarations are required to be published online and DPE will ensure this is done in accordance with the code of conduct.
- A member of the public made comments during an IHAP meeting about corruption and the operation of the IHAP. At the time of writing, the individual had not submitted a written complaint to council.

4.2.2 Panel operation and decision-making

Eight matters related to panel operation and/or panel decision-making. In summary:

- A local action group raised a concern about a panel decision, indicating that the panel appeared to show 'no interest' in the council's assessment report, the submitted information or previous objections. In response, Council's Director of environment and planning advised that the complaint was referred to Council's governance and risks management department for consideration and investigation.
- An applicant's consultant raised transparency and governance process concerns regarding a deferred planning proposal. The consultant specifically requested that as per the IHAP procedure, the chair that presided over the original deferment be appointed at the next meeting. The consultant also raised an issue about providing submitted documentation to council planning staff. The primary chair responded, explaining that the original chair had intended for council staff to be provided with the submissions and if possible, for it to be posted on the Council website
- A primary chair raised concerns about efficiency as many minor items are being referred to the panel due to pre-existing non-compliance. In this case, the relevant council and chair sought guidance from the DPE about the four proposed criteria for electronic determinations. DPE advised for transparency reasons it would be useful to write a resolution of the panel that sets out the criteria and to publish this on the council's IHAP page.
- An applicant's consultant raised a concern that the panel deferred then refused a DA, contrary to council recommendation to approve the application. The consultant sought clarification: if the original panel members would be involved in the determination. and, if an appeal was lodged with the Land and Environment Court, is the council at the direction of the panel. DPE informed the consultant that if the panel decision is reviewed, the review panel would comprise different panel members to the panel which is the subject of the appeal. DPE also advised that if the panel decision is appealed, council is the respondent subject to control and direction of the panel.
- An individual expressed concern that the panel had made a decision prior to the meeting. At the first panel meeting councillors did not comment/speak and the mayor had three minutes to speak. The source of this complaint was not provided.
- Following the refusal of a DA, the applicant raised concerns that: the IHAP meeting was poorly run and the chair could not keep the meeting under control, the decision was a foregone conclusion, members of public who were not registered to speak were allowed to address the

²⁹ Prior to the meeting the panel member disclosed reasonably perceived non-pecuniary interest. The chair allowed the representative to remain on the panel for the purpose of determining the DA.

³⁰ Pursuant to clause 4.21 of the code of conduct.

panel, and, the speakers' objections were taken at face value and not interrogated. DPE advised that the panel has discretion to hear from an unregistered objector and the panel is not required to ask questions after a submission.

- A council staff member raised community member concerns about how community representatives could represent community views if they were not able to speak with community directly about a matter. The council staff member also noted that when the biographies of the panel members (including those for community representatives), were posted on the council IHAP website, people commented that they were not aware that the nominated community representatives were representing them.

4.2.3 Mandatory IHAP model and panel establishment

Four issues were raised related to the mandatory nature of the IHAP model and panel establishment.

- One councillor gave a motion to rename the council's IHAP to reflect its mandatory nature. DPE advised that due to the variety of terminology used by councils to name their panels, it is necessary to formalise a standard naming convention. On 22 June 2018 the Minister for Planning issued a new direction stating that panels should be named in the following manner: [Local Government area] local planning panel.³¹
- A general manager and a chair raised issues relating to the mandatory nature of IHAPs, including concerns about delays, complexity, ambiguity, cost, conflicts of interest and members' lack of significant connection to the local area. The chair sought guidance from DPE and will relay DPE advice to council once received.
- A view that the panel's appointment overrides the democratically elected council; and a concern that select panellists are 'outsiders' without contact with/understanding of the local community.
- A concern about the appointment of a person to the panel and that this person has a conflict of interest.

4.2.4 Council's role with IHAPs

Two matters related to councils' role with IHAPs. That:

- A council (also the applicant) failed to invite members of the complainant's sporting community to attend the panel meeting to speak to the application.
- A council failed to notify the complainant of a DA.

4.3 Reviews and appeals

Sixteen appeals against IHAP decisions were filed in the Land and Environment Court during the first quarter, and three of these appeals had been finalised at the end of the reporting period. One of the appeals had been dismissed and the other two were upheld. Another appeal was also discontinued.

Two councils reported incurring legal expenses – in one instance for approximately \$26,000 and the other \$7,915.

Seven councils reported internal Division 8.2 reviews, with a total of 11 reviews commenced.

During the chair roundtable, chairs raised the following issues about appeals:

- how to run appeals under the new provisions
- the extent to which matters be delegated to the council, and
- whether different practices should apply depending on whether the decision is consistent with recommendations in council's assessment report.

³¹ Local Planning Panels Direction – Naming Local Planning Panels.

5 Stakeholder perceptions

This section provides additional information on key findings from the Report relating to key stakeholders' perceptions about IHAPs. This has been synthesised from the survey for chairs, media content analysis, existing community satisfaction surveys of existing IHAPs, and case studies. In this section, stakeholders include: chairs, councillors, community members, applicants, objectors and council staff.

5.1 Reform objectives

In the online survey, chairs were asked under the new IHAP model 'how likely is it that these objectives would be achieved'. Surveyed chairs strongly expressed opinions that the IHAP reforms could contribute to the objectives, albeit in different ways (Figure 21).

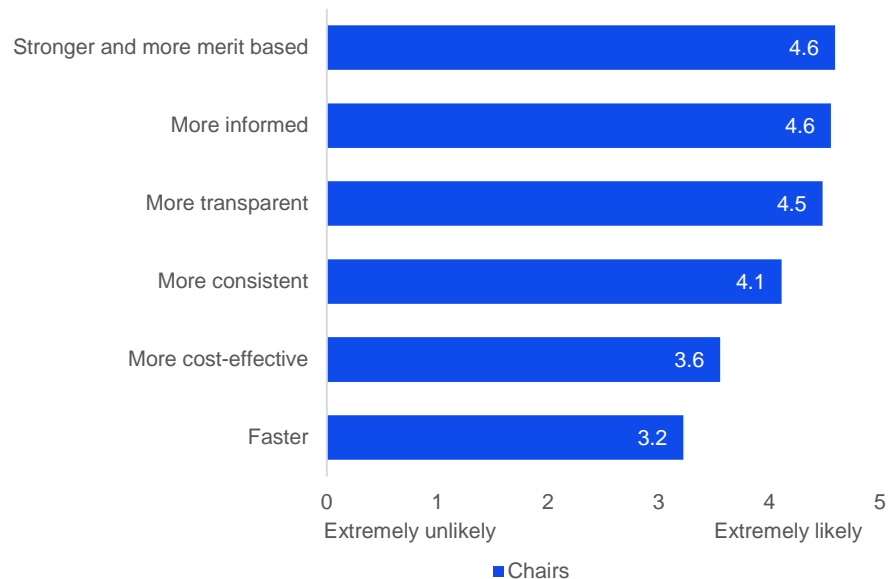
Surveyed chairs were most optimistic that decision-making would be more merit-based, expert informed, transparent, and consistent. Namely, surveyed chairs reported that they expected IHAPs to achieve:

- stronger and more merit-based decision-making (78 per cent extremely likely)
- increased expertise (74 per cent extremely likely)
- improved transparency (70 per cent extremely likely), and
- to a slightly lesser extent, improved consistency (78 per cent extremely likely or somewhat likely).

Surveyed chairs held mixed views regarding whether IHAP reforms could contribute to:

- improved cost-effectiveness (57 per cent somewhat likely or neither likely or unlikely), and
- faster decision-making (52 per cent unsure or viewed it unlikely).

Figure 21. Chairs' views on the likelihood that the IHAP model will meet reform objectives



Survey question: In your opinion, under the new IHAP model in Greater Sydney and Wollongong how likely is it that local planning decision-making will be...
Sample: N=31 chairs.

Chairs were asked to rank the relative importance of these six IHAP objectives (Figure 22). This question sought to draw out the distinction between what chairs think is likely to happen and what they deem to be important. Seventy-four per cent ranked the first objective as the achievement of stronger and more merit-based decision-making (an immediate objective). Several respondents indicated that their most highly

rated objectives are more expert-informed decision-making (15 per cent) and more transparent decision-making (11 per cent).

The least prioritised objectives as reported by chairs were:

- faster decision-making (56 per cent)
- more cost-effective (19 per cent)
- more expert-informed (19 per cent), and
- more consistent decision-making (7 per cent) (an immediate objective).

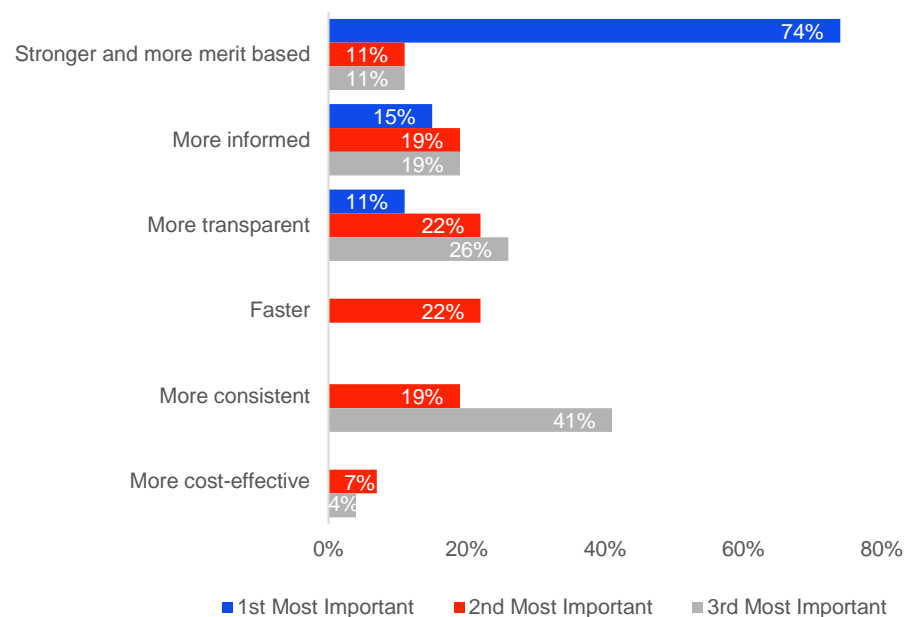
In general, chairs ranked less highly: cost-effectiveness (89 per cent ranked in bottom three priorities) and faster decision-making (78 per cent ranked in bottom three priorities).

Objectives that were usually middle ranked (ranked three or four out of six) were: consistency (67 per cent ranked three or four); transparency (56 per cent ranked three or four); and, expert-informed decision-making (38 per cent ranked three or four).

Put simply, based on surveyed chairs' priorities:

- highly prioritised: stronger and more merit-based decision-making
- moderately prioritised: consistency, transparency, and expert-informed, and
- least prioritised: cost-effectiveness and faster.

Figure 22. Reform objectives considered high priorities by chairs



Survey question: Please rank the following in order of the importance you place on them: local planning decision-making will be...

Sample: N=31 chairs.

In summary, the priorities of chairs are broadly in line with their expectations of likelihood that reform objectives will be achieved.

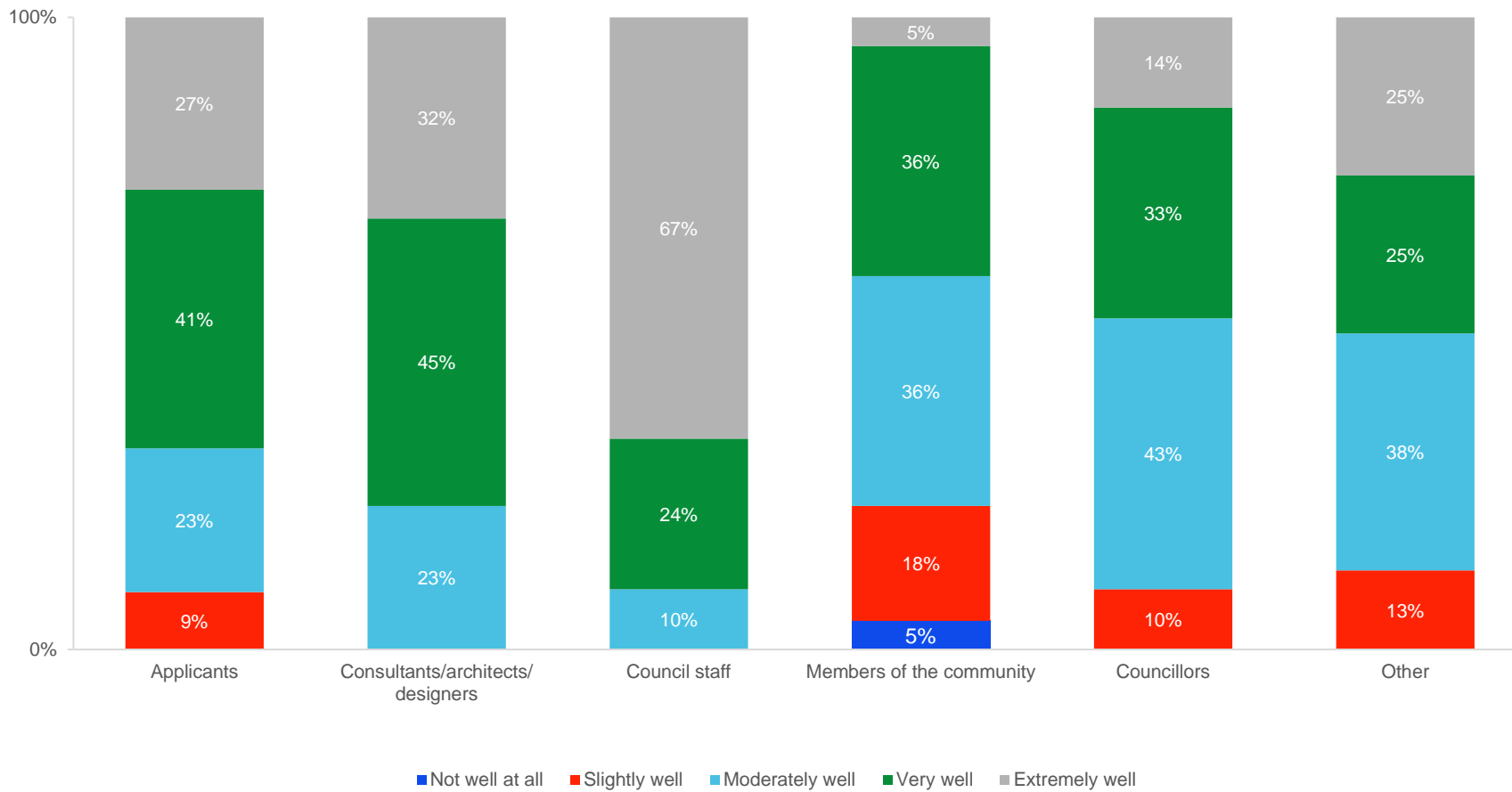


5.2 Understanding of the purpose of the panels

Surveyed chairs reported variations in understanding the purpose of IHAPs across groups of stakeholders, including applicants, consultants, architects, and designers, council staff, members of the community, and councillors (Figure 23).

Some respondents indicated that understanding among applicants naturally varies somewhat according to their level of experience with and interest in development applications.

Figure 23. Chairs' perceptions of how well stakeholders understand the purpose of IHAPs



Survey question: Overall, in your opinion, how well understood is the purpose of the IHAP by the following stakeholders who attend the meeting.
 Sample: N=31 chairs.

5.3 Satisfaction with the panels

5.3.1 Pre-panel implementation

5.3.1.1 Views reported in the media

Media content analysis was conducted from August 2017 (when legislation was passed) until the end of February 2018 (prior to the commencement of the reforms) to assess pre-reform stakeholder perceptions.

Stakeholder perspectives about IHAPs were mixed. The newspaper reports focused on councillors, as many gave interviews about the new system. In general interviews with councillors or mayors raised negative views about the panels. However, there were some councillors who thought that the IHAPs were a good idea. In contrast, community perceptions appear less frequently and generally in the context of opinion pieces.

Monthly Snapshot (August 2017 to February 2018)

- **August 2017:** Several press releases appear in August 2017, alongside descriptive articles detailing the new system.
- **September 2017:** There are some positive reports regarding a council which has an existing IHAP.
- **October 2017:** Positions on the panel are advertised, in conjunction with some negative reporting.
- **November 2017, December 2017 and January 2018:** Few articles appear. The coverage is predominantly in passing reference to a soon to be established IHAP or a council that already had an existing IHAP.
- **February 2018:** Most articles on the new panels were published in the final month in the lead up to implementation. The reporting is relatively balanced during this period. Some articles articulate concerns about the changes and there is uncertainty about what the new system will bring. However, this is countered by positive reporting which outlines the ways the IHAP model is an improvement to the planning system.

Key themes

During this period, the following key themes were identified in the reports:

- panel composition and selection
- remuneration, panel cost and resourcing issues
- bias and corruption
- allocation/distribution of power and the proper role of council, and
- role of community representatives.

Panel composition and selection

The issue of panel composition was discussed in two ways. First, in a purely descriptive sense where the make-up of the panel is set out in the article. Second, in the context of panel diversity with an inference of corruption. In some reports, there is criticism about the composition of panels and the lack of diversity. For example, *Five community representatives – all men – will help decide contentious DAs*.³² This article implicitly criticises the composition of the panel and transparency around its operation. The IHAP is censured for being made up of 'white men', during a 'confidential session' and that no details were provided about the panellists' backgrounds, their qualifications or suitability for the role. There is further criticism about panel diversity in *Assessment panel make-up questioned*, in the context of housing availability for the disabled.³³ The articles states that 'all members are male and no mention is made about representation from 'the disabled members of our community'. The articles states that members of this

³² Murray Trembath, *Five community representatives – all men – will help decide contentious DAs*, *St George & Sutherland Shire Leader* (21 Mar 2018).

³³ *Newcastle Herald* (1 May 2018).

panel 'were decided in a confidential session of Sutherland Shire Council which suggests a larger lack of awareness of some really basic issues across our community'.

Remuneration, panel cost and resourcing issues

Coverage on the costs of IHAP related to two themes: remuneration of panel members and the cost of running an IHAP. Remuneration was a recurring issue in newspaper reports. For example, *Meet the people deciding Camden's future* provides details about appointees, emphasising their credentials and outlines how much panellists are paid.³⁴ The article states: 'For their appearances at each IHAP meeting, the chair will be paid \$2000, the independent experts paid \$1500 each and community representatives \$1000, to be funded by Camden Council'. These rates are relatively consistent in the reporting on members' salaries. However, only two articles noted that pay rates are set by the Minister (e.g. 'the position will be paid in accordance with rates set by the NSW government').³⁵

The second theme focused on the cost of running panels. Figures ranged from \$80,000 to \$200,000.³⁶ For example, '[a]ssuming one panel meeting is held each month, the annual cost would be approximately \$80,000.'³⁷ It was frequently reported that the government's estimation of \$100,000 is inaccurate. No evidence was offered in support of this view. It was also argued that ratepayers will 'foot the bill' for operating the IHAP but that 'the actual costs could be much more than that figure.'³⁸

It was frequently reported that the cost of running an IHAP will be borne by the community and this means that money will have to be reallocated from other key services, such as sporting fields, roads, facilities and other essential infrastructure. For example, '[t]he cost is not part of any council's budget preparation and can only be funded by redistributing from core local government services'.³⁹ In an interview, a local government sector stakeholder/representative argued that 'the cost is not part of any council's budget preparation and can only be funded by redistributing from core local government services... This means less funding for local parks, childcare centres and libraries in local communities'.⁴⁰ The individual also expressed the view that DAs were processed quickly under the old system and that this will change with the implementation of IHAPs. In contrast, a DPE spokesperson suggested that 'councils may find these costs are offset through savings on legal costs from reviews and appeals'.⁴¹ Councils were concerned that this could add an 'expensive and unnecessary layer of bureaucracy' and potentially delay turnaround times'.⁴² This phrase appeared in several articles.

A sub-category relating to the cost of panels was reported in *The costs behind the Wayzgoose debacle*.⁴³ It was reported that at the IHAP meeting the panel rejected the existing DA, which had been modified following public submission. The article stated that the IHAP has cost council \$62,027 including \$10,124 in legal advice, \$19,426 in heritage consultants, and \$14,500 for the four panel members. This includes estimated future costs of \$14,848. The article stated: 'The total estimate showed that the council was out of pocket \$460,369.55. But a council spokesperson said that the 'real cost was much higher, as it didn't take into account staff time, nor legal fees on leases, mediation, correspondence with councillors, tenants and the public'. The report implies that the DA process, and by extension the IHAP system, can be lengthy and costly, with hidden expenses. Additionally, the total figure can be in excess of how much it would have cost to fix the building at the commencement of the process—evidenced by the fact that the IHAP finding aligned with what was initially proposed by experts a number of years ago.'⁴⁴

Corruption and bias

One of the first articles post-implementation highlights that the new IHAP system was required to prevent corruption in the DA process. *Haphazard development extends beyond Canterbury corruption inquiry*

³⁴ Jess Layt, *Goondiwindi Argus* (16 Feb 2018).

³⁵ *Nominate for Panel job, Local News Plus* (9 Feb 2018); Murray Trembath, *Proposed fee of \$500 per meeting for community representatives on shire IHAP, St George & Sutherland Shire Leader* (15 Nov 2017); *Randwick Council calls on community members to register for Development Assessment Panel, Public Now* (31 Oct 2017).

³⁶ Isabell Petrinic and Matt Taylor, *Development application time frames: How fast are the Macarthur region's councils? The Daily Telegraph* (26 Feb 2018).

³⁷ Eric Kontos, *IHAP rules: councillors lose development application powers, South West Voice* (12 Feb 2018).

³⁸ *NSW Planning Law changes – what to expect, Inside Waste* (7 Mar 2018).

³⁹ *NSW Planning Law changes – what to expect, Inside Waste* (7 Mar 2018).

⁴⁰ *Democratic representation in planning reduced, Get Regional* (1 Mar 2018).

⁴¹ Isabell Petrinic and Matt Taylor, *Infrastructure investment drives second wave of residential development in Parramatta CBD, The Daily Telegraph* (28 Feb 2018).

⁴² *NSW Planning Law changes – what to expect, Inside Waste* (7 Mar 2018).

⁴³ Jennie Curtin, *The North West Star* (22 Feb 2018); *A long-running saga is reaching its conclusion, Camden Haven Courier* (25 Jan 2018).

⁴⁴ *Ibid.*

states that 'hundreds of millions of dollars of over-size housing developments across the former Canterbury Council were approved with little consideration of their merits, community amenity, and mandatory design standards'.⁴⁵ *The Sydney Morning Herald* reported that the DPE audit identified that there were 84 instances between July 2012 and August 2016 of the former Canterbury Council approving variations from local development standards. It was also reported that there were close relationships between council staff and property developers and pressure from the former Canterbury Council to advance building projects. This coverage highlights the requirement for transparency in the DA process and the need for an independent assessment panel in this decision-making context. (In addition, ICAC's corruption inquiry of Canterbury Council continued to be widely reported in the national press.)

Other reports include concerns by some councils that they are not corrupt and therefore should not be included in part of the new IHAP system.⁴⁶ It was reported that Sutherland Shire Council was seeking an exemption, expressing concerns about democracy, transparency and loss of voice. Other voices of dissent included the deputy mayor of Hunters Hill Council. Wollondilly Shire Council also issued a response to the Minister's statement.⁴⁷

Despite the rationale of the new reforms to increase transparency and probity, alternative views about bias and possible corruption were reported. It was implied in various articles that the new IHAP system was merely a continuance of the 'old ways'⁴⁸, panel members were selected from a small pool of approved persons and some panel members were politically motivated.⁴⁹

Allocation/distribution of power and the role of council

In the lead up to the implementation of the panels many articles addressed the councillors' loss of power and the community's loss of voice. Many reports raised concerns about the loss of democracy in local development applications and how councillors had been 'stripped of their powers'. Opponents of the IHAP system argued that the process is 'anti-democratic' and gives too much power to a small group of people. In general, the opponents were councillors or mayors. For example, one mayor expressed concern about the system, stating 'when it comes to DAs, residents will no longer have true representation because they will be decided by bureaucrats...instead of elected councillors'.⁵⁰

Multiple articles included quotes of the similar nature: 'open council meetings are the epitome of accountable, transparent and balanced decision-making. By contrast, IHAPs will be chaired by powerful state-level experts who are unlikely to have the same level of knowledge or understanding of our city's needs'.⁵¹ Noting that 'local government is the closest level of government to the community'.⁵² Council dissatisfaction with the new system was reported in Blacktown City Council's dramatic protest whereby the final DA voted by councillors was burnt.⁵³

Role of community representatives

There was some detailed reporting about the composition of the panel and the role of the community representatives.⁵⁴ (There were also some advertisements for community members to apply to be on the Panel.)⁵⁵ It was reported that Hornsby Council recommended in a report that the government include an extra community representative to provide a balance between residents and expert representation on the panel.⁵⁶ Also, applicants for the community representative role on the Georges River Panel were reviewed and ranked according to their expertise, knowledge or experience of the development process, their extent

⁴⁵ Jacob Saulwick and Lisa Visentin, *Haphazard development extends beyond Canterbury corruption inquiry*, *The Sydney Morning Herald* (30 Apr 2018).

⁴⁶ Murray Trembath, *We're not corrupt: Councillors appeal over DA ban*, *St George & Sutherland Shire Leader* (3 Oct 2017); Eric Kontos, *Our elected representatives lose power with grace and good humour*, *South West Voice* (14 Feb 2018).

⁴⁷ *Hunters Hill faces a new fight over planning panels*, warns Deputy Mayor Ross Williams, *The Weekly Times* (10 Oct 2017), *Councils stripped of DA powers in NSW*, *The Urban Developer* (9 Aug 2017).

⁵⁰ *Fairfield mayor Frank Carbone lashes out at new planning processes*, *The Daily Telegraph* (3 Oct 2017).

⁵⁰ *Fairfield mayor Frank Carbone lashes out at new planning processes*, *The Daily Telegraph* (3 Oct 2017).

⁵⁰ *Fairfield mayor Frank Carbone lashes out at new planning processes*, *The Daily Telegraph* (3 Oct 2017).

⁵¹ Blacktown City Mayor Stephen Bali quoted in Graeme Philipson, *It's IHAP day in NSW – and ashes for Blacktown*, *Government News* (1 Mar 2018).

⁵² Ben Chenoweth, *Campbelltown CBD a haven for high rise*, *Wollondilly Advertiser* (9 Jan 2018).

⁵³ *Council mourns loss of DA powers*, *Western News* (2 Mar 2018); Graeme Philipson, *It's IHAP day in NSW – and ashes for Blacktown*, *Government News* (1 Mar 2018); Tawar Razaghi, *Blacktown City Council to stage dramatic protest against mandatory planning panels*, *Domain* (28 Feb 2018).

⁵⁴ Murray Trembath, *Proposed fee of \$500 per meeting for community representatives on shire IHAP*, *St George & Sutherland Shire Leader* (15 Nov 2017).

⁵⁵ *Council seeks community members for IHAP and JRPP*, *Public Now* (8 Jan 2018).

⁵⁶ Jake McCallum and Nigel Gladstone, *Councils hit out at State Government IHAPs, call for more community representation*, *The Daily Telegraph* (11 Oct 2017).

of time in the local government area, their extent of community involvement, and whether they had any previous experience on an IHAP or similar planning panel.⁵⁷

A positive article was published in the *North West Star* placing an emphasis on encouraging community participation in the IHAP process.⁵⁸ The report focused on community involvement in DA process. Three community representatives were interviewed and these representatives encouraged residents to provide feedback on DAs. Another article included an interview with a community representative who explained that she joined the panel as a passionate community member (rather than as an expert).⁵⁹

5.3.1.2 Existing IHAPs' community satisfaction surveys

During Phase 1 three councils with existing IHAPs indicated that they had conducted IHAP community satisfaction surveys.⁶⁰ Generally, registered speakers, including owners/applicants, objectors and professional consultants engaged on behalf of others, were invited to complete the surveys. For one survey, IHAP members and council staff were also invited to respond.

The purpose of these surveys included to:

- gauge the effectiveness of the panel in dealing with the referred development applications
- ensure that community has confidence in the panel, and
- ensure the panel is operating in an open, independent and public forum in accordance its relevant guidelines.

The results for the surveys indicate that the majority of respondents considered that:

- they were given adequate time to present their concerns to the panel
- they received a fair hearing from the panel
- the panel members were independent, and
- the professional expertise of the members benefited the final decision.

Concerns were raised in relation to:

- disagreement between the panel determination and the council recommendations
- panel bias (e.g. against the applicant), and
- deliberations and determinations.⁶¹

The range of benefits the councils attributed to panel included:

- being able to call upon independent people with a range of expertise (skill and experience)
- that the panel exercised independent thought and oversight in its determinations
- transparency in the planning process
- increased administration cost savings
- fewer delays in processing of major proposals
- council meeting agendas no longer overwhelmed by DAs
- providing council and the community with added confidence that development decisions referred for determination would be legally and technically robust if an appeal was to be lodged against a determination

⁵⁷ Jim Gainsford, *Georges River Council considers community representatives for its new Local Planning Panel* *Goondiwindi Argus* (8 Feb 2018).

⁵⁸ Ashleigh Tullis, *Locals urged to have say on development applications*, *The North West Star* (14 Mar 2018).

⁵⁹ Ben Chenoweth, *Meet the four people shaping Campbelltown's future*, *Goondiwindi Argus* (14 Feb 2018).

⁶⁰ One council indicated that these surveys were conducted after panel meetings, however, we were unable to clarify if this included IHAP meetings after 1 March 2018.

⁶¹ For one panel, it was raised that when the panel discussions and determinations were made behind closed doors, the process was not transparent. In response, the council acknowledged its desire for transparent decision-making. However, it was found that current structure of the panel appeared to be somewhat undermining public confidence in the process. It was recommended that providing the panel with sufficient opportunity to confer and discuss matters in a full and frank manner after hearing from the public would also be expected to further improve the quality of decision-making on complex and contentious matters.

- eliminating lobbying of councillors by parties (for or against developments), and
- enabling councillors to concentrate on strategic and policy issues.

5.3.2 Post-panel implementation

5.3.2.1 Views reported in the media

From March 2018, newspaper coverage became more detailed, neutral and for the most part, the issue of IHAPs receded as part of a wider discussion about development in Sydney. There are some articles published in April and June 2018 that discuss the ICAC's current corruption inquiry regarding the former Canterbury Council.

Since the commencement of the panels, when approximately 34 articles were published, the numbers have decreased steadily from 10 articles in April 2018 to 8 articles in May and June 2018 respectively.

Monthly snapshot (March – June 2018)

- **March 2018:** Some newspaper reports published during March 2018 are negative in tone. The new system had recently commenced which means that the substantive content of the meetings is absent from the coverage. There are a few descriptive and informative articles explaining how the panels will operate, in addition to a positive community focused article.
- **April 2018:** Articles published in April 2018 predominantly relate to initial operational problems with the panels and there is some concern relating to panel transparency and questions of public accessibility and involvement. A few of the articles describe councils going into closed sessions (with reference to meetings being conducted 'behind closed doors'). The reporting is detailed about what is taking place during the meetings (e.g. details of the development application, the nature of objections and the list of speakers at the meeting).
- **May and June 2018:** Articles in May and June 2018 address particular applications (rather than a generalised discussion of the IHAP system). A direct link to the relevant council website is often provided at the bottom of the page, directing the reader to the panel's decision. In some articles the names of the panel members are provided. The articles are more informative than critical. The IHAP system is frequently discussed within the wider context of overdevelopment in Sydney rather than considering IHAPs specifically.

Key themes

From March until June 2018 reporting related to:

- deliberations, transparency and perceptions of feeling heard, and
- meeting times.

Deliberations, transparency and perceptions of feeling heard

This relationship between open and closed deliberations and transparency was raised. It was reported that Hornsby Shire Council would write to the chair of the Hornsby IHAP asking that the panel's deliberations be made open to the public.⁶² As panel decisions are made during closed deliberations this had 'angered residents and councillors'. Nevertheless, it was reported that the panel's decisions were made public the following morning. When contacted by the newspaper in April 2018, the chair was quoted as saying 'the deliberations would be compromised if they were before an audience'.⁶³ It is noteworthy that the operational procedures that allow for public or closed deliberations were not noted in any of the newspaper coverage. This point was made in *Councils Must Cut Red Tap* which emphasised the need for councils to better communicate the development assessment system.⁶⁴ However, the report did acknowledge that reasons for the final decision and how panellists voted are published on the council website within 48 hours of the meeting. In addition, a list of 'IHAP meetings in your area' setting out the date, time and frequency of meetings and where the agenda could be found was provided at the bottom of the page. This

⁶² Council calls for public IHAP decision-making, *Public Now* (27 Mar 2018).

⁶³ IHAP hiccups, *Monthly Chronicle* (29 Apr 2018).

⁶⁴ Councils must cut red tape *Hornsby Advocate* (1 Mar 2018).

included the fact that members of public could address the meetings with a limit of three minutes speaking time, with a link indicating how to register as a speaker at the panel meeting.

In May 2018 there was one article that referred to community dissatisfaction with the Cumberland IHAP. It was reported that the IHAP was not listening to community concerns.⁶⁵ It was also noted by the Council's General Manger that there are 'no circumstances' where they can override decisions made by the IHAP. However, this article appears to be a single example rather than evidence of any trend of community dissatisfaction with the system.

Meeting times

The timing of some daytime meetings was raised as an issue.⁶⁶ This was because these meetings cannot be attended by those at work, whereas council meetings are typically held in the evening.⁶⁷ For example, one Mayor noted during an interview that IHAP meetings will be held at 4pm 'which is not convenient for most people who are accustomed to the council meetings in the evening'.⁶⁸

5.3.2.2 Panel members' perceptions

Surveyed chairs reported a range of perceived satisfaction among stakeholders (Figure 24).⁶⁹ It was generally perceived by chairs that satisfaction might be highest for community members in attendance at meetings, with applicants and objectors also perceived to have high levels of satisfaction. By contrast, it was perceived by chairs that councillors might be relatively less satisfied. Chairs perceived that around one-third of councillors may be extremely or somewhat dissatisfied (10 per cent) and relatively few councillors satisfied (around one-third) compared to community members (73 per cent), objectors (73 per cent), and applicants (77 per cent).

⁶⁵ *Local News Plus* (7 May 2018).

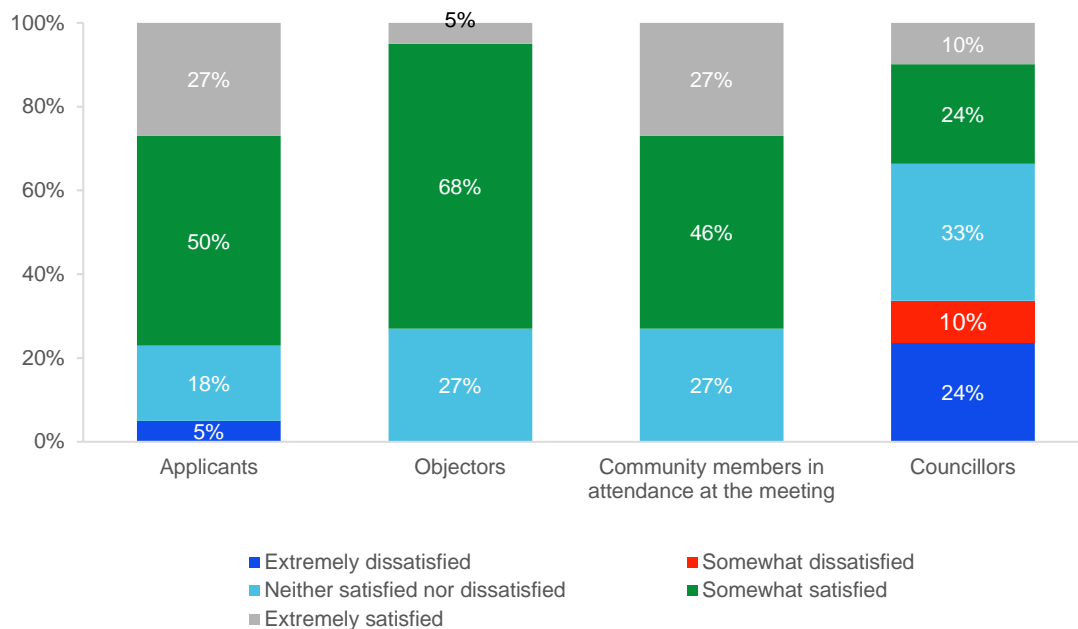
⁶⁶ This echoes the views of a council case study expert,

⁶⁷ Matt Taylor, *DA data has Waverley streets ahead of Woollahra*, *The Daily Telegraph* (27 Feb 2018).

⁶⁸ Matt Taylor, *DA data has Waverley streets ahead of Woollahra*, *The Daily Telegraph* (27 Feb 2018).

⁶⁹ It bears noting, however, that these perceived satisfaction levels are based on the perspective of surveyed chairs, not the respective stakeholders, and so it should not necessarily be inferred that actual satisfaction of these stakeholders corresponds with these perceptions (a survey of these particular stakeholders would be necessary to determine this).

Figure 24. Chairs' perceptions about stakeholders' satisfaction with decisions being made by experts compared to councillors



Survey question: Overall, in your opinion, how would you describe the satisfaction of the following with the process of planning decisions being made by independent experts compared to councillors.
Sample: N=31 chairs.

In general, council case study panel members thought the community was satisfied with the reforms.

An expert explained that, in their opinion, the community is satisfied when their DA is approved and dissatisfied if their DA is not approved, and that the community generally likes the panel because panel members are seen as independent authorities that both listen to and ask questions of the applicants and objectors. A community representative, who was also an expert on another panel, explained that no one in the community had spoken to them about IHAPs. The representative's sense was that people were happy that DAs were being determined by independent experts because council may have a range of political views. Another community representative said they had not encountered any newspaper articles about their panel and that they had set up a Google alert with keywords which revealed that the new process was good, independent and avoids corruption.

Other issues raised about stakeholders' satisfaction included:

- Lack of clarity about the purpose and protocols during site visits:** According to an expert, council staff might inform people when they registered for a site inspection about the purpose and protocols of the site visits, but this should be proactively reinforced by the chair at the site visit. They also flagged that some chairs are better than others when they conduct the site visits, and that it was important to emphasise that the purpose of site visits is not to ask questions, which is instead done at the meeting. The expert believed that this information should be relayed to registered person at each site
- Representativeness of the community representatives:** A community representative explained that when the IHAP model was announced there were some comments in the local paper about the lack of gender diversity for their panel. The representative agreed with this observation (see section 5.3.1.1) and added that this could frustrate some people in the community, especially given that community representatives are not permitted to canvass the community.
- Meeting times:** An expert raised there was some community dissatisfaction regarding meetings that are held during the day.