



Panels Evaluation

Appendix A

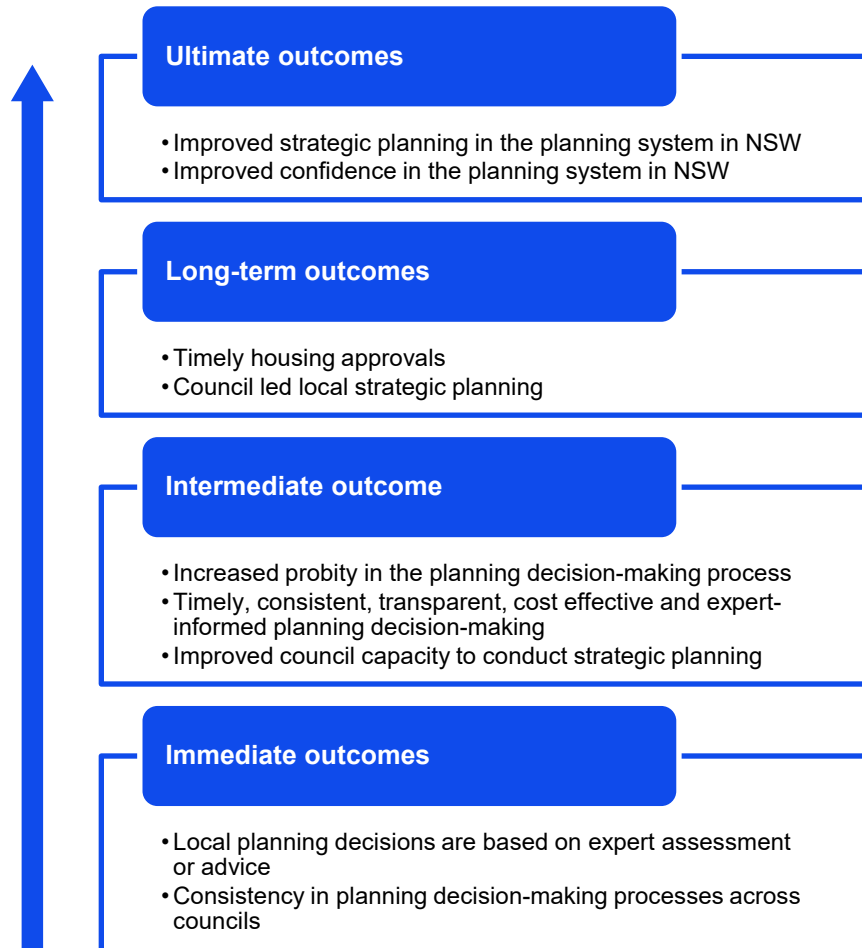
Program Logic

Institute for Public Policy and Governance

Prepared for the NSW Department of Planning and Environment

February 2018

Program logic





Panels Evaluation

Appendix B

Methodology and Evaluation Design

Institute for Public Policy and Governance

Prepared for the NSW Department of Planning and Environment

March 2018

Methodology and Evaluation Design

Phase 1 (December 2017 – March 2018) involved the design of the monitoring and evaluation framework.

IPPG consulted with key stakeholders including council staff, industry and government to inform this approach and develop a program logic. Refer to Appendix A for a figure summarising the program logic.

Year 1 of the evaluation focused on understanding the immediate outcomes (Table 1).

Table 1. Summary of evaluation plan for year 1

Immediate outcomes	Evaluation questions	Topics/issues to be explored
Local planning decisions are based on expert assessment or advice	Are local planning decisions merit-based ?	Panel composition and processes – operational issues, questions of expertise
		Timing and types of DAs
		Appeals
		Stakeholder satisfaction with the IHAP model
	Are decisions about planning proposals based on expert advice by LPPs? ¹	Provision of advice
Consistency in planning decision-making processes across councils	Do key stakeholders report increased consistency of the LPP process across councils?	Panel processes – rotations
		Satisfaction with LPPs
		Timing and types of DAs
		Relationships between key stakeholders
		Complaints and probity

IPPG analysed the available data from councils on the operation of panels. This data was provided by DPE from data entered by councils in the IHAP webform (Table 2).

¹ Local Planning Panels (LPPs).

Table 2. Summary of data available through IHAP webform

Data type	Quarter 1	Quarter 2	Quarter 3	Quarter 4
Dates covered	7/03/2018 to 18/7/2018	2/07/2018 to 26/09/2018	2/10/2018 to 20/12/2018	15/1/2019 to 29/3/2019
Number of public meetings	136 from 30 panels (22 marked as 'not finalised')	122 from 33 panels (4 marked as 'not finalised')	133 from 34 panels (1 marked as 'not finalised')	92 from 34 panels (3 marked as 'not finalised')
Number of development applications considered by panels ²	459 (485 substantive criterion) ³	466 (513 substantive criterion)	535 (542 substantive criterion)	299 (266 substantive criterion)
Number of determinations	417 (91 per cent)	423 (91 per cent)	489 (91 per cent)	263 (88 per cent)
Number of referral criteria triggered ⁴	485 (1.06 per DA)	513 (1.1 per DA)	564 (1.05 per DA)	306 (1.02 per DA)
Missing data for DAs pertaining to relevant referral criteria	54 (12 per cent)	46 (10 per cent)	21 (4 per cent)	6 (2 per cent)
Number of councils supplying quarterly reporting	22 out of 34	25 out of 34	32 out of 34	32 out of 34
Number of planning proposals (DPE supplied supplementary)	Data not collected	40 (with 37 recommendations recorded)	45 (with 36 recommendations recorded)	27 (with 27 recommendations recorded)

² Some DAs may be double counted if they are deferred, modified, or reviewed. They have not been excluded in this count.

³ Excluding reviews and modifications (as reported in quarters 3 and 4 only explicitly).

⁴ An amendment was made in the webform for quarters 3 and 4 that allowed users to enter 'reviews' and 'modifications' explicitly as referral criterion. (This was not a change to the webform but came out of further investigation into council meeting minutes by DPE)



Panels Evaluation

Appendix C

Quarter 3 Data (October – December 2018)

Institute for Public Policy and Governance

Prepared for the NSW Department of Planning and Environment

February 2019

Contents

List of figures	4
List of tables	5
1 Introduction	6
1.1 Methods	6
1.2 Qualifications and considerations	8
2 Operation of panels	9
2.1 Departmental support of panels	9
2.2 Panel members' understanding of panel roles	9
2.3 Development applications considered by panels	10
2.4 Panel decision-making	19
2.5 Panel decisions	24
2.6 Panel advice on planning proposals	29
2.7 Costs and resources	30
2.8 Overall perceptions of panel operation	30
3 Conflicts of interest, complaints, reviews and appeals	32
3.1 Conflicts of interest	32
3.2 Complaints and issues	32
3.3 Reviews and appeals	33
4 Stakeholder perceptions	35
4.1 Understanding of the purpose of the panels	35
4.2 Satisfaction with the panels	35
4.3 Reform objectives	37

List of figures

Figure 1. Average number of DAs considered per meeting, per panel	10
Figure 2. Average number of DAs considered by each panel for the quarter, by region	11
Figure 3. Proportion of DAs, according to referral criteria	11
Figure 4. Proportion of DAs, according to the number of referral criteria triggered	12
Figure 5. Proportion of DAs, according referral criteria, by region	14
Figure 6. Proportion of departure from development standards DAs, according to development standard	15
Figure 7. Average departure from development standards variation (%), by Schedule	16
Figure 8. Proportion of conflict of interest DAs, according to applicant or landowner	16
Figure 9. Proportion of contentious development DAs, according to number of objections	17
Figure 10. Proportion of non-RFB sensitive development DAs, according to type of sensitive development	18
Figure 11. Proportion of DAs considered with site visits, average per panel, per region	19
Figure 12. Average site visit duration (minutes), average per panel, per region	20
Figure 13. Number of panel meetings held, per panel	20
Figure 14. Number of meetings per panel, per region	21
Figure 15. Proportion of DAs, according to the number of registered speakers	23
Figure 16. Proportion of panel meetings, according to meeting duration	23
Figure 17. Average meeting duration (minutes) per DA, per panel, by region	24
Figure 18. Breakdown of panel decisions	25
Figure 19. Breakdown of panel decisions, by region	25
Figure 20. Breakdown of panel decisions, by referral criteria triggered	26
Figure 21. Proportion of DAs, according to panel determination	27
Figure 22. Proportions of approved DAs and deferred commencement approval DAs, by region	27
Figure 23. Breakdown of DAs determined by panels, according to consistency with council recommendation	28
Figure 24. Average inconsistency of panel determination with council recommendation, by region	28
Figure 25. Proportion of DAs, according to determination time	29
Figure 26. Proportion of planning proposal that panels provided advice on, related to council recommendations	30
Figure 27. Outcomes of internal reviews conducted by panels that were finalised in quarter 3	34

List of tables

Table 1. Summary of evaluation plan for year 1	2
Table 2. Breakdown of DAs by referral criteria triggered	13
Table 3. Breakdown of DAs by referral criteria, by Schedule	15
Table 4. Comparative summary of a typical panel meeting day	19
Table 5. Summary of panel member rotation in quarter 3	22
Table 6. Breakdown of panel decisions which were inconsistent with council recommendations, according to referral criteria	29

1 Introduction

This appendix presents the data collected during quarter 3 (October - December 2018) for the monitoring and evaluation of Independent Hearing and Assessment Panels (panels). This supports the Final Report for the Local Planning Panels (panels) Evaluation and provides more detail and other monitoring information.

In summary, this appendix contains additional information about:

- research approach, methods and qualifications and key considerations for quarter 3 (Section 1)
- the support for panels (Section 2)
- the operation of panels (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 3, along with key qualifications related to the interpretation of findings. See the Final Report for details on the overall monitoring and evaluation approach across quarters.

1.1.1 Analysis of secondary data

1.1.1.1 Briefing and training materials

The Institute for Public Policy and Governance (IPPG) obtained briefing materials from the Department of Planning and Environment (DPE) relating to three community representative briefing sessions held in quarter 3. Analysis of this data was descriptive and thematic.

1.1.1.2 Council quarterly reports

IPPG analysed the available data from councils on the operation of panels. This data was 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 applications referred to panels, and decisions made by panels).

The data covers panel meetings held during the period between 2 October 2018 and 21 December 2018, planning proposals, complaints and appeals. In total, across 34 councils data was available for 535 DAs considered, 489 DAs determined and a total of 133 public meetings.

Quarterly data was available from 32 councils. There were 45 planning proposals recorded for 20 councils.

Reminders to councils to input data were sent by DPE on 18 December 2018, 9 January 2019 and 11 January 2019. The Department also followed up the submission of panel data with numerous phone calls and emails to councils in the weeks leading up to the deadline.

In certain instances, data was analysed according to DPE-defined regions.⁵ For some referral criteria analysis, council data was also clustered by Schedule number.⁶

⁵ These are: Sydney Central, Sydney North, Sydney South, Sydney South West, Sydney West, and Sydney West Central. Since the evaluation commenced, the Greater Sydney Commission finalised District Plans (following *A Metropolis of Three Cities*) and this involved renaming districts. There were two relevant changes: Sydney West and Sydney South West were consolidated as 'Western City'; and, Wollongong City Council is not a member of the District Plans. IPPG have retained the previous naming system to enable readers to compare quarter 1 and quarter 2 reports with subsequent quarterly reports.

⁶ 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.

1.1.1.3 Complaints and other data

From mid-August 2018, the DPE Complaints Register recorded written complaints to DPE regarding panels. Issues and enquiries received by the Department are recorded in an issues register.

Complaints about panels can be made directly to councils.⁷ 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 panels 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 has been aggregated.

IPPG's analysis of this aggregate data is descriptive and thematic. The analysis identifies common issues that were raised in complaints and includes notes as to why the data cannot be relied upon to draw conclusions.

1.1.1.4 Media content

Online media coverage from 52 newspaper sources was analysed from 1 October 2018 to 31 December 2018. The purpose of analysing media content is 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 monitoring. Search terms included:

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

Reports were analysed according to themes.

1.1.2 Collection and analysis of primary data

1.1.2.1 Case studies

IPPG conducted two case studies for this quarter. The purpose of these case studies is to develop an in-depth understanding of how some councils are implementing their panels.

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

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

Letters of invitation were sent by IPPG to directors of planning or 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, community representatives and council staff)
- observed panel site visits, briefings by council and the panel meetings, and
- analysed the council panel website, key council documents and/or other internal data collection sources.

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

⁷ These complaints are captured in the DPE issues register if the Department is copied in to the correspondence by the complainant or the council.

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:**

A number of updates were incorporated in IHAP webform for quarter 3:

- Referral criteria triggers were reported explicitly for the first time in quarter 3. IPPG identified 35 DAs which did not meet applicable referral criteria. Of these 35 DAs, 21 were referred to panels as reviews or modifications with the remaining 14 DAs recording some form of data entry error from online form users.
- DPE advised that DAs referred to panels for review and for modification were to be treated as standalone referral criteria. In this report 'substantive referral criteria' refers to: conflict of interest, contentious development, departure from standards, and sensitive development referral criteria. 'Expanded referral criteria' relates to: reviews, modifications, conflict of interest, contentious development, departure from standards, and sensitive development. Incorporating reviews and modifications as standalone referral criteria does not make a substantial difference as these referral criteria make up a relatively small proportion of all referral criteria triggered.
- Councils could report whether DAs were determined electronically.

Analysis of panel member rotation is based on public meeting data provided via the IHAP webform. IPPG does not have access to information on the council's pool of experts and community representatives, panel rosters and panel member availability which limits the ability to comment on panel member rotation.⁸

In common with quarters 1 and 2, the reporting of planning proposals remains incomplete (due to limitations in the information obtained by IHAP webform and the time lag until councils determine planning proposals). There were inconsistencies with the number of planning proposal recommendations that were recorded in the webform (58 recommendations) compared to those manually identified (36 recommendations). There were nine planning proposal recommendations with no data available.

The quarterly reporting of appeals, complaints, and reviews remains incomplete (due to limitations in the information obtained by IHAP webform and/or matters are ongoing) and difficult to interpret. For instance, the outcome of appeals data in the DPE online form uses a free text field and users' entries do not appear consistent with their entries in other fields of the form.

A relatively high level of zero valued entries continues to appear in user-entered data. IPPG continues to recommend that zero valued entries should only be made possible for users in instances that it is a feasible entry, and to be mindful that average values reported are significantly altered where zero valued entries are retained.

IPPG has remained in consultation with departmental staff, throughout the evaluation and ahead of quarter 4 reporting, to help increase consistency of reporting through the webform and streamline the data analysis process.

- **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 reported and to determine if there are patterns emerging.
- **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.

⁸ In quarter 1 IPPG assessed the comparative expertise available to panels by region based upon the panels chairs and experts nominated, using the data provided by Derwent Executive.

2 Operation of panels

This section provides some detailed information on key findings in relation to the operation of panels in quarter 3, with a focus on panel members' understandings of panel roles, rotation, referral criteria, decision-making and panel decisions.

2.1 Departmental support of panels

This section draws on data from DPE briefing and training material (see Section 1.1).

2.1.1 Community representative briefings

In total, 44 community representatives attended DPE training sessions for community representatives. Community representatives were invited to attend one of the following training sessions:

- in Sydney on 17 October 2018 (20 attendees)
- in Parramatta on 23 October 2018 (18 attendees), and
- in Hurstville on 31 October 2018 (6 attendees).

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

At this session the following topics were covered:

- role of the community representative
- conflicts of interest
- good decision making, and
- advising on planning proposals.

Community representatives raised a number of queries in the question and answer session, including the community representative's role within the community and on the panel, perceived and real conflicts of interest by other panel members, representatives' financial liability if a panel decision is appealed, and the degree of flexibility that panel members have in applying relevant planning instruments and balancing these instruments with the public interest.

Some community representatives suggested that they would like information regarding panel decisions, particularly instances when a community representative dissented.

2.2 Panel members' understanding of panel roles

Case study panel members and council staff were asked if they thought community representatives understood their role on the panels. A chair and an expert provided examples of when a community representative provided context to the DAs and raised pertinent issues (e.g. regarding seasonal parking). Another expert indicated the community representative acted as a witness to the panel's processes.

However, most respondents indicated that they did not think that community representatives understood their roles. Panel members commented that community representatives sometime struggle with whether they are a representative who speaks on *behalf of the community* or whether they are a community member with local knowledge and who *speaks on behalf of themselves*. For example, a chair explained that it was not the representative's role to advocate on behalf of the community rather their role was to have local knowledge and provide input; this chair indicated that this distinction was not clear to all community representatives. Another chair indicated representatives had difficulties understanding what panels were entitled to consider and how they might be able to reconcile their views on behalf of the community.

Case study panel members and council staff were also asked if they thought community representatives should have planning or related expertise. Council staff's and panel members' positions on this issue varied. For those that did not believe planning expertise was a requirement, they often indicated it was important that the community representatives have general knowledge of planning and law, could read a plan and adopt a logical decision-making approach (rather than being overly swayed by objections).

Some case study panel members indicated that the difficulties that community representatives encountered was in part related to their title 'community representative'. It was also suggested that over time and with further training and guidance for community representatives, some of these issues might be resolved.

2.3 Development applications considered by panels

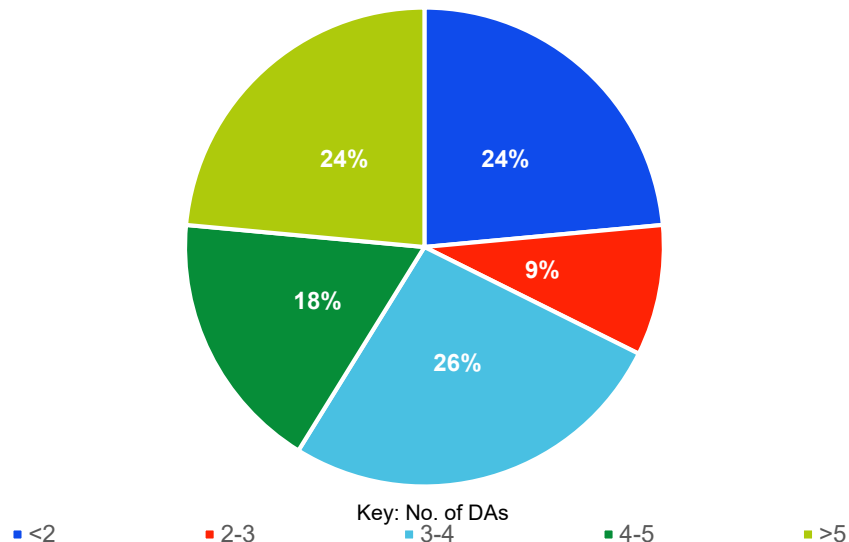
In quarter 3, on average, panels considered more DAs, of higher average value, with more dwellings, and fewer storeys per DA than in quarter 2.

2.3.1 Number of development applications

In total, 535 DAs were considered by panels, at an average of around 16 DAs per panel.

Per meeting, an average of 4.0 DAs were considered, and an average across panels of 3.9 DAs per meeting. Around one third of panels consider an average of three or fewer DAs per meeting, while around one quarter consider an average of five or more DAs per meeting (Figure 1).

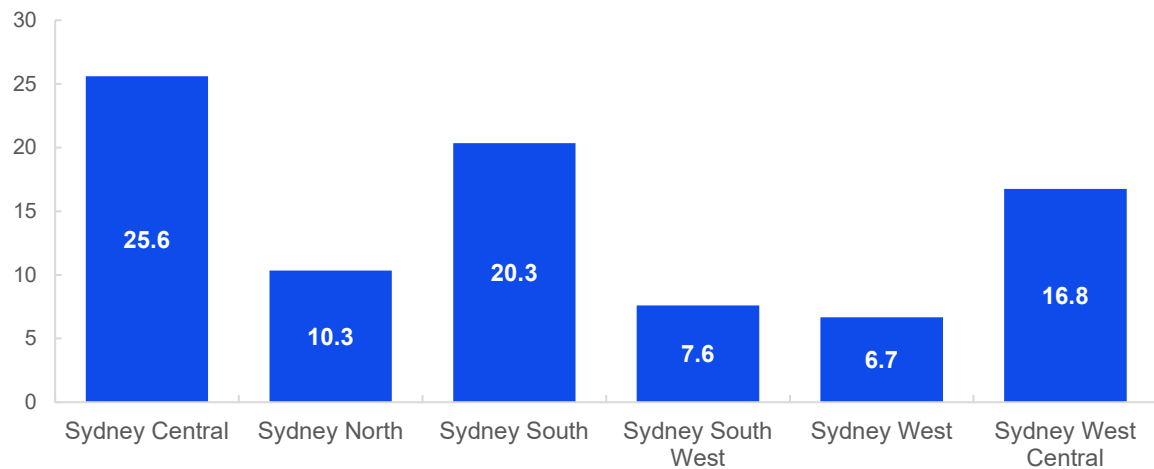
Figure 1. Average number of DAs considered per meeting, per panel



Source: Council online IHAP reporting data.
Sample: n=535 DAs (133 meetings, 34 panels).

Panels in Sydney Central consider on average relatively more DAs per meeting compared to panels in other regions, especially compared to Sydney West which recorded the fewest DAs per meeting on average (Figure 2). Four panels considered an average of seven or more DAs per meeting and six panels considered fewer than two DAs on average per meeting.

Figure 2. Average number of DAs considered by each panel for the quarter, by region



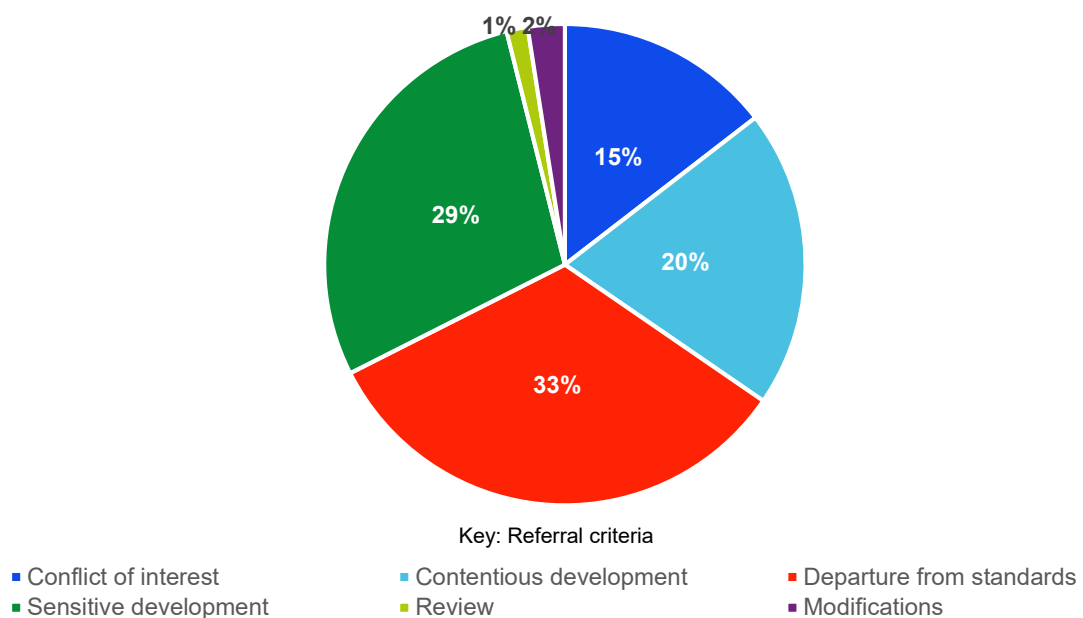
Source: Council online IHAP reporting data.
Sample: n=535 DAs (133 meetings, 34 panels).

2.3.2 Referral criteria triggered⁹

DAs considered by panels triggered slightly fewer referral criteria in quarter 2. A total of 564 referral criteria were triggered in quarter 3 (around 1.1 per DA¹⁰), with 21 DAs reported as being outside of the scope of the referral criteria (this is a much lower proportion than was identified in previous quarters).¹¹

Departures from standard (33 per cent) and sensitive development (29 per cent) make up the largest proportion of referral criteria triggered (Figure 3).

Figure 3. Proportion of DAs, according to referral criteria



Source: Council online IHAP reporting data.
Sample: n=535 DAs, with 564 referral criteria triggers (including modifications and reviews).

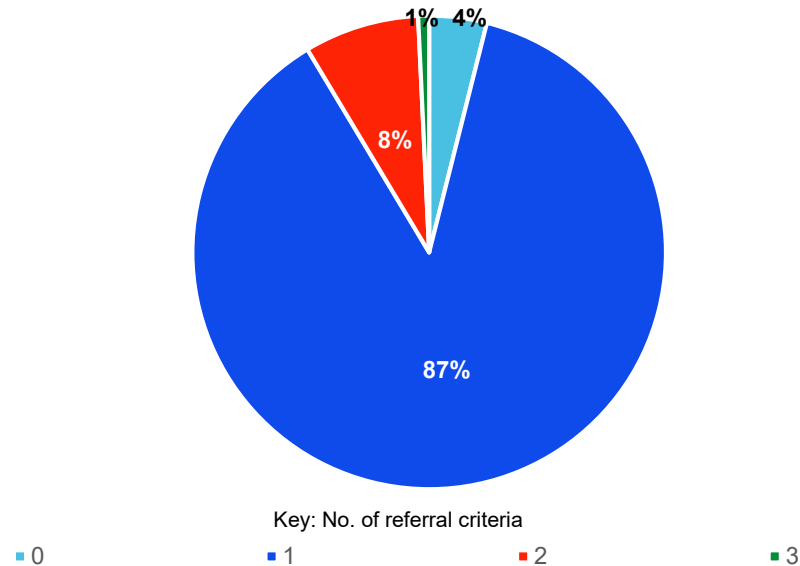
⁹ DPE has advised that two councils have submitted submission policies.

¹⁰ This is calculated as total number of referral criteria triggered (564) divided by the number of DAs in which at least one referral criteria was triggered (514, that is 535 total DAs referred to panels less the 21 DAs without a referral criteria identified).

¹¹ Of the 21 DAs for which no referral criteria trigger could be identified, 19 of these DAs were considered by one council. The two other DAs related to residential flat buildings which were three storeys in height (not meeting the Schedule 2 threshold of four or more storeys).

For most DAs considered by panels, only one referral criterion was triggered (Figure 4).

Figure 4. Proportion of DAs, according to the number of referral criteria triggered



Source: Council online IHAP reporting data.
Sample: n=535 DAs, with 564 referral criteria triggers.

The criterion most commonly triggered in combination with other referral criteria was the departure from standards (building height) criterion (Table 2). In summary, the departure from standards (building height) criterion was triggered with:

- the Residential Flat Building sensitive development criterion for 18 DAs, and
- the contentious development criterion for 9 DAs.

The contentious development criterion was triggered with the Residential Flat Building (RFB) sensitive development criterion for seven DAs.

Table 2. Breakdown of DAs by referral criteria triggered¹²

		Conflict of interest	Contentious development	Sensitive development		Departures from standards				Reviews and modifications	
				RFB	Non-RFBs	Lot size	Building height	Floor space ratio	Other	Rev	Mod
Conflict of interest		79	2			1					
Contentious development		2	93	7	1	9	1			1	1
Sensitive development	RFB		7	82		2	18	6		3	
	Non-RFB		1		46		1	2	1		
Departures from standards	Lot size			2		15			1		
	Building height	1	9	18	1		79	3		1	
	Floor space ratio		1	6	2		3	39	1	1	
	Other				1	1	6	3	37		
Reviews and modifications	Review		1	1			1	1		4	
	Mod ¹³		1								13

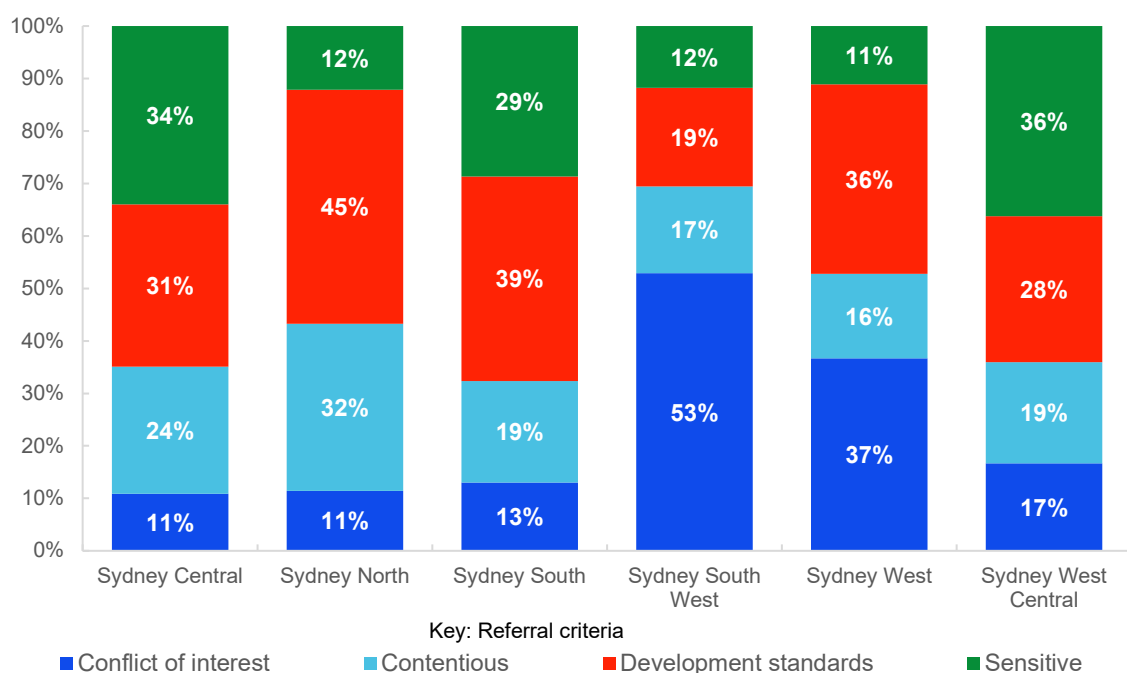
¹² Note the total number of referrals in this table is greater than the total of all referral criteria counted in other sources because the departures from standards are typically counted as one referral rather than being counted separately for each departure.

¹³ Mod is an abbreviation for modification.

From a regional perspective:

- Departures from standards make up a relatively large proportion of DAs considered, on average, for panels in Sydney North, Sydney South, and Sydney West.
- Conflict of interest criteria was triggered on average at a relatively high proportion for panels in Sydney South West and Sydney West.¹⁴
- Contentious developments make up a relatively large proportion of DAs considered, on average, for panels in Sydney North.
- Sensitive developments make up a relatively large proportion of DAs considered, on average, in panels in Sydney West Central, Sydney Central, and Sydney South (Figure 5).

Figure 5. Proportion of DAs, according referral criteria, by region



Source: Council online IHAP reporting data.

Sample: n=542 substantive referral criteria triggered¹⁵ (averaged across each of the 34 panels), reviews and modifications not counted in order to improve display.¹⁶

Per DA, Schedule 3 panels recorded more referral criteria being triggered, and fewer for Schedule 2 panels (Table 3).

¹⁴ There were 19 conflicts of interest in Sydney South West with the following breakdown of DAs according to landowner/applicant: council (12 DAs), relative (4 DAs), council staff (2 DAs) and councillor (1 DA).

¹⁵ This is made up of 186 RFB sensitive developments, 50 non-RFB sensitive developments, 111 departure from standard DAs (excluding double counting of DAs where more than departure was recorded), 82 conflict of interest, and 113 contentious developments.

¹⁶ For reference, reviews were undertaken at Parramatta City Council (x2), Blacktown City Council, Hawkesbury City Council, Randwick City Council, Ryde City Council, Hills Shire Council, and Waverley Council. Modifications were undertaken at Northern Beaches Council (x10), Strathfield Municipal Council (x2), Canada Bay Council, and Waverley Council. No referral criteria triggered was recorded by Strathfield Municipal Council (x19), Inner West Council, and Penrith City Council.

Table 3. Breakdown of DAs by referral criteria, by Schedule

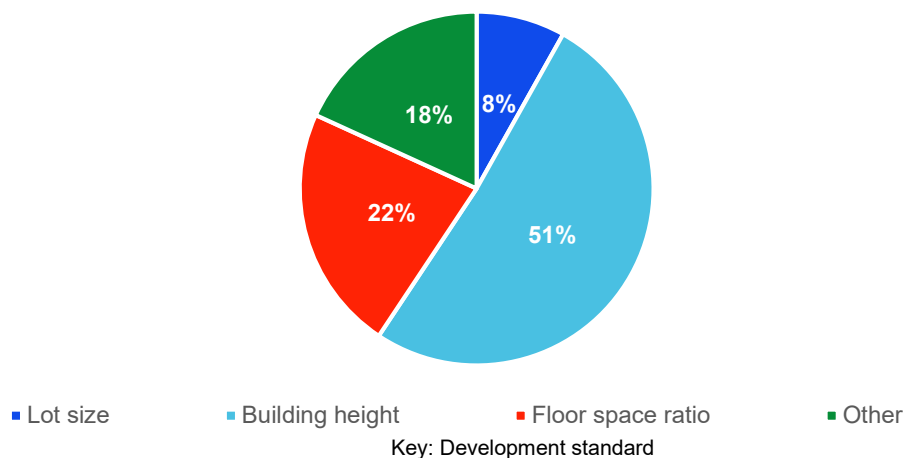
		Schedule 1 (274 DAs considered)	Schedule 2 (240 DAs considered)	Schedule 3 (21 DAs considered)	Total (535 DAs considered)
Conflict of Interest		39	37	6	82
Contentious development		62	47	4	113
Sensitive development	RFB	72	34	5	111
	Non-RFB	15	30	5	50
Departures from standards		96	85	5	186
Reviews		4	4	0	8
Modifications		4	10	0	14
No referral criteria triggered		19	2	0	21
Total referral criteria triggered		292 (1.07 per DA)	247 (1.03 per DA)	25 (1.19 per DA)	564 (1.05 per DA)

2.3.2.1 Departure from standards

Departures from standards were the most frequently reported referral criteria in quarter 3. Around half (51 per cent) of the departures from standards related to building heights while around one quarter reported floor space ratio departures (22 per cent). The remaining quarter (26 per cent) was split between lot size variation and 'other' (Figure 6).

In common with quarters 1 and 2, the open text field for users to fill for other departures from standards indicates that landscape variations make up a substantial proportion of this category. However, the range of responses provided in this open text field for 40 DAs offers little additional information for analysis.

Figure 6. Proportion of departure from development standards DAs, according to development standard



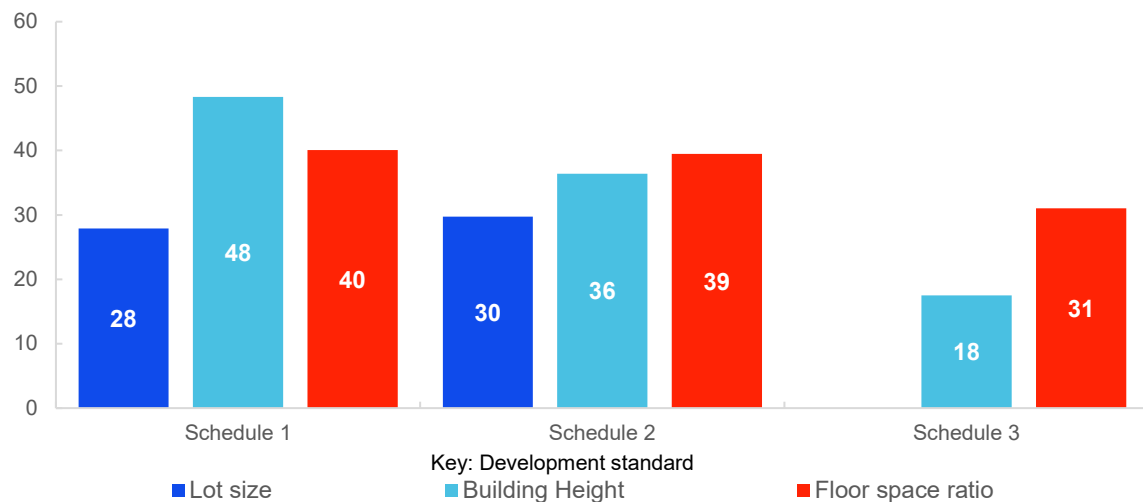
Source: Council online IHAP reporting data.

Sample: n=186 DAs with 209 departure from standards criteria triggered. Note: Percentages do not add up to 100 due to rounding.

On average, departures from standard are highest for building height (with 42.9 per cent variation), followed by floor space ratio (with 39.7 per cent variation) then lot size variations (with 29.2 per cent variation).

The rate of variation of building heights was relatively high for Schedule 1 panels compared to Schedule 2 and Schedule 3 (Figure 7).

Figure 7. Average departure from development standards variation (%), by Schedule



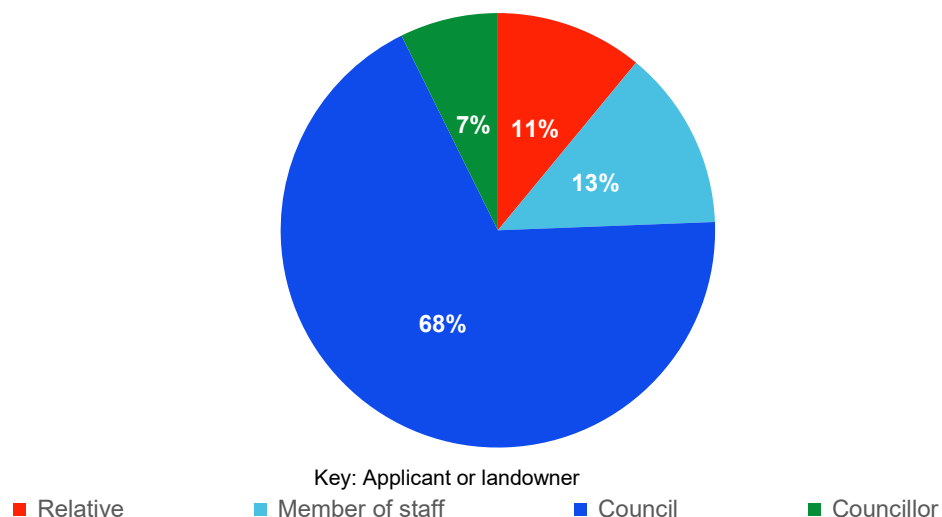
Source: Council online IHAP reporting data.

Sample: n=169 DAs with numerical departure from standards criteria reported (excluding 'other' departure from standards DAs).

2.3.2.2 Conflict of interest

Of the DAs referred to panels for a conflict of interest, around two thirds were referred because council was an interested party (Figure 8).

Figure 8. Proportion of conflict of interest DAs, according to applicant or landowner



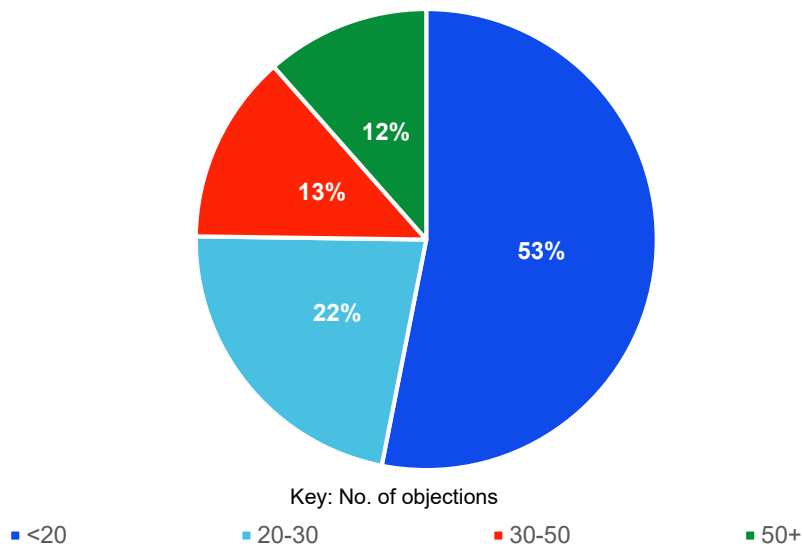
Source: Council online IHAP reporting data.

Sample: n=82 DAs with conflict of interest recorded.

2.3.2.3 Contentious development

For DAs that triggered the contentious development criteria, the average number of objections was 27. Around half of the DAs under this criterion recorded 20 or fewer objections (Figure 9). Two DAs recorded more than 100 objections (one DA with 103 objections and the other with 173 objections).

Figure 9. Proportion of contentious development DAs, according to number of objections



Source: Council online IHAP reporting data.

Sample: n=113 DAs with contentious development triggered (there were 114 DAs with complaints data entered by councils, but one DA for City of Sydney was excluded because it did not meet the Schedule 3 threshold to trigger the referral criteria).

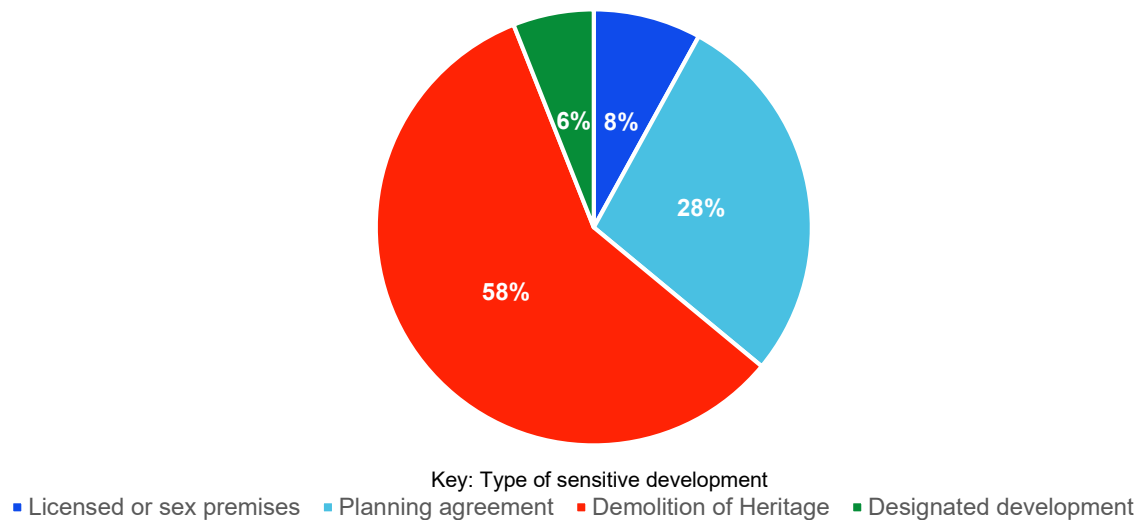
The average number of objections was highest for DAs in Schedule 3 panels (83 complaints on average, for four DAs), but were somewhat lower and similar across panels in Schedule 1 (24 complaints on average), Schedule 2 (26 complaints on average).

2.3.2.4 Sensitive development

The majority of DAs triggering sensitive development criteria pertain to RFB sensitive developments (111 DAs, with an average of 6.4 storeys). Seventy-two of these DAs were Schedule 1 (average of 6.5 storeys), 34 DAs were Schedule 2 (average of 5.9 storeys), and five DAs were Schedule 3 (average of 8.8 storeys).

Of the non-RFB sensitive developments considered by panels the majority related to demolition of heritage (58 per cent) while around one quarter were planning agreements (28 per cent) (Figure 10).

Figure 10. Proportion of non-RFB sensitive development DAs, according to type of sensitive development



Source: Council online IHAP reporting data.

Sample: n=50 DAs with non-RFB sensitive criteria (including one DA which triggered both non-RFB sensitive development and RFB sensitive development).

2.3.2.5 Reviews and modifications

There were eight DAs reviewed in quarter 3, four of which did not trigger any further referral criteria.

There were 14 DAs referred under the 'modification' trigger in quarter 3, of which one DA also triggered an additional referral criteria (contentious development).

Case studies

At one case study council staff indicated that they thought the referral criteria was appropriate for their council.

At the second case study, council staff indicated that there were simple DAs being caught by the referral criteria.

2.3.3 Other characteristics

2.3.3.1 Cost of works for development applications

The average cost of works in quarter 3 was around \$4.0 million (higher than in quarter 2 at \$2.7 million and quarter 1 at \$3.0 million).

2.3.3.2 Number of dwellings

The average number of dwellings per DA was 10.2 in quarter 3 (consistent with quarter 1 and higher than in quarter 2 with 7.8 dwellings). Excluding zero value entries (250 entries), the average number of dwellings was 19.2 per DA.

2.3.3.3 Number of storeys

The average number of storeys for DAs considered in quarter 3 was 2.3 (consistent with quarter 1 and 2). Excluding zero value entries (178 entries), this average was 3.4.

2.4 Panel decision-making

Panels in quarter 3 (compared with quarter 2) on average held more meetings, for longer, considered more DAs per meeting, and spent more meeting time considering DAs. The proportion of DAs with, and average time spent on, site visits was unchanged from quarter 2. On average there were fewer registered speakers in meetings per DA.

Both case studies structured the panel meeting day differently (Table 4). This is examined below.

Table 4. Comparative summary of a typical panel meeting day

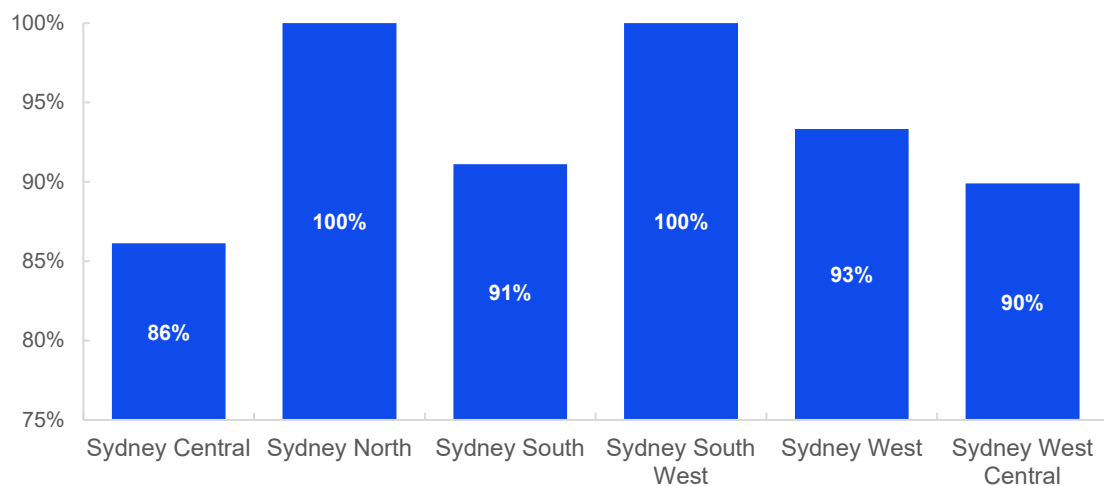
Council 1	Council 2
- Preliminary briefing by council staff. - Site visits (up to five council staff at each site). - Lunch and briefing. - Public meeting, all council staff present for their assigned DAs. - During the meeting, panel members asked council staff questions regarding particular DAs.	- Site visits (up to six council staff at each site), council staff brief panel on site and answer panel member questions. - Public meeting, all council staff present for their assigned DAs. - Meeting closed after all submissions are heard. - Dinner and detailed panel discussions, council staff present.

2.4.1 Site visits

Ninety one per cent of DAs had a site visit. Across all panels this is an average of 93 per cent per panel (consistent with quarter 2).

Site visits were conducted for all considered DAs at panels in Sydney North and Sydney South West, while panels in Sydney Central recorded relatively low proportion of DAs with site visits (Figure 11). The average site visits proportion for Sydney Central is lowered by City of Sydney Council (5 per cent of DAs considered). Excluding City of Sydney Council, Sydney Central panels averaged site visits for 95 per cent of DAs considered.

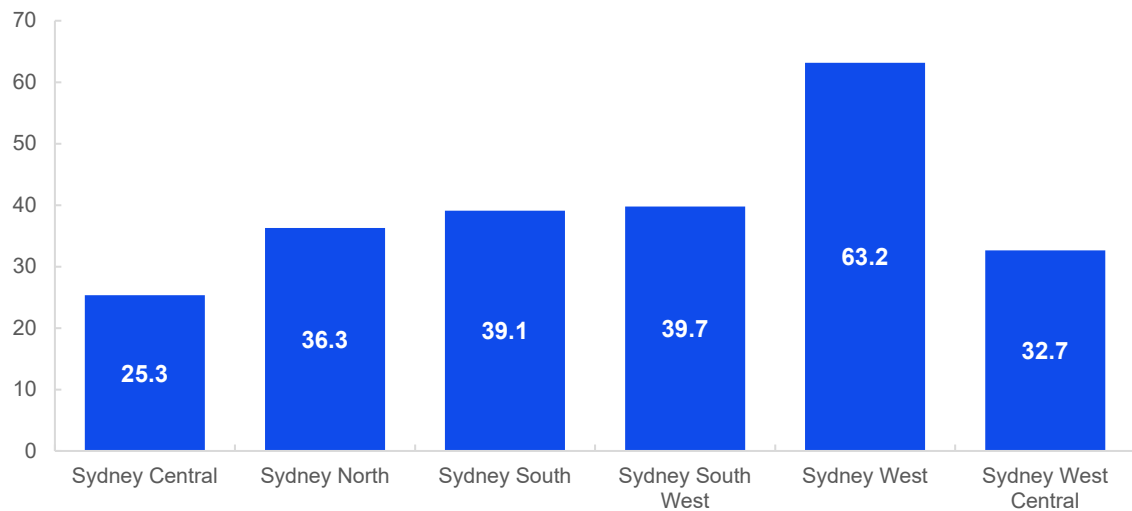
Figure 11. Proportion of DAs considered with site visits, average per panel, per region



Source: Council online IHAP reporting data.
Sample: n=486 DAs with site visits (34 panels).

The average site visit duration per DA for quarter 3 was 32.1 minutes (higher than in quarter 2 with 31.9 minutes, and quarter 1 with 35.4 minutes). The average duration of site visits were longest for panels in Sydney West and Sydney Central though this is partly accounted for by City of Sydney recording zero minutes for site visits (Figure 12).

Figure 12. Average site visit duration (minutes), average per panel, per region



Source: Council online IHAP reporting data.
Sample: n=486 DAs with site visits (34 panels).

DAs which did not have a site visit had a higher rate of approval (90 per cent of DAs determined, compared to 78 per cent for those with a site visit).

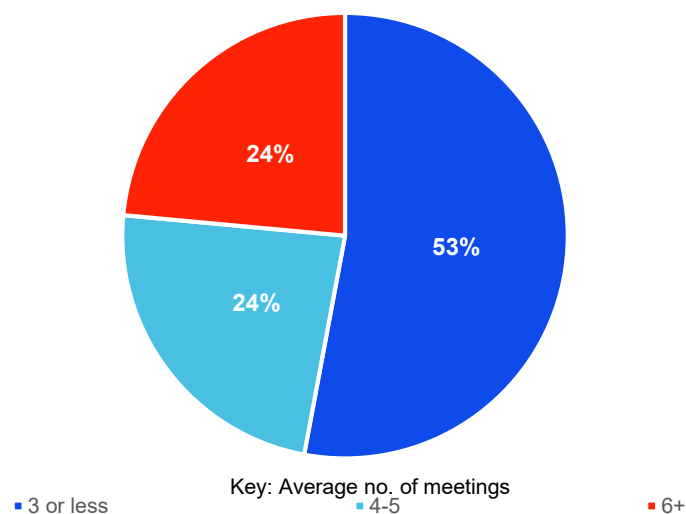
2.4.2 Public meetings

2.4.2.1 Number for public meetings

The average number of meetings per panel was 3.9 in quarter 3 (higher than in quarter 2 with 3.7 meetings, and lower than in quarter 1 with 4.5 meetings).

More than half of councils (53 per cent) recorded three or fewer meetings in quarter 3 (Figure 13). Around one in four councils (24 per cent) held six or more meetings.

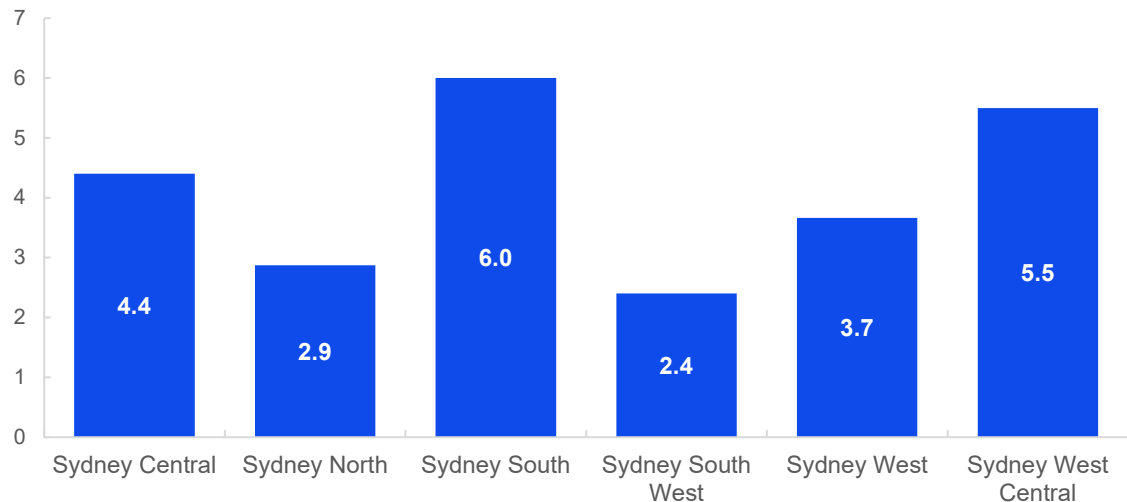
Figure 13. Number of panel meetings held, per panel



Source: Council online IHAP reporting data.
Sample: n=133 meetings (34 panels).

On average panels in Sydney South and Sydney West Central recorded the most meetings, while Sydney North and Sydney South West recorded the fewest (Figure 14). In particular, two councils held eight meetings each, while three councils held one meeting.

Figure 14. Number of meetings per panel, per region



Source: Council online IHAP reporting data.
Sample: n=133 meetings (34 panels).

2.4.2.2 Panel member rotation

In quarter 3, community representatives were rotated the most on average, while chairs were rotated the least (Table 5). In general, the average rate of rotation per panel is highest in Sydney South West and lowest in Sydney West Central.

Rotation of chairs

On average, the number of chairs per panel and the average rotation of chairs on panels remained relatively constant in quarter 3. Around half of the panels (47 per cent) had three chairs preside over panels (compared with 33 per cent in quarter 2 and 37 per cent in quarter 1). Eight panels rotated the chair at each meeting and seven panels did not rotate the chair during the quarter.

Across panels, around half of chairs (49 per cent) presided over two panels at least once, with eight chairs presiding over three panels at least once.

Rotation of experts

On average, the number of experts per panel and the average rotation of experts reduced slightly in quarter 3. The majority (62 per cent) of panels engaged between four and six experts (compared to 70 per cent in quarter 2). Five panels rotated experts at each meeting and four panels did not rotate their experts over the quarter.

Across panels, almost two thirds (62 per cent) of experts served on one panel, while around one quarter served on two panels. One expert served on seven panels and one expert served on five panels.

Crossover of chairs as experts

A majority (59 per cent) of chairs sat as an expert on a panel in quarter 3. Four chairs served on three or more panels as experts, including one chair who served as expert on seven panels and one chair who served on five panels (in common with the above observation about experts).

Rotation of community representatives

The majority of panels (61 per cent) utilised two or three community representatives in their public meetings in quarter 3 (compared to 63 per cent in quarter 2).

On average, the number of community representatives per panel increased slightly in quarter 3, and the average rotation rate of community representatives increased to 68.2 per cent (compared to 60.2 per cent in quarter 2).

Case studies

Council staff at one council case study indicated that they sought to ensure a gender balance of panel members. With regard to expertise, council staff and panel members indicated they did not think there were enough architects on the panels.

Table 5. Summary of panel member rotation in quarter 3

Panel composition	Chairs	Experts	Community representatives
Average panel member number ¹⁷	2.26	4.58	2.71
Panel member rotation per panel ¹⁸	52.5%	57.9%	68.2%
Panel member coverage across panels ¹⁹	1.21	2.79	-
Panel member rotation across panels ²⁰	1.88	1.62	-
Chair crossover rate ²¹	0.90	-	-

2.4.2.3 Number of registered speakers

On average, 1.5 speakers registered per DA in quarter 3, and 1.7 average per panel. Nearly half of all DAs (47 per cent) did not report any speakers (this includes 248 entries of zero and one blank entry) (Figure 15).

More speakers registered, on average, for contentious developments (3.4 speakers on average) compared to other criteria:

- departures from standard (1.2 speakers on average)
- RFB sensitive development (1.1 speakers on average)
- non-RFB sensitive development (0.9 speakers on average), and
- conflict of interest (0.6 speakers on average).

¹⁷ $\sum_{i=1}^n ((\text{Number of (chairs, experts or community representatives) sitting on panel}_i \text{ at least once}) / \text{panel}_i)) / \text{number of panels}(n)$

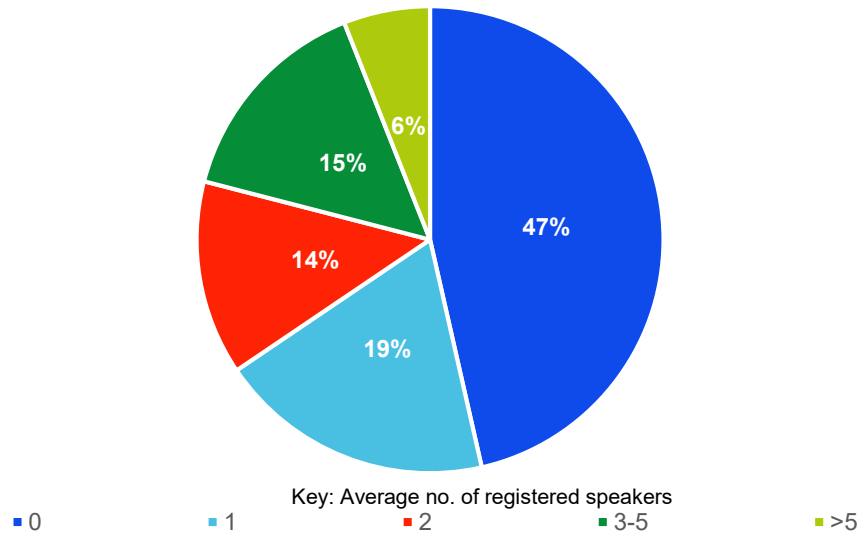
¹⁸ Proportion which chairs are rotated in a given panel. 0=one chair presides over all meetings; 1=a different chair presides over each meeting

¹⁹ Number of 'panel member' sitting on panels/Number of panels

²⁰ $(\sum_{j=1}^k (\text{Number of panels that (chairs or experts) sit on at least once})) / \text{Number of (chairs or experts)} (k)$

²¹ $(\sum_{j=1}^k (\text{Number of panels that chair}_j \text{ has presided over as expert at least once})) / (\text{Number of chairs}(k))$

Figure 15. Proportion of DAs, according to the number of registered speakers



Source: Council online IHAP reporting data.

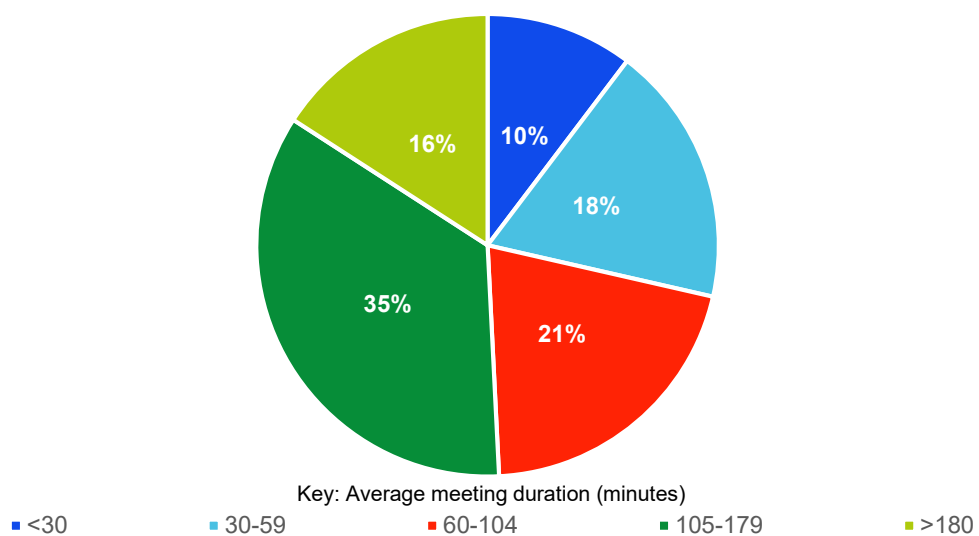
Sample: n=534 DAs with registered speakers recorded (including zero-valued entries), with 286 DAs with non-zero values entered.

Panels in Sydney North recorded the highest average number of registered speakers per DA, while panels in Sydney South West and Sydney West Central recorded relatively fewer.

2.4.2.4 Duration of meetings

The average duration per meeting for quarter 3 was 103 minutes (longer than in quarter 2 with 97 minutes, and quarter 1 with 100 minutes), or 109 meetings excluding seven entries of zero minutes. Most meetings (56 per cent) were between 60 and 180 minutes in duration (Figure 16).

Figure 16. Proportion of panel meetings, according to meeting duration



Source: Council online IHAP reporting data.

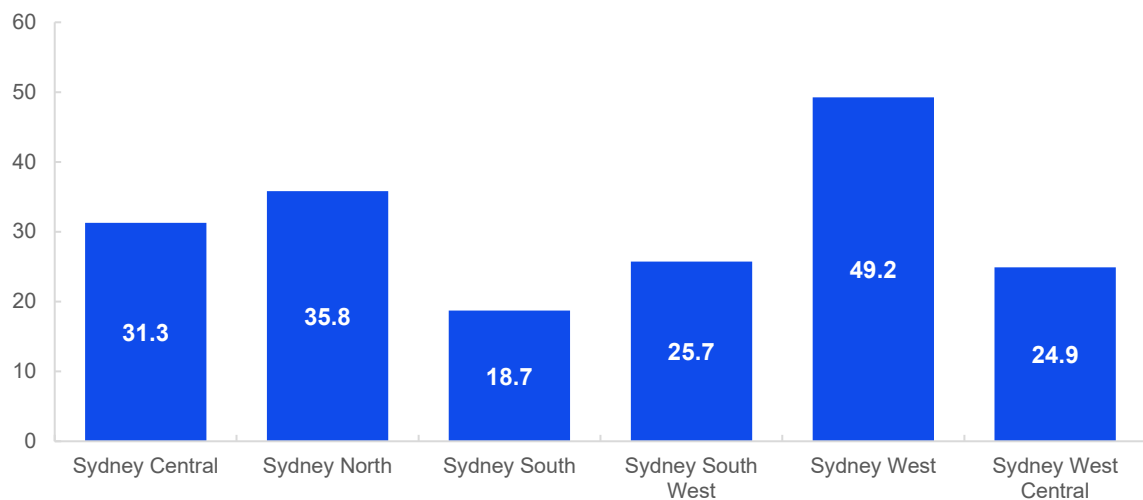
Sample: n=126 meetings (34 panels), 7 meetings excluded as zero minutes were recorded.

On average, panels in Sydney Central and Sydney North held longer meetings, while Sydney South held the shortest meetings on average.

The average duration of meetings per DA across panels²² was 25.6 minutes in quarter 3 (longer than in quarter 2 at 25.3 minutes, but shorter than in quarter 1 at 29.6 minutes).²³ There is a wide distribution in the average time per DA considered by panels with a majority (62 per cent) spending 30 minutes or less but with a minority of panels spending 50 minutes or more per DA.

On average, DAs were heard longer by panels in Sydney West, Sydney North, and Sydney Central than in panels in Sydney West Central and Sydney South (Figure 17).

Figure 17. Average meeting duration (minutes) per DA, per panel, by region



Source: Council online IHAP reporting data.
Sample: n=535 DAs (133 meetings, 34 panels).

2.4.2.5 Deliberation approaches

At one case study, the chair and council staff indicated that most of the matters before the panel were simple so this meant that panel deliberations were conducted in public. An expert on this panel indicated that for more complex matters deliberating in public posed problems for the panel members as they are not able to discuss the issues in a free and open manner. This expert did not think the perceived advantages of public deliberation outweighed the benefits of closed deliberation. Another expert indicated that for panels that deliberated in closed session it might be more transparent to instead adjourn the meeting, deliberate, then reopen the meeting to explain their decision.

The chair at the second case study indicated the panel always deliberated in closed session. This chair explained that the advantage of hearing all submitters then closing the meeting and deliberating avoided the perception that panel had pre-determined applications.

2.5 Panel decisions

2.5.1 Overview of panel decisions

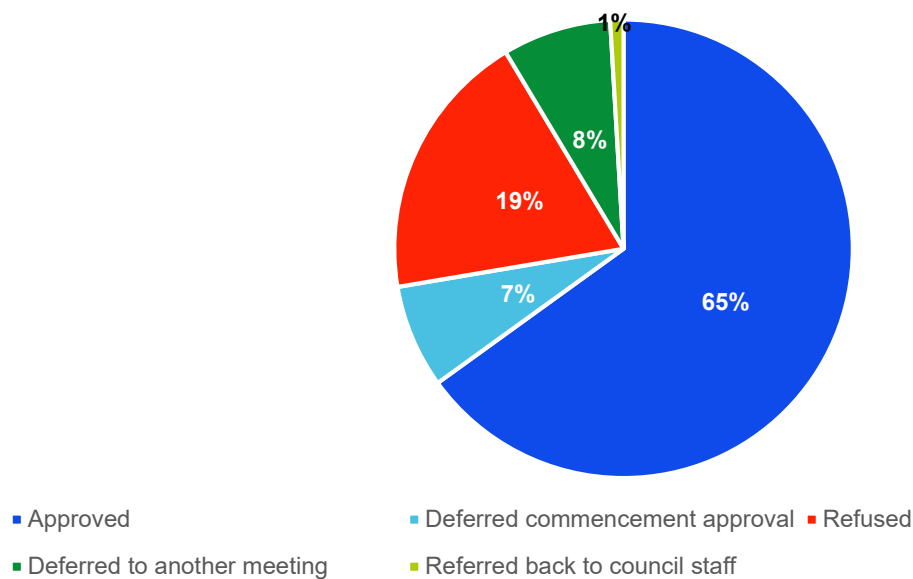
In quarter 3, panels considered 535 DAs. Most DAs were approved (65 per cent), followed by refused (19 per cent) and deferred to another meeting (8 per cent) (Figure 18) (see Section 2.5.1.1 for a discussion on Determinations).

Of the five DAs (1 per cent) that were referred back to council staff, four of these DAs triggered RFB sensitive development criterion and one DA triggered the departure from standard criterion.

²² This is calculated by taking the average for each council and then averaging this across all councils (to correct against individual council dominance).

²³ Zero valued entries retained for this calculation.

Figure 18. Breakdown of panel decisions

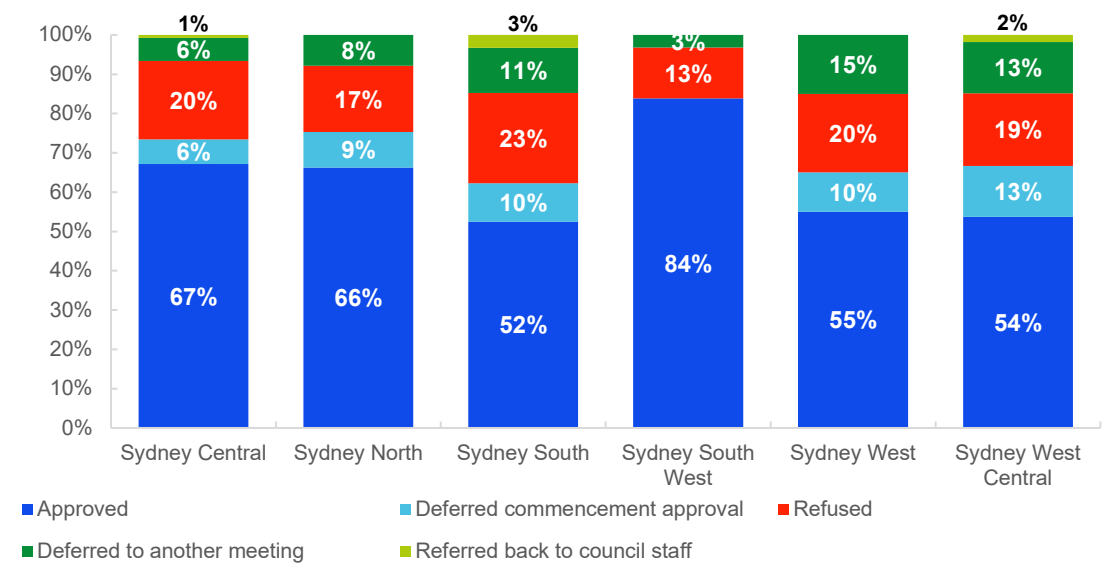


Source: Council online IHAP reporting data.
Sample: n=535 DAs considered by panels.

On average, a relatively high proportion (84 per cent) of DAs considered across panels in Sydney South West were approved, particularly compared to panels in Sydney South, Sydney West, and Sydney West Central (Figure 19). When deferred commencement approvals are included, the approval rate across panels ranges from 62 per cent to 84 per cent.

On average the rate of referral of DAs considered across panels in Sydney West, Sydney West Central, and Sydney South was slightly higher than in other regions, particularly Sydney South West.

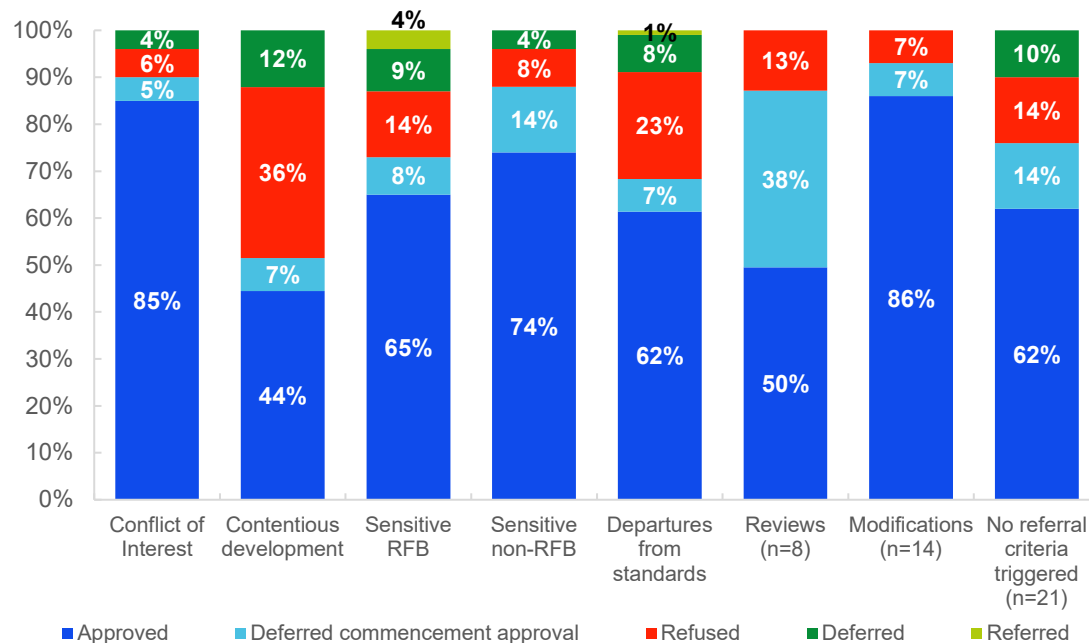
Figure 19. Breakdown of panel decisions, by region



Source: Council online IHAP reporting data.
Sample: n=535 DAs considered by panels (133 meetings and 34 panels).

Conflict of interest DAs were most likely to be approved (particularly for Schedule 2 panels), while contentious developments were least likely to be approved (particularly for Schedule 2 panels) (Figure 20).

Figure 20. Breakdown of panel decisions, by referral criteria triggered



Source: Council online IHAP reporting data.

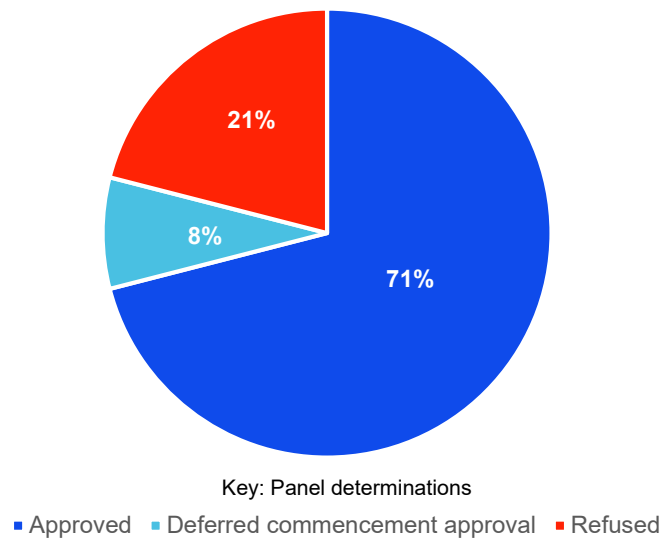
Sample: n=564 referral criteria triggered (from 535 DAs, 133 meetings and 34 panels).

2.5.1.1 Determinations

Panels determined 489 DAs (91.4 per cent of considered DAs) in quarter 3. Of the 489 DAs where a determination was made, 348 DAs (71 per cent) were approved, 39 DAs (8 per cent) were given deferred commencement approval, and 102 DAs (21 per cent) were refused (Figure 21).

Compared to quarter 2, DAs were slightly less likely to be approved, and panels were slightly more likely to reach a consistent decision with council's recommendation.

Figure 21. Proportion of DAs, according to panel determination

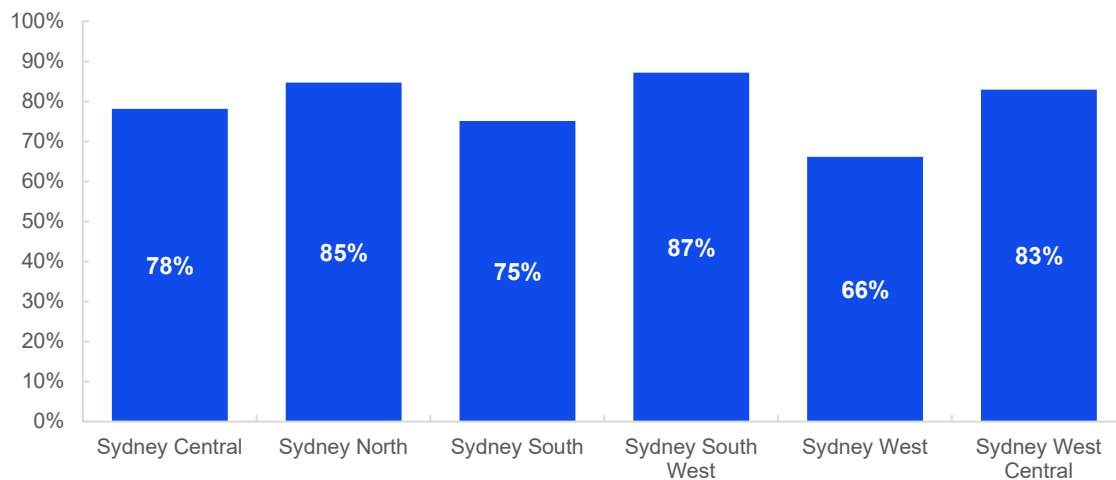


Source: Council online IHAP reporting data.

Sample: n=489 DAs where a determination was made by panels.

On average, DAs determined in panels in Sydney South West, Sydney North, and Sydney West Central were more likely to be approved in quarter 3 than DAs determined in Sydney West (Figure 22).

Figure 22. Proportions of approved DAs and deferred commencement approval DAs, by region



Sample: n=443 DAs where councils recommended approval or deferred commencement approval (489 DAs determined, 133 meetings, and 34 panels).

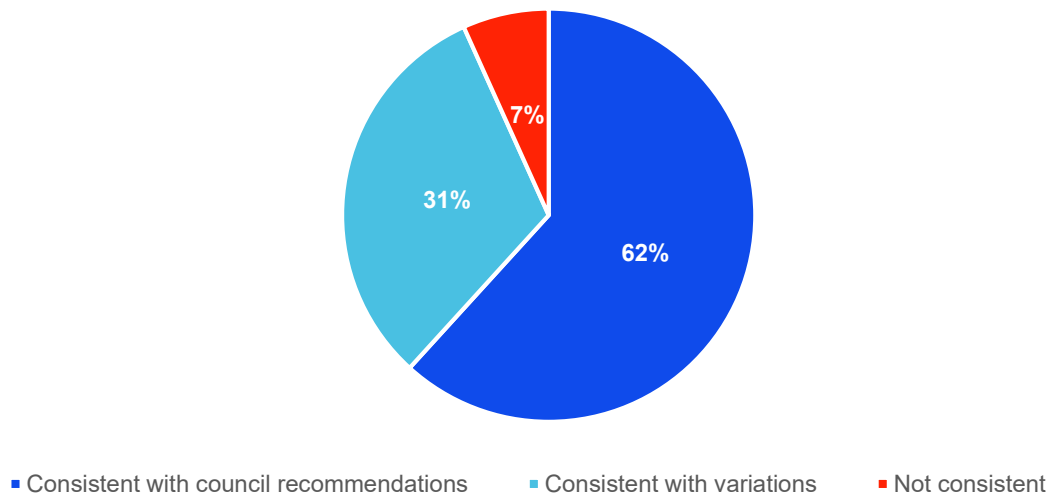
Of the 19 DAs determined electronically, 16 DAs (84 per cent) were approved or given deferred commencement approval and 3 DAs (16 per cent) were refused.²⁴

Consistency with council assessment

In common with quarter 2, most panel determinations in quarter 3 (62 per cent) were consistent with council recommendations, with a further 31 per cent consistent with council recommendations but with some variations (compared to 30 per cent in quarter 2) (Figure 23).

²⁴ The 21 electronically considered DAs triggered 26 referral criteria – departure from standards (11; 42 per cent), contentious development (5; 19 per cent), sensitive development (4; 15 per cent), review (3; 12 per cent), modification (2; 8 per cent), and conflict of interest (1; 4 per cent).

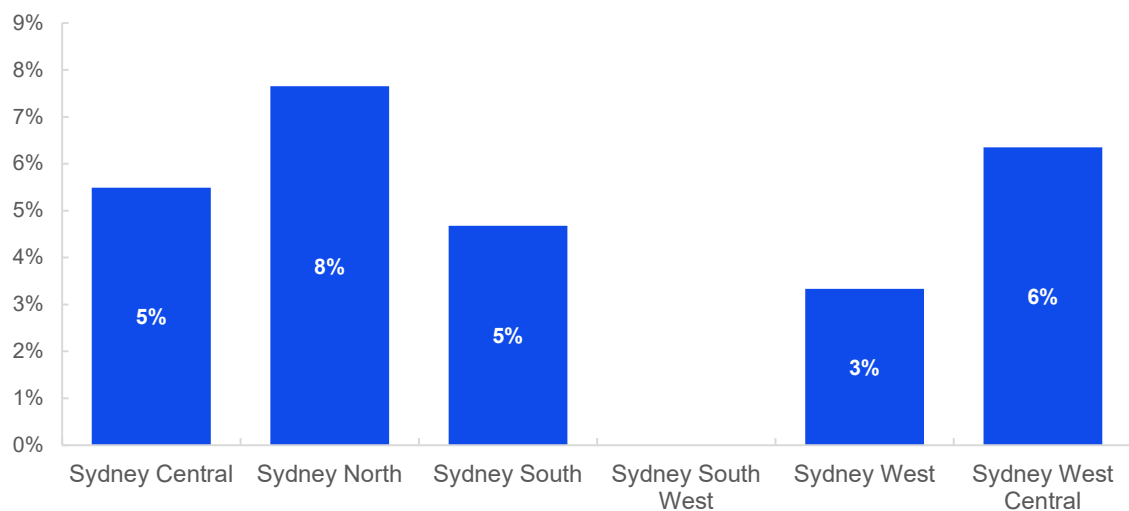
Figure 23. Breakdown of DAs determined by panels, according to consistency with council recommendation



Source: Council online IHAP reporting data.
Sample: n=489 DAs where a determination was made by panels.

Inconsistencies with council recommendations were relatively high, on average, for panels in Sydney North (Figure 24).²⁵

Figure 24. Average inconsistency²⁶ of panel determination with council recommendation, by region



Source: Council online IHAP reporting data.
Sample: n=33 DAs with a different decision reached to recommendation, 489 DAs where a determination was made by panels.

In cases where panels disagreed with council recommendations (33 DAs), panels typically:

- refused contentious developments for which council had recommended approval, and
- approved sensitive and departures from standards developments for which council had recommended refusal (Table 6).

²⁵ There were seven DAs with inconsistencies in this region: six DAs were refused and one DA was deferred to another meeting. These DAs triggered the contentious developments and departures from standards referral criteria.

²⁶ For the purpose of this calculation, inconsistency refers only to decisions reached that are different to council recommendation. That is, agreement with modifications is counted as consistent for these purposes.

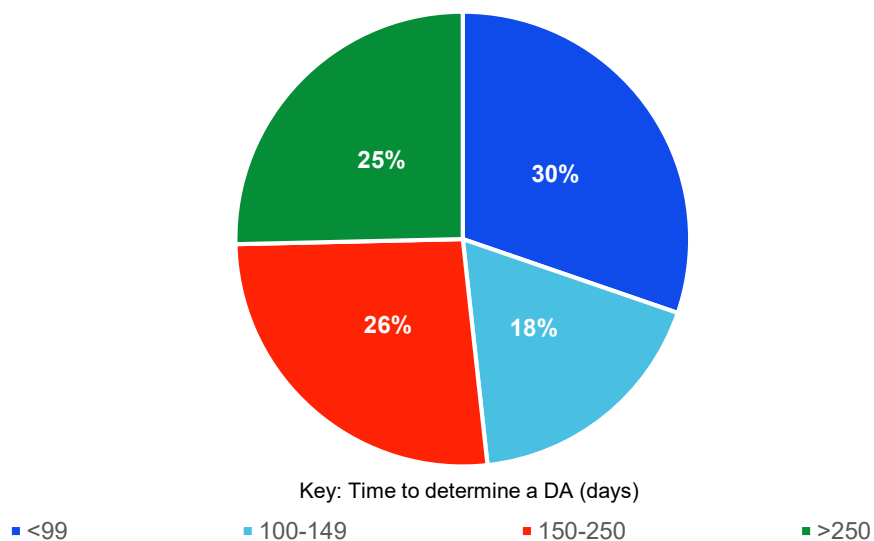
Table 6. Breakdown of panel decisions which were inconsistent with council recommendations, according to referral criteria

DAs with inconsistent decisions	Number of DAs	Panel determination	
		Approved	Refused
Sensitive development	6	5	1
Conflict of interest	2	1	1
Departure from development standard	16	12	4
Contentious development	12	1	11

Determination time

The average time for determination in quarter 3 was 199 days (higher than in quarter 2 at 192 days, and lower than in quarter 1 at 203 days). Around half of DAs were determined in less than 150 days (Figure 25). Four DAs were determined in over 1000 days and 13 per cent of DAs were determined in 365 days or longer.

Figure 25. Proportion of DAs, according to determination time



Source: Council online IHAP reporting data.

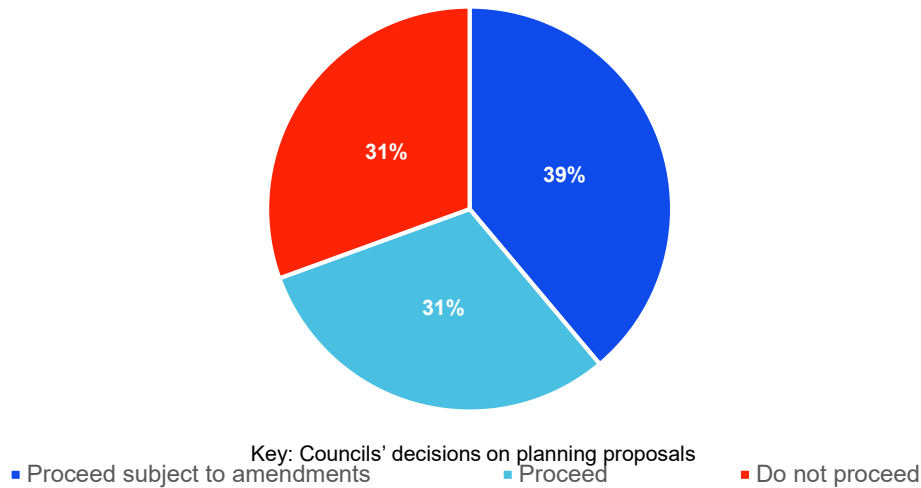
Sample: n=489 DAs with a determination, including 10 DAs which recorded zero days for determination.

2.6 Panel advice on planning proposals

There were 45 planning proposals considered by panels in quarter 3, with 58 recommendations made.

Of the 36 proposals for which further information was provided, panels recommended that most proposals (69 per cent) proceed or proceed with amendments (Figure 26).

Figure 26. Proportion of planning proposal that panels provided advice on, related to council recommendations



Source: DPE collected data on planning proposals.

Sample: n=36 planning proposals with recommendations information provided.

Of the 33 proposals which had further information regarding whether council adopted panel recommendations:

- councils agreed with panel recommendations for 11 proposals (33 per cent)
- disagreed with panel recommendations for two proposals (6 per cent), and
- twenty proposals (61 per cent) had not yet been considered by councils.

2.7 Costs and resources

Both council case studies paid the minimum remuneration rate prescribed by DPE for the chair and experts, although councils varied regarding the remuneration for community representatives (\$500 and \$1000).

Council staff indicated that other costs and in-kind costs associated with operating the panels included travel expenses (for site visits), catering and council staff salaries (including overtime in some instances).

2.8 Overall perceptions of panel operation

2.8.1 Key elements functioning well

Council staff members and panel members from the case studies raised the following points:

- **Efficiency of panel operation:** At one council case study panel members indicated the council provided good support for the panel meetings (e.g. minutes were prepared and finalised quickly). However, the chair from the other case study raised minor inconsistencies and inefficiencies in the way different panels operated (e.g. confirming panel minutes at the next meeting).
- **Quality of council assessment:** Panel members at one council case study praised the quality of the council assessment reports. They explained that the reports were well written and provide sufficient information to consider the application (e.g. the history of the site, the relationship to instruments, and a summary of the submissions). At the other case study, an expert indicated that there was some room for improvement regarding the quality of council assessment, particularly the level of detail provided.
- **Level of engagement of council staff:** Panel members reported that council staff were highly engaged with the panel. This included briefing the panel members on site, pre-meeting briefings and responding to panel questions during the panel meeting. However, some panel members

questioned whether all of the staff who attended the site visit and the public meeting were required to attend.

- **Opportunities for professional development for council staff:** Panel members and council staff from both case studies indicated that the panel system created professional development opportunities for council staff, particularly junior staff.

2.8.2 Key challenges

Case study council staff members and panel members raised the following challenges or limitations:

- **Uncertainty regarding the process to advise on planning proposals:** Some panel members raised that they felt unsure what the panel could comment on with regard to planning proposals. Council staff were also unclear about whether planning proposals should be considered during the public meeting or in closed session.
- **Readiness of the council staff to answer panel member questions at the panel meeting:** A chair indicated that council staff should be ready to present matters and answer questions from the panel, even if there are no registered submitters.

2.8.3 Suggested areas of clarification and improvement

Council staff and panel members from council case studies suggested the following areas could be improved or clarified:

- **Role of the community representatives:** Panel members indicated that there could be more training and guidance provided to community representatives, including regarding the relevant statutory planning instruments.
- **Dealing with conflicts of interest:** Council staff indicated that more guidance could be provided regarding how to respond when panel members do not declare a perceived or actual conflict of interest that council staff are aware of.
- **Planning proposals:** Panel members requested clear Departmental guidelines on the panel's role with planning proposals.
- **Time allocated to registered speakers:** An expert indicated that there should be more time allowed for submitters to present, depending on the number and complexity of issues.
- **Transportation to site visits:** An expert who sat on a number of panels indicated that some councils used a mini-bus for transportation to site visits and that this was preferable to using panel members' or council staff's cars as it enabled discussion among the panel members and provided an opportunity for council staff to brief panel members.
- **Types of experts on the panels:** One panel member raised that there should be greater gender balance and age diversity among experts. Some panel members reported that there should be more architects appointed as experts to panels.
- **Communication between primary and alternate chairs:** A chair indicated that it would be desirable to have more communication between alternative and primary chairs to ensure there is consistency with how the chairs operate each panel.

3 Conflicts of interest, complaints, reviews and appeals

This section provides more detailed information on key findings in the Final Report related to conflicts of interest, complaints, reviews and appeals. Data was primarily obtained via DPE and from OLG, the NSW Ombudsman and ICAC, as well as case studies and council reports.

3.1 Conflicts of interest

At a council case study, a chair was employed as a consultant by the council to facilitate industry and staff meetings. The session covered how the panel works when the panel has different views to those previously provided to the applicant by the Design Review Panel. The chair saw this facilitation activity as an extension of their chair role on the panel.

3.2 Complaints and issues

The level of data shared by some agencies means it is not possible to establish if there is overlap between these matters reported and to determine if there are patterns emerging.

3.2.1 Code of conduct complaints

The council reporting data indicated that there were a total of five code of conduct complaints (recorded by two councils).²⁷ Of the five complaints, two were recorded as resolved with no further action taken and three had an 'other' outcome recorded.

3.2.2 Other complaints

In total, there were 12 complaints recorded in the agency data provided from DPE, OLG, NSW Ombudsman and ICAC.

Complaints relate to panel operation and panel members' conflicts of interest. The complaints related to:

- a complex and significant DA where the complainant alleged that the time allocated by the panel was insufficient
- a council that withheld or changed information provided to a panel in contrast to what was provided to the public
- a panel meeting and the independence of the panel
- a perceived conflict of interest declared at a meeting, where the panel member left the chamber (according to the publicly available minutes and audio recording) however, the complainant alleged that the recording would indicate that the panel member did not leave.
- a chair who allegedly demonstrated a lack of empathy, consideration and listening skills
- a comment made by a community representative at a question and answer session (that was not related to panel or the council) about social facilities that may be established in the local area
- concerns about two panel members (also raised in a previous complaint). The complainant alleged a panel member was not a resident of the LGA and was a general manager at a different council. It was also alleged that a different panel member had an conflict of interest owing to their professional role at a legal firm

²⁷ Three complaints related to one panel and two complaints related to a different panels.

- the time taken to review a document
- to a community representative who allegedly did not live in the local government area
- a panel member being removed
- a perceived conflict of interest, and
- a community representative's alleged conflict of interest.

3.2.3 Procedural issues

There were eight procedural issues captured in the DPE issues register²⁸, including queries relating to:

- whether there was a minimum notice period for notifying applicants and objectors of a meeting
- the scope, meaning and interpretation of the term 'unique submissions' as set out in the Directions
- whether a development that exceeded a development standard could be refused by council under delegated authority or whether the panel had to determine the application
- whether future DAs for outdoor dining could be delegated where council is the landowner
- the relevant 'return period' for pecuniary interests and the deadlines/timeframes for the lodgement of LPP written annual returns
- panel starting times
- deliberation approaches for all panels, and
- the average number of items dealt with at a typical panel meeting.

3.3 Reviews and appeals

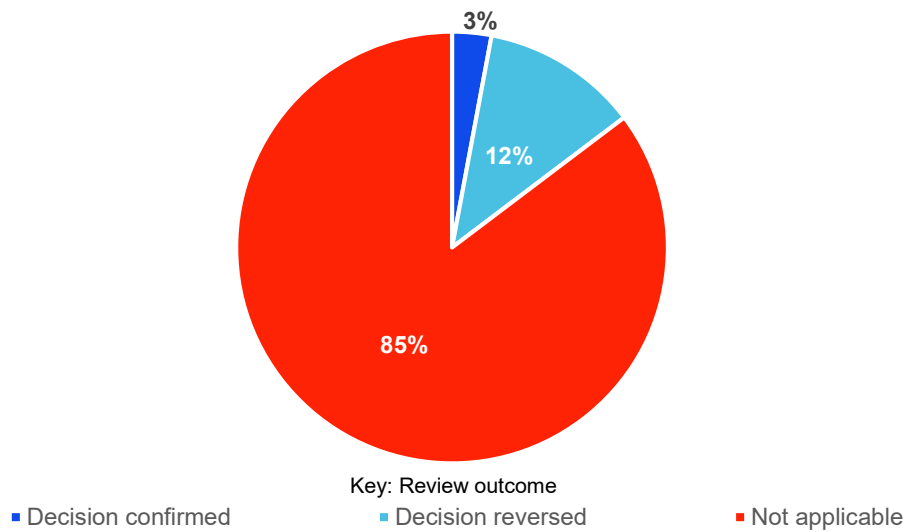
There were seven internal Division 8.2 reviews commenced in quarter 3 (compared to 12 reviews commenced in quarter 2 and 11 reviews commenced in quarter 1).

Of the 34 internal reviews in which there was information recorded on their outcome, most recorded that there was 'not an applicable outcome'²⁹ (29 reviews, 85 per cent) (Figure 27). Of the five appeals where an outcome was elaborated within data available, four decisions were recorded as 'reversed' and one decision was 'confirmed'.

²⁸ The DPE issues register also includes technical queries/issues relating to the IHAP council webform. In quarter 3, twelve matters were raised and these matters related to login details, completion of online forms, and requests for information.

²⁹ IPPG have requested further information regarding this definition.

Figure 27. Outcomes of internal reviews conducted by panels that were finalised in quarter 3



Source: Council online IHAP quarterly reporting data.

Sample: n=34 internal reviews conducted by panels and finalised.

Based on the council online IHAP reporting data, there were 27 appeals filed in the Land and Environment Court in quarter 3, with two appeals finalised (compared to 18 appeals filed and two appeals finalised in quarter 2, and 16 appeals filed, with three appeals finalised in quarter 1).

Appeals data remains incomplete at present in order to make further interpretation, particularly in terms of outcomes of finalised appeals.

Three panels recorded legal expenses (\$8,064, \$22,247 and \$132,452) (compared to one panel incurring legal expenses of \$3752 in quarter 2 and two panels incurring \$26,000 and \$7,915 in quarter 1).

4 Stakeholder perceptions

This section provides additional information on key findings from the Final Report relating to key stakeholders' perceptions about panels. This has been synthesised from the media content analysis, and the case studies. In this section, stakeholders include: panel members, councillors, community members, applicants, objectors and council staff.

4.1 Understanding of the purpose of the panels

A chair at one case study indicated that they were drafting an information brochure to be sent to submitters when they register to present to ensure they understand the purpose of the panel and the panel meeting procedures (e.g. time allocated to applicants and objectors). The chair indicated that this document could help ensure the public has a better understanding of the panel.

4.2 Satisfaction with the panels

4.2.1 Views reported in the media

Similar to previous quarters, in quarter 3 newspaper articles tended to focus on community concerns about overdevelopment in the local area. Articles generally focused on a specific DA which was considered by a panel and there were references to council planning instruments (e.g. Local Environmental Plans, Community Strategic Plans and Development Control Plans).³⁰ The coverage was predominantly neutral in tone and was descriptive.

Monthly snapshot (October to December 2018)

- **October 2018:** Articles focus on specific DA with passing reference to panels. The DAs before the panels included applications which were either recommended for refusal or approval by council. Overdevelopment in the local area was a recurrent theme.
- **November 2018:** Articles focus on DAs that would have social impact. The remaining articles included references to panels as part of broader discussion about a DA, and community and/or resident objections.
- **December 2018:** Mostly neutral and/or positive reports, including highlighting community benefits of specific DAs. Articles also referred to the findings of the Kaldas Review.

4.2.1.1 Key themes

The following themes were identified in the newspaper reporting:

- concerns regarding overdevelopment and infrastructure
- impacts on the community
- findings and recommendations of the Kaldas Review, and
- concerns regarding approval rates and panel operations.

Overdevelopment and infrastructure

In quarter 3, overdevelopment in the local area continued to be a common theme. Concerns regarding overdevelopment were frequently related to cases where houses were being knocked down to make way for residential flat buildings. This is illustrated by a proposal for a seven-storey unit development (which

³⁰ See for example, Jim Gainsford, 'Hurstville's tight squeeze gets thumbs up' *St George & Sutherland Shire Leader* (20 Oct 2018); Kate Burke, 'Roseville residents to have development built around them, despite wanting to sell' *Domain* (19 Nov 2018) and 'Character' test no issue as Thirroul townhouses recommended by Wollongong council *Illawarra Mercury* (23 Nov 2018).

would replace a single dwelling).³¹ More than 50 objections were lodged. Concerns about overdevelopment were linked to the local character of the area, housing strategy and local planning statements.

Many articles that referenced local residents' views emphasised that the council had recommended approval despite local resident objections, rather than the role of the panels in the process.³² In one article an individual who spoke on behalf of all residents who opposed a DA stated that approval would create a precedent and change the character of the suburb. He asked that the panel look beyond the technical requirements in making its decision.³³

Articles frequently linked overdevelopment and infrastructure.³⁴ One article noted that due to the number of new dwelling approvals (jumping from 88 in 2016 to 255 in 2017) the increase in the number of residents would lead to a demand on local services and infrastructure.³⁵

Impacts on the community

Many reports addressed the social impact that specific DAs would have on the community. These impacts were described in both positive and negative terms.

Examples of potential positive impacts were related to the built environment and social and economic benefits which would advantage residents, tourists and the local economy. For example, there was a positive article about a panel's approval of a craft beer pub which highlighted the positive social and economic benefits to the local community.³⁶ It was reported that the pub would revitalise an under-utilised heritage building and bring significant economic benefits to the area. Other positive articles related to an approval of boarding house for students and the approval of a mixed/combined shopping and residential building indicating that the development would provide much needed community infrastructure and a range of residential opportunities in a growing community.³⁷

In contrast, other articles highlighted potential negative impacts of DAs on the community. For example, concerns were raised about a new childcare centre based on traffic safety concerns.³⁸ There was also community opposition to the relocation of a methadone clinic.³⁹ Other examples related to parking, noise, vehicle safety and anti-social behaviour.⁴⁰

Findings and recommendations of the Kaldas Review

Articles in December related to the findings and recommendations of the Review of Governance in the NSW Planning System – Nick Kaldas APM (Kaldas Review) (which was released by the Department on 18 December 2018).

Most articles reported the outcomes of the review and that DPE had accepted all 19 recommendations.⁴¹ Some articles described all of recommendations while other articles focused on certain recommendations. Some articles focused on the recommended ethics unit, explaining that the purpose was to provide pre-emptive advice about corruption risks within the State's complex planning system rather than to investigate specific complaints of corruption.⁴² Other articles focused on panel members, including time limits on members' tenure, probity checks on community representatives and tighter restrictions on who can sit on

³¹ Emily MacDonald, 'Huge backlash to Drumlbyn Rd development application for seven storey unit complex at Bellevue Hill' *The Daily Telegraph* (31 Oct 2018).

³² See for example, Laura Sullivan, 'Residents thrilled at knock-back of Enfield DA' *The Daily Telegraph* (1 Oct 2018); Ben James, 'Maroubra boarding house plans thrown out' *Southern Courier* (18 Dec 2018).

³³ Eric Kontos, 'Planning panel urged to reject subdivision bid on Glen Alpine' *South West Voice* (24 Oct 2018).

³⁴ See for example, 'High rise impact fear' *Local News Plus* (18 Dec 2018).

³⁵ Callum Hoogesteger, 'Glenorie Progress Association' *Glaston Community News* (30 Oct 2018).

³⁶ Craft brewpub gets green light' *Blue Mountains Gazette* (28 Dec 2018).

³⁷ Ashleigh Tullis 'Students expected to live in 95 room boarding house in Crown Lane, Wollongong' *Illawarra Mercury* (12 Dec 2018); and, Jake McCallum, 'Box Hill Town Centre masterplan, retail, commercial and education precinct approved by Hills Shire Council' *The Daily Telegraph* (21 Nov 2018).

³⁸ Jim Gainsford, 'residents rally against child care centre where five-year-old was killed crossing the street' *St George & Sutherland Shire Leader* (24 Oct 2018).

³⁹ Ashleigh Tullis, 'Auburn Street business owners oppose methadone clinic relocation' *Illawarra Mercury* (10 Oct 2018); and, Ashleigh Tullis, 'Wollongong's methadone clinic seeks approval for Auburn Street relocation' *Illawarra Mercury* (7 Nov 2018).

⁴⁰ See for example, Ashleigh Tullis, 'Yours and Ours' Last Dance DJ party likely to be held at Bulli Showground' *Illawarra Mercury* (28 Nov 2018); Jack McCallum, 'Glenorie RSL, progress association block proposal for Glenorie Bakery to extend opening hours' *Hills Shire Times* (23 Nov 2018); and, Ben James, 'Bellevue Cottage restaurant plans thrown out' *The Daily Telegraph* (27 Nov 2018).

⁴¹ 'KALDAS REVIEW – Planning Dept Strives For Nation's Best Practice' *The Middle East Times* (20 Dec 2018).

⁴² Jacob Saulwick, 'Planning department to get ethics unit after Kaldas review' *Sydney Morning Herald* (19 Dec 2018).

the panels.⁴³ One article addressed the possible extension/introduction of panels to the Central Coast.⁴⁴ The article set out reasons why the expansion of the panels to these areas was not desirable including that council is elected to represent the people and is better placed to make DA determinations and that State government was interfering with local issues. These reasons were similar to the themes identified in the media content analysis during quarter 1.

Concerns regarding approval rates and panel operations

Articles with a negative tone tended to relate to concerns about the high approval rate for two panels and residents' dissatisfaction with panel operations.⁴⁵

In other examples the negative articles are in the form of opinion pieces or letters to the editor. The articles stated that the panel is not listening to local residents' objections and describe general dissatisfaction with the panel.⁴⁶ For example, it was reported that over an eight-month period one panel refused eight of the 72 DAs. This led to further concerns about panel operation, including the way in which meetings are run, that the meetings finish late in the evening and the length of time individuals are allocated to speak.⁴⁷

Another article highlighted that variations from development standards were approved in more than 100 DAs. The article noted that Council expressed 'deep concern' at the situation and sent a strong message to staff that non-compliance with the LEP should occur only 'in the most extreme circumstances'.⁴⁸

There is one article which addressed appeals, and this was in the context of a tennis court being rejected and the applicant stating that he would be going to court.⁴⁹

4.3 Reform objectives

At one case study, council staff indicated that councillors have dedicated more attention to strategic planning since the reforms commenced.

⁴³ Kylar Loussikian, 'Kaldas: expand planning corruption safeguards' *Sydney Morning Herald* (19 Dec 2018).

⁴⁴ 'Mayor not happy with proposed Local Planning Panels' *Coast Community News* (27 Dec 2018).

⁴⁵ Murray Trembath, 'Embarrassing error by planning panel over Miranda childcare centre proposal' *St George & Sutherland Shire Leader* (23 Oct 2018).

⁴⁶ 'Planning approval process not allowing everyone 'a fair go'' *St George & Sutherland Shire Leader* (14 Nov 2018); 'Childcare decision query' *St George & Sutherland Shire Leader* (7 Nov 2018); and, 'The role of planning panels in the development process' *St George & Sutherland Shire Leader* (7 Nov 2018).

⁴⁷ Murray Trembath, 'Shire planning panel under fire from irate residents' *St George & Sutherland Shire Leader* (31 Oct 2018).

⁴⁸ Murray Trembath, 'Variations from shire's LEP rules approved in 102 cases over last year' *St George & Sutherland Shire Leader* (16 Oct 2018).

⁴⁹ Ben James, 'Bob Ell's Bellevue Hill tennis court plea: 'It's for the children'' *The Daily Telegraph* (14 Dec 2018).



Panels Evaluation

Appendix D

Quarter 4 Data (January – March 2019)

Institute for Public Policy and Governance

Prepared for the NSW Department of Planning and Environment

April 2019

Contents

List of figures	2
List of tables	3
1. Introduction	4
1.1 Methods	4
1.2 Qualifications and considerations	7
2 Operation of panels	8
2.1 Departmental support of panels	8
2.2 Panel members' understanding of roles	10
2.3 Development applications considered by panels	11
2.4 Panel decision-making	22
2.5 Panel decisions	29
2.6 Panel advice on planning proposals	33
2.7 Costs and resources	35
2.8 Overall perceptions of panel operation	35
3 Conflicts of interest, complaints, reviews and appeals	39
3.1 Conflicts of interest	39
3.2 Complaints and issues	39
3.3 Reviews and appeals	42
4 Stakeholder perceptions	44
4.1 Understanding of and satisfaction with the panels	44
4.2 Reform objectives	55

List of figures

Figure 1. Average number of DAs considered per meeting, per panel	11
Figure 2. Average number of DAs considered by each panel for the quarter, by region	12
Figure 3. Proportion of DAs, according to referral criteria	13
Figure 4. Proportion of DAs, according to the number of referral criteria triggered	13
Figure 5. Proportion of DAs, according referral criteria, by region	16
Figure 6. Proportion of departure from development standards DAs, according to development standard	17
Figure 7. Average departure from development standards variation (per cent), by Schedule	18
Figure 8. Proportion of conflict of interest DAs, according to applicant or landowner	19
Figure 9. Proportion of contentious development DAs, according to number of objections	19
Figure 10. Proportion of non-RFB sensitive development DAs, according to type of sensitive development	20
Figure 11. Surveyed community members' views on the appropriateness of the panel referral criteria	22
Figure 12. Proportion of DAs considered with site visits, average per panel, per region	23
Figure 13. Average site visit duration (minutes), average per panel, per region	24
Figure 14. Number of panel meetings held, per panel	25
Figure 15. Number of meetings per panel, per region	25
Figure 16. Proportion of panel meetings, according to meeting duration	28
Figure 17. Average meeting duration (minutes) per DA, per panel, by region	28
Figure 18. Breakdown of panel decisions	29
Figure 19. Breakdown of panel decisions across each referral criteria	30
Figure 20. Breakdown of panel decisions, by region	30
Figure 21. Proportion of DAs, according to panel determination	31
Figure 22. Proportions of approved DAs and deferred commencement approval DAs, by region	31
Figure 23. Breakdown of DAs determined by panels, according to consistency with council recommendation	32
Figure 24. Proportion of DAs, according to determination time	33
Figure 25. Proportion of planning proposals that panels provided advice on, related to council recommendations	34
Figure 26. Surveyed community members' perception of expert advice adding value to planning proposals	35
Figure 27. Surveyed community members' most recent experience with a panel	44
Figure 28. Surveyed community members' views about whether the DA warranted being referred to a panel	45
Figure 29. Outcome of DAs related to surveyed community members	46
Figure 30. Surveyed community members' satisfaction with the outcome of the DA	46
Figure 31. Surveyed community members' views whether the panel determination would have been different if councillors determined the application	47
Figure 32. Surveyed community members' perception of panel members' expertise	48
Figure 33. Surveyed community members' degree of satisfaction with elements of the panel process	49
Figure 34. Satisfaction with the outcome of the planning proposal	50
Figure 35. Surveyed community members' views on the appropriateness of panels determining DAs and advising on planning proposals	50
Figure 36. Surveyed community members' level of agreement with the statement 'the IHAP process is operating well'	51
Figure 37. Surveyed community members' level of agreement about elements of the panel processes	52
Figure 38. Surveyed community members' views on the likelihood that the panel model will meet reform objectives	56

List of tables

Table 1. Attendance at DPE panel member briefing sessions	8
Table 2. Breakdown of DAs by referral criteria triggered	15
Table 3. Breakdown of DAs by referral criteria, by Schedule	17
Table 4. Summary of a typical panel meeting day	23
Table 5. Summary of panel member rotation in quarter 4	27
Table 6. Breakdown of panel determinations that were inconsistent with council recommendations, according to referral criteria	33

1 Introduction

This appendix presents the data collected during quarter 4 (January – March 2019) for the monitoring and evaluation of Independent Hearing and Assessment Panels (IHAPs). This supports the Final Report for the Local Planning Panels' (panels) Evaluation and provides more detail and other monitoring information.

In summary, this appendix contains additional information about:

- research approach, methods and qualifications, and key considerations for quarter 4 (section 1)
- the support for panels (section 2)
- the operation of panels (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 4, along with key qualifications related to the interpretation of findings. See the Final Report for details on the overall monitoring and evaluation approach across quarters.

1.1.1 Analysis of secondary data

1.1.1.1 Briefing and guidance materials

The Institute for Public Policy and Governance (IPPG) obtained from the Department of Planning and Environment (DPE) the panel update email sent on 13 February 2019 and materials relating to an panel member briefing session held on 26 March 2019. Analysis of this data was descriptive and thematic.

1.1.1.2 Council quarterly reports

IPPG analysed the available data from councils on the operation of panels. This was 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 applications referred to panels, and decisions made by panels).

The data covers the period 9 January 2019 to 29 March 2019 and also includes:

- planning proposals,
- complaints made in relation to the procedure of a panel meeting or the conduct of panel members and
- Land and Environment Court appeals of decisions made by a panel.

In total, across 34 councils, data was available for 299 development applications (DAs) considered, 263 DAs determined and a total of 92 public meetings.⁵⁰

Quarterly data was available from 32 councils. There were 27 planning proposals, 26 proposals included whether the panel's recommendation was consistent with council's agreement.⁵¹ Twelve councils⁵² supplied recommendation details.

Reminders to councils to input data were sent by DPE on 18 December 2018, 9 January 2019, 11 January 2019, 15, 22 and 30 March 2019. The Department followed up the submission of panel data with numerous phone calls and emails to councils in the weeks leading up to the deadline.

⁵⁰ Limited information was supplied for the two meetings held by Burwood Council as this was made available after the data entry cut-off deadline.

⁵¹ One planning proposal for Ku-ring-gai Council did not include information as to whether Council agreed with the Panel's recommendation.

⁵² It is undetermined if the remaining panels either considered no planning proposals or if the data was simply not available.

In certain instances, data was analysed according to DPE-defined regions.⁵³ For some referral criteria analysis, council data was also clustered by Schedule number.⁵⁴

1.1.1.3 Local development performance monitoring data

IPPG was supplied with a full list of DAs determined by councils in 2014-15 and 2015-16.⁵⁵ DPE has advised IPPG that within this data assumptions are made by councils, which means that there is limited comparability in the way that items are measured. While some councils operated IHAPs during this period, the remit of such IHAPs is not generally comparable to the operations of panels during the reform period. In sum, pre-reform comparisons are of little quality with the operations of panels post-reform. For this reason, IPPG has not included an analysis of this data for quarter 4.

1.1.1.4 Complaints and other data

From mid-August 2018, the DPE Complaints Register recorded complaints to DPE regarding panels. Issues received by DPE are recorded in an issues register.

Complaints about panels should be made directly to councils.⁵⁶ 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 operations during the quarter, and
- 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 has been aggregated.

IPPG's analysis of this aggregate data was descriptive and thematic. The analysis identified common issues that were raised in complaints and includes notes as to why the data cannot be relied upon to draw conclusions.

1.1.1.5 Media content

Online media coverage from 56 newspaper sources was analysed from 1 January 2019 to 31 March 2019. The purpose of analysing media content is 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 monitoring. Search terms included:

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

Reports were analysed according to themes.

1.1.2 Collection and analysis of primary data

1.1.2.1 Community survey

IPPG administered an online survey to community members using Qualtrics to canvass their experiences with, and perspectives on panels. The survey was advertised by DPE through the IHAP webpage, NSW Planning Twitter account, the DPE newsletter and by IPPG through IPPG website, Twitter account and

⁵³ These are: Sydney Central, Sydney North, Sydney South, Sydney South West, Sydney West, and Sydney West Central. Since the start of the evaluation, the Greater Sydney Commission finalised District Plans (following *A Metropolis of Three Cities*). This involved renaming districts. There were two relevant changes: Sydney West and Sydney South West were consolidated as 'Western City'; and, Wollongong City Council is not a member of the District Plans. IPPG have retained the previous naming system to enable readers to compare quarter 1 and quarter 2 reports with subsequent quarterly reports.

⁵⁴ 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.

⁵⁵ Note that many of these councils have since been subject to amalgamation.

⁵⁶ These complaints are captured in the DPE issues register if the Department is copied in to the correspondence by the complainant or the council.

Facebook. Certain councils sent the survey via email to registered speakers and the survey was advertised on their Facebook and/or Have your say websites.

The survey was open from 15 January 2019 to 12 February 2019. The majority of community members found out about the survey through an email from council (43 per cent), and approximately one quarter (26 per cent) through other communication channels such as Twitter, Facebook and LinkedIn.

The survey was completed in full by 170 community members across the Greater Sydney and Wollongong region. Of the 170 community members who completed the survey, 29 per cent have never been involved with a panel, while 68 per cent have been involved with a panel one or more times since March 2018.

A large number of survey respondents lived in the Eastern suburbs, specifically the Woollahra and Randwick local government areas (33 per cent combined).

Survey data is presented descriptively, and the number of respondents to each question is reported.

1.1.2.2 Panel member workshop

IPPG conducted a one-hour workshop with 126 panel members including chairs, experts and community representatives who attended the DPE panel member briefing on 26 March 2019. Panel members were asked a range of general and role-specific questions.

Analysis of this data was descriptive and thematic.

1.1.2.3 Council directors of planning workshop

IPPG conducted a workshop with council directors of planning on 28 March 2019 and 26 directors or their delegates attended. Participants were asked a range of questions regarding the first year of panel operation and were invited to provide suggestions regarding how to improve the panel system.

Analysis of this data was descriptive and thematic.

1.1.2.4 Interagency meeting

IPPG conducted an interagency meeting with ICAC, NSW Ombudsman, OLG and DPE on 28 March 2019. The meeting focused on the issues and potential trends or patterns of any complaints regarding IHAPs and councils during the first year of panel operation.

Analysis of this data was descriptive and thematic.

1.1.2.5 Case study

IPPG conducted one case study for this quarter. The purpose of this case study was to develop an in-depth understanding of how some councils are implementing their panels.

The case study was selected in consultation with DPE, with a view to capture a cross-section of different councils (taking into account case studies from previous quarters) largely based on the following factors:

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

A letter of invitation was sent by IPPG to the council's director of planning, who gave consent to participate in the case study.

As part of the case study, IPPG:

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

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

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 is some user-entered data that continues to contain inaccuracies and anomalies. Seventy DAs (23 per cent) required additional investigation by DPE to clarify that user-entered data was accurate. DPE subsequently reviewed user entries and revised data accordingly. The most common user error was inaccurate identification of the relevant referral criteria with which a DA had been triggered. In addition, there were six meetings where a panel only had one independent expert. While a quorum was still achieved, it does impact upon the calculation of some indicators used by IPPG to reflect rotation of panel members. Similarly, in two meetings, the person presiding over the panel was not a chair. For the purposes of data analysis, these two meetings were included, though the absence of the two chairs results in a slight adjustment in the calculation of IPPG metrics of rotations of chairs. Quarterly reporting of planning proposals and Land and Environment Court appeals data continue to remain incomplete.
- **Community survey:** Nearly half of survey respondents were objectors, and a significant number were from two Sydney local government areas (see section 1.1.2.1). When asked why the DA was referred to the panel, 64 per cent of surveyed community members indicated that the application triggered the contentious development criterion, and 39 per cent stated the DA triggered the departure from the development standards criterion. As a result, reported community member experiences and perceptions of current panel processes may not be entirely representative of the wider community.
- **Complaints and issues data:** The level of data shared by some agencies means that it is not possible to establish the existence of an overlap between the matters reported. It is also not possible to determine if there are patterns emerging.
- **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.

2 Operation of panels

This section provides detailed information on key findings in relation to the operation of panels in quarter 4, with a focus on panel members' understandings of panel roles, rotation, referral criteria, decision-making, and panel decisions.

2.1 Departmental support of panels

This section draws on data from DPE briefing and training material (see Section 1.1).

2.1.1 Email updates

DPE sent a panel update email on 13 February 2019. The update included information regarding:

- the half year evaluation report and Review of Governance in the NSW Planning System – Nick Kaldas APM (Kaldas Review) (released by DPE on 18 December 2018),⁵⁷ and
- clarification of issues relating to site visits, rotation of panel members, deliberations and court appeals (see sections 2.4.1 (site visits); 2.4.2.2 (panel member rotation); 2.4.2.5 (deliberation approaches) and section 3.3 (reviews and appeals).

2.1.2 Panel member briefings

There were two DPE panel member briefing sessions held in quarter 4: a chair session and an all panel member session. Table 7 below provides attendance numbers.

Table 7. Attendance at DPE panel member briefing sessions

DPE Panel Briefing Sessions	Attended in-person	Attended online	Total
Chairs	29	2	31
Community representatives and experts	80	15	95
Total	109	17	126

2.1.2.1 Chair session

On 26 March 2019, a DPE panel briefing session was held for chairs from 4:00-5:00 pm, 29 chairs attended in person and two participated online. The session focused on the role of the community representative. The purpose was to build a stronger shared understanding of the value of community knowledge and its contribution to decision-making in practice. Attendees heard from three community representatives who shared their experiences of sitting on a panel. The presentations were followed by a question and answer session on how chairs have engaged with the community representatives.

Key matters that emerged from the presentations included:

- The community representative has three strengths: prioritises local expertise, increases transparency as well as accountability, and contributes to panel member diversity.
- There is a need for ongoing training on the role of the community representative. There is not always a shared understanding of the value of local community knowledge in informing panel decisions among panel members.

⁵⁷ Review of Governance in the NSW Planning System – Nick Kaldas APM (18 Dec 2018) www.planning.nsw.gov.au/-/media/Files/DPE/Reports/Assess-and-Regulate/About-compliance/review-of-governance-of-decision-making-in-the-nsw-planning-system-report-2018-12-18.pdf [accessed Apr 2019].

- The community representative is a resident within a unique, specific local community i.e. a local resident within a local community. However, they may find it difficult to know and understand the whole local government area.
- A key component of the community representative role is to understand both the planning process and what is happening in the local area in order to be able to engage with the local community.
- There can be discord between consultants commenting on the matter and community representatives who may not understand technical (i.e. planning) language during panel discussions.
- It is important for the panel to demonstrate that it is listening to the speaker and to ensure that the local community member is heard. Those who address the panel need to be given fair and equal consideration. The panel should listen and engage with those who are speaking.
- The community representative role is an opportunity to contribute to, and be involved in, the process that facilitates infrastructure, services and development to the community.
- The community representative allows for the interests and voices of the community to be heard and can make a significant contribution to the panel discussion.
- Their role on the panel is not to be a technical expert in planning, architecture or construction. Rather, it is to listen to community concerns and consider the impact on the quality of life of local residents.
- It is important for the community representative to speak to issues, ask questions, examine reports and seek clarification.
- The community representative brings local understanding that expert members do not have as the member has intimate and detailed knowledge of the local area.

Chairs raised the following in the question and answer session:

Summary of objections: Panel members always read the summary of objections section that council officers prepare in the reports. They are useful but need to be read in conjunction with the submission itself. Council's submissions do not necessarily express the entirety of the point, and tone and nuance will be found in the original. Sometimes more detail is needed around particular objections. It is important to bring to light information that may not be in the report.

Three minutes to speak before the panel: Some panels have started to go beyond three minutes in cases where there were few attendees and there was the opportunity to allow extra time. Chairs endeavour to be understanding. However, procedural equity is also an issue. Chairs appear to be mindful of this.

Utility of a mid-term review: DPE indicated that this briefing session was the first of a new format. Chairs also meet four times per year, which allows for feedback and discussion. It was acknowledged by panel members that different chairs and experts operate in different ways and it is important to have consistency within the one panel.

Variation of meeting times: This varies depending on the council and council practice. For example, many outer metropolitan councils hold panels during the day. It was acknowledged that daytime meetings tend to discourage community attendance. On the other hand, evening meetings commencing at 6:00 pm may mean an 11:00 pm or midnight close. Meeting times during the day may impact on people's work time and evening meetings may impact on people's family time. Some panel members agree that meetings for contentious proposals are put on in the evening. Chairs must strike a balance to ensure equitable, accessible meeting times, just as those wishing to address the panel must make a choice of the relative importance of other activities.

Participation: Some community representatives are sometimes reluctant to raise issues, so it is important that they are encouraged and made to feel like they are an equal member of the panel by the Chair. Chairs play a vital role in making community representatives feel valued and ensuring that all panel members contribute to the decision-making process.

Remuneration of community representatives: This depends on the individual council. However, some attendees indicated that it should be equal payment for equal work and level of decision making. There were different views on this issue. Some community representatives advocated for higher remuneration and some experts indicated that the current system is appropriate.

2.1.2.2 All panel member session

Following the chair-session, an all panel member session was held from 5:00–6:00 pm. In total, 126 panel members (29 chairs, 80 experts and community representatives and 17 online participants) attended the DPE briefing session held on 26 March 2019.

The following topics were covered:

- Kaldas Review and Ethics Unit, and
- the Greater Sydney Commission's (GSC) District Plans.

Some panel members suggested that they would like information regarding:

- detail about how to increase panel transparency
- policy guidance with respect to conflict of interest
- whether panel decisions are made in public and/or in camera
- the figures regarding refusal and approval rates and the proportion of refusals and approvals that are council recommended
- the involvement of local councils and panels in the preparation of Local Strategic Planning Statements (LSPS)
- whether the District Plan is a relevant matter for consideration in the assessment of a development application. There remains confusion about the relevance and alignment of district plans to Local Environmental Plans etc. and the role of GSC in local planning, and
- a status update about the requirement for councils to have design review panels and whether DPE will meet with council staff or councillors in this consultation.

2.2 Panel members' understanding of roles

During the case study, panel members, council staff and workshop participants were asked about the community representatives' roles on the panels.

- Case study council staff indicated that their community representatives do a very good job. They submitted that community representatives ask good questions, provide constructive comments, are very interested in site inspections and meetings, and take advice about planning controls. At the all panel member workshop it was noted that community representatives have been courteous, respectful and interested in understanding the framework in which applications must be considered.
- The case study community representative indicated that they are guided by the information from the experts and their role is not to be too technical. The community wanted the panel to hear and understand the view expressed by the community representative. However, it can be difficult because the community representative cannot ask people what they think (outside of the meeting). The community representative can use their local knowledge and awareness from living in the area to provide some comment on what might be community concerns.
- When asked if community representatives need planning experience, the case study community representative noted that the details of planning are more technical, whereas an expert might not know the general and local impact on the area. For this reason, the community representative can talk about the impact on the local community and this is why it is important to have the community representative on the panel.
- Panel members at the workshop indicated that the role of the panel is to simply consider each application on its merits when considered against the relevant planning controls that exist at the time the application is dealt with. It is not to consider whether the relevant planning controls are appropriate or there are better planning controls as this is a role for the council itself.
- Council directors of planning and panel members at the workshops had mixed views about whether community representatives should have planning or related expertise. It was suggested that the community representatives, who do not have relevant planning qualifications, be required to attend training sessions similar to those run by the Planning Institute of Australia called 'Planning for Non-Planners.' DPE has provided all community representatives with the opportunity to attend this training session (at no cost). At the workshop, a number of panel members indicated that community representatives should not be experts.

- Some workshop participants did not see any benefit in increasing the number of community representatives on panels.
- Workshop participants and case study panel members indicated that the difficulties that community representatives encountered were in part related to their title 'community representative'. Many panel members indicated that the name should be changed to 'community member', which would better reflect the nature of the role. The panel member is not elected by, or accountable to, the community, even though they are called representatives.
- A community representative may have expertise and qualifications in other areas. It was suggested that over time and with further training and guidance for community representatives, some of these issues might be resolved.

2.3 Development applications considered by panels

In quarter 4, fewer DAs were considered than in previous quarters. As a result, there were fewer meetings. This is largely attributed to the seasonal quieter period of activity in the post-Christmas and January summer period at councils. During this period, 13 councils (38 per cent) did not conduct meetings during January.

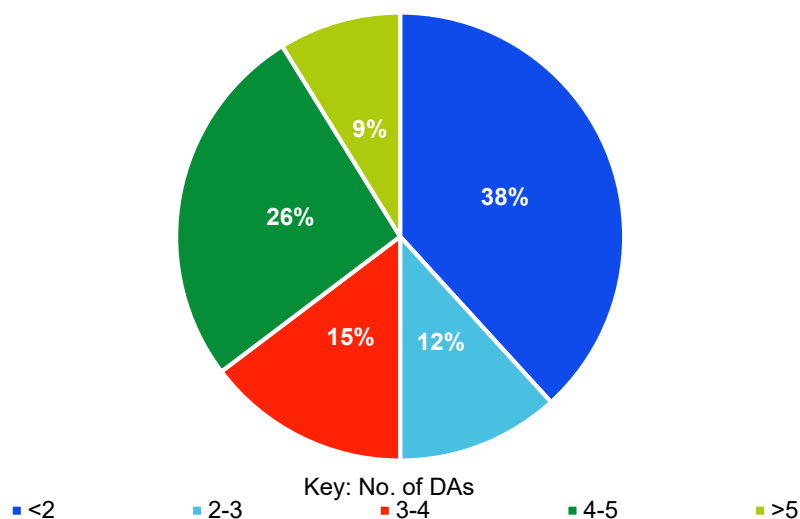
In quarter 4 and on average, panels considered fewer DAs, of lower average value, with fewer dwellings, and fewer storeys per DA than in quarter 3.

2.3.1 Number of development applications

In total, 299 DAs were considered by 34 panels, at an average of around 9 DAs per panels (compared to around 16 in quarter 3).

Per meeting, an average of 3.3 DAs were considered (compared to 4.0 in quarter 3).⁵⁸ Around half of panels considered an average of three or fewer DAs per meeting (compared to one third in quarter 3) (Figure 28).⁵⁹

Figure 28. Average number of DAs considered per meeting, per panel



Source: Council online panel reporting data.
Sample: n=299 DAs (92 meetings, 34 IHAPs).

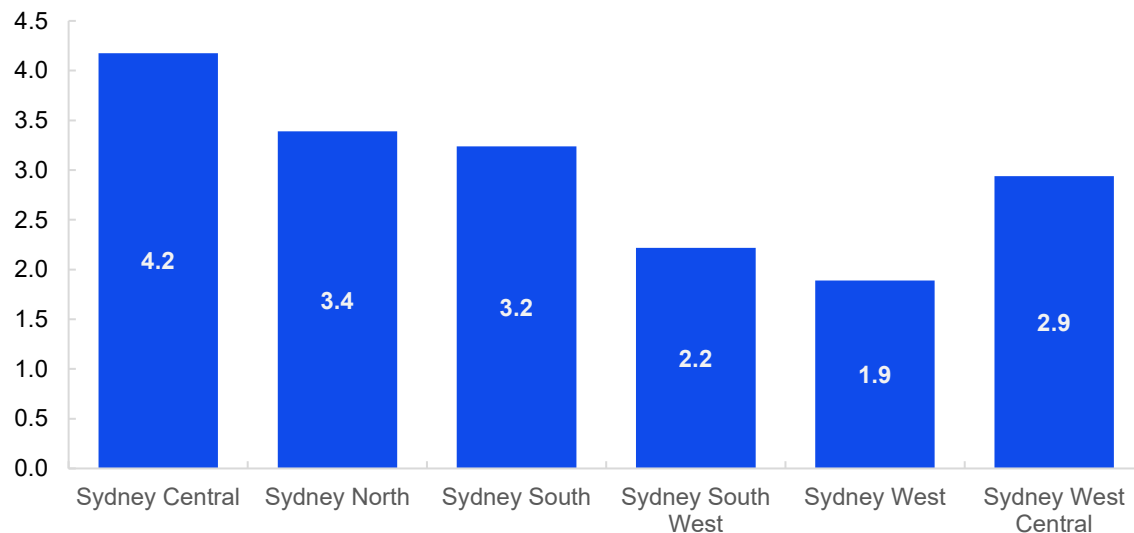
Panels in Sydney Central considered on average more DAs per meeting compared to panels in other regions, especially compared to Sydney West, which recorded the fewest DAs per meeting on average

⁵⁸ This is the total number of DAs/number of meetings for all panels.

⁵⁹ This is the average number of DAs/number of meetings across panels.

(Figure 29).⁶⁰ Three panels considered an average of seven or more DAs per meeting, two of which considered on average eight or more DAs per meeting.

Figure 29. Average number of DAs considered by each panel for the quarter, by region



Source: Council online IHAP reporting data.
Sample: n=299 DAs (92 meetings, 34 IHAPs).

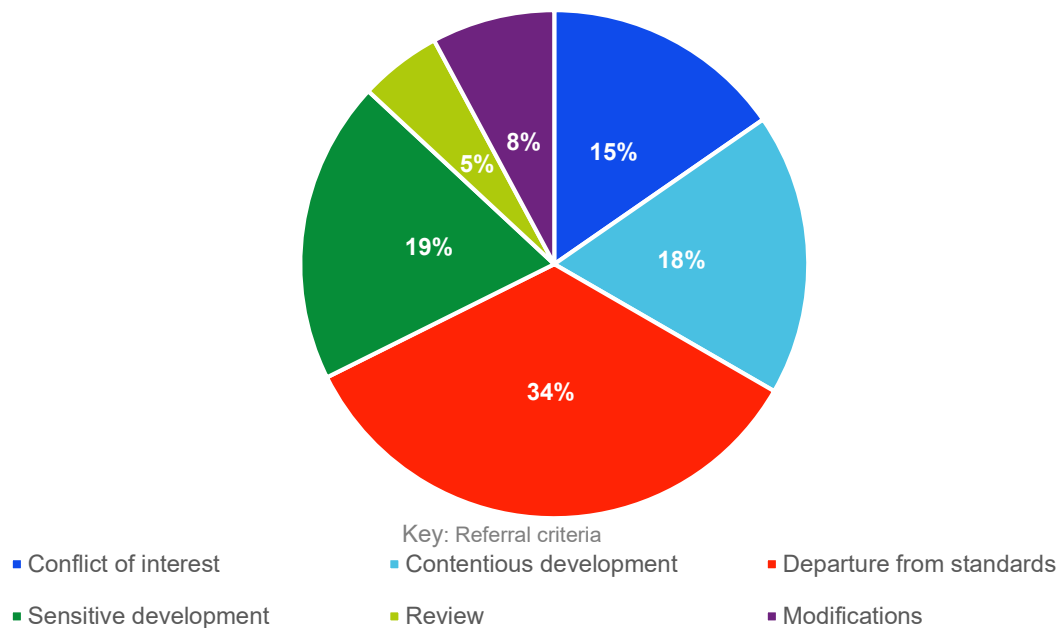
2.3.2 Referral criteria triggered

Given the reduced number of DAs considered by panels in quarter 4, there were fewer referral criteria triggered than in earlier quarters. A total of 306 referral criteria were triggered in quarter 4 (1.02 per DA, compared to around 1.1 per DA in quarter 3). Six DAs were reported as being outside of the scope of the referral criteria, a much lower proportion than was identified in previous quarters.

Departures from development standard (34 per cent), sensitive development (19 per cent), and contentious development (18 per cent) make up most of the referral criteria triggered. However, the proportion taken up by sensitive development reduced in quarter 4 (Figure 30).

⁶⁰ These are: Sydney Central, Sydney North, Sydney South, Sydney South West, Sydney West, and Sydney West Central. Since the evaluation commenced, the Greater Sydney Commission finalised District Plans (following *A Metropolis of Three Cities*) and this involved renaming districts. There were two relevant changes: Sydney West and Sydney South West were consolidated as 'Western City'; and, Wollongong City Council is not a member of the District Plans though it is located in Sydney Central according to DPE's regional breakdowns. IPPG have retained the previous naming system to enable readers to compare quarter 1 and quarter 2 reports with subsequent reports for quarters 3 and 4.

Figure 30. Proportion of DAs, according to referral criteria

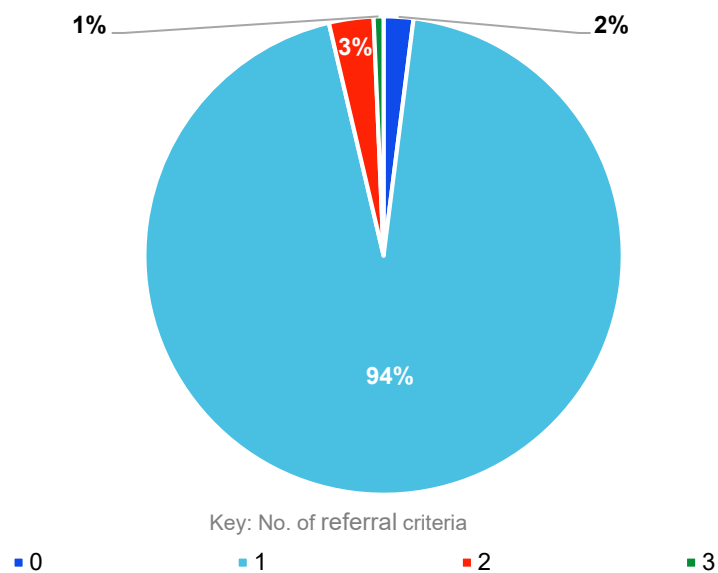


Source: Council online IHAP reporting data.

Sample: n=299 DAs, with 306 referral criteria triggers (including modifications and reviews).

For most DAs considered by panels, only one referral criterion was triggered (Figure 31), with significantly fewer DAs triggered in combination with other referral criterion than in earlier quarters.

Figure 31. Proportion of DAs, according to the number of referral criteria triggered



Source: Council online IHAP reporting data.

Sample: n=299 DAs, with 306 referral criteria triggers.

Conflict of interest DAs were least likely to trigger an additional referral criteria, along with contentious development and non-RFB sensitive developments (Table 8). A moderate number of residential flat building (RFB) sensitive developments triggered additional referral criteria (around one in four) namely, building height and floor space ratio departures.

DAs that involved a departure from a development standard were more likely to trigger additional referral criteria. Specifically:

- 40 per cent of floor space ratio departures triggered an additional referral criterion (particularly building height)
- 38 per cent of other departures triggered an additional referral criterion
- 37 per cent of building height departures triggered an additional referral criterion, namely floor space ratio, other, and contentious development, and
- 36 per cent of lot size departures triggered an additional referral criterion.

Table 8. Breakdown of DAs by referral criteria triggered⁶¹

		Conflict of interest	Contentious development	Sensitive development		Departures from development standards				Reviews and modifications	
				RFB	Non-RFBs	Lot size	Building height	Floor space ratio	Other	Rev	Mod
Conflict of interest		46	-	-	-	-	1	-	-	-	-
Contentious development		-	51	2	-	-	4	-	-	-	-
Sensitive development	RFB	-	2	26	-	-	3	3	1	-	-
	Non-RFB	-	-	-	25	-	1	2	-	-	-
Departures from standards	Lot size	-	-	-	-	7	1	-	3	-	-
	Building height	1	4	3	1	1	39	8	5	-	-
	Floor space ratio	-	-	3	2	-	8	21	1	-	-
	Other	-	-	1	-	3	5	1	16	-	-
Reviews and modifications	Review	-	-	-	-	-	-	-	-	16	-
	Mod ⁶²	-	-	-	-	-	-	-	-	-	24

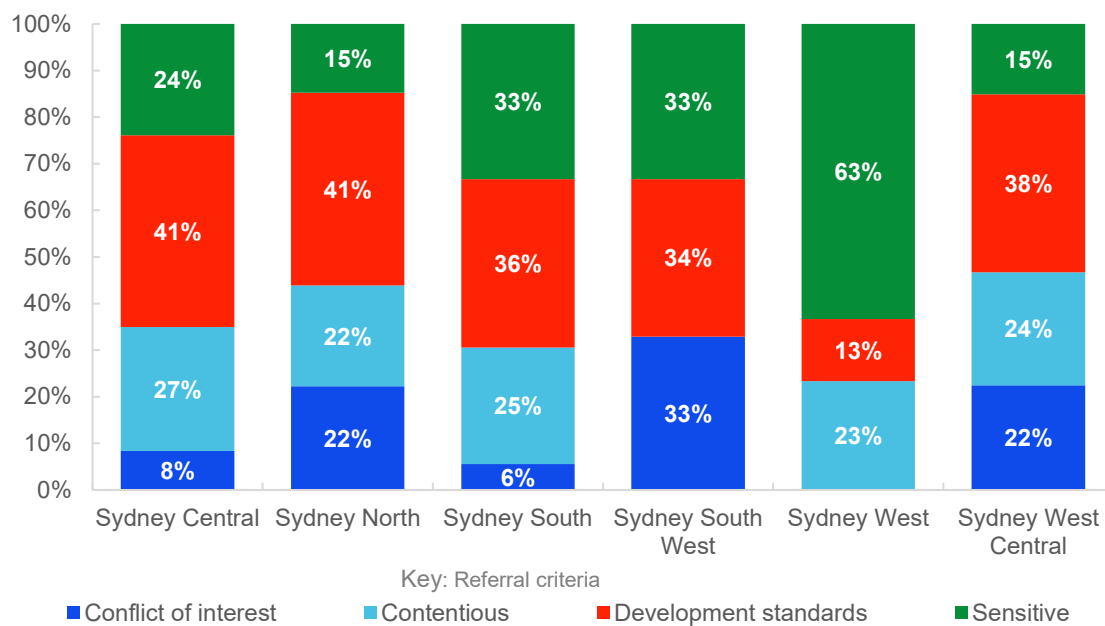
⁶¹ Note the total number of referrals in this table can be greater than the total of all referral criteria counted in other sources because the departures from development standards are typically counted as one referral rather than being counted separately for each departure.

⁶² Mod is an abbreviation for modification.

From a regional perspective (Figure 32):

- Departures from development standards make up a relatively large proportion of DAs considered, on average, for panels in Sydney Central, Sydney North, and Sydney West Central.
- Conflict of interest criteria was triggered on average at a relatively high proportion for panels in Sydney South West.
- Contentious developments make up a relatively small proportion of DAs considered, on average, for panels in Sydney South West.
- Sensitive developments make up a relatively large proportion of DAs considered, on average, in panels in Sydney West.

Figure 32. Proportion of DAs, according referral criteria, by region



Source: Council online IHAP reporting data.

Sample: n=266 substantive referral criteria triggered (averaged across each of the 34 panels), reviews and modifications not counted in order to improve display.

Per DA, Schedule 3 panels recorded more referral criteria being triggered, and fewer for Schedule 2 panels (Table 9).

Table 9. Breakdown of DAs by referral criteria, by Schedule

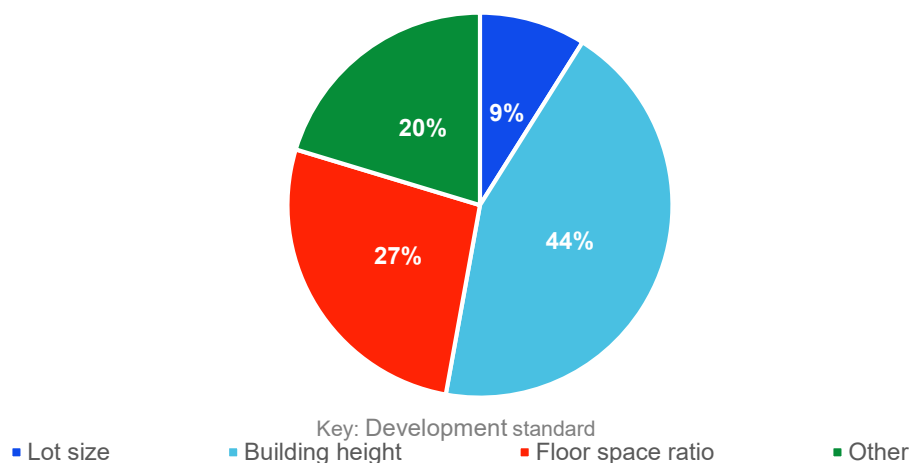
		Schedule 1 (172 DAs considered)	Schedule 2 (114 DAs considered)	Schedule 3 (13 DAs considered)	Total (299 DAs considered)
Conflict of Interest		13	29	5	47
Contentious development		34	20	1	55
Sensitive development	RFB	19	13	-	31
	Non-RFB	11	16	-	30
Departures from development standards		68	28	9	105
Reviews		11	5	-	16
Modifications		22	2	-	24
No referral criteria triggered		1	3	-	4
Total referral criteria triggered		179 (1.04 per DA)	113 (1.00 per DA)	15 (1.2 per DA)	306 (1.03 per DA)

2.3.2.1 Departure from development standards

Departures from development standards were the most frequently reported referral criteria in quarter 4. Nearly half (44 per cent) of the departures from development standards related to building heights while around one quarter reported floor space ratio departures (27 per cent). The remaining segment was split between lot size variation (9 per cent) and 'other' (20 per cent) (Figure 33).

In common with earlier quarters, the open text field on the IHAP webform for users to fill for other departures from development standards presented assorted responses. Few entries pointed clearly to the nature of the departure (excluding those that also triggered an additional criterion).

Figure 33. Proportion of departure from development standards DAs, according to development standard

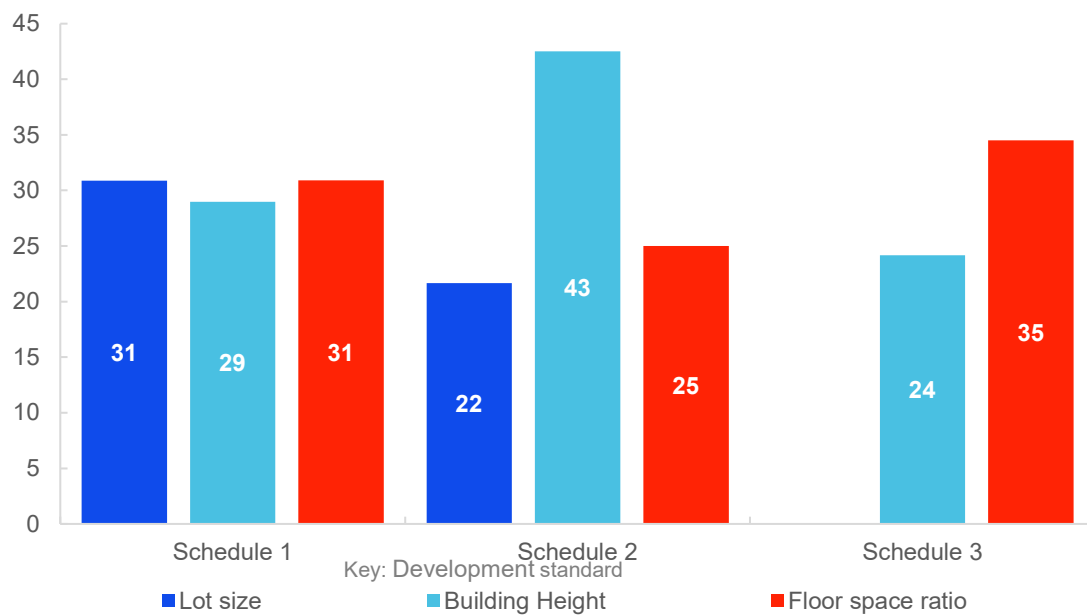


Source: Council online IHAP reporting data.
Sample: n=105 DAs with 123 departure from development standards criteria triggered.

On average, departures from development standards are highest for building height (with 30.9 per cent variation) followed by floor space ratio (with 29.9 per cent variation) then lot size variations (with 28.4 per cent variation).

The rate of variation of building heights was relatively high for Schedule 2 panels, while floor space ratio variations were relatively high for Schedule 3 (Figure 34).

Figure 34. Average departure from development standards variation (per cent), by Schedule



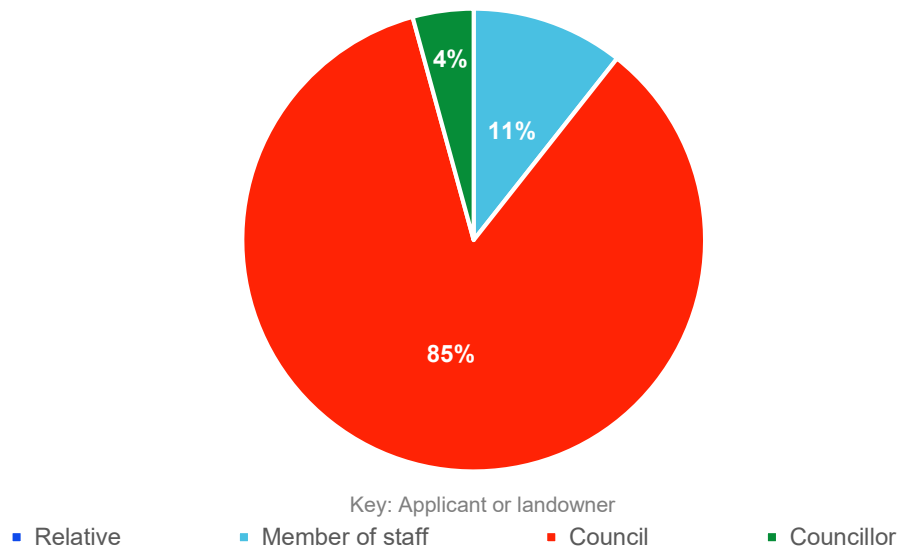
Source: Council online IHAP reporting data.

Sample: n=98 numerical departure from development standards criteria reported (11 lot size, 54 building height, 33 floor space, 'other' departure from development standards excluded).

2.3.2.2 Conflict of interest

Of the DAs referred to panels for a conflict of interest, 85 per cent were referred because council was an applicant or landowner (Figure 35). This is an increase from quarter 3 where the referral figure was around two thirds.

Figure 35. Proportion of conflict of interest DAs, according to applicant or landowner

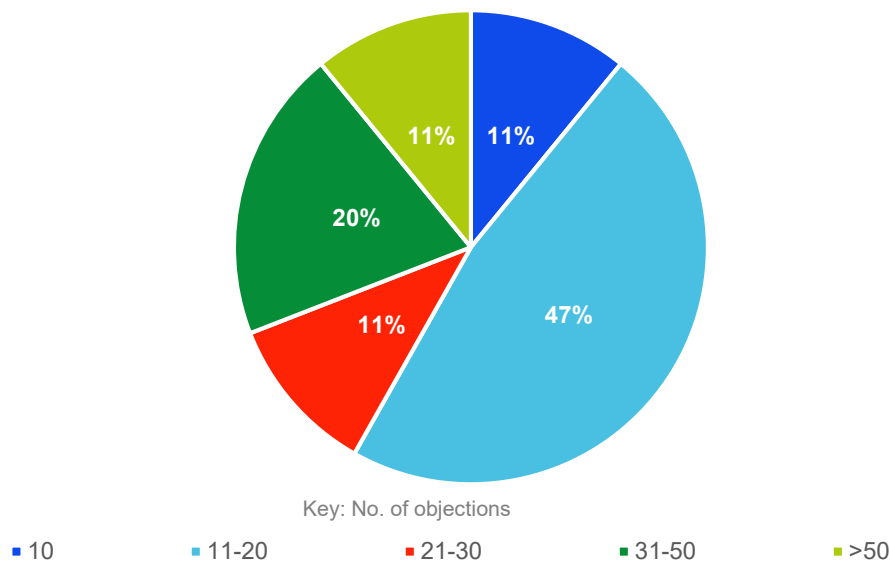


Source: Council online IHAP reporting data.
Sample: n=47 DAs with conflict of interest recorded (note that 'relative' was not recorded as a source of conflict in quarter 4).

2.3.2.3 Contentious development

For DAs that triggered the contentious development criteria, the average number of objections was 26 and 58 per cent of the DAs under this criterion recorded 20 or fewer objections (Figure 36). Two DAs recorded more than 100 objections (one DA with 107 objections and the other with 113 objections).

Figure 36. Proportion of contentious development DAs, according to number of objections



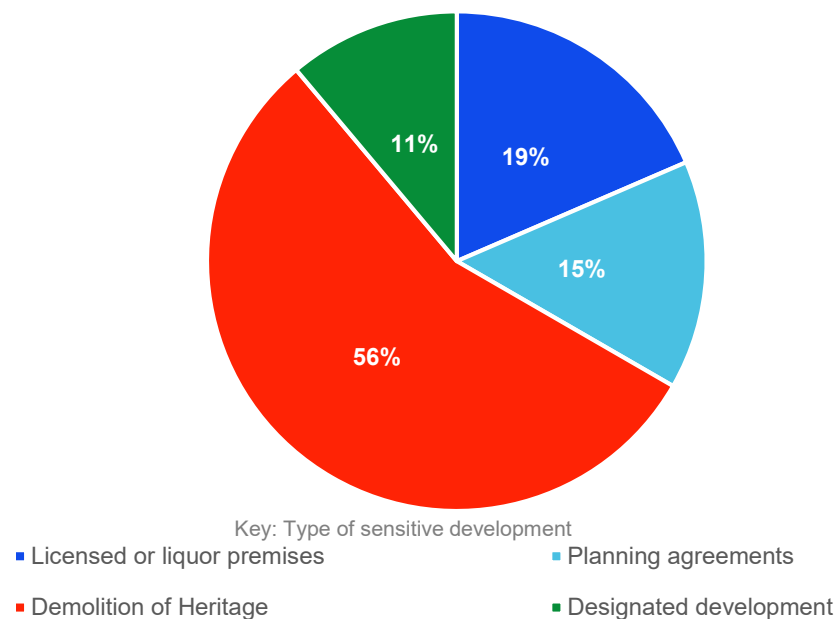
Source: Council online IHAP reporting data.
Sample: n=55 DAs with contentious development triggered.

2.3.2.4 Sensitive development

While more DAs that triggered sensitive development criteria relate to RFB sensitive developments (32 DAs, with an average of 6.0 storeys), this proportion was relatively low in quarter 4 compared to earlier quarters. Of this proportion 19 DAs were Schedule 1 (average of 5.1 storeys) and 13 DAs were Schedule 2 (average of 7.2 storeys).

Of the non-RFB sensitive developments considered by panels, a majority (56 per cent) of these were related to the proposed demolition of heritage items, with the remainder dispersed across a range of reported development types (Figure 37).

Figure 37. Proportion of non-RFB sensitive development DAs, according to type of sensitive development



Source: Council online IHAP reporting data.
Sample: n=27 DAs with non-RFB sensitive criteria.

2.3.2.5 Reviews and modifications

There were 16 DAs reviewed in quarter 4, none of which triggered any further referral criteria.⁶³

There were 24 DAs referred under the 'modification' trigger in quarter 4, none of which triggered an additional referral criterion.

2.3.3 Appropriateness of the referral criteria

Panel members at the panel member workshop indicated that the referral criteria are too strict. This included or related to:

- The conflict of interest criterion for council as the applicant or land owner. This requires nearly all DAs where council is the applicant or land owner to be determined by the Panel. In practice, this has meant council has had to report many minor DAs for development in public reserves, including small community buildings, facilities already agreed under long-standing Voluntary Planning Agreements (VPAs), and temporary community events. It was suggested that a financial threshold should be applied for the panel to consider such DAs (e.g. ≥\$1 million).
- The ten per cent development standard referral criterion. This criterion results in inconsequential development standard variations being reported notwithstanding that they exceed ten per cent. It

⁶³ While the directions issued by the Minister for Planning do not extend to modifications, councils can decide which modification applications are to be determined by their panels and which modification applications are to be determined by staff. For further information see the Independent Hearing and Assessment Panels Overview, August 2018.

was suggested that the panel only be required to consider such DAs where there is a submission, alternatively to exclude certain minor forms of development from the criteria such as dwelling houses.

- The referral criterion for all designated development. For example, one council had to report a DA for designated development in the middle of a large industrial estate that had virtually no impacts and attracted no submissions. It was suggested that the panel only be required to consider such DAs where there is a submission.
- The panel currently needs to determine all State Environmental Planning Policy No 65 (SEPP 65) DAs.⁶⁴ The panel could instead determine SEPP 65 DAs only where there are a certain number of submissions, a large development standard variation, or when it is over a monetary threshold.
- The referral criterion currently applies to the demolition of all heritage items, including partial demolition. This should be reduced to only full or substantial demolition of heritage items.
- A council's general manager should be able to nominate certain DAs to be determined by the panel. For example, a discretionary referral would be possible for those of significance and interest to the community that may not meet the minimum ten submissions threshold.

Some chairs indicated the following:

- Many requests for variation to a development standard are trivial and are simply caught by the broad referral criterion of Clause 4.6. Very minor Clause 4.6 variations, especially applications where there are no objections, do not need to come before the panel. For example, minor structures such as pergolas on a building that already exceeds the height development standard must be referred to a panel, even though there may be no objections and it creates no impact on neighbours.
- All development on council-owned land requires applications to be referred to a panel. Recent examples of trivial applications considered by a panel include minor internal alterations to a surf club and the construction of a single baseball dugout on a large sporting complex, neither of which attracted any adverse submissions.
- Voluntary Planning Agreements (VPAs) raise potential problems for panels. First, panels are not involved in the negotiation of a VPA. However, a VPA is often the reason why a development is recommended for approval. However without the VPA the application may not be acceptable. Second, a panel must accept that the negotiations were conducted in good faith and that the best interests of the community have been served in the negotiations.

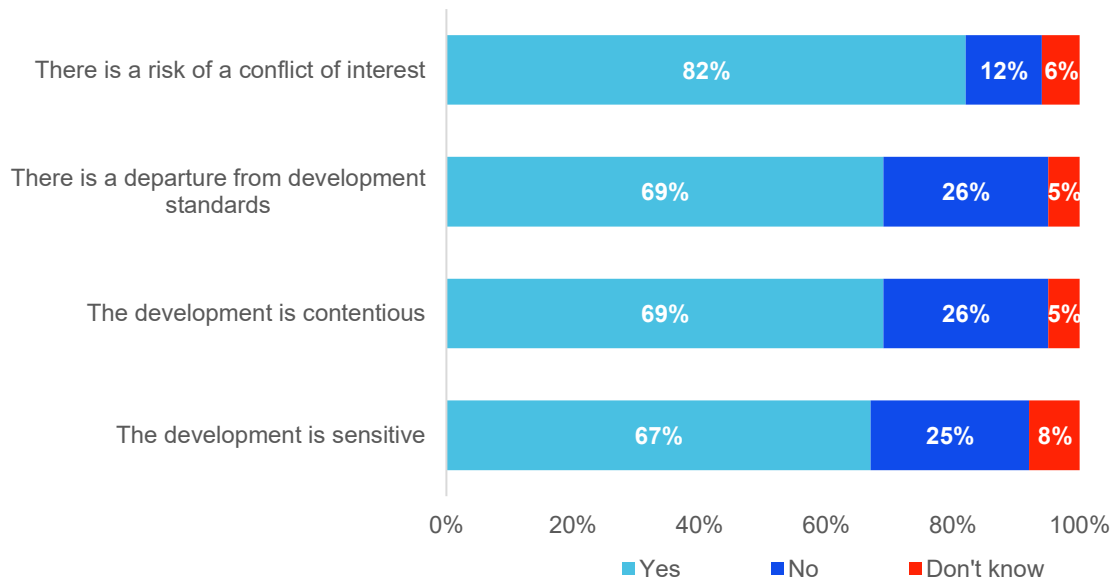
Other examples of referral criteria that panel members at the IPPG workshop considered did not warrant panel determination of an application were:

- A minor extension to a dwelling that does not extend an existing building height, but exceeds a policy height limit with no objections. This should be dealt with at council level as it is a minor matter and could be dealt with by delegation to council staff.
- Applications that trigger the relevant development standard exceedance criteria but the existing approved development on the site already exceeds the standard. There is no additional exceedance as a result of the application referred to the IHAP (there may even be a reduced level of exceedance).
- Applications that vary the motorcycle parking requirement of the Affordable Housing SEPP.

Surveyed community members were also asked about the appropriateness of the referral criteria for triggering a DA to be assessed by the panel. A statistically significant proportion (82 per cent) agreed that in cases where there is a perceived risk of a conflict of interest, the DA warranted a referral to a panel. For each of the other referral criteria, more than two-thirds of the surveyed community members agreed with their appropriateness (Figure 38).

⁶⁴ State Environmental Planning Policy No 65 – Design and Quality of Residential Apartment Development.

Figure 38. Surveyed community members' views on the appropriateness of the panel referral criteria



Survey question: Please indicate whether you think the following criteria for referring development applications to IHAPs are appropriate.
Sample: n=170 community members.

2.3.4 Other characteristics

2.3.4.1 Cost of works for development applications

The average cost of works in quarter 3 was around \$2.7 million (lower than in quarter 3 at \$4.0 million, while closer to that recorded in quarter 2 at \$2.7 million and quarter 1 at \$3.0 million).

2.3.4.2 Number of dwellings

The average number of dwellings per DA was 4.6 in quarter 4 (somewhat lower than 10.2 in quarter 3). Excluding zero value entries (138 entries), the average number of dwellings was 8.5 (compared with 19.2 in quarter 3).

2.3.4.3 Number of storeys

The average number of storeys for DAs considered in quarter 4 was 2.1 (slightly lower than 2.3 in quarter 3). Excluding zero value entries (102 entries), this average was 3.1 (compared to 3.4 in quarter 3).

2.4 Panel decision-making

Panels in quarter 4 conducted relatively few meetings (around one third) compared to earlier quarters. This is attributable to the season slowdown in council activity over the post-Christmas and January summer holidays. In addition, meetings were shorter on average (by around one quarter in duration, and around 13 per cent shorter per DA) than in quarter 3.

A summary of how the case study council structured the panel meeting day is outlined in Table 4.

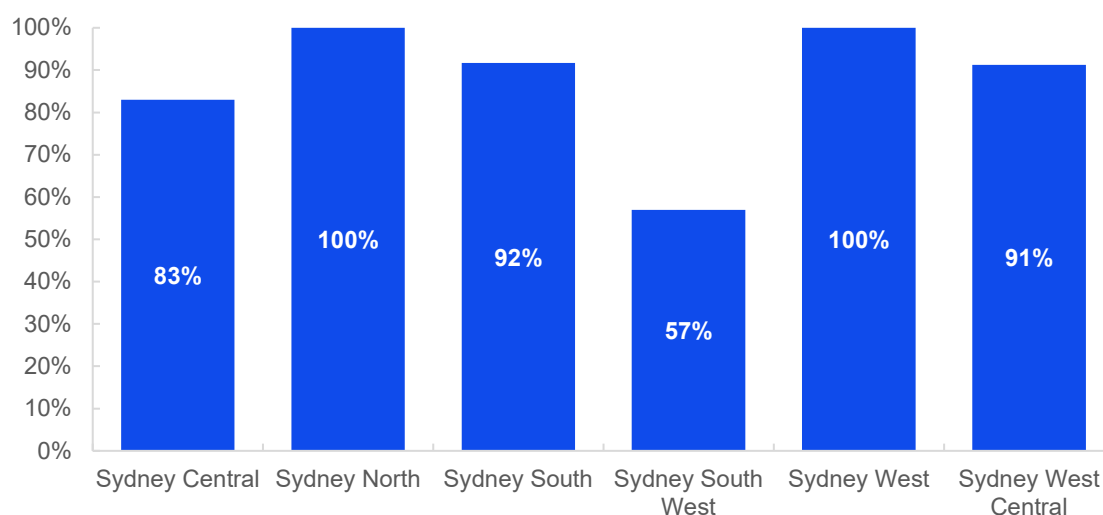
Table 10. Summary of a typical panel meeting day

Council 1
• Site visits, council staff brief panel on site and answer panel member questions. • Briefing by council staff. • Public meeting, all council staff present for their assigned DAs. • Meeting adjourned after all speakers are heard. • Deliberations in closed session. • Meeting opened to communicate decisions.

2.4.1 Site visits

Eighty six per cent of DAs had a site visit (compared to 91 per cent in quarter 3). Site visits were conducted for all considered DAs at panels in Sydney North and Sydney West, while panels in Sydney South West recorded relatively low proportion of DAs with site visits⁶⁵ (Figure 39). In common with earlier quarters, City of Sydney Council did not conduct site visits for any of the DAs that it considered.

Figure 39. Proportion of DAs considered with site visits, average per panel, per region

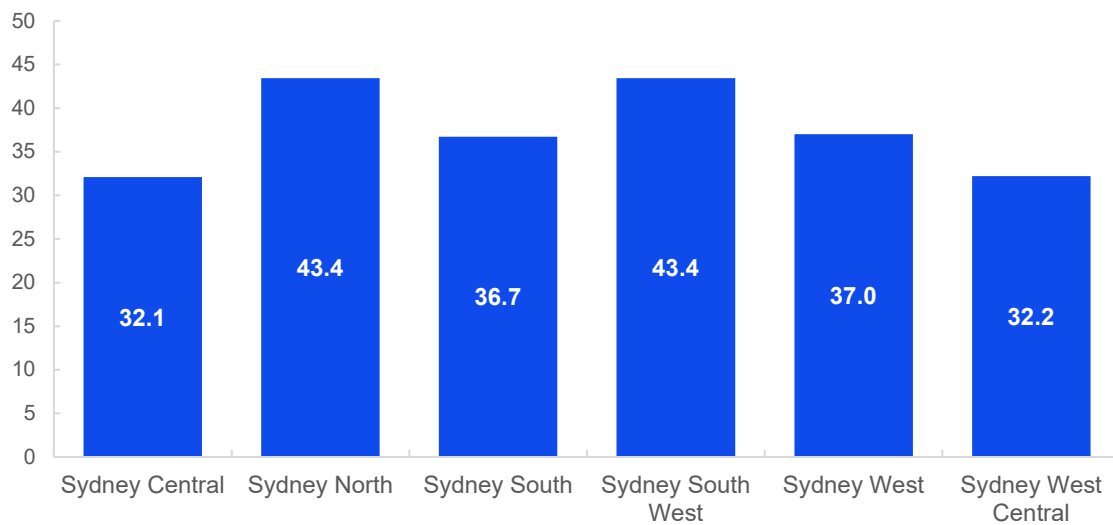


Source: Council online IHAP reporting data.
Sample: n=258 DAs with site visits (34 panels).

The average site visit duration per DA for quarter 4 was 37.6 minutes (compared with 32.1 minutes in quarter 3). The average duration of site visits was longest for panels in Sydney South West and Sydney North (Figure 40).

⁶⁵ Particularly, because Campbelltown City Council did not conduct any site visits and Fairfield City Council conducted site visits for two of the seven DAs considered.

Figure 40. Average site visit duration (minutes), average per panel, per region



Source: Council online IHAP reporting data.

Sample: n=258 DAs with site visits (32 panels (City of Sydney Council and Campbelltown City Council were excluded because they did not conduct any site visits)).

In common with quarter 3, DAs that did not have a site visit had a higher rate of approval (92 per cent of DAs determined, compared to 79 per cent for those with a site visit).

At the panel member workshop, it was indicated that the council planning staff should be in attendance at the site visit to answer any questions and to assist in understanding of issues.

In the panel email update (13 February 2019), DPE indicated that panel members could not ask the assessment planner of their opinion of the proposal at the site visit. Site visits are considered valuable in assisting panel members to familiarise themselves with the local context of a proposal, particularly those proposals which, if approved, may affect the community through local traffic, environmental or other impacts. Panel members should refrain from drawing council staff into conversations on the merits of a proposal at site visits or briefings. This is to avoid any perceptions of either pre-judgement of the proposal or of influencing council staff on their recommendations.⁶⁶

For DAs, most surveyed community members stated that the site visits were 'very' or 'moderately' important to inform the panel's assessment of the DA (total important, 67 per cent). Only five per cent of community members stated that no site visit was conducted. For planning proposals, over half (58 per cent) of those surveyed agreed that site visits were important to inform the panel's advice to the council. No one surveyed reported that no site inspection was conducted.

2.4.2 Public meetings

2.4.2.1 Number for public meetings

At the panel member workshop, meeting times were discussed. Many panel members indicated that there were fewer registered speakers for meetings held during the day compared to the evening. While evening meetings tended to be favoured by the participants, the finish time was an important consideration.

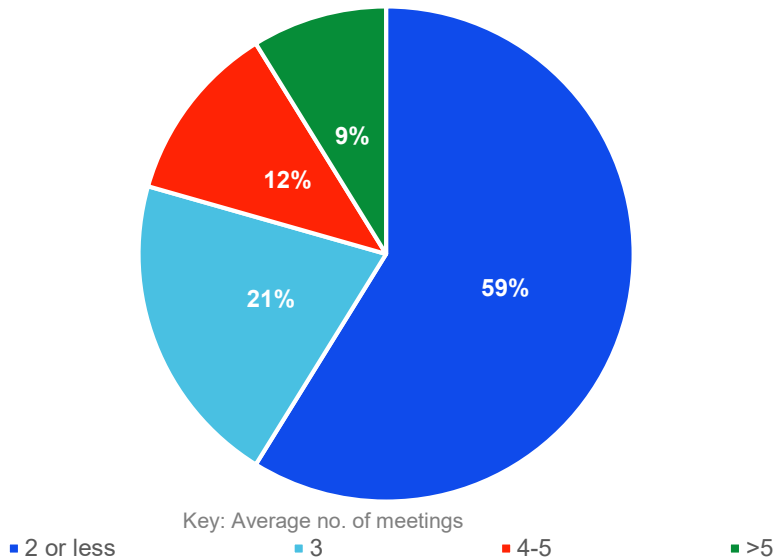
Participants also raised the issue of the number of agenda items per meeting. Some participants indicated that they considered as many as 10 DAs and planning proposals, which meant there was not adequate time to fully consider each item. One panel member indicated that it was daunting to have ten items on the agenda – meetings should be as equal as possible in numbers of items. However, the complexity of items is also a factor.

The average number of meetings per panel was 2.7 in quarter 4 (compared to 3.9 in quarter 3).

⁶⁶ Recipients of the update were further directed to 3.4 of the Operational Procedures and 3.15, 3.22, 7.1 and 7.2 of the Code of Conduct.

A majority of panels (59 per cent) recorded two or fewer meetings in quarter 3 (Figure 41). Two panels conducted six meetings in the quarter and one panel conducted seven meetings, while five conducted only one meeting.

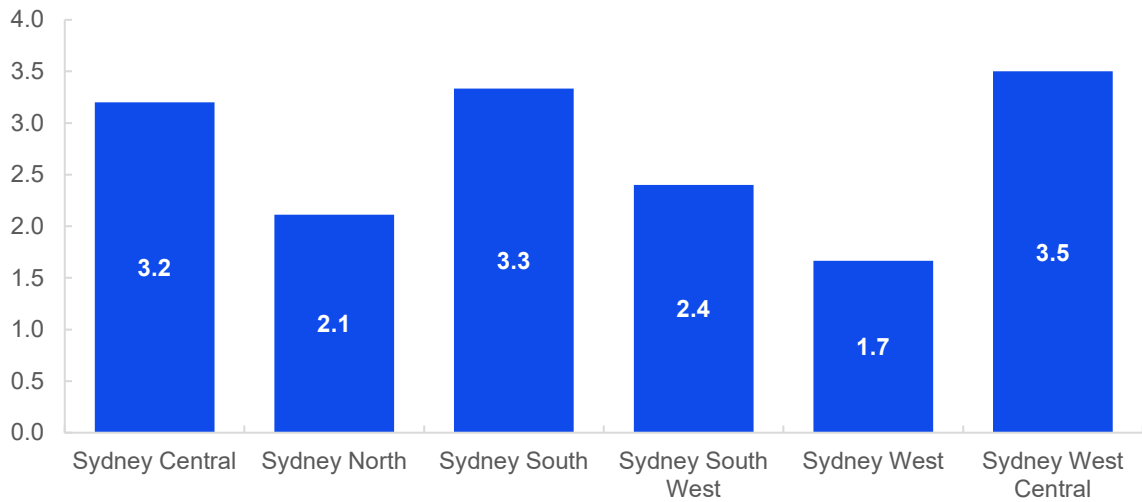
Figure 41. Number of panel meetings held, per panel



Source: Council online IHAP reporting data.
Sample: n=92 meetings (34 panels).

On average panels in Sydney West Central and Sydney South recorded the most meetings, while Sydney North and Sydney South West recorded the fewest (Figure 42).

Figure 42. Number of meetings per panel, per region



Source: Council online IHAP reporting data.
Sample: n=92 meetings (34 panels).

2.4.2.2 Panel member rotation

In quarter 4, community representatives were rotated the most on average, while chairs were rotated the least (Table 11).

In the panel email update (13 February 2019), DPE indicated that the Operational Procedures outline that chairs are responsible for ensuring rotation of chairs, alternate chairs, experts and community representatives.⁶⁷ DPE consider that best practice is for chairs to ensure regular rotation of all panel members, allowing members to become familiar with panel procedures and experienced in the responsibilities that being part of a determining body entails.

An analysis of documents from the case study indicated that the Minister for Planning selected three independent expert chairs for the panel, who rotate between various meetings. Council has selected four expert members (who also rotate to fill the two expert positions required for each meeting) from a pool established by DPE and approved by the Minister. The case study council created an extensive pool of community representatives to ensure continuity of the panel for the number of meetings and anticipated workload.

Panel members on multiple panels

At the panel member workshop, it was reported that one panel member sits on five panels. Due to the number of experts on panels and the required rotation of members, this panel member attends, on average, two to three panels per month. However, they could not recall having seen the same applicant or applicant's representative regularly appearing before the panels they had attended.

It was noted that some planning consultants tend to operate more in certain areas and on occasion would appear for different applicants. Due to the clear restrictions on discussing matters before a panel, one panel member saw no reason why there would be any valid basis for limiting the number of panels a person may sit on but acknowledged this could be viewed differently if the panel member also worked as a consultant. In contrast, where a panel member sits on multiple panels this creates broad based authority over multiple areas and potentially that panel member would influence decisions in a range of council areas. One panel member suggested that this needs to be examined carefully as a matter of practice.

Rotation of chairs

On average, the number of chairs per panel and the average rotation of chairs on panels were lower than in quarter 3. In common with quarter 3, half of the panels had three chairs preside over panels (compared with 33 per cent in quarter 2 and 37 per cent in quarter 1). Ten panels rotated the chair at each meeting and eleven panels did not rotate the chair during the quarter – the reduced frequency of meetings could be a contributing factor.

On average, chairs presided over 2.6 meetings over the quarter as chair, and on panels in 1.75 councils on average.

Across panels, around half of chairs (47 per cent) presided over one panel as chair, with seven chairs presiding over three or more panels at least once as chair.

Rotation of experts

On average, the number of experts engaged per panel were fewer, and experts presided over fewer panels, although the average rotation of experts was slightly higher than in quarter 3. Fourteen panels (41 per cent) engaged only two or three experts in quarter 4, while around one in four (26 per cent) engaged five or more experts (including one panel that engaged nine experts).

Eight panels rotated experts at each meeting and eight panels did not rotate their experts over the quarter.

On average, experts took part in 2.0 meetings each across 1.5 panels. Approximately two thirds (66 per cent) of experts served on one panel, while nine experts (10 per cent) served on three or more panels.

Crossover of chairs as experts

A majority (58 per cent) of chairs did not serve as an expert on a panel in quarter 4. Four chairs served on three or more panels as experts.

Rotation of community representatives

Around half of panels (47 per cent) utilised two community representatives in their public meetings in quarter 4, with around one quarter (26 per cent) utilising only one and the remaining quarter (26 per cent) utilising three or more.

On average, the number of community representatives per panel was lower than in quarter 3. This means the number of community representatives consulted in each council over the course of the quarter was lower.

⁶⁷ Local Planning Panels Direction – Operational Procedures, <https://www.planning.nsw.gov.au/-/media/Files/DPE/Other/local-planning-panels-direction-development-applications-2018-02-23.pdf?la=en>

The average rotation rate of community representatives decreased to 64.4 per cent (compared to 68.2 per cent in quarter 3).

At the panel member workshop, community representatives were concerned that they were not regularly sitting on the panel. Many community representatives had only sat on a panel once during the year. Concerns were raised about continuity and consistency.

Table 11. Summary of panel member rotation in quarter 4

Panel composition	Chairs	Experts	Community representatives
Average panel member number ⁶⁸	1.79	3.85	2.09
Panel member rotation per panel ⁶⁹	49%	58%	64%
Panel member coverage across panels ⁷⁰	1.06	2.56	2.15
Panel member rotation across panels ⁷¹	1.75	1.48	-
Chair crossover rate ⁷²	0.86	-	-

2.4.2.3 Number of registered speakers

At the panel member workshop, participants indicated that registered community speakers were often not given enough time to present their submissions. For some panels, community representatives encouraged chairs to provide more time to community members.

A significant reduction in the number of speakers registered per DA was observed in quarter 4 (0.5 compared to 1.5 in quarter 3) – attributable to a large increase in the number of DAs recording zero speakers (82 per cent in quarter 4 compared to 47 per cent in quarter 3).

2.4.2.4 Duration of meetings

The average duration per meeting for quarter 4 was 80 minutes (compared to 103 minutes in quarter 3), or 87 minutes excluding seven entries of zero minutes. One third of meetings (34 per cent) were between 60 and 104 minutes in duration, while another third were less than one hour, and the remaining third were 105 minutes or longer (Figure 43).

⁶⁸ $\sum_{i=1}^n ((\text{Number of (chairs, experts or community representatives) sitting on panel}_i \text{ at least once}) / \text{panel}_i)) / \text{number of panels}(n)$

⁶⁹ Proportion that chairs are rotated in a given panel. 0=one chair presides over all meetings; 1=a different chair presides over each meeting.

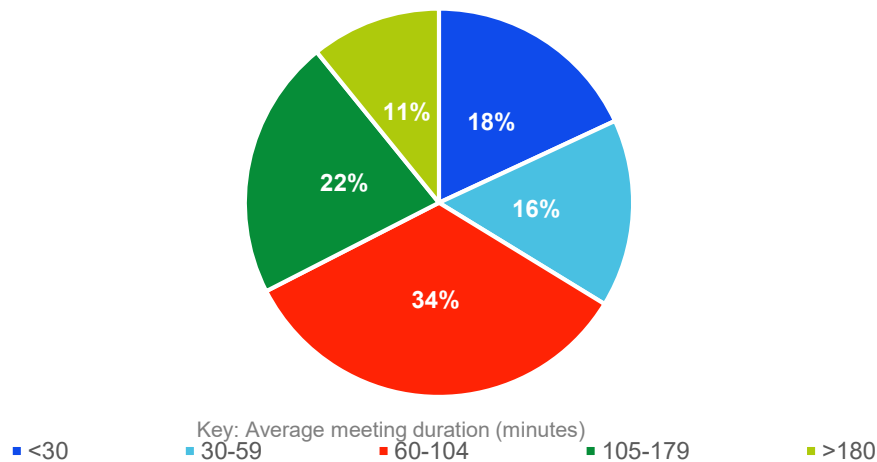
⁷⁰ Number of 'panel member' sitting on panels/Number of panels.

⁷¹ $(\sum_{j=1}^k (\text{Number of panels that (chairs or experts) sit on at least once})) / \text{Number of (chairs or experts)} (k)$

⁷² $(\sum_{j=1}^k (\text{Number of panels that chair}_j \text{ has presided over as expert at least once})) / (\text{Number of chairs}(k))$

$(\sum_{j=1}^k (\text{Number of panels that chair}_j \text{ has sat on presided over as expert at least once})) / (\text{Number of chairs}(k))$

Figure 43. Proportion of panel meetings, according to meeting duration



Source: Council online IHAP reporting data.

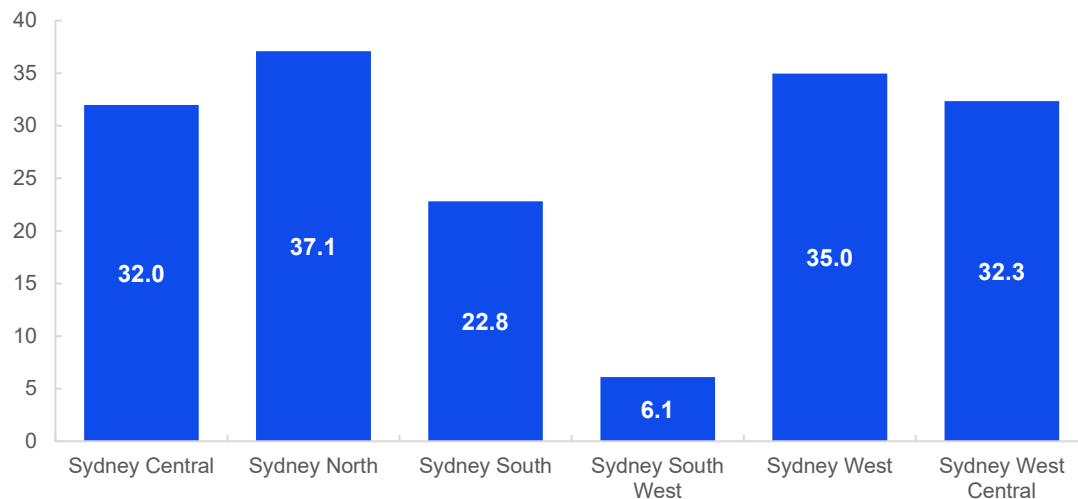
Sample: n=83 meetings (33 panels), seven meetings excluded as zero minutes were recorded and two blank entries (meetings data for Burwood Council was not supplied).

On average, panels in Sydney Central (100 minutes), Sydney North (99 minutes), and Sydney West Central (97 minutes) held longer meetings, while Sydney South West (17 minutes), in particular, held shorter meetings.

The average duration of meetings per DA was 24 minutes in quarter 4.⁷³

On average, panels in Sydney North, Sydney West, Sydney West Central and Sydney Central held longer meetings per DA, while Sydney South and Sydney South West held shorter meetings per DA on average (Figure 44).

Figure 44. Average meeting duration (minutes) per DA, per panel, by region



Source: Council online IHAP reporting data.

Sample: n=299 DAs (90 meetings (2 meetings for Burwood Council excluded as data not supplied), 33 panels (Burwood Council excluded and reported as a missing value, while Campbelltown City Council retained as an entry of zero as its only one meeting was recorded as zero minutes).

⁷³ Using a simple sum of total minutes recorded for meetings in the quarter (7181 minutes) and dividing by the total number of DAs considered over the quarter (n=299).

2.4.2.5 Deliberation approaches

In the case study, the panel usually deliberated in public for minor matters and for complex matters adjourned the meeting to deliberate in a closed session. The chair indicated that all three panel members adjourn then reconvene unless they come to a view during the briefing and there are no objectors. However, the chair preferred to hear everything and then consider the matter and have staff record the outcome. In terms of transparency, after the adjournment, the chair would explain publicly what was discussed with council staff so people attending the meeting could understand what had occurred.

At the panel member workshop, panel members indicated that it is helpful to be able to have a full and frank discussion in a closed session. A community member raised concerns about the number of council staff present during panel discussions. Experts and chairs tended to believe it is better to have the council planners in attendance at the site inspection and when requested for any deliberations. Although one expert did suggest that the council staff's role be limited for DAs in which the council had an interest.

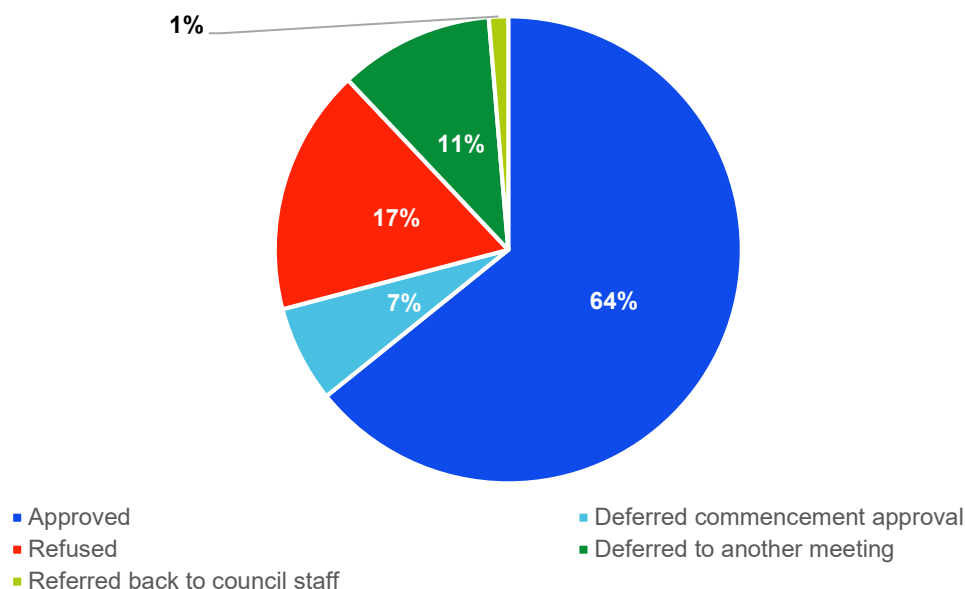
In the panel email update (13 February 2019), DPE indicated that the Operational Procedures and the Best Practice Meeting Procedures confirm that adjournments for private discussions are allowed.⁷⁴ Should the panel require technical clarification the adjournment can be combined with a council staff briefing. After reconvening the meeting, the panel chair should briefly summarise the matters discussed in the adjournment, which should be recorded in the meeting minutes. If a council staff briefing is held as part of the adjournment a brief summary should also be included in the minutes.

2.5 Panel decisions

2.5.1 Overview of panel decisions

In quarter 4, panels considered 299 DAs. Most DAs were approved or given a deferred commencement approvals (71 per cent compared with 65 per cent in quarter 3), followed by refusals (17 per cent compared with 19 per cent in quarter 3) and applications deferred to another meeting (11 per cent compared to 8 per cent in quarter 3). Four DAs were referred back to councils⁷⁵ (Figure 45) (see Section 2.5.1.1 for a discussion on Determinations).

Figure 45. Breakdown of panel decisions



Source: Council online IHAP reporting data.

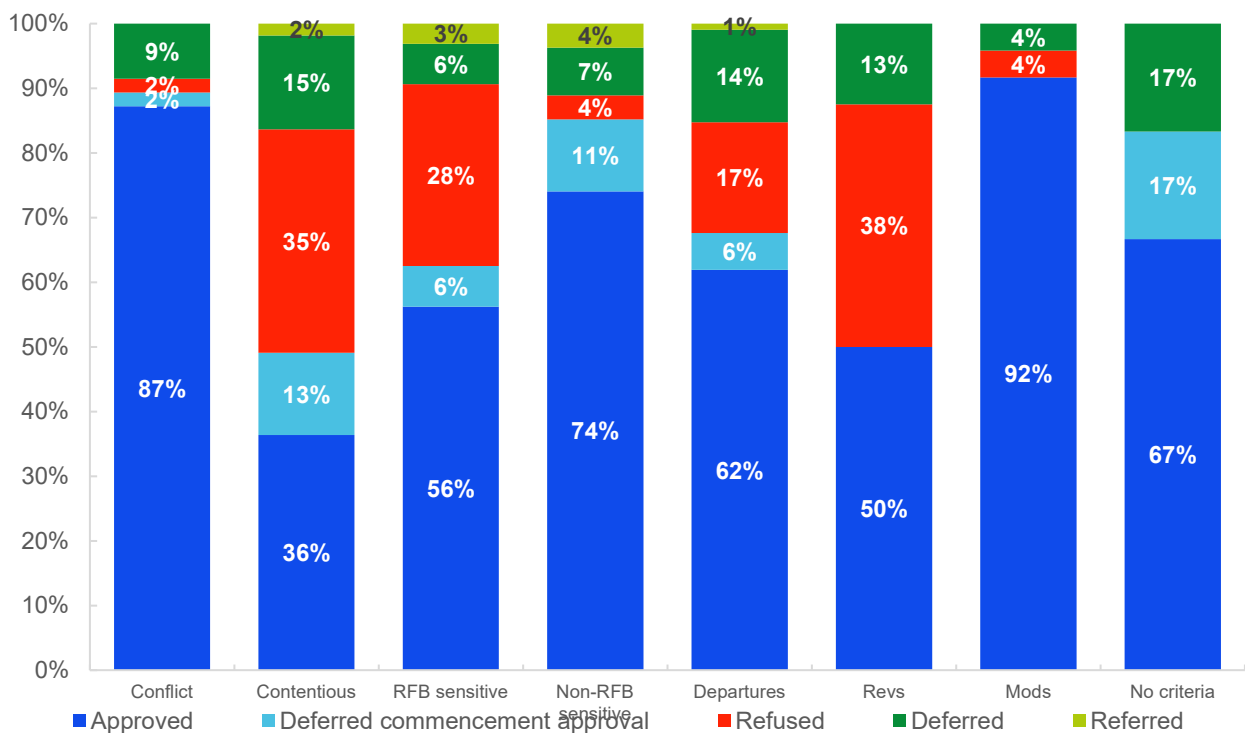
Sample: n=299 DAs considered by panels (92 meetings and 34 panels).

⁷⁴ Independent Hearing and Assessment Panels – Best practice meeting procedures (18.12.2018).):

<https://www.planning.nsw.gov.au/-/media/Files/DPE/Other/ihaps-best-practice-meeting-procedures-2018-09-12.pdf?la=en>

⁷⁵ There was insufficient evidence of common reasons for being referred back to councils across these DAs.

Figure 46 Breakdown of panel decisions across each referral criteria

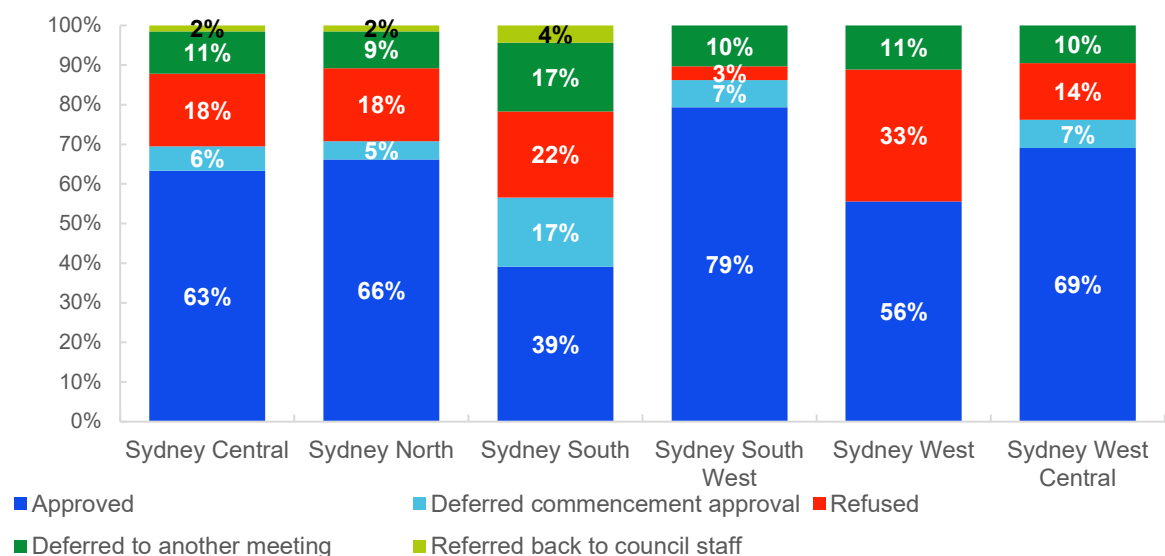


Source: Council online IHAP reporting data.
Sample: n=299 DAs considered by panels.

On average, a high proportion (86 per cent) of DAs considered across panels in Sydney South West were approved or deferred commencement approval, particularly compared to panels in Sydney South (56 per cent).

On average the rate of refusal of DAs considered across panels in Sydney West was relatively high while it was relatively low in panels across Sydney West Central (Figure 47).

Figure 47. Breakdown of panel decisions, by region

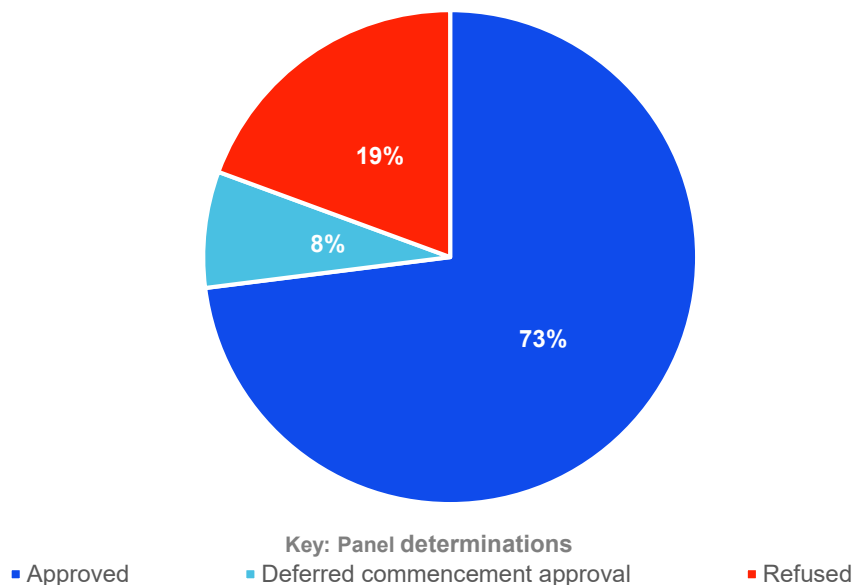


Source: Council online IHAP reporting data.
Sample: n=299 DAs considered by panels (92 meetings and 34 panels).

1.1.1.1 Determinations

Panels determined 263 DAs (88 per cent compared to 91 per cent in quarter 3) in quarter 4. Of the 263 DAs where a determination was made, 192 DAs (73 per cent) were approved, 20 DAs (8 per cent) were given a deferred commencement approval, and 51 DAs (19 per cent) were refused (Figure 48).

Figure 48. Proportion of DAs, according to panel determination

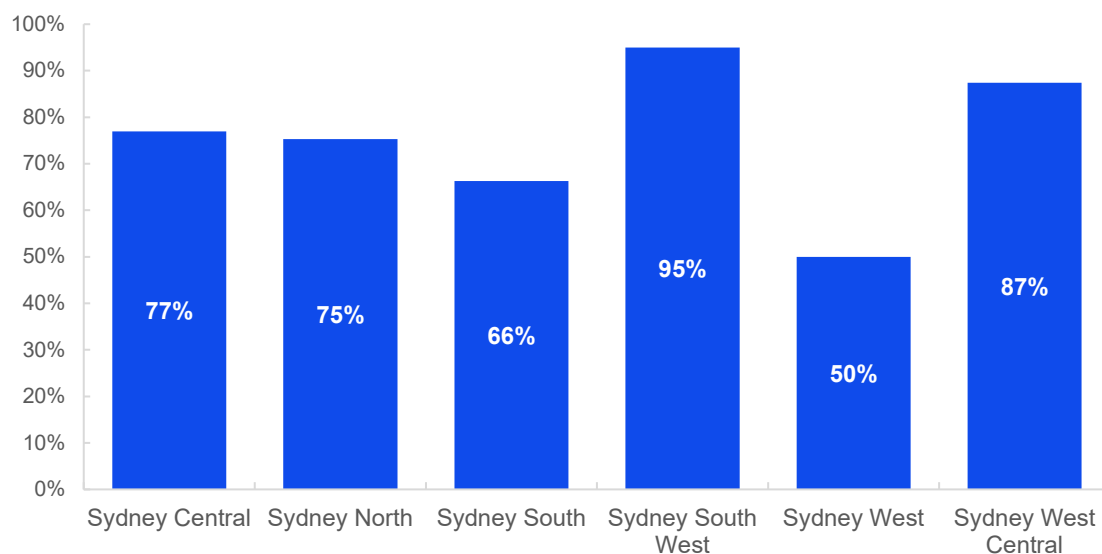


Source: Council online IHAP reporting data.

Sample: n=263 DAs where a determination was made by panels.

On average, DAs determined in panels in Sydney South West and Sydney West Central were more likely to be approved in quarter 4 and least likely for DAs determined in Sydney West (Figure 49).

Figure 49. Proportions of approved DAs and deferred commencement approval DAs, by region



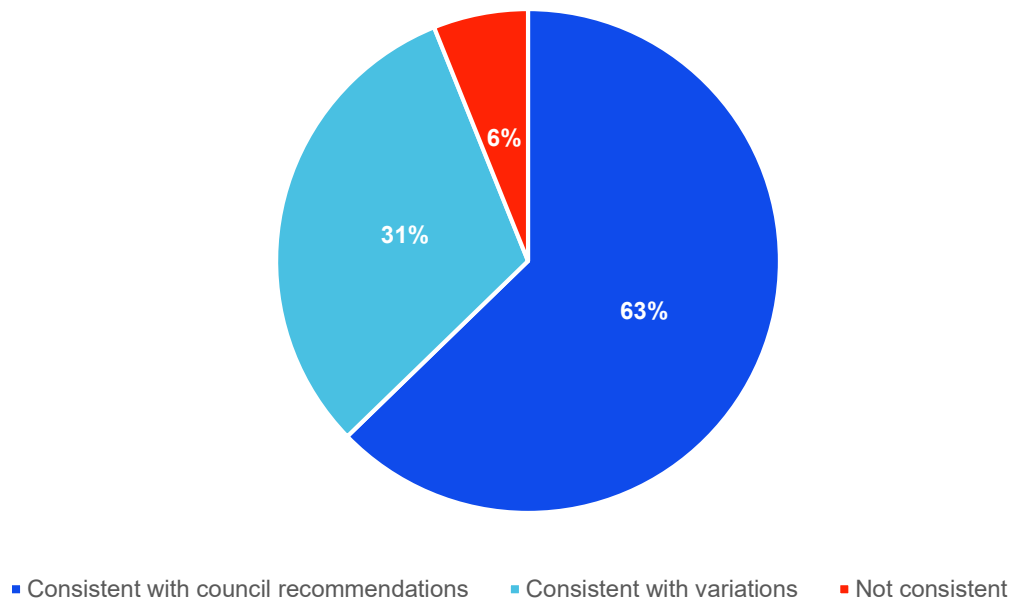
Sample: n=212 DAs that were approved or deferred commencement approval (263 DAs determined, 92 meetings, and 34 panels).

All of the nine DAs determined electronically were approved or given a deferred commencement approval.

Consistency with council assessment

In common with earlier quarters, most panel determinations in quarter 4 (63 per cent compared with 62 per cent in quarter 3) were consistent with council recommendations, with a further 31 per cent consistent with council recommendations but with some variations (in common with quarter 3) (Figure 50).

Figure 50. Breakdown of DAs determined by panels, according to consistency with council recommendation



Source: Council online IHAP reporting data.

Sample: n=263 DAs where a determination was made by panels.

Only 16 DAs recorded an inconsistent determination with council recommendations, with no inconsistencies recorded for panels in Sydney West and Sydney South West. On average, inconsistencies were relatively high for IHAPs in Sydney South (10 per cent).

In cases where panel determinations were inconsistent with council recommendations (16 DAs), panels:

- refused two-thirds of contentious developments for which council had recommended approval
- refused sensitive developments for which council had recommended approval, and
- reached mixed conclusions for applications involving departures from development standards – four DAs were approved for which council had recommended refusal and three approved for which council recommended approval (Table 12).

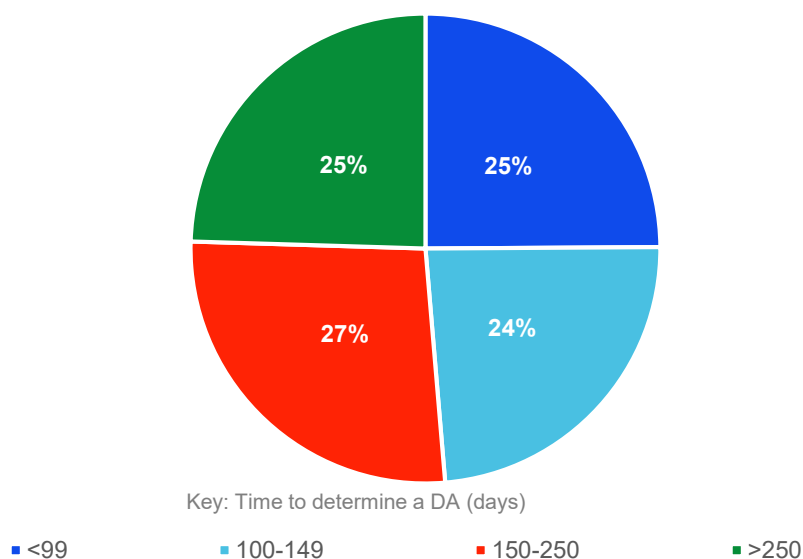
Table 12. Breakdown of panel determinations that were inconsistent with council recommendations, according to referral criteria

DAs with inconsistent determinations	Number of DAs	Panel determination	
		Approved	Refused
Sensitive development	2	-	2
Conflict of interest	-	-	-
Departure from development standard	7	4	3
Contentious development	9	3	6

Determination time

The average time for determinations in quarter 4 was 202 days (compared with 199 days in quarter 3). Around half of the DAs were determined in less than 150 days (Figure 51). Two DAs were determined in over 1000 days and 10 per cent of DAs were determined in 365 days or longer.

Figure 51. Proportion of DAs, according to determination time



Source: Council online IHAP reporting data.

Sample: n=261 DAs with a determination, with zero-valued entries excluded.

2.6 Panel advice on planning proposals

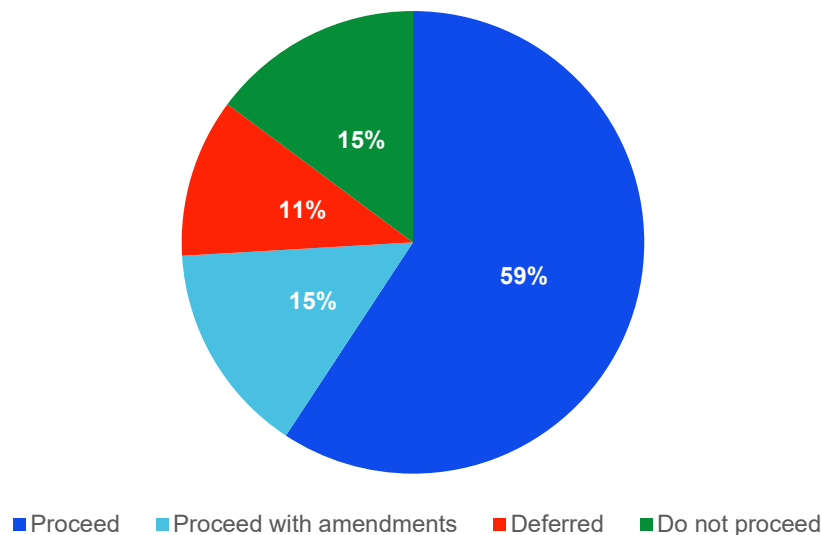
At the council directors of planning workshop it was indicated that, in relation to panel advice on planning proposals, the panels have not been put together with the right level of planning expertise to be making these types of decisions.

It was agreed that council staff need to discuss the local context and issues with the panel in relation to planning proposal matters.

Quarterly reporting from panels recorded 32 planning proposals being referred to panels, from 13 councils, and recorded 51 recommendations. DPE supplied supplementary information for 27 planning proposals, from 12 councils, with 23 recommendations made.

Of these 27 proposals, panels recommended that most proposals (74 per cent) proceed (with 15 per cent of these being recommended to proceed subject to amendments), with a further three proposals recommended to be deferred (Figure 52). Three proposals were recommended not to proceed.

Figure 52. Proportion of planning proposals that panels provided advice on, related to council recommendations



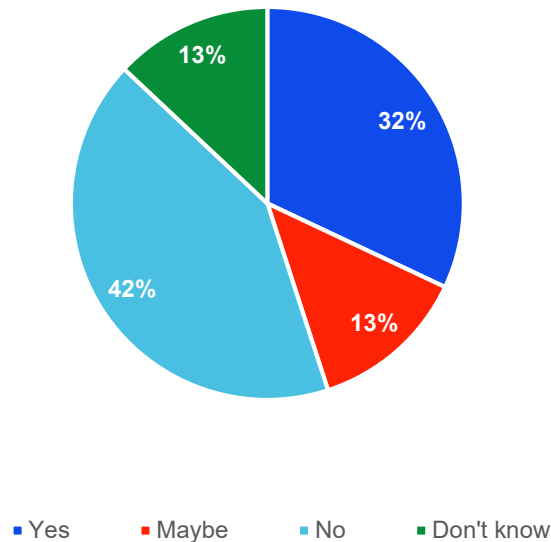
Source: DPE collected data on planning proposals.

Sample: n=27 planning proposals with recommendations information provided (12 panels).

For 26 proposals, DPE obtained data pertaining to whether council adopted the panel's recommendations. This data identified that councils generally agreed with panel recommendations (for 22 of the 26 proposals) with the remainder either indicated not yet considered (for three proposals) or disagreed by councils (for one proposal).

Of the surveyed community members who have had a recent experience with a panel in regard to planning proposals, nearly one third (32 per cent) agreed 'the expert advice on the planning proposal added value to the process' (Figure 53). However, 42 per cent said the expert advice did not add any value, and another 26 per cent 'did not know' or said 'maybe'.

Figure 53. Surveyed community members' perception of expert advice adding value to planning proposals



Survey question: Do you think the expert advice on the planning proposal added value to the process?
Sample: n=31 community members.

2.7 Costs and resources

The council case study paid the following remuneration to panel members: \$2200 to the chair, \$1500 to experts and \$620 to community representatives plus travel expenses for all panel members. Other costs incurred included technology set-up costs, catering, and printing and postage costs. The council did not account for the staff employment costs, other than for some nominal overtime payments.

At the council directors of planning workshop it was indicated that the panel is an additional agenda and an additional cost. There are also additional administrative costs. One council staff member indicated that there had been no saving in legal costs and for another council this cost has increased.

Workshop participants indicated that they usually spend around half a day to a full day preparing for the meeting and then approximately three quarters of a day to a full day for the meeting day (briefings, site visits, panel meeting and deliberations). Some panel members noted that there may also be post-meeting requirements. Some participants indicated that it is a struggle to fit everything into one day. One panel member found that eight items per meeting were too many and other panel member noted there was no consistency in the number of items that can be considered at the meeting.

2.8 Overall perceptions of panel operation

2.8.1 Key elements functioning well

Council staff and panel members from the council case study and panel members at the workshops raised the following points:

- **Efficiency of panel operation:** Council case study staff noted that the panel was running well operationally and administratively.
- **Quality of decision-making:** The panel removes the politics from decision-making. Workshop council staff reported that panellists go in detail through the reports and are trying to reach a correct decision. They have seen a strong commitment to make the panels work and witnessed professional standards of decision-making. There has been no loss of access to decision-makers

through the process. Panel members are able to hear what the local community think before making a decision.

- **Independence:** Panels are very independent and some council staff were surprised about this. In one example, an officer's report was not accepted and a different decision was made. From a council staff perspective, there are more balanced, independent views.
- **Positive public feedback:** People feel they are getting a 'fair go'.
- **Community representatives:** One council staff member noted that community representatives have embraced a role to speak for the public. This in turn encourages the councillors to advocate for the community without being a decision-maker.

2.8.2 Value add

Council staff and panel members from the council case study and workshops suggested the panel added value in the followings ways:

- **Conflict of interest:** The case study chair noted that the panel adds value for DAs that trigger the conflict of interest criterion, particularly when the council is an applicant or landowner.
- **Establishment phase:** The issues raised during the council directors of planning workshop were said to be part of the transition to a new system and a settling in period. It is necessary to have regard to the local context as what works in one area may not work in another and flexibility should be allowed.
- **Decision-making:** Inconsistency is one side of the coin, and the other is independent decision-making. One council director of planning indicated that overall the decisions were fantastic. If the panel is always the same where rotation does not occur there is the danger of corruption. Despite the purpose of the rotating roster this does not always work as the alternate chair could be one of the other expert members.
- **Council staff having to report to the panel:** This has led to a higher standard of professionalism. The staff reports need to ensure all matters are thoroughly addressed as panel members may question technical matters.
- **Legal focus:** One community representative noted that the panel is fixated on doing things legally and that legislation is determining the outcome. The community representative found this difficult.

2.8.3 Key challenges

Council staff and panel members from the council case study and workshops raised the following challenges and limitations:

- **Consistency with council recommendations:** Council staff indicated that they could not predict how the panel would determine an application as the panels often overstepped their role and sought further and/or irrelevant information and interpreted the council's planning instruments differently.
- **Local context:** Some council staff were concerned that some panel members were going beyond their realm of responsibility and applying inner-city council logic to a greenfield, high-growth area. Some staff indicated that other councils had experienced a similar problem. Decisions the panel make can reflect the lack of knowledge and appreciation of the difference between growth centres versus inner centres.
- Council staff thought that each panel needed to understand the local context. It was necessary to inform the panel of the local setting. Other council staff had indicated that they made awareness of local context a part of the panel briefing process.
- **Longer determination times:** Council staff indicated that it was harder to progress an application through the system as the panel tended to defer applications instead of making a decision straight away.
- **Panel membership:** Some councils indicated that some of the alternate chairs were less than satisfactory and would not have hired these panel members. However, selection of panel members by council were satisfactory.

- **Role of councillor:** Council staff noted that from a councillor's point of view, a large proportion of their role has been taken away. It was noted that some councillors were unhappy with the new system.
- **Strategic planning:** Council staff noted that one panel member had indicated that they did not have time to read the Community Strategic Plan. This was difficult from council's perspective and the panel member did not appear willing to learn.

2.8.4 Suggested areas of clarification and improvement

Council staff and panel members from the council case study and workshops suggested the following areas could be improved or clarified:

- **Naming convention:** The naming of panels is confusing and inconsistent, e.g. local planning panels and IHAPs.
- **Electronic determination:** The panel could determine all DAs by electronic determination if no submissions are received, unless council desires a face to face meeting with the panel to discuss the issues and ask questions (note that electronic determinations are already allowed).
- It would be useful for council staff to be able to refuse DAs that are inconsistent with planning controls that attract submissions, etc. under delegation rather than having to report to the panel. It was suggested that the panel could be a body to **approve** DAs rather than **determine** all DAs.
- A council's general manager should be able to nominate certain DAs to be determined by the panel. For example, those of large significance and interest to the community that may not meet the ten submissions threshold.
- **DPE guidance:** It would be helpful if DPE provided a clear, consistent definition of what constitutes a unique submission. DPE's website states that 'council assessment staff are best placed to determine whether a submission is 'unique''. This provides some broad guidance but it is open to interpretation.
- It would also be useful if DPE provided greater direction as to what constitutes 'development applications for which the developer has offered to enter into a planning agreement.' One council enters into VPAs for the development of new release areas. The VPAs generally deal with matters contained in a Contributions Plan and often cover the development of the entire estate. It is not practical to send all DAs for the development of the estate to the panel for determination nor should these DAs be viewed as sensitive development. Greater direction is sought in this regard.
- **Planning proposals:** Panel members requested clear DPE guidelines on the panel's role with planning proposals. The role of the panel in terms of planning proposals is unclear and does not seem to add value.
- **Appropriate referral criteria:** The referral criteria was inappropriate and required revision. For example, the sensitive development criterion was not appropriate in a high-growth area. If there are no objections and there are no departures from the controls then these applications should not be sent to the panel. Council staff indicated that assessment officers should be trusted and there should be more delegated applications for council officers.
- **Chair rotation:** This was described as 'a mess' and leads to inconsistent decision-making within a council. Having three different philosophical views is difficult for council officers to manage. The rotation of community representatives means they have too little involvement in the panel over one year.
- **Remuneration of community representatives:** Community representatives should be paid the same rate as experts. It was evident that some councils have adopted this approach. Views were mixed on this issue.
- **Discrepancy between preparation time and remuneration:** Participants indicated that they usually spend around half a day to a full day preparing for the meeting and then approximately three quarters of a day to a full day for the meeting day (briefings, site visits, panel meeting and deliberations).
- **Lack of webcasting:** Webcasting will soon be mandatory for council meetings. It would be worth working towards requiring live streaming of panel meetings.

- **Appeals:** Once a panel has made a decision it should no longer be involved in any legal proceedings and/or appeals. This should be dealt with by council (councillors were not involved in the appeal process).
- **Number of DAs considered at each meeting:** Some panels consider five DAs, other panels consider nine DAs. Consideration should be given to this issue, particularly as applicants and members of the public are present at the meeting. There should be flexibility to listen to concerns and not rush through the agenda. If there are too many items on the agenda this can have a negative impact on public perception.

Participants indicated that meetings should be capped at five items assuming some level of complexity to each item.

- **Design considerations:** A design review panel for councils that do not currently have such a panel would be of assistance.
- **Standardised report templates:** There should be a standard format report. It is particularly useful to have an executive summary providing firstly the key compliance and merit issues, followed by the detailed assessment.
- **Opportunities for community representatives to meet with each other:** Community representatives have not had the opportunity to talk to other community representatives. Panel members are interested in hearing one another's views.

3 Conflicts of interest, complaints, reviews and appeals

This section provides more detailed information on key findings in the Final Report related to conflicts of interest, complaints, reviews, and appeals. Data was primarily obtained via DPE and from OLG, the NSW Ombudsman and ICAC, the interagency meeting as well as the case study and IHAP webform data. As discussed in Section 1.2, the quarterly reporting of appeals, complaints, and reviews remains incomplete and difficult to interpret.⁷⁶

3.1 Conflicts of interest

At the panel member workshop, some chairs and experts who sit on multiple panels indicated that their approach is to not take work in the local government areas that their panels cover. It may be the case that their business will take projects but the panel member has no involvement in the project.

Another expert said that they had no issues with being a member of different panels and thought that it was in fact helpful. One panel member does not undertake work as a consultant in those council areas where they are a panel member if it is a matter that may go before the panel. The panel member was also advised that they cannot work for those councils e.g. as an expert in Land and Environment Court proceedings. It was expressed that clarification as to what constitutes a conflict of interest would be useful as a blanket exclusion but is quite onerous.

Case study

A panel member indicated they had applied for a contract position at the council on which they were panel member. This panel member did not see this as a conflict of interest and indicated that if their application was successful they would step down from their member role.

3.2 Complaints and issues

The level of data shared by some agencies means it is not possible to establish if there is overlap between these matters reported. It is also not possible to determine if there are patterns emerging. However, IPPG conducted an interagency meeting with ICAC, NSW Ombudsman, OLG and DPE on 28 March 2019 where it was agreed that steps should be, and are being, taken to improve the recording process and sharing of panel related complaints data (see section 3.2.4).

3.2.1 Code of conduct complaints

Two code of conduct complaints were recorded in quarter 4 (relating to the same council). One complaint was resolved through the dismissal of a panel member, while the other recorded the outcome as 'other' without further information supplied.⁷⁷

⁷⁶ This is due to limitations in the information obtained by IHAP webform and/or because matters are ongoing.

⁷⁷ This is due to limitations in the information obtained by IHAP webform and/or because matters are ongoing.

Case study

Council staff indicated that they had received two complaints. One complaint was received after the first meeting. An applicant complained about the way the panel ran. Staff indicated that the applicant was unhappy about the outcome of the application and therefore questioned the process. Notwithstanding, the council adjusted the panel script e.g. introductory remarks and explanations in relation to panel operations after the meeting to address the area of concern. An objector also complained about an application that the panel approved that the council had recommended be refused. This objector had not attended the panel meeting.

3.2.2 Other complaints

In total, there were four complaints recorded in the agency data provided from DPE, OLG, NSW Ombudsman and ICAC. However, one complaint concerned a Sydney Planning Panel and is therefore not relevant to the panel evaluation. This means that, in total, three complaints were received.

The complaints related to panel operation and panel decision-making. The complaints related to:

- A general objection to a DA and an allegation that the development cost may have been understated to avoid having the matter decided as 'regionally significant development' by a Sydney Planning Panel (at the relevant time). No further action taken.
- A DA was refused by a panel for a number of reasons. The applicant requested a review of the panel's decision to approve a new application rather than 'review' the previous decision of the prior panel meeting. The proposal was considered to be substantially the same as the original application. The Conservation Management Plan was required to be revised to include the cost of works schedule and timeframes associated.⁷⁸ The refusal of two development applications by a panel. The complainant listed objections by the proponent to the reason for the panel's determination to refuse the proposals. The matter was referred to council and the proponent sought clarification of the reasons for the decision. This third matter is not technically a complaint, rather a request for information.⁷⁹ However, the matter was still recorded by the agency who are awaiting a response.

3.2.3 Procedural issues

There were 14 procedural issues captured in the DPE issues register, including queries and comments relating to:

- community representatives: (re)naming, qualifications, remuneration and background checks
- members holding positions on multiple panels
- a review of referral criteria
- the negotiation of Voluntary Planning Agreements
- general panellist remuneration enquiries and comment
- the appointment of planning consultants to the panel
- procedure for inclusion in the expert's pool for panels
- the process to refer matters to council prior to panel consideration (Local Planning Panels Direction – Operational Procedures requires that assessment reports are not to be endorsed or presented to council prior to being forwarded to the panel) – amended so that reports are provided to panel prior to councillors
- the process to advise on planning proposals and usefulness of briefing session for panel members on various District Plans according to geographical area
- quality of submissions for Clause 4.6 variations

⁷⁸ No further information was supplied as to its status.

⁷⁹ Decisions made by planning panels are not bound by the complaints procedure.

- guidelines for managing conflicts of interest
- whether or not a DA would need to be referred to a panel for a site owned by a registered club (where one of the council's councillors sits on the club's board of directors), and
- a general question about a development assessment panel and its relationship with panels (whether there was a requirement for this panel to come into line with the local planning panel).

3.2.4 Summary of issues across year 1

IPPG conducted an interagency meeting with ICAC, NSW Ombudsman, OLG, and DPE on 28 March 2019. The meeting focused on the issues and potential patterns of any complaints regarding panels and councils during the first year of panel operation.

Key issues during the first year of panel related complaints data

- The number of complaints had remained low and there were no significant concerns. Most complaints raised were either perception based e.g. people failing to listen or those who felt they were denied the right to be heard, or were a dispute about the decision. Other examples included complaints about non-pecuniary conflicts, allegations that the consultant report on which the panel relied contained an error, omission or was corrupt and complaints about the panel's advisory role for planning proposals.
- In the first half of the year the complaints related to the appointment of panel members with a perceived conflict of interest and whether the panel members had sufficient contact and understanding of local community. In the second half of the year complaints related to operational matters around conflict of interest. This concerned council processes such as providing documents to panels and allegations that these documents had been manipulated or information had been withheld.

Process to handle complaints

- Previously agencies focused on issues with councillors and their conduct in relation to a decision made, rather than the merits of the decision. It was agreed that there is a need for greater clarity in the complaints handling process. This process could be streamlined and improved.

Agency identification of panel related complaints

The agencies discussed the complaints handling system and considered process improvements for identifying panel related complaints. Some points raised during the meeting included:

- Complaints are often about a council rather than the panel. The complainant may mention panels but the substance of the complaint concerns council processes.
- One agency needed to include 'IHAP' as a search term for their complaints handling process as this is currently a manual filtering exercise. It was noted that there is scope for error or missing data as this is an interpretative and subjective process.
- Sometimes the complaint names an individual but not the panel, and the panel member could sit on multiple panels. The problem can also be attributed to the different naming conventions e.g. IHAP, local planning panel, LPP. The lack of consistency means it is hard to identify complaints.

Cross-referencing of complaints to prevent double counting

Agencies were asked whether complaints are cross referenced when referred to other agencies to prevent double counting. It was agreed that process improvement was required.

- The difficulty is that there is no baseline information. It is unclear how many complaints are double counted. The complaint numbers by themselves do not identify doubling up.
- The agencies are trying to redo the classification so they can speak to each other and also compare data across agencies. Some agencies receive 1000 complaints per year about local government so there may be the same matter coming to multiple agencies agency. However, there was not thought to be much duplication.
- It is important to capture how many different and unrelated complaints are made. If complaints are increasing, this might be due to better awareness and/or perception of a problem.

Suggestions on how to improve the collection and reporting of panel related complaints data

Regarding the collection of panel complaints data it was agreed that the relationship between these agencies will continue to be important.

- The objective of panels is to improve transparency and to prevent the potential for corruption. However, the data cannot be interpreted to conclude whether or not the system is better or worse due to the absence of baseline data.
- Agencies discussed their willingness to share the number and nature of complaints and to which panel the complaint relates. This would allow for a panel that received many complaints to be identified and investigated. The issue can then be examined and if procedural in nature (rather than corruption being a cause) can be resolved relatively easily. If the panel cannot be separated out and identified, this diminishes the ability to have an extra layer of security for monitoring purposes. By linking complaints to the relevant panel, the problem can be better examined.
- It may also be helpful to consider how frequently complaints are referred to the Land and Environment Court.

Other matters: transparency and conflicts of interest

The agencies were asked for their views about the suitability of former councillors sitting on panels as community representatives.

- It was agreed that panellists should know what is happening in the local area and there is a need for input by people representing the broader public interest. Other factors such as the council, its location, and public perception of the councillor could play a role. Was the councillor divisive? It would be ideal to have a 'neutral' former councillor, but this balance would be difficult to find. This is a source of some of the complaints, as ex-councillors have a long track record and history of public decision-making. If the past views of the former councillor are easy to track, then their decision may be subject to scrutiny once on the panel. This has the potential to bring panel determinations into contention.

For panel members working as consultants in the LGA, the following points were discussed:

- This is a perception issue and it is important to examine the degree of separation. All consultants cannot automatically be precluded from the panel based on each past interaction within the LGA. It is necessary to take a balanced approach and it is impossible to say that members cannot have any connection whatsoever.
- Instead of excluding the consultants from the panel, there is a declarative model in place. It is important that each member is open about the work they do and have done that is related to the DA. This issue was considered as part of the establishment phase and the model has a very strong code of conduct. Disclosure is key and the reason for providing alternative panel members.
- Council select from a pool of members that DPE provides. The onus is on council to take this into account and choose to prohibit unsuitable candidates. Some councils have the rule that the consultant cannot be on the same panel when they work in that LGA. It was suggested that the screening process could be carried out earlier. However, the code of conduct addresses this issue and provides guidance to councils.
- Live streaming the meeting is one way to address the issue of accessibility and transparency.

3.3 Reviews and appeals

There were 11 internal section 8.2 reviews commenced in quarter 4 (compared to seven reviews commenced in quarter 3).⁸⁰ Nine reviews were completed within the quarter (seven of these were confirmed and two were reversed) and two reviews remain in progress.

Based on the council online IHAP reporting data, there were 32 appeals filed in the Land and Environment Court in quarter 4, with 11 appeals finalised. Data on the outcomes of six appeals was recorded in the

⁸⁰ Under Section 8.2 of the *Environmental Planning and Assessment Act 1979* (NSW), an applicant can apply for a review of the decision to refuse (or approve) a DA. Also an applicant can apply for a review of the conditions of a development consent (review of modification). There are statutory time limits for the making of a review application and also timeframes for the review process.

quarterly webform data, which identified that four appeals led to the confirmation of decisions and for two appeals the decision was reversed.

Four panels recorded legal expenses (\$6,397; \$60,000; \$44,667; and \$25,000) (compared to three panels incurring legal expenses in quarter 3). In the panel email update (13 February 2019), DPE indicated that in relation to court appeals:

- It is generally expected that council arranges legal representation to appear at court. Councils are responsible for managing court proceedings and can be subject to the 'direction and control' of the local planning panel under section 8.15(4) of the *Environmental Planning and Assessment Act 1979*.
- Panels need to provide clear instructions to council on whether the panel wants to remain involved in an appeal or not and maintain dialogue with council staff throughout. Some panels have delegated to the chair the authority to provide instructions on appeals.
- Council is responsible for remunerating members and experts in relation to court appeals. The Minister's Remuneration Determination sets out how panel members are to be paid.

At the council directors of planning workshop council staff indicated that of the applications that go to the panel there are very few appeals. This was estimated to be about seven per cent.

4 Stakeholder perceptions

This section provides additional information on key findings from the Final Report relating to key stakeholders' perceptions about panels. This has been synthesised from the community survey, media content analysis and the case study. In this section, stakeholders include: panel members, councillors, community members, applicants, objectors and council staff.

4.1 Understanding of and satisfaction with the panels

4.1.1 Views from the community survey

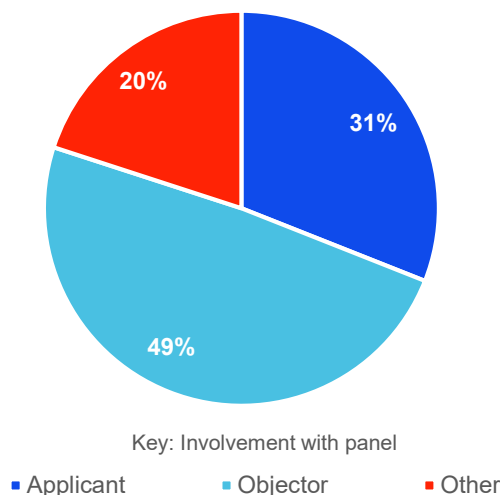
The IPPG community survey had two parts. Part I of the survey was for applicants, objectors and observers i.e. people directly involved with the panels. Part II was for all people directly involved as well as other community members who would like to have a say regarding the reforms (but who have not been directly involved).

4.1.1.1 Perceptions of surveyed community members who have had a direct experience(s) with a panel

Development applications

Sixty-eight per cent of surveyed community members have been involved with a panel one or more times since March 2018, with 88 per cent of involvement related to DAs. Of those who indicated involvement with a panel since March 2018, 31 per cent stated they were an applicant or consultant supporting a DA (Figure 54). Another 49 per cent indicated they were an owner, resident or another party (e.g. a consultant) objecting to a DA. The 'other' 20 per cent includes members of the community observing a sitting panel and/or council staff.

Figure 54. Surveyed community members' most recent experience with a panel



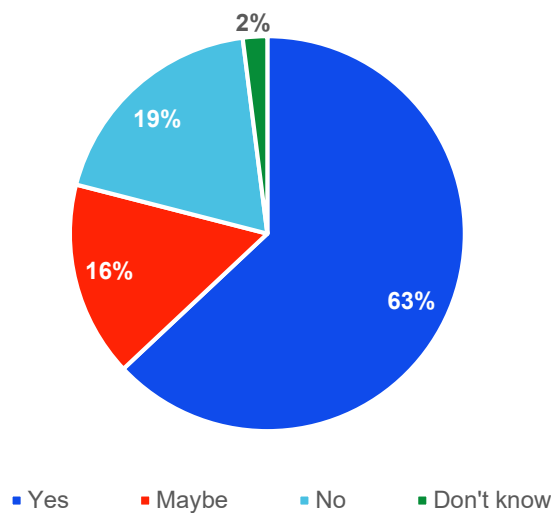
Survey question: Thinking about your most recent experience with a panel, please select which of the following best describes your involvement with the IHAP.
Sample: n=108 community members.

Forty-two per cent of surveyed community members interacted with a panel in relation to a residential DA⁸¹ and 32 per cent were involved in a sensitive DA.⁸² The remaining community members reported they were involved in either commercial (11 per cent) or 'other' types (12 per cent) of DAs.

Seventy four per cent of objectors were involved with sensitive and residential DAs, and just over half (52 per cent) of applicants were involved with residential applications.

Nearly two thirds of respondents (63 per cent) agreed that the most recent DA they were involved with warranted consideration by an independent expert panel (Figure 55). Applicants were less likely to agree with this statement (39 per cent) compared to objectors and other community members (70 per cent and 82 per cent were in agreement, respectively).

Figure 55. Surveyed community members' views about whether the DA warranted being referred to a panel



Survey question: Do you think the development application warranted consideration by an independent expert panel?
Sample: n=108 community members.

For community members who reported 'no' to the above question and chose to comment, many disagreed with particular DAs being referred to panels because the application was a departure from development standards, and accordingly should have been refused on this basis by the council. Conversely, community members who agreed that the DA warranted referral to a panel, stated that this was because the DA was a departure from the development standards and required an independent assessment.

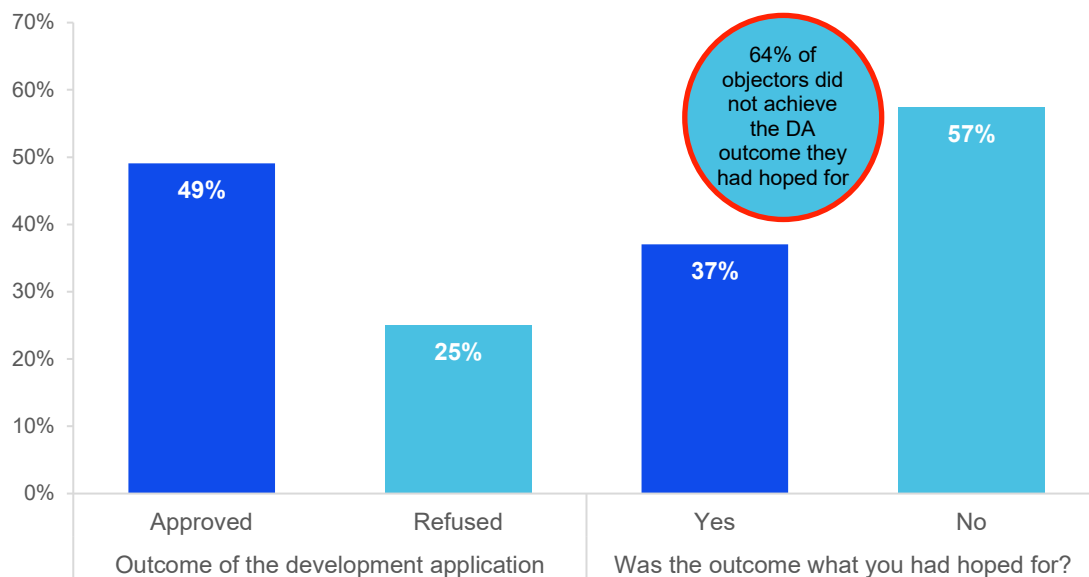
Surveyed community members reported that 49 per cent of DAs were approved and a quarter refused (Figure 56). Another 12 per cent of DA outcomes were deferred to a future panel meeting, and 10 per cent of outcomes received 'deferred commencement approval' dependent on meeting certain conditions.

Fifty seven per cent of all respondents did not achieve the DA outcome they had desired (Figure 56), with 64 per cent of objectors and 59 per cent of 'other' community members selecting 'no' to the question: 'was the outcome what you had hoped for?' Applicants of DAs were more evenly split in their satisfaction to the DA outcome.

⁸¹ Includes multi-dwelling, but excludes residential flat buildings.

⁸² Includes designated developments, residential flat buildings, demolition of heritage items, licensed premises, sex services and restricted premises.

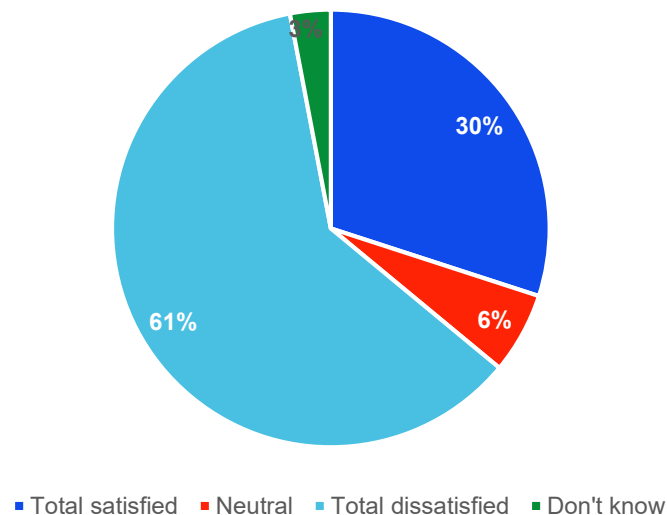
Figure 56. Outcome of DAs related to surveyed community members



Survey question: Was the outcome what you had hoped for? Option 'don't know / unsure' is not graphically represented.
Sample: n=108 community members.

When asked about their level of satisfaction with the outcome of the DA, community members who did not receive the result they wanted were more likely to be dissatisfied with the outcome of the DA (total dissatisfied, 95 per cent) – and more likely to be extremely dissatisfied (68 per cent) – than those who were had achieved the outcome they had hoped for (Figure 57). Conversely, those who did achieve the outcome they desired were more likely to be satisfied (total satisfied, 73 per cent).

Figure 57. Surveyed community members' satisfaction with the outcome of the DA

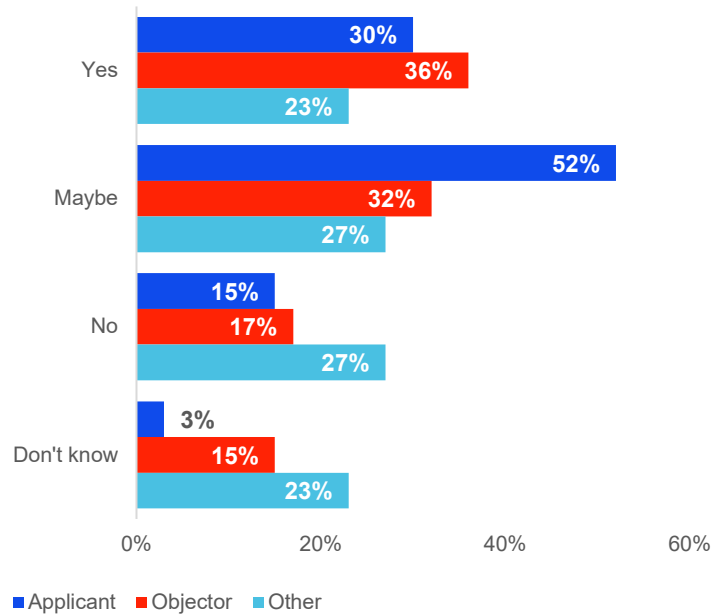


Survey question: How satisfied were you with the outcome of the development application?
Sample: n=108 community members.

Community members were also asked about whether they thought the outcome of the DA would have been different if councillors determined the application rather than the panel. Thirty per cent of applicants and 36 per cent of objectors agreed the outcome would have been different, while 52 per cent of applicants (and 32

per cent of objectors were unsure. Other community members were more evenly divided in opinion, but were more likely to report 'no' or 'don't know' compared to other target groups (Figure 58).

Figure 58. Surveyed community members' views whether the panel determination would have been different if councillors determined the application



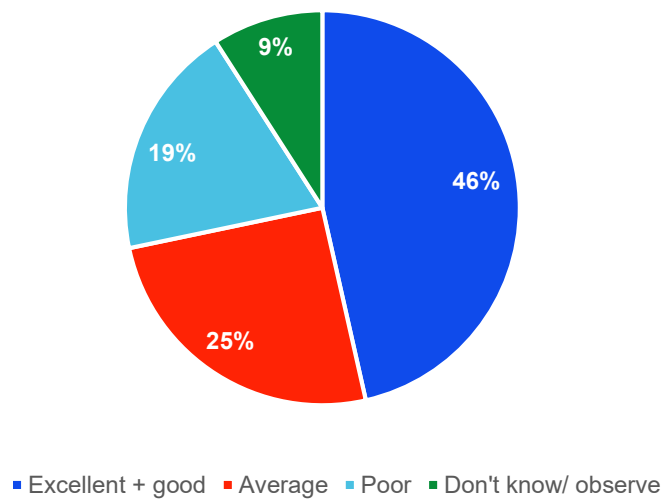
Survey question: Do you think the outcome of the development application would have been different if councillors determined the application?

Sample: n=108 community members.

Of the surveyed community members who have had experience with a panel, 46 per cent rated the level of panel members' expertise as 'excellent' or 'good', while 19 per cent of respondents rated the panel members' expertise as 'poor' (Figure 59).

It should be noted that the outcome of the DA may have influenced responses. Those who cited the panel members' expertise as 'excellent' or 'good' were more likely (70 per cent) to have had achieved the outcome they had hoped for with their most recent DA. In contrast, those who did not achieve the outcome they had hoped for were more likely (32 per cent) to rate the level of expertise as 'poor' – and be an objector or other community member.

Figure 59. Surveyed community members' perception of panel members' expertise



Survey question: How would you rate the level of panel members' expertise?
Sample: n=108 community members.

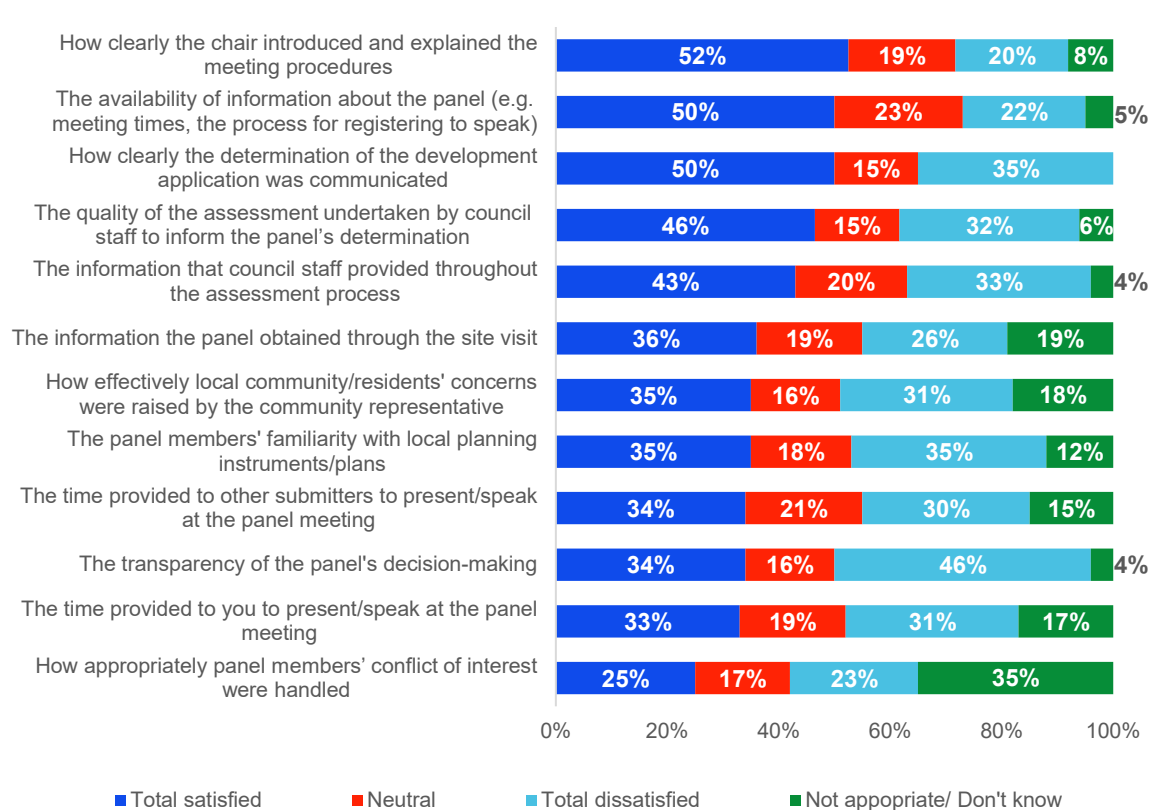
When asked about their level of satisfaction with certain elements of the current panel processes, community members were most satisfied with the:

- chair's introduction and explanation of meeting procedures (total satisfied, 52 per cent), and
- availability of information about the panel's meeting times and on how to register to speak (total satisfied, 50 per cent).

Compared with other elements, the level of satisfaction regarding how effectively local community concerns were raised by the community representative was more evenly split (Figure 60).

A significant proportion of the surveyed community members were dissatisfied (total dissatisfied, 46 per cent) with the transparency of the panel's decision-making processes, with 31 per cent (a significant number) extremely dissatisfied with this element. Community members were also much less likely to be satisfied (total satisfied, 24 per cent) with how appropriately the panel members' conflicts of interest, if any, were handled. However, a significant proportion could not comment on this element (don't know/not appropriate, 35 per cent).

Figure 60. Surveyed community members' degree of satisfaction with elements of the panel process



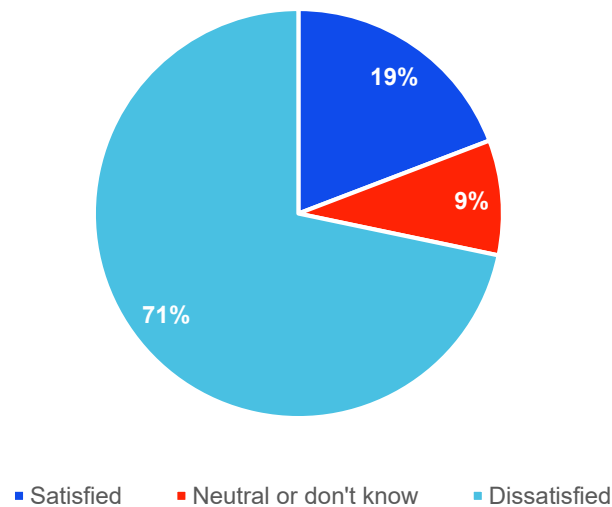
Survey question: How satisfied were you with the following?
Sample n=170 community members.

Planning proposals

Of the surveyed community members who have been involved with a panel one or more times since March 2018, 26 per cent were involved with a planning proposal(s). For most planning proposals (64 per cent), the panel advised the proposal to proceed or to proceed with amendments, while nearly a third (32 per cent) were advised not to proceed, or were deferred.

Seventy one per cent of surveyed community members were dissatisfied with the most recent outcome of the planning proposal (Figure 61). Of those who were dissatisfied with the outcome, most were likely to be an objector to the proposal.

Figure 61. Satisfaction with the outcome of the planning proposal



Survey question: How satisfied were you with the outcome of the planning proposal?
Sample: n=31 community members.

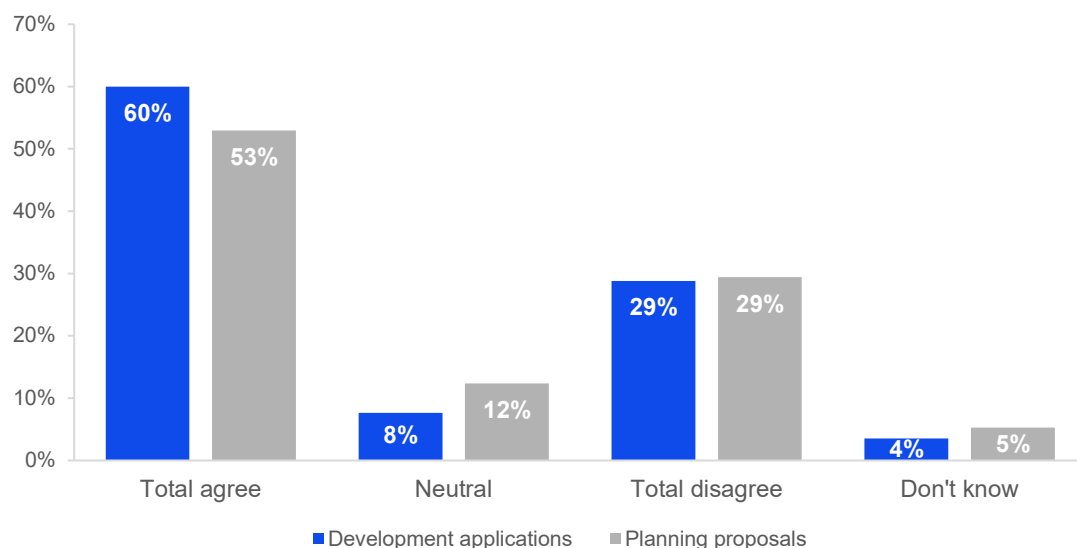
4.1.1.2 Perceptions of surveyed community members and their experience with a panel

Appropriateness of panels and referral criteria

Most respondents agreed that panels are an appropriate way to determine certain DAs and advise on planning proposals (Figure 62). The level of agreement did not decrease by a significant amount as the number of interactions with panels increased, highlighting a consistency in opinion about appropriateness.

Specific to DAs, surveyed community members were more likely to agree (total agree, 90 per cent) with the appropriateness of panels if the outcome of the most recent DA was what they had hoped for. Conversely, community members were more likely to disagree (total disagree, 42 per cent) and strongly disagree (32 per cent) with the appropriateness of panels if the outcome was not what they had hoped for.

Figure 62. Surveyed community members' views on the appropriateness of panels determining DAs and advising on planning proposals



Survey question: Please indicated your level of agreement with the following statement: IHAPs are an appropriate way to determine certain development applications/ planning proposals.
Sample: n=170 community members.

Operation of panels

Overall, surveyed community members were less likely to agree (total agree, 24 per cent) with the statement 'the IHAP process is operating well'. Nearly half of respondents disagreed with this statement (total disagree, 47 per cent), and a significant proportion (31 per cent) strongly disagreed with the current panel process. Another 29 per cent were neutral or did not know (Figure 63).

The main reasons that community members gave that the process is not operating as well as it could were because:

- the community was inadequately informed about the new panel system and processes
- of concerns that an independent panel were unaware of the local issues
- of inadequate access to information about the new panel system
- of a perceived conflict of interest, and
- of the lack of opportunity provided to objectors and residents to be heard.

In the online survey, community members were also given the opportunity to provide open feedback on the current panel process. Additional themes arose about the:

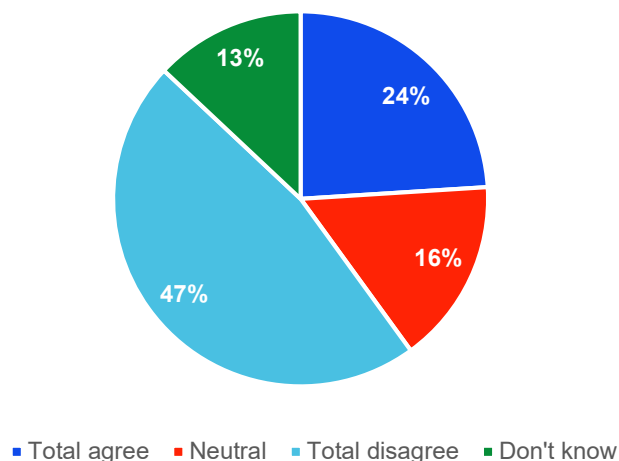
- lack of accountability of panel members
- lack of emphasis given to objector's and resident's views in the decision-making process
- panel members' reduced knowledge about the local community, and
- issues of trust.

Most noticeably, surveyed community members raised concerns around the lack of accountability for the decisions being made by the panel members. A number of respondents felt they could no longer exert democratic influence over DA outcomes as the new panel model removed elected council members from the decision-making process. Similarly, views were expressed about the panel members' perceived lack of knowledge of community issues and culture – with independent panel members widely viewed as experts not from, or familiar with, the local area.

Respondents also commented that local community concerns and objections to DAs are not taken into account in the panel decision-making process, while some community members stated panel deliberations should held in public to ensure greater transparency and due process.

A number of respondents reported feelings of distrust around the independence of panel members and their perceived conflict of interest. Many cited that the panel should not be directly employed through the state government and argued for a strict criteria to ensure the independence and expertise of panel members.

Figure 63. Surveyed community members' level of agreement with the statement 'the IHAP process is operating well'

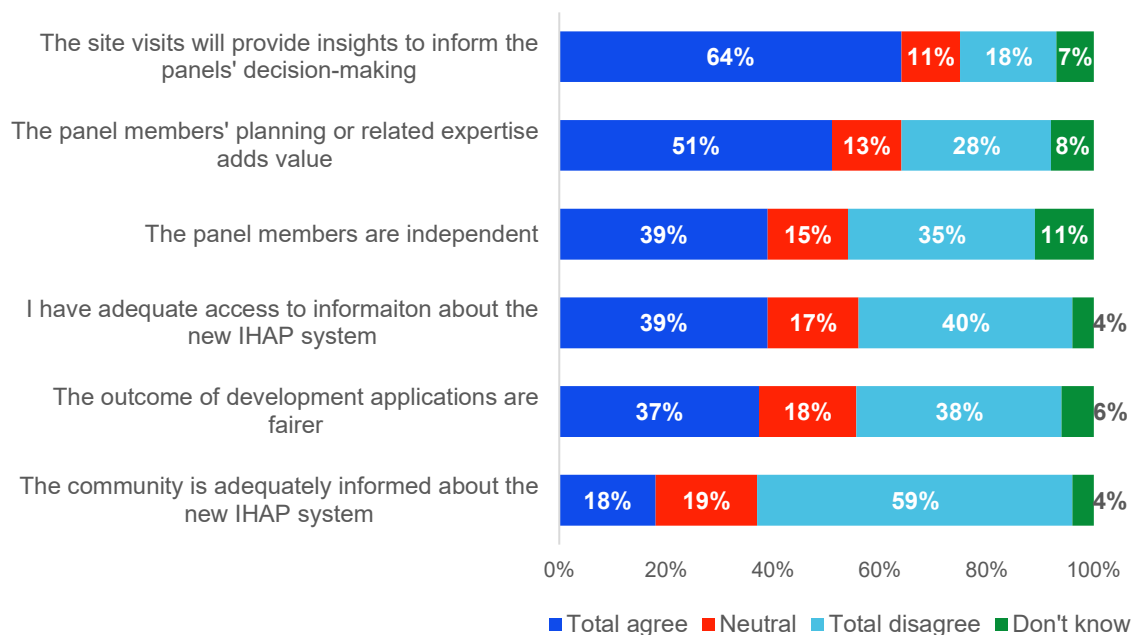


Survey question: Please indicate your level of agreement with the following statement: The IHAP process is operating well.
Sample: n=170 community members.

A significant proportion of community members:

- agreed (64 per cent) with the statement 'the site visits will provide insights to inform the panels' decision-making'
- agreed (51 per cent) that 'the panel members' planning or related expertise adds value' to the DA process, and
- disagreed (59 per cent) that the community was adequately informed about the new IHAP system (Figure 64).

Figure 64. Surveyed community members' level of agreement about elements of the panel processes



Survey question: Please indicate your level of agreement with the following statements.
Sample: n=170 community members.

4.1.2 Views reported in the media

Similar to previous quarters, in quarter 4 newspaper articles tended to focus on community concerns about overdevelopment in the local area. Articles focused on a specific DA that was either considered, or due to be considered, by a panel. During this quarter there were more references to appeals to the Land and Environment Court than in previous quarters.

Monthly snapshot (January to March 2019)

January 2019: Articles focus on specific DAs with passing reference to panels. New large developments placing pressure on infrastructure was a recurrent theme.

February 2019: Articles focus on overdevelopment that is out of touch with the character of the area. Articles about applications that are contentious in the local community, for example, development applications for boarding houses.

March 2019: High rise developments or large residential units set to be heard by panel were a common subject of reports. Articles frequently referred to the relationship between overdevelopment and traffic.

4.1.2.1 Key themes

The following key themes were identified in the newspaper reporting:

- appeals to the Land and Environment Court
- concerns regarding overdevelopment and infrastructure
- contentious applications in the local area, and
- impacts on the community.

Appeals to the Land and Environment Court

Several articles referenced appeals to the Land and Environment Court. In one instance, when the DA was lodged, a townhouse development received many objections relating to non-compliance issues and unjustifiable impacts on neighbours. Following community objections, it was reported that the developer moved on the grounds of 'deemed refusal' of the DA to bypass council and the panel and proceeded directly to the Land and Environment Court.⁸³

One article detailed a council's spending on legal disputes, which was reported to have increased by 18 per cent over the previous 12 months.⁸⁴ The cases involved developers appealing to the Land and Environment Court after council planners rejected proposals relating to boarding houses, high-rise buildings and a liquor outlet. The reasons for refusal related to unacceptable height limits, impacts on ocean views and incompatibility with the local area. However, it was reported that the rise in appeals was not related to the introduction of the panels. The panel had processed 60 applications and one planning proposal (from March to November 2018) and only two appeals that were related to those determinations had been lodged to date.

Other references to legal proceedings included that a council and the Land and Environment Court rejected initial plans for a childcare facility. However, this was later approved by the panel after the developer scaled back the building and reduced the number of proposed places.⁸⁵ Another article stated that the panel ruled a gym was in breach of its operating consent but now faced an 'expensive legal challenge in the Land and Environment Court to keep the doors open.'⁸⁶

Some articles noted the increase in number of boarding house applications that residents argued were not 'compatible with the surrounding area' and noted that several of the current applications are the subject of appeals. It was reported that where developments are refused by the Local Planning Panel, applicants are confident they can successfully appeal in the Land and Environment Court.⁸⁷ This is because boarding houses are permitted with consent according to the council's LEP.

Overdevelopment and infrastructure

In quarter 4, overdevelopment in the local area continued to be a common theme.⁸⁸ Concerns regarding overdevelopment frequently related to reports of large scale residential developments and articles would detail the size of the apartments and price of the development.⁸⁹ Similar to quarter 3, articles frequently linked overdevelopment with lack of infrastructure. For example, residents objected to plans for a \$34 million housing development on the basis that the necessary infrastructure, i.e. roads, was not in place and the development failed to provide sufficient communal open space.⁹⁰

Overdevelopment and traffic congestion was a common theme in the reporting.⁹¹ Some reports detailed how a local planning panel had rejected a development application 'to the delight of neighbours' in a decision that had implications for future development in the area. It was reported that the panel suggested that a 'holistic' view of the cumulative effects of traffic should be adopted. This was necessary to show how much

⁸³ Murray Trembath, '18 townhouses proposed for two blocks in quiet little corner of Jannali' *St George & Sutherland Shire Leader* (26 Feb 2019).

⁸⁴ David Barwell, 'Randwick Council spends \$1.4m in legal challenges with developers' *The Daily Telegraph* (23 Jan 2019).

⁸⁵ Murray Trembath, 'Childcare centre development in Miranda approved with reduced numbers' *St George & Sutherland Shire Leader* (23 Jan 2019).

⁸⁶ Matt Taylor, 'Anytime Fitness, Gladesville faces closure over noise, security issues' *The Daily Telegraph* (8 Jan 2019).

⁸⁷ Ben James, 'Fears boarding house decision could 'destroy' northern beaches' *The Daily Telegraph* (26 Feb 2019).

⁸⁸ Jake McCallum, 'Hornsby Action Group fight to stop construction of units, townhouses at Asquith' *The Daily Telegraph* (26 Mar 2019) and Matt Taylor, 'Epping at 'crisis point' as rapid development cripples suburb' *Weekly Times Now* (17 Mar 2019).

⁸⁹ Jake McCallum, 'Hornsby Council receives 200-unit development application for Waitara' *The Daily Telegraph* (14 Mar 2019).

⁹⁰ Ben James, '\$34m development planned for vacant northern beaches land' *The Daily Telegraph* (9 Jan 2019).

⁹¹ Ben Langford, 'Council busy not listening to advice on Thirroul traffic' *Illawarra Mercury* (6 Mar 2019) and Jim Gainsford, 'High-rise apartments to be built next to Mortdale Railway Station' *St George & Sutherland Shire Leader* (5 Mar 2019).

more development could not be allowed in the area given the capacity of the road network and worsening congestion in the area.⁹²

Contentious applications in the local area

Articles with a negative tone tended to relate to development applications that were in breach of the Local Environmental Plan (LEP) and/or variations from development standards.⁹³ In an example of non-compliance, one article detailed a luxury development that would exceed building height and floor space ratio requirements set out in the LEP.⁹⁴ Another example included a four-storey apartment building that did not comply with council's development control plan in relation to the building's setbacks, fence height, building materials, car and parking access and waste management.⁹⁵ However, these articles tended to focus on the development application and the effect on the local community, rather than panel operation or panel decision-making.

Contentious developments were frequently large in scale. For example, local residents objected to a retirement village where the design was described as 'over-development' of the site as the height was too great for medium density housing.⁹⁶ Controversial applications were typically development applications that were in breach of regulations, for example, an application that failed to meet requirements for floor space, built form and amalgamation with an adjoining property.

One article described the 'proliferation' of boarding houses in the local area and residents spoke out about boarding houses being 'imposed' on them without prior consultation.⁹⁷ It was reported that residents had raised concerns about traffic, amenity, proximity to schools and the type of occupants the dwellings would attract. This was part of a wider discussion in the article about overdevelopment in the area and whether this was attributable to the local council or the State government.

Impacts on the community

Many reports addressed the social impact that specific DAs would have on the community. These impacts were described in both positive and negative terms.

Examples of positive impacts were related to a 'water splash park', which was touted as an area's 'future premier recreation arena'⁹⁸, and a proposed shopping area and 70 apartments, which were earmarked as a 'gateway feature'.⁹⁹ Some articles referenced development applications that were open to receive submissions from the public and/or were currently being prepared for public exhibition. In these reports, the article was merely descriptive of the application and stated that the relevant local planning panel would likely hear the application.¹⁰⁰

In contrast, other articles highlighted the potential negative impacts of DAs on the community and related to safety, traffic, noise, and amenity. For example, a childcare centre that gave rise to safety and traffic conflict concerns,¹⁰¹ a swimming centre that was inconsistent with the local planning panel zone and would lead to traffic and parking issues,¹⁰² and a development application for two blocks that received objections relating to privacy, traffic and parking impacts.¹⁰³ One development application for a four-level boutique hotel was contentious due to its impact on adjoining neighbour's privacy and traffic impacts.¹⁰⁴ Another application was refused by a panel because 'the building design fails to strengthen, enhance or integrate into the existing character of the Sutherland Centre, or contribute positively to its desired future character.'¹⁰⁵ The need for a

⁹² Ben Langford, 'Thirroul townhouses rejected as a 'bad precedent' for the area' *Illawarra Mercury* (14 Feb 2019). See also Ben Langford, 'Standstill: Council's stance on Thirroul traffic not shifting' *Illawarra Mercury* (14 Mar 2019).

⁹³ Jim Gainsford, 'High-rise plan for Kogarah Bay foreshore site' *St George & Sutherland Shire Leader* (29 Mar 2019).

⁹⁴ Murray Trembath, 'Nine-storey apartment block proposed for very small block near Ozone site in Cronulla' *St George & Sutherland Shire Leader* (25 Mar 2019).

⁹⁵ Ashleigh Tullis, 'North Wollongong foreshore apartment proposal likely to be rejected' *Illawarra Mercury* (12 Feb 2019).

⁹⁶ Steven Deare, 'Aveo Mosman Grove retirement village irks neighbours' *Mosman Daily* (15 Jan 2019).

⁹⁷ Alena Higgins, 'Council bites back over boarding houses' *Western Weekender Online* (27 Feb 2019).

⁹⁸ Daniel McGookin, 'Ron's Creek Park given green light' *The Daily Telegraph* (31 Jan 2019) and Kayla Osborne, 'Region's biggest splash park set to be built in Oran Park' *Camden-Narellan Advertiser* (4 Feb 2019).

⁹⁹ Daniel McGookin, 'Apartments proposed for Elderslie' *The Daily Telegraph* (16 Jan 2019).

¹⁰⁰ Steven Deare, 'Turramurra shops set for apartments under GSW Property plan' *The Daily Telegraph* (20 Feb 2019) and Eric Kontos, 'On the way: \$200 million boost to seniors' living in Campbelltown' *South West Voice* (15 Feb 2019).

¹⁰¹ 'Motor scooter rider and passenger killed at Kingsgrove in crash involving bus and car' *St George & Sutherland Shire Leader* (29 Jan 2019).

¹⁰² Ben James, 'Swimming school to open in Maroubra' *The Daily Telegraph* (9 Jan 2019).

¹⁰³ Murray Trembath, 'Residents highlight new issue in fight against developments at Sylvania and Caringbah' *St George & Sutherland Shire Leader* (6 Feb 2019).

¹⁰⁴ Sue Williams, 'Proposed boutique hotel in Redfern angers residents' *Commercial Real Estate* (1 Feb 2019).

¹⁰⁵ Murray Trembath, 'DA for nine-level block opposite train line at Sutherland 'should not be approved' *St George & Sutherland Shire Leader* (18 Feb 2019).

development application to align with the character of the local area had previously appeared in articles published during quarters 2 and 3.

4.2 Reform objectives

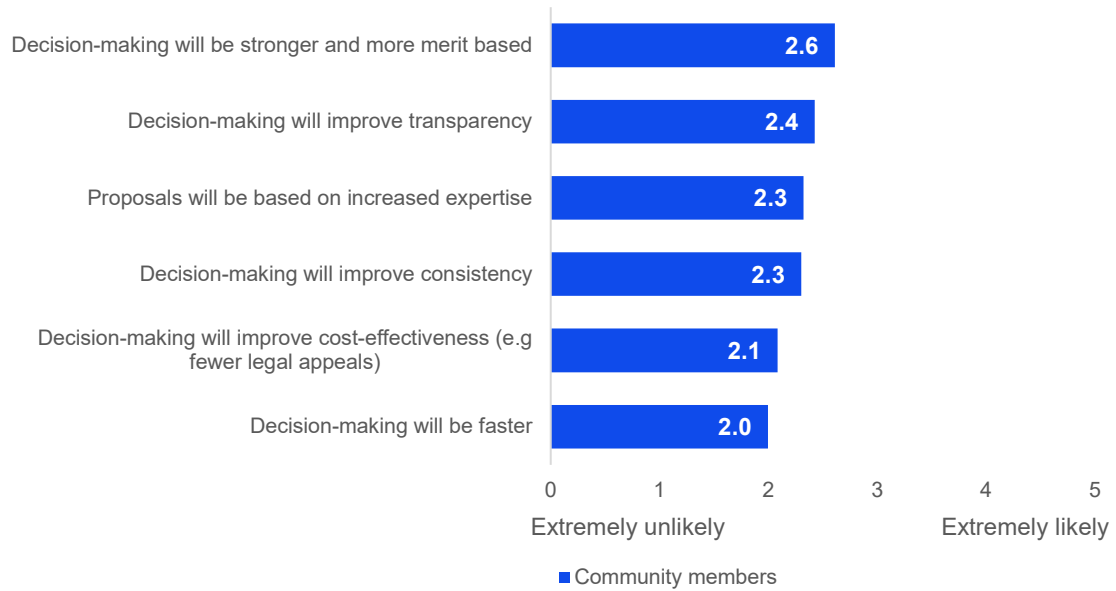
At the council directors of planning workshop it was indicated that:

- There are many small development applications that do not warrant determination by a panel. Councils have a high number of small applications with a minor impact and this is perceived to affect panel efficiency. It was suggested that if the minor matters were removed this would make the panel process more efficient.
- In relation to panel efficiency and the number of meetings held, one council had held its second panel meeting in one month. In contrast, other councils held one meeting per month but it takes six to eight weeks for a matter to be put on the agenda. This indicates that there were differences in the length of time an applicant would have to wait to have their application heard.
- To unclog the system the DA should be called up and out of panel hands. It was suggested that there should be some guidance from DPE to council staff about what the panel could send back to council.
- Councillors have been more interested and involved in strategic planning because they have been taken out of the DA process. Councils indicated they had to divert resources from council projects to LSPS, which means there has been a refocus away from DAs. Other council staff indicated the focus has shifted to policy rather than strategic planning, for example, boarding houses and land use type.
- It was suggested that DPE need to stay on track and give consistency and commitment to projects such as the implementation of local planning panels. It was noted that council resourcing is one of the main issues for these sorts of projects.
- Some council staff do not want guidance from DPE. However, it would be more helpful to have access to what other councils are doing. It was indicated that this type of information was more valuable to councils.

Surveyed community members were asked how likely it was under the new panel model that certain objectives would be achieved. Surveyed community members held fairly neutral opinions about how the panel reforms would contribute to these objectives (Figure 65, likelihood scale from 0 to 5).

Community members were most optimistic that decision-making would be more merit-based and more transparent. Overall, community members tended to perceive that most of the other reform objectives were less to be achieved through the current panel model.

Figure 65. Surveyed community members' views on the likelihood that the panel model will meet reform objectives



Survey question: Thinking about the new IHAP system, how likely is it that:
Sample: n=170 community members.