

# Local Planning Panels (IHAPs) Evaluation

Final report (April 2018 – March 2019)

**Institute for Public Policy and Governance**

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## Table of acronyms and abbreviations

<b>CSPs</b>	Community Strategic Plans
<b>DAs</b>	Development Applications
<b>DCPs</b>	Development Control Plans
<b>DPE</b>	Department of Planning and Environment
<b>LEPs</b>	Local Environmental Plans
<b>LGA</b>	Local Government Area
<b>LPPs</b>	Local Planning Panels
<b>ICAC</b>	Independent Commission Against Corruption
<b>IHAPs</b>	Independent Hearing and Assessment Panels (known as Local Planning Panels under the <i>Environmental Planning and Assessment Act</i> 1979 (NSW))
<b>IPPG</b>	Institute for Public Policy and Governance
<b>OLG</b>	Office of Local Government

# Executive Summary

On 1 March 2018, the NSW Government introduced requirements for all councils in Greater Sydney and Wollongong (34 councils) to establish an Independent Hearing and Assessment Panel (IHAP), known as a Local Planning Panel under the *Environmental Planning and Assessment Act 1979* (the Act).

The role of a panel is to determine certain types of local development applications (DAs) on behalf of councils and provide expert advice to councils on planning proposals. The objectives of introducing panels are to reduce corruption risk, promote more consistent decision-making, enhance expertise in decision-making, promote faster decisions, and over the long term, improve the capacity of councils to undertake strategic planning.

## The evaluation

The NSW Department of Planning and Environment (DPE) engaged the University of Technology Sydney's Institute for Public Policy and Governance (IPPG) to monitor and evaluate the implementation of IHAPs (panels) over the first year of their operation.

The evaluation will inform decisions about whether policy settings and referral criteria should be changed and evaluate (after a period of operation) whether the panel reforms met policy objectives.

IPPG, in collaboration with DPE and stakeholders, developed a program-logic to frame the evaluation (Appendix A). The program logic identifies the immediate, intermediate and long-term outcomes of the reforms, and how these ultimately contribute to system outcomes. This first year reporting refers to the immediate and intermediate outcomes of the reform process.

## Key findings

All 34 panels across greater Sydney and Wollongong have been established and are operational.

Overall the implementation of panels has been successful with respect to their objectives.

Surveyed panel members and directors of planning reported that the panel process is operating well.

Surveyed chairs, experts, council directors of planning, and community members express the view that panel reform objectives are being achieved.

In the first 12 months, 483 panel meetings were conducted; panels considered 1759 development applications and 1592 determinations were made. Panels deferred 141 development applications. Findings suggest it is likely that a majority of the deferrals may have been determined throughout the course of the year.

Panels provided advice on a total of 112 planning proposals.<sup>1</sup>

In relation to the evaluation questions, this report shows that:

- Overall, panels have been found to contain an appropriate range and depth of expertise, and 46 per cent of surveyed members of the community who have had experience with a panel rated the level of panel members' expertise as 'excellent' or 'good'. (Evaluation question: Are local planning decisions merit-based?)
- A majority of planning proposals were recommended to be approved across the four quarters. There is some lack of clarity regarding the role of panels in planning proposals, but most surveyed community members agree that panels are an appropriate way to determine certain DAs and advise on planning proposals (Evaluation question: Are decisions about planning proposals based on expert advice by LPPs?)
- The panel reforms provide a consistent framework for decision-making while allowing councils flexibility around panel procedures. Throughout the quarters, the number of DAs being reported as being outside the scope of the referral criteria decreased, and the consistency between council staff recommendations and panel determinations increased in each quarter (Evaluation question: Do key stakeholders report increased consistency of the LPP process across councils?)

The Department has provided considerable support to the panels and this has been successful in strengthening the success of their implementation.

<sup>1</sup> DPE collected planning proposal data for quarters 2, 3 and 4.

### ***Expertise informing decision-making***

The recruitment of specific expertise, with the determinative role of the panels, demonstrates that the reforms have delivered expert based local decision-making.

Data indicates that a high level of expertise and familiarity with planning controls is being brought to the local development determination process. There have been positive community perceptions of panel members' expertise. The evaluation demonstrates that the panel processes bring expertise to local planning decisions.

Panel members are familiar with the council statutory and strategic planning instruments. It is anticipated that knowledge of local strategic plans will increase during 2019 as a result of the implementation of the Local Strategic Planning Statements.

The evaluation assessed the degree of support and advice provided to panels and it was found that there was a broad range of support tools offered to all parties associated with the panel process. Departmental briefings were highly valued.

### ***Consistency in decision-making***

The panel reforms are intended to provide a consistent framework for decision-making while allowing councils flexibility around selecting the procedures and processes that work for their panel meetings. This was reflected in the findings, with councils taking different approaches to the timing of when panel meetings are held, deliberation processes and interactions with council staff.

Across the four quarters, most DAs determined by panels were approved (or approved with deferred commencement), with most decisions made by panels consistent with council recommendations.

### ***Referral criteria***

Most DAs considered by panels triggered one referral criterion. Over the course of the year, the most commonly reported referral criterion triggered was the departure from development standards.

Data about the referral criteria indicates that the criteria are largely capturing the volume and type of DAs expected. However, some panel members and council staff report that in some cases simple DAs were being referred to panels and the appropriateness of referral criteria could be refined. Some concerns were raised in relation to the time and cost implications for panels that determine a large volume of these types of relatively minor matters.

### ***Next steps***

The half year report recommendations have all been adopted and implemented by DPE.

The agreed focus for demonstrating outcomes for years two and three are the following:

- increased probity in the planning decision-making process
- timely, consistent, transparent and cost effective assessment processes, and
- improved council capacity to conduct strategic planning.

Progress toward these year two outcomes, particularly with respect to increasing probity in planning decisions is already being demonstrated.

# 1 Introduction

## 1.1 Planning reforms and the establishment of panels

In 2017, the NSW Parliament introduced mandatory requirements for all councils in Greater Sydney and Wollongong to establish an IHAP (known as a Local Planning Panel under the Act) to determine certain types of local DAs and to provide expert advice to councils on planning proposals.<sup>2</sup> These requirements took effect on 1 March 2018.

Sixteen councils in NSW already had IHAPs at the time the reforms commenced.<sup>3</sup> Other councils in NSW may establish these panels but are not required to do so.

The main objectives of the panels are to:

- minimise corruption risk for local planning
- promote better planning outcomes through greater expertise, independence, and probity in decision-making
- ensure people with expertise have a determinative role on DAs
- promote consistent decision-making and enable faster decisions, and
- improve capacity for councils to undertake strategic planning functions.

The role of the panels is to determine DAs:

- where there is risk of a conflict of interest (e.g. an applicant or landowner is the council, councillor or council staff, or a member of State or Federal parliament)
- that are contentious (multiple objections received)
- that depart from the development standards, or
- propose sensitive development.

The Ministerial direction tailors the DA referral criteria to three groups of councils. These are:

- Group A (Schedule 1) – most councils
- Group B (Schedule 2) – councils that determine more than 1800 DAs and have a population over 200,000, and
- Group C (Schedule 3) – City of Sydney.

Different thresholds are applied to each of these groups.<sup>4</sup>

<sup>2</sup> In addition to the Act, panels are governed by a range of statutory rules, including Code of Conduct for Local Planning Panel Members; Local Planning Panels Direction – Operational Procedures; Remuneration Determination – the Act; Local Planning Panels Direction – Development Applications; Local Planning Panels Direction – Planning Proposals and Local Planning Panels Direction – Planning Proposals. For further information, see [www.planning.nsw.gov.au/assess-and-regulate/development-assessment/independent-hearing-and-assessment-panels/statutory-rules](http://www.planning.nsw.gov.au/assess-and-regulate/development-assessment/independent-hearing-and-assessment-panels/statutory-rules).

<sup>3</sup> Bayside, Canterbury-Bankstown, Cumberland, Georges River, Inner West, Land Cove, Liverpool, Mosman, North Sydney, Northern Beaches, Parramatta, Strathfield, Sutherland, Waverley, Wollongong

<sup>4</sup> Local Planning Panels Direction – Development Applications, the Act, Section 9.1.

## 1.2 The evaluation

In 2017, DPE engaged IPPG to monitor and evaluate the implementation of the panels.<sup>5</sup>

The short, intermediate, long-term and ultimate objectives of the evaluation are to:

- inform, after a reasonable period of panel operation, decisions about whether policy settings and referral criteria should be changed or adapted to better meet the objectives of the reforms, and
- evaluate, after a longer period of operation, whether the panel reforms have begun to meet the policy objectives.

The scope of this evaluation included the role of panels, councils, DPE and other stakeholders. Key stakeholder agencies include NSW Office of Local Government (OLG), NSW Ombudsman, and the Independent Commission Against Corruption (ICAC). Council and community stakeholders included councillors, community members, applicants, objectors and council staff.

### 1.2.1 Phase 2 – year 1 evaluation activities

Phase 2 (March 2018 – May 2019) involved monitoring and evaluating the implementation of the reforms for the first year of operation. Table 1 provides a summary of the evaluation methods used in year 1 i.e. quarter 1 (April – June 2018),<sup>6</sup> quarter 2 (July – September 2018), quarter 3 (October – December 2018) and quarter 4 (January – March 2019).

**Table 1. Methods for year 1 evaluation**

Data source	Evaluation method	Quarter 1	Quarter 2	Quarter 3	Quarter 4
Documents supplied by DPE	Review of panel implementation and training materials or briefing materials	✓	✓	✓	✓
Council data submitted via IHAP webform	Analysis of data on panel expertise	✓	-	-	-
	Council produced quarterly reports	✓	✓	✓	✓
Complaints and issues data provided by DPE	Analysis of data on complaints and issues from agencies (OLG, NSW Ombudsman, ICAC) and DPE	✓	✓	✓	✓
	Interview with agencies	-	-	-	✓
Online surveys	Survey analysis	Chairs	Experts Community representatives Directors of planning from all (34) councils.	-	Community survey (applicants, objectors and other community members)

<sup>5</sup> Three IHAP reviews have been conducted to date. A preliminary review of the IHAP model was conducted by DPE, with support from the Boston Consulting Group (see <https://www.planning.nsw.gov.au/-/media/Files/DPE/Reports/minimising-and-monitoring-risk-in-the-ihap-framework-2018-05-24.pdf?la=en>). A second review was conducted in March 2018 by DPE to assess the performance for panels during their first month of operation. A third review conducted by Nick Kaldas APM, *Review of Governance in the NSW Planning System*, was released in December 2018. It focused on decision-making in the NSW planning system (see <https://www.planning.nsw.gov.au/Assess-and-Regulate/About-compliance/Kaldas-review>). The Kaldas Review contained 19 recommendations and DPE accepted all of these. For the purposes of this Panel Evaluation Final Report the relevant recommendations are 2-9 and 16.

<sup>6</sup> Councils were provided with a grace period for reporting in the first month of operation (March 2018).



Observations of panel site visits, briefings with council and panel meetings	Panel case studies chosen according to stratified sampling framework	✓ (3 panels)	✓ (2 panels)	✓ (2 panels)	✓ (1 panels)
Panel members and council staff from the case studies	Face to face and phone interviews	✓	✓	✓	✓
Data from workshops with panel members and council staff	Descriptive and thematic analysis	-	-	-	✓
Online newspapers	Content analysis	✓	✓	✓	✓

### 1.3 This report

This document presents the evaluation of panels for quarters 1, 2, 3 and 4. It consists of:

- key findings with regard to the immediate objectives (Section 2)
- recommendations and areas for consideration (Section 3)
- program logic (Appendix A)
- detailed evaluation methodology (Appendix B)
- quarter 3 data (Appendix C), and
- quarter 4 data (Appendix D).

The key findings and emerging themes from this report will support DPE's monitoring of the panels, in line with the immediate and intermediate objectives of the evaluation as shown by the program logic (Appendix A):

Immediate objectives:

- local planning decisions are based on expert assessment or advice, and
- consistency in planning decision-making processes across councils.

Intermediate objectives:

- increased probity in the planning decision-making process
- timely, consistent, transparent, cost effective and expert-informed planning decision-making, and
- improved council capacity to conduct strategic planning.

#### 1.3.1 Data collection

IPPG developed a mixed-methods approach to answer the evaluation questions (Appendix B), to explore and enable the validation of emerging issues and trends (Table 2).

**Table 2. Notes on data collection in year 1**

Data source	Quarter 1	Quarter 2	Quarter 3	Quarter 4
Council data submitted via IHAP webform <sup>7</sup>	<b>Data on 30 of 34 panels</b> (covering the period of 7/03/2018 to 18/7/2018) DA-level data for 29 panels Incomplete data on 35 panel meetings Referral criteria missing for 54 DAs	<b>Data on 33 of 34 panels</b> (covering the period of 2/07/2018 to 26/09/2018) Incomplete data on 7 panel meetings Incomplete data on referral criteria for 46 DAs	<b>Data on 32 of 34 panels</b> (covering the period 2/10/2018 to 20/12/2018) Incomplete data on 1 panel meeting Referral criteria missing for 21 DAs	<b>Data on 32 of 34 panels</b> (covering the period 15/01/2019 to 29/03/2019) Complete data on all panel meetings Referral criteria missing for 6 DAs
Summary data provided by DPE <sup>8</sup>	14 matters recorded	16 matters recorded	12 complaints and 8 procedural issues recorded	3 complaints and 14 procedural issues recorded
Online surveys <sup>9</sup>	Chairs: 31 of 41 individuals (76% response rate)	Experts: 41 of 115 (36% response rate) Community representatives: 61 of 161 (38% response rate) Directors of planning from all councils: 14 of 34 (41% response rate)		Community members: 170 responses
Case studies data collection	Observation from 2 panels 9 interviews (6 panel members and 3 council staff)	Observation from 1 panel 8 interviews (7 panel members and 4 council staff)	Observation from 2 panels	Observation from 1 panel 3 interviews (2 panel members and 2 council staff)
Online newspapers	170 articles (from 8 August 2017 to 30 June 2018)	45 articles (from 1 July 2018 to 30 September 2018)	52 articles (from 1 October 2018 to 31 December 2018)	56 articles (from 1 January 2019 to 31 March 2019)

### 1.3.1.1 Council quarterly reports

IPPG analysed the available data supplied by councils on the operation of their panel. 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 7 March 2018 and 29 March 2019, planning proposals, complaints and appeals. The contents of the data collected through the IHAP webform is set out in Appendix B. While some data collection involved missing or incomplete data, DPE has successfully addressed some sources of data errors.

IPPG is confident with the conclusions drawn and recommendations made in this report based on the available data. While there is some data missing for each quarter and there are some issues with the categories and completion of the webform, these are continually being addressed.

<sup>7</sup> Councils submit data on meetings through the IHAP webform on a monthly or quarterly basis—depending on their operational practices. The IHAP webform data represents data entered by councils and extracted for the evaluation according to reporting specifications. The quarter 1 report (Appendix B) incorporated data from the meetings conducted in March and seven meetings held in July 2018 to strengthen the evidence base. For regional analysis, outliers were removed from averages (e.g. in cases where there was one panel meeting and one DA considered for a panel, data from that panel was excluded).

<sup>8</sup> The level of information from the DPE's complaints and issues register and agencies' systems varies. It presents an overall picture of key issues but limited details.

<sup>9</sup> In view of the survey response rates, survey data is presented descriptively, and the number of respondents to each question is reported. Conclusions can be drawn with confidence with regards to the views of respondents and wider findings are contextualised with evidence from other sources.

## 2 Key findings

This section provides the yearly findings in the context of the immediate evaluation objectives. As outlined in the program logic for year 1 (Appendix A), these are:

- Local planning decisions are based on expert assessment or advice (Section 2.1).
- Consistency in planning decision-making processes across councils (Section 2.2).

### 2.1 Expertise informing decision-making

#### Context

The purpose of the panel model is to ensure people with expertise in relevant fields determine DAs as well as promote consistent decision-making. Each panel comprises three independent expert members (one chair and two experts) and a community representative.

The model requires that expert members have expertise in a specified field and chairs must have expertise in law or government and public administration.

Councillors, property developers and real estate agents are ineligible to be panel members.

The Minister appointed a primary chair and two alternate chairs for each panel. Councils were required to select from the approved shortlist at least two experts and enough alternate experts.

#### 2.1.1 Panel determinations of development applications

##### 2.1.1.1 Panel expertise and knowledge

###### Areas of expertise

Overall, panels have been found to contain an appropriate range and depth of expertise. In addition to having the requisite expertise in government and public administration, a number of chairs also had expertise in planning and/or law. Other identified areas of expertise among chairs are tourism, engineering, economics, architecture, and traffic and transport.

The expertise of expert members is strongest in planning, government and public administration, followed by environment, urban design, architecture, law, heritage, traffic and transport, engineering and economics. Continuing to increase the diversity of the disciplinary backgrounds of the members will strengthen the panel expertise both across the panels and for particular panels.

###### Knowledge of council statutory and strategic planning instruments

Most surveyed panel members are familiar with the council statutory and strategic planning instruments. This was confirmed through the case studies and the council directors of planning workshop. The highest levels of familiarity were Local Environmental Plans (LEPs) and Development Control Plans (DCPs). There was less familiarity with Community Strategic Plans (CSPs). Panels seek to bring a stronger strategic focus to planning by freeing up elected councillors to better focus on the preparation and delivery of these documents. DPE expects that the knowledge of strategic plans will increase with the development and implementation in 2019 of Local Strategic Planning Statement (LSPS) that seek to bolster local strategic planning.

###### Perceptions of expertise

IPPG's half-year report recommended DPE investigate additional ways to build confidence in the panel system. This was a long term recommendation and DPE identified particular communication and awareness raising strategies available in the system.

In implementing this recommendation, DPE has advised:

- It has accepted the recommendations of the Kaldas Review.<sup>10</sup>

<sup>10</sup> The status of implementation is either complete, ongoing or following the year 1 report.

- It will offer a refresher Planning for Non-Planners course for community representatives.
- It will continue regular panel member briefings.

Of the surveyed members of the community 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'.

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 statistically more likely (70 per cent) to have had achieved the outcome they had hoped for with their most recent DA, whereas those who did not achieve the outcome they had hoped for were statistically more likely (32 per cent) to rate the level of expertise as 'poor'.

### **Membership on multiple panels**

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

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

- 14 are primary chair for one council
- six are primary chair for two panels, and
- two chairs are primary chair for four panels.

Most chairs also have at least one alternate chair appointment. Most alternate chairs hold one or two alternate chair appointments, and around half also hold at least one primary chair appointment.

Of the 41 chair and/or alternative chair positions, 59 per cent also took up positions as independent experts.<sup>11</sup>

Along with their involvement in panels 84 per cent of surveyed chairs reported being involved in other planning panels or related committees. Among the reported current and previous involvement (up to the last five years) with other planning panels or related committees, it was identified that many chairs sit on other panels, or have in the past sat on pre-reform IHAPs. In addition, chairs reported their involvement in Joint Regional Planning Panels, design review panels, the Planning Commission and NSW Planning and Development Committee.

Councils have made a total of 215 expert appointments. This indicates an average of 6.3 available experts per council and that councils offered a range of expert appointments. No evidence was found of current problems with respect to influence or probity but there is a potential for risk in the future and it is recommended that this continues to be monitored.

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<sup>11</sup> Of the 108 panel members (chair and experts) recorded for quarter 4:

- Three are chair of three panels and experts in two panels.
- One is chair of two panels and an expert in five panels.
- Two are chair of two panels and experts in three panels.
- Two are chair of two panels and expert in two panels.
- Six people are chairs of one panel only and experts in one panel only.
- Eleven are chairs of multiple panels only (not experts in any panel):
  - One is chair of four panels.
  - Two are chairs of three panels.
  - Eight are chairs of two panels.
- 21 are experts in multiple panels only (not chairs in any panel):
  - Five are experts in three panels.
  - Sixteen are experts in two panels.

### 2.1.1.2 Role and expertise of community representatives

#### Context

The recruitment, selection and appointment process for community representatives is a matter for councils. DPE provided guidelines to assist councils in this process.

The DPE IHAP Overview and FAQs released in August 2018 highlights that community representatives bring local knowledge and experience to the panel, can be chosen to represent more than one ward and, in choosing the community representative for each meeting, the chair is to choose a representative whose ward has the *most matters* being considered at that meeting.

As reported in the half-year report, issues around role clarity and the purpose for community representatives on panels continues.

While demonstrating knowledge of the local area was considered to be the most important role for community representatives (according to the surveyed community representatives and experts), for some panels, this is not being delivered in practice. In particular, when community representatives possess both planning and 'local' expertise, they tend to act as a third expert.

Although community representatives are not required to have planning or related expertise, some panel members and council staff consider that panels would be improved if they did. Possessing planning or related expertise was a criterion used by some councils in selecting a community representative. The use of experts as community representatives tends to lessen their value in providing local expertise.

These findings demonstrate that the purpose and value of local community insights are not always fully understood and valued, or that there is not a shared understanding of the role of a community representative.

DPE is working with councils, chairs, panel members and community representatives to address this point and to ensure all panels can tap into the valuable community knowledge provided by the community representatives. DPE has established quarterly meetings for community representatives from different panels to allow community representatives to share knowledge and effective practices.

DPE has advised:

- Panel chairs and community representative briefings in September and October 2018 included a discussion of the role of the community representative and how to incorporate community representatives' views into the panel's decisions.
- This issue was also part of the chairs quarterly briefing for March 2019.
- The *Guidelines for the selection of IHAP community representatives* is being updated.

Notwithstanding the above, there is a positive perception of the role of the community representatives, with case studies indicating that they were doing a very good job and contributed to local expertise, panel transparency and accountability, and panel member diversity.

The evaluation finds it would be useful to re-articulate the role as a community 'member' rather than a 'representative' as the emphasis should be placed on the unique value of local insights/perspectives. Additional training and guidance may be required to ensure that there is a consistent understanding of the role of the community 'member'.

### 2.1.1.3 Referral Criteria

#### Context

The panel referral criteria for DAs relate to:

- conflicts of interest
- contentious development
- departure from the development standards, and
- sensitive development.

The Minister's Direction tailors thresholds in the panel referral criteria across three different groups of councils. These groupings recognise differences in terms of levels of population or demand for development across local government areas in Sydney and Wollongong.

In August 2017, the Government announced indicative referral criteria. These were developed in consultation with the Independent Commission Against Corruption (ICAC) and a review of the charters of existing panels.

Following consultation with councils, ICAC and the Office of Local Government, the criteria was refined to achieve two key objectives:

1. To ensure that panels focus on the more contentious and complex DAs, and DAs with the greatest corruption risk, while council staff continue to determine routine DAs. This will minimise development assessment timeframes, while still meeting the policy goals of greater probity and transparency in decision-making.
2. To build some flexibility into the criteria to reflect differences in the types of development and community expectations across LGAs.

Most DAs considered by panels triggered one referral criterion. The main referral criterion that triggered a referral to a panel was 'departure from development standards', followed by 'sensitive development', 'contentious development', and then 'conflict of interest'.

Over the first year of operation, 1806 substantive referral criteria (excluding reviews and modifications) were triggered by DAs heard by panels. Over this period, the relative proportions of the DAs considered varied slightly. The share of DAs that were referred for residential flat buildings (RFB), sensitive development and those due to departures from development standards fell from quarter 1 to quarter 4.

The conflict of interest criterion for referral increased with each quarter. The increase may be due to an increased awareness by councils of potential conflict of interest, with therefore more referrals of these DAs to the panels. The conflict of interest overwhelmingly related to council as applicant or landowner (as opposed to relative, member of staff or councillor).

In quarter 2, the proportion of DAs triggered by the departure to development standards was broadly consistent with quarter 1 (259 variations from 215 DAs in quarter 1, 272 variations from 227 DAs in quarter 2), although the average number of variations was higher in quarter 2 (around 1.20 variations per DA compared to around 1.12). In quarter 4, the number of DAs triggered by the departure to development standards was greater than that in quarter 3 (209 variations from 186 DAs in quarter 3, 124 variations from 105 DAs in quarter 4), but made up a lesser proportion of DAs than in quarters 1 and 2.

Overall, the number of DAs triggered by the departure to development standards was the most commonly referred trigger across all four quarters. Findings from the media content analysis indicated that this was an important issue.

DPE has advised that the referral criteria were designed to largely capture the same types of development that were previously considered by councillors. As panels are broadly considering the levels of DAs anticipated, these findings do not demonstrate that there have been more contentious DAs or DAs with departures from development standards since the panels were introduced.

### **Appropriateness of referral criteria**

Panel members and council staff raised concerns during workshops that the panels were being referred DAs that did not warrant panel assessment. This included DAs that were referred due to existing breaches, very minor matters, and/or matters that council could have assessed. Concerns were also raised in relation to the cost implications for panels that determine a large volume of these types of matters. The panel has the option to delegate these matters back to council for determination or make an electronic determination.

There could be greater scope to consider other referral pathway options. In quarter 2, 64 per cent of the surveyed council directors of planning believed that the general manager/CEO should be given the discretion to refer matters to the panel (e.g. based on a report from the director of planning).

Surveyed members of the community were also asked about the appropriateness of the referral criteria for triggering a DA to be assessed by the panel. Eighty-two 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.

For some councils the variation to development standards criteria has captured 'simple' matters. These can arise because applications do not distinguish where there is a pre-existing non-compliance with development standards and applications that are the cause of the non-compliance. Consequently, development applications that contravene a development standard by more than 10 per cent, regardless of whether the contravention is pre-existing, the impact, or whether the planning controls are outdated, are required to be referred to the panel. Councils can write to the Planning Secretary and request that the Secretary allow concurrence to be assumed by council staff for contravening development standards in these circumstances or the Panel can refer them back to council staff to be determined. Following the 2018 updates to the

*Environmental Planning and Assessment Act 1979* and through the preparation of local strategic planning statements, Councils are required to review and update their LEPs. As part of this process, the Department has recommended that Councils review their development standards so they do not need to rely on a further temporary concurrence from the Secretary.

The Kaldas Review recommended the Minister consider amending the 'Local Planning Panels Direction – Development Applications' to provide greater flexibility for local councils to refer additional matters to panels for consideration (recommendation 8). IPPG raised this issue in the half-year report. DPE has indicated that it will consider this as part of the 18-month policy review.

#### **2.1.1.4 Determinations**

Most DAs determined by panels were approved (or approved with deferred commencement).

On average about 73 per cent of DAs were approved, around 17 per cent of DAs were refused, and 8.5 per cent were deferred to another meeting. The proportion of DAs that were referred back to council is negligible and has tended to fall over the reporting period.

#### **Consistency with council recommendations**

Across the four quarters most determinations made by panels were consistent with council staff recommendations. Approximately seven per cent of DAs determined by panels were not consistent with council staff recommendations. This indicates that consistency in decision-making has remained relatively constant throughout the year. Consistency between council staff recommendation and panel determination has been high in all quarters.

In quarter 2, surveyed council directors of planning indicated the main reasons for the panel disagreeing with the council staff assessment were:

- new issues were raised that had not been considered or addressed in the initial staff assessment (e.g. the panel identified additional issues when reviewing the application)
- panel members' being less exposed to the local context of the DA, and
- there was information missing from the staff assessment.

### **2.1.2 Panel advice on planning proposals**

#### **Context**

From 1 June 2018, councils were required to refer all planning proposals to panels for advice, except for those relating to minor, machinery or consequential amendments, or matters that will not have a significant adverse impact on the environment or adjoining land. General Managers decide if an exception applies. Planning proposals must be referred for advice before forwarding to the Minister or the Greater Sydney Commission.

There are no statutory provisions about the documentation council must provide to the panel. The DPE IHAP FAQs released in August 2018 recommended that council provide a full assessment report to enable the panel to provide comprehensive advice. The DPE Best Practice Meeting Procedures released in September 2018 suggested that the panel may request a briefing by council staff or other relevant persons.

The Local Planning Panel Direction – Planning Proposals<sup>12</sup>, released on 27 September 2018, provides information about the documentation councils need to provide to panels. Additional resources and activities provided by the Department include:

- The Executive Director of Regions briefing panel chairs, experts and community representatives on advising on planning proposals in September and October 2018.

Further information on planning proposals was provided in the IHAP newsletter and FAQ, published December 2018.

<sup>12</sup> The Act, section 9.1.

### 2.1.2.1 Number of planning proposals referred

On average, across the three quarters that data were recorded, 70 per cent of planning proposals were recommended to be approved or approved subject to amendments.

#### Perceived value of panel advice

Surveyed council directors of planning were mostly neutral about the statement: 'the expert advice provided by the panel on planning proposal(s) is valuable to council staff'. Council planning directors indicated that this is mainly due to limited comments from experts or limited advice provided by the panel at the time, and cost to process these proposals.

Of the surveyed members of the community who have been involved with a panel one or more times since March 2018, 26 per cent were involved with a planning proposal(s). Of the surveyed members of the community who have had a recent experience with a panel about planning proposals, 32 per cent agreed 'the expert advice on the planning proposal added value to the process', 42 per cent said the expert advice did not add any value, and another 26 per cent 'did not know' or said 'maybe'.

Surveyed members of the community reported that for most planning proposals (64 per cent), the panel advised the proposal to proceed or to proceed with amendments, while 32 per cent were advised not to proceed, or were deferred. Of surveyed members of the community, 71 per cent were dissatisfied with the most recent outcome of the planning proposal. Of those who were dissatisfied with the outcome, most were likely to be an objector to the proposal.

## 2.2 Consistency in decision-making

### Context

A goal of the panel reforms is to provide a consistent framework for decision-making, while allowing council's discretion on operational procedures.

Findings here mainly relate to differences in operational procedures across panels. In the half year report, IPPG suggested DPE consider strategies to best achieve a balance between flexibility and consistency in decision-making. It was noted that the panel system allows councils and chairs to have the flexibility to accommodate local practices/preferences. This discretion however has the potential to affect the consistency of panel processes when there is not a shared understanding of the rationale for decisions – or when this process is not as transparent as it could be.

The evaluation suggests that further consideration may be required. This is particularly the case regarding:

- the rotation of panel members
- panel meeting times
- time limits for speakers
- approaches to deliberation, and
- communication of determinations.

### 2.2.1 Operational aspects

Panels tend to have different operational procedures reflecting chair preferences and the way some councils previously ran their panels, or run their council meetings. The data on panel decision-making illustrates the conditions under which panels operate (Table 3).

The average number of registered speakers increased in quarters 3 and 4 and the average number of public meetings per panel declined from quarter 1 to quarter 2 and was at its lowest in quarter 4. Fewer meetings were held in quarter 4.

In quarter 4, fewer DAs were considered than in previous quarters, resulting in fewer meetings. This is largely attributed to the seasonal quieter period of activity in the post-Christmas and January summer period at councils. The overall trend of an increasing number of DAs being considered per meeting across the first



three quarters suggests that panels are becoming more efficient as chairs and members get more used to the process.

**Table 3. Summary data on panel decision-making**

Data type	Quarter 1	Quarter 2	Quarter 3	Quarter 4
Average number of public meetings per panel <sup>13</sup>	4.53	3.70	3.91	2.59
Average duration of public meetings (hours)	1.66	1.61	1.72	1.30
Average number of DA per meeting across panels	3.4	3.8	4.0	3.3
Average meeting duration per DA considered (hours)	0.49	0.42	0.43	0.38
Proportion of development applications with a site visit	88%	91%	91%	86%
Average duration of site visits per development application (hours)	0.59	0.53	0.53	0.50
Average number of registered speakers <sup>14</sup>	1.92	1.61	2.44	2.91

### 2.2.1.1 Induction and support processes

Councils and DPE have conducted induction and support briefings and provided a range of resources.

#### Council activity

Councils provide support to panel members and inform the community about the panels. Most of these council activities were conducted in quarter 1 and quarter 2 as the new panels were established and became operational. For example, most of the council case studies in quarter 1 and quarter 2 conducted briefings for panel members. These briefings generally provided an opportunity for panel members to meet each other and key council staff and included an overview of council's statutory and strategic planning instruments. Community representatives without planning or related expertise found these council-led activities helpful but indicated that in general, they required further guidance and support.

In quarter 2, surveyed council directors of planning also reported a range of resources and activities designed, hosted and provided by council. These included: a panel overview, briefings and workshops for chairs, panel members and councillors, frequently asked questions and a councillor guide/toolkit.

#### DPE activity

DPE has conducted briefings for panel members and circulated guidance materials to councils and panel members. DPE conducted or provided:

- three chair and expert briefings (21 February 2018, 27 September 2018 and 26 March 2019)
- three chair roundtables/briefings (23 May 2018, 27 September 2018 and 26 March 2019)

<sup>13</sup> Simple calculation of number of meetings divided by the number of panels reporting for the quarter.

<sup>14</sup> For comparative purposes, all zero entries are excluded from this calculation (in some quarters there were both zero-valued entries and blank entries recorded, making it impossible to distinguish missing values and zero-valued entries).

- six community representative training sessions (10 April 2018, 12 April 2018, 30 April 2018, 17 October 2018, 23 October 2018 and 31 October 2018)
- all community representatives with the opportunity to attend a free training session, Planning for Non-Planners course, run by the Planning Institute of Australia
- IHAP Submission Policy Approval guidance (7 June 2018)
- six panel update email newsletters (4 July 2018, 10 September 2018, 12 December 2018, 13 February 2019, 15 April 2019 and 16 May 2019)
- information regarding the amended code of conduct (21 August 2018)
- IHAP Overview and FAQs information package (31 August 2018), and
- IHAP Best Practice Meeting Procedures information package (10 September 2018).

Most surveyed experts and community representatives were aware of the DPE guidance material packages.

Survey results indicate that resources provided by council and DPE are highly valued by experts and community representatives, while informal relationships are valuable to directors of planning, chairs and experts, and induction activities are valuable to community representatives.

Panel members and council staff in quarter 1 and quarter 2 indicated that they would find the following resources/activities useful:

- templates (e.g. meeting minutes template)
- guidance and further information (e.g. on planning proposals, various scenarios, delegating modifications and appeals), and
- forums/discussions with other panel members/council staff.

In quarter 4, panel members indicated that they found DPE briefings helpful, including the guidance on conflict of interest. It was repeated during the workshops that panel members wanted to meet with each other, particularly community representatives, to share ideas and experiences.

In addition, in quarter 2, surveyed council directors of planning indicated they would find further best practice notes, council briefing sessions hosted by DPE or independent bodies, and council staff workshops/courses on panel best practice (e.g. hosted by professional bodies or universities) useful.

While council and DPE resources and activities have been useful to panel members and council staff, it is apparent that these stakeholders would appreciate the opportunity to learn from other panel members and council staff, and the provision of a range of resources, including templates (e.g. meeting minutes), guidance and further information (e.g. on planning proposals, various scenarios, delegating modifications and appeals).

In the half year report IPPG suggested DPE explore strategies to collaborate with stakeholders to develop and promote best practice. DPE has advised it will:

- continue to hold chairs, experts and community representatives briefing and feedback sessions
- continue to monitor panel member feedback to inform learning needs, and
- survey members ahead of briefing sessions to target presentations (via DPE's communications team).

In the half year report IPPG suggested DPE communicate strategies to councils that can best support reform implementation. Councils play an important role in the successful achievement of the panel reform objectives (e.g. encouraging councils to provide further information and guidance to panel members on community strategic plans to help improve panel members' knowledge of relevant council plans and future strategic directions).

In response to this recommendation, DPE has advised:

- enquiries and feedback from stakeholders are recorded and evaluated to inform views
- ongoing engagement has been programmed, and
- council panel websites are regularly reviewed

### 2.2.1.2 Rotation of panel members

#### Context

For each meeting, the operational guidelines require that the chair and any alternate chairs are to rotate as practicable. Experts and community representatives for wards and their alternatives can be interchanged as needed by the chair for reasons including: a member has a conflict of interest; a member is unable to attend on the day; or to periodically rotate the members.

In the panel email update (February 2019), DPE indicated the operational procedures outline that chairs are responsible for ensuring the rotation of chairs, alternate chairs, experts and community representatives. 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.

In quarter 1, surveyed chairs indicated the most common selection criteria for panel members for each meeting was the turn in rotation cycle and the availability of the expert members.

#### Rotation of chairs

Across the reporting period, panels employed around 2.1 chairs per quarter. Each panel, on average, rotated a chair for around one in every two meetings. The total pool of chairs employed across all panels was largest in quarter 3 and smallest in quarter 4. This may be the result of panel members' availability constraints over the holiday period, in combination with the holding of fewer meetings. Averaged across the four quarters, chairs presided over around 1.8 different panels in a chair capacity. Averaged across the four quarters, chairs presided over around 0.9 panels in the capacity as independent expert; this was highest in quarter 2 and lowest in quarters 1 and 4.

#### Rotation of experts

Panels employed around 4.5 experts each, averaged over the four quarters – recording the most in quarter 1 and fewest in quarter 4. Experts were rotated more frequently than chairs (but less than community representatives), with experts rotated for three in five sittings, averaged across the four quarters. The pool of experts employed across all panels was markedly higher in quarter 1 than in subsequent quarters – with around 3.4 experts per panel employed in quarter 1 to around 2.6 per panel in quarter 4. Experts presided over fewer different panels than did chairs – sitting on around 1.6 panels as experts, averaged across the four quarters.

#### Rotation of community representatives

Across the reporting period, each panel employed around 2.6 community representatives each quarter – albeit with a marked reduction from quarter 1 to quarter 4. Community representatives were rotated for around two in every three sittings, averaged across the quarters. This was lowest in quarter 2 and highest in quarter 1.

During quarters 1 and 2, some councils with wards appointed ward community representatives to each relevant DA, while other councils selected one representative per meeting to represent the views of the whole community. Council case studies suggest that councils are following DPE guidance so that only one community representative is appointed to each panel meeting.

DPE has advised that it should be considered that:

- employment is part time
- expert members are usually industry professionals
- to a large extent panel membership is a public service
- the risk of conflicts of interest by panel members is high, meaning a precautionary approach is necessary, and
- members must make choices between panel and professional work.

The Kaldas Review recommended that that the Department 'give consideration to ensuring consistency and providing greater clarity in relation to the Independent Hearing and Assessment Panels and Regional/District Panels (recommendation 4), for example, in relation to:

- a) tenure of panel members
- b) rotation of IHAP panel members, and
- c) restrictions on who can be a panel member.

DPE has indicated that elements of this recommendation may require legislative change.

### 2.2.1.3 Assessment information provided by council and panel briefings

#### Context

Councils provide panels with a range of assessment information. For example, assessment reports, details of plans and/or addenda. Councils may also conduct panel briefings with relevant council staff.

The quality of assessment information provided by councils to the panel was of a good or higher standard. This was confirmed by surveyed panel members and case study participants throughout the year. Some panel members indicated that they considered council staff briefings to be invaluable.

A number of case study experts and chairs explained they were working with council staff on refining the required assessment information and they reported an increase in the quality of the materials they are being provided. Some panel members indicated that the provision of documentation in a mixed manner (electronically and hard copy) was problematic and that some councils could learn from other councils' operational practices.

### 2.2.1.4 Site visits

#### Context

The operational procedures state:

- The chair may elect for the panel to attend site inspections for DAs and planning proposals to be considered at the public meeting.
- Site visits should be conducted on the same day as a public hearing, if practicable.
- Site visits are to be used solely to identify and clarify issues with a proposal.
- At a site visit, a panel member must not offer an opinion on the merit of the proposal, or ask those involved with the assessment of the proposal for their opinion or recommendation.

The DPE IHAP – Best Practice Meeting Procedures released in September 2018 indicates that at a site visit (or briefing by council) the panel, council staff and other persons engaged in the assessment are usually in attendance. In some circumstances, the applicant and people who made submissions on the DA may be invited to attend.

Panels conducted site visits for most DAs. Over the entire reporting period, the proportion of DAs with a site visit was quite high, though slightly lower in quarter 4 than in the preceding quarters. Site visits were conducted for 91 per cent of DAs considered in quarter 2 and 3 compared to 88 per cent in quarter 1 and 86 per cent in quarter 4. In addition, the average duration of site visit per DA was also slightly shorter in quarter 4, but across the quarters was recorded at around 32 minutes on average.

When no site visit was conducted, surveys indicated that this was usually because the DA was minor, the site was remote, there were time constraints, and/or there were no objectors.

Site visits have been beneficial in informing panel decision-making processes. Most surveyed panel members and case study participants (in quarter 1 and 2) indicated that the site visits are very or extremely useful.

During the case studies, it was apparent that council staff and panel members interacted and offered their opinions to various extents. Some council staff provided a briefing on the DA and responded to panel members' questions, including about the opinion of council officers. Discussions between panel members and/or council staff appear to be informative. However, a strict reading of the operational guidelines indicate panel members seeking council staff's opinions or offering their opinions on DAs is not permissible during the site visits.

In the half year report, IPPG suggested that DPE scope the feasibility of strengthening requirements for site visits.

DPE has advised:

- The February 2019 Quarterly newsletter addressed this issue.
- Site visits are promoted as best practice.

- Clarification was provided that panel members should be careful not to be seen to influence or direct assessment officers, or give the impression of bias or pre-judgement in any comments made at site visits or briefings.

#### 2.2.1.5 Panel meetings

##### Context

The panel may determine detailed procedures for the execution of efficient and effective meetings. The chair is responsible for the management of the panel's functions and operations, including managing conflicts of interest.

With a view to discharging its responsibilities in a timely manner, the panel may, in its absolute discretion, but otherwise fairly and consistently, impose time limits on presentations by persons other than members of the panel. Where a large number of objectors with a common interest is present at any public meeting, the panel may, in its absolute discretion, hear a representative of those persons.

Scheduled meeting times varied and tended to reflect the times of council meetings (e.g. during the day or in the evening) or the time of the pre-existing IHAP meeting. This was reportedly because keeping the meeting at the same or similar time meant panel practice would be more familiar to members of the community.

Surveyed members of the community were most satisfied with the chair's introduction and explanation of meeting procedures (52 per cent) and availability of information about the panel's meeting times and how to register to speak (50 per cent). In the IHAP April update it was stated that the Minister's Local Planning Panels Direction - Operational Procedures does not specify speaking time limits or the times at which panels should meet, leaving these operational details to the panel's discretion. Meeting times, particularly for contentious proposals, should be scheduled to maximise community involvement, with adequate time allowed for interested persons to address the panel. This is to ensure the local planning panel determination process is as open and as transparent as possible. Chairs can discuss with councils if there are concerns that meeting times are not at broadly accessible times.

#### 2.2.1.6 Deliberation process

##### Context

As per the operational procedures, chairs have the discretion to choose how to manage the deliberation process. The options include:

- deliberate, vote and make a determination in the public meeting
- adjourn the public meeting to deliberate and reconvene the meeting for voting and determination, and/or
- close the public meeting to deliberate, vote and then notify the public of the outcomes outside of the public meeting.

Further, the DPE IHAP – Best Practice Meeting Procedures released in September 2018 indicate a panel may adjourn the meeting (to a closed session) where:

- a panel briefing is required to hear confidential or sensitive information, or
- the panel wishes to confer among itself before reconvening the meeting for voting and determination.

The procedures suggest that before the adjournment, the chair should publicly state the reasons for the adjournment and after reconvening the meeting the chair should summarise the matters discussed in adjournment.

Panels conducted their deliberation in various ways: in public, closed, or a combination of both. Case studies and quarters 1 and 2 surveys indicated that this was usually due to chair preference and/or previous council meetings and/or pre-existing panel practices, and the complexity of the DA.

In most case studies throughout the year, adjournments were only used to discuss complex matters or if new information was presented at the meeting. This was observed in all but one case study. In one case study the panel conducted extensive discussions regarding the DAs prior to the public meeting. This panel often provided its determination immediately after speakers had made their submissions. While meeting procedures are at panels' discretion, it was observed that this approach may have resulted in some members of the public feeling unheard. Meeting practice is discussed at the quarterly chairs' meetings, alongside

feedback collected through the evaluation and other sources. Over time this is expected to improve meeting practice and set shared understandings of best practice.

While the variation in approaches seems to provide scope for differences in councils, chairs and/or DAs, this may have implications in terms of community perceptions and confidence in the panels. The community member survey (conducted in quarter 4) indicated that 46 per cent of respondents were dissatisfied with the transparency of the panel's decision-making processes.

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<sup>15</sup> 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.

The Kaldas Review recommended that DPE clarify the issue of panel meeting procedures with the intent being that private deliberations should be permitted (recommendation 6). There should also be clarity on whether panel members can, or cannot, meet with Council staff during deliberations and what record is made of those meetings.

DPE has indicated:

- Both the IHAPs Best Practice Meeting Procedures released in September 2018 and the LPP Operational Procedures confirm that private deliberation is permitted.
- Adjournments can be combined with a staff briefing. The IHAPs Best Practice Meeting Procedures confirm written records of briefings should be made. Private deliberations are not recorded but after reconvening the meeting, following an adjournment, the panel chair should briefly summarise the matters discussed in the adjournment.
- Further clarification was provided in the February Quarterly newsletter.
- The Department will continue to provide education to all panel members and run four forums a year with chairs and two forums a year with panel members. In addition, quarterly newsletters are sent to all panel members providing regular updates.

### 2.2.1.7 Costs and resourcing

#### Context

The Minister has set the remuneration for panel members.<sup>16</sup> It is expected that members would be remunerated either on a per meeting day basis that is inclusive of reading time, any site inspections and public meetings (7 hrs, or 3.5 hrs for a ½ meeting day), or on an hourly rate basis.

For each meeting the minimum rate (excluding GST) is: \$2000 for chairs; \$1500 for experts; and, \$500 for community representatives.

For business conducted outside meetings the minimum hourly rate (excluding GST) is: \$285 for chairs; \$215 for experts; and, \$71 for community representatives.

If a panel member was a member of a pre-existing IHAP, councils are required to pay their previous panel remuneration rate if this was higher.

Panel members are entitled reasonable travel and out of pocket expenses.

The panel system allows councils to determine the level of involvement of council staff with the panel. A number of panels had large numbers of council staff present during site visits, meals, panel meetings and briefings. The salary costs for council staff, particularly overtime payments, is a possible area for cost savings. Council practices are key to cost impacts of the operation of the panels.

The DPE April 2019 update stated that councils are responsible for resourcing of the panels and monitoring panel performance and so are best placed to act on these matters.

Councils appear to be paying panel members close to or slightly above the minimum remuneration rates. In quarter 2, surveyed council directors of planning indicated that the total remuneration for all four panel

<sup>15</sup> 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>

<sup>16</sup> The Act, Schedule 2, Clause 14.

members per meeting was between \$5,000 to \$7,000 (10 mentions for the aforementioned cost and four mentions for a cost more than \$7,001).

Not all panel business can be completed in one meeting day and the remuneration does not fully account for preparation time – this was confirmed by survey responses, chair comments at the chair roundtable (May 2018) and case studies. In quarter 1, surveyed chairs reported that their time commitment varies from four to 16 hours per meeting (including travel time, post-meeting finalisation). Most indicated they were remunerated by a fixed flat rate of either \$2000 or \$3500 per meeting. The time experts and community representatives spend preparing and participating in the panel ranged from five to 13 hours, but the time paid per meeting was equivalent to five to eight hours. In the panel email update it was stated that prior to determining a matter panel members should have adequate time to visit the site, review the assessment report, and be briefed by council staff. Should panels regularly experience excessive workloads then discussions with the panel chair about scheduling additional meeting days may be appropriate.

There were mixed views about whether other panel costs were higher or lower than council estimates or councils' previous expenses for pre-existing IHAPs. In quarter 2, surveyed council directors of planning reported that, on average, the total cost of staff resourcing was less than \$4,000 (10 mentions) and the cost for incidentals was less than \$500 (11 mentions).

In quarter 4, some council directors of planning indicated that the panels had been an additional cost. Some council directors of planning indicated that the costs had remained the same, and for others costs had increased. However, this evidence is anecdotal as there is no standard for calculating costs prior to or during the implementation of the panels.

To a considerable degree the costs of the panels are affected by the operational procedures of each council. As no data is available regarding the costs of assessing DAs prior to the introduction of the panels it is impossible to assess if the panel process has led to greater costs for councils. The costs of operating the panels can only be assessed fully as the system reform continues toward greater effort at the strategic rather than the statutory processes.

## 2.3 Probity in the planning decision-making process

### 2.3.1 Conflicts of interest

#### Context

Parts 4 and 5 of the code of conduct outline the specific requirements relating to conflicts of interest for panel members. Panel members are required to avoid and appropriately manage any conflicts of interest, including the early and complete disclosure of any perceived or actual conflicts to the chair.

The chair manages the situation and, in doing so, must uphold the reputation of the panel. The chair may decide to allow the panel member to remain on the panel and vote, determine they should step aside and record the reasons for that decision, among other approaches. An alternate chair manages conflicts of interest arising because of an interest of the chair.

The DPE IHAP Overview released in August 2018 outlines that the overriding approach is always to err on the side of caution and prioritise the public interest in the proper exercise of public functions. The Overview also provides a number of scenarios to provide high-level guidance on the identification, disclosure and management of conflicts of interest.

In August, the updated code of conduct was released. The amendments provide clarification regarding which situations are considered to represent a conflict of interest for panel members. The new disclosure requirements require all panel members to sign a declaration of interest in relation to each matter on the agenda before or at the beginning of each meeting. These declarations and any management measures put in place are to be published on the relevant council's website as soon as practicable.

The majority of surveyed panel members and council directors of planning (in quarter 2) agreed that the panel model will increase probity in the assessment system. Surveyed experts, community representatives and council directors of planning tended to be slightly less optimistic that the new disclosure requirements for panel members for conflicts of interest will increase probity in the planning system. The quarter 2 survey of council directors of planning indicated that there were a number of situations which survey respondents indicated they felt some cause for concern, but they decided not to report.

In quarter 4, council directors of planning indicated that the system was not working effectively as there was an issue with the perception of a conflict of interest, in addition to actual conflicts of interest. It was

acknowledged that conflicts often arise in instances where an expert on the panel had worked as a consultant for a long time in the local area and consequently 'knew everyone'.

Most interviewed panel members throughout the year indicated that they were able to identify a conflict prior to a meeting. However, in some instances, the conflict was not apparent until the site visit or panel meeting. It was suggested that the provision of more details (e.g. names of landowners) and the timely provision of all reports would help to identify any conflicts more quickly.

In the half year report IPPG recommended that DPE and other relevant stakeholders (e.g. ICAC) continue to provide greater clarity on what constitutes a conflict of interest in the context of panel membership and operations.<sup>17</sup> DPE has advised:

- The *Code of Conduct for Local Planning Panel Members* (the code of conduct) was amended on August 2018 to require a signed declaration of conflict of interest in relation to each matter on the agenda at the commencement of each meeting and make these statements publicly available on the council website.
- Section 9.1 direction issued December 2018 requiring all councils — when appointing members to panels — to require new members to sign a form agreeing to abide by the code of conduct.
- IHAP Overview published August 2018 provides conflict of interest scenarios.
- 2019 briefings will highlight conflict of interest management.
- DPE Ethics Unit will assist in briefing panel members on conflict of interest management and this included being part of the panel members briefing.

There is some ongoing confusion around what constitutes a conflict of interest. Across each quarter, the complaints and issues data indicate that 10 matters related to alleged breaches of the code of conduct (e.g. declarations and handling of non-pecuniary interests). An overriding value of the panel system is for the public good and strengthening probity and transparency. Panel members who also act as consultants in the LGAs on which they have a determinative role can lead to a perception of a conflict of interest.

The quarter 4 panel member workshop found that panel members would like more guidance (including policy guidance) on conflict of interest and would welcome suggestions for tools, guides, services, information and support to the integrity and ethics unit to support panel members. It was also indicated that the system was not working effectively if there was an issue with the perception of a conflict of interest.

Some chairs and experts who sit on multiple panels indicated that their approach is to not accept work in the local government areas that their panels cover. It may be the case that their business will accept projects, but the panel member is not involved. However, this assumes that there is a process internal to the business which effectively prevents sharing of information. Declarations made during the panel process need to be documented. Other panel members do not undertake work as consultants in those council areas where they are a panel member if it is a matter that may go before the panel. One panel member was also advised that they cannot work for those councils e.g. as an expert in Land and Environment Court proceedings.

Improved reporting of paid work in the LGA of the panel by panel members will assist with increasing transparency.

### 2.3.1.1 Complaints and other issues raised<sup>18</sup>

#### Context

Part 10 of the code of conduct outlines the reporting pathways for making a complaint about a panel member in relation to an alleged breach of the code.

The council's general manager is responsible for managing code of conduct complaints about panel members and for determining the outcome. The general manager has a range of options available: to take no action (should they deem it unwarranted); to resolve the complaint through alternatives means (e.g. voluntary apology and/or mediation); or to impose sanctions (e.g. censure, requiring an apology and/or removing the person from the panel). The general manager must provide written reasons to the complainant.

In addition, the NSW Office of Local Government receives complaints about the consideration of a code of conduct complaint by the general manager (or his or her delegate). Further, the Act provides that a panel member is a 'public official' pursuant to *Independent Commission Against Corruption Act 1988*. This

<sup>17</sup> Departmental activities to date have included panel member briefing sessions on amended code of conduct and guidance material.

<sup>18</sup> These matters relate to operational aspects as well as decision-making.



allows panel members to report misconduct or other suspect behaviour to the NSW Ombudsman. Complaints are also able to be made to ICAC.

DPE directs enquiries or complaints to the relevant authority and the Department registers all complaints made this way.

Stakeholders who are unsatisfied with the way in which a council has handled a complaint can request DPE to review the matter.

Issues, enquiries and complaints received by the Department are recorded in an issues register. From the commencement of the reforms, a register has been maintained within the Department. However, in August 2018, this function was formalised and is now managed directly by the DPE complaints team using the formal Complaints Register.<sup>19</sup>

Most of the matters raised with DPE and the other relevant agencies related to the code of conduct and panel operation and decision-making. Where appropriate, these matters were dealt with under the relevant sections of the code of conduct. The number of complaints decreased over the year, with a total of three complaints in quarter 4. The number of complaints had remained low with no significant concerns, and it was identified<sup>20</sup> that complaints were often about a council rather than the panel.

The DPE issues register includes a range of procedural matters, including comments/feedback and enquiries. While the stakeholder who raised the matter is noted, how DPE was notified of these matters was not always recorded.

In the half year report, IPPG recommended that DPE be able to effectively monitor complaints submitted to other agencies and for DPE to develop a data provision template for agencies to complete. It would also be advisable for DPE to encourage councils to notify the Department of any panel complaints lodged with councils to ensure DPE is able to monitor effectively panel operations.

To ensure there is comprehensive complaints data from across the system, IPPG also recommends that DPE map the complaints pathways and make this information available online.

DPE has advised it has:

- established an additional pathway for complaints to be made about IHAPs in August 2018. The DPE complaints and panel webpages were updated to reflect the new process, and
- communicated preferred complaints pathways to IHAP stakeholders through IHAP Overview, published August 2018.

In the interagency meeting in quarter 4, it was apparent that there was a need for greater clarity in the complaints handling processes. During this meeting the agencies considered process improvements for identifying panel related complaints and discussed ways to improve the collection and reporting of IHAP related complaints data.

### 2.3.1.2 Reviews and appeals

#### Context

In the panel email update (February 2019), the Department indicated that 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 Act. It is generally expected that council arranges legal representation to appear at court.

Panels need to provide clear instructions to council on whether the panel want to remain involved in an appeal and maintain dialogue with council staff throughout the court proceedings. 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.

The Kaldas Review recommended DPE consider providing greater guidance and clarity to local councils and panels in relation to decisions of those Panels that have been appealed to the Land and Environment Court including:

- who should appear before the court

<sup>19</sup> A matter is recorded if it is made in writing to the Department. The register indicates if the matter is deemed a complaint, pursuant to the DPE Complaints Policy.

<sup>20</sup> During the interagency meeting with ICAC, NSW Ombudsman, OLG and DPE

- if council staff appear before the court, who should instruct Council, and
- clarity in relation to resourcing for panels in court matters (recommendation 9).

DPE indicated that this was completed with further clarification provided in February 2019 Quarterly newsletter.

## 2.4 Stakeholder perceptions

In this section, stakeholders include: councillors, members of the community, applicants, objectors and council staff.

### Understanding and satisfaction

In the media, there was a gradual shift in perceptions and reports regarding the panels which became neutral or positive as the year progressed. In quarter 2, articles mostly tended to focus on a specific DA or a community issue in the local council area, with passing references to the panels. In quarters 3 and 4 the articles predominantly focused on perceived community concerns about overdevelopment in the local area.

There appears to be scope to provide community members with (further) information on the panel system. Surveyed experts thought that the understanding of community members was lower than council staff and industry stakeholders.

Stakeholder perceptions of applicants/objectors' satisfaction with panel processes contributes to an understanding of how well the panels are operating. Community representatives tended to rate satisfaction lower than experts. It is too soon to tell what this means for the reform objectives.

Sixty-eight percent of surveyed members of the community have been involved with a panel one or more times since March 2018 – with most involvement relating to DAs (88 per cent). Of those who indicated involvement with a panel since March 2018, 31 per cent stated they were an applicant or consultant supporting a DA.

Sixty-three per cent of respondents agreed that the most recent DA they were involved with warranted consideration by an independent expert panel. Notably, applicants were statistically less likely to agree with this statement compared to objectors and other community members.

Fifty-seven per cent of all respondents did not achieve the DA outcome they had desired, 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.

### Satisfaction with elements of panel

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.

Most surveyed community members agreed that panels are an appropriate way to determine certain DAs (60 per cent) and advise on planning proposals (53 per cent). The level of agreement did not decrease by a statistically significant amount as the number of interactions with panels increased, highlighting a consistency in opinion about appropriateness.

Overall, community members were statistically 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 statistically significant proportion (31 per cent) strongly disagreed with the current IHAP process. Another 29 per cent were neutral or did not know. Overall, the main reasons community members stated that the process is not operating as well as it could were because of:

- the community being inadequately informed about the new panel system and processes,
- concerns that an independent panel were unaware of the local issues,
- inadequate access to information about the new panel system,

- a perceived conflict of interest, and
- the lack of opportunity provided to objectors and residents to be heard.

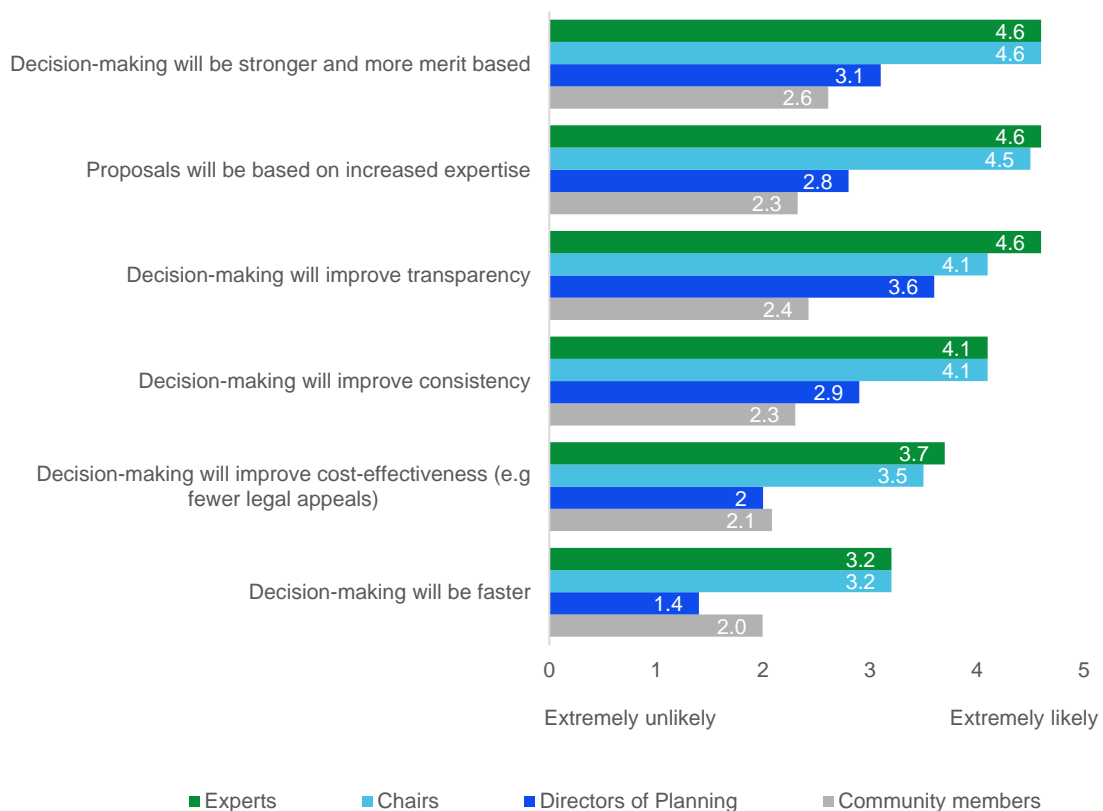
Surveyed community members were also given the opportunity to provide open feedback on the current panel process. Respondents commented on:

- the lack of accountability of panel members,
- the 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.

### Views on the reform objectives

The new panel model is intended to contribute to six (immediate and intermediate) reform objectives: merit-based consideration, faster decision-making, improving consistency and transparency, improving cost effectiveness, and ensuring local planning proposals are based on increased expertise (Figure 1). Chairs and experts tended to agree that it is likely that most reform objectives will be met, whereas council directors of planning and community members tended to view this as less likely and had a more neutral opinion.

**Figure 1 Views on the likelihood that the IHAP panel model will meet reform objectives, according to panel members, council directors of planning and the community members**



Survey question: In your opinion, under the new IHAP model in Greater Sydney and Wollongong how likely is it that...?  
 Sample: Chairs N=31; Experts N=41; Directors of Planning N=14; Community Members N=170. Scale: 0 to 5 (Extremely unlikely – Extremely likely).

In the half year report IPPG recommended that DPE investigate additional ways to build confidence in the panel system. IPPG recommends that DPE continue to explore ways to bolster community confidence. Many of the areas for consideration outlined below are likely to contribute to system confidence. Additionally, DPE could identify particular communication/awareness raising strategies (e.g. online information) about the overall expertise of panellists available in the system.

DPE has advised this was ongoing and:

- is implementing recommendations of the Kaldas review
- is providing refresher Planning for Non-Planners course to be offered, and
- will continue regular member briefings.



## 3 Recommendations

The evaluation recommendations are based on quarters 1, 2, 3, 4 findings as detailed here in this final year report. Ongoing monitoring and evaluation of the reforms will assist in tracking their effectiveness and, if needed, refine or update recommendations as more information comes to light following this evaluation. The Department's continued high quality engagement with key stakeholders provides ongoing support for their effective implementation.

As considerable support has been provided to date, strong relationships exist which form an excellent basis on which to continue to support the implementation of the panels to achieve their objectives.

The key themes that emerge from year one of the evaluation range across several dimensions and include seeking to achieve a balance between:

- flexible implementation and direction and guidance to ensure the integrity of the panels as a model to deliver on their objectives with respect to process and outcome consistency
- the importance of councils applying the model with flexibility for their local circumstances while ensuring that the points of system influence remain limited and predictable to deliver the objectives with respect to minimising corruption risk, and
- the importance of recognising the value of local expertise and the contribution of interdisciplinary inputs in determinations to enhance and grow expertise in determinations, for both panels and council staff.

Consideration of these factors underpins and influences the nature and range of the recommendations. DPE's view on where to strike the balance between local flexibility and direction will determine the extent of change that results from these recommendations.

### Panel members: experts and chairs

#### **Recommendation 1: Review the number of panels on which members sit in subsequent panel appointment processes**

While the value of panel members on multiple panels may lead to the cross-fertilisation of good ideas and practices, this may also lead to a few people potentially having wide ranging influence over development determination processes. It is recognised that the Department facilitates the selection of the pool of experts on behalf of the Minister and the councils select from this pool for their panel appointments. Improved coordination of this process may lead to a greater spread of individuals across available appointments.

Additional monitoring of the spread of panel members across IHAPs and Regional Planning Panels and other relevant bodies (i.e. the Independent Planning Commission, etc.) is recommended to review the total number of DAs panel members determine over a year and the number of appointments individuals have in the panel process and on other relevant panels. It is recommended that data be collected for at least another year to support these investigations with a view to considering the potential for influence that any individuals can exercise over determinations in the NSW planning system.

#### **Recommendation 2: Provide greater guidance and clarity regarding processes for panel member rotation**

It is recognised that chairs control the selection of members for each panel meeting. There is a notable variation in the number of times panel members sit on a panel and some panels have insufficient rotations of members.

DPE indicated as part of its panel email update (Feb 2019) that the Operational Procedures outline that chairs are responsible for ensuring the rotation of chairs, alternate chairs, experts and community representatives. 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 gain experience in the responsibilities that being part of a determining body entails.

This recommendation follows the Kaldas Review recommendation: that the Department give consideration to ensuring consistency and providing greater clarity in relation to rotation of IHAP panel members.

DPE should continue to provide detailed good practice guidance and reporting in this area. This is an important issue of probity and if councils do not appear to be following guidance this should be a point for further review.

## Panel members: community representatives

### **Recommendation 3: Change the name from community representative to community member**

It is recommended that the 'community representative' role name be changed to 'community member.' This will bolster continuing Departmental efforts to clarify the role.

This will emphasise the importance of local knowledge as part of the community representative's contribution to the panel deliberations and de-emphasise notions of 'representativeness'. Emphasis should be placed on the unique value of local insights and perspectives.

The panel member is not elected by, or directly accountable to, the community, and therefore should not be named 'representative'. The role of the community member is intended to focus on local concerns and knowledge. It is recommended that DPE continue to work on ways to refine, improve and engage with these members and chairs in supporting the value of their contributions.

### **Recommendation 4: Councils should not appoint professional experts as community members in the future**

The community representative should not be an expert in one of the listed professions for eligibility for expert member selection as this changes the actions of the 'expert' community member if they have professional qualifications and reduces their focus on bringing local expertise to the determinations.

It is noted that DPE issued guidance on this issue as part of its April 2019 update. It is understood that DPE remains committed to building a stronger shared understanding of the value of community knowledge and ensuring that community representatives have the support they need to provide informed and relevant input into the decision-making process.

### **Recommendation 5: Councils review the remuneration for community representatives**

It is recommended that councils review the remuneration for community members relative to that of other experts.

The Minister has set the minimum remuneration rates and councils are able to determine higher rates. It is widely discussed by the community representatives that if they are remunerated less than other panel experts, this sends a message that their inputs are of less value. Others argue that as they are not required to have particular professional expertise, it is appropriate to set the remuneration levels at a lower rate for this role.

## Referral criteria

### **Recommendation 6: Establish a working group to review the referral criteria**

It is recommended that a small working group, made up of experts, prepares a position paper on referral criteria for DPE to consider.

It would be beneficial to obtain multiple perspectives on this issue and it is recommended that stakeholder feedback is formally invited on this issue as part of the 18-month review which the Department has already committed to undertake.

This recommendation aligns with the Kaldas Review recommendation: that the Minister give consideration to amending the 'Local Planning Panels Direction – Development Applications' to provide greater flexibility for local councils to refer additional matters to panels for consideration (recommendation 8).

## Probity, conflict of interest, transparency

### **Recommendation 7: Continue to provide further education on and ongoing monitoring of conflicts of interest**

It is recommended that DPE and other relevant probity agencies and stakeholders (e.g. ICAC) continue to provide greater clarity on what constitutes a conflict of interest in the context of panel membership and operations. This is a valuable way to build a stronger shared understanding of real, perceived and potential conflicts of interest and how to manage these appropriately.

DPE should review periodically conflicts of interest declared at public meetings and to request councils to alert DPE of individuals when there have been numerous declarations of conflicts of interest before the meeting which have required the individual to step down for that meeting.

It is recommended that the Department implement ongoing monitoring and reporting of chair management of conflicts of interest at panel meetings.

### **Recommendation 8: Investigate the role of panel members in paid work in the areas in which they sit on panels**

Undertaking consultancy work in an area where a panel member has been appointed does not in itself necessarily lead to a conflict of interest, and there is detailed guidance and directions for chairs in handling conflicts of interest.

It is recommended that DPE further investigate panel members' involvement in planning matters in the local government areas in which they make determinations which may, in the future, lead to considerations of limiting panel members from paid work in development delivery, planning, legal appeals, including work for the council, in areas in which they are appointed to panels.

There are many quality applicants to sit on the panels and therefore this may be achievable without impacting on the pool of quality panel members available.

It is noted that DPE has already conducted extensive work around this issue. Notwithstanding, the public perception of conflicts of interest fluctuates, and ongoing monitoring will be required in order to minimise any potential risk and consolidate public confidence in the operations of the panels.

Annual reporting of all activities by panel members of the professional activities in the local areas will assist in generating further data about this issue.

### **Recommendation 9: Continue to improve the collection and reporting of complaints data**

It is recommended that DPE pursue ways to further collaborate with complaints agencies to enable the exchange of relevant data and files related to panels. This could include entering into a Memorandum of Understanding and piloting data-driven techniques.

As part of this collaboration, it is recommended that DPE initiate regular opportunities for complaints agencies to meet to explore issues and trends in panel-related complaints. With the establishment of the DPE Ethics Unit, it will be important to ensure that complaints data and systematic reviews adequately capture panel-related data and can readily identify the council, the panel and panel member/s involved.

It is recommended that DPE work with complaints agencies to ensure any complaints related to panels are identified when the complaint is lodged (e.g. by tagging or classifying panel-related complaints) and information is also recorded for the council and panel member involved to enable more comprehensive review of the complaints and issues system-wide.

To ensure there is comprehensive complaints data from across the system, it is also recommended that DPE map the complaints pathways and make this information available online.

To enable DPE to monitor effectively complaints submitted to councils, DPE should emphasise the requirement for councils to notify the Department of any panel complaints lodged with councils to ensure DPE can effectively monitor panel operations.

In relation to complaints data, DPE could investigate ways to embed advised changes to complaints data collection into its routine business systems.

### **Recommendation 10: Chairs encourage councils to hold meetings at times that enable most public access**

Panel meetings held during the day may impact the degree of accessibility and engagement for proponents and members of the community. The Department could consider advising councils that an early evening meeting may lead to greater accessibility for community members, acknowledging that no time will likely suit every community member. This is an important transparency measure. It is noted that DPE issued guidance on this as part of its April 2019 update. Chairs can discuss with councils if there are concerns that meeting times are not at broadly accessible times.

### **Recommendation 11: Councils explore live streaming of panel meetings**

It would be valuable to work towards live streaming of panel meetings; this can be done relatively cheaply and is a good transparency measure. This requirement has been introduced for council meetings across NSW.

## Planning proposals

### **Recommendation 12: Continue to support the effectiveness of the role of panels in planning proposals**

It is recommended that DPE continue to provide guidance to councils about the advisory role of panels on planning proposals.

The evaluation found the involvement of panels in planning proposals remains varied and still is relatively unclear. This is likely to improve as the councils develop their Local Strategic Planning Statements.

## Ongoing support, monitoring and evaluation

The following outlines issues for DPE to consider actioning, often in collaboration with key stakeholders. The need for and relevance of these matters should be monitored, particularly where this may involve a change or refinement to operational processes or procedures.

### **Recommendation 13: DPE continue to provide councils with further guidance and support**

It is proposed that DPE continue to host half yearly sessions for all key stakeholders where they can share best practice, raise issues and explore ways to fine-tune their implementation of the panels.

To assist councils, DPE could provide an avenue for councils to share panel-related resources (e.g. templates) and share advice (e.g. online portal or group email address).

### **Recommendation 14: Council continue community education and support to panels**

Councils and communities play an important role in the successful achievement of the panel reform objectives. The range of strategies implemented in the first year should continue in years two and three of monitoring the panels operation.

For example, councils should continue to be encouraged to hold half yearly or annual meetings for all panel members, host meetings for community members and conduct community outreach to inform community members about the panels.

Issues for focus by councils and DPE include:

- consider the role of chairs chairing the meetings - introductions, public or closed deliberations
- find opportunities for education of the community regarding the value and functions of panels
- clarify the conduct of the chair in relation to seeking advice from council staff, and
- explore e-meetings or electronic determinations when appropriate.