



Property Council of Australia
ABN 13 00847 4422

Level 1, 11 Barrack Street
Sydney NSW 2000

T. +61 2 9033 1900
E. nsw@propertycouncil.com.au

propertycouncil.com.au
 [@propertycouncil](https://twitter.com/propertycouncil)

Australia's property industry

Creating for Generations

21 November 2019

Mr Peter Achterstraat AM
Productivity Commissioner
NSW Treasury
GPO Box 5469
SYDNEY NSW 2001

Email - ProductivityFeedback@treasury.nsw.gov.au

Dear Mr Achterstraat,

Review of the Independent Planning Commission

The Property Council of Australia welcomes the opportunity to provide comments to you in relation to the review of the Independent Planning Commission (IPC) (the Review).

As Australia's peak representative of the property and construction industry, the Property Council's members include investors, owners, managers and developers of property across all asset classes. We are pleased to provide the following comments for your consideration.

We have reviewed the three terms of reference for the conduct of this review and make our comments in globo.

We believe the IPC has and should continue to have an important role to play in the planning system. As we have seen at a local council level with the introduction of Independent Hearing and Assessment Panels (IHAPs), there is value gained by using technical experts to review detailed assessments and make final decisions and determinations about projects. With the establishment of IHAPs, it makes logical sense that there be an equivalent body to make decisions beyond the remit of the local panels.

Budget, efficiency and resourcing

According to its Annual Report, in the 2018-19 financial year, the IPC completed 65 cases, including:

- the determination of 44 SSD applications
- four public hearings, and
- providing advice on 17 development applications and planning matters.

A further 24 cases were still under consideration as at 30 June 2019.

There is no publicly available data available as to the current resourcing of the IPC as its budget seems to be subsumed within the broader allocation to the Department of Planning, Industry and Environment and no details are provided in the IPC's Annual Report. Thus, it is impossible to make judgements or recommendations about whether the IPC has enough resources and whether those resources are being used efficiently or could be more efficiently used elsewhere.

The only information available as to the IPC's efficiency is in its Annual Report which includes the following table:

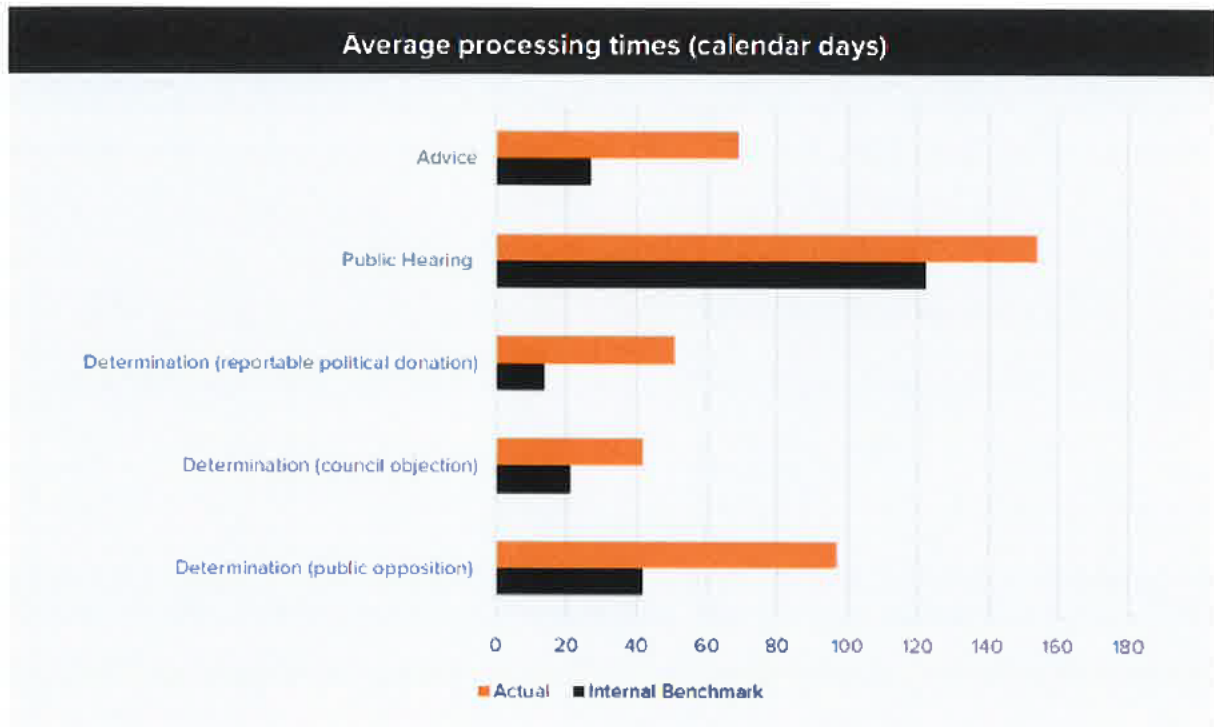


Figure 6 Average processing times for Commission cases by function type 2018-19.

No information is given as to how the benchmarks have been determined internally or how they compare with other merits decision making bodies. Nonetheless, certain conclusions can be drawn from the above table:

- No internal benchmarks are currently being met
- Advice matters take longer to conclude than determinations where there has been a reportable political donation or a council objection
- Apart from public hearings, the actual processing times are approximately double the benchmark processing time
- On average, the IPC giving advice adds 69 days to a matter's time within the NSW planning system

There is no information provided in the most recent Annual Report as to how the IPC intends to address these matters.

Systemic delay is an unfortunate feature of the NSW planning system. It should be key priority of all agencies within the system to measure "time", "delay" and to take measure to improve performance in this regard.

We recommend:

- The IPC's budget be made transparent by, for example, an addition to its Annual Report

- The internal benchmarks be reviewed against best practice standards and amended if necessary
- The IPC put in place a plan to reduce average processing times and report against it in its Annual Report

Functions

The functions of the IPC are currently set out in Section 2.9 of the *Environmental Planning and Assessment Act 1979* (the Act). The key functions of the Commission are to:

- determine State significant development applications where there is significant opposition from the community (a decision-making function),
- conduct public hearings for development applications and other planning and development matters (a decision-making function without an appeal right), and
- provide independent expert advice on any planning and development matter, when requested by the Minister for Planning and Public Spaces or Secretary of the Department of Planning, Industry and Environment (an advisory function).

A fundamental question is what functions should the IPC have? Arguably, as currently conceived, the IPC's focus is too broad.

A current function of the IPC is to provide advice to the Minister or the Planning Secretary on any matter on which the Minister or the Planning Secretary requests from the Commission. It is arguable that as a matter of principle, the IPC should not be both a decision maker and an advisor given its niche role in the planning system. There is an inherent risk of institutional confusion both on the part of the Department as well as the IPC, given the current mix of functions. Although including this function might have been a sensible response to the system which the Planning Advisory Commission (and subsequently the IPC) replaced, now is an opportune time to consider whether this function is better placed elsewhere. And, were the IPC's functions narrowed, this would ensure more resources could be allocated to its decision-making functions which should also contribute to improved processing times.

What would be the impact should the IPC no longer have an advisory role? Should the Minister or Secretary require independent advice on a matter, they have a number of other sources, including the standing and independent Greater Sydney Commission. The Secretary also has well qualified experts within the Department who should be able to provide independent, frank and fearless advice. And, in recent times, Ministers have also requested independent advice from other eminent experts such as Nick Kaldas APM during Minister Roberts' tenure.

The prevailing view that the IPC as currently conceived is contributing to the systemic delays within the NSW planning system seems to be borne out by the statistics above, especially in relation to its advice function. There is a strongly held view amongst our members that over time the IPC (in its advisory capacity) has become a place to 'warehouse' difficult matters about which the Department does not wish to take a stand. We understand an increasing number of matters under consideration by the Department are referred to the IPC for advice, such as planning proposals and rezoning reviews. This practice should be stopped.

When the Commission, at the request of the Minister, holds a public hearing (including a multi-stage public hearing) in relation to an SSD application for which it is the consent authority, merit appeal rights in respect of any future decision on that application are extinguished. We would argue that this is an unsatisfactory situation. It is not clear from information available in how many cases, a direction given to the IPC to hold a public hearing has been made by the Minister or by a delegate. We would submit that denial of a proponent of an appeal right is unjust and a denial of natural justice.

We recommend:

- The SSD decision-making function be retained
- An appeal right be put in place for matters which proceed to a public hearing
- The advice function of the IPC be reconsidered

Expertise

We have become aware that in recent years there has also been a decline in the depth of professional planning expertise available to the IPC members from its own staff resources. As the final arbitrator on very important planning matters (in most cases the most technically complex of all planning matters in NSW), the IPC should have a team of qualified planning experts it can use to assist IPC members make sound decisions.

We understand the current members of the IPC hold strong skillsets from a wide range of scientific and public administration backgrounds but there are very few qualified urban or regional planners within the ranks of the current panel of IPC members. This is a very important skill that we think is required for this role.

We recommend:

- A stocktake of the skills and experience of the current IPC members be undertaken
- A stronger representation of members holding a recognisable qualification such as eligibility for membership (Corporate or Fellow level) of the Planning Institute of Australia (PIA).
- The Chair should have appropriate and specialist qualifications in planning in addition to any other they may have.

Certainty and consistency

As the IPC exercises its functions as a consent authority it is required to adhere to relevant State legislation and government policy. Recently we saw the IPC seek to develop policy clearly outside its statutory role. It should be the Government which sets policy not an independent body acting as a consent authority.

Additionally, we strongly believe that much more work needs to be done to ensure IPC decisions are consistent and that outcomes as predictable as they can be. Having more specialists making those decisions will assist in that regard. The other key component relates to the leadership and quality assurance process that the Chair can and should have. We also would submit that the Chair should take an active role in ensuring that members not only make decisions that are consistent with law, but also that logically consistent. At the moment, some of the variations in decisions (where no such variations should exist) are undermining the status of the IPC and its decisions.

We recommend:

- The Chair should be a full-time appointment.
- There needs to be clear guidance issued to the IPC that were it identifies a policy gap, the Chair of the IPC should be raising that with the Minister for direction and guidance.
- The Chair should have clear KPIs around a quality assurance process in relation to the decision making of the IPC.

Should you have any questions in relation to this submission do not hesitate to contact [REDACTED]
[REDACTED] Deputy Executive Director on [REDACTED] [REDACTED] or [REDACTED] [u](#)

