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**Trusted Institutions: Expertise,
Gender and Legitimacy on
Planning Panels**

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Trusted institutions: expertise, gender and legitimacy on planning panels

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Abstract

Experts are increasingly replacing elected representatives in the planning of Australian cities and regions. Following concerns about delays and corruption, expert decision-making has been promoted as an important mechanism to restore trust in the planning process. Others have expressed concerns about the loss of democracy entailed in this shift, but this is not the whole story. The nature of expertise is itself significant, and we examine the composition of these new decision-making bodies. We focus on Local Planning Panels, the latest suite of expert planning bodies introduced in NSW, the state that has led the shift from elected to expert decision-makers. Our analysis reveals that expert panels are highly gendered, which may work against the legitimacy and effectiveness of these increasingly influential planning bodies.

Over the past three decades, power has shifted from elected councils to statutory bodies. Decisions about whether to grant approval for development – crucial decisions for the liveability and sustainability of Australian cities – are increasingly being made by non-elected ‘experts’. Critiques have focused on the loss of democratic accountability, but have not considered the composition of the expert bodies themselves. Yet preliminary examination suggests composition is an issue, with significant homogeneity across gender, age, ethnicity and the types of expertise represented. This is compounded by the large proportion of members serving on multiple bodies.

While experts are promoted as depoliticising the planning process, ensuring informed, objective decision-making in the public interest, expertise brings its own challenges. The subjectivity of expert-led planning has long been a target of critique, with widespread calls to diversify the decision-making table. As Fainstein and Servon note: “planning decisions have historically been the province of white upper-middle class men, and the decisions that have been made reflect the interests and experiences of that group” (Fainstein & Servon, 2005, p. 2).

In this paper we examine the gender of experts appointed to the newest planning panels in NSW, Local Planning Panels (LPPs). NSW has pioneered the use of panels, developing models that have influenced other states. The introduction of LPPs in 2018 is significant, expanding beyond projects of regional and state significance that had been the focus of panels for the previous 30 years, to take over all of the development decisions previously made

by elected councilors across Greater Sydney and Wollongong. Our analysis shows that an unintended consequence of the shift to expert decision-making is that women are underrepresented in the decisions that shape our cities and regions. If panels are to build trust in the planning system, this must be addressed.

Diversity and legitimacy of the planning process

A key driver for the introduction of expert panels is a concern that planning suffers from a lack of public trust, particularly after several high profile cases of corruption in NSW. Both the Independent Commission Against Corruption and the Kaldas review of decision-making in the planning system have recommended greater use of expert panels to reduce corruption (ICAC, 2012; Kaldas, 2018); peak bodies have echoed government claims that expertise can improve the quality and legitimacy of decision-making (PIA 2018; Property Council 2017; UDIA 2013). When introducing legislation to establish local planning panels, the Minister explained:

Corruption in the exercise of planning functions by local councils will always be a potential risk. ... When a panel is truly independent and expertly qualified, it greatly reduces the risk that the decision-maker will have a conflict of interest. This approach also helps to de-politicise planning decisions and improves the thoroughness and quality of decision-making (Roberts, 2017).

Much like many other planning panels in NSW and Australia, LPPs are composed primarily of experts. Each panel has four members; the chair and two others must be experts in planning, architecture, heritage, the environment, urban design, economics, traffic and transport, law, engineering, tourism, and/or government and public administration (EPA Act, s. 2.18). The chair and two alternate chairs are appointed by the Minister, the council selects the other two experts and their alternates from a pool approved by the Minister. The fourth member is a community representative chosen by council.

There is no indication that diversity has been considered in the development of LPPs. Little guidance is provided to councils on how to make their selections from the pool of approved experts. The government has taken care to ensure that panel members are not property developers, real estate agents or elected councilors, but ‘expertise’ appears to be the only concern beyond this. Factors such as gender, age, ethnicity, cultural background, profession and (dis)ability are not mentioned. Diversity was not discussed in an evaluation of panels commissioned by the NSW government, which found that “the panel process is operating well” and “overall, panels have been found to contain an appropriate range and depth of expertise” (Institute for Public Policy and Governance, 2019, p. 5).

The increasing power of planning panels has prompted critique, but composition has attracted very little attention. Concerns have centred on the loss of democratic accountability (Bishop, 2014; Ruming, 2011a, 2011b; Williams, 2014). While there is little literature on panel composition, the composition of comparable bodies has been examined through a gender lens: corporate boards, juries, political parties, parliaments and courts (see for example Colley and van Acker, 2020; Lückcrath-Rovers, 2013; Kenney, 2013). Panels are perhaps closest to courts in their functions. Like judges, panel members assess cases against pre-determined rules. Panelists

make determinations that are framed as objective and technical, not subjective or political. Like judges, there is little accountability for panel members. They are appointed for fixed terms, and can be removed only in very limited circumstances.

The literature on court composition emphasises the importance of diversity (Kenney, 2013; Posner, 1999; Rackley, 2008; Solanke, 2008). Because justice must not only be done but be seen to be done, judicial diversity makes decisions more legitimate, and compliance more likely. This rationale is even stronger with respect to panels, which are more explicitly political – the rules and standards that panel members apply are more flexible than the laws that judges enforce. Planning rules are almost never black and white, but discretionary, requiring trade-offs which are inevitably subjective and political. Once this is acknowledged, the people chosen to make those choices becomes especially important. This is recognised to some degree in the design of planning panels: community representatives can be understood as an acknowledgement that expertise is not infallible, and that other factors are also necessary for legitimacy.

Expertise and gender

We examined the composition of LPPs to quantify women’s representation and drew on publicly available information about panel members on individual councils’ websites. While there are many forms of diversity that would strengthen planning panels, we focused on gender, since information about other identity markers is generally unavailable and women are a significant group that is often under-represented. Our analysis revealed significant disparity in the numbers of men and women appointed as chairs and experts to panels.

Men comprise approximately two thirds of all panel chairs (66 of 104 chair roles, which include chairs and alternate chairs). Women comprise only 12 of the 35 chair positions, with eight serving as chair on more than one panel. Women make up more than half of all expert panel member positions (135 of 226 positions), however, over 85 per cent of these women sit as experts on two or more panels, compared with two-thirds of men who are on multiple panels. Examining the numbers of individual women and men appointed as experts on panels, rather than the number of positions, shows that the number of individual men appointed as experts is double the number of women appointed. Women sitting on multiple panels is similar to women being on multiple corporate boards – a process known as ‘over-boarding’ (Lee, Marshall, Rallis, Moscardi, 2015) which does not fully diversify boards, or panels.

The lack of women on panels indicates that compared to men, fewer women are seen to be expert. Expertise is defined as “the knowledge people have to accomplish a given task” (various authors in Azocar and Ferree, 2015, p. 844). Historically, expertise was used to lock women out of professions. Men were credentialled as competent and could therefore be admitted into the professions, whereas women and others from diversity groups were unable to meet these exclusionary standards (Azocar and Ferree, 2016). More recently, researchers have examined how expertise operates *within* professions. They have concluded that expertise is gendered, as it is constructed around competencies, skills, knowledge and networks that are a product of gender relations (Azocar and Ferree, 2015; Kelan, 2008). Expertise is constituted and framed through existing power relations, which operate to prioritise men’s interests.

Researchers have found that the expertise held by women is not valued as highly as that held by men, with the tropes of women's expertise being shaped by the traditional gendered division of labour (ie women seen to be more focused on family and caring responsibilities) (Azocar and Ferree, 2015). Gendered competencies were also ascribed to women and men, with those being held by men seen as more objective, and accordingly more valuable (Azocar and Ferree, 2015; Kelan, 2008).

Further research is needed to examine whether panels operate to reinforce gendered norms and whether expertise is shaped according to these norms. To enable this research, further data collection and monitoring is required. We need to know much more about who applies for panel positions, and from this to identify and address the barriers to diversity: if women and other minoritized groups apply in similar numbers to men, why isn't this reflected in panel appointments? If the pool of applicants lacks diversity, what can be done to encourage others to apply, and to diversify the pipeline of future experts? If panels are to be effective in restoring trust and legitimacy in the planning process – and, especially, in making determinations that produce cities and regions that are inclusive and sustainable – their composition cannot continue to be overlooked.

Gender on planning panels

The lack of women on planning panels exacerbates gender inequality in cities and regions. Since the 1970s, feminist critiques have highlighted the degree to which urban planners have created gendered environments tailored to the needs of men and the heteronormative family (Hayden, 1980; McFarlane, 1995; Sandercock & Forsyth, 1992). There is an extensive literature on gender in the built environment, documenting how cities have been shaped to support the activities of the privileged white male, marginalising other needs (Beebejaun, 2017; Fainstein & Servon, 2005; Hayden, 1980; Peake & Rieker, 2013; Sandercock & Forsyth, 1992; Whitzman, 2013). Recognition of intersectionality has added to this, emphasizing the multiple dimensions of exclusion at play (Bosman et al., 2017; Yon & Nadimpalli, 2017). From transport, housing and public safety to childcare, workforce and civic participation, the urban environment can be experienced very differently depending on gender, age, disability, class and cultural background. There is no single women's interest.

The lack of a clearly identifiable women's interest increases the importance of gender on panels. When interests are unclear, and especially when accountability is also limited, the need for diverse decision-makers is greatest (Mansbridge, 2003). It is much harder for 'experts' to consider women's interests when those interests are not clear. More women on panels will not necessarily mean more gender-responsive environments, however, increasing panel diversity can be significant in how issues are framed and pursued, which can make a difference to outcomes (Kenney, 2013; Phillips, 1998; Rackley, 2008). More directly, increasing the proportion of women panel members can increase representativeness and, through this, the legitimacy and effectiveness of planning panels.

Conclusion

Planning panels are rapidly replacing elected decision-makers across Australia. If panels are to meet their stated aims of increasing public confidence in the planning process, then much greater

attention must be given to the composition of these increasingly influential bodies. Our analysis shows that the gendered and exclusionary dimensions of expertise can limit the quality and legitimacy of determinations made by planning panels.

Panels more closely resembling the diversity of the population, who have an understanding of the ways in which cities are experienced by different people, are more likely to be viewed as legitimate. Diversifying planning panels would increase opportunities for members of underrepresented groups, and would increase the legitimacy of panels and their decision-making processes. Increasing the numbers of women on panels would also provide researchers with an opportunity to examine how expertise is constructed, quantified and gendered. With public sectors having extensive numbers of boards, committees and panels where membership is based on expertise, it is time to more fully examine the operation of gendered expertise.

Key Points

- State governments have introduced expert panels to perform advisory and decision-making functions in planning and urban development.
- In NSW, Local Planning Panels have replaced elected councillors in the determination of development applications across Greater Sydney, Wollongong and the Central Coast.
- Our examination of the gender of experts appointed to these panels reveals that women have been appointed to approximately one third of the expert chair roles, but more than half of the expert member roles. However, over 85 per cent of these women sit on two or more panels.
- The lack of women being appointed to planning panels indicates that compared to men, fewer women are seen to be expert, leading to the conclusion that expertise is gendered.
- The under-representation of women on planning panels may exacerbate gender inequality in cities and regions.

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