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Dear Shayne

PIA NSW Submission – Revised Draft Operational Procedures, Code of Conduct and Complaints Handling Policy for the Joint Regional Planning Panels

Thank you for inviting the NSW Division of the Planning Institute of Australia (PIA NSW) to comment on the draft amendments to the Operational Procedures, Code of Conduct and Complaints Handling Policy for the Joint Regional Planning Panels.

In the main, PIA NSW has no objection and raises no significant issues in relation to the proposed amendments. They broadly reflect necessary legislative changes and rationalise the current documents. However, some specific comments on each of the documents follow, noting that some of our comments may relate to parts of the documents that are not subject to proposed amendments.

Operational Procedures

Section 4.7 of the Procedures states that the Regional Panel may request additional information on a Development Application (we assume a reference to Clause 54 of the Regulation). In the context of this Section of the Procedures, this appears to relate to requests for additional information made at the Panel meeting where the application is assessed. However, it may be intended to have wider meaning. We note that Section 4.6 of the Procedures states that where Council requests additional information it should be done in one request. We also note that Section 4.9 of the Procedures indicates that the Panel may identify issues that they expect to be addressed or clarified in the assessment report at the time it holds its briefing meetings with the Council staff. Bringing all of these sections together, we suggest it would be appropriate for the Procedures to indicate that at the briefing sessions the Panel may advise the Council staff of any information it considers it may need to undertake its assessment that has not be submitted or is inadequately addressed in the Development Application submission material. In this way the Council has the opportunity to include such requests in its Clause 54 notices to applicants at an early stage in the assessment rather that the matter having to be deferred at a Panel meeting.

Whilst Clause 54 of the Regulation is addressed in Section 4.7 of the Procedures, the Panel’s powers under Clause 55 are not identified.
Our understanding is that the Panel’s powers include agreeing to applicant initiated amendments to the Development Application under Clause 55(1). However, one of our members has previously been advised by the Panel Secretariat that the Panel considers it does not have this power, as it resides only in the relevant Council. Thus, if a Council undertaking the assessment does not agree to accept amended plans, the Panel cannot agree to receive those amendments. If this advice accurately represents the Panel’s position, this would appear anomalous in practical terms as well as legal interpretive terms (we do not understand from where this restriction in the Panel’s delegation arises).

In Section 4.7, reference should be made to requests for variations to development standards under Clause 4.6 of the Standard Instrument (where applicable), not only to SEPP No. 1 objections.

In first dot point of Section 4.8, “from” should be “form”.

Section 4.13 states that “although an applicant may lodge a DA prior to the completion of the re-zoning process, the DA should not be accepted until the re-zoning process has been finalised ...” We are not certain of the distinction between applications “lodged” but not “accepted”. We do not think it appropriate for a set of non-statutory procedures to seek to restrict a legislative right, that is to lodge (or accept) a Development Application and ‘rezoning application’ concurrently.

In Point 5 of Appendix 1, the recommendation that business transacted by means of telephone, email and CCTV should be limited to “extraordinary circumstances” appears more onerous than the requirements outlined in Clause 268I of the Regulation, which places no such limitations on these meeting modes. We suggest that whilst such meetings are likely to be limited and (usually) inappropriate where applicants or submitters wish to address the Panel, it would seem to be effective and efficient to use technology in favour of face to face meetings for ‘straightforward’ matters (say in circumstances where a recommendation is accepted without alteration and no objections and requests to address the Panel have been received).

Complaints Handling Policy

Under the heading “How to make a complaint”, subheading “General principles” (page 6), would not a potential outcome also be to “dismiss the complaint if considered to be without reasonable basis”?

Code of Conduct

Under point 3.8(a) of the heading “Conflicts of Interests” (page 4), it refers to the disclosure of the interest “at a meeting.” It is our understanding that most conflicts are identified by Panelists well prior to the particular Panel meeting and that the Panelist notifies the Chair or Secretariat in advance of the meeting and either excludes them self from either the whole meeting or that item. We suggest appropriate wording to be “at or before a meeting.....” This is more consistent with paragraph 3.13 (page 5) which refers to a declaration “before or at the commencement of the Panel meeting.”

However, paragraph 3.13 also appears to indicate that even if the member is not selected as a Panelist for an upcoming meeting (whether because of a conflict or for other reasons) that member’s interest should be recorded in the minutes. If the member is not contemplated to be a member of a particular Panel, there appears to be no reason to record an interest in that meeting’s minutes.
PIA NSW appreciates the opportunity to make this submission and will be pleased to be involved in the ongoing review of these documents. Please contact, Robyn Vincin, PIA NSW Executive Officer, on telephone number 8904 1011 or email nswmanager@planning.org.au, should you require any further information.

Yours sincerely,

Sarah Hill
President