23 April 2009

JOINT REGIONAL PLANNING PANELS: DISCUSSION PAPER
(23 April, 2009)

Mr Terry Barnes
Department of Planning

Dear Terry,

Further to the Implementation Advisory Committee meeting last week where you provided a briefing on the commencement of the JRPPs, I received the revised version of the Discussion Paper dated 23 April, 2009.
The document picks up many of the points that were raised at the IAC meeting.
I would like to make the following additional points in regard to the revised version to assist you in finalising the proposed arrangements. The sections referred to in the following comments correspond to the sections in the Discussion Paper.

Section 1.2

It would be helpful to indicate up front here that Guidelines will be sent to Councils in June setting out the “necessary administrative procedures “to be put in place before July 1.
I hope that Councils receive the guidelines in early June. PIA would be prepared to assist the Department with the drafting of the Guidelines for Councils prior to their release.

Section 2.1

The reference now to a CIV of $5m for Council projects is noted and supported.
Whilst the monetary threshold is supported, there is still a problem with determining whether there is a "conflict of interest" (as referred to in the Discussion Paper) or a "potential conflict of Interest" (as referred to in Attachment 2 - Schedule 9 sub-clause (1)d)).
Who decides there is a (potential) conflict?

Is a non-pecuniary or pecuniary conflict of interest different for the purposes of deciding whether the Panel deals with the Council application?

If the application is a change of use of a Council property giving a higher rental then isn’t there still a conflict of interest? The Panels will not want to look at changes of use.

This matter is likely to lead to considerable confusion (or abuse) if not clearly explained.

Section 2.3
I would urge you to consider the implications of every minor S.96 modification application having to be referred back to the JRPP. Many applications can involve multiple S.96 modifications that deal with minor matters arising from detailed design/CC of a project following issue of a consent.

It is recommended that further consideration be given to criteria that might be applied to enable delegation of minor S.96 applications back to Council for example the criteria might allow delegation for internal design changes but no modifications relating to special conditions imposed by the Panel in the consent, car parking, noise generation or similar matters. This may require revision to the Regulations. If this process is not reviewed it is likely that the JRPP will be bogged down with minor modifications.

This Section of the Discussion Paper could be revised to foreshadow that "consideration can be given to delegation of consent for certain categories of modifications back to Councils subject to criteria to be established".

This will also require amendment to clause 6D(3)(a) of Attachment 2 to the Discussion Paper.

**Section 2.4**

The section refers to Crown DAs being determined by the JRPP when Council fails to determine the DA within the prescribed period.

This might also be extended to cover Council decisions that impose conditions that are unacceptable to the Crown proponent.

**Section 2.6**

The Discussion Paper is really silent on the detail of the roles of the JRPP in respect to advice to the Minister on regional planning matters or even on the power that can be given to a Panel to act as a Relevant Planning Authority with responsibilities for plan making.

It is suggested that the Discussion Paper should note that the Paper does not deal with those roles and will be the subject of a separate Discussion Paper or Guidelines.

**Section 4.1**

Given the timing of the commencement of the Panels, the dot points listed in this section need to be covered by clear guidelines as soon as possible. The changes made to the original dot points are helpful and appreciated.

There is a high degree of uncertainty about the process that I am aware of from both planning consultants who may be in future lodging applications to Panels and Council Planners.

It is imperative then that step by step guidelines be made available as soon as possible so that the latter stakeholders are prepared for the new processes at the commencement date.

PIA would be pleased to assist in conducting seminars to interested stakeholders to provide information about the new processes.

A more substantive issue is how the Minister might delegate some determination functions back to Councils that have demonstrated an ability to deal with large applications in a timely and skilled way. This was supported by the Urban Taskforce at the IAC meeting.
This goes also to the concern raised at the IAC meeting that the discretion available to the Minister to determine that a matter valued between $50m and $100m should go to the JRPP or not will be removed. Whilst this adds certainty to the system, it curtails the ability of the Minister to determine the best process to determine an application and whether it has or hasn't regional significance. This is ultimately a policy decision for the Government. Section 4.1 of the Discussion Paper should foreshadow that the Council Guidelines will clarify how a Council might make its own submission to a JRPP when Council Officers are also preparing the assessment report for the Panel and where a Councillor or senior officer may be Council members.

Whilst the timeframes for determination might preclude it, one approach may be for the officers report to go to Council prior to the Panel and the view(s) of the Council subsequently included in the report to the Panel along with other Submissions.

This can be resolved through case management by the Panel Secretariat.

**Section 4.2**

Can the section clarify whether it is contemplated that a JRPP may at its discretion, refer an application to an existing IHAP if it believed advice from a local IHAP might assist the Panels deliberations?

This circumstance may arise not just for IHAPs but I can envisage instances where a Panel defers a matter for specialist advice from an independent expert(s) that may not have been detained through the assessment. The Guidelines should provide for this possibility and protocols adopted as to how the Panel can obtain such external advice.

**Section 4.3**

This new section dealing with Design Review Panels is appreciated.

I would comment that referral to such Panels would ordinarily result in an extended assessment period. This needs to be provided for in the timelines for JRPP matters and should be covered in the protocols for dealing with delays (Point number (d) under s.4.1).

**Section 5.1**

The additions to S.5.1 are noted.

I believe an additional section should be inserted to clarify the role of Council members who are Councillors or community members: "Council members on the Panel are expected to participate in the deliberations of the Panel bringing to the Panel their specialist expertise, in the case of at least one of the Council members, or their knowledge of the local circumstances of the Council area in which the matter is proposed. It is not intended that they are to advocate on behalf of any interest group or the particular views of the Council that has nominated them for the Panel. Council members are not to be subject to the direction or control of their input to the Panel by their respective Councils."

**Section 5.2**

An issue with the areas of expertise listed for State members, unlike Council members, is the inclusion of members with experience in "government and public administration". With respect, it is hard to think of any planning or development application matter that could be referred to a Panel that would benefit by being considered by a member having such expertise. Whilst I understand that the latter categories are prescribed in the legislation, the Institute supports the change that is now reflected in the first paragraph
of this section that State members must have both experience in development assessment or planning matters and one or more of the prescribed categories.

Section 6

Feedback has been received from several Planners expressing concern about the logistics of Panel meetings where several matters involving different Council areas are involved. The likely outcome may be a practical difficulty with Council Panel members changing in/out as matters on the agenda are brought up. Information brochures will be needed to clarify to panel meeting observers what is happening and to minimise disruption to proceedings with the "bump in/bump out" of some Panel members during the meeting.

This logistical difficulty also includes arrangements for site inspections by all of the State members but only the Council members dealing with matters in their areas. These practical matters need to be addressed in the Guidelines.

The section refers to the requirement for Panels to consult with Councils where "a significant adverse financial impact" on a Council may occur.
This matter needs further clarification as to what is "significant" or "adverse". For example, this could include a decision to vary or waive a S.94 contribution, impose a maintenance responsibility on Council, create a public liability risk or require new infrastructure to be supplied by Council. All of these could fall into the context of the terms used and criteria/guidance for the JRPP must be developed.

Moreover, the Regulations do not clarify how the consultation with Council is to occur (General Manager under delegation from a Council?) and what action the JRPP might take if a Council opposes a significant and adverse financial impact.

Section 7

The proposal to use Planning Reform funds to finance the Panels is supported as the preferred option.

Section 8.2

The Institute does not support the restriction on the standing of people or groups to make representations to a Panel.

The Institute requests that these limitations be reviewed.

Furthermore, the Regulations should provide that all Panel meetings and decision making must be made in open session. The only matters that might be considered in camera might be applications that are the subject of an appeal and the Panel is considering legal advice that may be prejudicial to a case if held in open session.

In this respect, the Guidelines need to also deal with the circumstance where an applicant has lodged an appeal against a decision of the Panel, or for a deemed refusal, and the Panel is considering legal advice from Solicitors on the settlement or prospects of a case. This situation occurs in many Councils and will need to be provided for in the protocols for the Panel to explain the process for the Panel considering the development application separate to consideration of confidential advice on the merits of an appeal.

Section 8.5

The revised timetable is noted. The following points are raised:
May
(b) Should include City of Sydney
(e) Draft Guidelines should be provided to IAC members for comment.

June
(b) Should include DoP Regional Teams

The Guidelines must not be issued later than the first week of June to allow sufficient time for Councils to put in place the new administration processes.

Section 9

It should be noted that the Local Development monitoring program is an onerous obligation for many Councils. For this reason, I would urge caution in expanding the list of monitoring data except for critical performance markers.

CONCLUSION

This Institute acknowledges the considerable effort that has occurred to develop the JRPP Discussion Paper.

A lot of detail needs to be worked out and I hope the foregoing comments are not construed as "nit picking". The Institute is prepared to work cooperatively and constructively with the Department to develop any draft Guidelines and inform key stakeholders.

If you have any queries regarding the foregoing please do not hesitate to contact me on the e-mail or number below.

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