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10 November 2022

Mr John Stimson
Presiding Member
Expert Panel
Planning System Implementation Review

DTI.PlanningReview@sa.gov.au

Dear Mr Stimson

City of Salisbury Council Assessment Panel Submission
– Council Assessment Panels

A key reform under the *Planning, Development and Infrastructure Act 2016* has been to increase the level professionalism in the assessment process and remove Elected Members from planning decisions. This change has revealed a tension for operation of the Panels that the City of Salisbury Council Assessment Panel wishes to raise with the Expert Panel for consideration.

This issue arose following development applications where the participation of the Elected Member on the Panel was challenged by the applicants due to the Council having made a representation on a development application before a Panel.

The applicants for the development applications that were subject to the consideration of the Council Assessment Panel raised concerns with conflict of interest due to Council objecting to the development applications through making formal representations on notified development applications. Notwithstanding that the Elected Member on the Panel declared a conflict of interest when the Council considered the motion to lodge a representation on the development applications, the applicant's concern related to the *Assessment Panel Members - Code of Conduct*. In particular clause 21 that relates to Bias.

A member of an assessment panel should always have regard to any affiliation, disposition or any material, pecuniary or other interest that would lead to a reasonable apprehension that they may be biased in carrying out any aspect of their role under the Act.

Legal advice provided to the Elected Member was that the member should be mindful that a complaint could be made about the member being affiliated with Council. Caution was suggested as a complaint could be made to, and subsequently investigated by, the State Planning Commission. As a consequence, the Elected

Community perceptions are often that the CAP will make a decision consistent with a Council position, whether that be to oppose a development application as a representor or to lodge an application as developer. These perceptions cause considerable consternation for representors, CAP Members and applicants despite CAPs being 'live' to them and discharging their statutory role and functions in strict accordance with the PDI Act.

The Expert Panel is requested to consider this issue and may wish to:

1. Review clause 21 of *Assessment Panel Members - Code of Conduct* to provide better clarity for the role of Elected Members on Panels in circumstances where a council makes a representation and the member declares a conflict at the council meeting. As it is drafted, it can be interpreted in such a manner as to cause difficulty for CAP Members who are also Elected Members in balancing their separate roles in this regard and how this is viewed by the community.
2. Consider whether clauses 14.e. and 21 of the Code of Conduct can be refined or, whether they remain necessary and can be deleted. With respect, clauses 7 – 14.d. and 15 – 20 are very clear and detailed in their scope and application such that they ensure that CAP member behaviour is objectively appropriate, fair and impartial without causing tension with applicants and the community who may view the mere fact of a CAP Member also being an Elected Member of the Council or an Independent Member being a member of a professional organisation, or a member of several Panels, of themselves, constituting a breach of one or both of these clauses.
3. Use an alternative title than "*Council Assessment Panels*" to better differentiate the independent role of Panels for the community. The continued use of the term "Council" means that applicants and members of the community make assumptions concerning the CAP and its relationship with the Council which cause many of the tensions mentioned above.
4. Review the call-in power and practice by the Minister for Planning under section 94 of the *Planning, Development and Infrastructure Act 2016* to include more significant development applications undertaken by a Council.

Yours faithfully



Chris Zafirooulos
Assessment Manager
City of Salisbury Council Assessment Panel