

INQUIRY INTO REGIONAL PLANNING PROCESSES IN NSW

Organisation: Namoi Councils Joint Organisation

Date received: 15/02/2016



Members:

Gwydir Shire Council, Gunnedah Shire Council, Liverpool Plains Shire Council, Moree Plains Shire Council, Narrabri Shire Council, Tamworth Regional Council, Uralla Shire Council and Walcha Council

***Serving member Councils' best interests by working together
to build the scale and capacity of Local Government***

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<p>(a) opportunities to stimulate regional development under the planning framework including through legislation, policy, strategy and governance,</p>	<p>Provision should be made to work more outside the Standard Instrument to address local/regional issues. Examples; including implementing uses outside of mandated provisions and more scope to develop specific local clauses to address unique circumstances.</p> <p>Flexible and performance-based provisions should be incorporated within the LEP framework to enable regional councils to work outside the restrictive, and often metro-focused, SILEP framework.</p> <p>The fundamental constraints of the current planning framework relate to a costly and cumbersome system where many of the key actors have low level knowledge and skills. There is a distinct lack of flexibility to achieve “outcomes” based planning. An integrated system of state, regional and local planning provisions with high flexibility at the local planning level would provide a clearer framework for decision-making and avoid many of the obstacles of the existing system.</p>

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<p>(b) constraints to regional development imposed by the planning framework, and opportunities for the framework to better respond to regional planning issues,</p>	<p>Provision should be made to work more outside the Standard Instrument to address local/regional issues. Examples; including implementing uses outside of mandated provisions and more scope to develop specific local clauses to address unique circumstances.</p> <p>Duplicitous development requirements currently exist within the current planning framework. For example, under the <i>Environmental Planning and Assessment Act 1979</i> and the <i>Local Government Act 1993</i> there are diverging and inconsistent approaches in respect of the management of manufactured housing, a common regional development type.</p> <p>In addition to duplicative frameworks within the current legislative regime, there are multiple layers of approvals required, frequently from a series of separate Government agencies (Federal, State and Local). This in turn adds to the complexity and cost of conducting regional development. Given ongoing processes of State Government restructuring and down-sizing, detailed and timely targeted technical advice is frequently unavailable to regionally-based applicants and their appointed consultants. In turn, the complexity of the legislation is also forcing many regional development applicants down the path of seeking assistance by consultancy firms for even basic development applications for residential-allied development.</p> <p>The NSW State Environmental Planning Policy (SEPP) framework, as pertaining specifically to rural and regional development issues, is in urgent need of review. Some items of NSW State Policy are largely</p>

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	<p>redundant or are significantly out-dated (for example SEPP21 - Caravan Parks and SEPP36 – Manufactured Home Estates) and have failed to achieve their originally intended outcomes. The ongoing existence of these items of legislation serves to further clutter the already complex approval frameworks.</p> <p>The complex and duplicitous nature of the NSW planning framework is well-documented. Unfortunately, little progress has been made to streamline and refine approvals process. The Panel's attention is drawn to the previous findings made by the NSW Department of Planning and Environment: <i>Review of the NSW Planning System</i> and associated supporting documentation and submissions.</p>
(c) the suitability of a stand-alone regional planning Act,	<p>Stand-alone regional planning Act is supported but it is important that it not be allowed to stagnate over time while attention is focussed on metropolitan legislation.</p> <p>JO member Councils are unconvinced that a Regional Planning Act would resolve many of the issues and barriers to the promotion of regional development. Whilst it is a noble objective, a Regional Planning Act could indeed create another layer of complexity within an already over-loaded and bureaucratic approvals system. It is considered that the Joint Organisation framework proposed under amendments to the <i>NSW Local Government Act 1993</i> could be a more effective vehicle for regional advocacy and the requisite collaborative processes required to promote regional development opportunities and achieve tangible, on the ground outcomes. The incorporation of</p>

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	<p>suitable regional-centric provisions within primary and cognate legislation (and/or associated Ministerial objectives) may be a more preferable and realistic approach.</p> <p>The recommendations of the <i>Harper Review</i> (2015), specifically in respect of Recommendation No. 9 – Planning and Zoning, is acknowledged. The review recommendation pertaining to the application of a public interest test in the creation of zoning regimes, the need for simplification of approvals processes, and, the broadening of business zones, is duly noted.</p>
<p>(d) the effectiveness of environmental planning instruments including State Environmental Planning Policies and Local Environmental Plans (including zoning) to stimulate regional development, and opportunities to improve their effectiveness,</p>	<p>EPIs are recognised as important means to stimulate regional development. There may be opportunities to allow the development of more regionally specific SEPPs to address local / regional issues.</p> <p>Refer commentary above regarding the need for review of elements within the State Environmental Planning Policy framework. Presently, many SEPPs do not have commensurate guideline documents. This creates issues in respect of the application of certain provisions and the attainment of consistency in the application of Policy across local government areas.</p> <p>State Environmental Planning Policies (SEPPs) are not considered an effective tool in stimulating regional development. Where they act to override local planning provisions so as to provide “an easier path” the resulting complexity in working out exactly what the effects of these</p>

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	<p>instruments are can frequently outweigh proceeding down the normal development path. At the end of the day SEPPs operate more in a restrictive manner than an enabling manner.</p> <p>It is unclear to what degree SEPPs are about promulgating state policy as distinct from providing “how-to” approaches to particular land use issues. They often operate as alternative detailed statutory paths. As an example, Exempt and Complying development is growing in complexity with every amendment yet frequently it is impossible to find a “box” in which to fit a straightforward, low impact development. In addition, this SEPP crosses over with other SEPPs such as the Infrastructure SEPP. While this facilitates many useful forms of infrastructure, without requiring specific development consent, of itself it is a complex and cumbersome tool.</p> <p>It is recommended that where Policy instruments are created, associated Best Practice Guidelines or Explanatory notes are provided to improve the effectiveness of the application of the Policy requirements. These advisory documents will also assist in minimising the need to obtain associated legal advices.</p> <p>A more effective path is an integrated suite of policies covering the state, regional and local levels in a single planning document that clearly articulates how state and regional policy is being expressed at the local level.</p> <p>LEPs should be considerably more flexible than the current Standard</p>

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	<p>Instrument and make much more use of “open” zones where zones are indicative of strategic intent rather than prescriptive. Queensland has utilised such a system for many years.</p>
<p>(e) opportunities to increase delegations for regional councils in regard to the planning making processes,</p>	<p>It is considered more provision can be made for Councils to use delegation where proposals do not increase the development potential of the subject land, e.g. to correct errors in mapping or schedules.</p> <p>JO member Councils are supportive of increased delegations in certain circumstances. Alterations to available delegations should be appropriately balanced against ultimate benefit/need and availability of specialised skill sets within the broader regional context to ensure that the best available outcomes are achieved. A clear ‘<i>line of sight</i>’ also needs to exist to ensure State policy objectives are achieved.</p> <p>A number of delegations exist as per the Planning Circular issued in 2012. These allow regional councils to make plans on their own account subject to certain reporting provisions and also noting ongoing oversight (as is appropriate) from the Department of Planning and Environment. At this stage current delegations (if accepted by councils) as being generally appropriate.</p>

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<p>(f) opportunities for strategic planning to assist in responding to challenges faced by communities in regional areas including through Regional Plans,</p>	<p>Strategic planning and regional plans can allow issues to be addressed prior to conflict developing but it is not appropriate to add a level of complexity without significant identified benefits.</p> <p>Effective regional strategic planning is considered to be an important mechanism to respond to the obstacles faced by rural communities. Many such communities are facing similar issues and challenges and it is considered that the identification of common themes and key priority areas can enable commensurate rectification and/or improvement actions to be identified. These, in turn, can be progressively implemented and be appropriately funded, and supported, at the local level.</p> <p>Regional land use plans (and other regional plans) developed through a genuine consultative process can be an important strategic tool, however, these need to be supported on a statutory base that gives them more weight. Such a statutory base could also ensure that consultation processes are undertaken in a thorough fashion as has recently been achieved with the New England/North West Regional Land Use Plan.</p> <p>This leads to a broader point which is that with the dropping of Local Environmental Studies from the EPA Act there is now no mandated strategic planning process underpinning planning schemes.</p> <p>Various tools such as Growth Management Plans are an administrative convenience and operate without either statutory support or a clear</p>

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	<p>framework as to what they are meant to do and how they are meant to do it.</p>
<p>(g) opportunities for government-led incentives that promote regional development,</p>	<p>Stand-alone regional planning Act is supported but it is important that it not be allowed to stagnate over time while attention is focussed on metropolitan legislation.</p> <p>Refer to commentary in Items (c) and (f) above. It is considered that there are considerable opportunities for the delivery of incentives on a regional basis in a collaborative fashion. This type of model has worked very successfully from a waste management perspective, for example, through the activities of the Northern Inland Regional Waste (NIRW), a joint-funded organisation (NSW EPA and local Councils). The pilot Namoi JO has also successfully delivered government-funded projects for the benefit of their member Councils' communities.</p> <p>It is important that local Councils are engaged in a meaningful fashion in the delivery of incentives to ensure that the best available outcomes are achieved.</p> <p>There are a wide range of opportunities for government-led incentives. In particular these can include a more integrated approach to regulation with regulations being overhauled to be simpler to understand and comply with. Performance based approaches can provide for flexibility in achieving the performance outcomes for those who wish to look to an alternate path to a "deemed to comply" framework. The Building Code of Australia is an example of a</p>

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	<p>regulation framework where one can either “follow the dots” or can propose an alternate solution to achieve the aims. The regulatory burden is growing and is expensive. Adopting a “risk management” approach to regulation can assist in focusing regulation on those areas where risks are highest and consequences more severe. Incentives could be provided by way of reduced compliance costs where businesses take an outcomes based approach to their operations.</p> <p>At the broader level, the provision of infrastructure particularly core infrastructure - the need for which is developed through competent regional-scale planning - can be a major “driver” of economic development.</p> <p>For example, the Namoi Joint Organisation of Councils is currently conducting a regional freight study which is looking at high productivity vehicles and ways in which their regional movement can be facilitated to increase reliability and reduce costs for primary industries. Once this study is complete, however, there is the challenge of funding the infrastructure network that has been identified. This is beyond resources of local councils. Where regional transport priorities have been identified and justified on productivity grounds a major incentive would be the provision of additional funds to construct these works. Fixing Country Roads is a start, however more is needed.</p>

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<p>(h) pathways to improve decision making processes for regional development proposals, including increasing the use of complying development, improving negotiation processes for voluntary planning agreements, and reducing costs associated with assessment, and</p>	<p>Process for Voluntary Planning Agreements</p> <p>Namoi Councils support the Draft Planning Agreement Guidelines embodied in document titled “Planning Agreement Guidelines for State Significant Mining Projects July 2015” produced by the Department of Planning and Environment in consultation with the Mining Industry and NSW Councils as a key part of the Integrated Mining Policy Reforms.</p> <p>Namoi Councils support the mandating of Planning Agreements. Where it is evident the council and the mining company propose to enter into an agreement for the provision of contributions that extend beyond the scope of section 94 or 94A of the Environmental Planning and Assessment Act 1979, the planning consent must include a standard condition of development consent that, acting in good faith and following best practice, the mining company and the council must conclude negotiations for a planning agreement contributions within 3 months of the date of granting development consent.</p> <p>Ideally, planning agreement negotiations should run parallel to consideration of the Mining Development Application and final agreement reached in conjunction with determination of the DA.</p> <p>However, for a number of reasons, this may not be possible. In any event, such a condition of development consent will drive the process for negotiation and finalisation of a planning agreement within an acceptable time frame following the granting of development consent.</p> <p>As a natural progression from mandating planning agreements, Namoi</p>

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	<p>Councils support the obligatory inclusion of an arbitration clause in planning agreements where there is a failure between the mining company and the council to deliver a planning agreement within a nominated period of time following the date of development consent.</p> <p>Namoi Councils support IPART as the body appointed to mediate and arbitrate planning agreement disputes.</p> <p>Namoi Councils support inclusion in planning agreements of the ability to collect monetary contributions from mining companies to commence the process of establishing comprehensive and accurate base line data for the whole of the Gunnedah Coal Basin.</p> <p>Such an initiative is vital to the long term protection of prime agricultural land and aquifers on the Liverpool Plains and will significantly enhance the State Government and local Councils ability to more accurately assess the environmental impact on land, air, water and biodiversity, waste generation and noise emissions of extractive industry, such as coal mining and coal seam gas, entering the production phase.</p> <p>The absolute need for this initiative is never more apparent than at the present moment given the current level of mining and coal seam gas activity in the Gunnedah Basin and adjoining Pilliga Woodlands.</p> <p>This need is reinforced by the July 2015 Federal Department of the Environment final approval for development of a \$1.2billion dollar 268</p>

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	<p>million-tonne Chinese Government owned Shenhua Watermark Open-Cut Coal Mine on high ridge country located adjacent to the prime agricultural highly fertile black soils of the Liverpool Plains.</p> <p>This need is further reinforced by the 2006 granting of Exploration License 6505 to BHP Billiton for the Caroon Coal Project, again located closely adjacent to the prime agricultural black soils of the Liverpool Plains, approximately 30kms south of the Shenhua Watermark Coal Mine. BHP Billiton anticipates obtaining all the necessary approval for commencement of construction in 2016/2017.</p> <p>While not geographically located on the Liverpool Plains, the \$2billion Santos Narrabri Coal Seam Gas Project planned for the Pilliga Woodland near Narrabri involving the development of 850 gas wells, the largest in the NSW, adds further weight and justification for the establishment of comprehensive and accurate base line data for the whole of the Gunnedah Coal Basin.</p> <p>Extractive industry development places immense and diverse pressure on many aspects of the natural environment. Through the independent collection of baseline information, a description of the status and trends of environmental factors will be established against which predicted changes can be compared and evaluated in terms of importance; and a means established for detecting actual change by compliance monitoring once a project has been initiated.</p> <p>Just as extractive industry development places immense and diverse</p>

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	<p>pressure on the natural environment, there is also a significant impact on the region surrounding the LGA where the mine is physically located.</p> <p>It is critical that planning agreements can be negotiated on a region-wide basis, with multiple councils being party to an agreement in circumstances where the impacts of a proposed mine are likely to extend beyond the boundaries of a single local government area.</p> <p>Regional centres such as the City of Tamworth will be called upon to provide a whole range of services and facilities to mining employees and their families regardless of whether they are domiciled within the LGA in which the mine is located or in one of the adjoining LGAs.</p> <p>Mining employees who choose to be domiciled in Liverpool Plains, Gunnedah or Narrabri LGAs will likely travel to the Regional Centre of Tamworth to utilise sporting facilities, cultural facilities, retail, health, medical and education which imposes pressures and cost impacts on the financial resources of the Regional Centre without any contribution from rates and charges from permanent residency.</p> <p>Namoi Councils strongly support the inclusion of Planning Agreements of a formula that provides for sharing of cost impacts across local government boundaries where there is agreement that the mining development will generate a regional demand for services, facilities and infrastructure.</p>

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	<p>Namoi Councils strongly support the principle that planning agreement negotiations, and ultimately the planning agreement, reflect the priorities of the community as outlined in Councils Community Strategic Plans, and address the impacts on the community over the life of the project.</p> <p>While not currently in existence, when Regional Strategic Plans are adopted at the regional level through regional joint organisations, such plans must also inform planning agreement negotiations as they identify the regional strategic priorities and aspirations, the Councils within the Region and the communities each Council represents.</p> <p>The support of Namoi Councils is recorded in respect of provision within planning agreements for a “Future Fund” to provide funding to support council diversification planning initiatives to be deployed following mine closures and end of operational life scenarios, together with mining exit strategies during the life of the mine in circumstances where world market coal prices fall to uneconomic production levels or energy technology changes drive movement away from the use of fossil fuels.</p> <p>Planning agreements are an integral part of the NSW Planning System to redress and mitigate community concerns about the cost impacts for services and infrastructure generated by mining development.</p> <p>Joint Regional Planning Panel Namoi JO Council members are supportive of the Joint Regional</p>

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	<p>Planning Panel (JRPP) framework. The JRPP has achieved some excellent on the ground outcomes and its activities have effectively de-politicised and streamlined decision-making for larger regional developments.</p> <p>The enhancement of complying development opportunities is also supported. However, the commensurate legislative framework needs to be appropriately robust and responsive. State Environmental Planning Policy (Exempt and Complying Development) Codes 2008 is considered to be a poorly drafted piece of legislation which has, unfortunately, in some areas complicated low impact and minor development types.</p> <p>From a planning practitioner's perspective, the Exempt Codes generally work well as they are suitably prescriptive. On the other hand, the Complying Codes can be very complex, as they are open to (mis)interpretation. Furthermore, they are often unable to be suitably supported and integrated by valuable State-led initiatives including the NSW ePlanning framework including the Electronic Housing Code (EHC).</p> <p>General Comments</p> <p>Planning and decision-making processes around regional proposals are a very mixed bag. As indicated earlier, the approach of a local authority together with the technical skills and abilities they are able to bring to the assessment task makes a very significant difference as to whether development proceeds or not. Additional significant barriers</p>

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	<p>arise at the state agency level. The potential for a “one-stop shop” coordinated approach to regional state agency approvals should be given serious consideration. In addition, state agencies should have a tight and a statutory timeframe surrounding the period in which they need to respond to mandatory referral and they also need to have the capacity to respond to non-mandatory referrals where specific technical advice is being sought in a timely manner.</p> <p>Although there is pressure to reduce costs associated with assessment, some of these costs are an integral and important part of the assessment process. Costs can certainly be reduced through clearer planning frameworks, and less resource - intensive application and assessment processes that operate in a time effective manner. This reduces professional time costs and, importantly, expensive holding costs.</p> <p>Where there is a need to increase costs is having development application fees that more clearly reflect the real time-value of assessment. For example, most large developers would have no difficulty in meeting a development application fee that would permit a Council to employ consultants to assist in providing a rapid and thorough assessment of a major project. Similarly, in the constrained circumstances that local government finds itself, the ability to operate a development assessment unit on a cost-recovery basis significantly enhances the prospect of a Council providing appropriate and sufficient resources for a quick and efficient assessment unit.</p>

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	<p>There is little benefit in an enhanced use of exempt and complying development. Most exempt and complying development is hedged round with standardised restrictions into which many small-scale development proposals do not fit. As previously indicated, it is often more complex to work out whether a project “fits” into exempt or complying than simply to prepare standard development application.</p> <p>That said, there is considered to be some additional scope for exempt development noting that the “net” of development caught by the legal term “development” has grown markedly over the years. No development application should be necessary for backyard swings, a barbecue, a reasonable size garden shed, a pergola, or the like.</p> <p>Straightforward and simple development applications that do not require neighbour notification should be able to be easily processed within the 10 day guideline for complying development utilising the standard local development processes. In particular, this permits sensible and appropriate conditions to be added to address specific amenity issues. In this respect complying development is seen as an unnecessary tool provided that Councils implement appropriate administrative methods for addressing small-scale development applications in a timely fashion.</p>

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(i) any other related matter.	<p>Regional and local economic development operates best when there are efficient and effective assessment systems operating within a clear framework of policy and where the outcomes of these assessment systems is outcome based/performance-based decisions.</p> <p>There is a strong need for a complete re-write of the NSW land use planning legislation to provide an integrated state/regional/local set of controls where local controls outline the local implementation of regional and state policy. Careful design of such a system would obviate the need for separate city and regional planning frameworks. Regional and Local scale planning in particular needs to be underpinned by statutorily mandated strategic planning, thereby ensuring an integrated system.</p> <p>There are major reforms to state agency administration that are needed to improve responsiveness, performance and quality of advice. There is a need for an integrated approach to state agency response, in particular for larger or more significant developments.</p>