

INQUIRY INTO REGIONAL PLANNING PROCESSES IN NSW

Organisation: Local Government NSW

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Submission to the Inquiry into regional planning processes in NSW

25 February 2016

Opening:

Local Government NSW (LGNSW) is the peak body for councils in NSW. It represents all the 152 NSW general-purpose councils, and associate members including 12 special-purpose county councils and the NSW Aboriginal Land Council.

In essence LGNSW is the 'sword and shield' of the NSW Local Government sector. LGNSW is a credible, professional organisation representing NSW councils and facilitating the development of an effective community-based system of Local Government in NSW. LGNSW represents the views of councils to NSW and Australian Governments; provides industrial relations and specialist services to councils; and promotes NSW councils to the community.

Purpose

This submission is a response to the NSW Parliamentary Inquiry into regional planning processes in NSW by the Legislative Council's Standing Committee on State Development.

Section 1: Introduction

Background

The planning system has been constantly under review for over a decade by successive NSW Governments that have concentrated primarily on metropolitan issues and in particular how to deliver additional housing more quickly across Sydney. The reform process has focussed on Sydney's growth, often overlooking the opportunity to enable growth to be accommodated outside Sydney, thereby providing employment and services in areas often subject to depletion of such benefits.

The current NSW Government undertook a comprehensive overhaul of the planning system, outlining a new direction and the need for supporting legislation in the *New Planning System for NSW; White Paper, 2013*. This resulted in the development of new legislation that did not receive sufficient support to be passed by the NSW Parliament of the day. Since then directions around the reform of the planning system have not been so clearly articulated by the NSW Government and appear to have been progressed through a series of policy changes with some recent legislative amendments to the Act.

While Sydney councils have had mixed responses to the reform agenda that has been driven by the necessity for growth, regional and rural councils have considered that many of the reform issues under discussion, but not all, to be somewhat irrelevant to the planning issues of their areas. Most of these councils strongly support growth and their current development assessment practice is often less complex or unwieldy, providing a valued service for local applicants. Hence many of the debates around changing the development assessment process have been irrelevant. Nevertheless, the more substantive issues around plan making and implementing a more flexible and less layered plan making process have remained relevant to all councils.

The introduction of regional planning in legislation

Last year, an unexpected and significant legislative change was made to the *Environmental Planning and Assessment Act 1979* with the introduction of strategic /regional planning process outside Sydney, which was introduced at the same time as the establishment of the Greater Sydney Commission. The new legislation introduces Part 3B to the *Environmental Planning and Assessment Act 1979*, which establishes a new regional planning model for areas outside Sydney.

The new model for regional planning has been introduced with little advance consultation with Local Government NSW and the NSW Government is yet to articulate on how these changes will impact on current council practice.

Local Government NSW has raised concerns with the NSW Government about the very limited influence that councils will have in the regional plan making process under the legislation, while yet being required to implement the plan. State agencies do not have the same level of accountability to the plan. In particular, there appears to be no requirement that councils are consulted during the preparation of the plan, except during the public exhibition period with the general public. We believe this too late in the process and will undermine the partnership relationship between Local Government and the NSW Government and the benefits of the emerging regional plan making process.

Regional and rural planning issues for councils

Over many decades, NSW has experienced growing disparities in employment, wealth, income and educational opportunities between and within regions in the state. The spatial impacts of the current economic development path are uneven and hence there is a considerable need to focus not only on metropolitan issues, but also on the issues relevant to the wider rural/regional NSW, including the planning issues.

However, Local Government NSW does not support the view that there is a need for a separate Planning Act for rural / regional NSW, in principle or in practice. In principle, the legislation already provides a general planning framework for plan making and development assessment that is relevant to the whole state with no need to differentiate between the metropolitan and rural areas. In practice, it is impossible to do so anyway. The NSW Parliament was unable to pass draft planning legislation for the state that had been through many years of debate. A separate Act for rural and regional NSW would be hard to justify ; as there is no reasonable position as to how to separate planning issues between the metropolitan and rural/regional areas and develop distinct laws around these differences. In addition, the proposition is unworkable. If there were two Acts it would for example raise the question as to which Act would be applied to the peri-urban areas of Sydney and the regional cities, where development of land is often highly contested. How would this be managed?

Instead of setting up a new Act what is needed is a state/regional policy that identifies areas of future growth for NSW and addresses the specific issues within each region, either on a regional basis or by theme. This framework needs to address planning issues such as the following:

- Infrastructure planning and the expected implementation of that plan by relevant state agencies;
- The implementation and review of the Regional Strategic Land Use Plans to manage land use decisions around resource planning;
- The need to grow regional centres to address the pressure on large metropolitan areas and maintain services, employment opportunities and youth in regional NSW ;
- The tension between protection of prime agricultural land and allowing for resource investigation and development;
- The need to protect biodiversity values and endangered species when considering the permissibility of environmentally sustainable development;
- The issues around the application of E Zones across NSW having regard to the review of E Zones in the Far North Coast;
- Coastal management and planning issues which cover land use decisions and management; and

- The retention and development of infrastructure in regional/ rural NSW to serve local communities.

The need for a Minister for Rural and Regional NSW

LGNSW held a Rural and Regional Workshop in June 2015 for regional/ rural councils where concerns were raised about the lack of representation for rural and regional NSW in the NSW Cabinet. There was a view amongst workshop participants that the NSW Government did not direct adequate priority and attention to issues relating to rural and regional NSW relative to metropolitan areas.

The workshop participants agreed to advocate for a dedicated Minister for Rural and Regional NSW to address the imbalance currently within the NSW Cabinet, and provide for representation for rural and regional NSW in Cabinet.

The following are LGNSW's comments on questions posed by the committee for the Inquiry.

Section B: Specific comments on the Terms of Reference

That the Standing Committee on State Development inquire into and report on regional planning processes in NSW, and in particular:	LGNSW response
(a) Opportunities to stimulate regional development under the planning framework including through legislation, policy, strategy and governance,	<p>Better co-ordination of land use and infrastructure planning Planning instruments provide a broad basis for managing growth and development as well as conservation and protection, depending on the issues. Environmental Planning Instruments (EPIs) are prepared to encourage development in the right places and reduce barriers for such change. Yet they are unable to directly facilitate growth. An economic development policy is needed to attract economic development to specific regions or towns.</p> <p>Growth is supported by infrastructure and having appropriate transport and community services attracts growth. Improving and retaining these services in rural/regional areas is the most effective strategy to attract growth to an area.</p> <p>Regional planning processes need to include an action plan for the delivery of the relevant supportive infrastructure. This could be modelled on the South East Queensland Plan 2009-2013 that identified key infrastructure projects together with associated land use decisions.</p> <p>A better Governance Model The current proposal by the NSW Government is to put in place Joint Organisations of councils, which are supported in principle by Local Government NSW. This model is expected to facilitate regional planning processes.</p>
(b) constraints to regional development imposed by the planning framework, and opportunities for the framework to better respond to regional planning issues,	<p>The recent amendments to the <i>Environmental Planning & Assessment Act 1979</i> (EP&A) provide a new framework for regional planning that may be helpful, but councils are currently unclear as to how will be implemented.</p> <p>Local Government NSW is concerned that council involvement in this new process appears to be on the periphery. Consultation with councils needs to be strengthened to develop a more equal partnership with the State Government so that councils are able to be an integral part of the process and therefore invested in delivering the regional plan.</p>
(c) the suitability of a stand- alone regional planning Act,	There appears to be little benefit in developing a stand-alone planning Act as legislation itself is not considered to be the key barrier to growth.

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(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>EPIs have limited capacity to stimulate growth and are intended to provide the framework for growth to follow. The economy provides the impetus for growth but 'sits outside' the planning system.</p> <p>Developing a more flexible, performance based assessment process will facilitate growth, where it is already occurring but rarely will instigate growth.</p> <p>Many rural areas use place making skills to improve town centres and encourage tourism to support the local economy.</p>
(e) opportunities to increase the delegations for regional councils in regard to the planning making processes,	<p>Some powers of delegation have been given to councils in recent years that enable them to prepare the planning instrument after the planning proposal (rezoning application) has been approved by the Minister or his delegate to fast track the last stage of the plan making process.</p> <p>It would be more effective to give councils real decision making powers to be able to approve minor planning proposals for local development, where they are clearly anomalies and comply with the strategic plan. These applications could be ratified by the Minister, under agreement.</p>
(f) opportunities for strategic planning to assist in responding to challenges faced by communities in regional areas including through Regional Plans,	<p>Regional planning varies across the state with only a few regions having an up to date strategic plan. The challenge is that these plans can be either very general providing little practical direction, or overly prescriptive, over-controlling council's decision making. The process needs to be informative and flexible enough to manage local differences and issues.</p> <p>The proposed Joint Organisations of Councils are expected to provide a suitable model to facilitate a more strategic approach to land use planning at a regional level that includes councils and the relevant state agencies. This will assist the regional planning process.</p> <p>Nevertheless, a key problem with the existing system is the lack of delivery of key infrastructure to support growth in regional areas. Councils indicate that what is often lacking in regional planning is state agency commitment to the plan.</p>

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(g) opportunities for government - led incentives that promote regional development,	<p>There are a number of government led policies that support growth such as the relocation of government offices and subsidiaries to support the relocation of private industries that employ local people.</p> <p>Many regional and rural councils activity implement policies that promote economic growth such as the Evocities Program, with dedicated economic development officers who promote local employment schemes by re-location subsidies and the like.</p> <p>http://www.evocities.com.au/en/</p>
(h) pathways to improve decisions 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,	<p>Councils generally indicate that the length of time to approve a DA in regional and rural areas is not considered to be a problem and does not warrant a complying development pathway. Many applicants appreciate the benefits of obtaining advice from the council staff and find councils' codes more adaptive and easy to follow, in contrast to the Codes SEPP that is hard to navigate and only applies to limited development types of a certain scale and envelope. Any application that falls outside the permissible envelope has to be transferred to the DA pathway. In addition, in rural and regional areas development requires council consent for the sewer and stormwater connection. This again favours the use of a DA, where this is managed at the same time.</p> <p>The certification process itself does not deliver the expected outcomes in rural and regional areas or the professional rigor required, an issue which was identified in the recent <i>Independent Review of the Building Professional Act</i>. In addition, from a practical perspective, some regions lack access to private certifiers anyway. .</p> <p>Voluntary Planning Agreements are challenging to negotiate depending on the type of DA under assessment. All councils across NSW can find this process complicated however it is not a problem distinct to rural/ regional areas. The practice by its very nature is based on the circumstances of the development under consideration and hence it is very challenging to provide guidelines that would assist practice. Improving mechanisms to ensure that Section 94 Plans can be approved more quickly by IPART may be of assistance so that councils are not required to rely on VPAs when land is up-zoned.</p>
(i) Any other matter.	N/A