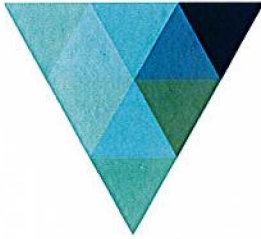


**Submission
No 28**

INQUIRY INTO REGIONAL PLANNING PROCESSES IN NSW

Organisation: Richmond Valley Council

Date received: 5/02/2016



Council's Reference: ECM#1099587

Telephone Enquiries to: Tony McAteer

5 February 2016

The Director, Standing Committee on State Development
Parliament House
Macquarie Street
SYDNEY NSW 2000

Dear Sir,

Submission – Inquiry into Regional Planning Process in NSW

Thank you for the opportunity to make this submission. Richmond Valley Council prides itself on being 'Open for Business', however, the current Planning System in NSW, despite many attempted reforms, is still failing to meet many of Council's and the Community's expectations.

The *Environmental Planning and Assessment Act 1979* is not seen as the root cause of these failings, therefore, having a separate regional planning act would do little to address Council's concerns. In our view, it is the complicated system that has evolved beneath the Act that is causing the haemorrhaging. The planning system is overly complex, slow to evolve & react to change, and very often inflexible. This submission is not a comprehensive review of the System but some examples of where Council has recently encountered issues.

Complex Planning System

- The Planning System is too complex from the perspective of having an overwhelming number of planning layers/tiers of controls and requirements. Navigating the system is often confusing to practitioners with a working understanding of NSW Planning, so the wider community has no chance.

A sample of the many layers in the NSW Planning system (in no particular order) include-

- EP&A Act 1979
- EP&A Regulation 2000
- Standard Instrument LEP Order
- Planning Practice Notes, Planning System Circulars, and Building System Circulars
- Section 117 Directions
- State Environmental Planning Policies
- Regional Plans (and Sub-Regional Plans)
- LEPs, and City Centre LEPs
- DCPs
- Exempt and Complying Development
- Guidelines – such as Planning for Bushfire Protection

- S.94/94A Plans
- Policies - such as the Coastal Policy
- State Significant Development
- Gateway processes
- JRPP processes
- Coastal Development Master Plans
- Voluntary Planning Agreements
- and the list continues.

In addition, there may be a myriad of Approvals under other Acts that may be needed, but not all are Integrated Development.

The system would be far more efficient if many of these layers were condensed into 4 or 5 tiers.

Integrated Development

- Integrated development needs to be extended to include additional approval types including Native Vegetation clearing, and Threatened Species.
- It would be convenient if a centralised agency could deal with all integrated development referrals, and issue general terms of approval assessed against predetermined objectives and principles issued by the respective Agency.

Consistent use of Definitions and Language

- There are often language and definition inconsistencies between many of the planning system layers. The Standard Instrument LEP Order introduced a number of new terms and definitions but there is still inconsistent use of terms in other EPIs and the Regulation.
- There are instances where terms, for example “Environmentally Sensitive Land”, are used but there is no definition of what this means, yet there are similar defined terms such as “Environmentally Sensitive Area” that are defined.

Complying Development – Expansion

- Experience shows that developers are avoiding some Complying Development types, under the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (the Codes SEPP), because the requirements are too onerous and rigid. It is often far easier to lodge a Development Application.
- The Codes SEPP mandates that exempt or complying development within an LEP shall not apply to development where the same development type is specified in the Codes SEPP. However, this wasn't always the case. Savings provisions in the Codes SEPP enabled Complying Development to be done under either EPI where the same development type was identified. This gave additional flexibility to councils to setup exempt and complying development to suit their local needs, but gave developers choice of options.

This flexibility should be reintroduced, with the Codes SEPP setting the State's standards and requirements as a benchmark.



Complying Development – Variations to Standards

- The *NSW Planning White Paper* introduced a concept of permitting minor variations to Complying Development standards with the approved of the local council (Code Assessment). This is a great concept and should be rolled out.

Regional Plans

- Regional Plans need to be more than guiding documents full of motherhood statements.
- The *Draft North Coast Regional Growth and Infrastructure Plan* proposes to continue mapping of urban growth boundaries for each LGA. There needs to be a firm commitment by the Government to assist with implementing these Plans, including the funding of infrastructure projects, to enable timely delivery of urban releases.

Infrastructure Costs Preventing Development

- The cost of infrastructure is a major impediment to regional development where returns on investment are slowly recouped over extended periods of time (20-30 years). This makes such development generally unviable, or at the very least unattractive, to developers looking at short term returns on their investments. It often falls on councils to be proactive in providing this infrastructure upfront with no guarantees that development will precede immediately. For example, servicing a new urban release area at Casino will cost about \$6M for water and sewer infrastructure before the development can commence. Councils are financially challenged with existing infrastructure back logs, without the burden of seed funding such infrastructure projects.

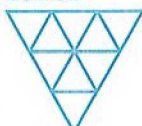
Local Environmental Plans – land use tables

- Quite often acceptable proposals are pitched to Council but the land use table doesn't support the development. The Act currently only supports the Minister granting consent to prohibited development if it is of State Significance. Councils must resort to preparing Planning Proposals to amend the land use table, or identify the proposal as an additional permitted use on the land. The time constraints for preparing these amendments are a deterrent.

A mechanism could be included in land use tables to relax zoning permissibility via:

- a merits consideration process, similar to how SEPP1 operated for development standards, or
- a Site Compatibility Certificate process, or
- concurrence of the Ministerial, or
- a JRPP process.

All of these mechanisms provide transparency to councils but having a third party verify that the development is appropriate and in the best interests of the community.



Simplify the Rezoning Process

- Simplify the rezoning process and enable rezone to be fast tracked. The current Gateway process is far superior to the old rezoning process, however, there is room for improvement.
- Changes to Planning Proposals require the Gateway Determination to be amended.

In one example, a revised Gateway Determination required a second round of Agency and community consultation due to amends made post community consultation. This was despite the amendments being consistent with the original Planning Proposal and arising as a direct result of the consultation process. This meant an additional 4 months would have been added to the amendment process.

Land Reservation Acquisition

- Land Reservations should be acquired within a specified period following identification within LEPs.

Council has examples of land that was reserved for future National Park in the mid 1980's and which has yet to be acquired. Land owners are objectionable to the proposed acquisitions, so do not demand action by the Service. But the reservation applies restrictions on how the land can be used and developed.

If the Service is serious about acquiring reserved land for addition to the Parks system, it should bite the bullet and find the resources, or remove these restrictions once-and-for-good.

NSW State Government – Strong Leadership

- There needs to be clear direction and strong leadership from the NSW State Government on major issues such as Climate Change, CSG, flooding, etc.

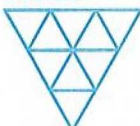
Biodiversity Legislation

- Integrated Development should be extended to include addition approvals such as Threatened Species Conservation Act, and Native Vegetation Act.

Biodiversity provisions are still difficult to navigate for developments. Things may have changed recently but several years after the introduction of the Native Vegetation Act, there had only been 1 or 2 Property Vegetation Plans approved for clearing on the North Coast. This was because the current assessment process is complex and requires enormous offsets in the order of 10 to 1 at a minimum.

Contributions Plans Section 94 and 94A

- The Act doesn't permit a single consent to contain both a s.94 and s.94A condition. There are instances where this would be more practical than alternative measures, such as negotiating individual Voluntary Planning Agreements. Case in point is a development having a shortfall in on-site car parking. A S.94 Plan could enable payment of contributions in lieu of



the car parking as a special levy, as well as applying the usual S.94A developer contributions based on the value of the development.

Alternative, allow councils to prepare a generic Voluntary Planning Agreement for a specific type of charge/levy, such as car parking in lieu, which has been publicly exhibited. Apply this generic VPA to a development, similar to a S.94 Plan, without needing to further engage with the community.

- Section 94A cannot be applied to land where a previous section 94 charge has applied. This means that additional contributions cannot be collected even for an intensification of the land use. Yet if a Section 94 Plan applies a levy can be charged.

Building Certificates

- Building Certificates are being misused as a means of getting retrospective Construction Certification, and Occupation Certification, for illegal work with little to no penalty.

Advisory Services

- It would assist councils if the Department had a centralised advisory service to provide advice and assist with the interpretation of the planning system.

For example, the Department's Hazards Unit, and Complying Development Unit, currently offer great assistance.

Standard Instrument Order

- Amendments to the Standard Instrument Order (SIO) were meant to be simple. However, it has turned out to be nothing but.
- There needs to be a willingness in the Department to amend the SIO when councils raise issues. An example of an issue raised by another council related to the Act defining 'building' as excluding a manufactured home. It was put to the Department that a "***dwelling house means a building ...***" therefore, technically cannot comprise a manufactured home. The council that raised the issue was told to find their own solution and pursue an amendment to their LEP. Surely issues like this affect all LEPs and should be tackled by the Department?

Thank you again for this opportunity. If you would like to discuss this submission further please contact Tony McAteer, Coordinator of Strategic Planning and Environment

Yours faithfully

Angela Jones
Director of Infrastructure and Environment

Richmond
Valley
Council

