

INQUIRY INTO REGIONAL PLANNING PROCESSES IN NSW

Organisation: Dubbo City Council

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



Dear Sir/Madam

NSW UPPER HOUSE INQUIRY INTO REGIONAL PLANNING PROCESSES IN NSW

Council welcomes the opportunity to provide its perspectives and raises issues in respect of regional planning processes in NSW.

At the outset, Council would like to make it very clear that it does not support the creation of a stand-alone Regional Planning Act. Council considers that a stand-alone Regional Planning Act would add a further layer of complexity and bureaucracy an already overly complicated and cumbersome State Planning System. Further, the creation of a stand-alone Regional Planning Act is likely to result in the following:

- The creation of an 'artificial' boundary with no purpose or meaning where a Regional Planning Act would take over from a State Planning Act;
- Add further complexity where planning practitioners (councils and consultants) would find it difficult to operate under both sets of legislation and the likely nuances of both Acts or, indeed, readily move/operate across the State;
- Add further complexity for the public in not knowing the exact planning provisions their local council may be operating under and why; and
- Serve to detract investment or create confusion in regional areas in not knowing which legislative provisions may or may not apply to a specific local government area or particular development type.

The Terms of Reference of the Inquiry raise a number of issues and considerations for the future of the State Planning System. Council considers that a number of the Terms of Reference highlight the need for Government to recommence the stalled planning reform agenda in some form and to ensure that the NSW Planning System can address the following key considerations:

- Remove and/or streamline the various layers of complexity from the system to make it more efficient;

All communications to:

THE GENERAL MANAGER PO BOX 81 CHURCH STREET DUBBO NSW 2830

T (02) 6801 4000 F (02) 6801 4259 E dcc@dubbo.nsw.gov.au

CIVIC ADMINISTRATION BUILDING CHURCH STREET DUBBO NSW 2830 ABN 77 296 185 278

- Provide a planning system that has clarity and transparency for the community, development proponents and practitioners;
- Provide for a sound, strategic planning framework with an identified purpose from the community; and
- Deliver a fair and balanced development assessment system which allows for appropriate rigour to be placed around development proposals whilst respecting the community's values and expectations and ensuring development can proceed in an expeditious manner to ensure economic growth.

Following are Council's comments in respect of the specific Terms of Reference of the Inquiry:

- (a) Opportunities to stimulate regional development under the planning framework including through legislation, policy, strategy and governance.***
- (b) Constraints to regional development imposed by the planning framework, and opportunities for the framework to better respond to regional planning issues.***

In the face of legislation overload, the Environmental Planning and Assessment Act, 1979 has done a good job in facilitating the development of NSW for some 37 years. However, given the age of the Act and the will of Government to attempt to enact and streamline a level of change to the planning system, it is considered that the Act has become too complicated for the public and planning practitioners to the point where professional officers can have vastly differing opinions about specific provisions of the Act and the associated Regulation, which all too frequently have to be resolved through legal intervention and the Courts.

Dubbo City Council has been supportive of the planning reforms attempted by Government over time; in particular, the move towards more evidence-based strategic planning. The new planning system promised new perspectives and streamlined systems for doing business in regional NSW which, unfortunately, did not come to fruition.

Following the new planning reform agenda being apparently abandoned by Government, it is considered that there is still considerable opportunity for Government to lead the collaborative development of a new planning system that will promote economic development, provide for investment in regional areas, provide certainty to landowners as to what development that may be undertaken on and around their property, and provide planning policy and legislation that allows for all planning practitioners and community members to understand what is required and what may result from planning decisions.

The Standard Instrument Local Environmental Plan process was a worthwhile exercise in attempting to further assist development and general development activity in NSW. However, the greatest negative in the Standard Instrument delivery has been the substantive costs incurred by local government and the Department of Planning and Environment in administration and delivery. In addition, it is considered that a standardised structure and land use zones do not provide all of the answers or protection for the sometimes competing interests of the community and the development industry nor does it keep pace with the changing nature of development.

Council's land use strategies were given the level of priority and importance by the Department in the Standard Instrument preparation process with the former Director-General's concurrence required to be sought for Council's land use strategies. However, the restrictions of the Standard Instrument meant that any references to land use strategies and the sound strategic planning work undertaken by Local Government was removed and subsequently recognition as an essential component of the planning process restricted. It is considered critical that any new planning system provide sound strategic planning as a fundamental base to land use decisions and associated LEP provisions.

The Act and the Regulation also have a complex existence and relationship with a significant range of legislation that is seldom understood by the public. With this legislation are inherent requirements to obtain approvals from other government agencies. Government agencies can be difficult to contact and in some circumstances have a limited understanding of the planning process and how the decisions they make interact with development proposals and cost structures.

Any new Planning Act should also give adequate consideration to assisting the process for obtaining assessment and approvals from government agencies. One way this could be achieved is through streamlining the legislative basis of such approvals and including these relevant sections in a single planning act. While this may not render existing legislation obsolete, it could result in any components in respect of assessment considerations at both a strategic and statutory level being included in the relevant planning act.

With respect to the actual assessment of proposals by agencies, in Council's experience there is a significant disconnect between the officers undertaking the assessment and the understanding of the implications of this assessment from a planning or development perspective. To overcome this situation, and this perceived lack of knowledge, a dedicated planning officer could be installed in each public agency. This officer would have the relevant skills and experience, would have the role of coordinating all referrals and concurrence requirements and act as a conduit between an individual agency and a council and/or a development proponent. This would allow technical officers in public agencies to maintain their functions without unduly becoming 'caught up' in the planning process.

(c) The suitability of a stand-alone regional planning act

Council considers a regional stand-alone planning act would add unacceptably to an already overly cumbersome and bureaucratic planning system. Council considers that the proposed suite of changes promised as key components of the government Planning Reform package would not necessitate the need or the demand for a stand-alone Regional Planning Act. Council considers that the provision of a Regional Planning Act would only serve to further complicate reforms and the planning system for planning practitioners, across the State and members of the public.

There must be a common legislative basis for all planning in NSW. Council supports the retention of the principle of one stand-alone planning act that sets the principles and direction for the planning system. However, councils must be provided more flexibility in any new planning system to dictate the content and structure of local environmental plans (or local plans) to ensure variations and directions for development in regional areas can be provided at the local level to reflect local values and objectives, subject to these plans being consistent with relevant regional and state planning policy.

Instead of a new stand-alone regional planning act, Council considers that Government should pursue the preparation of a NSW Regional Plan that would become a plan for the regions, with the NSW State Plan being a plan for the metropolitan areas. The preparation of a specific regional plan for NSW could include the following key components:

1. Issues of Regional Planning Significance

This section could provide the background and basis of issue of regional planning significance including but not limited to mining, water resources, economic development, social planning including safety and security, infrastructure, agriculture and food security, and affordable housing.

2. Regional Growth Infrastructure Plans

Based on the identified issues of regional planning significance as included in section 1, section 2 would specify minimum requirements for the preparation of Regional Growth Infrastructure Plans.

This section could specify minimum requirements for the preparation of Regional Growth Infrastructure Plans including structure, content and specify a minimum level for government action. This section could also specify minimum community consultation for each plan and set the roles of government, state agencies and local councils.

3. State Regional Planning Principles

Based on the identified issues of regional significance, section 3 could include the preparation of specific State Regional Planning Principles.

The planning principles could achieve two key outcomes. This includes informing the preparation of local land use strategies and also forming key components of the Planning Proposal process in effectively replacing the current suite of Section 117 Directions.

4. State and Regional Development Policy

This section of the Plan could explain the basis and background of all state and regional development currently included in a variety of State Environmental Planning Policies.

This section could also provide a 'one stop shop' for development permissibility for state and regional development, which is currently included in a range of SEPPs.

(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

State Environmental Planning Policies are not considered to be effective in the delivery of regional or local development outcomes. The very existence of State Environmental Planning Policies is a case in point in respect of the cumbersome nature of the planning system. In particular, the Department of Planning and Environment has in recent years gazetted a number of new State Environmental Planning Policies which have added significant layers of uncertainty to the planning process.

A typical example of this is State Environmental Planning Policy (Infrastructure) 2007. This SEPP adds another layer of development permissibility for infrastructure. The intent of the Department of Planning and Environment in providing an easier path for the delivery of infrastructure is understood however, the permissibility of development and definitions included in the SEPP are difficult to follow and understand, and can often be overlooked or misinterpreted if one is not familiar with the structure of the SEPP.

Council considers that the Standard Instrument Local Environmental Plan has not substantially stimulated regional development or improved the level of understanding of developers/consultants across Local Government boundaries. As previously discussed in this submission, the Standard Instrument has attempted to streamline and bring commonality between all local environmental plans. However, this has only been through land use zoning and general structure.

It is also noted that the Department of Planning and Environment initially placed more rigour around the structure, form and content of Standard Instrument LEPs. However, given the length of time taken and the complexities of development in some local government areas in respect to environmental and other constraints, the Department now appears to have relaxed its unofficial rules around how local councils could adapt the structure, form and content of their individual SI LEPs.

Some nine years after the gazettal of the Standard Instrument (Principal Local Environmental Plans) Order 2006, development proponents and property owners still require an explanation of the individual content and provisions included in each Standard Instrument Local Environmental Plan, in particular in respect of Group Terms and land use definitions.

One of the most significant issues with the Standard Instrument is the removal of permissible development included in State Environmental Planning Policies. Council, in preparation of the Dubbo Local Environmental Plan in 2011, attempted to ensure the permissibility of development included in State Environmental Planning Policies was reflected in the Dubbo LEP to ensure certainty was provided to the development industry and to landowners. However,

given the cumbersome and complex makeup of the Standard Instrument, this could not be achieved.

Another example of the complexity provided to the planning system through State Environmental Planning Policies is the gazettal of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008. The idea of providing a common set of exempt and complying development criteria for the State had merit. However, over time, the regulatory burden on local government and private certifiers through the rapid expansion of Complying Development has now resulted in a system where questionable development outcomes could be delivered in order to continue to achieve compliance with the required turnaround time of 10 days for Complying Development. In recent years, this has grown more difficult to achieve through the inclusion of further commercial, industrial and other institutional development types where councils or private certifiers must undertake both an assessment of compliance against Complying Development criteria and also undertake a concurrent Building Code of Australia assessment. This issue is particularly relevant in regional areas where smaller councils may not have the staff or the expertise to undertake intricate assessment regimes and private certifiers may provide limited or no service coverage.

It is considered that the push by Government to introduce additional Complying Development types of a more intricate nature, including multi dwelling housing, may result in assessment times not being met or in sub-standard assessments being undertaken.

The provision of a specific State Environmental Planning Policy for Exempt and Complying Development for the Central and Far West, which is currently under consideration by the Department of Planning and Environment, will in some part address a number of these issues. However, it is considered that the Government push for additional Complying Development types should be afforded an increased assessment time to guarantee a correct and robust assessment process can be followed.

(e) Opportunities to increase delegations for regional councils in regard to the plan making processes

Council, over time, has been supportive of Government-led initiatives to further delegate plan-making functions to reduce time and delays in the plan-making process. However, further functions should be delegated to local councils.

An alternative plan-making system for certain LEPs would be similar to the current LEP process. However, instead of a council providing the Department with a Planning Proposal to seek a Gateway Determination in accordance with Section 56 of the Act, Gateway Determinations could be delegated to the relevant Council. At the time the Department considers provision of a Gateway Determination, a council or the Relevant Planning Authority (RPA) would forward a copy of the Planning Proposal to the relevant regional office. The regional office could then be afforded a period of 21 days in which to consider if the Planning Proposal raised any concerns which would warrant further assessment by the Department through the normal 'Gateway' process.

If the RPA did not receive any correspondence from the regional office effectively 'calling in' the Planning Proposal, the RPA could assume its delegation and place the Planning Proposal on public exhibition and undertake further processing in accordance with Section 59 of the Act. After consideration of any submissions by the RPA, the regional office could then be provided with a final report and a request by the RPA to undertake gazettal. The regional office could then be provided with a time frame of, say, 21 days to undertake gazettal.

(f) Opportunities for strategic planning to assist in responding to challenges faced by communities in relation areas through Regional Plans

A key component of any planning system is strategic planning. Sound strategic planning should have an identified purpose and need from the community and a guarantee of successful integration into the planning system.

In respect of the Dubbo Local Government Area, this includes the preparation of a single Regional Plan to include the Orana Regional Organisation of Councils (OROC) area of which Dubbo is a member Council and the Central West Regional Organisation of Councils area (CENTROC).

It is acknowledged that both the OROC region and the CENTROC region have some synergies. However, the Orana region is a broad geographical area incorporating 193,917.97 square kilometres with different development pressures, environmental constraints, industries and agricultural production basis.

To date it is considered that the regional planning process has been poorly defined and the regions have been selected without proper rigour and a general lack of understanding of the complexities of the issues in the regions. It is anticipated that the Regional Growth Plans will have no statutory weight and will be without planning rigour to be meaningful regional strategies for the advancement of regional development and conservation of our unique environment.

(g) Opportunities for government-led incentives that promote regional development

Council considers there to be a number of government-led incentives which could be used to assist and aid in the stimulation of regional development and, in particular, the consideration of incentives and options to deliver greater housing choice and affordability to regional NSW.

One of the most significant planning issues the Dubbo Local Government Area will face into the future is the provision of affordable housing reflective of the role of Dubbo as a regional service centre and the largest centre in the Orana Region.

Council undertakes frequent reviews of the state and health of the Dubbo housing market and the demand for housing in the City as a component of the ongoing review of the Dubbo Residential Areas Development Strategy. This includes a housing and land supply monitor

which enables Council to closely consider how development progresses through a housing supply pipeline.

The last review of the Dubbo housing market undertaken by consultants, Hill PDA, showed that the City needs to ensure an adequate supply of affordable housing is provided based on the average annual household income. This showed that the City may have a home affordability issue for the percentage of Dubbo households that can afford a dwelling house. The analysis also showed that the City requires further investment in social housing that can deliver housing outcomes for the percentage of the Dubbo population that is unlikely to have the means to afford outright home ownership through either purchase of a dwelling or unit.

The Hill PDA Review also found that due to the uneven nature of income distribution in Dubbo, the provision of affordable rental accommodation was even more critical than the provision of affordable housing for purchase. Hill PDA also found that 46% of Dubbo households fall into the low to very low income bracket (below \$45,093 pa) and will be unlikely to purchase a property without significant government assistance or subsidy. Increasing the supply of affordable rental accommodation provides the most immediate and effective means of relieving housing stress.

Hill PDA in preparing the report also prepared a Household Income Affordability Calculator model of housing affordability in Dubbo. The model provides a profile of household income levels based on Australian Bureau of Statistics Census Data for Dubbo and consideration of the level of debt or rent each household income could afford to pay, dependent on a number of key variables. These key variables include interest rates, deposit availability and the level of household income. The table below shows the level of home affordability in Dubbo across a range of household incomes.

Household Income	Household Income (Weekly)	Rental (% Income)	Weekly Rental	Ownership (% Income)	Monthly	Principal Loan	Deposit	Home Affordability
\$20,000	\$385	25%	\$96	30%	\$500	\$75,154	\$7,515	\$82,669
\$25,000	\$481	25%	\$120	35%	\$729	\$109,599	\$10,960	\$120,559
\$30,000	\$577	26%	\$150	35%	\$875	\$131,519	\$13,152	\$144,671
\$35,000	\$673	27%	\$182	37%	\$1,079	\$162,207	\$16,221	\$178,428
\$40,000	\$769	28%	\$215	38%	\$1,267	\$190,390	\$19,039	\$209,429
\$45,000	\$865	30%	\$260	40%	\$1,500	\$225,461	\$22,546	\$248,007
\$50,000	\$962	30%	\$288	40%	\$1,667	\$250,513	\$25,051	\$275,564
\$55,000	\$1,058	30%	\$317	40%	\$1,833	\$275,564	\$27,556	\$303,120
\$56,368	\$1,084	30%	\$325	30%	\$1,409	\$211,813	\$21,181	\$232,995
\$56,368	\$1,084	30%	\$325	40%	\$1,879	\$282,418	\$28,242	\$310,660
\$60,000	\$1,154	30%	\$346	40%	\$2,000	\$300,615	\$30,062	\$330,677
\$65,000	\$1,250	30%	\$375	40%	\$2,167	\$325,666	\$32,567	\$358,233
\$70,000	\$1,346	30%	\$404	40%	\$2,333	\$350,718	\$35,072	\$385,789
\$75,000	\$1,442	30%	\$433	40%	\$2,500	\$375,769	\$37,577	\$413,346
\$80,000	\$1,538	30%	\$462	40%	\$2,667	\$400,820	\$40,082	\$440,902
\$85,000	\$1,635	30%	\$490	40%	\$2,833	\$425,871	\$42,587	\$468,459
\$90,000	\$1,731	30%	\$519	40%	\$3,000	\$450,923	\$45,092	\$496,015
\$95,000	\$1,827	30%	\$548	40%	\$3,167	\$475,974	\$47,597	\$523,571
\$100,000	\$1,923	30%	\$577	40%	\$3,333	\$501,025	\$50,103	\$551,128

*Assumptions: 10% deposit, 7% interest rate, 30 year term

Council considers there to be a number of mechanisms available to Government that may assist in the provision of further affordable housing in the Dubbo Local Government Area, as provided below:

(i) Section 94 Contributions

Government could focus specific regional planning provisions and incentives in respect of the developer contributions system. This focus could be provided through State Environmental Planning Policy (Affordable Rental Housing) 2009 and provide specific allowances for developer contributions, provided certain criteria and processes were met.

The general rules and practices around such a system could include the following:

- Sale of the development to a third party must be undertaken at no greater than the average price for housing in that Local Government Area for the 12 calendar months prior to the granting of development approval;
- A Caveat could be included on the title of the development with Council having the right to vary, modify or remove such for re-sale of the property to not be undertaken within a two (2) year period and for the property to be owner-occupied for the same period; and
- The Caveat could be amended in certain circumstances if required.

In respect of social and public housing, a mechanism could be introduced that allows for the collection of developer contributions towards the provision of social and public housing. This could allow for the levying of contributions as a flat percentage rate which must be utilised by the Government in the delivery of social and public housing within a specific timeframe based on the greatest percentage of need per head of population, with a specific requirement for development to be prioritised in regional areas.

(ii) Planning Reform Fund Levy

Government could focus specific spending on social and public housing in regional areas from monies collected through the Planning Reform Fund. Such an initiative could consist of the following:

- The Planning Reform Fund Levy collected on certain developments be utilised (in full or part) to a new housing fund; the housing fund to be utilised by non-government housing providers under certain circumstances.
- Monies from the levy provided to a Local Government Area based on the greatest percentage of need per head of population.
- Administration of the fund undertaken on a Local Government Area basis by a structured panel including Housing NSW and Local Government representatives.

(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

The development assessment regime and processes for State Significant Development proposals in NSW have been varied in the last 10 to 15 years. This has created uncertainty in the community as to how the State Government goes about the processing and consideration of development proposals which can appear to be different to how councils assess development proposals despite the applicability of the same legislation. In addition, many residents see a complete disconnect between State Government decision-makers through the Department of Planning and Environment and the availability and accountability of Local Government to its community. This situation can be further highlighted through the fact that key decision-making bodies, including the Joint Regional Planning Panel and the Planning Assessment Commission, do not have the same level of accountability to the community as local councils.

A significant State issue of concern to the Dubbo Local Government Area and the Orana Region is the constant change in State Government policy in respect of the consideration of proposals for mining and in particular coal seam gas proposals. The policy's inconsistency and the importance of water to the continued economic growth and development of Dubbo and the health of our agricultural lands must be acknowledged by Government.

Criteria for Regional and State Significant Development proposals are currently included in a number of different locations including the Act, Regulation and State Environmental Planning Policies. Council considers that the Department of Planning and Environment should integrate all Regional and State Significant Development provisions including requirements for approval, into one State Environmental Planning Policy. This would ensure the information is provided in one easily accessible location for the community, planning practitioners and development proponents.

Council considers that Government should return more applications for regional development and State development back to local councils and to place specific parameters around this delivery. For instance, local government could determine development applications of regional significance if the proposal is permissible in the zone, no public objections were received, and where the council has no interest in the matter.

In respect of Voluntary Planning Agreements (VPA), Dubbo City Council has successfully negotiated three (3) VPAs. These successful negotiations were undertaken with the assistance of an Infrastructure Services Impacts Model that was developed by Council in conjunction with consultants, REMPLAN. The Model allows Council to provide an assessment of the impacts of a major development proposal based on the actual characteristics of the proposal and specific Australian Bureau of Statistics data, National Accounts and information from other sources. Council is now using the model to assist in the assessment and identification of impacts from development proposals or, indeed, the closure of business in the city.

(i) Any other related matter

Numerous state governments over a long period of time have attempted to streamline the NSW Developer Contributions System. This has culminated with the IPART Benchmarking of Local Infrastructure Contributions in 2014 and the associated review of local developer contributions undertaken by consultants, JBA, on behalf of the Department of Planning and Environment in 2013.

It appears that each subsequent review and information request in respect of developer contributions commences with the best of intentions. However, local government appears to be no closer to knowing the future structure and outlook for developer contributions in NSW.

To understand the importance of developer contributions to the delivery of infrastructure, contributions collected by local councils allow for the quicker delivery of infrastructure without placing undue pressure on the rates base. In particular, in the current environment of Council amalgamations and the future of local government, developer contributions will continue to be important revenue sources to enable councils to keep pace in the delivery of infrastructure.

In addition, local government has suffered over a long period of time from a lack of direction and policy in respect of format, process and procedure for the management, levying and accounting of developer contributions. Any new planning system must provide guidance and

assistance to local councils, the development industry and the community in respect of the system and the roles and responsibilities of all parties in the process.

Council appreciates the opportunity to provide these comments on regional planning processes and looks forward to discussing this submission with the Committee at a Public Hearing in the future.

If you require any further information or clarification, please do not hesitate to contact me

Yours faithfully

~~Melissa~~ Watkins
Director Environmental Services