

INQUIRY INTO REGIONAL PLANNING PROCESSES IN NSW

Organisation: Lake Macquarie City Council

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SUBMISSION TO NSW LEGISLATIVE COUNCIL STANDING COMMITTEE ON STATE DEVELOPMENT

Inquiry into regional planning processes in NSW

In October 2015, the NSW Legislative Council's Standing Committee on State Development wrote to Council advising that the Committee was conducting an inquiry into New South Wales Regional Planning processes.

Lake Macquarie City Council supports the NSW Government in identifying ways to improve the NSW Planning System:

- so it is less complex and more efficient;
- to improve clarity and certainty; and
- so planning decisions are transparent and accountable to the community.

It is noted that the recent passage of the Greater Sydney Commission Bill 2015, makes amendments to the EP&A Act by inclusion of a new Part 3B which allows for any area of the State (other than the Greater Sydney Region) to be a Region for the purposes of the making of a Regional Plan. There have also been a relatively large number of regional plans completed to draft stage, or finalised across the state in the last year. It is curious that this regional planning inquiry is being undertaken at a time when important decisions have already been taken about management of regional planning.

This submission is in response to the committee's invitation, and is based on the Terms of Reference provided by the Committee. It has been prepared by Council staff and has not been endorsed by the elected Council due to the timing of the submission deadline relative to the Council's meeting schedule.

The submission has been set out to follow the terms of reference for the inquiry. Listed terms of reference are restated in bold followed by the submission.

(a) opportunities to stimulate regional development under the planning framework including through legislation, policy, strategy and governance,

Submission:

- Regional Strategies provide the opportunity to stimulate regional development. Clearer direction, particularly through planning for regional infrastructure to support regional services, would provide an opportunity to stimulate regional development.

- A regional planning framework is helpful if there is a suitable governance framework in place to implement and monitor the results of implementation of the regional plan. Regional plans undertaken in NSW over the last decade have been disappointing in this respect. More consideration needs to be given to the timing and funding of infrastructure required to support regional development.
- It is the perception of Lake Macquarie Council that state agencies are less likely to be influenced by regional plans, particularly in respect of new infrastructure provision, than local Councils. This represents a failure of the current governance structures.
- Current planning policies and practices in NSW are excessively complex and metro centric, and do not allow for the nuances of regional areas very effectively. This is particularly evident with the structure, content and implementation of the Standard LEP. A suite of templates allowing for regional differences, would have been more appropriate in this instance. Effective regional planning requires identification of appropriate regional boundaries. This is of particular significance for Lake Macquarie City Council, which is located between the Hunter Region and the Central Coast Region, and at the same time is influenced significantly by planning policy in the Greater Sydney Region.
- Local Government needs to be recognised as an important partner in the regional planning process. There should be opportunity for bottom up input and direction setting, rather than directions down from the State regarding what councils must do.
- Key drivers of, and attitudes toward, economic development, are the attitudes and engagement of local communities. Ensuring the planning system provides appropriate opportunities for local communities to be involved in preparing regional and local policies and plans also provides an opportunity to stimulate economic development.
- Quadruple Bottom Line (QBL). Future opportunities for Regional development under the planning framework needs to ensure that: Environmental, Social, Cultural (including governance), and Economic objectives are being met.
- As part of the regional planning process, state-owned land, development and infrastructure, that could better serve economic centres or are potential opportunities to encourage economic development, should be identified in plans. For example, a number of train stations in Lake Macquarie could be better connected to nearby town centres.
- A regional plan that identifies additional transport services planned or required for the area in the next 10 years would be beneficial. For example, a regular bus circuit between Charlestown, Glendale/Cardiff and Warners Bay and/or a ferry between Toronto and Belmont would be desirable and would have significant impact on local development and planning decisions.
- A high-speed train between Sydney and Newcastle would vastly improve connectivity between the City and an important Region, providing opportunities for commuters to move between the centres more efficiently, and provide greater choice as to where people could live and work. Such

infrastructure provides opportunities to develop sustainable regional economies, facilitating commerce and industry, as well as offering wider lifestyle choices.

(b) constraints to regional development imposed by the planning framework, and opportunities for the framework to better respond to regional planning issues,

Submission:

- A major constraint to regional development is the lack of investment in appropriate infrastructure such as rail, road, economic and social infrastructure. Whilst the current planning framework provides opportunities for regional infrastructure planning, the use of regional plans to plan for regional infrastructure is currently limited. State and regional plans should be able to provide more definitive plans, including implementation actions to deliver regional infrastructure. Regional infrastructure needs to be planned and delivered to enable current and future populations to establish new commercial, industrial and residential housing employment opportunities in their regions. The current closure of the Newcastle Railway station and removal of the Railway corridor is an example of decisions made by the State that have an impact on regional planning outcomes.
- The regional planning framework needs to address climate change to provide certainty for planning decisions. The timeframes that are included for regional planning decisions need to have alignment with climate change projections for that region. Sea level rise, flooding and changing bushfire risk should be included into regional planning decisions particularly land releases, the location of and access to major transport hubs, and the location and availability of open space, ecosystem migration, biodiversity conservation and emergency response.

(c) the suitability of a stand-alone regional planning Act,

Submission:

- Whilst a stand-alone regional planning Act may have merit, this needs to be carefully considered given the interface between the current EP&A Act and its related SEPP's and LEP's. Introduction of another Act without clearly considering its relationship with the EP&A Act and the future role of SEPPs and LEPs, would add complexity to an already complex process. Details of any proposal for a regional planning Act are required in order to make any real comment.

Specifically, any new regional planning Act should clearly articulate:

- whether it will be the Primary Act, or sub-ordinate to the EP&A Act, similar to SEPP's,
- the role of SEPPs and LEPs in the planning framework, in regions where a regional planning Act may apply.
- have an agreed framework for land use, transport, infrastructure and natural resource allocation,
- be based on the Principles of Environmentally Sustainable Development (ESD),

- espouses the precautionary principle,
 - inter-generational equity,
 - conservation of biological diversity and ecological integrity,
 - improved valuation, pricing and incentive mechanisms, and the inclusion of environmental factors in valuation of assets and services,
 - Effective community engagement and participation in the decision making process, including 3rd party appeal rights,
 - Make provision for Climate change and heads of consideration.
- Any stand-alone regional planning Act should clearly articulate how the community will be engaged in the decision-making process, at what points they will be consulted, and how the issues/concerns/ideas/suggestions that they raise will be considered in the process. It is also imperative that community consultation is undertaken in any regional planning process (e.g. the development of a Regional Plan, or if regional councils or Joint Organisations have increased delegations).

(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,

Submission:

- Currently, the need to address the high number of SEPP's in the Planning system creates inefficiencies in the plan-making and development assessment processes. SEPP's have a place in the Planning System but should not override each other, nor interfere and overly complicate the operations of a statutory instrument such as an LEP.
- The role of SEPPs as a policy instrument to stimulate regional development is not clear. SEPPs generally require special consideration to be given to specific aspects of proposals. Regional Plans, through agreed stakeholder actions, and identified opportunities, are more likely to improve the potential and effectiveness of regional development.
- Having to consider provisions in multiple SEPPs potentially increases transaction costs for development, and the potential for errors in advice provided to customers, or inconclusive information being provided which then requires a legal opinion. Limiting the number of SEPPs will assist in reducing these costs for developers and the community.
- LEP's should be stand-alone instruments incorporating the relevant SEPP provisions and definitions, and dealing with inconsistencies that occur between instruments.
- Where a land use is prescribed in an LEP as either exempt, permitted without consent, permitted with consent or prohibited, then SEPP's should not operate separately, to identify additional uses which are either permitted or prohibited. This ability makes it difficult for stakeholders to understand the current system and again, potentially adds to the transaction costs for developers and the community. Instead, the SEPP should amend the local plan.

(e) opportunities to increase delegations for regional councils in regard to the planning making processes,

Submission:

- Whilst no definition is provided for “Regional Council”, it is assumed that councils such as Lake Macquarie, with a population over 200,000, would meet the criteria of a regional council.
- The use of delegations by regional councils, where a planning proposal is consistent with the regional plan, is seen as a positive step in the plan making process. Councils such as Lake Macquarie generally have sufficient experience and expertise in the plan making processes on the Minister's behalf.
- Increasing the use of delegations would also assist in reducing time-frames for the making of final plans and their publication.
- It is not clear how such delegations, or the roles of “Regional Councils” might intersect with Joint Organisations (JO's). JO's are a proposal of the government contained within their Local Government reform package, “Fit for the Future”.

(f) opportunities for strategic planning to assist in responding to challenges faced by communities in regional areas including through Regional Plans,

Submission:

- The opportunity for communities in regional areas to participate in and be assisted by regional plans should be embraced.
- Challenges faced by communities in regional areas, such as Lake Macquarie, include acquiring and maintaining adequate infrastructure, having access to a wide range of services, and providing a variety of housing, business and economic opportunities.
- An important aspect to address these challenges is the establishment of appropriate policy settings to facilitate appropriate outcomes. Strategic planning provides an opportunity to develop appropriate policy settings through collaboration with key stakeholders. Objectives and delivery plans agreed to by State agencies, local government and community representatives, and appropriately reviewed will assist communities respond to challenges. It is important to ensure strategic plans/policies include delivery plans, against which performance can be measured. Opportunities for refinement and further participation should be facilitated once a strategic plan has been put in place.
- The draft Hunter Regional Plan represents the State's intended vision for the Lower Hunter. The proposed governance of the Plan, whilst incorporating key stakeholders, will need further review to ensure its workability. However, regular monitoring of the Plan outcomes by key agencies and stakeholders, should enable timely responses to the various challenges faced by Lower Hunter communities, including infrastructure provision.

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

Submission:

- Any proposed incentives would need to ensure that both the community, and the council representing those communities, are strong participants in the process.
- Any proposed incentives need to provide an agreed long-term framework for land use, transport, infrastructure and natural resources founded on ecological sustainable development (ESD) principles.
- The implications of providing incentives need to be analysed, including the effects both within and across industry sectors. Development of incentives need to occur in consultation with local stakeholders, to ensure appropriate areas are targeted and impacts on related sectors are understood.
- The Federal Government's announcement on Startups in new business ventures should have a positive effect on Local Governments, as potentially new innovative technologies and industries are created. Financial incentives should be available to Local Governments perhaps in the form of grants in order to assist any transition that may be required to fully take advantage of and assist startups at the local level.
- Experience overseas suggests incentives for regional development may generate unintended consequences and may lead to development that only survives while incentives persist. Investment in backlog or enabling public infrastructure may produce more predictable and lasting development results.

(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

Submission:

- Increasing the use of complying developments whilst expediting planning approval time-frames, need to be carefully considered.
- Council has previously submitted a response to the NSW Planning System Review – White Paper, raising concerns with the planned introduction of an 80% target for code assessed development. Having such a quantum as code assessed development is not regarded as desirable to the community or developers in all circumstances. It was recommended that an expansion of complying development that included a greater range of development types may be a better option. However, it should not include large or complex developments such as Greenfield subdivision, residential flat buildings, multiple dwelling housing, heritage items etc., which nearby neighbours should have the opportunity to comment on. Nor does it recognise that in many circumstances, there are reasonable, state led barriers to code assessable development, such as Mine subsidence impact management.

- Council advocates for the continuation of the current structure and process surrounding the execution of Planning Agreements, as this is seen as a positive outcome for the Community, Council and the Development Industry.
- Joint Regional Planning Panels (JRPP) are not efficient. The process requires a report from Council staff for the JRPP, the Councillors then make a separate submission, usually prepared by other staff, to the assessment staff. This consumes resources through officers assessing the application, responding to the Panel, helping Councillors prepare submissions in addition to the costs incurred in hosting Panel meetings.
- There is also a significant cost to council resources when reviewing DA's for major developments when the consent authority is not council. Examples relate to PAC determined matters where council is not compensated for time and resources incurred in providing referral responses but has a significant input into the proposal. A more appropriate approach could be similar to Integrated Development where a fee is provided to the Council for the LGA in which the application is being considered.
- The current threshold of applications identified for assessment by the JRPP and PAC, do not reflect developments of Regional or State significance and should be increased.
- The Department of Planning and Environment processes for application determination appears to be overly "time" focussed. The JRPP and PAC approval bodies are now experiencing problems of poorly prepared applications that council have been enduring for years. In this regard, schedule 1 of the EP& A Act Regulations are deficient in ensuring a competent application is submitted to council.
- Experience is demonstrating that the comments of specialist Panels, for example SEPP 65, are too often being dismissed by JRPP Panels. If an application is required to go before a SEPP 65 Panel for assessment then legislation should reflect that the Panel's advice cannot be set aside by an approval body. Decisions such as this should only be set aside by the Land and Environment Court in allowing for natural justice to be seen to be observed.
- Issues associated with the performance of the JRPP secretariat are of concern. Council receives criticism because of poorly organised meetings, lack of transparency, indecision, and untimely community feedback on application processing and determinations which are not in Council's control.
- In addition, the legislation and regulations that govern proposals that are approved by the PAC or the JRPP should set clear guidelines for community involvement / consultation that need to be undertaken. Apart from the statutory exhibition requirements, many proposals are modified with no community involvement. This means they may need to be further amended as a result of community feedback. Ensuring community involvement in the design of projects will mean that changes can be made in the earlier stages, and community concerns/issues can be addressed as the project is developed, rather than being required to make significant amendments in the final stages of the proposal.

(i) any other related matter.

Submission:

- The current planning system in NSW is very complex to navigate. Council has previously made a submission to the Standing Committee on State Development - Inquiry into the New South Wales Planning Framework on the benefits of a new Planning Act.
- The submission included issues such as the complexity of the layered approach to development control, with multiple SEPPs, REPs, Regional Strategies, LEPs and DCPs making the planning system extremely complex, mainly due to the absence of a management perspective from the state government.
- The top down approach to the development of policy and planning legislation in NSW needs review. A more collaborative approach is required with all stakeholders involved in the process from the outset.
- Regional Plans are not being accompanied by Regional Conservation Plans or Infrastructure funding.
- Changes to the planning system in NSW have resulted in a proliferation of decision making bodies for both the preparation of new controls and the making of development control decisions.
- Contamination needs to be recognised as a major issue of concern specifically for Council's such as Lake Macquarie. The Code SEPP Exempt and Complying should not apply where potential contamination issues have been identified by the LGA.
- The Mining SEPP is limited in terms of protecting local and regional air quality. Council's comments on this matter were made recently in September 2015, under submission to the Department of Planning and Environment.
- Recent changes to the Mining SEPP are encouraging in consideration of economic matters as being equal to social and environmental concerns. However, there remains the threat of the impact on Climate Change not only for our immediate area but also for the State as a whole.
- Funding for State and Local Government infrastructure is an essential requirement when planning for growth. Councils fund local infrastructure through section 94 and section 94A contributions of the EP& A Act. It is essential for the State Government to develop and implement a funding mechanism, across the entire State rather than concentrated to specific growth centres, to ensure funding is available for the necessary state infrastructure. It is important that the adopted funding mechanism is transparent and spreads costs equitably across all development.

In closing, staff from Lake Macquarie Council thank the NSW Legislative Council Standing Committee on State Development for the opportunity to comment on the Inquiry into regional planning processes in NSW.

Yours faithfully,

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