

INQUIRY INTO REGIONAL PLANNING PROCESSES IN NSW

Organisation: Moree Plains Shire Council

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

Dear Sir/Madam,

**Online Submission Lodgement
Inquiry into Regional planning Processes in NSW**

Thank you for the opportunity to make submissions on this critical matter. Whilst much can be said regarding the planning framework in general, we have focused our reply on what we perceive to be key problem areas, in particular as they relate to Moree Plains Shire Council. Where relevant we have, however made reference to more system-wide matters.

Preamble

Planning processes extend beyond but also include the *Environmental Planning and Assessment Act 1979*. Important from a contextual point of view is the development of Joint Organisations of Councils which, as currently envisaged, would include regional planning as a function. Regional planning is also undertaken by a range of state agencies including such areas as land use planning, catchment management, health and education, resource management and transport networks.

In addition to regional *scale* planning there is also *local planning* in regional areas. In many respects the “coalface” of planning plays out at the local level through the particular infrastructure investments and development decisions that are made. Clearly the regional planning framework provides the context for local planning decisions and, increasingly, infrastructure investment decisions.

Sitting above this is the state-based legislative framework which includes, but is not limited to the *Environmental Planning and Assessment Act 1979* (EPAA). Functionally, the EPAA is well past its use-by date. In our view the frequent and at times poorly executed amendments to the Act together with an indistinct hierarchy of state and local instruments has created a highly complex system which is difficult to navigate and which is uncertain in operation. As far back as the late 1990s concerns had arisen in the urban planning profession regarding changes to the Act and that it had become dysfunctional.

This is clearly a system-wider problem but the issues created by this can be particularly acute in regional areas. This is because of the more limited resources available to both proponents and Councils in preparing and assessing applications. The overall level of understanding of legislation is poor in regional areas even amongst the limited number of professionals who are available to assist proponents. In many cases these professionals are not planners by education and training but are drafts people, land surveyors and the like. This results in applications which often do not respond to or address basic statutory requirements let alone deal with the range of complex and interlocking policies that currently apply.

From the Council end, many councils in regional areas struggle to maintain planning staff and again staff performing these duties may often have their basic qualification in other areas such as Health and Building Surveying or Engineering. Qualified planners are often very junior and lack experience in both the NSW system and planning generally.

Together these circumstances exacerbate, as we have stated, the problems and complexities of the overall planning system.

In the following sections we respond to the specific Terms of Reference:

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

Constraints

As indicated above Council is of the view that the current legislative framework is dysfunctional and of itself provides constraints to regional development. Other constraints include the difficulties of obtaining input from state agencies and the narrow basis on which that input is provided where sectional agency issues are often in sharp conflict with each other and where agencies often appear not to understand the critical role of development in regional areas and the need for flexible (but still justifiable) applications of policy and procedure.

The Standard Instrument currently applied in NSW also has limitations. In particular, is the use of “closed zones” where only specific development as listed can be considered for approval. This is much more restrictive than older style LEPs where Councils generally preferred open zones, particularly for rural and similar zonings.

Opportunities

Moree Plains Shire Council (MPSC) has recently had significant input into a revised New England/North-West Regional Land Use Plan. As a vehicle, this is considered to be of benefit in particular in setting broad regional policy frameworks and establishing overall planning directions for the region. The most recent iteration of this Plan has involved a number of consultation rounds with councils of the region prior to formal exhibition. This has ensured that the plan is based on a robust and comprehensive understanding of the variety of issues that arise throughout the region and focuses on those elements which are of most benefit to the region.

While this is a valuable exercise, it does not sit on any statutory base. The former Regional Environmental Plans (REPs) provided (to varying degrees) an appropriate instrument which had statutory force. While some of these REPs had complex statutory provisions that intersected poorly with Local Environmental Plans (LEPs) others had a more policy-based focus and provided a way of ensuring that regional scale issues were addressed in individual development decisions.

In other jurisdictions, such as Victoria, all state and regional level policy is incorporated within local Planning Schemes ensuring these documents provide a clearly articulated suite of policy from state through to local with local provisions fleshing out the detail as to how state and regional policies are being implemented in specific circumstances. Victoria makes no differentiation in the planning system between state and regional areas however many aspects of the Victoria Planning Provisions (the statewide provisions) address various regional issues be it coastal issues, Alpine landscapes, growth corridors or the like.

This suggests that consideration should be given to an integrated model along the Victorian lines that, perhaps, avoids including metropolitan schemes and regional strategies that clearly affect a smaller number of councils. This would ensure a common operating environment across NSW, which would be of benefit, whilst ensuring that regional issues and state issues are properly integrated with local issues.

Another opportunity is to look at the Queensland model of the “one-stop shop” regarding state level input into development decisions. Staff within Council have had direct experience of this system and it can work well in ensuring that a coherent “whole of state” response is provided where mandatory referrals apply. At the present time it is often the role of local government to facilitate discussion between state agencies to seek to find and understand common ground and to look for ways to achieve satisfactory development that may involve agencies moving beyond a framework of standard procedures.

Looking to the local level, a form of LEP that provides a policy-based, outcomes driven focus could provide significant additional opportunity. It would avoid the situation where development is discouraged by having to address both rezoning and development control processes simultaneously which raises both cost and complexity. If dealt with sequentially, assessment times of up to 2 years can often be required. This is not acceptable when looking at much of the small-scale development in regional areas where investment capital is limited and professional time is expensive and sparse.

As an example of an older type plan that provides high levels of flexibility I would refer to the Severn LEP 2002. This plan, which can be accessed from the NSW government legislation website (repealed EPIs) had no prohibited uses except for the National Parks zone. The mapping was provided by way of a GIS system (with reader) that included a series of 12 overlays which identified constraints to the development of land. The plan provided a clear indication as to where constraints occurred and allowed sites to be selected with lower levels of constraints particularly for developments with higher impacts. This plan meant that any development could be considered on any land and that all parties had a clear indication of the constraints that would need to be addressed for development to occur in certain locations. The plan was developed with strong community support and operated well in practice.

Summary

The fundamental constraints 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.

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

In Council’s view there are challenges associated with a stand-alone regional planning Act notwithstanding the very substantial differences that exist between “Town & Country”. In our submission the preferred outcome is a common legislative base that can be utilised adaptively for different circumstances. For example the detail and at times prescriptive needs of urban development policy within the CBD of a major city should be provided for as part of local policy in that area but are not needed in many regional areas. It is about being able to draw on an appropriate base of provisions and policies that are relevant to particular areas. We would therefore not support a stand-alone Regional Planning Act as this would of itself create complexities particularly for development proponents who operate in both urban and regional areas as well as for peri-urban areas that have characteristics of both urban and regional areas.

(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 (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 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.

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.

An example of the dangers of trying to facilitate quick development paths through special processes was the Building Education Revolution. In practice, more resources were required to use the “fast track system” than would have been required to simply process a standard development application. Timeframes were also no better than could have been achieved through an efficient standard development assessment regime under the existing legislation.

As indicated above, we submit that 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.

Also as indicated above LEPs should be considerably more flexible than the current Standard 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.

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

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 we see the current delegations (if accepted by councils) as being generally appropriate.

Perhaps the main issues with the plan making process relate to, at times, poor advice from the Department of Planning and Environment and also sluggish processes. We have experienced both these issues at MPSC where some straightforward plan amendments have dragged out to over three years. Indeed issues with changes to the State approach over time meant it took nearly 10 years for Council to achieve a new LEP from the point of commencement.

The early days of the “Gateway” process permitted straightforward local environmental plan amendments to be processed in around three months. This was effective and efficient and at times quicker than statutory assessment of development applications. Administrative delays now mean that these processes take much longer typically up to 12 months and sometimes several years.

We conclude that the issues relate more to administrative processes and timeframes rather than the underlying system of delegations.

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

As mentioned, 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 now in preparation.

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. Various tools such as Growth Management Plans are an administrative convenience and operate without either statutory support or a clear framework as to what they are meant to do and how they are meant to do it.

We note the White/Green papers for reforming the NSW planning system which have not been adopted and where the current state government appears to have taken a very different approach to that recommended by the review. That review strongly recommended a revised approach to strategic planning.

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

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 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.

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. For example in MPSC's area 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.

Related to this is the more general problem of maintaining local road networks. In the case of MPSC we currently have some 2400 km of unsealed roads, the majority of which are natural material (black soil). When it rains, these roads are impassable, at times for a week or 10 days. The single biggest incentive that could be provided to facilitate development within the Moree area would be a funding stream sufficient to build and maintain the local road network as an all-weather network.

Council does not support rate holidays, headworks concessions, the provision of land below market value or other similar “bribes” to attract development. All these do is ensure that the costs of development are not captured while the benefits often flow elsewhere. Long experience in dealing with major projects has revealed that to gain the long-term presence of a business, that business should make its locational decision based on comparative advantage rather than these short-term measures. When a region has comparative advantage, it can attract development through efficient and effective engagement processes and by well-managed assessment processes. Unfortunately these are not fully within the control of local government and state agencies need to be intimately involved in development facilitation.

A recent example in Moree saw an innovative process proposed that would assist with waste disposal in an environmentally benign manner while creating an energy surplus. Potentially this would lead to over 30 jobs. Bureaucratic obstructionism at the state agency level has stalled the project which is at risk of being lost to the region, and the state. This is a clear example of the need to have an outcomes orientated process which is focused on facilitating development while recognising that appropriate controls are necessary.

(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

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 arise at the state agency level. As outlined previously 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.

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.

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.

We see 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.

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.

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.

Council has made little use of voluntary planning agreements and, in our submission, these are a risky tool. They tend to lead to a perception that offering something on a voluntary basis would enhance the prospects of gaining development consent. In our submission the use of Section 94 or Section 94A is more appropriate method of capturing contributions that can be directly applied to the impacts of development. At the present time the preparation of Section 94 plans is a relatively complex and time-consuming process and it is difficult for these plans to anticipate all forms of development where a contribution might be appropriate. In this regard there is some logic behind voluntary planning agreements as these cover these cases. Preferable, however, would be a more flexible approach to Section 94 that allows contributions to be assessed and imposed as development conditions on a case-by-case basis according to a clear set of guidelines or principles.

(i) any other related matter

As is hinted at through the terms of reference regional planning processes extend far more widely than land use planning. In particular, it is considered that the inclusion of regional planning within the core functions of Joint Organisations of Councils requires careful and thorough review. There is a potential risk that if this function is included in the proposed legislation there will be a shifting of responsibility for regional planning towards Joint Organisations. While devolution of itself is not necessarily a bad thing, there is a risk that such an approach will increase the costs of regional planning and result in the disengagement by many state agencies. We submit that it would be appropriate for the enquiry to specifically address this matter under its terms of reference.

Overall Summary

At the end of the day 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.

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. This ensures that such planning is done and that it contributes to such an integrated system.

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.

Councils need to improve their administrative responses and to do so require adequate resources to pay for efficient and effective systems.

Thank you for the opportunity to provide this submission to the enquiry and we would be pleased to provide additional material including case-studies should this be desired.

Yours sincerely,

Angus Witherby
ACTING GENERAL MANAGER