

INQUIRY INTO REGIONAL PLANNING PROCESSES IN NSW

Organisation: Planning Institute of Australia, NSW Division

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The Director
Standing Committee on State Development
Parliament House
Macquarie Street
Sydney NSW 2000
statedevelopment@parliament.nsw.gov.au

Dear Sir/ Madam

Planning Institute of Australia, NSW Division

Submission to the Inquiry into Regional Planning Processes in NSW

Introduction

This submission has been prepared by the Planning Institute of Australia NSW Division (PIA NSW) as a response to the State Development Committee's *Inquiry into regional planning processes in NSW*.

The Planning Institute of Australia (PIA) is the peak body representing professionals involved in planning Australian cities, towns and regions. The Institute has around 5000 members nationally and around 1200 members in New South Wales. PIA NSW plays key roles in promoting and supporting the planning profession within NSW and advocating at all levels in relation to key planning and public policy issues.

This submission addresses the terms of reference which the State Development Committee has been given and has been prepared on behalf of PIA NSW by Members of the Institute who have a particular interest in Regional Planning in NSW.

The Terms of Reference of the Inquiry are as follows:

“That the Standing Committee on State Development inquire into and report on regional planning processes in NSW, and in particular:

- 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,*
- c) the suitability of a stand-alone regional planning Act,*
- 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,*
- e) opportunities to increase delegations for regional councils in regard to the planning making processes,*
- f) opportunities for strategic planning to assist in responding to challenges faced by communities in regional areas including through Regional Plans,*
- g) opportunities for government-led incentives that promote regional development,*
- 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*
- i) any other related matter.”*

This submission discusses some general points around the planning process prior to addressing the specific terms of reference, as this provides an important background to the recommendations presented at the end of this submission.

Background – PIA National Policy Position

The Australian settlement pattern is increasingly characterised by population concentrated in capital cities. This pattern of urbanisation has heightened the debate around the merits of different approaches to the development of regional Australia. Over the past 50 years capital cities and some regional centres have grown rapidly. At the same time, some parts of regional Australia have been in decline or have grown at much

slower rates than the capital cities. In recent years, these disparities have widened due to a number of social, economic and technological changes associated with globalisation.

The past two decades have witnessed a considerable shift in both the objectives and content of regional policy. The process of globalisation has reconfigured many of the forces driving development in regional Australia, including new technologies, new production methods, new lifestyle preferences, and new business and investor location decisions.

The policy response from government has been receptive to these new drivers and reflects many of the recent 'breakthroughs' in regional development literature. Government has generally supported the view that regions should capitalise on their location-specific competitive advantages. In practice, this has meant developing region-specific policies, delivered through a bottom-up governance approach.

The role for regional planning however remains vague under this approach. This is compounded by the lack of a clear spatial framework to guide planning policies and actions, including economic and taxation policy, and provide certainty to both public and private investment across regional Australia.

The greater competitiveness of Australia on a global scale demands a stronger integration of all regions into the global economy. Resources and policy efforts should be guided by an overarching spatial strategy for each State and Territory.

A full copy of the National Policy Position on Rural and Regional Development is attached at Appendix A.

Detailed comments on points a) to i) of the Inquiry

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

As outlined in this submission, there is a need for a clear focus on Regional Strategies and Plans and their practical implementation. This includes the funding of regional infrastructure plans and regional infrastructure projects which are critical in assisting regional areas to grow and thrive. By adopting the well established strategic planning approach of nominating land uses for specific areas over 20 plus year horizons, the community and industry can move forward with greater certainty. A Strategic Plan does not preclude alternate land uses infinitum; rather it focuses investment decisions and the subsequent development in priority areas over a specific timeframe.

The purpose of Regional Growth Plans should be to consider the broader, cumulative and longer term impacts of development. They should also provide the decision making framework to make complex land use decisions within regions, which in turn reduce land use conflict and enhance the potential to secure sustainable land use outcomes for communities when measured in social, economic and environmental terms.

Ensuring appropriately qualified and experienced regionally based Department of Planning and Environment professional staff who understand issues specific to regional planning to guide and facilitate decision making in relation to major investments through the complex NSW planning system should be seen as a high priority. Likewise appropriately qualified and experienced staff in major regional Councils will also facilitate the process of improving regional planning and decision making. The issue of training and education is discussed later in this submission.

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

It is noted that significant land use conflicts in regional areas continue to be a problem. For example, conflicts between coal mining and agriculture in the Liverpool Ranges that discourage investment and that to date strategic planning for identified areas has been piecemeal. This invariably leads to conflicts which are not in the interests of any of the parties and requires allocation of considerable resources to manage.

There is a lack of coordination between different government departments in regional areas that have an interest in regional planning. Infrastructure agencies have a critical role to play in providing the infrastructure that can act as a catalyst to growth and development and yet these agencies are not effectively engaged in the regional planning process.

Under the current NSW planning system the situation exists where a special interest government agency such as the Office of Environment and Heritage (OEH) or the Environment Protection Authority (EPA) can effectively take over as the planning authority and can dictate to a local council whether or not a project receives approval. This occurs when Integrated Development is referred to a government agency by Council. This complicates the development assessment process and significantly increases the timelines associated with assessment of applications for development. These government agencies virtually assume the role of the planning authority as Council is powerless to do anything other than what it is directed to do notwithstanding what its views might be about the appropriateness of the proposed development. These government agencies have a role to play in informing decision making but should not be the decision makers. The role of making planning decisions should rest with a planning body who is able to

weigh up all relevant considerations and come to a balanced decision about whether a particular application should be approved or not.

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

PIA NSW does not support a stand-alone Regional Planning Act. The case in support of such a proposal has not been convincingly made. PIA believes that a single piece of legislation that has a clearly articulated hierarchy of State, regional and local planning is the most appropriate legislative approach.

Regional planning needs to be integrated with local planning and State planning and the coordination of these different levels is best served in a single piece of legislation.

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) have been prepared to achieve a number of goals, including the protection of significant environmental assets (e.g. koalas, wetlands), addressing and providing consistency across state wide issues (e.g. seniors living, signage), providing guidance for significant sites (e.g. Kosciuszko National Park) or allowing minor works to be undertaken without lodging a development application (DA). The benefit of SEPPs is that they over-ride Local Environmental Plans (LEPs) and thus provide clear guidance on development matters considered to be of state or regional significance. Where LEPs may vary between Council areas, SEPPs prevail.

LEPs are prepared by Councils in line with the Standard Instrument (Local Environmental Plans) Order 2006 and Standard Instrument—Principal Local Environmental Plan. That is, LEPs are prepared in accordance with a 'standard template'. PIA supports this approach to maintain consistency of general content, format and definitions across the State, but it also should allow a limited degree of 'customisation' to suit local conditions, provided that outcomes remain consistent with overarching state or regional policy settings.

In relation to the specific issues to be raised by this Inquiry, the effectiveness of SEPPs and LEPs in stimulating regional development depends on a number of factors, some more market driven than others. Nonetheless, the role of LEPs, together with robust regional strategic planning are very important factors in regional development.

For example, the Three Ports SEPP, which is designed to encourage development around Port Kembla, Port Botany and the Port of Newcastle, has been in place for a number of years and facilitated significant development. This SEPP provides encouragement for port operators and associated facilities to co-locate in an area and provides flexibility for this

to occur. The role of SEPPs should be to provide guidance to Council, the private sector and the community on the State Government's expectations on the implementation of planning and land use policy.

One of the major constraints of SEPPs is the lack of modifications and review of these instruments. Take for example, the manufactured home estates SEPP. Implemented in 1993 this SEPP is going through a review, some twenty years later. Manufactured home estates and construction methods have changed in recent years with the advent and improvement of pre fabricated homes and an ageing population. However, approvals for manufactured home estates include approvals under both the Environmental Planning and Assessment Act 1979 and the Local Government Act 1993 and approvals are more complicated and complex than they need to be.

For SEPPs to contribute to regional development they need to be updated and modified where appropriate on a regular basis to ensure they keep up to date with current best practices and the changing nature of land uses and needs of the community.

It is PIA's view that the long awaited 'root and branch' review and rationalisation of all current SEPPs should be completed expeditiously. The SEPP review announced late last year is limited to some relatively 'low hanging fruit'. PIA considers that the multitude of current SEPPs has the potential to be substantially reduced. SEPPs should be restricted to high level matters of state or regional significance. SEPPs generally should contain strategic planning principles and policy directions rather than detailed development controls, which are best incorporated consistently into the subordinate LEPs.

Whilst the former nomenclature of "regional environmental plans" was removed from the Act some years ago, PIA considers that SEPPs under the current Act can and should be applied to regions where appropriate to give effect to policy issues requiring a regional spatial response. Integration of such 'regional SEPPs' with Regional Infrastructure Plans is essential.

Another constraint of SEPPs is the use of definitions and principles within them and the subsequent use of those terms at the local level in conjunction with the lack of reviews undertaken of these SEPPs. The Principal Standard Instrument contains definitions that are outdated or definitions that should be in the standard instrument but are not. For example, why is it necessary to have health consulting rooms limited to a dwelling?

Regional development could be enhanced through the use of 'open zoning provisions', rather than 'closed zoning provisions'. At present there are numerous LEPs in NSW which identify a number of permissible land uses in a zone and then everything else is prohibited. This is referred to as 'closed zoning provisions'. The disadvantage of this

approach is that any proposed development that is slightly different has difficulty in being approved. To facilitate regional development, LEP zoning provisions should provide 'open zoning provisions'. This would allow Councils in regional areas to be more flexible when developments are proposed. Councils in regional areas need to be able to respond to changing market conditions.

It should be noted that other factors outside of Environmental Planning Instruments are also influential in promoting regional development, including infrastructure plans, resourcing infrastructure in regional areas as well as ensuring local government planning staff keep up to date on best practice planning and techniques.

In summary, the key points are:

- Expedite the comprehensive review and rationalisation of all current SEPPs and give consideration to appropriate 'regional' SEPPs.
- Ensuring SEPPs and LEPs are regularly monitored and updated to maintain currency and best practice standards;
- Ensuring SEPPs and LEPs are flexible enough for regional areas to optimise opportunities for regional development;
- Ensuring professional staff employed by local government and State government who are actively involved in regional development keep up to date with best practice planning and techniques.

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

The current gateway process would benefit from further delegations to Regional Offices of the Department of Planning and Environment. Turn around times could be improved if further delegations were granted to staff who have a good understanding of regional issues.

Certain minor LEP amendments, mapping anomalies and updates to reflect more current data or information could reasonably be delegated to Councils in the context of existing S117 directives and Planning Circulars/Guidelines.

Councils in regional areas have at times found it difficult to articulate and convince Sydney based staff of the Department of Planning and Environment of the difficulties created by current clauses in the Standard Template LEP. Examples of this include the split zone provisions and the removal of any ability to vary the 10% threshold for rural lots sizes.

Regional areas are diversified in character and maintaining a nominal 40ha development standard across the bulk of rural zonings does not reflect the changing nature of rural land use in proximity to regional centres. The significant increase in intensive produce farming, value add products, small scale food destinations focussed on gourmet, organic and sustainable practices means that smaller holdings are developing their own land use character not adequately acknowledged by the current planning instruments.

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

PIA supports a coordinated approach to Regional Plans that make strategic decisions to achieve clear outcomes, rather than a large version of a local land release plan. It is critical that Regional Plans recognise the diversity in communities and not force uniformity within a region. They need to co-ordinate key infrastructure such as transport, water, sewerage, education and health.

Regional Plans are also considered to be the appropriate tool to address such things as threatened ecological communities and areas of National Significance under the EPBC Act to ensure that Federal, State and Local Government requirements are integrated into the planning system offering certainty to government, communities and the private sector.

Regional Plans need to have appropriate and practical funding sources and resourcing so that they are delivered within clear timeframes. The responsibilities for implementing these Plans need to be clearly articulated including the ongoing implementation responsibilities, management, monitoring and review.

Community engagement and ownership of these Plans is paramount.

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

There are opportunities for government at both Federal and State levels to offer support to promote regional development, such as AusIndustry funding. It is however critical that if such funding is forthcoming for a project that requires planning approval that the planning approvals process and system does not hinder the timeframes and practical implementation of the project. Extended timeframes due to the planning process can be a roadblock and it is critical that all government agencies and the private sector work together to achieve a sustainable outcome.

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,

Assessment of major rural /intensive agricultural industry applications needs to be undertaken by persons with the appropriate and relevant level of experience and qualifications. However it is often Planning Assessment Officers with insufficient expertise to assess complex highly scientific applications, who are assigned application without sufficient resources or access to persons with the expertise undertake the assessments.

This can be deleterious to the processing times as well as resulting in clumsy and impractical consent requirements. Establishment of a mechanism to allow for experts in the industry/field to be called upon to mentor and supervise less experienced assessment officers would help to avoid substantial costs in getting specialist reports for matters that are not really critical to the assessment.

It is also critical that other key government agencies, such as the OEH, RMS and EPA also have staff that have relevant levels of experience and qualifications to access major rural / intensive agricultural industry applications and have a working knowledge of regional areas.

Reducing costs associated with development assessment is in no small part influenced by the ability of the assessing officer to undertake a professional judgement of what information is or is not necessary.

i) - *any other related matter*

Training and Education

Targeted training of technical specialist staff providing comment on DA referrals would assist in reducing processing times and information request costs. Training in the appropriate wording of conditions of consent would reduce the number of S82A and S96 modifications under the Environmental Planning and Assessment Act 1979. Often the modifications requests are needed in order to have conditions modified to something more practical and reasonable for the particular development.

Pre-lodgement meetings

The current system of pre-lodgement meetings is proving very useful and constructive and Councils should be encouraged to continue to provide this service. It brings together the relevant Council staff from technical sections and is typically chaired by a senior manager. This generates a more constructive and problem solving approach than when the application is considered within each silo of technical expertise. The grouped consideration of the proposal results in improved awareness of the implications of varying requirements from different sections within Council. Finally the written minutes

and comments from the pre-lodgement meetings help maintain consistency of approach throughout the assessment process.

Concluding Remarks and Recommendations

PIA asks the State Development Committee to consider the following issues in its final report:

1. The Environmental Planning and Assessment Act 1979 needs significant reform.
Various submission were made by PIA to the government's planning reform process (Issues Paper, Green Paper, White Paper and Exposure Bill) that set out PIA's opinions on the general nature and detail of reform required. Most elements of our submission remain relevant today and we request that they be considered as part of our submission to this Inquiry. Whilst some reforms have subsequently been implemented, much remains to be done. In general, however, we consider that the overall framework and architecture of the planning system should remain consistent across metropolitan and regional areas of the State. A separate planning Act or system for the regions would add unnecessary complexity and would be counterproductive to good planning in the State. However, the system needs to be flexible enough to accommodate policies and procedures that are customised to meet the different requirements of the regions compared to those of the urban areas. A one-size-fits-all approach to policy and procedures will not adequately meet regional needs.
2. The provisions of Integrated Development which allow special interest State government agencies to direct planning bodies to determine development applications on the basis of single issues needs to be removed. The State Government should ensure that the many positive initiatives of the Review into the NSW Planning System are introduced as soon as possible.
3. All levels of government need to ensure policies and plans are evidence based and are regularly monitored and updated. Complex and contradicting legislation and process should be replaced with streamlined processes, for example within the EPBC, Native Vegetation and Threatened Species Conservation Acts.
4. Community engagement needs to be much more effective. This has been a difficult task for all planning professionals, however, guidelines from the Department of Planning and Environment outlining appropriate processes for different levels of development for all private and public sector planners and developers need to be prepared and widely circulated. To be effective, consultation needs to be undertaken early in the process to avoid unnecessary delays caused by lack of community

understanding of the strategic context once proposals reach development assessment stage.

5. The Department of Planning and Environment needs to allocate local resources to its regional offices. This includes devolving responsibility to the regional offices within a clear cohesive management framework for the Department as a whole. Regional staff who are proactive and who can assist in facilitating sustainable outcomes that benefit the community can be invaluable as a resource to all stakeholders involved in regional development in NSW.
6. The Department of Planning and Environment and local Councils need to ensure that adequate resources are made available to provide ongoing training to staff involved in the development assessment process so that they are skilled in best practice processes and are outcome focussed. Other State Government agencies should similarly be adequately resourced to ensure that staff within these agencies are also appropriately trained to undertake the tasks required of them.

The Institute welcomes ongoing engagement on this issue and is happy to elaborate on any of the matters covered in this submission.

Yours Sincerely

Marjorie Ferguson MPIA CPP

President NSW Division

Appendix A – PIA National Policy Position on Rural and Regional Development refer to <http://www.planning.org.au/policy/rural-and-regional-development-1210>