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INQUIRY INTO REGIONAL PLANNING PROCESSES IN NSW

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Regional Planning Processes in NSW (Inquiry)

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Introduction

ACS NSW represents over 200 Consulting Survey firms in NSW and approximately half of those firms are located in regional NSW. The type of activities undertaken by survey firms cover a range of disciplines that directly relate to the creation of new Torrens and Strata titles including planning, infrastructure design, construction management, survey and project management

Survey firms, particularly in regional areas, are the primary consultant in a large proportion of land and property development activities and as such we believe it is important to provide a submission to the inquiry based on our experiences and the problems being encountered by our members.

It is our view that a modern, agile and responsive planning system is an important structural element to economic and social growth in regional NSW. The system should be capable of arresting the decline in populations in rural communities but it should also be capable of handling the growth pressure that exists in coastal areas and larger tree change regional centres. The planning system should be well resourced and make significant use of code complying development provisions to reduce application processing times and eliminate the need for large bureaucracies within local councils.

The original 1979 act has been amended many times and the accompanying regulations, ministerial directions and SEEP'S have complicated the planning process in NSW. It is therefore appropriate to review the act and it is also appropriate to examine the planning laws as they specifically relate to regional NSW. The reality is that there are many varied and complicated differences between developments in regional areas as compared to the metropolitan areas. Many of our members believe that changes to the planning or regulations in recent times have not been sympathetic to planning and development in the regional areas.

We have listed below an overview of the issues with the current planning system in regional NSW:

Strategic planning:

Over the last two decades we have seen significant land use conflicts in the regional areas. In part, the strategic planning of these areas has been done only on the basis of the hotspots in development. This invariably leads to conflicts between the existing landowner and their perceived property rights relating to investing in their land and either creating a new industry or agricultural pursuit or developing the property for residential or commercial development. In the last decade, realising that all of the strategic plans are not properly in place, the proponents of a development have often been sidelined until the strategic planning has been completed. This has a significant impact on economic development. It is our view that the government should be properly resourcing strategic planning and that the plans should include both the practical as well as theoretical elements so that they are "buildable".

An example of this is a brownfield site in a regional coastal centre that has secured significant monies for a new federally funded university. The site was ideally located to the new University but required a change of residential zoning to allow multistorey student housing development. The enquiries at Council met with the response that whilst there was no opposition to the proposal it was not part of the strategic growth plan and it would therefore have to wait for a "spot" rezoning of up to 2 years in time. Clearly this is a system that is not agile enough to cater for the modern day demands of economic growth or to be sympathetic to an injection of Government infrastructure funds. The strategic plan should have been able to accept this type of proposal.

Similarly, the land use conflict between mining and agriculture in regional areas has been at the forefront of the public's attention in recent years. A proper and coordinated approach to strategic planning should identify the potential land uses across the entire state. Obviously the initial allocation of resources in this regard should be directed at the "hotspot" and there should be the ability to vary the land use categories upon detailed evaluation. This should be done prior to the issue of any mining licenses to avoid conflict in land uses.

Strategic Planning- Certainty of Development potential:

Unfortunately, under the current planning system the designation of a particular land use under a strategic plan provides little long-term comfort and security for an investor. The de facto planning approval required from a range of government departments complicates the process and significantly increases the timelines for approval. These de facto planning approval authorities within other government departments either need to be brought within one authority or properly integrated into a system so that they cannot delay the planning process. Indeed, many submissions have been made to the NSW government about the issue of "culture" in consent authorities. Traditionally the role the government Department was to implement the laws and regulations passed by government. Over time this has been expanded to a role where they force their ideology onto the development. Often this is an individual ideology rather than a collective ideology and invariably it is never part of a documented policy that has been properly researched and reviewed within that government Department. This creates uncertainty and tension between the applicant and the approval authority. This is particularly evident in the regional areas of NSW and should be a key focus of this inquiry to make recommendations to remove this impediment. A simple example of this fragmented ideology is the requirement to provide replacement trees in an environmental offset area. Figures can range from 2 to 20 replacement trees per removed tree depending on the consent authority environmental officers personal preference and this is further exacerbated when there is a requirement to allow spacing between these trees of 10 metres which sterilises large areas of land.

In addition to this we are aware of instances of recently rezoned land still requiring extensive ecological studies at that the DA stage even though comprehensive assessments have been carried out during the planning proposal to justify the rezoning.

Biodiversity conservation and Vegetation Management:

ACS notes the production of the final report for the review of the Biodiversity Legislation carried out by the NSW government. There can be no doubt that the existing system relating to vegetation management in NSW is in need of modernisation and the Association supports the recommendations in the final report.

Generally, our members have been reporting significant conflict between zoned and approved development and the issue of vegetation management. The current system relies heavily on locally based or Shire wide management principles and the provision of localised offset areas. This has created a disconnected series of offset lands that do not address the landscape wide issues of biodiversity and environmental protection. Often these localised offset lands come at significant cost and are administered uneconomically by the local councils. Local Councils in some cases are creating whole departments to manage Offset lands. In addition to this the rules and procedures governing the type and indeed level of offsets vary significantly from one Council to another. It would be appropriate to provide a state-based system that deals with the issue holistically rather than within a relatively small local area.

A large number of our clients have held their property for many years if not generations. They have progressively seen the increased encumbrance of the environmental legislation on their property and the current rules and regulations are, we believe, at a much higher level than the landowner's believe is applicable. Our members are often put in a position where they have to explain the laws and we have no doubt that the landowner's believe that their property rights are diminished by the current legislation. It is an important objective of the planning law review to more closely align the "regulation reality" with the public understanding and indeed expectation. The proposed issue of compensation for the loss of economic or agricultural development on environmentally sensitive lands assessed as worthy of conservation should be seriously considered and it should form an important part of the new planning law.

An integral part of this management regime is the proper identification of areas that should be considered as worthy of conservation. At this point in time the state does not adequately know the full extent of the environmental value of many areas within its boundaries. In addition, those areas have not been properly considered in relation to the significant amount of land that is already allocated to conservation management. We would urge considerable caution with the vegetation mapping that would be an integral part of proper biodiversity management. Our experience in this area has shown an ideological bias that, once formalised within adopted mapping, is difficult to counter or vary. We therefore would recommend a range of views be included in the mapping process. Furthermore, that the relative accuracy of mapping should be properly considered as in some areas of NSW the digital cadastral boundaries could vary significantly from the on ground features. Whilst difficult to quantify the distances may be from 25 – 100 m out of proper alignment. Significant expertise in assessing the relative accuracy of maps is already within the Land and Property Information Department of the NSW State government and that resource should be applied to any mapping of land use of vegetation types in NSW.

Over the last decade a number of offset areas have been identified and allocated to local councils as part of the development process. The local Council has also likely extracted a contribution for the rehabilitation management of these areas. These areas should be identified by the state government as part of a landscape wide biodiversity scheme and they should be removed from the control of the individual Council and the funds allocated should be pooled to provide a more efficient means of dealing with the conservation and management of the offset lands.

The review and repeal of the Native Vegetation Act is also an important consideration for development in regional areas. All too often the current Native Vegetation Act prevents the proper management of properties which can then lead to those properties becoming bushfire hazards and reducing development yield on those properties or adjoining properties significantly. Preparation of Property Vegetation Plans under that this act slow the development process and adds significant cost to the production of new land parcels.

The importance of linking planning legislation and the new Biodiversity Conservation Act can't be understated. This alone is a significant reason to seriously consider a separate legislation. Given the size and the scale of the areas that would be considered within the Biodiversity Conservation Act we believe these two pieces of legislation should be written and implemented together and the objectives of the act should be closely aligned.

NSW Planning Legislation and the EPBC Act

As previously discussed negotiating a proposed development through the environmental issues relating to biodiversity and vegetation conservation is difficult and cumbersome. A further significant issue is the EPBC Act which whilst commonwealth legislation, is causing confusion in the regional land development sector as well as having an impact on development certainty and approval times for developments in regional areas.
At present, development needs to consider both NSW and Commonwealth environmental legislation. Proponents are required to run parallel ecological assessments and seek separate approvals from each jurisdiction.

The Commonwealth legislation largely operates by self-notification. Development proponents are often unaware of their responsibilities or alternatively choose to deliberately ignore the reporting requirements. We would submit that for small to medium size development this legislation is ineffective.

NSW should include measures in any new act to streamline the concurrence of Commonwealth approvals, particularly for the smaller scale development in regional areas. The Commonwealth department is poorly resourced and does not have the personnel with sufficient experience to deal with applications from smaller country towns.

Whilst it is politically unlikely that there will be any changes to the EPBC Act in the new future the NSW government should take the opportunity to create a process that fast tracks approvals by providing support to proposals by ensuring they are considered concurrently with the Commonwealth legislation instead of having to be considered after approval by the State. Existing approvals should also be considered separately and should not retrospectively be subject to EPBC act requirements without appropriate review and compensation.

An example recently forward to the ACS office from one of our regional members is detailed below:

> *"We have the situation where Council issued development consent many months ago yet we are still have to work through the EPBC process which could take a further 12 months. There is no guarantee the development will be approved after this time. The result is uncertainty and we are seeing situations where developers and Councils are actively seeking to avoid referring developments to the Commonwealth Department of the Environment (DotE). There is a risk that developments could destroy a habitat listed as a Matter of National Environmental Significance (MNES)and therefore attract significant penalties. Yet there are areas of the state whereby developers and Councils are completely ignorant of the need to consider whether there are MNES under the EPBC. Also, the DotE has no plan for an awareness campaign to educate regional communities that the EPBC Act has a wider influence than many currently understand. We've also found DotE to be ignorant of the development and growth needs of regional communities. At least most NSW departments have a connection to regional communities. DotE personnel rarely visit development sites."*

The inquiry should be concerned that the significant improvements in the system that is proposed by the new Biodiversity Conservation Act could be undermined by the lack of integration with the EPBC Act.

Voluntary Planning Agreements.

The use of Voluntary Planning Agreements (VPA's) has become widespread in regional areas during both rezoning and development approval process. There can be no doubt that these instruments have an important role in freeing up roadblocks to development and to enable proposals that have been subject to opposition from consent authorities to be restarted. It is also clear that the VPA will be an important tool to implement the management regime proposed in the new Biodiversity Conservation Act proposals put forward by the NSW government.

It is therefore important to note that these agreements should be maintained in a new act but just as importantly, it is appropriate to review how they are currently working and how they can be modified to work better in a new Act. In that regard we wish to register some concerns with the potential of these instruments to become compulsory rather than voluntary and for some councils to adopt a position in the negotiation of these agreements that leaves little option for a proponent to either adopt the provisions of the VPA or not obtain an approval. This attitude is not in the spirit of the VPA system but some councils are using their consent authority as leverage against a proponent. Often proponents have no choice but to capitulate and agree with the provisions because of the economic demands of the development.

It is particularly apparent when the VPA is required to be completed and signed prior to rezoning and development approval which means that the VPA itself sits out side any effective appeals process.

Clear and concise guidelines for VPA's should be issued with a new regional planning act and the inquiry should seriously consider allowing a process for the mediation of VPA 's in exceptional circumstances rather than the take it or leave it attitude that currently exist within some councils.

Section 94 and Section 64 contributions

It is well-established that the section 94 contributions regime is in need of an overhaul. Councils are seeking to fund facilities well outside the original intent of the Section 94 proposals and the cost of some of these facilities are being disproportionately diverted to the development. In addition to this large amounts of collected contributions are being retained by Council and not being spent or used effectively. Section 94 contributions are required to demonstrate a nexus to the service or facility that is to be provided. The control, governance and transparency of the large amounts of unexpended monies in these funds should be reviewed and examined appropriately.

When a regional Council can increase the contribution to a sporting facility by $1 million over the course of the Council meeting without a full report of this complying with the plan or confirming the nexus to the facility indicates that the system needs review. Our members are aware of instances such as this occurring regularly.

The section 94 contributions significantly increase the cost of land and property development in NSW and contribute to the lack of housing affordability.

The committee should also be aware of the imposition by some councils of a Section 94A contribution that is levied as a percentage of the cost of a building. This contribution has no nexus whatsoever and can be used in a somewhat random fashion by Council's. When you have an example of a regional manufacturing business installing a new roof over a large existing outdoor storage facility and having to then pay the local Council $50,000 in Section 94A contributions for the privilege of installing a roof to protect their stock without increasing the business in any way it is appropriate to review the regime under which this contribution is applied. Clearly this is a disincentive to investment in infrastructure in regional areas.

In relation to Section 64 contributions that are levied for the provision of water and sewer in regional areas it is important to highlight that contribution may be up to $12,000 per lot but the equivalent charges in the metropolitan area of Sydney is actually waived and, in part, covered by a government subsidy. The water and sewer authorities in regional NSW were subject to a comprehensive review a number of years ago to streamline the provision of these facilities to regional towns. In line with the review of local councils the government should consider a process to make these authorities more efficient and reduce the costs to new development and new manufacturing industries.

State Special Infrastructure Charges

The State administered infrastructure charge was introduced in some areas by the previous government. The government should be aware that economic growth and development will significantly contribute to the state economy and the imposition of these charges is a retrograde step and they should be eliminated immediately. The current system also requires a separate voluntary planning agreement with the state government which is overly bureaucratic and provides a further delay the development. We believe the system should be immediately reviewed for regional areas and we further believe that it will be possible to demonstrate that the bureaucracy required to implement these charges, if removed, will compensate the state government for the loss of revenue. This is particularly relevant when considering the additional activity that the removal of this charge would promote.

The quantum of the Special Infrastructure Contribution varies significantly throughout the state with an example of approximately $93,000 per hectare in Wyong. Contributions of this scale are significant and add to the cost for new homebuyers. There is no guarantee or nexus that this money will in fact be spent by the State government in the local government area that the lot was created. The inquiry should seriously examine the value of this contribution to development in regional areas and they should be excluded from future planning systems.

Expansion of Section 149 register

The provision of a section 149 certificate is an almost compulsory action when purchasing a property. Amongst other things the 149 certificate details statutory planning controls that affect a property and the certificate issued by local the Council.

We believe the system should be expanded to include a schedule of planning restrictions on the use of the property that are imposed by the development approval that created the lot or approved the building factory or commercial premise.

Matters like this are currently dealt with by the implementation of a condition that requires they be shown on a Section 88B instrument created under the terms of the Conveyancing Act 1919. Matters such as stormwater detention facility maintenance, bushfire asset protection zone maintenance, acoustic controls or additional building setbacks are “planning restrictions” formulated during the process of the development approval. In the current practice these controls are then required to be registered as part of a section 88B instrument. Whilst these restrictions obviously burden the lot the practical reality is that not many people in the development process review a section 88B instrument. The instrument was never designed to be used for complicated planning controls rather it was more about creating easements or simple restrictions on the use of land. By imposing these restrictions Council are creating a long-term problem because these instruments and their terms are not easily accessible to the public and in fact are often completely ignored during the conveyancing process and when a private certifier reviews the requirements for the construction of a dwelling.

This restriction should therefore be moved to a schedule within the section 149 instrument that can be easily accessed every time the property is transferred but more importantly can be merged into the proposed electronic planning portal that is currently being evaluated by the government. This would allow access to these restrictions for the owners, for neighbours and for any people dealing with building on the property.

Service Authorities

Over recent years significant changes have been made to the role that service authorities have in the creation of new dwellings and upgrading the electrical and telecommunications networks for new industries in regional NSW. There has been significant disruption in the provision of these services by the changes to the NBN network and by the significant changes to the way Essential Energy operates in the NSW market.

It is particularly apparent that these authorities are less than motivated to become involved with the relatively small-scale of new development. They have introduced significant changes to the way they charge for their infrastructure and the changes are becoming an impediment to development. In addition to this it is difficult to engage these authorities in long-term network planning as they are attempting to outsource as much of this work as possible. There is a role for the NSW government to facilitate proper lines of communication between various stakeholders to ensure that the services required for new development and economic growth in the regional areas are properly planned and implemented by the relevant authorities. Essential Energy in particular is undertaking a significant corporate and cultural transition and they are paying little or no attention to the development industry.

Council Planning Resources

The particular nature of development in regional areas means that the majority of development is within a limited range in terms of complexity and indeed investment. Occasionally a project comes before the local Council that lies significantly outside of these historical limits both in complexity and in its potential for employment and/or growth for the region. These types of development may require significant additional review of environmental factors. A simple example with be the expansion of a meat processing facility in a regional town.

If the resources within the Council are limited, then the quality of advice in relation to planning approvals and indeed the way the application is dealt with by the local planners may adversely affect the project and if the project is referred to a higher level being a state authority or indeed the Commonwealth then the standard of assessment of the environmental effects may need to be significantly increased.

The inquiry should consider implementing a system that allows a team of experienced planners to bolster the resources that are available to a local Council with the aim of expediting an approval and quickly identifying the matters of concern and how those matters should be addressed by the applicant. The corollary that we make here is the way that the Department of Commerce often subcontracts out to local councils for the provision of

major infrastructure in the water and sewer areas. This idea of a "planning flying squad" would increase the knowledge and experience of planners in regional areas but would also ensure the consistent application of the planning act requirements. We have numerous examples of proposals for the intensification of agricultural pursuits that were initially signed off by local planners but when referred to state government authorities the assessment report was determined to be inadequate. This "go back to the drawing board" result for an application is extremely inefficient and deters potential investors and other contributors to economic growth in regional NSW.

Regional Offices- Department of Planning

Throughout the early part of this decade there was a diminution of the authority of regional planning offices. The Government should consider these offices as a strength of the system and provide those offices with the appropriate delegation authorities and ability to influence planning outcomes and therefore growth and economic development in NSW regions.

The decentralisation of planning control powers should be a key deliverable of a regional planning act and exporting experienced and practical Planning Department staff should be encouraged. The regional areas have much to offer economic growth and development in NSW and having an aspiration to provide a high quality planning consent authority in the regional area should be included in any change to the current system.