

## **INQUIRY INTO REGIONAL PLANNING PROCESSES IN NSW**

**Organisation:** Ardill Payne and Partners

**Date received:** 14/09/2016

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## WITNESS SUBMISSION

Submission to Standing Committee  
on State Development

For:  
Public Hearing at the inquiry into regional planning  
process in NSW held in Ballina

September 2016

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## 1 Introduction

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Ardill Payne & Partners have been invited to appear as witnesses at a Public Hearing in Ballina at the Ramada Hotel for the inquiry into regional planning processes in NSW. The Hearing date is Monday 19 September 2016 and below are our submissions ahead of the Hearing.

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## 2 Terms of Reference

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### 2.1 Opportunities to stimulate regional development under the planning framework including through legislation, policy, strategy and governance

- Good infrastructure leads to growth
- Jobs leads to growth
- Affordability leads to growth

Decades ago the state provided some funding for regional infrastructure programs via roads, sewer and water grants. The re-introduction of this coupled with a co-ordinated regional approach to plan, fund and build the infrastructure would allow long term infrastructure to be regionally planned and established to form the basis of long term growth. It would also reduce development costs and therefore land affordability. It would allow smaller development and business opportunities to flourish. As it currently stands this infrastructure is funded by s94 and s64 levies or to a lesser extent VPAs. These contributions have now become a major cost in land building development to the extent that many small business operators and developers walk away from opportunities of expanding their businesses due to the significant cost of these levies. The situation which preceded the current boom saw only very large players be able to step into business and land development or expansion activities. Currently there is a surge of activity due to low interest rates, pent up demand and a speculative fervour. We expect this to drop back to more conventional lower levels of activity once interest rates return back to pre-boom levels.

Having a regional based infrastructure authority for the provision of infrastructure is not unusual. It exists locally with Rous Water as the main water supply authority. Melbourne has been working along this line for some time and now has the Plan Melbourne paper in place. It has provided regional infrastructure to its major growth corridors prior to development and is recovering costs at reasonable developer charges. By co-ordinating infrastructure supply, the holdups in development approvals while issues around infrastructure are sorted one by one could be avoided. The problem with this current approach is that local Councils do not have the human resource capacity or funding to do this at a

significant scale. Run at a larger scale infrastructure supply costs and delivery times could come down. The current situation dictates that only as funding becomes available through s94 and s64 sources can the infrastructure be provided, hence Infrastructure supply is not an upfront service as opposed to say Melbourne. This delay, coupled with the fact that levies have become so high, means the funds are often not collected because development does not proceed and hence the infrastructure is not supplied. This is evidenced in Ballina by the road contribution levies which assume an average expenditure of \$7m per annum on major roads for next 20 years, yet the historical expenditure is approximately 15% of that amount. So effectively, the excessive costs of s94 and s64 levies is preventing small to medium size projects ever proceeding past the DA the DA approval stage.

In Ballina and Byron Bay the developer charges have escalated in 15 years from being 30% of construction costs to in some instances being greater than the construction costs. Much of the funds are raised against future works and there is no guarantee the work will be done or be of any benefit to the development which paid for it. Developers are happy to pay reasonable infrastructure supply costs as they see the rationale behind an efficient, cost reducing, planned process which would remove the uncertainty, current excessive levels of Council charges and time delays they currently endure.

The following opportunities have been identified:

- Supply a Plan for Regional Infrastructure
- Fund the Plan by State loans
- Build the infrastructure up front
- Recover the cost via developer charges over time at a lower rate than currently being made.

## **2.2 Constraints to regional development imposed by the planning framework and opportunities for the framework to better respond to regional planning issues**

The framework is too open ended and too easily influenced by personal agenda and local politics. The framework constrains process by being populated by state wide policies which are not necessarily applicable to regional issues.

The framework could be improved by making it a more prescriptive system with policies more suited to the region. Brisbane has a good framework to work under but a poor regional infrastructure supply system. Melbourne has achieved a better balance except the end solutions are too repetitive and sterile. We have a state based system with policies driven principally by metropolitan or state wide issues (eg. stormwater runoff in rural catchments is different from that in a metropolitan catchment but the same rules are applied, housing density, state wide environmental and endangered species legislation which may or may not be relevant).

The Brisbane system has a process which consists of policies to address which are described as objectives. Deemed to comply solutions to the objectives are provided and where departures are sought suitable provisions are provided to enable merit bases justification. For example by reference to other standards. The system quickly gates different parts of the development proposal into complying and non-complying portions which seem to be able to be dealt with relatively quickly. It inserts a box ticking component to the application which removes much of the politics and personal agenda.

The same concept could be applied to:

- affordable housing where more prescriptive solutions could be provided
- small compliant subdivisions
- residential flat buildings that achieve compliance
- other forms of compliant residential and commercial development

A better system for regional planning framework would be to have a more prescriptive assessment process with policies and issues pertinent to the local areas.

### **2.3 The suitability of a stand-alone Regional Planning Act**

A Regional planning Act along the lines described in section 2.2 would be supported.

## 2.4 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

Most of the environmental planning instruments and policies are highly ineffective and restrict regional development rather than stimulate. They often fail to relate to existing development, nor provide reasonable parameters to guide sensible and sustainable development into the future.

SEPPs often fail to create suitable outcomes as they have been designed to guide Sydney and Newcastle like developments, a fully compliant development can become excessively controversial in the eyes of the public as what is being proposed does not often fit into regional areas.

The following commentary on Environment Planning Instruments is provided as examples and points of discussion:

- a. The senior's living SEPP is overly revised and causing uncertainty in the development area. A final, comprehensive change is required. Principal concerns are due to DDA matters. Fear of legal action is driving parking requirements to provide 100% PWD parking whereas most of the people buying the facilities need no such assistance. Uncertainty for the development community pushes them away from such a SEPP.
- b. The SEPP65 and associated apartment guidelines are seen as better products and consideration for expanding their applicability beyond the zones provided in the SEPP are recommended. However, applying SEPP 65 to regional areas often results in developments which fail to relate to surrounding contexts due to the fact that this SEPP was created to guide Sydney and Newcastle like developments.
- c. Due to problems in providing affordable housing a recommendation that land uses in the ***State Environmental Planning Policy (Affordable Rental Housing) 2009***, such as boarding houses, instead of being uses that require development consent, be changed to "complying development". i.e. the government would produce a set of standards which had all of the relevant numerical development standards and if a development was compliant with that code, then it would be able to be certified rather than needing to be processed through the impossible gateway of gaining development approval process.

## **2.5 Opportunities to increase delegations for regional councils in regard to the planning making process**

The trick of achieving good planning and development outcomes between a remote State Planning Authority producing Policy and Objectives and a local Council cognisant of local issues but influenced by local politics is a difficult recipe to get right.

A local Council would be able to provide more ideas on how increases in delegation might be useful. Delegations to the State on how regional planning frameworks, infrastructure supply systems and policies should be done would be extremely useful. However, the delegations should include industry representatives with equal status, as much knowledge of what is required and how it could be done resides with them.

Local Councils could manage the regulatory and strategic planning process more efficiently if the more prescriptive frameworks described in preceding sections were implemented. Historically, there was not as much interference from the State on subsequent regulatory and strategic planning processes and outcomes. Many of Council resources are devoted unnecessarily to State requirements.

Although an appeal mechanism to a separate entity should be available, there have been many instances where the overturning of Local Council decisions by the State have produced some poor local planning outcomes. For example, the West Byron development which is an example of both poor Council and State responses to how and what should have been developed.



## **2.6 Opportunities for strategic planning to assist in responding to challenges faced by communities in regional areas including through regional Plans**

Strategic planning can be managed locally to address local issues, provided guidelines and funding is available for it. Annual conferences and more frequent workshops around regional strategic planning would be most useful provided it is run properly. Attendees would be community stakeholders, Councils and the State.

Local strategic planning ideas and outcomes vary a lot. In Byron Shire there is a push for:

- affordable housing
- rural settlement and
- urban consolidation within the towns
- There is a reaction against expansion of townships;  
eg. west Byron

In Ballina a different situation exists:

- Affordable housing is not a major/contentious issue
- Rural settlement developments are virtually banned as no R5 zone exists
- There is little urban consolidation
- Most development consists of township expansion or satellite suburbs

These varied issues and positions are a result of long term Council policies, population types, demographics and land values. The striking variance between two adjoining Shires is a strong example for local input into Strategic Development.

## 2.7 Opportunities for government-led incentives that promote regional development

As discussed above. Government led incentives of:

- infrastructure funding
- funding of regional planning for same
- funding of regional strategic planning workshops which include community stakeholders
- implementation of regional based planning schemes
- providing prescriptive planning framework with deemed to comply solutions

Changes to SEPP's and mapping errors such as:

- Repealing SEPP 71 in its entirety due to the archaic nature of its controls and the fact that it's been replaced by the standard LEP.
- Correct the substantial errors in SEPP 14 mapping that were identified 15+ years ago
- Correct the substantial errors in the mapping of bushfire prone land which cause extensive costs to developments in regards to reports, construction and the time it takes to process applications. There is currently a blanket application of rules which have been set as a result of the Canberra bushfires. These rules have resulted in over reaction to fire regulations in other parts of the state, in hand, resulting in lengthy delays for processing applications. The applications invariably do not trigger any RFS issues but the rules require a process which attracts unnecessary delays.
- Drastically overhaul the endangered species legislation and the way it is administered. Provide locally managed endangered species legislation as it is considered by most in the community to be nonsensical and not producing any significant environmental outcomes. The legislation seems more about employment for environmental officers and administration of the act than any significant environmental improvements. Endangered species are discovered everywhere to the extent they could be barely considered endangered but no effort is made to delist them. The responses to their discovery varies and can be waived for infrastructure development. Freshwater wetlands can be old farm dams, isolated stands of trees can become endangered environmental communities where identical trees stand in forests some metres away.

The legislation is administered in isolation to a general position on the relevance of a particular community when it is abundant elsewhere and other more important issues surrounding a site are not given sufficient weight because they are not state or commonwealth administered matters.

## **2.8 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 any other related matter**

The State Government have managed to complicate the CDC process to the point where it is almost easier, quicker and cheaper to obtain a DA/CC from the local Council. CDC provisions should be regionally specific as the Northern Rivers is not the same as western Sydney. They should also remove acid sulfate soils as a consideration as many areas including Ballina Island cannot undertake CDC work as it is mapped as containing class 2 acid sulfate soils.

Costs for development approval are not considered too high. The times for obtaining development approval and construction approval are the major issues. The biggest delay in the local area with development is the resource constraint in Council. They are too slow in reviewing, approving and supervising development work. To address this local senior consulting planners and engineers, all of whom at some stage were employed by Council, have approached Council to engage with the local consulting firms to provide peer review and supervision of applications and construction to address Council's resource constraints. This approach has been fruitless and this major cause of delay remains. We do not know whether the refusal was based on an income, cost or control matter but the opportunity to streamline the process via this offer has been turned down.

Added to this is an overly complex planning system with too many layers and is complicated beyond the point of reasonableness. A new framework as set out in earlier sections is recommended. That is:

- Regional Infrastructure Body
- New planning Framework
- Regional based policies and prescriptive requirements and solutions
- Strategic Planning Workshops
- Amend/repeal SEPPs and Environmental Legislation as per above
- Use of Peer Professionals to assist Council
- Regionally related CDC process