



NSROC PLANNING PRIORITIES:

PLANNING BLUEPRINT 2011

EXECUTIVE SUMMARY

This “Planning Blueprint 2011” describes NSROC’s proposals for NSW Planning reform. It consolidates various NSROC submissions and policy statements for consideration by the State Government and Opposition. The key positions are as follows:

PLANNING FOR SYDNEY

NSROC argues that the State Government must elevate the **Department of Planning to a lead agency** in order to deliver effective strategic planning in NSW and in Sydney in particular.

NSROC’s view is that the revised 2010 Metropolitan Plan (December 2010) fails on many levels:

1) it has **failed to adjust and respond to feedback from the community on transport**. It still nominates 2024 for the completion of the North-West Rail Link with construction not commencing until 2017. The Epping to Parramatta Link, previously ignored by the State Government, may be feasible if the promise of funding by Federal Government at the last election is honoured. However concerns remain about the current State Government’s capacity to deliver projects.

2) it **does not explain to communities why and how their growth targets have been set**. The revised Plan has proposed further growth in the northern Sydney area with 75,000 new dwellings expected to be incorporated into the region by 2036 (compared to 56,000 targeted for 2031). Despite criticism by many local councils, the revised Plan does not explain how these targets for each region have been calculated.

3) the “Infrastructure NSW” governance model excludes the Department of Planning. This model **does not ensure that independent merit assessment of planning and transport projects will be undertaken** compared with other “transport authority” models proposed by the Sydney Morning Herald inquiry and the State Opposition.

4) the Plan does not adequately recognize the fragmentation of rural land to greenfield development is irreversible and the need to implement planning, tax or other incentives to **protect agricultural land** on the fringes of Sydney.

5) the Plan **treats Sydney’s population growth in isolation**. It does not recognize or link with strategies for population diversion, through transport and economic policies, to regions adjacent to the Sydney Basin such as Central Coast, Wollongong and Newcastle.

PLANNING INSTRUMENTS

NSROC supports a **review of NSW planning legislation** based on the principles, structure, and reform process proposed by NSW Planning Institute of Australia (PIA) (see Attachment).

NSROC is in favour of **repealing Part 3A** and realigning larger development decisions and decisions of State significance to various other decision bodies as determined by a review of the Planning Act.

NSROC **opposes the continued capping of Section 94 contributions**. A more robust and workable solution needs to be developed to deal with the more pressing and widespread issue of raising funds for infrastructure 'renewal' rather than 'new' infrastructure development.

NSROC's view is that the **Affordable Housing SEPP requires major reform** and is not workable or beneficial in its current structure.

NSROC recommends that the **Housing Codes SEPP reconsider the wholesale application of the Codes to smaller lots**. The practical effect of the Code's extension to small lots is to escalate the development from low to high impact, generate negative neighbourhood outcomes and potentially slow down the development process for such matters.

NSROC does **not support the introduction of a Multiple Site SEPP**.

PLANNING AUTHORITIES

NSROC's view is that **Joint Regional Planning Panels (JRPPs) should be repealed** and that Councils be returned as the determining authority for this category of development.

NSROC does **not support the establishment of the Sydney Metropolitan Development Authority (SMDA)** given the ambiguities about its role and operations.

DEPARTMENT OF PLANNING

NSROC supports a concurrent **review of the structure of the Department of Planning** to better determine the resources required, and to shift its current focus on assessment and approvals toward a stronger governmental strategic planning role and emphasizing the value of strategic planning to the NSW community and the economy.

BACKGROUND

The Northern Sydney Regional Organisation of Councils (NSROC) is comprised of seven councils (Hunter's Hill, North Sydney, Willoughby, Ku-ring-gai, Ryde, Hornsby and Lane Cove) in the northern part of Sydney which have voluntarily come together to address regional issues, work co-operatively for the benefit of the region, and advocate on agreed regional positions and priorities. Some key information about the region includes:

Development¹

- Development across region is \$1.8 billion (excluding State and Federal government projects) or approximately 10% of the value of development approved across the State.
- NSROC processes around 7% of the DAs in NSW
- DA processing times (gross and net) are shorter than the state average

Community

- Population at 560,000 (estimated to be 680,000 by 2036)
- Aged populations are increasing while youth populations are decreasing.
- Highest growing ethnic community is Chinese

Economy²

- Gross Regional Product in 2009- \$40 billion, or about 10% of NSW Gross State Product. This equates to \$76,000 per capita income.
- 257,170 people work in the region. Half of those employed in the region travel daily from adjacent areas including the North West, the Central Coast and Parramatta.
- The region is a key corridor for transport for people and products throughout Sydney.
- There are 67,700 registered business
- 3.6% unemployment compared to 5.5% NSW average (September 2010)

Part A – PLANNING FOR SYDNEY

Land and Transport Planning for Sydney

The dominant policy guiding development in the Northern Sydney region has been the **NSW Government's 2005 Metropolitan Strategy**. This Strategy prescribed 56,000 new households - which equals approximately an extra 130,000 residents over the next 25 years; and 72,000 new jobs in the region by 2031. The Councils of the Northern Sydney Region have responded constructively to these targets with new plans for housing growth, particularly around centres and transport corridors.

In early 2010 the NSW State Government commenced a review of its 2005 Metropolitan Strategy and its **2010 Metropolitan Transport Plan**. NSROC provided submissions to both of these processes.

The key NSROC criticisms of the 2005 Metro plan were :

- The Strategy did not link land use planning and transport.
- The Strategy did not link with the State Infrastructure Strategy and the State Plan.
- The Strategy did not set out short, medium and long term objectives and an action plan.
- The Strategy was not consistent with the principles set out in the Federal Government Criteria for Capital Cities Planning.
- The Strategy failed to articulate funding mechanisms and delivery mechanisms.

¹ Local Development Performance Monitoring 2008-2009, NSW Department of Planning

² NSROC Economic Profile www.nsrco.org

- The Strategy does not set out additional objectives and actions for developing the Sydney's global economic arc and growth centres.
- The Strategy failed to articulate the specific roles and functions of the proposed Sydney Metropolitan Development Authority.
- The Strategy did not take into consideration Local Environmental Plan revisions and Community Strategic Planning Processes being undertaken by local councils to avoid conflicting plans and disconnected processes.

Moreover NSROC was critical about:

- 1) the **absence of any information** by the NSW Government about the methodology applied to calculate the housing and employment targets for each region and LGA.
- 2) the failures to provide definitions and arguments for particular designation of **“growth centres”** within the planning hierarchy;
- 3) the **delays and lack of updates of Sydney Sub-Regional Strategies**. The original 2005 Sub-Regional Metropolitan Strategies were never endorsed and continue to be delayed in terms of debate and discussion. The absence of Sub-regional Strategies is compromising NSROC councils' Community Strategic Planning.
- 4) the lack of effective measures to maintain diversity of land holdings and protect local food production. Protecting land on the city fringe is a key issue for our region. Member councils Hornsby and Ku-ring-gai are bounded by large tracts of protected bushland and agricultural or semi-rural land. **Once a greenfield development fragments a large parcels of rural land it cannot be reformed back into rural land.** For this reason rural lands should be protected as a resource for future local agriculture purposes. The Plan should include actions to preserve existing land for agricultural purposes on the metro fringe.
- 5) the Plan assumptions of fixed population growth for Sydney and failures to look at the current population movements and employment flows between the Sydney Basin and adjacent regions such as Central Coast, Wollongong and Newcastle. NSROC view is that **planning for Sydney is being made in isolation and in absence of transport and economic strategies that could encourage population growth outside the Sydney region.**

NSROC proposals for the 2010 Metropolitan Transport Plan included prioritising the following key projects for the region :

- North-West Rail or Metro link
- Parramatta to Epping Rail link
- Second Harbour Bridge rail crossing and fast North Shore line
- Bus or light rail link from Chatswood to the Northern Beaches
- Transport strategies for Military – Spit Corridor, Victoria Road, Pennant Hills Road and the Pacific Highway
- Completion of M2- F3 link into the Sydney Orbital
- Improved regional rail services to the Central Coast and Newcastle

NSROC also recommended Sydney's Metropolitan Transport Plan and governance arrangements were not adequately transparent, or sufficiently independent and resourced.

In mid 2010 the NSW Government created a new super agency: *Infrastructure NSW*. *Infrastructure NSW* merged the Department of Roads with the Department of Transport.

However NSROC's view is that land use planning and transport should be more closely aligned and integrated into a single conglomerate agency. The current arrangement excludes the Department of Planning. NSROC sees that strategic planning must be a priority function from which transport and infrastructure decisions follow. The current *Infrastructure NSW* leaves the Department of Planning as a derivative agency and hence strategic planning is not given the leading role to drive change.

NSROC argues that the State Government must elevate the Department of Planning to a lead agency in order to deliver effective strategic planning in NSW and in Sydney in particular.

In August 2010, the NSW Government revised its submission to Infrastructure Australia and has sought to reprioritise the North-West Rail Link as a project. During the Federal election in September 2010, a promise by the restored Federal Government was made for funding the Epping to Parramatta Rail Link. NSROC maintains that the North-West Rail link followed by the Parramatta to Epping Rail links projects, while outside the NSROC region, should continue to be the highest transport priorities for State Government and should be fast-tracked.

NSROC argues that these projects are critical to effective long term strategic land and infrastructure planning for the region. These projects will enable sustainable population growth with high amenity and economic stability for the region and for broader Sydney. Although Federal funding should be sought by the State Government for these projects, if funds are not available then the State Government should de-prioritise its other transport projects to allow for the immediate commencement of the North-West Rail Link and the Parramatta to Epping Rail Link.

The “Revised” Metropolitan Plan - released December 2010

On 17 December 2010 the State Government released its “Metropolitan Plan for Sydney 2036” – a merger of the 2005 Metropolitan Strategy plan and the 2010 Metropolitan Transport Plan.

NSROC's view is that the revised 2010 Metropolitan Plan (December 2010) fails on many levels:

1) it has **failed to adjust and respond to feedback from the community on transport**. It still nominates 2024 for the completion of the North-West Rail Link with construction not commencing until 2017. The Epping to Parramatta Link, previously ignored by the State Government, may be feasible if the promise of funding by Federal Government at the last election is honoured. However concerns remain about the current State Government's capacity to deliver projects.

2) it **does not explain to communities why and how their growth targets have been set**. The revised Plan has proposed further growth in the northern Sydney area with 75,000 new dwellings expected to be incorporated into the region by 2036 (compared to 56,000 targeted for 2031). Despite criticism by many local councils, the revised Plan does not explain how these targets for each region have been calculated.

3) the “Infrastructure NSW” governance model excludes the Department of Planning. This model **does not ensure that independent merit assessment of planning and transport projects will be undertaken** compared with other “transport authority” models proposed by the Sydney Morning Herald inquiry and the State Opposition;

4) the Plan does not adequately recognize the fragmentation of rural land to greenfield development is irreversible and the need to implement planning, tax or other incentives to **protect agricultural land** on the fringes of Sydney.

5) the Plan **treats Sydney's population growth in isolation**. It does not recognize or link with strategies for population diversion, through transport and economic policies, to regions adjacent to the Sydney Basin such as Central Coast, Wollongong and Newcastle.

Part B – PLANNING INSTRUMENTS

A New Planning Act

NSROC member councils support the NSW Planning Institute of Australia's (NSW PIA) proposal for the creation of a new NSW Planning Act.

The NSW development sector is a dynamic and evolving industry. For 20 years the NSW Planning Act 1979 has tried to keep pace with the industry through a myriad of changes and additions which has now compromised the integrity of the whole. There are regular exposures of competing and conflicting elements in the legislation resulting in a plethora of amendments, guidance notes and other materials. The lack of coherence in the planning regime's principle legislation has undermined public confidence in the planning system. The dangers of such a complex system are increased risks of interpretation errors, litigation and poor decision making. The costs to community, developers, building professionals and councils to navigate through such a complex system are rising without any correlating public benefit.

The principles of a new Act should recognise the balance between community and economic outcomes, provide for a standardisation and consistency in principles for development contributions, and recognise the cumulative impact of individual planning decisions on whole communities and areas.

NSROC recognises the roles of Federal, State and Regional Plans in strategic planning and particularly in infrastructure planning. These roles need to be articulated and stratified in the planning legislation in a way that maintains public accountability and community participation.

NSROC supports a review of NSW planning legislation based on the principles, structure, and reform process proposed by NSW Planning Institute of Australia (PIA) (see Attachment).

Repeal of Part 3A and transitional arrangements

NSROC accepts that there are developments of State significance which are properly dealt with by the Government, however Part 3A has become a dysfunctional mechanism of Ministerial discretion and should be repealed. The extent to which environmental assessment processes, the criteria for approval and public input can be dictated by the Minister under Part 3A cannot be defended. This capacity for discretion has provided an incentive for some developers to overvalue their proposals in order to be elevated to Part 3A and avoid more transparent Council development assessment processes.

In the NSROC region we have many developments captured by Part3A which simply do not warrant "state significance". The elevation of these developments to Part 3A has lead to a disengagement with Councils and the community on matters that are genuinely local.

The function to refer some Part 3A decisions to the **Planning Assessment Commission (PAC)** was designed to remove some of the perceived risks tied to Ministerial discretion. However in practice this function has not been utilised as the ICAC recently noted in its report on Part 3A reforms released on 13 December 2010.

ICAC has found that only 7% of Part 3A determinations were being referred to the PAC compared with an 80% referral rate that was anticipated by the then Minister Sartor in 2008 when establishing the PAC. ICAC has concluded the PAC referral system is not being complied with due to the absence of objective criteria for the referral process.

The ICAC has proposed that the application of Part 3A be limited to permissible developments under existing planning instruments and that the PAC perform a “gateway role by way of independent scrutiny, in reviewing proposals to call in private sector projects by specific Ministerial order”.

NSROC supports both these proposals should Part 3A and the PAC be maintained by any future government. Furthermore, as suggested by the ICAC, the PAC should be independently appointed, appropriately qualified and beyond Ministerial interference. The PAC must also be subject to the same accountability measures as local government with strong mandatory processes for environmental assessment and community consultation.

NSROC is in favour of repealing Part 3A and realigning larger development decisions and decisions of State significance to various other decision bodies as determined by a review of the Planning Act.

Developer Contributions (Section 94)

There has been substantial debate about developer contributions and the failings in the current system. Although not every NSROC member council is currently affected by the cap, NSROC is opposed to the capping of Section 94 contributions.

A problem with the current system is that development contributions must be spent on new infrastructure but not augmenting existing infrastructure or maintenance. This presents difficulties for metropolitan councils, like NSROC, who are undertaking predominantly urban renewal or infill development rather than greenfill development. This issue will be increasingly problematic given that the State Government’s revised Metropolitan Plan is prescribing a target of 80% urban renewal in the Sydney area.

NSROC believes a fundamental change in development contributions is required that is integrated with other funding mechanism reforms. Councils face both pressures to provide new infrastructure and to fund recurrent infrastructure maintenance and backlog repairs.

Overall, as a source of revenue, development contributions need to be re-structured to reflect both the reality of major infill development occurring in NSW cities, and the differentials across the State in infrastructure outlays and development returns.

NSROC opposes the continued capping of Section 94 contributions. A more robust and workable solution needs to be developed to deal with the more pressing and widespread issue of raising funds for infrastructure ‘renewal’ rather than ‘new’ infrastructure development.

SEPP Affordable Housing

On 20 December 2010 the NSW Department of Planning announced a Review of the Affordable Rental Housing SEPP 2009.

NSROC welcomes this review as there have been substantial concerns about how the SEPP has been implemented and its lack of recognition of local planning instruments such as LEPs and DCPs.

The NSROC region has experienced a variety of social housing and boarding house proposals through this SEPP framework. The key problem has been the failure to address quite substantial impacts on local amenity.

NSROC councils have experienced Affordable Housing SEPP proposals that are resulting in shifting from low to medium densities and undermining the prescriptions of their LEPs. Concerns have also been raised about the short consultation times allowed by the SEPP for both the community and council to respond to proposals. Furthermore councils have also been concerned about the inferences made by the Department of Housing that councils are supportive and actively engaged in particular affordable housing development approvals.

A more detailed response will be developed by NSROC for the SEPP review process due in March 2011. However a typical issue of concern is the requirements for on-site parking in the SEPP are less than the DPC requirements for NSROC member councils. As the SEPP prevails over councils' DCP requirements, councils are left to manage the effects of increased private vehicle movements and parking.

NSROC's view is that the Affordable Housing SEPP requires major reform and is not workable or beneficial in its current structure.

Exempt and Complying Development

While the principle of the NSW Government's Housing Code SEPP is generally supported by NSROC, the recent amendments to the Code to extend to small lots are generating negative outcomes in the NSROC region. With the application of the exempt and complying development to smaller lots, the impacts of building work on adjoining properties such as noise, shading and privacy are magnified. In built up areas the impacts of changes on views, heritage buildings, side courtyards, common walls and basements are arguably not "low impact" as they would be on larger lots. Also councils are experiencing increased complaints and resolving these matters are expensive and time consuming for all parties. These outcomes are contrary to the original aim of complying development- that is- to create a quicker process for low impact development.

NSROC recommends that the Housing Codes SEPP reconsider the wholesale application of the Codes to smaller lots. The practical effect of the Code's extension to small lots is to escalate the development from low to high impact, generate negative neighbourhood outcomes and potentially slow down the development process for such matters.

Proposed SEPP - Multiple Sites

NSROC is aware of a draft proposal for a Multiple Site SEPP which would allow for developers to seek approvals for multiple developments in multiple sites across LGAs.

This proposed SEPP should not be implemented. While there would be considerable savings to the developer from this approach, there is no clear public benefit in allowing a private developer

to consolidate their applications. It would appear that there are few constraints on the mix of multiple consent options across regions. A concern would be that developers would leverage non viable sites against viable sites in an application. A decision mechanism which bundles decisions into either “approve none” or “approve all” is over-simplistic. It elevates the risk of poor developments being approved by default when they are grouped with more attractive developments.

A particular concern is where developers gain multiple consents but land bank certain sites that are later repackaged for an alternate development. In this way the proposal will create a new form of ‘de-facto’ consent which will add further complications to the planning system. At a more operational level the proposed SEPP has a 21 day consultation period which, given the complexity, economic and complementary planning implications of the SEPP, is completely inadequate for councils to gather feedback from the community.

NSROC does not support the introduction of a Multiple Site SEPP.

Part C – PLANNING AUTHORITY ISSUES

NSROC has various concerns about specific NSW planning authorities:

Joint Regional Planning Panels (JRPPS)

The NSROC region has two JRPPs operating across the region: Sydney East and Sydney West. NSROC councils have chosen various combinations of membership on these panels ranging from all councillors to all staff, or a mixture of councillors, staff and/or community representatives.

Overall, councils are yet to see major benefits from the JRPP process for their communities.

The Minister for Planning advises that the JRPPs have an average determination time of 163 days which is below the statewide average of 249 days (Minister Kelly to NSROC on 7 December 2010). However NSROC average determination time for projects valued between \$5-20 million has been at 112 days (in 2008-2009), lower than that being achieved by the JRPPs.

It should be noted that the DAs, whilst determined by the JRPPS, are still assessed by the relevant councils. Effectively the “efficient” determination times achieved by the JRPPS are being resourced by council staff rather than a separately resourced JRPP.

A key concern is that the JRPPs have been introduced at a time of low development activity. It is unlikely that the JRPPs will be able to maintain the determination rate when the development market recovers and councils are loaded with an increase in both JRPP matters and regular DA matters.

NSROC’s view is that JRPPs should be repealed and that Councils be returned as the determining authority for this category of development.

Should JRPPs continue as a consent authority, then NSROC recommends the following reforms to improve operations and transparency:

- a review of the **procedural actions** by JRPPs in approving certain development applications. There are concerns that JRPPs have effectively rezoned particular sites leading to planning outcomes not envisaged by the relevant planning controls;
- an increase in **administrative resourcing** for JRPPS, including consideration of a greater number of JRPPs, to ensure decisions are processed in timeframes that are consistent with council DA processing benchmarks;
- more **prescriptive direction for the conduct of Panel members** in relation to council staff and interactions with applicants and objectors; and
- the thresholds of JRPPs applications be increased to a **minimum of \$25million** (CIV) or where development occurs across two or more LGAs.

Our member councils also believe that JRPP **closed session processes**, although permissible, are inconsistent with open decision requirements for councils and contrary to the spirit of transparent planning.

Sydney Metropolitan Development Authority (SMDA)

The concept of the SMDA was briefly proposed in the 2010 Metropolitan Strategy Review and then created in September 2010 with no further consultation with local government. The SMDA is broadly based on the Redfern Waterloo Authority (RWA) structure. The SMDA (which has subsequently absorbed the RWA) defines its geographic jurisdiction across the greater Sydney metropolitan area.

While NSROC supports a coordinated strategic approach to planning in Sydney, it does not support SDMA as a statutory development corporation. The SMDA's role includes precinct level planning and large scale urban renewal and development yet has no role for or recognition of local government. The interim Board has no local government representation and, given its structure under the Growth Centres (Development Corporation) Act 1974 there is no requirement for consultation with or consideration of local councils beyond the relevant statutory development approval processes. In effect, this corporation has no safeguards for community and local government consultation in broader strategic planning. Nor is it clear what obligations will be required on the SMDA to take into consideration existing regional plans and councils LEPs.

The new Metropolitan Plan released on 17 December 2010 notes the SMDA will be focused in initial precincts of Redfern-Waterloo, the Australian Technology Park and Granville. The overall scope, criteria and processes of the SMDA in development across Sydney remains undefined in the revised Plan. Reference in the revised Plan includes a possible Urban Renewal SEPP that "could apply, either in areas where the SMDA is operating or in other areas with good accessibility that have renewal potential"³ but this does not inform current understanding or confidence in this new Authority.

As mentioned previously, NSROC supports a review of the Planning Act and this includes a moratorium on new SEPPS and other major reforms. There are a plethora of SEPPS and accompanying agencies, authorities, panels and commissions within the existing planning system that need review prior to the introduction of any new structures.

NSROC does not support the establishment of the Sydney Metropolitan Development Authority given the ambiguities about its role and operations.

³ Metropolitan Plan for Sydney 2036, pages 225 -226

Part D – DEPARTMENT OF PLANNING ISSUES

Strategic capacity and resourcing

NSROC councils are concerned with the strategic capacity and resourcing of the Department of Planning. As noted previously the new “*Infrastructure NSW*” super agency fails to have Planning as a lead agency. A lead role in Cabinet by the Department of Planning is crucial for land planning and transport implementation to be successful.

The Department is under-resourced, particularly in strategic planning capacity, reflecting a broader shortage in the professional planning workforce. At an operational level, NSROC Councils have experienced delays and errors in processing key instruments such as 21 months to get a Section 65 certificate. Processing delays by the Department compromise NSROC council’s planning decisions and operations.

NSROC supports a concurrent review of the structure of the Department of Planning better determine the resources required, and to shift its current focus on assessment and approvals toward a stronger governmental strategic planning role and emphasizing the value of strategic planning to the NSW community and the economy.
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