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**Proposed Changes to  
Environmental Planning in NSW**

by

**Stewart Smith**

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# **Proposed Changes to Environmental Planning in NSW**

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**Stewart Smith**

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## EXECUTIVE SUMMARY

The *Environmental Planning and Assessment Act 1979* (EP&A Act) is the main vehicle for planning in NSW. The EP&A Act provides a comprehensive three tier planning scheme, allowing for state, regional and local plans, as well as outlining the development assessment process. Whilst the Act attracted considerable support upon its introduction, nearly twenty years of amendments, case law and the proliferation of other natural resource legislation has meant that the natural resource management regime in NSW is, to say the least, complex.

In mid 1998 consultations began on the review process for updating the method of environmental planning under the Act. After the release of a Green Paper in 1999 and further consultation, in February 2001 *PlanFirst, Review of plan making in NSW White Paper* was released. The White Paper foreshadowed publication of a draft exposure bill on the proposed reforms in later 2001. This paper briefly reviews some of the problems of environmental planning under the current system, summarises the proposed changes as noted in the White Paper, and provides the views of the reforms of some key stakeholders.

The PlanFirst framework aims to provide a ‘whole of government’ strategic approach to urban, regional and rural planning. The proposed reforms are designed to enable the plans and policies of government agencies which have a bearing on environmental planning to be better connected to the planning system. The White Paper proposed three levels of planning documents: local plans; regional strategies; and state planning policies.

It is proposed that the local plan will set the strategic direction for the council, and provide the focus for actions, development and environmental management across the whole local government area. A local plan will: be the strategic whole of council plan; provide a single mechanism that coordinates and focuses a council’s planning activities; be a single plan; cover a whole local government area, setting the direction for at least 3-5 years. Each council will have only one local plan, which will provide all the information for guiding the management of the local government area and development decisions taken.

The White Paper noted that regional strategies will: be a region’s principal environmental planning document; provide agreed goals; be much broader than a development control document, giving strong direction, identifying priorities for action and promoting opportunities for investment; set a clear framework for local planning; interpret and apply state planning policies and implement solutions to regional priorities and cross boundary issues; not affect the legal status of other regional plans, such as those dealing with natural resource issues.

State planning policies provide comprehensive advice on: the protection of ecological processes and natural systems; economic development; the maintenance of community well-being; and set the context for regional and local planning and decision making. The White Paper noted that after the passage of amendments to the EP&A Act, state planning policies will be prepared first, to enable the preparation of regional strategies. Once regional strategies are prepared, local plans can then be developed.



## 1.0 INTRODUCTION

Land use planning in NSW is controlled by the *Environmental Planning and Assessment Act 1979* (EP&A Act). In mid 1998 consultations began on the review process aimed at updating the method of environmental planning under the Act. In February 1999 a Green Paper was released on plan making in NSW<sup>1</sup>, and in November 1999 a feedback report was released which provided details on the responses to the Green Paper.<sup>2</sup> Finally, in February 2001 *PlanFirst, Review of plan making in NSW White Paper*<sup>3</sup> was released. The White Paper foreshadowed publication of a draft exposure bill on the proposed reforms later in 2001.

This paper briefly reviews some of the purported problems of environmental planning under the current system, summarises the proposed changes as noted in the White Paper, and provides the views of some key stakeholders.

## 2.0 THE PROBLEMS OF THE CURRENT PLAN MAKING SYSTEM

The *Environmental Planning and Assessment Act 1979* is the main vehicle for planning in NSW. The EP&A Act provides a comprehensive three tier planning scheme, allowing for state, regional and local plans, as well as outlining the development assessment process. The *Local Government Act* provides for council decision making procedures and building controls. Whilst the EP&A Act attracted considerable support upon its introduction, nearly twenty years of amendments, case law and the proliferation of other natural resource legislation has meant that the natural resource management regime in NSW is, to say the least, complex.

The Green Paper identified the following shortcomings in relation to current planning legislation:<sup>4</sup>

- the overall complexity of the current environmental planning system due to the array of policies, plans and practices, as well as the format and language of policies and plans. For example, under the EP&A Act, there are almost 300 current principal local planning instruments applying in the 177 local government areas, with over 5,300 amendments. Added to this are the 80 current State Environmental Planning Policies and regional environmental plans;
- the resulting difficulties in determining what planning provisions apply to a parcel of

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<sup>1</sup> Department of Urban Affairs and Planning, *Plan Making in NSW, Opportunities for the future – discussion paper*. February 1999.

<sup>2</sup> Department of Urban Affairs and Planning, *Feedback Report. Plan Making in NSW, Opportunities for the future*. November 1999.

<sup>3</sup> Department of Urban Affairs and Planning, *Plan First. Review of Plan Making in NSW White Paper*. February 2001.

<sup>4</sup> Department of Urban Affairs and Planning, *Plan Making in NSW, Opportunities for the future – discussion paper*. February 1999, at 2.

land;

- the age and prescriptive nature of many planning instruments;
- the inefficiencies in the current plan making and amendment process;
- the low level of attention given to strategic planning at State, regional and local levels;
- the lack of integration with other plans such as natural resource management plans;
- the lack of effective community participation in plan making;
- the lack of monitoring and frequent and thorough plan reviews;
- the inaccessibility of base information and plans for users of the system.

In addition, the Green Paper highlighted the large number of other natural resource related plans which occur outside the EP&A Act, but which clearly have subject matter that is relevant to the planning process. For instance, 65 plans or strategies were identified under the following subject areas:

- Catchment (5 plans);
- Coastal (8 plans);
- Water (15 plans);
- Biodiversity (11 plans);
- Environment protection (3 plans);
- Environmental planning (9 plans);
- Metropolitan planning (5 plans);
- Land management (3 plans);
- Other (6 plans).

Many of the above plans have no legislative basis or formal links to the EP&A Act, and the sheer number of them demonstrate the array of plans, policies and strategies which are being prepared to manage the State's environment.<sup>5</sup> The Green Paper canvassed options to improve the integration between the above types of plans. The spectrum of options ranged from: modifying local environment plans, with natural resource management plans still operating separately from one another; producing an integrated State strategy and having regional plans with linked strategies; new planning and resource management legislation, reorganising State and local government agencies on a regional basis. In the Green Paper Feedback Report, there was overwhelming support for regional strategic planning as the preferred means of achieving improved coordination and integration in plan making.<sup>6</sup> As noted in the next section of this Paper, the White Paper included proposals for a regional approach to integrate land use planning and natural resource and social planning.

The Green Paper Feedback Report noted that nine themes could be identified in submissions and discussion forums. These were:<sup>7</sup>

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<sup>5</sup> Department of Urban Affairs and Planning, *Plan Making in NSW, Opportunities for the future – discussion paper*. February 1999, at 8.

<sup>6</sup> Department of Urban Affairs and Planning, *Feedback Report. Plan Making in NSW, Opportunities for the future*. November 1999, at 10.

<sup>7</sup> Department of Urban Affairs and Planning, *Feedback Report. Plan Making in NSW, Opportunities for the future*. November 1999, at 37.

1. Focus on achieving sustainable outcomes ‘on the ground’;
2. Integrated regional planning;
3. Clear hierarchy – there should be a clear hierarchy of state, regional and local plans – with a reduced number at each level;
4. Accessible plans – plans should be written in non-legal language and available in an electronic format;
5. Better community participation techniques;
6. Outcome based plans – a more outcome focussed system of land use management is needed, which allows the use of zoning, but reduces prohibitions and requires greater attention to defining the desired outcome for a particular place;
7. More tools for land use management – zoning controls should be supplemented with the use of alternative mechanisms and implemented in accordance with best practice guidelines;
8. Greater local autonomy in plan making – greater local government autonomy is required to make the system more efficient and place responsibility in the hands of councils and the local community;
9. Regular monitoring and review – plans should be subject to regular monitoring against set performance indicators.

Each of these themes are addressed in the White Paper, as discussed below.

### **3.0 THE PLANFIRST WHITE PAPER – THE PROPOSED PLANNING FRAMEWORK**

The PlanFirst framework aims to provide a ‘whole of government’ strategic approach to urban, regional and rural planning. The proposed reforms are designed to enable the plans and policies of government agencies which have a bearing on environmental planning to be better connected to the planning system. The White Paper also envisaged that all plans will be written in plain, jargon free language, and will be made available electronically through the internet. The White Paper proposed three levels of planning documents: local plans; regional strategies; and state planning polices. Each of these are discussed below.

#### **3.1 Local Plans**

It is proposed that the local plan will set the strategic direction for the council, and provide the focus for actions, development and environmental management across the whole local government area. A local plan will:<sup>8</sup>

- Be the strategic whole of council plan;
- Provide a single mechanism that coordinates and focuses a council’s planning activities;
- Be a single plan, replacing in some cases hundreds of local environmental plans and development control plans;

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<sup>8</sup> Department of Urban Affairs and Planning, *Plan First. Review of Plan Making in NSW White Paper*. February 2001, at 21.

- Cover the whole of a local government area, setting the direction for at least 3-5 years;
- Be consistent with the regional strategy and implement its outcomes in local areas;
- Contain development controls and bring together other council programs such as social and community planning, heritage conservation and section 94 (developer contributions) planning.

Each council will have only one local plan, and will provide all the information for guiding the management of the local government area and development decisions taken. The present division between the local environment plan and the development control plan will be removed.

All new local plans will contain a local strategy, which is described as a framework and directions for achieving a sustainable local area, as shown below.

**Table 1: The Formulation of the Strategic Component of the Local Plan.**

<b>(A) Local plans will contain a strategic component</b>	
<b>Where are we now?</b>	<b>Local Profile</b> – the ‘state of the council’ component, including identification of trends and issues, and a statement of regional context.
<b>Where do we want to be?</b>	<b>Vision Statement</b> – for the local govt area
<b>What will we achieve? Where and how will we achieve it?</b>	<b>Outcomes</b> – what the plan will work to achieve, eg, increased turnover for the regional shopping centre, no net loss of native vegetation.
<b>(B) Local Plans will contain an implementation component</b> – responsibilities, including action to be undertaken by council, business and the community, resource requirements, timeframes, priorities etc.	
<b>How do we get there?</b>	<b>Strategies and Actions</b> – policies to achieve the outcome; action plans for agreed actions/programs to achieve the outcomes; regulatory provisions including development controls to achieve the outcomes in each locality.
<b>How are we going?</b>	<b>Monitoring and Review</b> – to measure the progress towards the outcomes and vision. There should be a review at least every 3-5 years, with ongoing monitoring linked to targets or indicators, eg water quality targets.

Under the present planning system, local environmental plans are divided into generic land uses zones, such as 'residential 2b'. Each land use zone contains a description of what development is prohibited and what development is permitted with consent and so forth. The White Paper noted that feed back from the Green paper indicated that this zoning and the degree of certainty that it provided was highly valued. The White Paper proposed to replace this zoning with locality planning. Locality planning identifies a place and sets down the environmental planning rules that apply in that place. It was argued in the White Paper that with current land use zoning there is little recognition of the special characteristics of the 'place' or its desired future character. Dividing land into numbered zones complicates plans and introduces jargon that communities often do not understand. The White Paper argued that by applying the same rules to localities rather than generic land use zones certainty will be increased. However, it was also stated that 'coupled with fewer prohibited uses, locality planning will be better able to deliver on the outcomes sought in feedback on the Green Paper.' This reflects the debate on how prescriptive these zoning controls should be. For example, a very prescriptive approach would state what development was prohibited. Whilst an 'outcomes' approach reverses this, so that as long as the outcome of the development contributes to the desired future character of the area, virtually any development is permissible with consent.

It was noted that some councils are likely to have only a small number of localities, such as the town area and rural, whilst for others the different localities may be numerous, reflecting their unique characters. Each locality will have objectives which guide actions and development assessment to meet the area's goals in the local plan. Objectives will relate to issues such as sustainability, accessibility, liveability, built form and design, resource management and economic development. Associated with these objectives will be the controls such as would have been included in a development control plan.<sup>9</sup>

The White Paper proposed that local councils prepare local plans in close consultation with the community. New local plans will only be prepared when new regional strategies are prepared. The outline of the preparation process is as follows:

1. Pre-plan consultation – public notice of the intention to prepare a plan, seeking community involvement and informing relevant government non-government interests;
2. Community involvement in preparation of the draft plan;
3. Draft plan exhibited, along with statement of consistency with the regional strategy;
4. At least 'one examination in public' of the draft plan will occur (possibly using the Commissioners of Inquiry);
5. Draft plan finalised by the council;
6. The Regional Forum (see section 3.2) provides advice to the Minister for Urban Affairs and Planning on the statement of regional consistency;
7. Draft plan and Regional Forum advice will be submitted to the Minister for Urban Affairs and Planning seeking concurrence;
8. The council approves the plan.

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<sup>9</sup> Department of Urban Affairs and Planning, *Plan First. Review of Plan Making in NSW White Paper*. February 2001, at 26.

The White Paper proposed that amendments to local plans will be able to be carried out using a shortened version of the above steps. Amendments will not exist as separate plans but will always constitute part of the single plan. The Minister will also have the power to make and amend local plans in response to matters of state and regional significance. This will allow all relevant controls to continue to be maintained in a single plan, and avoid the ‘layering of controls’ which has been a major criticism of the current planning system.<sup>10</sup>

### 3.2 Regional Strategies

The White Paper noted that regional strategies will:<sup>11</sup>

- Be a region’s principal environmental planning document;
- Provide agreed goals;
- Be much broader than a development control document, giving strong direction, identifying priorities for action and promoting opportunities for investment;
- Set a clear framework for local planning;
- Interpret and apply state planning policies and implement solutions to regional priorities and cross boundary issues;
- Not affect the legal status of other regional plans, such as those dealing with natural resource issues;
- Use a combination of mechanisms to achieve outcomes including non-regulatory tools like incentives and action plans;
- Be based on an adaptive approach to management and include measures to monitor and evaluate performance and achievement of desired outcomes.

A regional strategy will contain a strategic component and an implementation component similar to that of a local plan, as indicated in table 1. The White Paper proposed that draft regional strategies will be compiled through a multi-disciplinary process involving state agencies and local councils. It will then be submitted to a Regional Forum, which will prepare a report on the strategy, prior to it being submitted to the NSW Government for approval. It is proposed that members of the Regional Forum will be key players in the region, including representatives from local councils, state agencies and peak business, social, indigenous and environmental organisations, and local members of State Parliament. At an annual roundtable, the strategy will be evaluated by all interested regional players.

The White Paper proposed the following preparation process for a regional strategy:

1. Pre-strategy consultation to engage the community in determining the issues to be addressed in the regional strategy;
2. Draft strategy prepared by multi-disciplinary project team;

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<sup>10</sup> Department of Urban Affairs and Planning, *Plan First. Review of Plan Making in NSW White Paper*. February 2001, at 29.

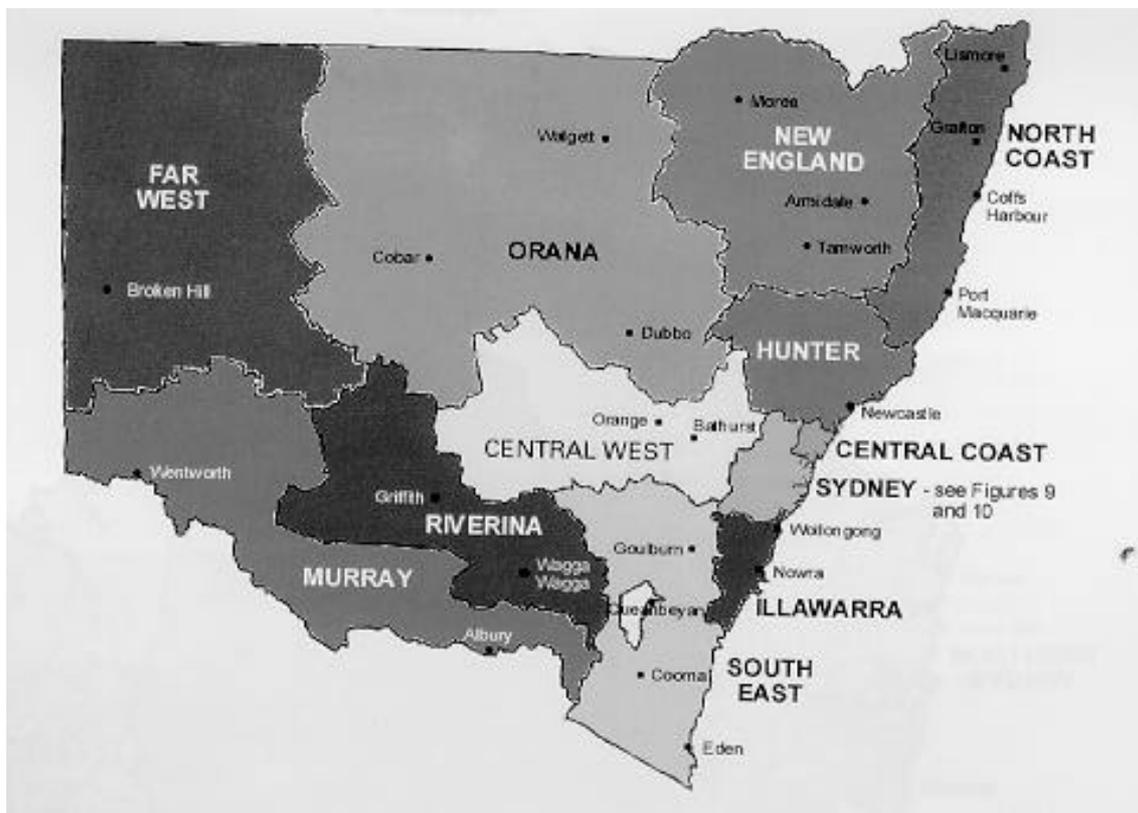
<sup>11</sup> Department of Urban Affairs and Planning, *Plan First. Review of Plan Making in NSW White Paper*. February 2001, at 31.

3. Exhibition of strategy;
4. Consideration of submissions (including the holding of a public hearing);
5. Review of the regional strategy by the Regional Forum, for presentation to the Minister for Urban Affairs and Planning;
6. The Government considers and approves the regional strategy;
7. The regional strategy is implemented through a range of actions including local plans.

The White Paper noted that should the process for preparing a regional strategy become unacceptably extended, the Minister for Urban Affairs and Planning will have the power to call in and determine the strategy. Likewise, the Minister will have the power to make and amend regional strategies in response to matters of state or regional significance.

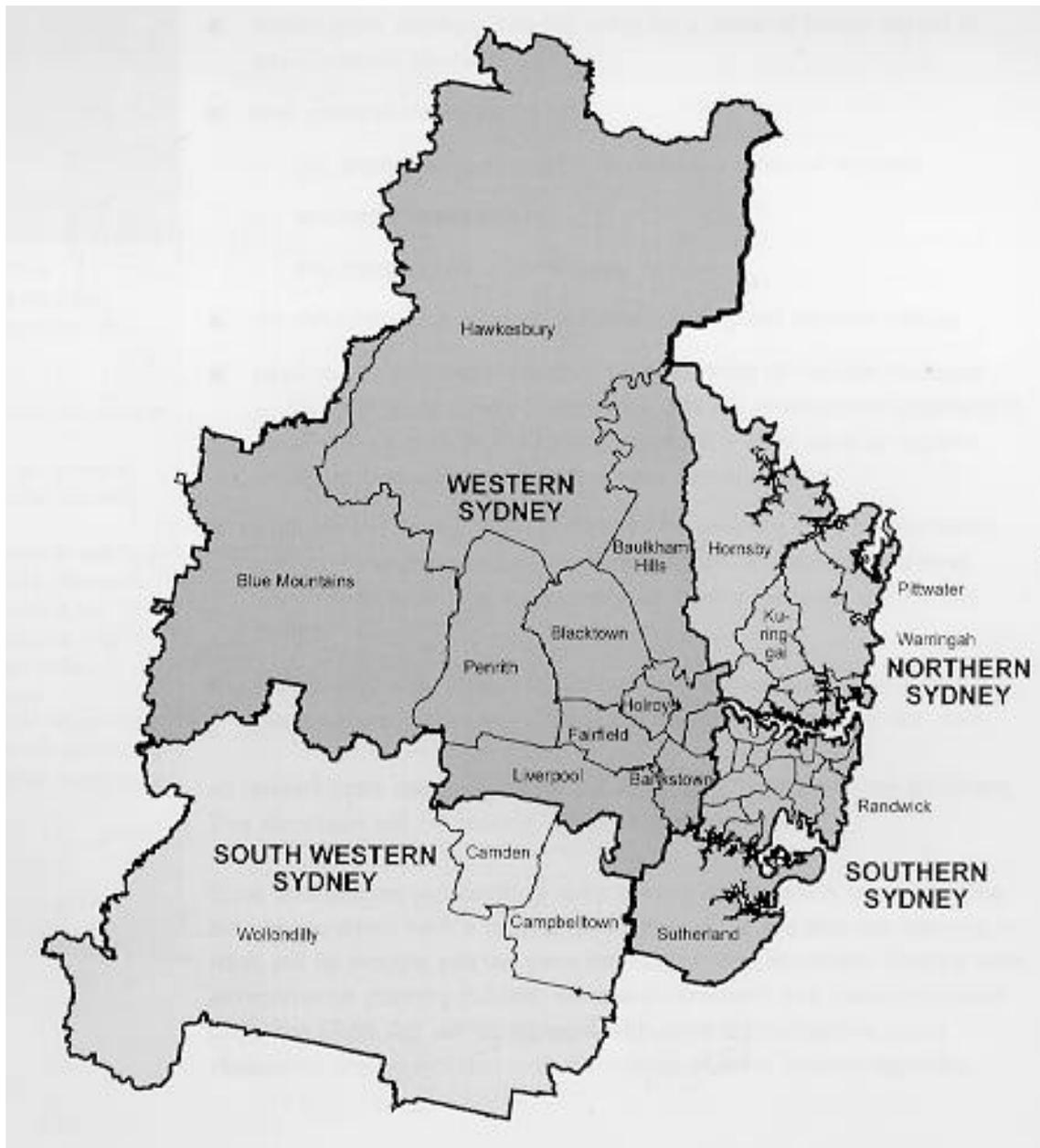
The White Paper proposed regional strategy boundaries for NSW as a whole, and two different options for boundaries within Sydney. The first option for Sydney was to divide it into two regional areas – Eastern Sydney and Greater Western Sydney. The second option was to divide it into four regions – Southern Sydney; Northern Sydney; Western Sydney and South Western Sydney. The proposed boundaries and the two Sydney options are illustrated below.

**Figure 1: Regional Strategy Boundaries for NSW<sup>12</sup>**



<sup>12</sup> Figures 1,2 & 3 from: Department of Urban Affairs and Planning, *Plan First. Review of Plan Making in NSW White Paper*. February 2001, at 37-39.



**Figure 3: Option 2 for Sydney Regional Boundaries**

### 3.3 State Planning Policies

The White Paper described state planning policies as follows:

- Explain state strategic planning policy on a range of issues related to environmental planning;
- Give comprehensive advice on: the protection of ecological processes and natural systems; economic development; the maintenance of community well-being;
- Set the context for regional and local planning and decision making;

- Need to be taken into account in the preparation of regional strategies – they will not ordinarily be considered at the development assessment stage;
- Maintain and strengthen opportunities for enacting state environmental policy on major issues that transcend regions or respond to national issues such as salinity, biodiversity, air quality and climate change;
- Not to be fixed blueprints but provide a contemporary framework to incorporate environmental planning and policy outcomes for the state.

All relevant state planning policies will be brought together in one document. Existing state environmental planning policies, Ministerial directions and model provisions under the EP&A Act will be replaced with more comprehensive policy statements.

The White Paper proposed that the state policies planning document will, in the first instance, be compiled by a cross-agency coordinating committee. When the Minister for Urban Affairs and Planning or another Minister proposes to prepare a new state planning policy or amend an existing one, the outline of the preparation process was proposed to be as follows:

1. The Minister will notify other Ministers who are likely to be affected and request a list of issues to be addressed;
2. The draft policy or amendment will be prepared, publicly exhibited and submissions received;
3. Upon recommendation of the Minister, the new policy or amendment will be made by the Government and included in the state planning policies document;
4. The new policy or amendment will come into effect;
5. Regional forums and local councils will update their respective strategies and plans in accordance with the new policy or amendment, or any standard provisions associated with the new policy or amendment will be inserted immediately into the local plan.

The White Paper noted that after the passage of amendments to the EP&A Act, state planning policies will be prepared first, to enable the preparation of regional strategies. Once regional strategies are prepared, local plans can then be developed, sometimes in tandem with the formulation of the regional strategies.

## **4.0 RESPONSES TO THE PLAN FIRST WHITE PAPER**

### **4.1 The Property Council of Australia**

In its submission to the White Paper the Property Council strongly supported the reform agenda.<sup>13</sup> The Council argued that the plan making system is in need of a major overhaul, and that it currently provides an inefficient mechanism for promoting investment and jobs, managing the environment and reflecting the interests of local communities.

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<sup>13</sup> Property Council of Australia, *Plan First White Paper: Review of Plan Making in NSW. A Submission to the NSW Government*, June 2001.

The Council fully endorsed the Plan First aim of delivering a whole of government planning strategy and development controls at each of the proposed state, regional and local planning levels. It also strongly endorsed the integration of the hierarchical structure where the content of local plans are guided by relevant regional strategies and state planning policies. The Council considered that this structure, where State and regional interests take precedence over local arrangements, should ensure a degree of fairness and harmonisation in planning across the State. It concluded that the Minister's ability to directly amend the content of a local plan or to finalise a regional planning strategy was crucial to achieving this outcome.

The Council supported the adoption of a broader range of more flexible planning tools, such as rate and tax relief, transferable development rights and density bonuses to achieve community benefits such as design, heritage conservation, environmental conservation and affordable housing.

The Council also strongly supported efforts to increase the effectiveness of community consultation on the plan making process and planning instruments. It noted that this is too often poorly done under the current system resulting in conflict being deferred to the development application stage.

In regards to state planning policies, the Council strongly supported the concept of a single document containing a whole of government agreed planning strategy for the State. The Council noted that the White Paper contained the following reference concerning state planning policies – “they will not ordinarily be considered at the development assessment stage, except to help understand provisions in local plans or regional strategies that are derived from a state planning policy.”<sup>14</sup> The Council did not support this, and was concerned that this provision will merely ensure that a state planning policy will be introduced into court proceedings and become the subject of conflicting legal interpretation, for which it was not designed. The Council recommended that state planning policies have no legal status for consideration at the development assessment stage.

The Council was broadly supportive of the content, preparation and review of state planning policies, but recommended that a formal five yearly review cycle be incorporated into the preparation process.

In regard to regional strategies, the Council noted that a formal and appropriately resourced regional level of planning was a vital and exciting part of the proposed reforms. The Council noted the importance of educating the public and local government about the advantages of regional planning, especially for economic, transport and environmental management. However, the Council noted that the mechanism by which regional strategies are to be developed will be critical to their success, and whilst it supported the proposal for a Regional Forum, it noted that this was not without some risks. The Council noted: the importance of strong leadership of each Forum; the number of representatives on each

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<sup>14</sup> Department of Urban Affairs and Planning, *Plan First. Review of Plan Making in NSW White Paper*. February 2001, at 41.

Forum should be limited to a workable number; there needs to be significant non-government representation on the Forums; the Forums need to be well resourced both at the initial stage and on an on-going basis; and conflict between the various interests on the Forum needs to be managed.

The Council supported the Minister having the power to quickly amend regional strategies and intervene if their development became too protracted. It also recommended that a formal five yearly review cycle should be incorporated into the preparation process for regional strategies. In regards to the definition of regions, the Council supported the second option of dividing Sydney into four regions. However, the Council proposed that Sydney be divided into six regions: north; central; south; north-west; west and south-west.

The Council also supported the general scope of local plans, and considered that local plans should be a strategic whole of council plan for the area and be both a strategic and regulatory document. The Council also noted that local plans must implement and be consistent with the regional strategy and state planning policies.

The Council strongly endorsed the concept of a single plan for each local government area that incorporates all the development controls that an applicant needs to comply with. The Council believed that this approach will:

- Substantially reduce complexity – development controls will no longer be spread throughout a variety of local, regional and state planning instruments with little or no integration between them;
- Integrate state, regional and local priorities for the first time, leading to a more holistic approach to planning;
- Be far easier for applicants and the community to understand.

The Council recommended that a local plan clearly differentiate between strategic, visionary and other action statements that are not development controls, and mandatory legal development controls that applications must comply with. The Council also recommended that in the format and presentation of local plans, requirements for consistent format and presentation should be set out and be mandatory.

In regards to locality planning, the Council tentatively supported the move away from a strong zoning focus towards precinct planning. It considered that underlying zoning should be retained, with State standard zoning templates developed, involving fewer prohibited developments and assessment related to environmental outcomes and the locality statement.

The Council endorsed the proposal for the Minister to have the power to directly amend local plans. It also considered that the reforms need to provide for privately initiated amendments to local plans, with appeal rights where a local council resolves not to proceed with a privately initiated request for a plan amendment. It also considered that non-complying development should be provided for, and treated in a similar fashion to that for designated development – ie, requiring an environmental impact statement and attracting third party appeal rights. The Council argued that this provision should also allow for a merits appeal in the case of the council refusing a non-conforming application.

The Council strongly supported the importance given by the White Paper to the review and monitoring of local plans, and recommended that they be subject to a mandatory five year review period.

Finally, the Property Council noted the high levels of commitment, leadership, political will and resources that will be required to implement the proposed reforms. It recommended that State planning policies be completed by June 2002, and that priority is given to ensuring good, early examples of local plans and regional strategies.

#### **4.2 The Submission by the Local Government and Shires Associations**

The Associations recognised the positive approach provided by the White Paper and fully supported the key features of the proposed reforms.<sup>15</sup> The submission covered each of the key features of the White Paper as summarised below.

##### **Local Plans**

The Associations generally supported the adoption of a locality based planning approach, ie, local plans will identify localities and apply specific environmental planning controls, rather than generic land use zones. The Association noted that planning practices in Australia and internationally are increasingly adopting this approach.

However, the submission noted that the April 2001 meeting of the Local Government Association Executive resolved that strong support be expressed for retaining zoning in local plans, and that there should be no provision to appeal the zoning of land to the Land and Environment Court. The Associations strongly opposed any suggestion of the removal of the current zoning system and prohibitions within zones. It considered that retaining zoning controls within the planning system is fundamental to the planning processes of Local Government and is generally well understood by all stakeholders.

The Associations also considered that the removal of prohibitions would remove certainty, and would result in a dramatic increase in the number of appeals in the Land and Environment Court. This would have an impact on the less well resourced councils with development pressures in their area.

The Associations also noted that the White Paper does allow councils to select the planning tools to suit local circumstances, through the proposed 'toolbox'. The Associations supported such an approach at a council's discretion. It was also noted that the adoption of a locality based planning approach would not preclude the use of zones by councils.

The Associations were not clear on how flexibility will be retained in the new local plans. Currently statutory controls are contained in local environmental plans, while other, non-statutory controls are contained in development control plans or council codes and policies,

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<sup>15</sup> Local Government and Shires Association of NSW, *Submission on PlanFirst – Review of plan making in NSW, White Paper by the Department of Urban Affairs and Planning, June 2001.*

and are able to be varied at a council's discretion. Under the proposed regime, all development controls will be contained in the local plan and will become statutory controls.

Currently State Environmental Planning Policy No 1- Development Standards provides flexibility in the application of planning controls where strict compliance with the prescribed standards would be unreasonable or unnecessary. The Associations were concerned about how a merit assessment of a development would be carried out where development standards would not be able to be varied except through the provisions of SEPP 1. It was considered that the continued variance of SEPP 1 was not conducive to best practice assessment and will undermine the effectiveness of a local plan. It was considered that DUAP will need to clarify the role of SEPP 1 in the reform process.

The Associations acknowledged that community involvement is a very important principle in plan making and supported earlier involvement in the plan making process. However, it was considered that councils should be able to determine the consultative methods to be used in the plan making process. It was also noted that the local plan preparation process in the White Paper had four consultation steps: pre-plan preparation; community involvement in plan preparation; exhibition of draft plan; and at least one examination in public of the draft plan. This was compared to the community consultation requirements for regional strategies and state planning policies which have two steps and one step respectively. The Associations noted these 'double standards' and stated that consultation opportunities to regional and state planning policies need to be increased commensurate with requirements for local plans.

The Associations were also concerned about a local plan requiring at least one 'examination in public', to allow for full public debate on the plan. The Associations supported a discretionary rather than compulsory public examination, for the following reasons: local government must retain autonomy in the plan making process and is elected to represent the best interests of the community; financial costs of holding a public inquiry have the potential to become prohibitive for councils; an inquiry process has the potential to become time consuming and delay the making of a local plan. The Associations were also opposed to the Minister's concurrence role and powers to amend local plans.

The Associations also drew attention to the lack of detail in the White Paper on the amendment process for local plans. It was also noted that there was a need for DUAP to specify what constitutes a minor and major amendment to local plans and the circumstances where a local plan will be referred to the Regional Forum for 'checking'.

#### Regional Strategies

The Associations welcomed the proposal to incorporate a regional approach into the plan making system. The Associations believed that councils are the appropriate sphere of government to strategically coordinate natural resource management in consultation with State government and other stakeholders.

The Association expressed concerns about the following issues:

- The regional bodies could become a defacto form of government, introducing another

level into the plan making process;

- There is no evidence that the strategies will recognise local government as the prime player in the process rather than just another stakeholder – councils must be at the forefront of the planning process;
- There should be a ‘sign-off’ from each council on the regional strategy for their area;
- Legislation should clearly state the criteria for which the Minister can intervene in the regional plan making process;
- The proposed membership and representation of the regional forums. It was noted that local government representation may be one to three people, and this was considered by the Association to be completely inadequate and unworkable;
- Local government members of the regional forum must be selected from and appointed by local government.
- Having business and additional community representatives on the regional forums was questioned by the Associations. It considered that business representatives are not accountable to the community nor responsible for actioning the outcomes of the strategies, and the Associations found this ‘most unsatisfactory’.

In regard to the proposed regional boundaries, the Associations supported the proposal to adopt boundaries along local government area boundaries, but noted that some of the regions may be too large and unwieldy to be functional.

The Associations also had concerns about the preparation process for regional strategies, and considered that there should be a legal requirement for a minimum level of consultation with local government in the preparation process.

#### State Planning Policies

The Associations noted that the bringing together of all state policies relevant to environmental planning into a single state level policies document is the beginning of better strategic planning for NSW. The Associations considered it to be essential that local government is represented on the cross-agency coordination committee, which will compile the state policies document.

The Associations also noted the proposed ‘double standards’ in respect of community consultation at the local and regional level of plan making compared to the state level. It was noted that the White Paper proposed only one opportunity for public consultation and comment in the preparation of state planning policies, whereas local plans have a minimum of four opportunities. The Associations believed that if there is a mandatory review process for local plans, then the same should apply to state planning policies.

In conclusion, the Associations generally supported the positive approach of the White Paper and the concepts proposed. Concerns about the level of detail provided in the White Paper and resourcing issues for councils to implement the reforms were expressed.

### 4.3 The Submission of the Environmental Defender's Office

The Environmental Defender's Office (EDO) had two primary concerns and then provided six recommendations. The two primary concerns were:

- The planning system needs to deliver better environmental outcomes. The planning review does not focus sufficiently on this. The review was too focussed on process, and responding to developer initiatives;
- DUAP is proposing radical changes, but this is not necessary to achieve its objectives. Instead, objectives can be achieved with minimal change to legislation, better use of existing legislation, and better coordination of existing administrative structures.

The EDO then made six recommendations as follows:

1. Retain the current three tier system – the State government has an essential role to play determining both strategic guidelines and mandatory standards. It is essential that the State government is able to direct minimum or best practice requirements for the protection of the environment;
2. Create a planning taskforce to: review existing State strategies, relevant SEPPs and agency policies to determine which ones, or elements thereof, should be adopted in SEPPs or regional environmental plans (REPs) as strategic or mandatory elements at the State level of the planning system; review the REP boundaries to be used; resolve existing inconsistencies between agency activities. The taskforce should be composed of high level members of the key agencies and local government, catchment management, and farmer and conservation representatives.
3. Improved use of regional planning mechanisms – the existing REP structure is equipped to deal with a broad range of issues. It should be used systematically across NSW. Regional taskforces should be created to review existing regional strategies, relevant REPs and regional policies in order to resolve inconsistencies between these documents. Following this review each regional taskforce should be responsible for drafting a REP for their region. The taskforce regions should be linked to bioregion models.
4. Increased emphasis on delivering better environmental outcomes – the Act should be amended to: incorporate the *Protection of the Environment Administration Act 1991* definition of ecologically sustainable development into the EP&A Act; require SEPPs, REPs and LEPs to be consistent with the principles of ecologically sustainable development; prevent consent authorities from making decisions that are inconsistent with the principles of ecologically sustainable development; ensure that environmental prohibitions are retained; require each environmental planning instrument to identify environmental objectives; require environmental studies to be performed in relation to any proposal to amend an environmental planning instrument where amendment is likely to have significant environmental impacts; link state of the environment reporting with the environmental objectives identified in each environmental planning instrument; ensure that it is clear that the cumulative impact of a decision is a relevant consideration.
5. Need to retain legal review of all environmental planning instruments – both legal (either Parliamentary Counsel or DUAP's legal staff) and Ministerial review of all plans should be retained;
6. Improve the 'user friendliness' of the current system – by presenting the plans in an

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easily accessible manner, for example by combining the SEPPs, REPs and LEPs for a particular council into a single volume; reviewing existing policies for inconsistency and ensuring that future environmental planning instruments are well drafted and subject to Ministerial review so that avoidable inconsistency or lack of clarity does not occur.

## **5.0 CONCLUSIONS**

It is evident that there is widespread support for reforms to the plan making system in NSW.

There is still some disagreement amongst the major stakeholders on what exactly these reforms should include, and this reflects the different roles and responsibilities in environmental planning. Local government is arguing very strongly that as it is the representative 'coalface' level of planning, it should have the major role to play in the planning process, rather than merely being another 'stakeholder.' Whatever their differences, most parties recognise that the current system is not sustainable, and is in need of reform.