environmental defender's office new south wales

Submission on Discussion Paper: Standard provisions for local environment plans in NSW

November 2004

The EDO Mission Statement

To empower the community to protect the environment through law, recognising:

- *the importance of public participation in environmental decision making in achieving environmental protection*
- *the importance of fostering close links with the community*
- *that the EDO has an obligation to provide representation in important matters in response to community needs as well as areas the EDO considers to be important for law reform*
- *the importance of indigenous involvement in protection of the environment.*

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Introduction

The Environmental Defender's Office (NSW) (EDO) is a member of the Planning Reform Reference Group established by the Department of Infrastructure, Planning and Natural Resources (DIPNR). In this capacity, the EDO provided feedback and comments on draft versions of the Discussion Paper.

Our comments correspond to the following sections of the Discussion Paper:

1. Scope of Local Planning Reform Initiatives

1.1 Background

The purported aim of the model LEP is summarised in the Discussion Paper in the following way:

> "The application of the common LEP template, common local planning provisions, common definitions and common zones will provide a robust structure to give effect to metropolitan and regional strategies. It provides a framework within which each LEP asserts a leading role in environmental planning and management. The LEP is proposed as the primary source for all statutory land use planning provisions for any parcel of land." (p2)

The EDO supports the move to improve LEPs and make LEPs the primary planning document as part of the greater planning reform process currently being undertaken by DIPNR. There are obvious benefits of a uniform and consistent system for the delivery of land use controls by including all mandatory requirements in LEPs. Consistency of terminology, and linkages with updated SEPPs will also help clarify requirements for both developers and the community. Clarification of the hierarchy of planning instruments is also supported.

The Discussion Paper states that "the policy intent of the provisions contained in any LEP must also be based on an evaluation of local strategies and be consistent with and give effect

to the overarching policies, strategies and relevant environmental planning instruments." (p2) The EDO supports this endeavour. However, it is equally important that these overarching policies (and thus the LEP) are underpinned by the principles of ecologically sustainable development (ESD); and the implementation of the policies involves accountability, transparency and community consultation.

1.2 What can be standardised?

The EDO generally supports the standardisation of the form and layout of LEPs. The creation of consistent user-friendly LEPs will assist the local council, developers, and the local community.

There are three specific issues that we would like to make further general comment on - namely: mechanisms for implementing standardised LEP provisions; objectives of standardised zones; and standardised mandatory and discretionary provisions. These issues are also addressed more specifically below.

Mechanisms for implementing standardised LEP provisions

The Discussion Paper suggests that the delivery options for the standard provisions are:

- in the same format as the 1980 Environmental Planning & Assessment Model provisions;
- strengthening section 33 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) to make provisions mandatory;
- amend the EP&A Regulation;
- a new SEPP;
- or any combination of the above.

In terms of the hierarchy of legal instruments, reference to mandatory provisions in the Act itself would create certainty, but less flexibility (and, of course, a need to change nomenclature). Regulations are also subject to parliamentary scrutiny so there would be an opportunity to comment on changes made to a model provisions regulation. A SEPP however, confers discretion on the Minister regarding the level of public involvement in developing the instrument.

The model employed by the *Murray Darling Basin Act 1992* is to contain the relevant agreement and amending agreement as Schedules to the Act. The body of the Act contains provisions for approving the agreement or an amending agreement. The Act contains provisions to give effect to a Council decision to adopt the agreement in the Schedule. A similar model could be adapted here by including the Model LEP provisions in a Schedule.

The EDO recommends that: section 33 be strengthened to make provisions mandatory; the process for Ministerial amendment (and gazettal) of any provision should be clearly set out; and mandatory provisions should be reviewed every 3 years with public consultation.

Objectives of standardised zones

The Discussion Paper is unclear as to the future role of objectives. It is suggested generally that they will be replaced by a list of permitted activities for each zone. This is incongruous with many of the proposed standard provisions that retain references to specific objectives. At a recent DIPNR presentation on the planning reform process, it was suggested that objectives were to be phased out.[1]

The EDO submits that objectives allow flexibility and promote innovation appropriate to the locality. A list of permitted activities is prescriptive, and a standard list may not be appropriate in all parts of the state. Objectives are an effective filter and promote the more sophisticated decision-making required to reduce conflicts over the uses of land and to effectively implement ecologically sustainable development.

The EDO submits therefore, that it may be possible to employ a combination of objectives and permitted activity lists. The EDO submits that it is particularly necessary to retain objectives for environmentally sensitive zones. Simply listing permitted activities will not ensure adequate protection in such areas, as the potential expansion of permitted activities by individual Councils would not be underpinned by the necessary conservation objective.

Standardised mandatory versus Discretionary provisions

The Discussion Paper divides LEP provisions in the following manner:

- Mandatory provisions include the LEP template, nominated clauses, zone categories defining permissible types of development (specified land uses) and the dictionary of definitions
- Discretionary provisions include other "optional" or model clauses and, where relevant, a council may add to but not delete from the specified land uses within the zoning categories.

The Discussion Paper does not provide a comprehensive list of specific mandatory and discretionary provisions. This makes it difficult to comment specifically on the benefits of standardisation.

Greater detail is required on what permitted activities may be added to which zones, and how consistency of approach will be achieved. The ability to add activities to the list could result in a huge diversity between councils. The result would be that neighbouring councils would have the same definition and core activities for the same type of zone, but one council could add more permitted activities to their LEP, thus changing the nature of the zone.

The proposed system of standardised zones with permitted lists of activities creates a development imperative, and does not promote environmental protection. As noted above, expansion of uses may be appropriate in the Business and Industry zones, but would be highly problematic in Rural and Environment Protection zones.

[1] Environmental Law Seminar Series – Environmental Planning Law Reforms, 13th October 2004, Faculty of Law, University of Sydney.

One alternative that could be considered is to include a list of core *prohibited* activities across the zones (particularly relevant to rural and environmental zones).

The EDO submits that comprehensive guidelines are needed to clarify the application of both mandatory and discretionary zones.

In the absence of a comprehensive list of proposed mandatory and discretionary clauses, it is difficult to provide specific comment. However, the EDO notes that certain provisions regarding environmental protection (such as tree preservation and heritage conservation) should be mandatory rather than discretionary. This is discussed further below.

1.3 Benefits of standardising elements of local environmental plans

As noted, the EDO recognises the benefits of standardising LEP provisions. These include: greater consistency and integration of state, regional and local policies; use of the LEP as the primary document; and the use of common terminology to reduce varying interpretations. These changes are generally supported on the condition that public consultation, environmental protection, accountability and transparency are not sacrificed in the "streamlining" process.

However, it is important to note that standardisation should not be at the expense of properly allowing for local considerations. In particular, it is felt that the proposed zones do not adequately reflect rural planning considerations. The move to standard zones will also raise problematic issues around imposing blanket zones over existing uses.

2 Local Environmental Plan Template

2.1 Plan making and the local environmental plan template

As noted, it is imperative that the overarching strategic plans which feed into the template are underpinned by sound management principles and ESD. Furthermore, the template must contain robust provisions for public consultation and notification. For instance, provisions clearly setting out public consultation requirements should be Part 1 of the template in Figure 1. The template should be structured to complement relevant state and regional instruments and policies, whilst being underpinned by information provided by comprehensive local studies (as discussed further in 2.2 below).

2.2 Submissions – Matters for consideration

1. The EP&A Act provides that local environmental studies (LES) under Section 57 be conducted as an integral part of the preparation of LEPs. Does the LES process still provide an adequate strategic planning tool?

At a recent presentation by DIPNR on the Planning reforms[2] it was suggested that the LES may be subsumed into a Local Strategy Statement (LSS). The Discussion Paper states that:

> "Councils will be encouraged to create their own overarching strategic plans. These are to guide and direct future land uses within the local area. They will provide the basis for the LEP, section 94 contribution plan, management plan and other operational plan. Metropolitan and regional strategies will provide the context within which local strategic planning occurs. The outcomes of this local strategic planning process are to be outlined briefly in a statement in the LEP and are to be given statutory effect through the various enabling provisions of the LEP." (p6)

The proposed "Part Two: Local Strategy Statement" (LSS) of the template is described as follows:

> *This Part contains local content that is prepared by the local council. It clearly and succinctly articulates the council's strategic planning objectives in relation to land use and development, and the desired future character of key localities and places in the local government area. These objectives will need to reflect State Government priorities and directions that have been articulated in relevant State environmental planning policies and future regional strategies (eg. the Metropolitan Strategy and coastal regional strategies). The local strategic direction must be reflected in the application of the local planning provisions, including the zones and development control provisions.(p7)*

The current position is that LES are only required to be made where the plan is the first for the area (sections 57 and 74 (2) EP&A Act). This will rarely be the case. In practice then, studies are ordered at the discretion of the Minister or the Director-General. It is submitted that such studies (whether an LES or an LES subsumed within a LSS) will be of increased strategic importance in light of the recent changes to the *Threatened Species Conservation Act 1995*. These reforms shift the focus of threatened species conservation measures to the planning stage at the expense of proper scrutiny at the individual site level. Thorough and properly resourced studies to determine the environmental attributes of an area will be crucial to achieving the object of threatened species conservation. The EDO submits that a LES is still required for new plans at a LGA scale and for new release areas.

In terms of whether the LSS will be a useful tool, the EDO submits that adequate resourcing must be provided to Councils to prepare their Local Strategy Statement (LSS), and the LSS must be underpinned by independently verifiable science as used in an LES. For example the strategy should incorporate where relevant, local threatened species studies, comprehensive coastal assessment, and native vegetation mapping where available. If it is proposed that the LSS replace Local Environment Statements (LES), it is important the rigorous research, science and a precautionary approach underpins the LSS.

As well as integrating of regional and state strategic planning policies, the LSS also has the potential to outline objectives for key localities and places. If the proposed removal of objectives from zones goes ahead, the LSS will become an important source of overall objectives.

A final point to note is regarding the legal status and interpretation of the proposed LSS. Problems can arise for the courts in interpreting the role of future strategies in local statements. For example, when "desired future character studies" were introduced into the

[2] Environmental Law Seminar Series – Environmental Planning Law Reforms, 13th October 2004, Faculty of Law, University of Sydney.

Warringah LEP in 2000, a number of cases arose regarding the consideration of and consistency with the 'desired future character studies."[3]

Therefore, the legal status and precise application of the proposed LSS needs to be clear to provide certainty for Councils, developers and the community.

2. Does the draft template address expected future planning needs for all parts of the State?

The purpose of the template is to achieve consistency of approach, rather than address potential planning needs. The LSS is supposed to set out the strategic planning objectives and reflect state government priorities, based on local considerations. The state and regional planning priorities are supposed to feed into the LSS, which in turn is incorporated into the LEP template. The crucial place for addressing future planning needs is therefore at the LSS stage, whilst the template is the framework for delivery.

The general layout and template should be flexible enough to be adapted across the state. The detail, such as the types of zones available, may need to be extended in certain areas, for example "bushland living" in the Blue Mountains.

3. Should LEPs contain all State provisions (ie. State environmental planning policies) in full or cross-references to applicable provisions in State environmental planning policies?

The EDO supports cross references to SEPPs. This ensures that the LEP relates to the most up-to-date version of the SEPP and doesn't require specific amendment every time a SEPP is amended. This will be particularly useful with improved electronic delivery of LEPs with electronic links to the relevant instruments.

4. Should the numbering of clauses be consistent for all LEPs (even if a provision is not applicable to that area and contains no content) or should clauses be able to be grouped (within the relevant parts of the LEP) on a place/locality basis?

It would seem nonsensical to retain numbers for non-relevant provisions. Where the headings for parts are standard across local jurisdictions, it would be appropriate to simply number the relevant provisions under the appropriate Parts.

3 Zone Categories

[3] For example, the appeal in *Dem Gillespies v Warringah Council* [2002] NSWLEC 224 focussed on the requirement of the consent authority to be "satisfied that the development is consistent with the desired future character described in the relevant Locality Statement" operating as a condition precedent to granting of development consent. As noted by Bignold J "on this ultimate issue (which is a question of fact or a mixed question of law/fact) the Court has received a considerable body of competing expert opinion evidence." [at 51]. The starkly contrasted planning evaluations were held to reflect a "fundamentally different understanding" of experts of the function of the Locality Statement in the LEP. Also see *Marchese & Partner Architects Pty Ltd v Warringah Council* [2002] NSWLEC 31.

The Discussion Paper sets out a menu of zone categories and zone names, with the primary zones categories being: Business; Industry; Infrastructure, Services and Facilities; Living; Rural; and Environmental Protection. There are 22 secondary zones nominated.

3.1 Rationale for standard zone categories

The EDO generally supports the refining of the current 3100 zones in use across NSW. The huge range of differing zones, conflicting definitions, and variations in corresponding prohibited and permitted uses is highly problematic.

3.2 Outline of zone categories and land use provisions

The Discussion Paper states:

> "The overall proposal is to reduce the number of zone categories and broaden the range of permissible uses, leaving it open to Council to specify additional uses to reflect local strategies and manage change towards desired planning outcomes." (p9)

As noted, the EDO broadly supports the standardisation of zones, however is concerned about the corresponding expansion of permitted uses. Fewer categories of zoning may require broadened permissible uses in some cases to encapsulate the amalgamated zones. However, there are certain zones, such as those with high conservation value, where permissible uses must not be broadened.

The EDO supports the adoption of primary and secondary zones, however as noted above, we have concerns about listing core permitted uses for zones and submit that objectives (and/or prohibited activity lists) are still required, particularly for certain environmentally sensitive zones.

3.3 Matters for consideration

1. *Does the range of zones address expected future planning needs for all parts of the State?*

The Discussion Paper is, amongst other things, premised on the desire for standardisaton and consistency of approach. As noted above, the EDO supports this endeavour. Planning, however, is perennially faced with the dilemma of balancing future planning needs with existing uses (or past planning decisions).

Fixed and limited zones can rarely achieve this balance (as recent experience with land use conflicts in both urban and urban-rural contexts has exemplified). The need for a consistent approach must therefore be balanced with the need for flexibility and a way of balancing both future needs and existing uses.

It is submitted that this can be best achieved in two ways. First, by having a more layered (and sensitive) set of Primary Zones. At present, the Primary Zones are fairly traditional and dichotomous zoning categories – namely, Business; Industry; Infrastructure, Services and Facilities; Living; Rural; and Environmental Protection. It is arguably this zoning structure which have given rise to numerous land use conflicts in recent years. It is not clear that the

secondary zoning categories will properly achieve the balance required. As noted, we would suggest that, at least, Environment Protection and Rural zones need to be broken down into more discrete elements. Rural Councils such as Wollondilly and Dubbo have used numerous zoning categories to more subtly delineate between different land uses, thus seeking to avoid having inconsistent uses in conflict.

Second, objectives can aid in giving more precision and rigour to planning decisions, where the zoning categories are ambiguous and/or broad (see the discussion at pages 3-4 above).

It is also submitted that there needs to be a clear process in place for adding a zone category to the Model LEP. In practice, it may become apparent that in a particular locality, there is not a zone category that is entirely appropriate, and a new category may have to be developed. An example of this has been suggested by the Blue Mountains Conservation Society – a "bushland living zone."

2. *Are the range of Primary Zones appropriate?*

See the discussion immediately above. In addition, the EDO has the following concerns about the notes for four of the primary zones:

- **Tourism zone** – the notes state that "uses permitted in surrounding zones may also be permitted to allow maximum flexibility". This is not a sound planning principle and could be have poor environmental outcomes, for example where a tourist zone is next to an environment protection zone.
- **Township zone** – this zone will be subject to high development pressure in the future particularly in coastal areas, however a "very large range of permissible uses" will be allowed (p18). The Discussion Paper suggests that these will be bound by the requirement of consistency "with zone objectives" but elsewhere suggests there will no longer be zone objectives. This needs clarification.
- **Agriculture 1 Zone** – it is unclear whether there will be an expressly stated prohibition on subdivision, or limitation on the allotment size that would sustain agricultural production.
- **Environmental protection zone** – Councils should not be able to add to the list of permissible uses in any category of environmental protection zone. The Discussion Paper does not outline potential core uses for this zone. Furthermore, the EDO submits that there should be a separate zone for dealing with public land - for example sports grounds. The purpose of such land is not for environmental protection, and should be zoned accordingly.

3. *Should there be fewer or different Secondary Zone categories within any Primary Zone?*

The Discussion Paper does not provide a list of permitted uses in secondary zones, or confirmation that these cannot undermine objectives of the primary zone. In the absence of this information, it is difficult to comment on the adequacy of the proposed zones. EDO submits that a full list be provided for public consultation.

Specific comments on the notes provided are as follows:

- Under the primary zone of **Environment Protection**, the Secondary zone of "national Parks, nature reserves and public open space" should be divided into two secondary zones. There is a significant difference between what is a permissible use of a national park and what is allowed in general public open space. These need to be addressed separately.

- EDO supports more specific secondary zoning categories where applicable. The Discussion Paper gives the example of "Conservation (Escarpment) Zone". Other categories might include: Conservation (threatened species) zone; Conservation (wetland) zone; and Conservation (riparian) zone.

- Under the **Living zone**, as noted, there may need to be a new secondary zone between rural living and township, to cater for bushland living. This grey area on the rural/urban fringe is an important category as it is subject to increasing development pressures.

- In the **Waterways zone** "appropriate water based activities" need to be clearly defined.

- The **Natural hazards zone** refers to the identification of high hazard floodways. Will bush fire hazards be considered under this zone also?

4. *Should the zones have the same content across local government areas (ie. mandated 'core' permissible uses) but allowing councils to add to the permitted uses in local environmental plans?*

As noted, the EDO has concerns over the ability of local councils to add to the list of permitted uses, and their inability to subtract from the list of permitted uses for conservation purposes. We reiterate that the power to increase the list of permitted uses undermines the object of creating consistency between LEPs.

We recognise that secondary zones need to be flexible in covering many categories, but this does not mean that addition of core uses should be flexible.

5.Do the 'background notes' clarify application of the zone in a sufficiently concise way?

No. Certain terms used the Background Notes need definition (for example, such as "appropriate water based activities" in the Waterways zone). The notes are vague on "likely" permitted and prohibited uses. The notes also refer to objectives, when it is unclear whether there will be any objectives. In their current form, the notes do not provide enough detail to inform the Council, developers or the community as to the application of zones.

The EDO recommends that detailed guidelines be developed that more clearly specify what is permitted and prohibited in the proposed zones according to their stated objectives.

6. *Should the zones include standard zone objectives?*

Yes. These provide a mechanism by which to calibrate sensitivities not picked up by the zoning category itself. As an example, sensitive environmental protection zones need to have

clear objectives. In the absence of objectives it would be possible for a local council to add to the permitted uses of a particular zone. Reference to the LSS (and thus relevant state and regional policies) may provide broad objectives, but more detail is needed to safeguard the environmental protection zones. This will be particularly important for the zones that will be subject to massive development pressure in the future (for example Living zones in coastal areas). Objectives can also be tailored to the location.

7. Four residential Secondary Zone categories are proposed in the Living Primary Zone. Would it be preferable to have only one or two broader secondary categories?

No. As noted this is a crucial area that will be subject to increasing development pressure in the future. The proposed Lower Density Zone already includes multiple dwellings such as townhouses, terraces and villas. More detailed zoning may be required to safeguard against incremental urban expansion in bushland areas. For example, specific lower density zoning may be required to maintain the character of a particular locality of a highly vegetated urban area.

8. Is a 'Rural Living' zone required or should this land use be tied more closely to the lower density zone to indicate its preferred proximity to towns and centres?

It is important to retain a separate Rural Living zone. To amalgamate rural living with lower density living would pave the way for unchecked rural subdivision. This can for example, have serious consequences of fragmenting significant threatened species habitat and corridors which are currently on private rural land.

9. Should there be more Rural zones to cater for different types of rural production and protect prime agricultural land?

Yes. A more sophisticated delineation would help to avoid the problems of conflicting land uses and would be consistent with the tenets of ecologically sustainable development. It is the role of the regional strategy to identify prime agricultural land for rural production. The provisions should apply strict limitations on the subdivision of such land.

The zoning categories should be designed to also cater for increasing private conservation on private rural land, for example under voluntary conservation agreements (VCAs), and the PVP system under the new native vegetation laws. In New Zealand, there is a category of "farm park" which involves a working farm but with public access and conservation promotion combined. This is an example of a potential future direction for rural zoning.

4 Local Planning Provisions

4.1 Scope of standard local planning provisions

The Discussion Paper notes that the suggested standard provisions do not include concurrence provisions (p27). The EDO has made comments previously (via the Planning Reform Reference Group) that it is not always appropriate, as suggested by the broader planning reform mandate, to streamline and reduce delays in development assessment by

removing concurrence. Whilst the EDO recognises that concurrence requirements may be removed for limited low impact development, we submit that complying development is never appropriate in areas of environmental sensitivity or high conservation value - for example, where significant indigenous heritage or critically endangered species are involved.

Many of the recommended provisions in the Discussion Paper refer to objectives of particular zones. These will be rendered meaningless if objectives are removed.

The EDO recommends that Guidelines be developed to help clarify the application of provisions.

4.2 Matters for consideration

1. The overall approach to mandatory and discretionary provisions.

The Discussion paper identifies six mandatory provisions namely, classification and reclassification of public land; community use of educational establishments and child care centres; subdivision of land; suspension of covenants, agreements or instruments; telecommunications facilities; and temporary use of land. The Paper sets out 14 discretionary provisions.

These lists are obviously not exhaustive, and a comprehensive set of detailed provisions is not provided in the Discussion Paper. This makes it very difficult to comment on the benefits of categorising and mandating provisions.

The EDO broadly supports making certain provisions mandatory. This would be extremely useful regarding particular processes, for example, a uniform notification requirement.

As noted, clear guidelines explaining the application of the provisions would be useful.

2. *The appropriateness of the classification of provisions: are there mandatory clauses that should be optional and vice versa?*

The EDO submits that important environmental protection provisions should be mandatory rather than discretionary due to their environmental significance. We understand that not every local government area has, for example, acid sulphate soils or salinity. However there are some general provisions that could apply across the state – for example, regarding environmental attributes, tree preservation, and heritage conservation. As noted, in the absence of a complete list of proposed provisions it is difficult to comment definitively on this.

Preliminary recommendations include mandatory provisions for the protection of native vegetation in a local government area; and mandatory provisions for notification requirements.

3. *Any improved wording or clarification of the draft local provisions.*

The EDO has the following concerns about specific proposed provisions:

- **Classification and reclassification of public land** - this provision should explicitly set out a public consultation process;
- **Subdivision of land** - this provision should require consideration of the objectives of zone, and minimum allotment sizes;
- **Suspension of covenants, agreements or instruments** – this provision should be restricted in relation to conservation zones. The EDO notes that it may be unrealistic to have a register of every section 88B instrument, and Councils would not be aware of every site-specific covenant. It may be possible create relevant categories of instruments (for example access easements), or simply retain the current system;
- **Temporary use of land** – Section (2) (a) refers to temporary use being "necessary and reasonable for economic use of the land". It is not appropriate that economic use is the only consideration. Environmental impact should also be considered. Section (c) should add "or zone."
- **Acid sulphate soils** – EDO supports the inclusion of an acid sulphate soils provision.
- **Environmental attributes** - Section (2) contains a subjective test of whether the consent authority is satisfied that the development will not "detract from the particular environmental qualities of the land". This should be an objective test of whether the development will have a significant impact on the environmental attributes of the land. This is a more broadly established and accepted objective test.
- **Foreshore building line** – this provision should be consistent with SEPP 71, for example regarding sea retaining walls (section 4(b)).
- **Heritage conservation** – the EDO supports the objectives contained in the provision. However, this provision contains certain tests and standards such as "minor nature (section 2(a)(i)); "not adversely affect" (section 2(a)(ii)); and "acceptable impact" (section4) "not adversely affect the amenity of the surrounding area otherwise than to a significant extent" (section 6(e) p47). These need to be clearly defined, and it would be preferable to use accepted wording for tests of significant impact that are supported by a body of jurisprudence. The EDO welcomes a regulation to clarify the heritage impact statement. The EDO also notes that developers could hold to ransom the conservation of heritage items under section 6 (1) (a). Also, there is no reference to Commonwealth heritage lists.
- **Wetlands and fisheries** – This provision needs to reference environmental protection provisions of Water Management Plans under the *Water Management Act 2000* (WM Act). Section 35 WM Act requires environmental protection provisions to be included in REPS. It will be important to include them in LEPs if the result of the current planning reform process is to reduce the number and role of REPs. Also, the reference in this provision to state protected land under the *Native Vegetation Conservation Act 1997* will become out of date.
- **Development near zone boundaries** – this provision is contingent upon zones having objectives. "Optimum development of land" is undefined and could be misinterpreted, for example where a sensitive conservation area may need a larger buffer zone.
- **Excavation and filling of land** – should this refer to acid sulphate soils?
- **Preservation of trees** – An updated version of this provision should be mandatory The updated version should: contain a requirement to protect all native vegetation in the

LGA; provide for protection of urban bushland; reduce the current list of exceptions which are far too broad; and properly address the issue of weed species.

- **Unzoned land** – this provision should be mandatory for all LEPs. (Also refers to objectives of adjoining zones).

4. *Should local councils be able to add local provisions or can a set of standard local planning provisions be developed to address all issues?*

It is preferable for the sake of consistency that a set of local planning provisions be developed that attempts to cover all issues. Where it becomes apparent that an issue is not satisfactorily provided for, there should be a clear process for adding to the set of provisions. It would defeat the purpose of the model LEP if Councils had free rein to add any provisions, and would not aid in addressing the proliferation of inconsistent provisions.

5. Any additional matters that apply across the State, or for a region, or for certain land uses and that could be addressed as a standard local provision. For example:

- *Application of a development standards provision:* EDO supports.

- *Application of an acquisition provision:* The issue of "upzoning" has risen to prominence recently (perhaps due to an increase in Greens Councillors at the last local government elections). The EDO has fielded several inquiries from members of the public and Councillors regarding the circumstances in which acquisition (and compensation) is required. The current reforms to the *Threatened Species Conservation Act 1995* will also continue to make this a growing issue. A provision that standardises and clearly sets out the law and procedures would be welcomed.

- *Application of a salinity provision:* The EDO supports the inclusion of this clause and its objectives. Further guidelines to assist in applying this provision would also be welcomed.

- *Application of a bushfire provision:* The EDO supports the inclusion of a cross referenced note rather than a provision paraphrasing the amended Rural Fires Act.

In addition to the provisions suggested above, the EDO would strongly support the inclusion of a mandatory standard provision outlining **notification requirements** for development applications.

Standard local provisions should also be proposed for **urban bushland** and **koala habitat** where relevant.

5 Definitions

5.1 Background to standard definitions

The EDO supports the development of a standard set of definitions to replace the almost 1700 different definitions currently in use.

Regarding the development of a number of the proposed definitions, the EDO would also like to note the absence of community and environmental representatives on the Development Assessment Forum:

> 1 The Development Assessment Forum (DAF) is made up of Commonwealth, State/Territory and Local Governments, the development industry and related professional associations. It was formed to bring together the relevant parties to reach agreement on ways to streamline the processes used for development approval. In November 2002, the State/Territory Planning Ministers adopted 14 'administrative' definitions for implementation across Australia. (p56)

It is inappropriate to exclude community and environmental stakeholders from such a forum.

5.2 Scope of State dictionary

The EDO would like to note that preliminary comments were made on the original Confidential draft discussion paper. The source of the definitions in the original draft was sometimes curious. There were a number of seminal or primary sources for definitions which were overlooked in favour of more obscure sources for definitions. The EDO previously submitted that primary legislative sources were preferable for developing the set of standard definitions. For example: 'biological diversity' as defined under the *Threatened Species Conservation Act 1995* (as well as the Biodiversity Convention 1992); 'coastal zone' from the *Coastal Protection Act 1979*; 'ecologically sustainable development' from the *Protection of the Environment Administration Act 1991*; 'fauna' and 'flora' from the *Threatened Species Conservation Act 1995*; 'fish' from the *Fisheries Management Act 1994*, and 'mining' from the *Mining Act 1992*.

We appreciate that these changes have substantially been made in the circulated Discussion Paper.

5.3 Matters for consideration

1. The dictionary of planning definitions should include all the definitions that currently appear in the EP&A Act and Regulation so that all definitions in current usage appear in the one document to assist in the interpretation of planning instruments.

Yes. The EP&A Act and Regulations are the fundamental source of planning definitions in NSW, and LEPs should adopt definitions consistent with these sources.

2. The definitions should be split into general/ administrative terms and land use terms.

It does not really matter how definitions are structured so long as the result is user friendly. A single alphabetical document would provide a 'one stop shop' for any person seeking a definition.

5. Other terms should be included in the dictionary.

Other terms that should be defined include 'riparian zone' and 'riparian buffer'.

The EDO submits the following additional comment on definitions:

- There are several words that are defined only in a heritage context and not a broader context. These include: "conservation management plan", "demolish", and "maintenance." Each of these words could have application in a LGA in a context other than heritage.
- The definition of "entertainment facility" should not include "zoos and animal parks." These should be defined separately as they have additional conservation and education objectives to entertainment.
- There should be an age limit on "seniors' in Senior living.
- Sewage treatment works definition refers to public authorities, which does not account for possible future privatisation. (Similar concern is relevant for "utility undertaking").

If you require any further information regarding this submission, please contact Rachel Walmsley at rachel.walmsley@edo.org.au or on 9262 6989.