Achieving Highest and Best Use
An investigation into Spot Rezoning and Reform in NSW

PLAN 4132 - THESIS PROJECT
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ACHIEVING HIGHEST AND BEST USE

AN INVESTIGATION INTO SPOT REZONING AND REFORM IN NSW

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ABSTRACT

After realising the need for change, there is indeed much to consider for any interested body when responding to a specific issue to provide a better outcome for a spatial area. In New South Wales, a local governing body can generally achieve the highest and best use for an individual parcel of land through a process commonly referred to as a ‘Spot Rezoning’. This process amends an original Local Environment Plan created by a local council through delegated state powers. Whilst procedural elements of a rezoning reflect the democratic nature of Australia, recent studies undertaken by the NSW Government have found ‘there is general consensus that the existing plan-making process is too complex, too confusing and takes too long’. A critical review of Spot Rezonings is thus timely, not only because of community interest but also to save much needed time and resources within local councils. This thesis will explain the historical context of the NSW land use system, whilst investigating a number of recent changes to plan-making procedures. It will also explore whether the changes found within the Environmental Planning and Assessment Amendment Act 2008 will ultimately bring harmony between local stakeholders.
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This thesis was inspired as a result of constantly dealings with Local Environmental Plans during my professional work experience as a student planner. I therefore felt obligated to devote some time to document this beneficial knowledge which I gained in the planning field.

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Chapter 1 - Introduction

Source: Department of Planning 2006d, p. 1
1.1 Introduction

There are many reasons for which good town planning through effective strategic processes has become paramount for governing bodies within Australia. This is partly due to many concerns and elements inevitably pertaining to a given spatial area to which a planning authority must respond. A majority of these considerations evolve because of specific environmental planning instrument’s relationship with a number of different properties land uses. Often, an individual property’s land use draws out many different polarised opinions from members of the public. In addition, the process of creating an amendment to a Local Environmental Plan (LEP) which proposes to change an existing land use is currently seen by many to be an over complicated and time consuming process.

Planners and government officials must ultimately accept that the need for a system of changing land use for both an individual property and a designated area is necessary in many circumstances. Historically, this need is also prevalent in any country which has a zoning code which controls the land use planning system. More importantly, this is because there are many drivers which trigger the need for a review of an individual property’s land use. In land development circles, rezoning drivers are mostly centred around the property market, which includes the basic economics of supply and demand. However, other government initiatives and new transport corridors are among the most regular justifications. The mere fact that there is a need for change means that planners should always be aware of planning reform, and how such reform in general is accepted as common professional practice.

Recently, the NSW Government through the Department of Planning (DoP) has shown its concerns about the number of applications for the creation of site specific new Local Environmental Plans, more commonly referred to as “Spot Rezonings”. As such, the DoP has responded to this challenge through a number of recent planning reforms and resultant legislative amendments. However, the ultimate question about whether these reforms go far enough still needs to be asked. Therefore, a review of Spot Rezonings is ultimately warranted not only because of community interest, but more generally because they are seen as a highly problematic topic in planning circles.
1.2 Problem statement and objectives

Recent studies undertaken by the NSW Government have found ‘there is general consensus that the existing plan-making process is too complex, too confusing and takes too long’ (Department of Planning 2008a, p. 3). Therefore, this thesis will endeavour to give reasons why Spot Rezonings, as a specific type of plan created within the planning process, have such stigmas attached.

This thesis will consist of a number of objectives, which will aim to:

• review past literature relating to the theoretical side of zoning as a growth control, through both domestic and international sources,
• account for the existence of a zoning system through the history of the NSW Planning System,
• explain the nature of Spot Rezonings within New South Wales,
• explore their interaction with planning reforms over the last decade,
• research the recent planning reforms, and identify how the NSW Government has made specific considerations for plan-making within these reforms,
• investigate data relating to rezonings within the past few years
• investigate opinions about the Environmental Planning & Assessment Amendment Act (EP&A Amendment Act 2008),
• indicate the issues relating to new plan-making process, which include the Gateway Model, the minister’s role within plan-making, the justification report, concern about the Model’s criteria for ‘streaming’ LEPs and finally where community consultation will fit into the process,
• understand what the specific roles of both Local and State bodies are in relation to Spot Rezonings,
• provide an thorough overall investigation and conclusion whether the proposed changes found within the EP&A Amendment Act 2008 will be able to help improve the creation of Local Environmental Plans, and
• give direction on where the plan-making process should be directed in the near future.
1.3 Theoretical context

When placed into a historical perspective, one must see rezonings as a result of the need for review of our land use zoning system, which is a mix of the land use systems within the United Kingdom and the United States of America. However, it is also important to note within this thesis that much of the theoretical and conceptual side of rezonings relates specifically to the existing land use based zoning system. This zoning system, more commonly referred to as Euclidean zoning, evolved because of the need for governing bodies to act out of a duty of care. ‘The use of land use zones for city planning documents reflected an expansion of the practice of controlling land uses to protect citizens and property from the escape of fire, harmful emissions and other nuisances’ (Mant 2006, p. 18). However, it is hoped that this thesis will steer away from the past studies relating to zoning which generally ‘have concentrated on measuring the external effect that zoning is hypothesized to have on land values’ (Munneke 2005, p. 456).

As such, it seems that any investigation into our zoning and plan-making system (specifically Spot Rezonings) still remains topical given its relation to the recent proposals of the Department of Planning. As mentioned within the aims of this thesis, the very fact that research into plan-making is within the latest reforms, namely *Improving the NSW Planning System*, has not gone unnoticed by NSW planners. It is worth also mentioning that ‘the NSW land use planning system has undergone a number of evolutions since the introduction of the *Environmental Planning and Assessment Act 1979*’ (Department of Planning 2007a, p. 3).

However, this thesis will not only be centred around historical research of land-use zoning systems and the current planning reforms. It will also include many of the various documents from the NSW Department of Planning which bring Spot Rezonings into the limelight of planning reform. These include a number of different planning circulars and discussion papers, which have generally stated the various problems behind the current rezoning system. Finally, it is also worth mentioning that many Australian and American planning journal articles have specialised research on changing land use, and its subsequent effect in planning terms, some of which will be referred to in this thesis.
1.4 Methodology

Any investigation into a governmental activity is inevitably constrained within certain boundaries. Given that such boundaries include the limited access and availability of information pertaining to rezonings, this thesis requires the extensive independent gathering of both quantitative and qualitative data. In undertaking this research it is useful to explain the necessary research procedure or methodology. This procedure is demonstrated below in the flow chart, found below in Figure 1.1.

Figure 1.1: Flow chart explaining methodology of thesis

The first step of the thesis required further research via a comprehensive literature review. This review sets the context for the explanation of the characteristics of zoning, as some of the literature contains elements of zoning and how it interacts with a planning system. The review contains aspects expanded in following chapter, on the changing nature of zoning found in Australian legislation, with a focus on past and present planning reform in NSW. From there, the next chapter contains a data investigation, followed by my recommendations based on the previous chapters. This data is highlighted by a more personal element through a case study, highlighting the reasoning behind this research. Through this investigation I have been able to give recommendations for the future direction that NSW plan-making should take.
1.5 Data sources

1.5.1 Primary

Quantitative Research

The primary source of quantitative research has been made possible through the gathering of the data contained in NSW Department of Planning Survey of LEPs through personal communication with a Department of Planning staff member. This survey provides details about amendments to Local Environmental Plans which have occurred within a given one-year period.

Case Study

The data contained within the thesis is able to be placed into a greater context through the use of the Case Study Pindari. This case study highlights the very complex nature of an individual spot rezoning. This information has been used with permission from the current land owner, and E.G. Property Group kindly made information on this case study available for analysis and use in this thesis. My experience with this case study helped immensely in making the necessary conclusions for this thesis, along with providing a greater understanding of the plan-making system.

1.5.2. Secondary

Government Reports

The Secondary data contained in this thesis includes a number of different reports within both State and Local Governments which have been gathered to give an overall synopsis on the nature of past and present rezonings within NSW. In particular, these include Planning Reform Discussion Papers, Department of Planning Annual Reports and recent Government Gazettes.

Qualitative Research

There is a limited amount of qualitative research analysis surrounding the recent planning reform through the gathering of literature surrounding the Environmental Planning and Assessment Amendment Act 2008. This analysis was possible through an investigation of the Manidis Roberts Independent Report on Submissions from the Public Exhibition of the Discussion Paper and opinions from other state agencies and stakeholders within the plan-making process.
1.6 Structure

There are a number of essential parts to this thesis. As such, the thesis contains eight chapters, as found within the chapter outline below.

Chapter Outline

1. Introduction,
   This chapter essentially introduces the topical nature of the thesis. More importantly, it includes the aims and objectives of thesis. It also describes the methodology through an easy to follow flow chart.

2. Literature Review.
   The Review has been a “work in progress”, learning and building from an already existent Literature Review on a similar topic. As mentioned above, in contained elements of the theoretical side of zoning gathered from global sources

3. Zoning Characteristics
   This is a general overview of how zoning operates as a tool for development. This chapter also explains how zoning operates within the NSW Planning System.

4. Planning Reform: Past and Present
   There are a number of components to this chapter. Firstly, it includes the reforms to the NSW Planning System since Plan First in the last decade. In addition, it explains a number of key documents throughout 2005-2007 highlighting the gradual reform process. Finally, the key document of explanation is the recent Environmental Planning and Assessment Amendment Act 2008, which contains the reforms as a result of the Improving the Planning System Discussion Paper (DoP 2007a). This incorporates both a diagrammatic and full text explanation of the relevant sections of the Environmental Planing & Assessment Act 1979.

5. Research Data
   Primary and secondary data, as detailed on the previous page, is presented and analysed in this chapter

6. Case Study
   This chapter examines the case study of Pindari to illustrate the spot rezoning process in NSW, as also explained on the previous page.

7. Recommendations
   This chapter will address and make recommendations about the implementation of elements contained within the EP&A Amendment Act 2008, and will look into the future of plan-making with the NSW Planning System.

8. Conclusion
   The conclusion will re-iterate aims and objectives of this thesis.

A list of References and appropriate Appendices follow the conclusion.
1.7 Conclusion

This thesis is by no means extensive and is based around a personal interest within the NSW Planning System. It is also important to mention that there have been extensive developments through the writing of this thesis. At the time of writing, the *Environmental Planning & Assessment Amendment Act 2008* has only recently passed through both the upper and lower houses of Parliament in New South Wales, with only a small number of the amendments found in the Act having been commenced. This thesis will therefore explore the existent planning system, with comments about the amendments to plan-making which may or may not commence in the near future. It is also important to note that there is very limited literature available on these amendments, quite possibly because of the fact that the amendments have only recently became current state legislation.
Chapter 2 - Literature Review

Source: Department of Planning 2007b, p. 1


2.1 Introduction

When it comes to deciding what an individual land owner can or cannot do with a parcel of land, opinions between concerned parties can be generally seen as quite polarised. This literature review examines the theoretical consideration of controlling land use through a land use based zoning system. As land use classification is generally undertaken by various government bodies, this very phenomenon is then naturally brought into the public sphere through the public sector. As such, land development restriction will, as a result of its very nature, lend itself to being evaluated by academics and land experts. In particular, some theorists have discussed the real possibility that such restrictions on land, enforced through a mixture of zoning procedures and public processes, fulfil public interest goals. The simple belief that such quantification exists often leads to attempts at further modeling. However, a more concentrated effort to enforce land use zoning has only existed within the last century. This chapter will therefore explore what can be considered from relatively new literature, especially as there has been limited research in the property field.

2.2 Background

There is indeed much to bear in mind for any regulatory body when it commences its decision-making process to establish land development controls. Historically, the separation of different land use types from each other in the effort to ensure some form of land use compatibility has previously provided such bodies with a starting point. In particular, one can attribute the origins of this separation to the creation of what is known as zoning ordinances or early planning schemes in the United States and Britain respectively. Over the years, growth controls in themselves have opened up a range of academic theories, issues and debate, of which opinions are seen to be quite varied. Yet ‘despite the widespread acceptance of zoning and the practice of land planning, little if any systematic and scholarly attention has been devoted to the study of available data in an effort to determine the nature and the extent of these externalities or neighbourhood effects’ (Crecine et al 1967, p. 2). Future investigations into this field, therefore, would seem well worth the effort, especially as there is currently no consensus within the planning profession on the effectiveness or implications of managing development and land use through a zoning system.
2.3 Sources of relevant literature

Australia’s land use zoning, as a form of development control, has its main origins as a mixture of systems used throughout the United Kingdom and the United States. Additionally, the control can be attributed to an ‘emphasis on regulation which predominates in Australian planning systems, derives from the traditional British system’ (Williams 2007, p. 93). Yet the international literature gathered to complete this review is mostly from specialised American journals. In conducting this review, it is quite noticeable that American authors are so prolific when it comes to writing about land values simply because property rights relating to these values are deeply embedded within the U.S. Constitution. As a result, the journals are stereotyped around main categories of law, economics and planning; and include the *Journal of Urban Economics* and the *Journal of the American Planning Association*. Australian domestic literature, while not that prevalent compared with the American literature, is just as important however, for the purposes of conducting and concluding this issue for an Australian thesis. Other research worthy of mention include the many current books written in both planning and planning law by Australian academics and Australian property and zoning experts who have put forward their interpretations on the importance of zoning.

2.4 History of zoning

The zoning system that exists in most cities around Australia is also often described in planning circles as Euclidian zoning. Historically, this zoning system evolved in the United States because of the need for governing bodies to exercise a duty of care. ‘The use of land use zones for city planning documents reflected an expansion of the practice of controlling land uses to protect citizens and property from the escape of fire, harmful emissions and other nuisances’ (Mant 2006, p. 18). This is also further explained and placed in context namely that ‘by the 1910s, the new science of town planning aimed at improving urban heath, efficiency and beauty was established in professional and popular parlance’ (Freestone 2007, p. 72). Since then, the profession of town planning within Australia has placed a high importance on seeking to find a necessary interaction with growth controls.
2.5 Models and theories which have been created over time

There are indeed many theories which have been developed over time which indicate that zoning interacts on a spatial level and produces a number of correlations. ‘Numerous studies relating to zoning have concentrated on measuring the external effect that zoning is hypothesized to have on land values’ (Munneke 2005, p. 456). Be that as it may, most of the available literature revealed through data base searches appears to only to highlight studies over the last fifty years.

Firstly, Stull (1974, p. 337) explains his own ‘simple model of an urban space economy with a manufacturing and residential sector’. As one of the models of this kind, this allows for the development of more models within the field. Therefore, it is not surprising that on a more local scale, American authors Cooley and LaCivita (1992) follow suit. With support of their own model, they ‘illustrate how growth controls might arise and relate their appearance to other characteristics of the local-government environment’ Developing further from this notion, Crone (1983) provides a link between the theory of optimal resource allocation with externalities and the empirical literature on zoning. He then attempts to justify municipal zoning through various sets of his own mathematical formulas.

American literature, including Brueckner (1998) and Rossi-Hansberg (2004) have correctly highlighted that zoning has a high spatial interaction with the land price and yield. In particular, ‘growth control models portray city governments as restricting their land areas to raise total land rents, thereby benefiting landowners’ (Brueckner 1997, p. 441). He also presents compelling evidence that indicates that when a city imposes stringent growth controls, neighbouring cities are more likely to do the same. This is because ‘a smaller population achieved by the restriction makes the city more attractive to consumers, and this amenity gain is partly capitalized in local rents’ (Brueckner 1997, p. 441). Finally, Rossi-Hansberg (2004) in a more recent article also discusses how zoning can play a key role in achieving an ultimate allocation of business and residential land in a city.
2.6 Current issues and debates about zoning

As indicated in the introduction and discussion of the literature above, it comes as no surprise that a zoning system, as one of the options for growth control, has been the subject of some scrutiny. In Australia, Leslie Stein (2008) rightfully points out that the segregation effect of Australia’s zoning system is somewhat problematic. He correctly argues that shifting employment areas away from residential zones has created problems with strip commercial development and the rise of shopping malls (p. 35). This is further amplified in the United States with ‘millions of residents of fast-growing regions who see controlling growth and its side effects – traffic congestion, declining environmental quality, and loss of traditional character’ (Landis 1992, p. 489).

The second resultant issue worthy of mention is that a zoning system, by its very nature, rarely allows for individual developer feasibility or variety. ‘Land development in urban areas is one of the most regulated human activities in the United States’ (Ellickson 1973, p. 682). So too, on Australian soil the zoning focus in several States has seen even more regulation through the standardisation of zones through the adoption of a template. However, ‘the concept of diversity is an important component of planning theory, and therefore homogenous suburbs with the same form of building design have been seen as planning mistakes’ (Stein 2008, p. 35). Therefore, planners and regulation bodies should see the need to be more committed to strategic planning, with a greater emphasis on more extensive community involvement.

Finally, a recent debate between the proponents of different zoning forms which took place within Australia reviewed the land use zoning system extensively. Firstly it questioned the necessity of zoning because of the previously experience complexity found by stakeholders. However, the debate was mainly about questioning the ‘relative advantages and disadvantages of formatting development controls using a parcel format instead of the traditional format’ (Mant 2006, p. 18). At this time, it was argued that locality planning would further complement the already mentioned streamlining process as it ‘uniformity would bring efficiencies not only to the producers of those standard products, but also for the State planning bodies, which have the task of reviewing the wording of each of the council’s planning controls prior to Ministerial approval (Mant 2006, p. 20)
2.7 Subsequent problems that have been addressed to this date

As a result of these zoning issues, there seems to be two main problems which need to be consistently addressed. The first, and probably the most commonly identified problem with a zoning system is the lack of flexibility. There is an obvious need to constantly review the zoning ordinance and relating planning document. ‘This is a particular problem because reviews of the current zoning plan can take many years and there is always reluctance to move away from current zoning based solely on the fact that it may somehow change in the future’ (Stein 2008, p. 34). Reference to this concern over community inflexibility in relation to zoning is highlighted in another American journal article, which states that ‘in general, the effects of growth controls on land or housing values depend on the way in which a community restricts growth’ (Knapp 1991, p. 471).

However, on the other hand there also comes a time where planners need to respond quickly to changes in an area or community over time. This is especially relevant to Australia where cultural diversity plays a massive part in our cities. Jane Jacobs (1961) leads the way in sharing her academic experience on this matter. She wisely points out that ‘the greatest flaw with zoning is that it permits monotony’ (Jacobs 1961, p. 152). Ellickson (1973) further elaborates on the over-complexities of zoning ordinances, where he offers a solution which incorporates the notion that land use control should be regulated through various other government regulations.

The second problem which arises from zoning as a method of development control is the need for changes in land use. These are more commonly referred to as ‘rezonings’, and like most other related planning decisions, come with their own polarised opinions. As discussed above, every so often there will be an occasion where there is an obvious need to review the zoning ordinance and relating planning documents. While there has been very little literature written on such changes, it does not take away from the importance of being able to change land use where appropriate. ‘If zoning is flexible and parcels are allowed to be reallocated towards their market allocated use, the presence of large land-price differentials should be reduced’ (Munneke 2005, p. 456). Knapp (1991) quite correctly points out that common practice in economics (such the market in the
above instance) is not necessarily good practice in planning policy analysis. However, planning agencies know how economically important it is to combine land uses and prevent urban sprawl by having more flexible zoning controls. A further reason for the need to prevent sprawl is that ‘it has also been noted that landscape fragmentation is often costly from a socioeconomic perspective’ (Munroe et al. 2005, p. 122).

2.8 Possible directions for future research

Growth controls are not a new phenomenon. ‘Local governments have long had the power to regulate new developments through zoning and land-use controls’ (Cooley & LaCivita 1982, p. 129). However, the importance for the future depends on whether planners believe that the current zoning system for growth and development control is appropriate. ‘The hope that planning may be fresh and dynamic, have an impact on the quality of life or mitigate urban problems is not possible in a system where the reason for controls becomes less important than the controls themselves’ (Stein 2008, p. 84).

In the state of New South Wales, growth controls are already seeing changes through a number of reforms. However, Australian planning commentator John Mant (2006) stresses that such land use zoning reforms are not the answer. Mant’s view of the future is that ‘even if many controls continue to be much the same in many paces, parcel formatted and place based controls provide a mechanism for encouraging communities to embrace the special nature of their own areas and to commit to achieving the desired futures’ (Mant 2006, p. 25). Today, Mant’s comments could possibly be achieved by ‘facilitating development through rapprochement with the private sector’ (Freestone 2007, p. 86).

2.9 Conclusion

In conclusion, controlling growth through a land use based zoning system brings about its own specific issues and problems. It seems that this topic will be forever under scrutiny because property rights are of utmost importance to the respective owners. It is planning that has the levers to control development, the power to impose exactions, and sufficiently broad objectives to include environmental concerns and allow the public interest. Be that as it may, the future of the system does not seem to be going anywhere quickly.
Chapter 3 - Zoning Characteristics

Source: Department of Planning 2007c, p. 1
3.1 Introduction

Over time, land use zoning has developed into an important land use planning tool. Planning bodies have progressively discovered that the use of a zoning system can play a vital role in the overall future of a given locality. Over the past century, zoning systems have also been developed to provide for the future of the spatial expansion of urban areas through the use of forward planning. More commonly referred to as strategic planning, forward planning is one of the two aspects within land use planning which ultimately tries to achieve an appropriate balance in considering environmental, economical and social objectives. Therefore, it is generally accepted that zoning can also play an inevitable part as ‘planners try to arrange human use of land so that it makes sense in terms of competing considerations’ (Farrier & Stein 2006, p. 29). So too, zoning systems guide future planning because of the underpinning established belief that certain land uses having common characteristics should be grouped. It is these beliefs, and many more, which have seen the refining of such regulatory systems for use within many different countries around the globe.

3.2 Zoning definition and purpose within the built environment

Despite being defined under the general category of land use planning, there are many elements pertaining to controlling future land use through the implementation of a zoning system. Truly defined, such a system occurs where ‘a zone aggregates uses of land that have a common form, such as single-family residential dwellings; or similar function, such as commercial uses within a commercial zone; or similar impact, such as the land within a landscape protection zone’ (Stein 2008, p. 33). Previous generations have seen this segregation or separation occur naturally over time. Yet currently, a zoning system now contains more formal characteristics. As such, the use of an appropriate zoning system for a given built-up area has become of upmost importance.

As mentioned within the previous literature review, a zoning system has a tendency to attract polarised opinion because of underlying interaction with the value of property. Previous cases dealing with such value have often shown a zoning system where ‘the purpose of zoning was to invest in an area or district with a certain predominant character and to protect it from avoidable invasion or erosion of that character’ (Baulkham Hills
Private Hospital Ltd 1980, 46 LGRA). Some suggest that the only form of achieving such objectives is for a regulatory body to enforce control of land use through legal proceedings. The concerned governing body may decide within reason to implement a system where ‘individual parcels of land must be identified as having a purpose within the regulatory scheme, and the scheme must indicate a range of possible uses that may be implemented for that land’ (Stein 2008, p. 7). Given this implementation, there is previous evidence which suggests a final result where ‘zoning allows for more convenient monitoring of uses that are prohibited as the commonality of uses makes exceptions evident’ (Dykes 1996, Unreported).

However, it is very noticeable how decisions about appropriate land use in both urban and rural contexts involve more than just forward planning. This form of land use control has been known to attract its own criticism. However, ‘the delineation of areas separated from each other by the device of zones is a logical consequence of the need to prescribe different uses of land for different areas and also to separate discordant or incompatible uses’ (Stein 2008, p. 32).

3.3 Zoning Types

As also mentioned within the literature review, there are many reasons and different objectives pertaining to a zoning system. Controlling land use ultimately relies on various planning documents detailing which type or code applies within its relevant zoning system. ‘This occurs in most jurisdictions by the adoption of ‘model’ planning provisions that form the basis for all planning schemes and set out a range of zone names from which a local government can choose, as well as the zone descriptions’ (Stein 2008, p. 33). Listed below are the various different broad zoning categories:

3.3.1 Euclidean Zoning:

One of the more popular forms of zoning dates back to a landmark case Village of Euclid v. Ambler Realty Co. within the United States of America. This case gave existence for Euclidean zoning, a ‘valid form of nuisance control’ which a governing body can exercise within reason (American Planning Association Website, 2008). Euclidean zoning allows for segregation within a defined government area. This type of
zoning is generally accompanied by other planning documents which more formally set
guidelines relating to setbacks, height limits and lot size for development control of an
individual piece of land. Regulatory bodies have been known to prefer this zoning
because of ease of implementation.

3.3.2 Form or place-based zoning

A common argument which exists within planning circles is that Euclidean zoning
rarely allows for flexibility. As such, Form-based zoning relies on rules applied to
development sites which ultimately bring forward a code taking in all aspects of a given
community. Such codes ‘set out all of the developmental imperatives for an area,
including the precise mix of housing types, the physical relation of buildings to streets,
the placement of the house on a block, and very complex design criteria for each
architectural form’ (Stein 2008, p. 39). This can ultimately result in a given area of
housing looking near identical in form to an untrained eye. Some believe this form of
zoning is also because the notion that diversity has ‘to be a requirement in planning
controls has never been justified from any psychological or sociological perspective’
(Stein 2008, p. 40).

3.3.3 Incentive Zoning

Incentive zoning relates heavily to spot rezoning, especially in the fact that it can be
seen as ‘fast-tracking” a planning approval. It is also known as a ‘land use regulatory
technique through which cities grant private real estate developers the legal right to
disregard otherwise applicable zoning restrictions in return for environmental amenities’
(Ramsay & Rowe 1995, p. 219). So too, ‘when a new community is to be established and
there is a desire to attract employment to the area, the mere zoning of an area as
‘Industrial’ or ‘Light Industrial will not of itself draw industry to that location’ (Stein
2008, p. 40). It seems more than reasonable to utilise another technique through a more
proactive implementation of zoning, which is more likely to achieve growth within a
given area. Known also as enterprise zoning, this forward planning tool often combats the
costs involved in submitting paperwork in accordance with government regulation
processes, which are often seen as quite time consuming and expensive for property
developers. It also encourages the appropriate use zoning to distribute land uses evenly across a given area.

3.3.4 Performance Zoning

Similar to the smart codes used within form based zoning, performance zoning encourages development through a more positive method. In particular, a planning body would implement performance zoning by using a points based system. This system would not only score a property developer’s compliance for a given individual development application against set criteria, but ultimately keep in mind the planners body’s future intentions for a given locality. Implementing future land use through this category of zoning is known to be problematic given that there needs to be much time and resources available throughout the process. For this reason performance zoning has not been widely adopted globally.

3.3.5 Overall critique

Overall, each of the categories has their own advantages and disadvantages. ‘For all methods, the objectives of a zoning system consist of the same three components: an explanation of the existing qualities of the area, an indication of which qualities should be maintained, and finally the changes that are to occur’ (Stein 2008, p. 46). However, it must be stressed that each zoning system is very locality dependent. Therefore, knowledge and education of the given area is crucial for any planning body before they wish to begin or change a zoning system.

3.4 Australia’s Zoning History (Brief Description)

Australia’s zoning, while having its origins from Britain, has been through its own journey over the last century. While not the primary focus of this paper, it is important to recognise planning activity which has evolved into Australia’s involved strategic planning processes. This is further emphasised by Freestone (2007, p. 67) who explains that ‘the long view of history provides a greater appreciation of planning aspirations, achievements and limitations’. In particular, ‘accelerated metropolitan growth through
the 1920s saw the priorities of the planning movement shift towards comprehensive strategic planning for future needs’ (Freestone 2007, p. 75).

Further still, the complications of using zoning as a growth control in the past also explains the creation of the complex nature of the relationship between strategic planning and development control within Australia. While obvious, this relationship is important within every planning system because of the need for ‘implementation or enforcement based in regulation, which relies on tools such as zoning and planning standards’ (Williams 2007, p. 93). It is also important to explain the historical role of government in planning. To this day, within Australia there is no single planning system which ultimately means that ‘each planning system is founded on statutory acts of the various federal, state and territory legislatures’ (Williams 2007, p. 93). Many believe this is because multiple elements of delivering good town-planning relies on the fact that the planning system must operate at a state level.

As a result, the current system the implementation of planning through zoning has now become a major focus for every Australian State. ‘The legislative frameworks encompassing Australian planning systems have also been characterised by growing complexity, which is the inevitable consequence of the explosion in the number of various development issues’ (Williams 2007, p. 93). At present strategic planning has also become a separate procedure for state planning bodies which is generally conducted through legally binding documents known as environmental planning instruments. Of direct reference, they are called ‘Planning Schemes’ in Victoria, Queensland and Western Australia, ‘Development Plans’ in South Australia and ‘Local Environmental Plans’ in New South Wales.

Whilst there is a variety to their names, many of these legally binding documents generally guide planning through the same methods. More importantly, the above mentioned States have, over time, generally ‘adopted “model” planning provisions that form the basis for all planning schemes and set out a range of zone names from which a local government can choose, as well as the zone descriptions’ (Stein 2007, p. 33).
3.5 Zoning’s existence in New South Wales

Given the very complex nature of plan making within Australia, the focus of this thesis is directed towards elements of zoning within the premier state of New South Wales. Both elements of planning within NSW - strategic and statutory - are applied through environmental planning instruments (EPIs). Such instruments come into existence through the detailed Environmental Planning and Assessment Act 1979 and ‘are legally binding on anyone applying for development consent and of decision-makers’ (Farrier & Stein 2006, p. 67). If used appropriately, these instruments protect NSW’s natural and built environments, as well as the state’s valuable resources.

Since strategic planning guides the future of the state, the EP&A Act has been proportionally created to reflect such significance. Strategic planning and the implementation of NSW’s zoning system are conducted through three specific Environmental Planning Instruments. Namely, they are state environmental planning policies (SEPPs), regional environmental plans (REPs) and local environmental plans (LEPs). Respectively, ‘State environmental planning policies deal with issues significant to the state and people of New South Wales’, Regional environmental plans cover issues such as urban growth, commercial centres, extractive industries, recreational needs, rural lands, and heritage and conservation and ‘Local environmental plans guide planning decisions for local government areas’ (DoP Website, 2008). Accordingly, there is a great amount of complexity within LEPs. In particular, the preparation of this document is undertaken by local councils across New South Wales.

The very complex nature of a local environment plan indicates that great detail must be placed into its creation and any follow up amendment. ‘The plan-making system in NSW is set out in Part 3 of the Environmental Planning and Assessment Act 1979 (DoP Website, 2008). Of particular reference, Part 3 includes sections 54 to 70, which explains step by step the requirements for the creation of a local environment plan. The Minister for Planning, under section 117(2) of the Environmental Planning and Assessment Act 1979 also issues directions that local councils must follow when preparing new LEPs. ‘The directions cover six broad categories: employment and resources; environment and
heritage; housing, infrastructure and urban development; hazard and risk; regional planning; and local plan making’ (DoP Website, 2008). There are five primary steps in the LEP-making process. They are:

1. ‘The local environmental plan is proposed, by a local council or by the Minister for Planning.
2. The council may carry out a local environmental study. This deals with topics like environmental conservation, housing and settlement, and suitable infrastructure development for industry. It allows the council to identify and focus on important issues.
3. The council prepares a draft plan, assisted by general directives from the Minister for Planning. The council then invites the community to comment on the plan, along with the local environmental study (if prepared).
4. The council considers the comments made by members of the public, and may incorporate them into the draft plan.
5. With the Minister's approval, the plan becomes law and is published in the Government Gazette’. (DoP Website, 2008)

These steps are also detailed in the table below (Figure 3.1).

Figure 3.1: Table explaining LEP process

<table>
<thead>
<tr>
<th>Section of Act</th>
<th>Respective roles of authorities</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 54</td>
<td>Council resolves to prepare LEP. LEP considered by LEP Review Panel.</td>
</tr>
<tr>
<td>Section 57</td>
<td>Council prepares environmental study (if required).</td>
</tr>
<tr>
<td>Section 62</td>
<td>Council consults relevant agencies that might be affected by draft LEP.</td>
</tr>
<tr>
<td>Section 64</td>
<td>Council provides copy of draft LEP to the Director General of the Department of Planning.</td>
</tr>
<tr>
<td>Section 65</td>
<td>Director General issues certificate enabling draft LEP to be exhibited.</td>
</tr>
<tr>
<td>Section 66</td>
<td>Draft LEP is publicly exhibited.</td>
</tr>
<tr>
<td>Section 68</td>
<td>Council considers submissions received in response to public submissions. Council may amend draft LEP in response to submission or call a public hearing. Council may re-exhibit draft LEP if changes warrant it Council submits draft LEP and report to Director General recommending plan be made. An opinion on whether the plan may be legally made is sought from the Parliamentary Counsel.</td>
</tr>
<tr>
<td>Section 69</td>
<td>Director General submits a report to the Minister recommending whether the draft LEP should be approved The LEP Review Panel will in some instances review the LEP</td>
</tr>
<tr>
<td>Section 70</td>
<td>Minister decides whether to approve the plan</td>
</tr>
</tbody>
</table>

Source: Department of Planning 2007a, p. 33
3.6 Rezoning within Australia

As discussed within the previous literature review, debates about the appropriateness of categories within a zoning system are not only present amongst planning bodies. Constantly, the need for review of a zoning system also enters the public forum. Given these observable occurrences, ‘it is likely that the original LEP, ordinance or order will have been amended since it first came into operation’ (Farrier & Stein 2006, p. 69). This phenomenon is more commonly referred to as a “rezoning”, and occurs quite frequently within planning systems in Australia.

Rezonings are very common not only because a specific land use needs changing, but because they are often driven through the financial incentives of a property development. ‘When a landowner finds that a use or development proposed is prohibited in the planning instrument in a particular zone, the only alternative is to obtain a zoning amendment (Stein 2008, p. 40). However, depending on the state, such a process for a rezoning can take several years.

‘The steps in the rezoning process vary in each state but generally consist of an initial decision of the local council to advertise the proposal, then advertising for submissions in the newspaper or on the site, the receipt of submissions, the creation of a draft planning instrument if the planning authority decides that the proposal has merit after the submissions, a report on the proposal by the planning authority’s experts, and finally a submission of the draft instrument to the Minister’s’ (Stein 2008, p. 41).

This process for a spot rezoning is virtually the same as the creation of a new LEP, but a smaller scale. This ultimately means that there must be a great amount of detailed placed within every amendment. Furthermore, the procedure is also bounded by legislation ‘which allows greater opportunity for members of the public to participate in the forward planning process than in the development control process’ (Farrier & Stein 2006, p. 72). There are many advantages and disadvantages within the allowance for public participation. However, ‘there is no question that councils respond to residents when they protest in numbers, and a rezoning for a project can be delayed for years if the number of residents protesting is seen to have reached a critical mass’ (Stein 2008, p. 64).
3.7 Rezoning in NSW

Within NSW, rezonings mainly exist because there are many sites which do not allow for appropriate development to take place. They also exist because ‘the whole plan-making procedure is designed to ensure that LEPs are in line with SEPPs, REPs and section 117 directions – or, at least, to make sure that any inconsistencies can be justified’ (Farrier & Stein 2006, p. 90). Therefore, the Department of Planning allows for a number of individual cases to be presented by local councils year. They inevitably are addressed on certain criteria, but most on individual merit. The following chapter will investigate the number of nature of “spot rezonings”.

3.8 Conclusion

Despite its complexity, zoning will always remain an important land use planning tool within Australia. Yet this complexity reflects the very challenges of separating land use. This separation is seen as positive, especially as it often creates certainty of outcome for an individual land owner of predictable amenity within a given locality. So too, many planning bodies use zoning as a way of restricting land supply and effect, as well as preserving property values. Yet zoning, as explained, can be easily become negative as many planning experts see it as a cause of frustration. Additionally, with new developments in planning systems there is a constant need for revision and reform. The next chapter looks at this aspect, and will review the reform which has taken place within New South Wales.
Chapter 4 - Planning Reform: Past & Present
4.1 Introduction

The very nature and sophistication of environmental planning instruments and how they accommodate changing demographics requires planning bodies to constantly review these important planning tools. So too, other Australian states and territories are currently facing ongoing challenges dealing with changing populations, environmental pressures and accommodating for future growth. Many planning bodies have also experienced problems when stereo-typing similar rezoning applications rather than adjusting for diversity and complexity. This often means that the existing state legislation created within the last 20 or so years, while providing a sound foundation for current planning practice, is in need of revitalisation. As a result, there have been a number of attempts to re-examine procedural methods of the implementation of LEPs by the NSW State Government. In particular, this chapter examines the more significant policy and legislative changes, most of which as covered under the general banner of Planning Reform.

4.2 The need for reform

The origin of such reform came into existence as a general response from many interested bodies within the planning field. Such stakeholders included property developers and conservation groups, who believed the current system should further respond to their needs. It also cannot be denied there were many outside influences acting, especially since ‘improved communications and liberated capital markets have increased the fluidity of investment, creating a more competitive, risk-sensitive development industry, which requires greater certainty and efficiency in planning and assessment’ (Department of Planning 2007a, p. 11). Therefore, Australian planners have quickly realised the need for change to implement ‘an effective planning system which is essential for a healthy and prosperous economy; the orderly development of land and timely provision of infrastructure; protecting the environment; and creating cities and towns that are well designed and also pleasant places to live and work’ (DIPNR 2004a, p. 1)
Past strategic planning has seen general consensus that the NSW planning system has become very cumbersome. Consequently, ‘a number of issues have been identified that need to be addressed within the plan-making system at the local level, particularly in relation to the issue of timeliness’ (Department of Planning 2007a, p. 28). It can therefore not go un-stated that any future system will need to examine the complex rules and procedures which presently exist. Listed below are some of the observable facts but certainly not limited to:

⇒ ‘Over 5,500 local planning instruments administered by Local Government
⇒ Somewhat 30 unnecessary State environmental planning policies (SEPPs)
⇒ The insignificant use of many regional environmental plans (REPs)
⇒ Some councils operating under planning rules that date back to before 1979.
⇒ Some councils have up to 20 local environmental plans each.
⇒ On average, 300 LEPs being amended every year.
⇒ Over 3100 zoning categories in use
⇒ And over 1700 definitions in use, of which many terms having multiple definitions’ (DIPNR 2004b, p. 1).

Therefore, it is also a common belief that by reforming the rules and procedures around plan-making, the NSW government would ensure that the Department of Planning could remain at the cutting edge of protecting some the state’s most valuable resources.

4.3 1985 amendments: Avoiding spot-rezoning

One of the first more notable changes to legislation concerning the plan-making system occurred more than twenty years ago. ‘In 1985, amendments were made to the Environmental Planning and Assessment Act with a view to avoiding what was alleged to be delay and stalling by local councils in relation to spot-rezoning LEPs’ (Farrier & Stein 2006, p. 90). Such change meant that there were certain situations where the need for a prior rezoning could be nullified. This meant that an applicant could therefore lodge a direct application for consent to carry out prohibited development within a given zone, in situations where the Minister for Planning was the consent authority, without the local authority having to implement the process of creating a new local environment plan.
4.4 **PlanFirst**

In 2001, the DIPNR released a White Paper titled *PlanFirst*, which was aimed at offering an alternative to the complex situation of planning at the time. Under *PlanFirst*, it was proposed that up to 16 regional strategies would be prepared to deal with settlement and growth management, transport and service provision and natural resource management issues, as relevant to regional centres and their hinterlands. As indicated in a subsequent Ministerial Taskforce Review of *PlanFirst* in 2003. ‘The main objectives and principles of PlanFirst were aimed at:

- Simplifying the system by reducing the numbers and layering of plans (and the controls and actions contained in them) that apply to land and as a result improve clarity and consistency of requirements, certainty of process and customisation of provisions for land holders.
- Strategies and plans being explicitly founded on the principles of sustainability and monitored as to their performance, resulting in more informed actions on the ground.
- A better connection between the range of existing planning structures (eg: social, economic, natural resource planning) and processes that often operate independently and ineffectively.
- Clearer State and regional guidance to facilitate more informed local planning and allowing the State government to focus on strategic policy development.
- Planning and managing regions and local areas as interconnected places not just a collection of issues, geographic features and land uses.
- More meaningful opportunities for community engagement in plan making especially in helping to set visions and examine future scenarios rather than just comment on single issues or detailed controls.
- Safeguarding Ministerial powers to intervene where required ensuring environmental protection or maintenance of State or regionally significant assets.
- A point for regional collaboration allowing State significant and locally important issues to be addressed’ (DIPNR 2003, p. 10).

4.5 **Review before Planning Reform**

In 2003, the then Minister for Infrastructure, Planning and Natural Resources commissioned several taskforces to review parts of the planning system. ‘The reviews covered:

- plan making and local development assessment
- developer contributions for local infrastructure (under section 94 of the Environmental Planning and Assessment Act 1979)
• major assessments and infrastructure
• State environmental planning policies (SEPPs)
• Minister’s consent role
• master plans
• housing for older people and people with disabilities’ (DIPNR 2004a, p. 2).

Of worthy mention is the work completed by The PlanFirst Review Taskforce. Under the guidance of chairperson Gabrielle Kibble, the committee reviewed: ‘how the system can be made more simple and user friendly; the concept and function of a single local plan; the role of e-planning and opportunities for implementation; and the role of State agencies in the plan making process and the strategic planning (PlanFirst) fee’ (DIPNR 2003, p. 6).

The committee also found that improvements could be made to the planning system without the arduous task of amending the Environmental Planning and Assessment Act 1979. However, the improvements would probably have not been made possible without the hard work of a number of stakeholders, especially state agencies who worked together to ensure the NSW government would stay at the cutting edge of environmental planning. ‘Key stakeholders and a planning reform reference group were consulted, mainly made up of group comprised planning experts from local government, industry, the legal profession, environmental sector and key government departments’ (DoP Website, 2008). ‘All parties worked together to assist DIPNR to develop a comprehensive set of measures to deal with all facets of the planning system’ (DIPNR, 2004a, p. 2).

4.6 Introduction to Planning Reform

Despite the previously mentioned one off 1985 amendment, Planning Reform slowly evolved a number of years later. It commenced on 30 September 2004, when the NSW Government Planning Minister announced a major overhaul of the NSW planning system. ‘The reforms are summarised below:

• focus on strategic planning for growth areas
• simplify planning controls
• improve development assessment processes
• allow flexibility in the use of developer levies’ (DoP Website, 2008).
4.7 Standardisation of Local Environment Plans

One of the most significant changes to local environmental plans occurred shortly after the commencement of Planning Reform. On 31 March 2006, the NSW Government gazetted the *Standard Instrument (Local Environmental Plans) Order 2006*. This order came ‘in response to concerns about the increasingly diverse nature of LEPs that were being prepared by councils and the confusing array of controls and other provisions being adopted’ (Department of Planning 2007a, p. 27). This range was partly due to previous dispensations by the State Government on specific guidelines covering the format and content of LEPs. Now, ‘for the first time, local plans across NSW will use the same planning language, making it easier for communities to understand the local plan for their area and the zoning controls’ (DoP Website, 2008).

In particular, this standard template includes:

- **Standard zones**—Presently, local councils across NSW have up to 3100 land use zonings. The new reforms create just 34 standard zones, which councils can then tailor by adding additional uses and objectives in response to local needs.
- **Standard clauses**—The standard instrument identifies a number of standard clauses for inclusion in new principal LEPs. Standard clauses are either compulsory or optional.
- **Standard definitions**—The standard instrument dictionary contains 241 standard terms. Only the terms used by a council in its LEP will appear in the dictionary for that council’s plan, so most councils will have far fewer definitions in their LEPs.
- **Land use table**—A land use table sets out the types of development that are permitted and prohibited in each of the standard zones.
- **Standard format**—The standard instrument will provide a consistent format for all new principal LEPs in NSW. Provisions common to each LEP will be located in the same place in all principal LEPs, making it easier to find uses and provisions’ (DoP Website, 2008).

‘At the same time, councils are able to tailor the template for their own local needs, including being able to continue to create local planning policies for their area’ (Department of Planning 2008b, p. 2). Councils are therefore encouraged to use local knowledge to best decide which zones to use based on the objectives which they would like to achieve. It was contemplated that ‘Regional and sub-regional strategies will also play a key role in informing the preparation of new LEPs’ (Department of Planning 2006a, p. 2).
'The key advantages of this planning reform are that:

- residents can view a single plan which outlines in the one place all local statutory planning controls for their land, along with being able to more easily understand plans when they move between areas
- businesses can spend less time and money trying to decipher a bewildering variety of different local zones and definitions for different council areas, when submitting development applications
- councils can use an off-the-shelf, ready-made template when creating new plans, rather than having to draft plans from scratch. This means they will have more resources available to concentrate on developing long-term planning policies for their areas
- It is intended that the standardization of LEPs will result in less variation between councils and provide for much greater transparency of planning controls to stakeholders across LEPs’ (Department of Planning 2007a, p. 27).

4.8 Creation of the LEP Review Panel

The most significant changes for the process of making local environmental plans within Planning Reform came into existence in early 2006. At the time, there was growing concern from many stakeholders that there was not enough accountability for many proposed LEPs. The Department of Planning therefore believed that the next step in ‘delivering a more modern, effective and easy-to-use system’ was through the creation of the establishment of the LEP Review Panel (Department of Planning 2006b, p. 1). The Panel works as an independent body, whose main role has been to ‘provide greater upfront certainty to councils, the community and investors about the likely success or failure of proposed LEPs’ (Department of Planning 2007a, p. 27).

Furthermore, the Department of Planning was conscious of its somewhat limited contribution to local planning. In the past, ‘councils had delegated authority under certain circumstances from the Director-General of the Department to publicly exhibit a draft LEP under section 65 of the Environmental Planning and Assessment Act 1979 and to recommend the Minister approve the plan under section 69’ (Department of Planning 2006b, p. 2). In a way, this allowed local councils to give their own tick of approval to the draft version of the new plan, which could be questioned on a number of levels. Under the new system, ‘proposals are reviewed at an early stage of development to ensure that rezonings are being pursued strategically and not in a piecemeal fashion’ (Department of Planning 2007a, p. 27).
‘The objectives of establishing a departmental LEP Review Panel are to:

- move to a more thorough upfront assessment of LEP proposals as soon as
  the Department is notified of a council’s decision to prepare a draft LEP
- strengthen the strategic and policy consideration of LEP proposals
- provide a consistent framework across councils and the Department to
  evaluate the context and justification for an LEP and the outcomes it is
  intended to produce
- reduce the number of draft LEPs in the system’ (Department of Planning
  2006c, p. 1).

The inclusion of the LEP Review Panel makes a slight change within the procedural
element from the previous LEP making process. In particular, the obligations upon a
local council to notify the Department of its intention to prepare at draft Local
Environmental Plan and identifying the land in which this LEP will apply remain
relatively the same. However, upon receiving the section 54 notification, the Department
may then engage the LEP Review Panel to ‘review these notifications from councils and
provide preliminary advice on each proposal’ (Department of Planning 2006b, p. 2). This
will be conducted through the use of set criteria, depending on the specific type of LEP.
The classification which the LEP Review Panel uses is found below in the table 4.1.

Table 4.1: Classifications used by LEP Review Panel

<table>
<thead>
<tr>
<th>Classification</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Spot rezoning LEPs</td>
<td>Usually involves a change of zoning for a single site, or additional</td>
</tr>
<tr>
<td></td>
<td>permitted uses and/or development controls that relate to the</td>
</tr>
<tr>
<td></td>
<td>development of that site</td>
</tr>
<tr>
<td>Reclassification LEPs</td>
<td>LEPs to reclassify council land from community to operational uses</td>
</tr>
<tr>
<td></td>
<td>under the Local Government Act</td>
</tr>
<tr>
<td>Precinct LEPs</td>
<td>Involving part of a local government area (LGA), e.g. city centre,</td>
</tr>
<tr>
<td></td>
<td>including a review of general and specific planning policy and provisions.</td>
</tr>
<tr>
<td>Policy LEPs</td>
<td>Involving a change in general and specific planning policy and provisions</td>
</tr>
<tr>
<td></td>
<td>across the LGA or part of it</td>
</tr>
<tr>
<td>Comprehensive LEPs</td>
<td>LGA-wide LEPs</td>
</tr>
<tr>
<td>Surplus government land LEPs</td>
<td>Involving the rezoning of surplus State and local government sites</td>
</tr>
</tbody>
</table>

Source: Department of Planning 2006b, p. 2

More specifically, the Minister for Planning can also choose to use the panel on a
number of different occasions other than just the section 54 stage. In particular, ‘the panel
will also consider and make recommendations on whether a council should be directed
pursuant to section 74(2)(b) of the EP&A Act to prepare and have regard to an environmental study prior to preparing its draft LEP’ (Department of Planning 2006c, p. 4). It is intended that this body will be able to ensure consistency throughout the whole process. Therefore, the panel may reconvene to ‘review a council’s final draft LEP before it goes to the Minister for Planning for approval, to ensure that it is consistent with previous advice’ (Department of Planning 2006b, p. 1). A flow chart of explaining how the LEP Review Panel operates in the current existing plan-making system can be found in appendix 1.

4.9 Improving the NSW Planning System Discussion Paper

Despite the extensive reform which has been identified, few can argue that the most detailed systematic reform commenced with a bold discussion paper labelled *Improving the NSW Planning System*. This document was released by the NSW Minister for Planning, the Hon Frank Sartor on November 27, 2007 in the hope of addressing feedback from a recent planning forum. Quite notably, ‘the discussion paper contained more than 100 individual recommendations in areas such as plan-making, development assessment, exempt and complying, certification, strata and ePlanning’ (Manidis Roberts 2008, p. 2). The relevant planning problems for local environmental plans and the Department’s proposed solutions are summarised in the Figure 4.1 below.

Figure 4.1: Key Planning and proposed solutions of discussion paper relating to LEPs

<table>
<thead>
<tr>
<th>Key planning problems and proposed solutions</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Land use changes and plan making</strong></td>
</tr>
<tr>
<td>- Extensive delays – one to five years.</td>
</tr>
<tr>
<td>- Inconsistencies.</td>
</tr>
<tr>
<td>- Ad hoc assessment.</td>
</tr>
<tr>
<td>- Uncertainty of process.</td>
</tr>
<tr>
<td><strong>Gateway review</strong></td>
</tr>
<tr>
<td>- Defined criteria.</td>
</tr>
<tr>
<td>- Whole of government approach.</td>
</tr>
<tr>
<td>- Consistent methodology.</td>
</tr>
<tr>
<td>- Key parameters resolved early.</td>
</tr>
<tr>
<td><strong>Lengthy plan-making</strong></td>
</tr>
<tr>
<td>- Currently takes one to five years.</td>
</tr>
<tr>
<td>- Lack of clear responsibility throughout the plan making process.</td>
</tr>
<tr>
<td>- Process driven – not outcome focussed.</td>
</tr>
<tr>
<td>- ‘One size fits all’.</td>
</tr>
</tbody>
</table>

Source: Department of Planning 2007a, p. 5
4.9.1 Gateway Review

In order for the NSW Planning System to move forward, the Department of Planning has expressed the need for the plan-making system to be made user friendly. One way this can be achieved is through a proposed system whereby an LEP can be assessed in an upfront manner. Under this system titled the “gateway process”, the Department would be able to provide answers on not only whether an LEP should or should not proceed, but also ‘stream LEPs into different categories (local and State significance) to determine the level of assessment, consultation and approval authority required’ (Department of Planning 2007a, p. 36).

The main reason for this reform is because the current system has many disadvantages, associated with the Minister for Planning not making a decision on the LEP until toward the end of the process. The discussion paper clearly states an improvement ‘by utilising the gateway process and a set of clear guidelines about the information required to make a decision on whether to proceed through the gateway, the decision on whether or not a proposal should be pursued can be brought down to three or four months’ (DOP 2007a, p. 8). At present, many local councils use much needed resources on the LEP process much of which goes to waste if ultimately an LEP is not gazetted. ‘The guidelines for the gateway process are likely to identify the need for the proposal to address strategic context, infrastructure and environmental considerations, public benefit and investment certainty’ (Department of Planning 2007a, p. 36).

4.9.2 Justification Report

For the “gateway process” to work effectively, the Department of Planning has also suggested that further documentation be included with section 54 notifications. It is believed that ‘the guidelines for the submission of a justification report at the gateway stage would make clear that the information required and the assessment undertaken is a focused and not a protracted process’ (Department of Planning 2007a, p. 36). This report would detail the components of the proposal, giving the Department enough information to allocate the appropriate amount of resources, timeframes and levels of community consultation. Upon receiving the report, ‘the assessment would be based on typical economic appraisal principles and cover all private and external costs associated with the
site, weighing these against the community benefits and environmental impacts of the development’ (Department of Planning 2007a, p. 36). Figure 4.2 below indicates the plan-making model under which the gateway process would operate.

**Figure 4.2: Possible gateway model including justification report**

<table>
<thead>
<tr>
<th>Major rezonings – land release</th>
<th>Major plan changes eg comprehensive LEPs, major spot rezonings</th>
<th>Minor plan changes eg reclassification of land, minor changes in zone boundaries</th>
</tr>
</thead>
<tbody>
<tr>
<td>Strategy inconsistent land release</td>
<td>Strategy consistent land release</td>
<td>Justification report required to address the following sustainability issues:</td>
</tr>
<tr>
<td>Justification report required to address the following sustainability issues:</td>
<td>Justification report required to address the following criteria:</td>
<td>Justification report required to address the relevant criteria (dependent on scale and nature of the LEP):</td>
</tr>
<tr>
<td>- Strategic planning validity.</td>
<td>- Infrastructure and servicing.</td>
<td>- The justification for the LEP as a stand-alone amendment.</td>
</tr>
<tr>
<td>- Infrastructure and servicing.</td>
<td>- Environmental constraints and benefits.</td>
<td>- Consistency with State planning policy.</td>
</tr>
<tr>
<td>- Environmental constraints and benefits.</td>
<td>- statement of community involvement.</td>
<td>- statement of community involvement.</td>
</tr>
<tr>
<td>- Public benefit including contribution to stocks of affordable residential land.</td>
<td>- strategic validity and justification.</td>
<td></td>
</tr>
<tr>
<td>- Investment certainty.</td>
<td>- Environmental constraints and benefits.</td>
<td></td>
</tr>
<tr>
<td>- statement of community involvement.</td>
<td>- Public benefits.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- Urban design implications.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- Infrastructure/servicing implications, if any.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- Consistency with State planning policies.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- statement of community involvement.</td>
<td></td>
</tr>
</tbody>
</table>

Source: Department of Planning 2007a, p. 38

Under this model, there would be circumstances where a justification report would take on a different role. ‘In the case of significant land release or other developments involving NSW Government investment in infrastructure, the gateway decision making process would also consider the merits of the proposal using a financial appraisal of costs and benefits, looking specifically at the likely risks to the State budget’ (Department of Planning 2007a, p. 36). This is a significantly different approach to that taken for minor plan changes, where the report would only need to be consistent with other policy documents.
4.9.3 Other areas of improvement

Along with the “gateway process”, the discussion paper addresses the issues of timing by also reviewing delegated powers to local councils. In particular, many the hour has elapsed under the present system due to the requirement of the signature of the Minister for Planning for the making of every local environmental plan. ‘The creation of the gateway system and the streaming of LEPs provide an opportunity for the Minister to delegate plan-making powers to councils for those matters that do not raise issues of State significance, particularly once an in-principle decision has been made at the gateway stage’ (Department of Planning 2007a, p. 43). Minor issues could therefore be addressed at a local level, giving power back to local people. ‘For instance some minor amendments that are consistent with guidelines may not even need the absolute requirement for referral to State agencies and authorities’ (Department of Planning 2007a, p. 44). It is believed that overall efficiency, as displayed in Figure 4.3 below, would be seen as a significant step forward for the situations that have existed in the past.

Figure 4.3: Possible one stop shop process for LEPs

Source: Department of Planning 2007a, p. 46
4.10 Environmental Planning & Assessment Amendment Act 2008

Finally, after years of speculation, the Planning Reform project came to fruition when the 2008 Planning Reform bill passed through the NSW Upper and Lower Houses in June this year, creating the EP&A Amendment Act 2008. ‘The object of this Bill is to amend the Environmental Planning and Assessment Act 1979 to implement improvements in the NSW planning system resulting from the proposals contained in the discussion paper released by the Department of Planning in November 2007’ (NSW Parliament 2008b, p. 1). This bill was divided into five schedules, with the first schedule relating solely to plan-making reform.

4.10.1 Primary Elements

The Bill’s explanatory note (2008) explains that the ‘reforms in Schedule 1 to the Bill seek to simplify and provide flexibility to the plan-making process, while retaining community and related consultation procedures. In particular, the reforms:

a) Make provision for a gateway determination at an early state of the process so that early decisions are made on whether a planning proposal will proceed, on the detailed community and other consultation required, on the time-frames for further stages of the process and on whether the final making of the plan can be delegated to the council, Director-General or other relevant planning authority, and

b) Require explanations and justifications for planning proposals for gateway determination and consultation purposes, rather than technical legally drafted documents, and

c) Enable comprehensive and other major plans to be provided with more detailed community and agency consultation than minor plans, and

d) Place on a permanent footing in the EPA Act provisions contained in a regional environmental plan to prevent development consent being granted in the Sydney hydrological drinking water catchment, and

e) Enable independent advice to be obtained to deal with planning proposals that have stalled, and

f) Make other amendments to simplify and improve the plan-making process’ (p. 2)

4.10.2 Consultation changes to discussion paper

Of particular importance to many planning stakeholders was the Department of Planning’s effort to responsibly account for the formal submissions regarding the already mentioned discussion paper Improving the NSW Planning System. The overall support for
the plan-making section within the paper meant that there was little change when these proposals were translated into the amendment bill. However, it is worthy of mention that some issues were raised during the consultation process. These include:

- Clarifying that LEPs cannot be made if required community consultation has not happened.
- Broadening the range of people who may be appointed as Planning Assessment Commission (PAC) members to include legal, engineering, traffic and transport or tourism skills.
- Expanding provisions to allow more than one arbitrator to be appointed for reviews of complex matters.
- The Department of Planning, not councils, will now appoint a planning arbitrator to review a council determination, to avoid a potential or perceived conflict of interest (Department of Planning 2008a, p. 2).

4.10.3 Other amendments

Other significant elements included within the Amendment Act also pertaining to earlier reform include:

- ‘section 26 of the principal Act to allow an environmental planning instrument (EPI) to make provision for the temporary zoning of land.
- section 33A of the principal Act to allow a LEP which adopts the standard instrument to be made without complying with the statutory requirements in Division 4 if the LEP is replacing an existing LEP and the replacement LEP does not make any substantial changes to the general effect of the existing LEP’ (NSW Parliament 2008b, p. 6).

4.11 Conclusion

Whilst much reform has occurred over the past decade, it is important to realise that the reasoning behind the reform is relevant given the very age of the original Environmental Planning & Assessment Act 1979. This does not take away from the sheer significance of the reform, which has also been commented on in other external department reports and through various some prominent media sources. Therefore, ‘the NSW Government is continuing this reform program for the land use planning system by canvassing a range of potential changes to the ways plans are developed and implemented’ (Department of Planning 2007a, p. 8). It is hoped that these reforms will arrive at a better outcome for the future of the state of NSW.
Chapter 5 - Research Data

Source: Department of Planning 2006f, p. 1
5.1 Introduction

The very fact that extensive reform has taken place over the past decade gives reason for investigation into data surrounding plan-making in New South Wales. Unsurprisingly, data relating to LEPs has reflected this reform, being slightly unpredictable and on the whole quite unevenly distributed over the reform period. This chapter will display data within the plan-making field relating to LEPs using qualitative and quantitative examination methods. Much of the information is gathered from reports produced by the Department of Planning, which include performance reviews and annual reports. Additionally, the chapter explains the results and qualitative data from the independent report on submission from the public exhibition of the *Improving the NSW Planning System* Discussion Paper. Importantly it is these comments which have created sharper attention by many stakeholders on the time spent in preparing LEPs. Therefore, this chapter will also endeavour to explain the reasoning behind the recent reforms. Such investigation seems timely, especially as media attention often misses the complexities of plan-making because the development assessment process is seen as more “news worthy” when placed in the public limelight.

5.2 Secondary Data

The NSW Government prides itself on being manifestly transparent about planning decisions through a range of different mediums. This freedom of information is especially shown through the efforts in ensuring that ‘the Department of Planning publishes a range of corporate publications to help inform the community about our work’ (DoP Website, 2008). In particular, one of the Department’s main efforts in providing information to the people of NSW is conducted through the release of annual reports. In recent years, these reports have been divided into five corporate plan outcomes, within which performance review is undertaken. Specifically, review of LEPs is conducted in outcome two of the DoP’s annual reports – *Efficient Planning and Development Assessment and Timely Decisions.*
Whilst there are more elements to an annual report than performance based outcomes, such reporting often shows how ‘the Department is the principal government agency vested with statutory, policy and administrative responsibility for strategic land use planning’ (Department of Planning 2007a, p. 7). Outcome #2, therefore, deliberately includes raw data to account fairly accurately for the monitoring of the LEP amendment process. As indicated in graphic representation below (Figure 5.1), the last decade has seen significant changes to the number of LEPs gazetted in NSW.

Figure 5.1: Total LEPs gazetted from 1999-2000 to 2006-2007

![Total LEPs gazetted from 1999-2000 to 2006-2007](image)

Source: Department of Planning 2006e and 2007b – Compiled by O’Kane 2008

In the period from 1999-2000 till 2004-2005 there was a pronounced decrease in the number of LEPs gazetted in NSW. This trend was reversed in the years 2005-2006 and 2006-2007, during which there has been a steady increase in amendments to local plans. However, because gazetted LEPs remain lower than the numbers gazetted several years ago, the level of rezoning has fallen dramatically. Many believe that ‘this is in line with the department’s desire to see a reduction in one-off rezoning proposals, with a move towards a broader strategic approach to regional planning’ (Department of Planning 2006, p. 29). More interestingly, a change in planning minister is a recognised reason for the turnaround causing an increase in the number of LEP gazettals since 2005 to the time of writing.
One of the major achievements by the Department of Planning in recent years has been the ‘improved quality of Local Environmental Plans through the use of strategic frameworks; precinct rather than individual site approaches; and integration of multiple land use changes in a single document’ (Department of Planning 2007a, p. 39). Furthermore, the introduction of the LEP Review Panel in February 2006 has seen the very nature of LEPs considered by the Department split into a number of different types. Figure 5.2 (below) shows the proportionate categorisation of LEPs by type, with the inner ring being the break down in 2005-2006 and the outer being the LEPs considered in 2006-2007 annual reporting years respectively.

Figure 5.2: Breakdown of LEP types between 2005-2006 and 2006-2007

In particular, most of the break downs between the identified years are very similar in proportion, with the main differences in percentages found in LEPs identified as Spot Rezoning and Precinct LEPs. This can often be attributed to how the ‘operation of the LEP review panel offers a number of benefits which include a more thorough initial assessment of LEP proposals, and early identification of plans that do not need to be prepared’ (Department of Planning 2006c, p. 31). So too, it also reflects the ongoing reform process explained in the previous chapter.
5.3 Primary Research

5.3.1 Introduction

The introduction of the LEP Review Panel has also seen a greater ability to keep track of the amount of time involved the creation of an LEP amendment. This is seen by many members of the public to be in line with the Department’s past efforts to be generally quite open and transparent about its processes. Over the past decade, the Department has sought to ‘ensure key environmental and planning issues are publicly identified and addressed early in the assessment process’ (Department of Planning 2007a, p. 30). Yet it seems that in formulating monitoring reports, the plan-making process often is prioritised lower than assessment of development applications. Therefore, it is somewhat surprising that the NSW government has identified time delay as a reason behind the reforms within plan making. This was made public in May 2008, when the Department of Planning released the Planning Reform Bills Guide which quite boldly stated that ‘there is general consensus that the existing plan-making process is too complex, too confusing and takes too long’ (2008a, p. 3). Whilst there seems to be no questioning of the Department’s statement through current literature sources, the statement still seems to be quite open to debate.

5.3.2 History of Research

The statement above is very questionable in that there is little evidence which is publicly available to suggest that the plan-making process “takes too long”. Apart from the annual reports already mentioned, and the occasional cross reference to LEPs within NSW Major Development Monitors published annually, the only real hard piece of evidence that gives any indication of the observable time spent in preparing an LEP is found in Improving the NSW Planning System. This document alludes to a sole survey of LEPs gazetted between 5 May 2006 and 20 April 2007. It also explains, however, that the research is somewhat qualified because the survey relates to only 50 per cent of LEPs that were gazetted during the time. The Department also tries to build some credibility by placing in graphical presentation the results of the survey, which can be found in Figure 5.3 (on the following page).
5.3.3 Research Method

In an effort to gain a greater understanding about the timing involved in the preparation of an LEP, it is evident that more research is needed to be undertaken, in addition to just relying on a 50% sample from the LEPs gazetted over 12 months since the introduction of the LEP Review Panel. By engaging in personal communication with a member of staff from the panel, I was able to obtain the complete results of the survey, as a starting point to further complete my personal investigation. The most surprising initial element of the survey was finding that only just over half of the data was correctly identified. Subsequently, to complete the survey, I needed to categorise the nature of the remaining 105 of 215 gazetted local environment plans in the given year from May 2006 to April 2007. This ultimately meant undertaking a sophisticated series of improved data entry from the original survey. The first step was to research every LEP gazetted during the time period, then identify which LEPs were missing. After this identification process, the next step was to definitively categorise the missing LEPs, a meticulous and time-consuming task which required extensive interpretation of the content of each LEP as it appeared in the Government Gazette. After completing the categorisation, it was important to finally go over the data to ensure consistency as well as accuracy within the updated data entries.
5.3.4 Results

Despite the missing data, the updated results are somewhat similar to that revealed by the 50% sample in the *Survey of LEP Timeframes*. So too, one can recognise a very similar breakdown of LEPs to those found within the Departmental annual reports and performance monitors. In particular, the proportions of LEPs within the final survey (as displayed in Figure 5.4 below) were relatively similar to those indicated in Figure 5.4 (already displayed above).

Figure 5.4: Amended Survey breakdown of LEP types

Admittedly, there is a noticeable difference within the *Spot Rezoning* category, decreasing from around 50% found within the annual reports to about 41% from my research. The *section 73* categories of LEPs also decreases to 3%, which is less than half the 8% average figure derived from Departmental reports. Further, the *Policy* category is over double the usual 15%, to 31% of LEPs during the reporting period. Also worthy of mention is that *Comprehensive* LEPs only comprise 1%, down from the average of 8% shown in Departmental annual reports already displayed in Figure 5.2 above. However, this does not really reflect a trend as a result of a Department initiative, and is rather more existent because of the fact that they make up such a low count number in the given survey.
More importantly, the updating of information through primary research reveals significant changes to the original statistics gained through the personal communication. The following two tables show a comparison of the average time which elapses from the date of the Council resolution to prepare a draft LEP (s.54 of the EP&A Act 1979) to the date of gazettal for the different categories of LEPs.

Table 5.1: Orginal Survey Data contain LEP Information

<table>
<thead>
<tr>
<th></th>
<th>Count</th>
<th>Average time taken (days)</th>
</tr>
</thead>
<tbody>
<tr>
<td>73A</td>
<td>5</td>
<td>196</td>
</tr>
<tr>
<td>Comprehensive</td>
<td>2</td>
<td>1721</td>
</tr>
<tr>
<td>Policy</td>
<td>33</td>
<td>830</td>
</tr>
<tr>
<td>Precinct</td>
<td>9</td>
<td>619</td>
</tr>
<tr>
<td>Reclassification</td>
<td>4</td>
<td>472</td>
</tr>
<tr>
<td>Spot Rezoning</td>
<td>54</td>
<td>753</td>
</tr>
<tr>
<td>Surplus Government Land</td>
<td>3</td>
<td>545</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>110</strong></td>
<td><strong>801</strong></td>
</tr>
</tbody>
</table>

Source: Department of Planning personal communication

There is quite a noticable difference between the figures in Table 5.1 above, which is based on incomplete data, to that shown in the table 5.2 below.

Table 5.2: Amended Survey Data containing LEP Information

<table>
<thead>
<tr>
<th></th>
<th>Count</th>
<th>Average time taken (days)</th>
</tr>
</thead>
<tbody>
<tr>
<td>73A</td>
<td>6</td>
<td>176</td>
</tr>
<tr>
<td>Comprehensive</td>
<td>3</td>
<td>2343</td>
</tr>
<tr>
<td>Policy</td>
<td>67</td>
<td>837</td>
</tr>
<tr>
<td>Precinct</td>
<td>27</td>
<td>1083</td>
</tr>
<tr>
<td>Reclassification</td>
<td>17</td>
<td>605</td>
</tr>
<tr>
<td>Spot Rezoning</td>
<td>88</td>
<td>715</td>
</tr>
<tr>
<td>Surplus Government Land</td>
<td>7</td>
<td>806</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>215</strong></td>
<td><strong>801</strong></td>
</tr>
</tbody>
</table>

Source: Compiled by O’Kane 2008

The main difference within the average time taken is that Comprehensive, Precinct and Surplus Government Land LEPs have increased quite significantly to 2343 days (over 6 years), 1083 (almost 3 years) and 806 days respectively. At the other extreme are the generally quicker types of LEPs being those under section 73A and the numerous Spot Rezoning categories which have decreased from 196 to 176 days, and 753 to 715 days respectively.
The very fact that these statistics have changed, means that there will be obvious changes when shown in a graph where the average time is plotted. As such, the graphic representation differs slightly from the one found in the discussion paper (as already indicated to in Figure 5.3 above). Figure 5.5 shows the amendments in graphic form.

Figure 5.5: Average time taken by LEP type

![Average time taken by LEP type](image)

Despite the changes already mentioned over the various categories of LEPs, the most significant observable fact is that overall the total average time taken of 801 days across all 215 gazetted LEPs is exactly the same time as the Survey of LEP Timeframes with both the incomplete data and resultant 50% sample.

5.3.5 Spot Rezoning Focus

Within Spot Rezoning LEPs, which is the highest individual category there are also some observations which deserve commentary. This is not only because they make up 88 (41%) out of the total 215, but also because this category has one of the most extensive ranges with the shortest rezoning occurring in 185 days and the longest taking 2130 days (over 5 years). Spot Rezonings take up two of the ten longest occurring LEP amendments within the survey, seventh and eight spots respectively. Whilst some would regard this as somewhat insignificant, it does show the sheer complexity of some individual cases.
The extensive range existent is also reflected in the fact that a number of Spot Rezonings have taken years to prepare. In particular, the Spot Rezoning LEPs have been held up within amending processes at various stages, resulting in many of the case studies dating back over eight years. Below, in table 4.3, contains the breakdown of the 88 spot rezonings by the years in which the Department received the initial section 54 resolution to prepare each LEP.

Table 5.3: Spot Rezoning LEPs Statistics

<table>
<thead>
<tr>
<th>Year of LEP Resolution</th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
<th>2005</th>
<th>2006</th>
</tr>
</thead>
<tbody>
<tr>
<td>Count</td>
<td>2</td>
<td>1</td>
<td>6</td>
<td>4</td>
<td>22</td>
<td>46</td>
<td>7</td>
</tr>
<tr>
<td>Total Days</td>
<td>4218</td>
<td>1695</td>
<td>9546</td>
<td>4880</td>
<td>18323</td>
<td>22195</td>
<td>2094</td>
</tr>
<tr>
<td>Average</td>
<td>2109</td>
<td>1695</td>
<td>1591</td>
<td>1220</td>
<td>833</td>
<td>483</td>
<td>299</td>
</tr>
</tbody>
</table>

Source: Compiled by O’Kane 2008

Whilst it is very positive to see that there are less than 15% of spot rezoning commencing their preparation before the calendar year of 2004, it gives greater reasoning for the Department of Planning to state that the plan-making system takes to ‘too long’. This is further explained in Figure 5.6 below, showing the breakdown of all the LEPs gazetted over the 12 month period by indicating their date of gazettal.

Figure 5.6: Time taken each Spot Rezoning gazetted in amended survey time period

In one way, it does show how the LEP Review Panel has worked hard since its introduction by approving many of the LEPs soon after its commencement in February 2006, especially by December 2006.
5.4 Submission Investigation

Whilst hard figures and clear data can explain much of the reasoning behind recent planning reform, the Department of Planning can also show evidence of the need for reform through formalised comments and feedback. Recently, the Department has been very transparent through its employment of an independent consultant to analyse comments and submissions raised about recent planning reform. In March 2008, planning consultants Manidis Roberts Pty Ltd were engaged by the NSW Government as a specialised consultation body to produce an Independent Report on Submissions from the public exhibition of the Improving the NSW Planning System discussion paper. This document was then placed on the DoP’s website, providing both a statistical snapshot of the formal 538 submissions and the breakdown of the key issues raised by each stakeholder group (Manidis Roberts 2008, p. 1).

The submissions which form the basis of this report were collected in a number of different ways. Most were gathered late last year, through ‘a road show of information sessions with key stakeholders which was held across the State – two in Sydney and nine in regional centres - Wollongong, Queanbeyan, Wagga Wagga, Dubbo, Tamworth, Ballina, Coffs Harbour, Newcastle and Gosford’ (Manidis Roberts 2008, p. 2). At the time, the “road show” was considered a success with over 1000 registered participants. The second source of submissions was through a more conventional means, where ‘key stakeholders and members of the community were invited to lodge submissions either by fax, email or post by Friday, February 8 2008’ to the Department of Planning (Manidis Roberts 2008, p. 2).

Whilst the Department had all intentions of producing the most transparent reasoning behind the reforms, many stakeholders were initially suspicious of the discussion paper. This was highlighted through the consultants stating the first hand experience of ‘a number of general issues associated with the discussion paper and the reform process were raised in submissions’ which were received over the consulting period (Manidis Roberts, p. 2). These issues were mainly centred around the timing of the release of the discussion paper, the proposed speed of the legislative timeframes found within the paper, local democracy and the effect of the proposed reforms on the environment and heritage.
5.4.1 Results

Yet despite the issues raised and the release of the discussion paper at a somewhat inconvenient time (just prior to Christmas), there were many different stakeholders who voiced their opinion about the proposed reforms outlined within the discussion paper. Figure 5.7 (below), provides a summary of the submissions by stakeholder category.

Figure 5.7: Summary of submissions by stakeholder

<table>
<thead>
<tr>
<th>Stakeholder</th>
<th>Submissions received</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Community (residents)</td>
<td>180</td>
<td>33.5%</td>
</tr>
<tr>
<td>Community groups</td>
<td>71</td>
<td>13.2%</td>
</tr>
<tr>
<td>Members of Parliament</td>
<td>3</td>
<td>0.6%</td>
</tr>
<tr>
<td>Local Government</td>
<td>117</td>
<td>21.7%</td>
</tr>
<tr>
<td>State Government agencies</td>
<td>21</td>
<td>3.9%</td>
</tr>
<tr>
<td>Professional practitioners</td>
<td>120</td>
<td>22.3%</td>
</tr>
<tr>
<td>Industry</td>
<td>26</td>
<td>4.8%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>538</strong></td>
<td><strong>100%</strong></td>
</tr>
</tbody>
</table>

Source: Manidis Roberts 2008, p. 5

The very fact that the Community (residents) had the most submissions by stakeholder category (33.5%) and community groups also ranked highly (13.2%) does show that there has been community consultation and that it is seen to be of upmost importance. A high volume of submissions were also received from local councils and professional practitioners (making up 21.7% and 22.3% of submissions respectively).

As indicated previously, one of the main parts of the report was to give a snapshot of the key issues. ‘In summary of the 31 key issues raised in the submissions and relating specifically to the discussion paper, there was general support for 12 of the key recommendations, mixed views on ten key recommendations and general opposition to nine of the key recommendations’ (Manidis Roberts 2008, p. 8). From the point of view of this thesis, one of the many advantages of identifying key recommendations or key issues is that it is very easy to identify the submissions which relate to the plan-making section of the discussion paper. Figure 5.8 (following page) shows the breakdown in submissions relating to each key issue, while also providing a general commentary within the last column of the table.
Overall, as correctly stated in the Independent Report, there was general support for most of the proposed reforms. However, it is important to highlight that many of the submission took no formal position, especially with the key issue of Streaming of LEPs to enable councils to make or amend a rezoning or LEP and the discussion relating to the State’s role in amending LEPs.

The other important table found within the Independent Report on Submissions indicated the exact position of each stakeholder category for the issues explained above, which is found in Appendix 2 of this thesis. Overall, it shows how very few members of the community, professional practitioners and industry are concerned with plan-making reforms, with a clear majority making up the high numbers indicating no formal position. However, some community members make up most of the other submissions against issues relating to the Gateway Model and Streamlining plan-making.
Finally, one of the main issues relating to plan making which rates special mention is the analysis of the views of Local Government, especially as it is the main stakeholder group concerned with plan making. Table 5.4 below details a summary of main Local Government body in respect to the issues relating to the proposed plan-making Gateway Model.

Table 5.4: Breakdown of Local Governing Bodies response to the Gateway Model

<table>
<thead>
<tr>
<th>General Support</th>
<th>Dubbo City Council</th>
<th>Orange City Council</th>
<th>Dungog Shire Council</th>
</tr>
</thead>
<tbody>
<tr>
<td>LGSA</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>LGMA</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>CENTROC</td>
<td>Eurobodalla Shire Council</td>
<td>Parramatta City Council</td>
<td></td>
</tr>
<tr>
<td>NOROC</td>
<td>Fairfield City Council</td>
<td>Penrith City Council</td>
<td></td>
</tr>
<tr>
<td>NSROC</td>
<td>Glen Innes Severn Council</td>
<td>Pittwater Council</td>
<td></td>
</tr>
<tr>
<td>SCCG</td>
<td>Goulburn Mulwaree Council</td>
<td>Port Macquarie-Hastings Council</td>
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<td>Great Lakes Council</td>
<td>Port Stephens Council</td>
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<td>Gunnedah Shire Council</td>
<td>Randwick City Council</td>
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<td>Hawkesbury City Council</td>
<td>Rockdale City Council</td>
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<td>Wakool Shire Council</td>
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<tr>
<td>Deniliquin Council</td>
<td>North Sydney</td>
<td>Warringah Council</td>
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<table>
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<tr>
<th>General Opposition</th>
<th>Mid-Western Regional Council</th>
<th>Inverell Shire Council</th>
<th>Sydney, City of</th>
</tr>
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<tr>
<td>Country Mayors Association of NSW</td>
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<td>Wollongong City Council</td>
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<tr>
<td>Marrickville Council</td>
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<td></td>
<td>Parks Shire Council</td>
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<th>Palerang Council</th>
<th>Forbes Council</th>
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<tr>
<td>Southern Councils Group</td>
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<td>Queanbeyan City Council</td>
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<tr>
<td>NROC</td>
<td>Gloucester Shire Council</td>
<td>Richmond Valley Council</td>
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<td>SSROC</td>
<td>Greater Taree City Council</td>
<td>Upper Lachlan Shire Council</td>
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<td>WSROC</td>
<td>Gunnedah Shire Council</td>
<td>Uralla Shire Council</td>
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<td>Auburn</td>
<td>Leichhardt Council</td>
<td>Urana Shire Council</td>
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<tr>
<td>Armidale Dumaresq</td>
<td>Manly Council</td>
<td>Warren Shire Council</td>
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<tr>
<td>Bega Valley</td>
<td>Moree Plains Shire Council</td>
<td>Woollahra Council</td>
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<td>Blayney Shire Council</td>
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<td>Wingecarribee Shire Council</td>
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<tr>
<td>Blue Mountains City Council</td>
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</tbody>
</table>

Source: Compiled by O’Kane 2008
The table shows a majority within the general support category, very few in the general opposition category and a small amount in the no formal position. One of the many positives for the Department of Planning is that many local councils support the venture of the gateway model in their effort to solve what is believed to be complex plan making processes.

5.5 Conclusion

Whilst the data above does give an indication for the reasoning behind extensive plan making reform, it would be fair to say that there is still a limited amount of data available for analysis to give a true and accurate assessment of the current plan-making system. However, it is hoped the data found in this chapter, being analysed through various research methods, does highlight the current systems very complex nature. So too, it is important to recognise that any reform to the plan-making system is generally welcome by many stakeholders, compared to the reforms proposed for development assessment which are more generally opposed. The case study highlighted in the following chapter is an example of good practice for spot rezonings. Whilst not reflecting or containing elements of the latest reforms stipulated in the *Environmental Planning & Assessment Amendment Act 2008*, it does show that appropriate communication between all stakeholders can lead to improvement to the NSW planning system.
Chapter 6 - Case Study

Source: Google Earth, 2008
6.1 Introduction

As explained in previous chapter, there are certain occasions where local councils use the spot rezoning process within the plan-making system to not only achieve the highest and best use of land, but also to keep up with current strategic planning practices, development objectives, and other planning policy. This chapter highlights some of the rezoning processes, through an explanation of a case study involving surplus government land being rezoned to an appropriate use for its given location, objectives and context.

6.2 Case Study: Pindari

6.2.1 Introduction

In late 2002, after many years of limited use, it was decided that the land located at 68–76 Wentworth Street Randwick required a change of land use to fit in with other land uses in the locality. The other most obvious reason behind this move by the land owner was to take advantage of the prime location of the site, being ‘located approximately 750 metres north-west of Randwick town centre at the centre of the triangle formed by Centennial Park (to the north), Randwick Town Centre (to the south east) and Randwick Racecourse (to the South West) (JBA 2001, p.6). The triangle is displayed in the map below, with the red star indicating the site location (Figure 6.1).

Figure 6.1: Map showing location of Case Study

Source: UBD Maps, Compiled by O’Kane 2008
Additionally, some of the advantages of this location were that a substantial portion of the site enjoyed panoramic city views and its close proximity to landmarks such as Centennial Park and Randwick Racecourse, as indicated in the accompanying aerial photograph in Figure 6.2 below.

Figure 6.2: Aerial Photo of Locality

The site was considered for a change in land use, given the lack of improvements to the land. At the time of the consideration of the rezoning proposal, the only real improvement to the land consisted of an old, disused house around 30 years of age and in a poor state of repair (as shown in the photo in Figure 6.3).

Figure 6.3: View of site from Wentworth Street looking north
The plan in figure 6.4 below shows the other characteristics of the original site, with the house shaded in dark grey. With no other existing buildings, it could therefore be easily argued that a rezoning would boost the total value of the land, especially because its value was virtually land value only.

Figure 6.4: Plan showing land and improvements

A residential townhouse development adjoins the land to the south and east and completed the rectangular street block on which the site is located, as shown in the photo in Figure 6.5 on the following page.
6.2.2 Zoning Particulars

At the time, the Randwick LEP 1998 defined the parcel of land as Zone No. 5 – *Special Uses*, which is graphically shown in yellow, on the original LEP zoning map found below (Figure 6.6).

Figure 6.6: Original Zoning of site, as shown in *Randwick LEP 1998*
Figure 6.7 below, extracted from the *Randwick LEP 1998*, contains the development guide to the original 5 zone, from which it was agreed that the site would be better used in future if it was rezoned.

Figure 6.7: Zoning Table Extract of 5 zoning from *Randwick LEP 1998*

<table>
<thead>
<tr>
<th>Zone No 5 (Special Uses Zone)</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) The objectives of Zone No 5 are:</td>
</tr>
<tr>
<td>(a) To accommodate development by public authorities on publicly owned land, and</td>
</tr>
<tr>
<td>(b) To accommodate development for educational, religious, public transport or similar purposes on both publicly and privately owned land, and</td>
</tr>
<tr>
<td>(c) To allow appropriate community uses, and</td>
</tr>
<tr>
<td>(d) To enable associated and ancillary development, and</td>
</tr>
<tr>
<td>(e) To identify and protect land intended to be acquired for special uses, and</td>
</tr>
<tr>
<td>(f) To allow for the redevelopment of land no longer required for a special use.</td>
</tr>
</tbody>
</table>

(2) Development for the purpose of the following does not require development consent:
- Bushfire hazard reduction;
- Public utility undertakings;
- Recreation;
- Roads

(3) Development for the purpose of the following requires development consent:
- Animal establishments;
- Bed and breakfast accommodation;
- Boarding houses;
- Car parks;
- Cemeteries;
- Child care centres;
- Clubs;
- Communication facilities;
- Community facilities;
- Dwellings;
- Dwelling houses;
- Educational establishments;
- Group homes;
- Health consulting rooms;
- Helicopter landing sites;
- Home activities;
- Hospitals;
- Multi-unit housing;
- Outdoor advertising;
- Penitentiaries;
- Places of worship;
- Plant nurseries;
- Public transport;
- Recreation facilities.

(4) Any development not included in subclause (2) or (3) is prohibited.

Source: *Randwick LEP 1998*

6.2.3 Planning Argument 1

In particular, one of the many reasons by which a different zone could be argued was that land use adjoining the site was a smaller townhouse development, of relatively recent construction, built in the same street block and connected to the site along its southern and western boundaries. At the time, it was also believed that this given zone change would compliment the already existing special Heritage Conservation Area. This conservation area is highlighted by many of the building facades and architectural character of a large area of North Randwick. It was therefore agreed that a residential zone would suit this location.
6.2.4 Planning Argument 2

As well as being consistent with the adjoining land uses and Heritage Conservation area, it is important to realise that the application for rezoning was encouraged because of the need to remain completely consistent with the zone objectives. At the time of the application, a future development consisting of multi-unit housing which reflected the neighbouring land use was permissible with development consent under Zone 5 of the Randwick LEP 1998 (as indicated in the previously mentioned Figure 6.5), and could also be argued to have meet most of the zone objectives. However, Randwick Council required that Development Applications cannot be lodged for the development of any site with an area of more than 4000 m² unless a master plan had first been approved. This meant that a rezoning to a residential zone would more appropriately meet the zone objectives, given that there was no mention of the requirement for a master plan within the Special Uses Zone.

6.2.5 Planning Argument 3

Finally, it could be argued that a proposed multi-unit residential building which required an approved master-plan would complement the very nature of existing policy on urban consolidation if rezoned to a residential zone as it would allow for greater flexibility within its development standards. This was especially the case where the Floor Space Ratio of the Special Use 5 Zone was set at 0.5: 1, which was lower than the other zones that permitted apartment buildings with development consent. Therefore, it would be a significant underutilisation of the site if a proposed development could not take advantage of a greater floor space ratio on offer for such a suitable and large parcel of land, if it was not rezoned to a residential use. Furthermore, there were many environmental benefits to be gained with an efficient use of urban land in a location that would promote consolidation and ease the pressure on the development of green field sites on Sydney’s fringe. Finally, the replacement of existing buildings and hard-standing areas that are poorly utilised with 2, 3 and 4 storey residential buildings would contribute positively to the visual character of the locality, and would also set the tone for any future proposed development within the locality.
6.2.6 Rezoning Process

After a year of consultation, Randwick City Council began the LEP amendment process in February 2002 to change the zone from *Special Uses Zone 5* to *Residential Zone 2D*. The process steps can be found in the time line below (Figure 6.8).

Figure 6.8: Time line for Rezoning

<table>
<thead>
<tr>
<th>PROCESS STEPS</th>
<th>Date Step Commenced</th>
<th>Time Elapsed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Feasibility stages</td>
<td>January 2001</td>
<td>12 Months</td>
</tr>
<tr>
<td>Submission of Masterplan</td>
<td>24 January 2002</td>
<td>7 Days</td>
</tr>
<tr>
<td>Masterplan Consultation</td>
<td>5th - 19th February 2002</td>
<td>14 Days</td>
</tr>
<tr>
<td>Section 54 - Resolution to prepare LEP</td>
<td>28 February 2002</td>
<td>7 Days</td>
</tr>
<tr>
<td>Section 57 - Environmental studies</td>
<td>March - April 2002</td>
<td>2 Months</td>
</tr>
<tr>
<td>Section 62 - Agency Consultation</td>
<td>May - July 2002</td>
<td>3 Months</td>
</tr>
<tr>
<td>Section 64 - Submission of draft LEP to DoP</td>
<td>August 2002</td>
<td>1 Month</td>
</tr>
<tr>
<td>Section 65 - Director General issues certificate</td>
<td>26 August 2002</td>
<td>7 Days</td>
</tr>
<tr>
<td>Section 66 - Draft LEP Exhibition</td>
<td>4th September - 1st October 2002</td>
<td>28 Days</td>
</tr>
<tr>
<td>Section 68 - Council considers submissions</td>
<td>2nd October 2002</td>
<td>6 Months</td>
</tr>
<tr>
<td>Section 69 - Director General submits report</td>
<td>1st April 2003</td>
<td>1 Month</td>
</tr>
<tr>
<td>Section 70 - Gazettal</td>
<td>9th May 2003</td>
<td>7 Days</td>
</tr>
</tbody>
</table>

Timeline Compiled by O'Kane 2008

One of the more notable elements of this timeline is the relative speed in which the LEP amendment passed through both section 57 and section 61; especially because these sections are known to be one of the main time consuming elements of the rezoning process. In addition, the very fact that the Department of Planning took a short time (one month) to issue certification under section 65 also shows that the rezoning application was justified, and not just a band-aid solution. So too, the very fact that a detailed masterplan was attached to the amendment would have help steer the amendment through the whole process.

The resulting amendment change is found on the following page, including both map and subsequent land use table (Figure 6.9 & 6.10), along with the actual LEP Amendment which can be found in Appendix 3. The rezoning permitted the use of the site for residential and open space purposes, subject to built form controls (also found in appendix 4) in relation to floor space ratio, landscaped area and building height.
Figure 6.9: Amended Zoning of site, as shown in Randwick LEP 1998

![Amended Zoning Map]

Source: Randwick LEP 1998 Updated Zoning Map

Figure 6.10: Zoning Table Extract of 2D zoning from Randwick LEP 1998

### 2D (Residential D—Comprehensive Development Zone)

1. The objectives of Zone No 2D are:
   - To allow the comprehensive redevelopment of land for primarily residential and open space purposes, and
   - To enable development that is not inconsistent with a master plan adopted under clause 40A, and
   - To allow a range of community facilities to be provided to serve the needs of residents, workers and visitors, and
   - To enable residential development in a variety of density and housing forms, where such development does not adversely affect the amenity and function of surrounding areas, and
   - To allow people to carry out a range of activities from their homes, where such activities are not likely to adversely affect the environment of the locality, and
   - To allow a limited range and scale of non-residential uses, that are compatible with residential amenity on land identified for those uses within a master plan adopted under clause 40A, and
   - To enable a mix of housing types to encourage housing affordability.

2. Development for the purpose of the following does not require development consent:
   - Broadacre farming; Public utility undertakings;
   - Recreation

3. Demolition, remediation or development for the purpose of the following requires development consent:

   | Bed and breakfast accommodation; | Horse activities; |
   | Boarding houses; | Multi-unit housing; |
   | Car parks (ancillary to primary land use); | Outdoor advertising; |
   | Child care facilities; | Places of worship; |
   | Communication facilities; | Public transport; |
   | Community facilities; | Recreation facilities; |
   | Dwelling houses; | Restaurants; |
   | Educational establishments; | Residential care facilities; |
   | Group homes; | Roads; |
   | Health consulting rooms; | Serviced apartments |

4. Any development not included in subclause (2) or (3) is prohibited.

Source: Randwick LEP 1998
6.2.7 Result

The rezoning, whilst allowing for a future use which was appropriate for the given locality, also allowed for an efficient use of urban land in a location that promoted residential consolidation and helped Randwick City Council reach the dwelling targets required by the Department of Planning. In addition, the change of land use facilitated a development which provided a high level of amenity for future residents in terms of living space, access to private and communal open space, natural ventilation, solar access and views. The photo in Figure 6.11 (below) shows the land today, with built improvements being a 2006 NSW RAIA Architecture Award winning 20 unit apartment building.

Figure 6.11: Photo showing current site and land improvements

Source: Google Street View

6.2.8 Conclusion

This case study, whilst only providing a brief description of the process, shows an example where a spot rezoning can be easily justified to achieve the highest and best use for a given site or locality. So too, this rezoning and subsequent land use change coincides at a time when urban consolidation and other sustainability methods are at the forefront of planning thought. Finally, it also shows an example where a rezoning can be achieved within an appropriate time period, despite going through a complex process.
Chapter 7 - Recommendations

Source: NSW Government 2005a, p. 2
7.1 Introduction

It should not go understated that the reforms to the plan-making system found within the *Environmental Planning and Assessment Amendment Act 2008* have occurred because of a number of operational problems. The NSW Government has noted that these issues are the product of a complex and complicated process. So too, there has been no real coordinated effort by both State and Local Governments to achieve better outcomes within plan-making. Currently, this process also fails to provide an answer for the increasing number of LEPs in preparation to account for both land release and urban consolidation areas. Additionally, it seems that the current process is too generic, and rarely allows for LEPs to be based on individual merits. Therefore, it is of no surprise that the recent amendments are centred on improving a system that is clearly not outcome based. This chapter gives some personal insights into these amendments that attempt to address the issues surrounding an over-detailed and time consuming plan-making system. The chapter also gives my recommendations based on the previously analysed data and the findings of this thesis.

7.2 Section 53 – Minister’s Role in making LEPs

The Independent Report by Manidis Roberts indicated that overall, there has been mixed views on the reforms which enable the State to amend an LEP, or kick-start the LEP amendment process, under the new section 53. This is probably because many local councils see this reform as somewhat un-democratic because it is perceived to be “taking power from the people”. Furthermore, many local councils possess expert local knowledge over the spatial area in which the LEP will have jurisdiction and believe that their knowledge should not be replaced by other agencies or Departmental staff working under the Minister for Planning. In some ways, this would also create an awkward situation where the local authority would then be placed in the difficult position of having to cooperate with another state agency in order to provide the important local information. Despite the claim that local planning control of a given spatial area exists merely because of delegated state powers, there is some merit in the local authority at least being able to review LEPs following legal drafting and prior to approval by the Minister.
7.2 1. RECOMMENDATION

Despite the mixed views of whether the Minister for Planning or a delegated state body should be allowed to make an environmental planning instrument for a local area, it is recommended that the Department of Planning implement section 53 because there are individual cases where local councils do not have the resources, nor the capabilities to make an LEP. This would be especially beneficial in the case where an LEP was streamed into the category of state significance within the reforms.

7.3 Section 54 – Relevant Planning Authority

The very fact that there have been changes to the Minister’s role also has repercussions on some of the other amendments contained within the Environmental Planning and Assessment Amendment Act 2008. At this point, it is also worth mentioning there has been some resistance from various stakeholders about accepting the way in which section 54 will now operate, given the new role of the Minister. In particular, section 54 now identifies that the:

‘Director-General or any such other person or body may be designated as the relevant planning authority, instead of a local council, in specific circumstances, including where the proposed LEP relates to matters of State or regional environmental planning significance or the council has, in the opinion of the Minister, failed to comply with its obligations with respect to the proposed LEP or has not carried out those obligations in a satisfactory manner’ (NSW Parliament 2008b, p. 7).

Under this section, other state agencies or designated bodies will be able to initiate an LEP amendment if they can obtain Ministerial support.

7.3.1 RECOMMENDATION

I think it is worthwhile for the Department of Planning to take seriously any advice given by local councils on this matter. It is also worth highlighting that the Local Government & Shires Associations of NSW has previously stated that ‘it would be simpler to have just one way of making new planning control documents instead of keeping different processes for SEPPs, LEPs and DCPs, largely distinguished by the authority that can initiate or change the controls’ (LGSA 2008, p. 1). However, I believe
that this section is important to implement sooner rather than later, as such identification process of a relevant planning authority is likely to speed up the plan-making process, whereas the suggested alternative from the LGSA could take years to come up with a draft model.

7.4 Section 55 - Justification Report

Whilst the contents of a justification report can be debated between many governing bodies, the overall idea that an accompanying report should explain how the LEP addresses certain aspects of already existing policy and legislation has been well received across the planning industry. ‘The guidelines for the submission of a justification report at the gateway stage would make clear the information required and the assessment undertaken is a focus and not a protracted process’ (Department of Planning 2007a, p. 36). Additionally, by providing a statement of the objectives for the planning instrument along with a list of intended outcomes, the Department of Planning will then be able to effectively categorise the plan. In spite of this, it could be argued that some of the suitability tests are completely ambiguous given the associated questions suggested in the contents of *Improving the NSW Discussion Paper*. Furthermore, there could also be questions asked about the investment certainty, and whether a local council would be able to predict future elements relating to the proposed development.

7.4.1 RECOMMENDATION

The only reasoning behind not recommending for this section of the *EP&A Amendment Act 2008* to proceed through to implementation would be if local councils believed that there were unreasonable contents embedded within a justification report. However, this report is an integral part of speeding up the plan-making system through the ‘gateway process’, and should be commended as a positive step forward.

7.5 Section 56 - Gateway Model

Many stakeholders in the planning industry have also welcomed the ‘gateway model’ as a standout response about concern of an over detailed, time consuming and expensive plan-making system. It is very clear that providing ‘for an upfront assessment of the
suitability of an LEP against clearly established criteria’ will bring clarity back into the system (Department of Planning 2007a, p. 6). At very least, it will let the relevant planning authority know earlier about the potentially time consuming processes involved such as the requirement for community consultation, the requirement for further studies or the referral of the Draft LEP to other state agencies. On pure economic grounds, it makes clear sense as this process will give local councils the information to dedicate the appropriate amount of resources and time to each proposed LEP. So too, it saves unnecessary time being spent between by local councils in passing amended drafts to and from the Department of Planning.

7.5.1 RECOMMENDATION

Given the overwhelming support for the ‘gateway model’ by local government bodies as shown in the data investigation, I strongly recommend that the NSW Government should proceed to implement section 56 of the Environmental Planning & Assessment Amendment Act 2008. However, it should be stressed that the criteria against which new LEPs are addressed should definitely take into account their individual aspects, rather than being generalisations about all LEPs.

7.6 Section 57 – Community Consultation

Community consultation still stands as one of the most pivotal issues within planning processes. Yet overall, it seems to have taken a different line throughout the whole planning reform process, most likely because the Department has not been able to identify a singular solution to this growing phenomenon. It is also worth highlighting that ‘representative democracy creates challenges and opportunities for communities and for planning, largely because it is often very difficult to identify a single, unitary ‘public’ for whom elected representatives plan’ (Zehner & Marshall 2007, p. 248). In my opinion, this especially relates to amendments to LEPs, given that in most circumstances such amendments affect a wider range of the community. Therefore, it is positive to see that this section of the Amendment Act allows for such consideration in that ‘the relevant planning authority must consult the community in accordance with the community consultation requirements of the proposed instrument’ before the whole process begins.
7.6.1 RECOMMENDATION

I believe that the Department of Planning best sums up this issue, by stating that ‘engaging the public in plan-making needs to be more meaningful to ensure many issues of concern to the community are dealt with earlier in the process than is currently the case and to ensure consultation is targeted to proposals that are of genuine broad community interest’ (DOP 2007a, p. 42). This is because the current system is somewhat blazé, and there are many LEPs that do not have appropriate levels of consultation, creating a situation where there is either too much or not enough time spent gaining public opinion. However, it seems that this approach relies heavily on the other sections within the process, such as its role within the justification report. In spite of this, I would not recommend for this amended section 56 to come into effect unless there was total implementation of sections 54 – 57 inclusive.

7.7 The ‘streaming’ of LEPs

As commented above, ineffective communication between both levels of government (state and local) overseeing planning seems to be a major factor in slowing down an already time consuming process. Therefore, it is a positive step to see that these amendments are creating a new system to ‘tailor the plan-making process for the different types of LEPs to better reflect the complexity or otherwise of the plans and their significance in terms of economic, social and environmental impacts (Department of Planning 2007a, p. 40). In particular, the modifications to both sections 54 and 56 will allow for a more suitable ‘streaming’ process to allocate the appropriate amount of resources and time to a given LEP. Under this system, the Minister for Planning would not only categorise each plan into a given type after resolution, but also allow for smaller and less controversial LEPs to be prepared without a final sign off by the Minister.

7.7.1 RECOMMENDATION

This streaming process, based on a set criteria and the very merit of each individual LEP, is a positive step forward for NSW. I believe that the only real concern for stakeholders is the criteria which will be used in this ‘streaming’ process. While it is all
very good for the Department of Planning to state that such streams will ‘ensure that the level of assessment, process, referral and consultation reflects the type and complexity’ (Department of Planning 2007a, p. 40), such criteria will be open to discretion which may end up being quite polarised. However, I believe that nearly any criteria which is to be used in the process will be much more transparent that the current system in which the Minister is not required to justify any amendments to an LEP.

7.8 Targeted and appropriate agency and consultation

If there was question over which one specific stage contributes to the most time being spent on drafting LEPs in the current plan-making system, most would probably agree that it is the stage where the plan must be scrutinised and cleared by concerned state agencies. This is probably because the Department of Planning has been possibly over cautious in the past, especially in undertaking ‘consultation with agencies when the LEP is of a minor nature and the agency interest was minimal or non-existent’ (Department of Planning 2007a, p. 42). However, one of the most favourable reforms found within section 56 and as a direct result of the gateway process is the Department of Planning’s firm desire to only target certain agencies during the consultation period. This will not only release such agencies from the pressure of assessing an inordinate amount of LEPs, but also improve communication between government bodies.

7.8.1. RECOMMENDATION

This amendment has been especially well received by stakeholders, and overall is a significant benefit within the reform of the NSW planning system. While this does not necessarily mean that there is going to be the precisely appropriate amount of consultation needed for every LEP which is gazetted, it does mean that minor LEPs will be able to be determined much quicker than the average time it takes, according to the data results in chapter 5. I believe this reform is therefore one of the most needed and should commence immediately, even if the Department did not decide to implement any of the other new sections found within the Environmental Planning and Assessment Amendment Act 2008.
7.9 Other amendments to the plan-making system

It is also worth noting that there are a number of other smaller changes found within the planning reform package that will ultimately end up with a more refined plan-making process. One of the more significant amendments found within the new Act is that relating to the times within which the various stages of the procedure for the making of the proposed instrument are to be completed (found also under section 56). This will work hand-in-hand with Departmental determination on whether the Planning Assessment Commission or a joint regional planning panel is needed to help in the various stages. ‘In certain instances the preparation of an LEP may become stalled due to factors such as unresolved agency objections’ (Department of Planning 2007a, p. 43). This reform provides a solution for where an LEP is found to be very controversial and where the Department believes the proposal is important enough to warrant a public hearing.

7.9.1 RECOMMENDATION

At very least, this reform under section 56 will bring some responsibility back into the various stages of the LEP making process. In my opinion, the gateway determination would not be as strong if it does not contain these elements. Therefore, I believe if the Department has to commence the implementation of this new section of the act, it must also commence action where it determines the times within the various stages, even if it means factoring in time spent in engaging the specialist bodies to determine controversial aspects or enabling independent advice for planning proposals.

7.10 Conclusion

Whilst some of these findings reflect those of the independent submissions to the Department of Planning regarding opinions about the Improving the NSW Department of Planning Discussion Paper, there is limited literature publicly available which provides an in-depth commentary on the main legislative changes to plan-making. The very fact that the Department of Planning has taken much of this reform into their hands does not necessarily mean that local councils are failing in their efforts to prepare LEPs. On the contrary, it shows concern for the councils especially as there seems to be fewer resources available to manage the repercussions of a system which is producing unnecessary delays and frustration.
Chapter 8 - Conclusion

Source: NSW Government 2005b, p. 2
8.1 Introduction

This thesis has been able to investigate the more extensive processes that the NSW Department of Planning undertakes regularly, to ensure that parcels of land around the state achieve their highest and best use. It is therefore very timely that the *Environmental Planning & Assessment Amendment Act 2008* was introduced to give greater awareness of a system in need of reform. Some have also commented that the amended sections not only reflect the changing nature of planning systems around Australia because of seemingly outdated legislation, but also the fact that such reform coincides with a time where achieving best planning practice is of utmost importance. The very fact that various stakeholders have stated their desire to help achieve this better practice by supporting a more simplified and transparent system does show how the NSW Government is mindful of the impacts of its actions on the planning profession. This chapter provides overall conclusions about the Department’s recent reforms, whilst giving advice on future directions concerning plan-making.

8.2 Process Description

The study has ultimately questioned why the NSW Government has boldly stated that there was ‘general consensus that the existing plan-making process is too complex, too confusing and takes too long’ (Department of Planning, 2008a, p. 3). This investigation was complemented through a specific concentration on spot rezonings, as the most common form of an LEP amendment in NSW. In undertaking this investigation, it was important to give the historical context of the existence of zoning through a literature review. This literature review was also helpful in explaining the existing zoning system used within NSW and the subsequent creation of LEPs under delegated state powers through planning legislation. Following this explanation was the key chapter of the thesis, which was the detailed investigation and commentary on the LEP process, gained through quantitative and limited qualitative research methods. As mentioned within the introduction, this investigation of governmental activity was inevitably constrained within certain boundaries, especially given that there was limited access and
availability of information pertaining to rezonings. Nonetheless, this was strengthened and augmented by personal insight and commentary on a relevant case study, Pindari. This thesis drew to a conclusion with the making of recommendations about future Department of Planning initiatives through the implementation of Schedule 1 of the *EP&A Amendment Act 2008*. Whilst this chapter does give a personal view of the direction which I believe the future of the plan-making process should take, it should be noted the Amendment Act will now be under further review because of recent ministerial changes in NSW.

### 8.3 Summary of Findings

This thesis has made a number of significant findings in questioning the general consensus and popular opinion about the existing plan-making process. Below are the elements of research and examination found within this thesis:

#### 8.3.1 Literature Review

Even though the literature review mainly concentrated on explaining the more theoretical side of zoning, there were a number of noteworthy issues which exist when controlling development through a zoning system. Despite most of the international literature being gathered from American journals, many of the articles highlighted that the most commonly identified problem with a zoning system was the lack of flexibility. The onus to address this issue has become of greater importance in the context of the multi-cultural aspects of cities in Australia. Yet rezoning, which is one of the possible ways to address this issue, has also attracted its own literature. Its discussion often results in varying opinions, even though planning agencies know how economically, environmentally and socially important it is to achieve the best functional use for a given parcel of land.

#### 8.3.2 Past Reform Investigation

The investigation into past reform found that there have been extensive attempts through both new policy and statutory changes to make amendments to somewhat ageing
planning legislation over the past three decades. Surprisingly, some of the more extensive amendments have also reflected the issues and challenges in reforming planning processes across Australia and the world. So too, recent amendments have coincided with a time where sustainability is increasing in significance for all governments and where achieving the ‘triple bottom line’ is becoming paramount. On a more local level, this thesis found that the reforms have also played an inevitable part in linking recently created state and regional strategies along with a different approval system for state significant projects.

8.3.3 Data Investigation

As one of the more detailed parts of this thesis, there were many different elements in examining trends revealed through both the primary research and the limited secondary data available. In particular, the quantitative analysis found that elapsed time (in terms of number of days) taken for different LEPs has a large range, with the average time taken to gazette LEPs being an incredible 801 days. In a way, it goes without saying that this is due to an over-complicated plan-making system. It was therefore no surprise that the qualitative analysis of some of the independent submissions from peak organisations in relation to the future reforms revealed almost unanimous support for any initiatives from the Department to eliminate excessive amounts of consultation and referrals amongst state agencies in the preparation of draft LEPs.

8.3.4 Case Study

Further qualitative analysis of primary data through a case study explained the complex elements of obtaining a spot rezoning. The change of land use for ‘Pindari’ not only confirms that future reform will complement ‘common sense’ rezonings, it also represents a typical example where a local council initiates a spot rezoning to work towards meeting population targets. Furthermore, a spot rezoning of this calibre should be encouraged by the Department of Planning, which is somewhat contrary to its past attitude where it has prefered to avoid rezonings. Finally, it proves to be a landmark case which achieves the ‘highest and best use’ and suits the ‘triple bottom line’ of land development.
8.4 Research Limitations

Whilst the research and investigations have been quite comprehensive, this thesis was somewhat restricted due to some inevitable boundaries. The general categories in which limitations were existent are found in the critique of different elements below.

8.4.1 Critique of Literature

One specific challenge for this thesis is the limited amount of academic work written on the theoretic side of changing land use. Even though there are a number of journal articles explaining some methods and theories associated with zoning, very few international articles and barely any Australian articles explain zoning’s effect as a development control tool in a given spatial area. Furthermore, there is virtually no literature written within Australia detailing the very complex and time consuming nature of plan-making systems. This is most likely because most efforts have been concentrated on exposing the problems within development assessment, which is seen as more pressing within Australian planning circles. However, planning commentator John Mant has been prolific in writing about other possible ways to use zoning to achieve the highest and best use for land within a given locality. Some of his works, along with some more noteworthy recent planning text books, were the main literature used as a starting point for this research. Yet even though this thesis to some extent treads new ground by exploring a relatively new field, it is worth mentioning that it could have possibly been strengthened if there was greater availability of literature relating to zoning systems used within Australia.

8.4.2 Critique of Data Investigation

It also somewhat predictable that a lack of literature relating to zoning systems within Australia is also a contributing factor to the limited amount of data available for analysis. With only a small reference to the time taken within the LEP process found in the Improving the NSW Department of Planning Discussion paper, nearly all further data research was therefore left to my own personal initiative. However, the surprising
element of this thesis was finding that the *Survey of LEP Timeframes* used within the Department of Planning was incomplete and contained some minor errors. Despite this limitation being rectified through some time consuming primary research which required extensive interpretations of NSW Government Gazettes, there needs to be much more attention to completing surveys to the highest professional standard. Additionally, the Department of Planning should continue its practice of being completely transparent with the information contained in these surveys by making them available to the public, especially if referred to in important discussion papers. This is because it could lead to possible questioning of the NSW Government’s intentions, given that stakeholders may be lead to believe that significant decisions on planning reform have been based on incomplete and possibly misleading data.

### 8.4.3 Critique of Reform

Whilst there are existing limitations in both the availability of related data and literature, the Department of Planning should be congratulated on its efforts to eliminate key causes of delays within the LEP process through the use of well thought out reforms to plan-making. However, it is worth mentioning the approach to consultation could be questioned given the time of the release of the *Improving the NSW Planning System Discussion Paper*. The very fact that the release of the paper was very close to the significant holiday period around the celebration of Christmas was highlighted by many stakeholders, despite extensive efforts of the earlier ‘road show’. This, combined with a very short submission period, meant that some stakeholder’s views were possibly not able to be expressed through a formal submission. In a way, the lack of this qualitative data is a limitation on the research found within this thesis. So too, it could be argued that there was an inadequate amount of documentation and eduction from the discussion paper in relation to the overall reforms bound within the draft bill. The very fact that there was only one paragraph written about how the Department listened to the feedback relating to plan-making is worth stating as a further limitation.
8.5 Future Outlook

Despite general consensus about the past plan-making system being complex, time consuming and expensive, the reforms found within the *Environmental Planning and Assessment Amendment Act 2008*, if implemented, will make a real change for the future in the way plan-making operates in NSW. There are many reasons why the ‘gateway model’, the ‘justification report’ and the ‘targeted referrals and community consultation’ will make a real difference when introduced into this planning process. These reforms will not only speed up a system which could be argued contains too much ‘red tape’, but also help solve the causes of delay which are centred around rules and policies. Not only will it allow for sustainable development outcomes to be achieved, but it will also complement a system which has in the past on a number of occasions been unable to provide the NSW government with a strategic planning tool.

8.6 Conclusion

This thesis certainly provides a certain perspective on a topic which is often disregarded by many planning experts. It is unsurprising that spot rezonings are embedded within a complicated system, especially at a time where good town planning through effective strategic processes is becoming more and more important for the state of NSW. The challenges and issues found within rezoning an individual parcel of land have in the past had the ability to often divide planning bodies and subsequently create polarised opinion from many different stakeholders. However, the future of spot rezonings, as a process which achieves the highest and best use for an individual parcel of land, can be seen as being of upmost importance to the NSW government. Planners and government officials need to be aware that their actions will generate the need for a system of changing land use for designated localities which is ultimately necessary for the survival of a given spatial area.
LIST OF REFERENCES


*Baulkham Hills Private Hospital Ltd v Newcastle City Council* 1980, 46 LGRA 231-235


Dykes v New South Wales Dairy Corporation (unreported, SCNSW, 6 December 1996)


Mant, J. 2006, ‘Formatting Development Controls: A Land Use Zone or Parcel Format?’, Australian Planner, 43(2), 18-25.


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APPENDICES

1. LEP Review Panel Flow Chart - Source: Department of Planning 2006c, p. 15


3. LEP Amendment 31 Zoning Map, *Randwick Local Environmental Plan 1998* – Source: Randwick City Council Website 2008

4. LEP Amendment 31 Built Form Control Map, *Randwick Local Environmental Plan 1998* – Source: Randwick City Council Website 2008
Local Environmental Plan Process

Departmental LEP Review Panel
The role of the panel is to:
in respect to all draft LEPs:
- provide advice to councils about proposed draft LEPs
- provide advice to the Director-General and/or Minister for Planning about proposed draft LEPs
- review section 54(4) notifications against the relevant set of evaluation criteria
and, in respect to certain draft LEPs:
- review draft LEPs submitted at the section 64 stage to determine whether a section 65 certificate should be issued (optional)
- review draft LEPs when submitted to the Department at section 68(4) stage (optional)
- review section 69 reports to the Minister (optional).
7 Analysis of key issues by stakeholder group

The following table highlights the 31 key issues against stakeholders.

**KEY:**
- **S** General support (Support or qualified support)
- **O** General opposition (Opposition or qualified opposition)
- **N** No formal position (No indication of support/opposition or was not raised as an issue)

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<th>Key issues</th>
<th>Community</th>
<th>Community groups</th>
<th>Local government</th>
<th>State Government agencies</th>
<th>Professional practitioners</th>
<th>Industry</th>
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<td>N 12</td>
<td>N 106</td>
<td>N 20</td>
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### Built Form Control Map

**Randwick Local Environmental Plan 1998** (Amendment No. 31)

#### Scale: NTS

**Locality:** Randwick

**Subject Land:**

<table>
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<th>Wall Height</th>
<th>Maximum Building Height</th>
<th>FSR</th>
<th>Landscaped Area (% of site area)</th>
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<tr>
<td>10m</td>
<td>12m</td>
<td>0.8:1</td>
<td>60%</td>
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**Note:**

1. A maximum building height of 9.5m and a wall height of 7m, applies to sections of buildings (for a distance of 20m from the site boundary) fronting Dangar Street and Tramway Lane.

2. Heights of the northern section (for a distance of 20m from the site boundary) of any buildings fronting Tramway Lane shall be measured from the existing ground level along the boundary of Tramway Lane.

3. Ground floor level of the western section (for a distance of 20m from the site boundary) of any buildings fronting Dangar Street shall not exceed RL 47.5 and the maximum building height shall not exceed RL 56.