

## Planning at the urban periphery in Australia: issues relating to private residential back and front yards\*

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### Abstract:

This narrative focuses on three planning issues affecting the suburban residential periphery in Sydney, Australia: (i) amenity, (ii) biodiversity conservation and (iii) bushfire potential. All relate to private front and back yards, which provide key elements of the residential landscape. Embedded in the paper is the complexity of the planning system and the subsequent inconsistency between dealing with the three issues. Considerable attention is paid to local government and its changing legislative terrain. In particular, several local statutory planning instruments are investigated to illustrate this. The conclusion calls for further research while stressing more action is warranted within and outside the planning system in an integrated manner. Two significant matters comprise community support and regional structures.

### Keywords:

Amenity, biodiversity, bushfires, suburbs, yards.

## 1 Introduction

The garden is a fundamental element of the residential environment, especially in low density suburbia. In heavily urbanised Australia, front and back yards play a crucial role for citizens seeking their own private open space experiences. Due to sunny attractive climes, many houses extend *into* the garden – both physically and ideologically – providing a key function in everyday life. The garden is part of the house itself. It is where family and social activities take place, such as cricket games, barbecues and lazing under shady eucalypts. Depending on the householder, this may broaden to, *inter alia*, built-in playgrounds, vegetable growing and/or planting and maintaining indigenous trees (Head and Muir, 2007). Whilst recognising the variation of approaches to private open space, the paper focuses on the potential ecological nature of the garden and the various conflicts that can arise.

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Although the above observations apply across all Australian urban landscapes, this paper focuses on Sydney's periphery. Australia's biggest city is surrounded by national parks to the north and south, the Pacific Ocean to the east and generally undulating lands towards the Blue Mountains to the west. Apart from (i) the rapid vertical residential expansion in central Sydney and key suburban hubs, including transport nodes, and (ii) the surge of in-fill development across all residential areas, apart from the environmentally sensitive, housing is marching west. A statutory instrument was introduced in mid-July 2006 with the explicit aim to "co-ordinate the release of land for residential, employment and other urban development in the North West and South West growth centres of the Sydney Region"<sup>1</sup>.

As western Sydney continues to grow, three critical issues demand scrutiny. All relate to private residential open space:

- enhancing and protecting neighbourhood amenity;
- conserving biodiversity; and
- minimising threats from bushfire.

This paper will address each one below, with particular attention to local government which is forefront of land use regulation and community involvement. While the third sphere of government suffers from no formal recognition in the Australian Constitution, it is nevertheless embedded in Australian governance.

## **2 The Emergence and Current Situation of Statutory Town Planning in NSW**

The first comprehensive planning legislation in NSW occurred in 1945 with insertion of Part XIA into the then *Local Government Act 1919* (NSW), which went far beyond building and subdivision control. The regime enabled the making of statutory planning scheme ordinances (PSOs), mainly to provide regulatory zoning provisions. Curiously, although the legislature relied heavily upon UK law (Freestone, 1998), Britain followed a different pathway soon afterwards in 1947. Australian jurisdictions have since remained glued to stringent zoning patterns. But due to inadequate resources and limited thinking, councils were slow to adopt planning as a vital function. Instead, it was the State Government that drove metropolitan planning through the Cumberland County Planning Scheme (CCPS) of 1951. This dealt with post-war urban expansion, thereby assisting development of the "Australian suburban dream" (Alexander, 2000, 102) i.e. detached houses surrounded by large well-watered lawns alongside almost identical townscapes. Local PSO-making did not flourish until the late 1960s and 1970s. In many places, standardised 'interim' instruments were handed down by the State Government with the same emphasis on zoning and standards regardless of geographical location.

In 1980, Part XIA was replaced by the *Environmental Planning and Assessment Act 1979* (NSW) (EPAA). This reflected the emergence of 'modern environmentalism', encouraging forward thinking plan-makers to move beyond land use conflict. In addition, local communities demanded greater input in plan preparation and implementation

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<sup>1</sup> *State Environmental Planning Policy (Sydney Growth Centres) 2006*, cl 2.

(Roddewig, 1978). Another factor was regional planning, acknowledging that many issues apply across administrative and arbitrary borderlines. This led to a cascade of strategic non-statutory instruments. The most current is *City of Cities: A Plan for Sydney's Future Sydney* (more commonly known as the 'Metropolitan Strategy') introduced in 2005 with its various existing and forthcoming sub-strategies. Adjacent to this is the Growth Centre policy wherein the State Government has promised an ongoing supply of land for low density homes for Sydney's West. This reflects a fierce political push for residential expansion at Sydney's periphery. Its implementation is currently taking place via the South-West and North West Growth Centres. The South-West sector is predicted to contain a capacity for about 110,000 new homes.

In terms of *statutory* plans, the EPAA introduced a series of statutory 'environmental planning instruments' (EPIs). At the time of writing, these have been reduced to State Environmental Planning Policies (SEPPs) and Local Environmental Plans (LEPs). SEPPs deal with matters of state or regional significance. A relevant example is *SEPP (Sydney Regional Growth Centres) 2006*, which provides the statutory basis for the two residential sectors mentioned above. The LEP, however, is the fundamental EPI that local government prepares and implements. As a result of legislative and policy reforms in 2006, the State Government introduced a standard 'LEP template'. Each of the 152 councils across NSW must abide by the template in redesigning its own LEP. Only a handful of 'templatised' LEPs have yet been gazetted. By providing standard definitions of many types of development and laying down formulae for specific zones, the template offers a comfortable level of uniformity. In some circumstances, however, it might be argued as a means to erode creativity in local plan making (Kelly and Smith, 2008).

SEPPs and LEPs tend to provide regulatory rather than incentive clauses. Nevertheless, they can reach far beyond uses such as buildings, reservoirs and mines. Under section 26 EPAA, an EPI make provisions for, *inter alia*:

- (a) protecting, improving or utilising, to the best advantage, the environment,
- (b) controlling (whether by the imposing of development standards or otherwise) development ...
- (e) protecting or preserving trees or vegetation,
- (e1) protecting and conserving native animals and plants, including threatened species, populations and ecological communities, and their habitats,
- (f) controlling any act, matter or thing for or with respect to which provision may be made under paragraph (a) or (e) ...

It is clear that an LEP may regulate front and back yards. For instance, it may require consent for the removal of one or more specified trees. Alternatively, pursuant to the LEP, the decision-maker may approve a residential estate subject to certain trees being retained. A council might even demand that a proposal be redesigned in order to retain identified vegetation.

There is concern, however, that contemporary detached dwellings in Sydney's west suffer from small yards. The modern home is often enormous. Under the 2008 NSW Housing Code (part of *SEPP (Exempt and Development Complying Codes) 2008*), allotments of between 450 and 600 sq metres can accommodate up to 50 per cent

building coverage (Department of Planning, 2008, 8-12). But this excludes driveways, verandas, terraces and even swimming pools and spas, leaving little room for back yard cricket or front yard sub-forests. Furthermore, these types of developments need not undergo environmental assessment; instead, there is a straightforward ‘tick the box’ approach to obtain permission. This kind of urban sprawl is therefore advancing across far-flung suburbia. What planning issues might directly spring to mind?

### 3 Amenity

Protection of amenity is immediately relevant. Notably, its meaning is intangible. It was described more than four decades ago as the “hardest worked word in planning language” (Wilcox, 1967, 361), which is still relevant today. Amenity often relates to the visual aesthetics of a place. Accordingly, in the suburban context, in addition to parklands and street verges, residential gardens play a crucial role especially via front yards which are more visible to passers-by. Because it is an extremely subjective concept, it reflects personal/community preferences and culture. In the broader context, landholders may prefer to change their neighbourhood landscapes with exotic trees rather than maintain what might appear as tedious scrub (Kelly, 2006). For instance, assemblages of the remnant Cumberland Plain Woodland in western Sydney might be regarded as drab, with land holders planting colourful species such as the South American jacaranda or a variety of tropical palms. Of course, such temptations are visible across all suburbs. In smaller gardens, however, they are less likely.

Throughout Sydney, the flat Wianamatta Shale based lands that dominate the western suburbs are easily seized for residential development. Closer to the coast and bays, the far steeper Hawkesbury Sandstone landscapes are used for municipal bushy parklands (Schoer, 1983) and, since the 1980s, well-engineered residential development (Berzens, 1984). Because close location to bushy locations is a symbol of affluence (Sandercock, 1975), more attention is now being paid to integrating private residential land with ‘safe’ indigenous bushland – i.e. away from spiders and prickly plants. In the expanding Sydney’s west, this leads to shrubs rather than towering trees.

The notion of amenity is embedded in Australian urban planning law. In NSW, the CCPS required that amenity be taken into account in determining a development proposal<sup>2</sup>. Although the provision contained a strong flavour of protecting residential lands from industrial emissions, a court judgment made it clear that amenity embraced “the pleasurable appearance of a neighbourhood in the eyes both of residents and passers-by”<sup>3</sup>. As the planning system moved onwards, councils directed their energy to “the protection of local amenity, usually residential amenity” (Harrison, 1988, 27). When the EPAA was introduced, decision-makers were required to consider “the existing and likely future amenity of the neighbourhood” when determining a development application<sup>4</sup>. This comprised one of 27 matters, which were reduced to five in 1998 deleting the

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<sup>2</sup> *County of Cumberland Planning Scheme*, cl 27(e).

<sup>3</sup> *Vacuum Oil Co Pty Ltd v Ashfield Municipal Council* (1956) 21 LGRA 8 at 12, per Sugerman J.

<sup>4</sup> *Environmental Planning and Assessment Act 1979* (NSW), former s 90(1)(o).

‘amenity’ reference<sup>5</sup>. It no longer has any mention in the EPAA at all. The judiciary, however, has made it clear that the shortened list is not exhaustive<sup>6</sup>, thereby ensuring amenity to remain steadfast alongside other express and implicit factors.

Amenity protection can be expressed in individual LEPs. In *Campbelltown (Urban Area) LEP 2002*, for instance, which covers a small part of the rapidly developing Sydney’s south-west sector with a current population of about 150,000 people, there are about 20 explicit references to amenity. The term, however, is again not defined. It is almost amorphous. The relevant clauses include an overall aim to “maintain and enhance the amenity of the urban area of the City of Campbelltown”<sup>7</sup> in addition to the need for the decision-maker to hold the opinion that a development proposal is “consistent” with the stated objects if the zone before consent may be granted<sup>8</sup>. Such zonal objective provisions are reasonably strong (Kelly and Smith, 2008). Numerous other clauses relate to a variety of matters including heritage provisions<sup>9</sup>, agriculture<sup>10</sup>, mining<sup>11</sup> and a specified area for urban expansion<sup>12</sup>. Clearly, amenity is entrenched in the LEP even though the provisions are sporadic.

*Liverpool LEP 2008*, which applies to the local government area directly north of Campbelltown and is part of the South West Growth Centre, confines only a handful of references to amenity. This instrument is a pioneer that follows the LEP template. But again, amenity remains undefined. Similar to the Campbelltown LEP, it is addressed in the main objectives to “maintain suitable and offer a variety of quality lifestyle opportunities to a diverse population”<sup>13</sup>. Further examples relate to temporary use of land, various zonal objectives especially in relation to residential zones<sup>14</sup>, minimum subdivisions size<sup>15</sup> and foreshore building lines<sup>16</sup>. Perhaps the most interesting provision is the optional template clause relating to ‘[p]reservation of trees or vegetation’<sup>17</sup> that requires permission for removal or damage. This item derives from ‘tree preservation order’ (TPO) provisions from the CCPS<sup>18</sup> and many subsequent local instruments. Indeed, such clauses originate from British planning ordinances (Cullingworth, 1967). As Liverpool LEP demonstrates, amenity remains a vital component of the statutory planning jigsaw.

Amenity is a frequently raised issue before the Land and Environment Court of NSW, especially in merits appeal cases. In many situations, however, it is only one of many

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<sup>5</sup> *Environmental Planning and Assessment Act 1979* (NSW), s 79C(1).

<sup>6</sup> *Carstens v Pittwater Council* [1999] NSWLEC 249 (Unreported, Lloyd J, 11 November 1999).

<sup>7</sup> *Campbelltown (Urban Area) Local Environmental Plan 2002*, cl 2(1)(c).

<sup>8</sup> See, for example, *Campbelltown (Urban Area) Local Environmental Plan 2002* cll 9(2)(d), 13(2)e), 22(2)(b) & 24(2)(d).

<sup>9</sup> *Campbelltown (Urban Area) Local Environmental Plan 2002*, cl 50(e).

<sup>10</sup> *Campbelltown (Urban Area) Local Environmental Plan 2002*, cl 36(d).

<sup>11</sup> *Campbelltown (Urban Area) Local Environmental Plan 2002*, cl 63(b).

<sup>12</sup> See, for example, *Campbelltown (Urban Area) Local Environmental Plan 2002*, cl 51D(c)(viii).

<sup>13</sup> *Liverpool Local Environmental Plan 2008*, cl 1.2(2)(c).

<sup>14</sup> *Liverpool Local Environmental Plan 2008*, see, for instance, cl 2.3 zones R2 Low Density Residential.

<sup>15</sup> *Liverpool Local Environmental Plan 2008*, cll 4.1(1)(e), 4.1A(1)(e).

<sup>16</sup> *Liverpool Local Environmental Plan 2008*, cl 79(1).

<sup>17</sup> *Liverpool Local Environmental Plan 2008*, cl 59(1).

<sup>18</sup> *County of Cumberland Planning Scheme*, cl 40(1).

considerations before the Court. In regard to TPOs, judicial actions tend to involve criminal actions. For instance, in *Holroyd CC v Skyton Developments Pty Ltd* (2002) 119 LGERA 225 at 229, Cowdroy J emphasised that “breach of a tree preservation order is a serious offence”. The defendant was found guilty of removing two trees in the western suburb of Westmead, including a Queensland Fire Wheel twelve metres in height which was reported as providing “existing amenity” and “colour, shade and screening” (at 227). The defendant admitted guilt and was fined \$A15,000. This and many other judgments illustrate how amenity is cemented in planning law. It relates directly to the appearance of suburban gardens.

#### **4 Biodiversity Conservation**

Biodiversity is a different concept altogether. It is based on science and represents a far more recent phenomenon. As will be seen, it is complex but in a different way. The *National Strategy for the Conservation of Australia's Biological Diversity* defines it as “the variety of all life forms – the different plants, animals and microorganisms, the genes they contain and the ecosystems of which they form part of” (Commonwealth of Australia, 1996, 1). Accordingly, it embraces the drab and the fetid that exist well beyond the amenity spectrum.

Whilst the precise origins of the term are arguable (Adam, 2009), Jeffery (1997, 4-5) refers to a “snappy abbreviation” composed by the co-director of the 1986 American ‘National Forum for BioDiversity’ who recognised references to ‘Biological Diversity’ in earlier scientific papers. The term has since become far more fashionable, often found in tourist brochures and newspaper articles. In a recent weekly gardening column from the *Sydney Morning Herald*, the author warns readers that because Australia has “one of the worst records for loss of biodiversity” our “[g]ardeners can be of great help to native birds and animals by cultivating indigenous plants to provide green corridors” (Maddocks, 2009, 25). The essence is no different to Beatley’s (2000) academic paper on retaining biodiversity in American backyards, even in small gardens. All this reflects the fact that biodiversity conservation need not be restricted to the pristine. On the other hand, massively manicured and minimised suburban gardens might be more of a museum than a working green environment.

Biodiversity conservation in Australia is crucial for regional, national and global purposes. Its international dimension is incorporated in the *Convention on Biological Diversity*, signed by many countries, including Australia, at the 1992 Rio Earth Summit. Australia’s worldwide bio-magnitude rests on its ‘megadiverse’ nature. It is “geographically more isolated” than other with rich biodiversity and the “only one ... predominantly in the temperate region” (New, 2000, 23). Possingham (2008) adds that a huge number of Australian species are endemic. Yet conservation biologists, policy-makers and environmental lawyers must consider well beyond listed species to other aspects, such as ecological assemblages. As Adam warns (2009, 19), “the ‘big picture’ approach is not being adopted and attention and resources are still on listed species”. It is here where the complexity intensifies. Specifying where the boundary of an ecological community exists is scarcely easy.

All spheres of government in Australia are involved in biodiversity conservation law and policy. Strategic documents have been designed at each level, including local government (Australian Local Government Association and Biological Diversity Advisory Council, 1999). Furthermore, many councils have prepared voluntary biodiversity policies, which rely on sufficient monetary resources, political backing and staff expertise. They do not carry statutory force but instead may offer incentives such as free or subsidised seedlings and specialist advice. Such programs are very different from regulatory control, with documents providing useful education material for local citizens. For example, Penrith City at the western rim of Sydney has produced its own strategy. It contains, *inter alia*, information for the community explaining the meaning of biodiversity, potential for public involvement in its conservation, a table of aims and outcomes, and a list of local vegetation communities. The document appears to be directed towards educating the community with delightful photographs and helpful explanations (Penrith City Council, n.d.). In contrast, Liverpool City offers a far more scientific approach with tables, technical information and a series of sub-issues such as suggested strategies, proposed actions, recommended policies (eg conservation targets, corridors and connectivity), tools and resources plus detailed maps (Liverpool City Council and Ecological Australia, 2003). Environmental consultants have performed a substantial role here. Despite the difference between the manuscripts, both reflect a commitment to biodiversity conservation. Some councils do not even possess such policies. Notably, both Penrith and Liverpool draw attention to the Cumberland Plain Woodland, a listed threatened ecological community under the *Threatened Species Conservation Act 1995* (NSW) (TSCA). Upon European settlement, this ecological community covered over 120,000 hectares. It has since been decimated to less than ten per cent. There is no doubt that some of these communities can be found on private land, including small but important patches in residential yards. What advantages might the planning system present here?

The TSCA piggybacks on the EPAA by demanding special requirements if a proposal is to have significant impact on a listed threatened species (eg koala), population (eg little penguins at Manly Cove) or ecological community (eg Cumberland Plain Woodland). All development applications must undergo the 'seven part test' to determine the effect of a proposal; if it is decided that the impact is significant, a 'species impact statement' must accompany the application<sup>19</sup>. This might relate to, for example, a residential subdivision in a bushy acreage in Sydney's west or erection of a building where a listed ecological community exists. Assessment is mostly carried out by councils or consultants on their behalf. Even if it is decided that the environmental impact will be ecologically devastating, approval is still possible. The end result will be informed habitat destruction. As noted by Riddell (2005, 446), "the balance is skewed strongly in favour of development and economic growth".

All this highlights the need for strategic planning rather than *ad hoc* decisions. The growth centres offer minimum hope without detailed green sub-regional plans. In relation to LEPs, *Campbelltown (Urban Area) LEP 2002*, for example, contains only one

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<sup>19</sup> *Environmental Planning and Assessment Act 1979* (NSW), ss 5A & 78A(8)(b).

reference to biodiversity which relates to a particular release area, stating one of the objectives as to:

“conserve and enhance the biodiversity of the Precinct through the management of areas of conservation significance and riparian corridors and the retention of remnant vegetation native vegetation within residential and business zones”<sup>20</sup>.

Another objective relates to “creat[ing] compact urban centres”<sup>21</sup>, adding an element of competition between the stated factors. The objective of the overall LEP referring to “biological listings, remnant native vegetation and associated buffers”<sup>22</sup> suffers from the same weakness.

Liverpool includes only one reference to biodiversity, ensuring that a proposal on land recognised as “high biodiversity significance” cannot fall within the list of ‘exempt developments’ which enable proposals to escape the development control process<sup>23</sup>. Otherwise, clauses for nature conservation relate to certain zones such as the ‘large lot residential’ zone, and the modern TPO-derived provision on ‘preservation of trees and vegetation’<sup>24</sup>. As noted earlier, Liverpool LEP adheres to the LEP template. The TPO provisions confuse both amenity enhancement and biodiversity protection (Kelly, 2006). More clarity is needed.

## 5 Bushfires

The third issue is bushfire. Unlike the other subjects, it can involve loss of human life and property. It therefore attracts more public attention than, say, disturbance of a fragment of Cumberland Plain Woodland and its replacement by non-native species in a neighbour’s front yard. Memory of the sheer impact of bushfires in Victoria in February 2009 with the death of 173 people lingers in the Australian psyche. Although it severely directly affected rural townships, its proximity to Melbourne must have caused considerable discomfort amongst many peri-suburban dwellers. In other cities, bushfires have actually reached the suburbs. In 1967, bushfires came extremely close to Hobart’s CBD destroying about 1300 houses and many lives (McAneney, Chen and Pitman, 2009). In 1994, bushfires unexpectedly leapt across a valley in southern Sydney to destroy homes with one person dying from heat and smoke as she attempted to reach the swimming pool in her back yard (Cockerill, 1994). Further bushfires occurred in a relatively new southern suburb in 2001/2002. In 2003, Canberra received the tragic shock of bushfire with four tragic deaths and loss of 530 houses (Odger, Ryan and Wells, 2003). In addition to these were the ferocious ‘Ash Wednesday’ fires in Victoria and South Australia in 1983. This short list excludes many other fire disasters since colonisation.

As stressed by Gillen (2005), Sydney is especially prone to bushfire. It enjoys a subtropical climate with “summer temperatures frequently reaching the high 30s centigrade and bringing low humidity and warm conditions” (at 466). He goes further to

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<sup>20</sup> *Campbelltown (Urban Area) Local Environmental Plan 2002*, cl 51D (b)(i).

<sup>21</sup> *Campbelltown (Urban Area) Local Environmental Plan 2002*, cl 51D(c)(ii).

<sup>22</sup> *Campbelltown (Urban Area) Local Environmental Plan 2002*, cl 2(2)(e).

<sup>23</sup> *Liverpool Local Environmental Plan 2008*, cl 3.3(2)(g).

<sup>24</sup> *Liverpool Local Environmental Plan 2008*, cll 5.9 & 7.6.



observe that Sydney “is located in the zone of highest bushfire frequency in Australia” (at 466). This automatically leads to concerns about the urban periphery (McAneney, Chen and Pitman, 2009). Various commentators (see Gillen 2005; Little 2003; Troy 1999) highlight the spate of low density housing across potentially fire prone areas.

Bushfires are unpredictable. Any idea that they can be prevented altogether makes little sense unless we accept landscapes of concrete. Australian bushland “is designed by nature to burn” (Cunningham, 2003, 26). One approach involves mitigation, including cooperation with community members (Marton and Phillips, 2005) or at least raising their awareness of potential catastrophe. Guidance on how to plan ahead is crucial. This leads to the need to consider strong and clear messages for householders. For example, residents may be warned against inappropriate exotic or native plant trees and shrubs, such as vegetation that deposits heavy amounts of dead or decaying debris. Landholders may also need to check if their roof gutters become dangerously full of flammable leaf litter.

The 2001-2002 bushfires spurred major legislative change. The *Rural Fires Act 1997* (NSW) (RFA) underwent alteration with not only a “streamlined process for the environmental impact assessment of bushfire hazard reduction works (e.g. prescribed burning)” but also the “creation of a Bush fire Environment Assessment Code” (Little, 2003, 29). Furthermore, the EPAA was amended to, *inter alia*, ensure that consent authorities must receive endorsement from the Rural Fires Service before approving subdivision for residential or rural residential uses<sup>25</sup>. This relates to the need to utilise the planning system to strategically help minimise the advent of fire damage.

In some outer wealthy established suburbs, especially to the north and south of Sydney, insufficient consideration was once given to the potential impact of bushfire in planning design. There are communities with, for example, one road access. Properties may be located on ridge tops above steep sideslopes and close proximity to bushland. This is where bushfire hazard reduction is cardinal for safety purposes. But as Little (2003) contends, more attention must be paid to the planning system in order to circumvent such problems. For example, siting principles can be improved. Greater setbacks that separate housing from bushland can be effective. Inclusion of perimeter roads can be valuable. Documents have been prepared to assist better planning on the ground (Little, 2003), such as *Planning For Bushfire Protection*, a guideline prescribed by both the EPAA and the RFA Regulation.

In terms of LEPs, provisions relating to bushfire are common at the urban periphery. This is the result of firm directions by the State Government. Inclusion of bushfire provisions is a relatively new ingredient in the complex planning pudding. *Campbelltown (Urban Area) LEP 2002* contains numerous clauses. In various zones, such as Rural Future Urban, bushfire hazard reduction needs consent; in others, especially special roadway zones, consent is not required provided it complies with a Bushfire Management Plan prepared under the RFA<sup>26</sup>. Another provision states that nothing shall stop the granting of

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<sup>25</sup> *Environmental Planning and Assessment Act 1979* (NSW), s 79AB.

<sup>26</sup> *Campbelltown (Urban Area) Local Environmental Plan 2002*, cll 7-8, 15-18 & 21.

consent for removal of any tree “for the purpose of creating a fire protection zone to protect a dwelling house”<sup>27</sup>. It is plain that human safety overrides amenity here. There is also a vital clause demanding that a ‘development control plan’ (DCP) – i.e. a non-statutory plan that adds detail to the LEP – be prepared for ‘urban release land’ to ensure “amelioration of natural and environmental hazards, including bush fires”<sup>28</sup>. These clauses appear to provide a mix of bushfire hazard reduction and preventative planning.

Curiously, the LEP template is sparse regarding references to bushfire. The only clause that stands out states that “bush fire hazard reduction may be carried out on any land without consent” (at cl 55). This provision is mandatory, and is found in *Liverpool LEP 2008*. Other clauses in the Liverpool LEP relate to its overall aims<sup>29</sup>, complying development<sup>30</sup> and, similar to Campbelltown, the need for a DCP for urban release lands to address bushfire<sup>31</sup>. Obviously the NSW Government agreed with Liverpool City Council to add more provisions to the template. They should be welcomed although they are scarcely outstanding. Perhaps more attention needs to be given to the forthcoming DCPs.

Ultimately, the issue leads to ongoing management by the landholder. While planning may lead the way in a strategic sense, owners of land must take care in choosing plants for their gardens and maintaining their allotments. If they wish to live at the urban periphery, reliance on governmental help alone is insufficient. Despite this, detailed plans backed by sound expertise and regulation can provide far more than reports that gather dust on government shelves.

## 6 Conclusion

This paper presents a conundrum. It approaches three very different issues relating to front and back yards that warrant their own individual approaches. Yet they all must be integrated in a manner that serves the public interest. The first item, protection of amenity, deals essentially with neighbourhood appeal. It is strictly a matter of local concern, involving establishment and maintenance of green charm. In contrast, biodiversity conservation engages international and national influences translated to regional and local levels. It can directly compete against protection of amenity. Yet a council can still encourage landholders to plant pleasant locally indigenous shrubs. The third issue, protection from bushfire, cannot be underplayed. It attracts strong media interest and immediate government response, especially when there is loss of human life.

All three factors raise the potential of the planning system in balancing competing objectives. But priorities may need to be fixed. Adherence to strategic approaches rather than *ad hoc* decisions is imperative. Coordination with other innovative tactics, such as tax subsidies and education campaigns, must take place. Communities must be involved. This leads to a role for local government that goes beyond command and control.

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<sup>27</sup> *Campbelltown (Urban Area) Local Environmental Plan 2002*, cl 30(5)(a).

<sup>28</sup> *Campbelltown (Urban Area) Local Environmental Plan 2002*, cl 42J(2)(f).

<sup>29</sup> *Liverpool Local Environmental Plan 2008*, cl 1.2(2)(i).

<sup>30</sup> *Liverpool Local Environmental Plan 2008*, cl 3.2.

<sup>31</sup> *Liverpool Local Environmental Plan 2008*, cl 6.6(2)(f).

Many councils are already involved in assisting and training local residents on appropriate plants for their gardens, including free or subsidised seedlings. Advice on what should be removed is another feature. In achieving this, councils may, for instance, hold friendly public forums, courses and workshops, letter drops, club presentations and excursions. Teaching at local schools and establishing special plots of land to preserve and introduce preferred native species is more than possible. These mechanisms can bring together the three key issues raised earlier. Matters such as local floral symbols and bushfire history are crucial. The advantage here is that it moves away from the notion of an over-regulatory 'nanny state'. On occasions, hard decisions must still be made. But a well informed community will be in a better position to tolerate this. Otherwise, a system in the hands of developers will flourish. Of course, the problem of limited local government funding cannot be ignored.

A further need is to reinforce *regional* planning. This is a central plank of the NSW Department of Planning (DoP), with its regional strategies and growth centres policy. The DoP has thankfully moved away from its fixation of LEP-checking in the 1990s. Perhaps a softer approach to reasonable changes to the LEP template sought by individual councils would assist further, provided key regional objectives can be met. The DoP itself continually combats against other agencies that carry their own agendas. The existence of robust well-articulated regional plans containing a degree of flexibility to deal with worthwhile political and/or scientific change might lead the way.

The elements of sound regional plans must filter down to suburban front and back yards. Their designs and management are critical to meet the layers of issues discussed throughout. A vital link is local government, operating at the environmental coalface with close community connections. In order to achieve better outcomes, improved financial resources are essential. Special environmentally-related funding warrants close scrutiny. Amongst the myriad of factors, improvement of private open space is a core factor in the environmental pie.

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