



**Legal & Conceptual Frameworks
for State of the Environment
Reporting**

July 2002

LOWER HUNTER &
CENTRAL COAST REGIONAL
ENVIRONMENTAL MANAGEMENT STRATEGY



Prepared by Twyford Consulting for the Lower Hunter & Central Coast Regional Environmental Management Strategy (LHCCREMS) including the Councils of Cessnock, Maitland, Port Stephens, Newcastle, Lake Macquarie, Wyong, & Gosford.



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1. Introduction

The Capacity Building Project on State of the Environment Reporting was commissioned by the Lower Hunter Central Coast Regional Environmental Management Strategy (LHCCREMS). It involves the following Councils: Gosford City Council; Wyong Shire Council; Lake Macquarie City Council; Newcastle City Council; Cessnock City Council; Maitland City Council; Port Stephens Council.

A description of the project's purpose is shown below:

The State of the Environment Report (SOER) Working Group currently operates across seven councils and is supported through the Lower Hunter and Central Coast Regional Environmental Management Strategy (LHCCREMS). This Working Group recently identified that all member Councils would benefit from the establishment of a 'capacity building' project to build on and extend the work already undertaken in the region on improved reporting on environmental performance.

Capacity building is a learning and development approach to skills, organisational structures, resources and a commitment to improve, in this application, environmental outcomes.

The SOER Capacity Building Project will:

- Enhance the knowledge and skills of Council staff in the design, resourcing and delivery State of the Environment Reports (SOE Reports).
- Facilitate better integration between SOE Reports and Council Management Plans – consistent with the expectations for recommendations of the SOE Report being taken forward as activities for consideration in the management planning process so that there is a clear management cycle of activities and reporting relating to the environment and the promotion of ecologically sustainable development (ESD) (consistent with the 1997 amendments to the Local Government Act).
- Review the potential for regional environmental reporting and resource sharing opportunities across member Councils.

The Project will concentrate on the development of report-preparation skills within Council staff, as well as the potential for improvements in data collection/analysis and organisational systems. Councils will be encouraged to share experiences of successful approaches or innovation to help achieve better outcomes in SOE Reports for all. This work will support and be part of improving Councils 2001-2002 SOE Reports, which are due in November.

Twyford Consulting has been engaged to work on this project with Alan Woodward, Dr Chloe Mason and Gabrielle Kuiper forming the consultancy team. These consultants bring experience in State of Environment Reporting as well as in data collection/usage, performance monitoring and planning in local government.

2. Legal Framework for SOE Reporting in Local Government (NSW)

NSW local governments have been required to prepare annual state of the environment reports since the introduction of the Local Government Act in 1993. This Act creates the legal framework for state of the environment reporting and needs to be read as a whole. In administering the Act, the Department of Local Government provide guidelines on:

- management planning,
- SOE reporting,
- matters relevant to environmental management generally,
- the promotion of ecologically sustainable development (ESD).

The NSW Local Government Act 1993 was the result of many forces for change and imported corporate approaches to management and planning, a requirement to consider the potential for more environmentally sensitive policies and services combined with improved policies for local and regional economic growth (Tucker in Dollery 1997).

The *Environmental Planning and Assessment Act (EPAA)* 1979 confers powers for development control and strategic land use planning on local government. Many other statutes also confer specific powers. A list of such powers was compiled as an Appendix in the 1999 Environmental Guidelines on SOE reporting, and is correct as of that date (see Appendix B).

There are ongoing substantial reforms to planning systems and the NSW planning statute, the *Environmental Planning and Assessment Act (EPAA)* that affect the environmental activities of Councils. These reforms have led to changes in the information supporting decisions about development approvals, the preparation of environmental planning instruments, and guidance documents.

2.1 Councils' Charters

The requirements for SOE reporting need to be situated within the overall intention and operation of the Local Government Act 1993. The Act sets out twelve guiding principles as a Charter (s8). Of these principles, a couple bear particularly upon the carrying out of environmental management:

- properly manage, develop, protect, restore, enhance and conserve the environment of the area for which it is responsible, in a manner that is consistent with and promotes the principles of ESD;
- to have regard to the long term and cumulative effect of its decisions.

Arguably, the concern for inter-generational equity, namely, that the present generation should ensure that the health, diversity and productivity of the environment are maintained or enhanced for the benefit of future generations, and the relatively

recent recognition of the necessity for environmental management including the promotion of ESD would suggest that two further principles are also pertinent:

- to promote and to provide and plan for the needs of children
- to exercise leadership in the community.

The ‘principles of ESD’ are defined in the Dictionary at the end of the Act. ESD is to be achieved by implementing principles and programs that allow for:

- the precautionary principle
- inter-generational equity
- conservation of biological diversity and ecological integrity
- improved valuation, pricing and incentive mechanisms.

These principles are identical to those first incorporated in the Protection of the Environment Administration Act 1991 and subsequently taken up by amending legislation to other statutes in NSW.

2.2 The purposes of the Local Government Act (LGA)

The purposes of the LGA, explicitly include environmental and ESD considerations:

S7(a) to provide the legal framework for an effective, efficient, environmentally responsible and open system of local government in New South Wales

....

S7(e) to require councils, councillors and council employees to have regard to the principles of ecologically sustainable development in carrying out their responsibilities.

The Act was amended in 1997 and as part of those amendments, the requirement of sub-section S7(e) was extended to councillors and council employees and deepened from ‘to have regard to the protection of the environment’ to ‘to have regard to the principles of ecologically sustainable development in carrying out their responsibilities’. Although these changes appear minor, they indicate the strengthening of responsibilities for environmental management and promoting ESD. This effect becomes more apparent from amendments to the chapter of the Act concerned with management planning and accountability of Councils, as discussed below.

2.3 Management planning and accountability of Councils

Chapter 13 of the LGA sets out the mechanisms as to how councils are made accountable for their actions:

- Management plans (Part 2)
- Financial plans (Part 3)
- Annual reports to include a report as to the state of the environment (Part 4)
- Inquiries, reviews and surcharging (Part 5).

Both Parts 2 and 4 are relevant to this SOE reporting project.

Chapter 13 Part 2 of the Act deals with the annual preparation of management plans relating to council's 'principal activities'. 'Principal activities' reflect a grouping of services in a way that supports the achievement of a council's vision and mission. Although the management plan is prepared annually, the principal activities are to extend for at least the next three years whereas revenue policy relates to the next financial year.

The plans must be prepared each year in draft (s402), publicly notified (s405), submissions received and considered (ss405, 406) and the plan adopted: s406.

The content of draft management plans with respect to council's work and activities are specified: s403. This provision requires the council to include in the draft management plan statements setting out the principal activities which the council proposes to conduct, objectives with performance targets for each principal activity, the means proposed to achieve those targets, and how the council will assess its performance, together with any other matter required by the regulations (s403(1)).

Section 403(2) sets out the particulars which must be included in the statement of principal activities and the activities for environmental management and promoting ESD are emphasised in italics below.

The statement of principal activities must include the following particulars:

- capital works projects to be carried out by the council
- services to be provided by the council
- asset replacement programs to be implemented by the council
- sales of assets to be conducted by the council
- activities of a business or commercial nature to be undertaken by the council
- human resource activities (such as training programs) to be undertaken by the council
- *activities to properly manage, develop, protect, restore, enhance and conserve the environment in a manner that is consistent with and promotes the principles of ecologically sustainable development*
- *activities in response to, and to address priorities identified in, the council's current comprehensive report as to the state of the environment and any other relevant reports*
- programs to be undertaken by the council to implement its equal employment opportunity management plan.

Note. Equal employment opportunity plans are dealt with in Part 4 of Chapter 11. (s403(2) italics added for emphasis)

2.4 Regulations relating to management planning

Part 4 of the *Local Government (General) Regulation, 1999*, as updated 26 June 2002, provides more detailed specification as to the contents and preparation of Draft Management Plans.

REGULATION PART 4 - DRAFT MANAGEMENT PLANS

- 27. Guidelines
- 28. Additional matters to be included in draft management plans
- 29. Draft management plan activities relating to ecologically sustainable development
- 30. Additional matters to be included in draft management plans implementation of access and equity activities

In particular, in preparing a draft management plan a Council “must have regard to” any guidelines (s.27).

The Regulation now specifies “additional matters” for inclusion in council’s management plan as any proposed council activity relating to the management of:

- (a) stormwater,
- (b) coasts and estuaries,
- (c) sewage,
- (d) waste (s.28(1);s403(1)).

The management of these four specified issues can affect the environment (and pose risks to human health), although responsibility for the activities to manage these issues may not lie within an environmental services unit. If any activity related to the above is proposed by Council then a number of particular matters must be observed and these are listed in s.28(2).

Section 29 of the Regulation set out in full below specifies activities relating to ESD, including environment protection activities:

29 Draft management plan activities relating to ecologically sustainable development

(1) When preparing the part of its draft management plan dealing with environmental protection activities, a council must do the following:

- (a) it must apply the principles of ecologically sustainable development,

(b) it must consider its most recent comprehensive state of the environment report,

Note. Under clause 40, a comprehensive state of the environment report is taken to include any subsequent supplementary state of the environment reports relating to the same area.

(c) it must consult the community (including environmental groups),

(d) it must involve the community (including environmental groups) in the development of environmental management strategies.

(2) In this clause, environmental protection activities means the principal activities that the council proposes to conduct in order to properly manage, develop, protect, restore, enhance and conserve the environment in a manner that is consistent with and promotes the principles of ecologically sustainable development (as referred to in section 403 (2) of the Act).

2.5 Management planning guidelines

The Department of Local Government published *Management Planning Guidelines*, as foreshadowed in Regulation s.27, on 1st February 2000. A Department of Local Government Circular to Councils explained that the *Guidelines* place particular emphasis on recent developments in management planning, including:

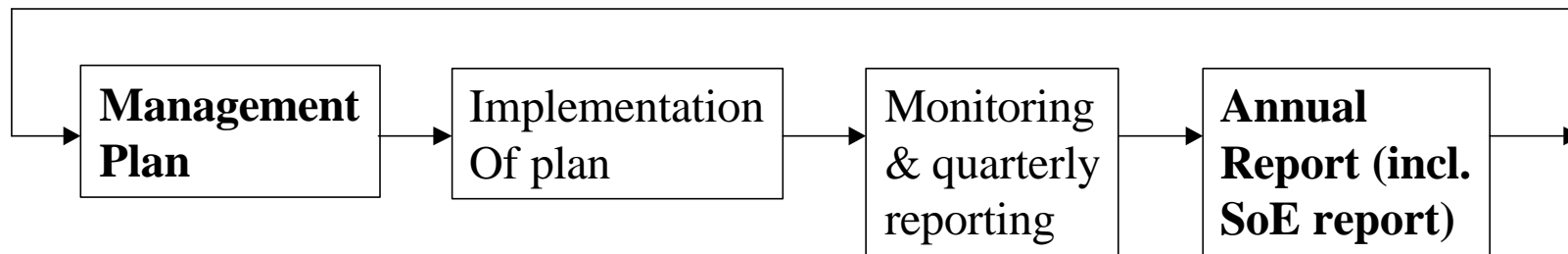
- The application of the principles of ESD throughout all Council activities
- The development of social policy
- Increasing community consultation in the development of the plan; and
- Encouraging a “whole of council” approach in management planning.(Circular No. 00/06)

These *Guidelines* are invaluable to Council staff with responsibilities for the strategic component of planning environment protection activities (and the promotion of ESD). The *Guidelines* create expectations and remind staff that for practical reasons the inclusion of principal activities is “the ability of council to provide resourcing and performance information for each principal activity”(p.19).

Figures from the *Guidelines* illustrate the annual reporting cycle (Figure 1) and the timeline for the council’s management planning cycle (Figure 2).

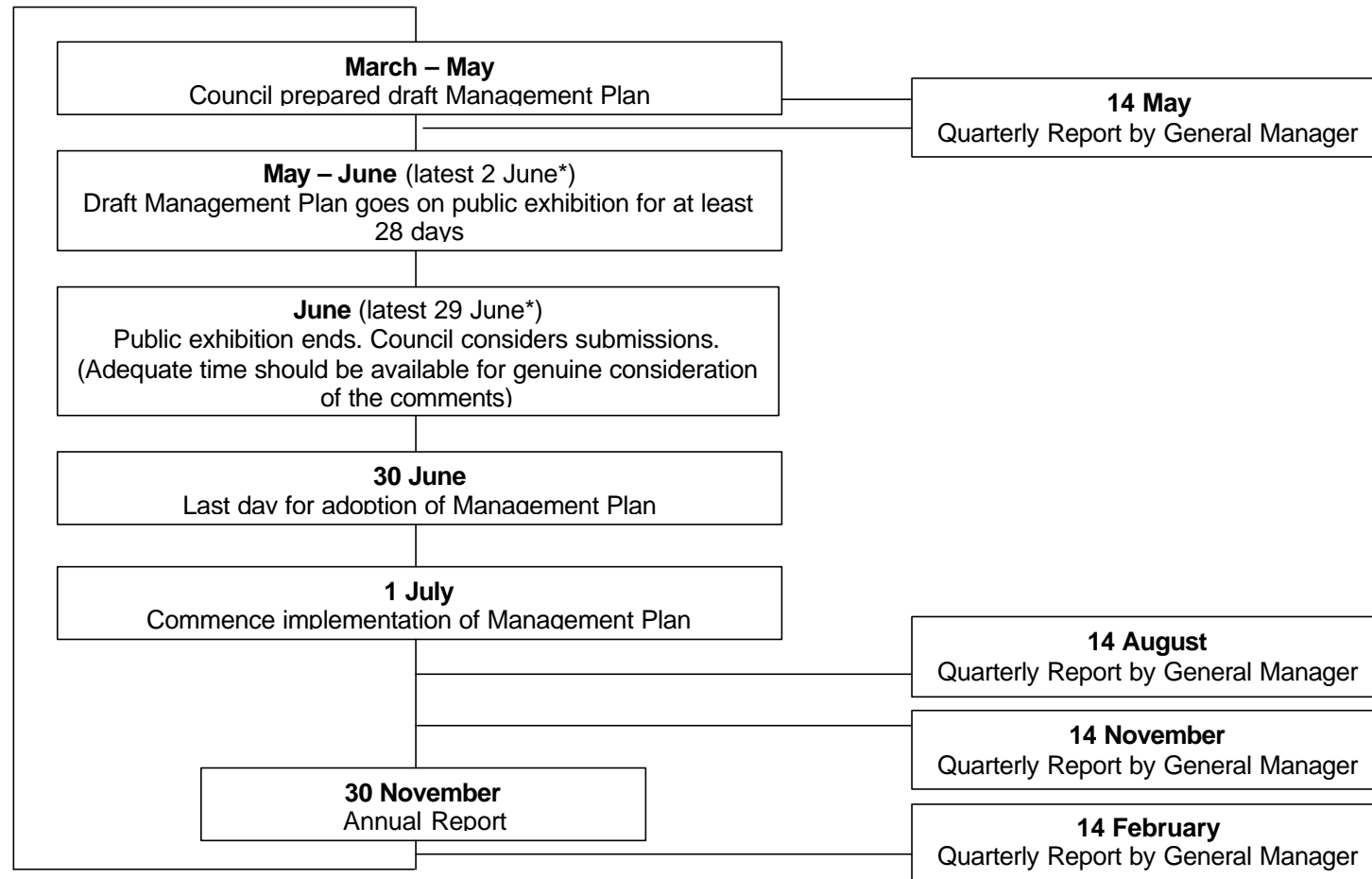
Figure 1 – Annual reporting cycle for local government in NSW

Annual Reporting Cycle



Source: Department of Local Government (2000), *Management Planning Guidelines*, p. 4.

Figure 2 Management Planning Cycle



Source: Department of Local Government (2000), *Management Planning Guidelines*, p. 9.

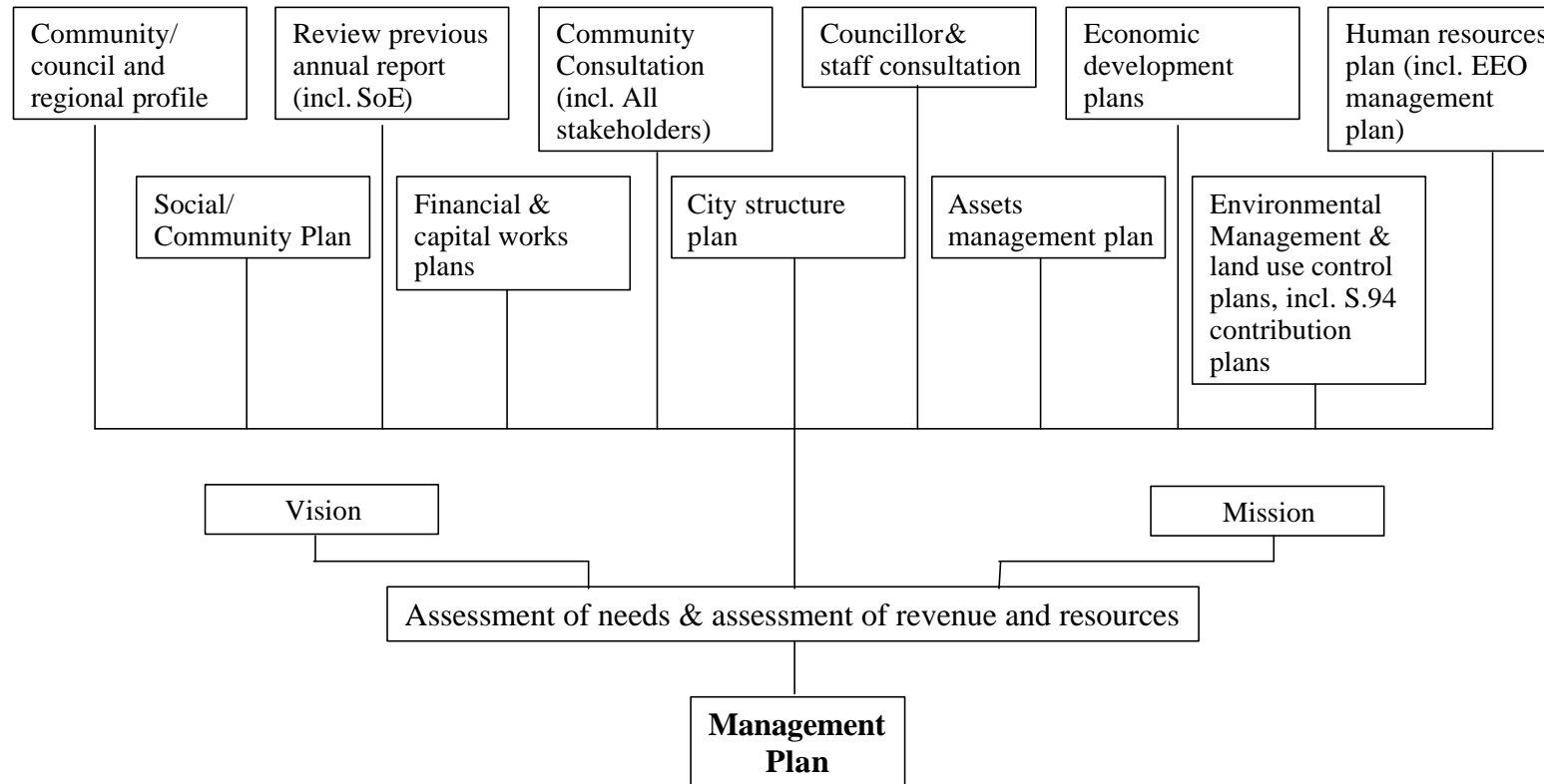
Figure 2 indicates the dynamic nature of the process with the (mandatory) quarterly reporting by the General Manager to the Council. This report must cover the extent to which the performance targets, as set by the council's current management plan, have been achieved during that quarter (s407).

Strategic management involves a whole-of-Council approach and one of the inputs is to review the previous annual report, including the SOE report. A 'whole-of-council' approach entails understanding and co-ordinating the relationship between all of the council's functions (p.10). The proposed activities can then be prioritised to allow the council's resources to be allocated and to allow the council's budget to be tailored to the strategic intent of the council rather than merely up-dating the previous year's budget. Figure 3 provides an example of the sources and processes that a council may use to achieve a "whole of council" strategic management approach.

Community consultation, in some form, is part of this approach. The *Guidelines* suggest, and we concur, that it is useful to include a chart or list of all Council plans as an appendix in the management plan, see Figure 3.

Figure 3 Whole of Council approach to management planning

Whole of Council Approach



Source: Department of Local Government (2000), *Management Planning Guidelines*, p. 10.

2.6 Annual reports including state of the environment reports

Chapter 13 Part 4 of the Act deals with annual reports within a long, single section s428. The report relates to the achievements with respect to the objectives and performance targets set out in its management plan for that year (s428(1)). The contents are set out in sub-section 2, including the requirements for a report on the state of the environment in the area (s428(2)(c)):

a report as to the state of the environment in the area, and in particular in relation to the following environmental sectors:

- (i) land,
- (ii) air,
- (iii) water,
- (iv) biodiversity,
- (v) waste,
- (vi) noise,
- (vii) Aboriginal heritage,
- (viii) non-Aboriginal heritage,

with particular reference, with regard to each such environmental sector, to:

- (ix) management plans relating to the environment,
- (x) special council projects relating to the environment,
- (xi) the environmental impact of council activities,

Note. Section 70 (2) of the Threatened Species Conservation Act 1995 requires a council that is identified in a recovery plan (within the meaning of that Act) as responsible for the implementation of measures included in the plan to report on action taken by it to implement those measures in its annual report as to the state of the environment of its area.

Section 87 (2) of that Act imposes the same requirement in relation to threat abatement plans (within the meaning of that Act).

2.7 Regulations relating to SOE reporting

Part 5 of the *Local Government (General) Regulation, 1999*, as updated 26 June 2002, provides more detailed specification as to the contents and preparation of SOE reports.

Regulation PART 5 - ANNUAL REPORTS

Division 1 - Additional information general

31. Additional information for inclusion in annual report

Division 2 - State of the environment reports

32. Meaning of "environmental indicator"
33. Requirements for state of the environment reports
34. Preparation of all state of the environment reports
35. Preparation of comprehensive state of the environment reports
36. Content of comprehensive state of the environment reports
37. Content of supplementary state of the environment reports
38. Frequency of comprehensive and supplementary reports
39. Report may contain information relating to region
40. Comprehensive report taken to include supplementary report

Section 34 of the Regulation lists the requirements in preparing the report. As for the preparation of draft management plans, Councils are required to consider guidelines relating to the preparation and content of SOE reports (s34(a)).

34 Preparation of all state of the environment reports

A state of the environment report meets the requirements of this clause if the council, in preparing the report, does each of the following:

- (a) it considers the guidelines and directions (if any) relating to the preparation and content of state of the environment reports that are issued to councils from time to time by the Director-General,
- (b) it consults the community (including environmental groups),
- (c) it involves the community (including environmental groups) in monitoring changes to the environment over time,
- (d) it produces the report in a form that is readily understandable by the general community.

2.8 State of the environment reporting guidelines

The Department of Local Government has revised and published *Environmental Guidelines: State of the Environment Reporting by Local Government and Promoting Ecologically Sustainable Development*, as provided in Regulation section 34(a), on 23rd December 1999. The Circular to Councils listed the main changes incorporated in the revised *Environmental Guidelines*:

- A greater focus on the relevance of SOE outcomes in local council's management planning and Annual Reporting cycle
- A new section on the integration of the SOE report with the management plan
- The inclusion of a list of core environmental indicators for use by Council
- The inclusion of Volume 1 of the *Sustainability Guidelines for Decisionmakers* (produced by SSROC); and
- The inclusion of a table of the legislation relating to environmental activities of councils (Circular No. 99/97).

There is a complementary relationship between the *Environmental Guidelines* and the *Management Planning Guidelines*. Both sets of guidelines are invaluable to Council staff, in particular staff with responsibilities for the strategic component of planning environment protection activities and the promotion of ESD.

The *Environmental Guidelines* consider the aim of SOE reporting to be a tool for environmental management and education (p.4). As a management tool of the council, the SOE report comes within the management planning-annual reporting cycle (Figure 1) and constitutes a part of the council's annual report.

The *Environmental Guidelines* state that:

The issues raised in this State of Environment Report should be used by the council for developing its environmental strategies within the management plan and its policy in relation to its role as environmental steward and manager. The SoE report has the potential to influence virtually all of the council's functions because most of those functions have environmental implications (see Chapter 2 -- *Ecologically Sustainable Development: Local Government Context* and Appendices A,B & E.).

The *Guidelines* suggest that it is useful to include a chart or list of all plans be included as an appendix in the management plan, and those relating to activities for environment protection and promoting ESD can be highlighted.

The *Environmental Guidelines* summarise the required contents and scope of reporting (comprehensive, supplementary, and regional) (pp.10-12). Councils are required to prepare a comprehensive SOE report at least every 4 years, within 12 months of the election of every new council. In the other 3 years, Councils are required to prepare annual supplementary SOE reports. The four yearly

comprehensive SOE reports are to incorporate baseline and background information, while the annual supplementary SOE reports are required to identify any new environmental impacts, update trends in environmental indicators that are important to each sector.

The *Environmental Guidelines* overtly encourage Councils to be innovative in the presentation of information and give some useful examples (p.11). The *Environmental Guidelines* also provide sections on:

- Identifying issues
- Identifying indicators
- Collecting and managing data
- Presentation of report
- Submitting and releasing the report; and,
- Integrating the SOE report with the management plan.

This material elaborates on the expectations of councils' SOE reporting and management.

3. International Context for SOE Reporting

SOE reports have been produced in over 100 countries worldwide since 1969 (Comolet, 1990; Parker & Hope, 1992). SOE reports have been produced not only by all levels of government, but also by international agencies (eg United Nations Environment Programme, European Environment Agency, OECD), environmental non-government organisations (NGOs) such as the World Resources Institute and World Conservation Monitoring Centre, and by corporations. State of the environment reporting has been and is supported by the United Nations (UN), the OECD and the European Union (EU).

Australia has obligations and commitments to report on the state of the environment due to its membership of the UN, OECD, World Meteorological Organisation and due to its ratification of a number of international agreements such as the Montreal Protocol for the Protection of the Ozone Layer and the Convention on Biological Diversity.

What constitutes a state of the environment report varies widely, but one popular definition of state of the environment reporting is “the development of objective, comprehensive and science-based information on environmental conditions and trends, including their significance, employing an integrated, holistic approach” (Rump quoted in Kristensen, Anderson, & Denisov, 1999, p. 9). The Organisation for Economic Co-operation and Development (OECD) states that a state of the environment report is “a way of responding to public demands for environmental information, it assists in the definition, implementation and evaluation of environmental policies and it helps to incorporate environmental concerns in decision making” (1979, p.9). SOE reports are thus seen as a tool to improve the state of the environment, in particular by being used to aid decision-making. However, the extent to which SOE reports have been part of an organisation’s management planning cycle varies greatly.

A report to the European Environment Agency commented, “There is very little experience in determining if the information in State of the Environment reports reaches the aims” (Kristensen, Anderson, & Denisov, 1999, p.21). Parker and Hope’s paper surveying SOE reports around the world acknowledges that, “Producing a SER [state of the environment report] does not indicate that prudent environmental policies are being followed in a particular place, or that accurate data are being collected” (1992, p. 26).

Regional environmental reporting in 21 regions in Europe was surveyed for the REGENA project in terms of the lead organisation and competencies, legislation, objectives, the process (for preparing the report), the content and whether environmental reporting was achieving its objectives. The survey found that:

In a small number of regions there was a clear mechanism, usually established by national or regional law, which linked ER [Environmental Reporting] directly into the formulation of environmental policies and programmes. However, in most regions such a mechanism did not

exist, and practitioners relied on influence, persuasion and awareness raising. None of the regions appeared to have a direct mechanism which linked ER to other policies and programmes such as land use planning. (C.A.G. Consultants & Land Use Consultants, 1996, p. iv)

They reported that the main concern amongst report authors was that environmental reporting “had not changed policies as much as had been hoped” (C.A.G. Consultants & Land Use Consultants, 1996, p. v). Therefore, the issues facing Councils in the Lower Hunter and Central Coast about integrating SOE reporting and management plans are common issues. It is necessary to look to the broader developments in environment protection and the promotion of ESD in order to improve organisational functioning with respect to the environment.

In parallel to developments in SOE reporting, over the past 30 years the need to apply ESD principles in decision-making has been recognised, for example, in the Rio Declaration and Agenda21 of the United Nations Conference on Environment and Development 1992. More recently, this approach has focussed on integrating the environment into all aspects of an organisation’s activities. A specific example is the inclusion of ESD principles, such as the internalisation of externalities (improved valuation) in the policy and action framework for each sector of the European Union (Article 6 of the EC Treaty). In this way, a systems approach is being applied by organisations to all of their activities to enable more effective environment protection.

4. Expectations for SOE Reporting

The council and its community have considerable latitude to determine its activities and priorities, subject to controls in the Act (and its Regulation and relevant guidelines) and elsewhere (Pearson 1994: 235, 286-289).

The legal framework for SOE reports has created requirements and expectations. The broad objects of the Act are directed to ensuring “an effective, efficient, environmentally responsible and open system of local government” and that the principles of ESD are given regard by councils, councillors and council employees in carrying out their responsibilities. Specific references to the application of ESD principles are listed in the Environmental Guidelines.

Applying the principles of ESD is obligatory for all council staff and councillors. In keeping with the obligation to promote the principles of ESD, an expectation is created that opportunities exist for staff and Councillors for learning and development about the ESD principles and examples of their application in council activities.

4.1. The legal framework for management planning

With regard to management planning for environment protection activities, the legislative requirements include:

- having regard to the principles of ESD
- having consideration of the latest comprehensive state of the environment report
- having consideration of their obligation to protect the environment
- having consideration of their obligations with regard to community lands
- activities to properly manage, develop, protect, restore, enhance and conserve the environment.

In practice, therefore, the approach to environmental management would reflect contemporary concepts and methods such as risk management, materials cycling, and measures toward the implementation of the ESD principles by councils. Activities for environmental protection across Council that are undertaken within the last year become the subject of the annual report, the SOE report.

4.2. Requirements and expectations for SOE reporting

The Act specifies the content and scope of the SOER report including:

- the use of eight 'environmental sectors', with particular reference to:
 - management plans
 - special council projects relating to the environment, and
 - the environmental impact of council activities
- particular reporting protocols for the 'additional matters' of stormwater, coasts and estuaries, sewage, and waste
- the use of the pressure-state-response model
- the use of environmental indicators
- consulting with the community and involving the community in environmental monitoring and environmental management strategies
- producing a report in a form that is understandable by the general community
- integrating the SOE report with Council's management plan as part of the management planning-reporting cycle.

Other than the heritage and waste sectors, the focus is upon environmental media, rather than on human activities such as human settlement, energy consumption, and chemicals management. Owing to the significance of the 'pressure' and 'response' of such human activities for environment protection of land, water, biodiversity, and air, it is therefore appropriate for Councils to include these human activities in their SOE reports.

5. Summation

Synthesising the amendments to the Act, the Regulation and the two sets of guidelines, it is apparent that SOE reporting is expected to have become part of council's strategic management involving a whole-of-council approach. As a result, preparing SOE reports entails co-ordinating information and securing co-operation from staff across council.

SOE reporting can be usefully framed by reference to council's strategic management plan and introduced by a 'community profile' as described in the *Management Planning Guidelines* (pp.16-17).

The *Environmental Guidelines* convey the expectation that it is appropriate for councils to identify their local issues and to report on issues of concern (not necessarily the same issues) to the council and the community in the SOE report. As part of the management cycle, these *Environmental Guidelines* also suggest sources of information about the general community knowledge and interest as well as how to find out about the equivalent environmental knowledge, interest and practices of the local community (pp.12-13).

A critical assessment of the 'responses' in the draft SOE report should lead to recommendations for the ongoing management or new strategies related to environment protection. These recommendations can then be considered in greater depth as part of strategic management by Environmental Unit, whether alone or together with a corporate strategic planning unit to identify priority activities for environmental protection of the area and for environmental management of council's own functions, according to the budget and relative environmental risks.

In addition, the *Environmental Guidelines* express a hope that regional reporting will be increased (p.17, pp.11-12) in order to allow better targeted environmental monitoring and rationalisation of programs between councils. In our view, it is likely that SOE reports have too readily been seen in isolation from council management planning-reporting processes. The Institute of Public Works Engineering Australia (IPWEA) recent report (Feb 2002) has shown that although a third of councils produce a SOE report only because it is mandatory, most of the councils were described as being either 'committed' (44%) or 'proactive' (17%). Marked differences in approach are reported for metropolitan councils and regional councils; regional councils are under-represented in the 'committed' or 'proactive' categories. Many reasons are advanced for this reported difference in approach.

However, the IPWEA's report seems to continue with an isolated approach to SOE reporting that undermines the very potential for improving SOE reports in a manner that is relevant to the functioning of local government and its relations with its community. The quality and utility of SOE reports must, in our view, be understood in the context of their relationship to the processes of management planning and the requirements on Councils in relation to ESD. The SOE reports may be seen as important inputs to the whole of Council planning and operations if this contextual understanding is promoted and upheld.