



NSW Legislative Assembly Hansard

Protection of Agricultural Production (Right to Farm) Bill

Extract from NSW Legislative Assembly Hansard and Papers Thursday 24 March 2005.

Second Reading

Mr DONALD PAGE (Ballina—Deputy Leader of The Nationals) [10.19 a.m.]: I move:

That this bill be now read a second time.

The object of the Protection of Agricultural Production (Right to Farm) Bill is to provide for rural land use notices to be given to purchasers of land adjoining or adjacent to rural land and for those notices to be taken into account in any subsequent proceedings by such purchasers to limit or prohibit the use of that rural land for rural purposes. For many years farmers and landowners have been concerned about the threat to legal agricultural activities from neighbours who buy into a rural setting and then proceed to complain about existing agricultural activities next door. For example, on the North Coast of New South Wales many new residents are setting up bed-and-breakfast and cabin accommodation on land previously used for agricultural purposes or on land adjoining agricultural land. When their neighbours continue to undertake rural activities there is the potential for conflict over farm machinery noise, pest control and numerous other issues. In many cases, the new residents also raise their concerns about legal agricultural activities with various authorities, such as local and State governments, and request that they be closed down.

Some of this anxiety has occurred as a result of poor planning decisions by local government authorities, which have failed to consider adequately land use conflict when approving subdivisions on adjoining land. There is potential for great discord in these circumstances, with the new residents having little or no regard for existing land use rights. Typically, farmers have responded to this situation by calling for "right to farm" legislation—a concept that exists in overseas jurisdictions and which aims to protect legitimate agricultural production in the face of urban encroachment. The New South Wales Farmers Association has long called for legislation along the lines of this bill. In addition, it has called for a State environmental planning policy to address land use conflict issues. This latter call is a more problematic area, and the bill does not purport to solve all land use conflict issues. My legislation does, however, recognise existing use rights.

The legislation that I have introduced today aims to protect agricultural activities by clearly identifying to potential purchasers existing agricultural activities on adjoining land. In the event a dispute arises later, a court can take into account the new landholder's prior knowledge of agricultural activities. It is important to note that this legislation does not override any legislation that would give a neighbour to farming activity the legal right to take action against any illegal activity. For example, the clean air and noise legislation will still apply, together with all other relevant legislation.

The legislation allows landowners to continue to apply for an alternative use of their land through rezoning. It does not inhibit landowners' capacity to seek to rezone their land. Essentially, the legislation emphasises that continuing legal use rights exist and the buyer of land adjacent to rural land purchases the land in that knowledge. It does not give a farmer the right to engage in any illegal or non-permitted activity. The legislation clarifies the position for all parties in relation to existing legal use rights should a dispute arise subsequently. By clarifying the law, this legislation protects a farmer's legitimate agricultural activities and, in the process, helps protect our food and fibre supply into the future. This is important because over the past 20 years farm numbers in New South Wales have declined by 25 per cent. The New South Wales Farmers Association predicts that horticulture and market garden numbers will drop by 30 per cent in the next few years. Agriculture is a valuable sector in New South Wales, contributing \$10.2 billion to the State's economy in 2002. We cannot afford a continued decline, as urban land use increasingly encroaches on traditionally rural areas.

I now move to the details of the bill, which prescribes the handing over of rural land use notices to purchasers of land adjoining rural land. These notices are then taken into account in any subsequent proceedings by the purchasers to limit or prohibit the use of that rural land for rural purposes. The intention of the bill is to give landholders who reside on land zoned rural across New South Wales the right to carry out legitimate activities permitted within that zone without harassment or complaint from neighbours. The most common complaints of this kind involve noise, dust, odour and chemical spray. The matter is addressed by requiring a vendor under a contract for the sale of land adjoining or adjacent to rural land to attach a rural land use notice to the contract. The notice is to be issued by the local council and attached to the contract before it is signed by, or on behalf of, the purchaser. If such a notice is attached, the purchaser is taken to have been given the notice.

The rural land use notice must contain, first, the name of the purchaser under the contract; second, a statement that the land adjoins or is adjacent to the rural land and sufficient particulars to identify that land; and, third, a statement setting out the activities that are permissible on the rural land. The local council must also keep a register of rural land notices that is has provided and make the register available for public inspection. The bill also provides that a rural land use notice can be issued as part of any other notice issued by a council in relation to a proposed land sale. This means that it is possible for a council to issue this notice as part of a section 149 certificate, for example. This will help reduce costs to councils. This is not a guarantee of the types of activities to be undertaken or not undertaken on a neighbouring rural property, but rather advice on its current rural use. The notice is proof that the purchaser has been advised that his or her neighbours are located on rural use land and undertake associated rural activities.

In the event that a landowner attempts to limit, prohibit or otherwise impede the use of the adjoining or adjacent rural land for agricultural or agricultural management purposes the notice must be taken into account by a court dealing with the

dispute. In any court proceedings production of a copy of a rural land use notice relating to rural land is evidence that the owner purchased the land knowing that the rural land was, or could be, used for the activities referred to in the notice. The bill prohibits complaints against legal and permissible activities only on rural zoned land, not illegal or non-permissible activities.

The bill is designed to protect all landholders: those participating in agricultural activities and those on adjacent properties. It allows local government authorities and landholders to share the responsibility for land use conflict prevention. The key to reducing conflict is shared responsibility and sensible land use planning. I commend the bill to the House and, as Deputy Leader of The Nationals, I take pride in the fact that this initiative is being put forward not just by me but on behalf of the New South Wales Nationals and Liberal parties. This is a genuine attempt to protect agricultural production in areas where it is permitted legally. It is not party-political legislation. I hope that Government and Independent members of the House will view this legislation in the positive light in which it is brought forward, and support what is essentially a clarification of existing use rights regarding agricultural land.

I reiterate that the legislation does not weaken in any way a neighbour's capacity to take action against a farmer who engages in any illegal activity. The usual legislation regarding clean air and noise abatement will remain in force. The bill in no way mitigates existing rights if a neighbour believes a farmer is doing the wrong thing. However, it makes it plain that existing use rights apply in terms of agricultural production. Purchasers of properties will be made aware that rural land use notices are attached to the contract of sale and it will be assumed that the purchaser has knowledge of the fact that the adjacent land is being used, or can be used, for agricultural purposes. In the event of a subsequent dispute, under the bill the court must consider the fact that the purchaser knew at the point of purchase that his or her property was adjacent to land that was available for agricultural activities. The court will take that knowledge into account when determining the outcome of the conflict.

This issue of right to farm has been around for a long time. It has been tried in other jurisdictions in slightly more complicated versions. The legislation that I propose is a relatively simple concept that essentially seeks to clarify what I believe the existing law to be. In my view legitimate existing use rights in relation to agricultural land have been watered down over time. This has been the result of complaints by people who have moved into an area and been unhappy about neighbouring agricultural activity. I commend the bill to the House.