

**Submission
No 32**

INQUIRY INTO REGIONAL PLANNING PROCESSES IN NSW

Organisation: NSW Farmers Association

Date received: 5/02/2016



**Submission to the
NSW Legislative Council Standing Committee on State Development**

Inquiry into regional planning processes in NSW

February 2016

**NSW Farmers' Association
Level 6, 35 Chandos St
St Leonards NSW 2065**

emailus@nswfarmers.org.au

Contents

Executive summary	3
Summary of recommendations	4
Introduction	5
On-farm management and development	7
Local planning	9
Peri-urban planning	11
State-significant development	14
Conclusion	16
Appendix 1	17

Executive summary

NSW Farmers welcomes the Legislative Council's Standing Committee on State Development's Inquiry into regional planning processes in NSW. Despite there being an increasing level of land use competition and conflict occurring in relation to regional planning issues, recent policy reform has not specifically examined opportunities that will benefit the regions, as opposed to metropolitan NSW, and so this inquiry is very welcome.

There are also a number of policy reform initiatives taking place which are tangential to regional planning issues and so we believe that it is an opportune time to examine how these laws operate together and in the context of land use planning in NSW. The NSW Department of Primary Industries' Strategic Plan of 2015 to 2019 aims to increase the value of primary industries within NSW by 30% by 2020¹ and we firmly believe that land use policy reform across the varying levels of government is needed to achieve this target. NSW Farmers' submits that poor regional planning is a result of excessive compliance as well as a lack of strategic planning for agriculture and aquaculture. Furthermore, land use conflict as well as retaining the ability to farm are major planning issues faced by both the agriculture and aquaculture industries in NSW. This submission will outline the following interconnected issues that we believe if addressed properly could go a long way to enhancing not only the strategic approach to regional planning, but the value of NSW agriculture as well.

- On-farm management and development is currently seriously curtailed, farmers have effectively lost the ability to manage and/or expand their farming operation, and have lost the ability to perform important enhancements to the natural resource base;
- Local planning is currently prohibitive, the drafting of the standard instrument local environmental plans in some areas has led to a lot of land locked away in standard instrument environmental zones (E-Zones);
- Many farmers are being driven off the land, particularly at the rural-urban interface, due to poor planning decisions and a lack of a legislated 'right to farm' in NSW;
- State significant development assessment processes in particular for the extractive industries pose a huge threat to the natural resource base and the future of agriculture and there is currently no process to prevent the potential loss of valuable agricultural land because of these industries.

NSW Farmers' policy position is that the way it currently stands, the NSW Planning scheme is failing in the protection and promotion of agricultural land use. As stated above these issues are interconnected and may overlap, but represent on the whole, a need to re-evaluate how we plan for the best use of land in regional NSW.

¹ NSW Government Department of Primary Industries *Strategic Plan 2015-2019* page 5 available via <http://www.dpi.nsw.gov.au/aboutus>

Summary of recommendations

Recommendation 1: That on-farm development opportunities are assessed at a regional or district level using triple-bottom-line considerations that are relevant to that region.

Recommendation 2: The regional planning process must incorporate a more flexible approach at a local level, guided by strategic plans that recognise the value of agriculture socially, environmentally and economically.

Recommendation 3: Provide regional planning policies that promote rather than restrict food and fibre production, and importantly that prohibit the local council application of environmental zones over farm land.

Recommendation 4: Legislate a right-to-farm in NSW which would protect farmers against lawsuits for lawful and accepted farming practices, particularly in peri-urban areas.

Recommendation 5: Create clear directions on principles of the right to farm for local councils.

Recommendation 6: Create a system of transferable development right (or agricultural enterprise scheme) to protect highly fertile and productive land in peri-urban areas, particularly in the Sydney Basin.

Recommendation 7: Using regional planning policies, identify areas of NSW containing highly productive and sensitive natural resources that are inappropriate to mine at this time.

Recommendation 8: Provide community certainty through regional planning policies by identifying areas of NSW where mining/gas extraction may or may not be appropriate depending on further assessment.

Introduction

NSW Farmers is Australia's largest state farming body, representing the majority of commercial farm businesses in NSW, ranging from broad acre, meat, dairy, wool and grain producers, to more specialised producers in the horticulture, egg, pork, oyster, poultry and goat industries.

Access to land for agricultural use is one of the primary issues facing agriculture in NSW. Pressure from urban expansion, environmental restrictions and conflict between agriculture and the extractive industries has led to serious declines in the amount of land in productive use across the state.

Farm held land in NSW collective represents over \$40 billion investment in real property. Agriculture contributed approximately \$14.5B (approximately 3.4%) to the State's economy in 2011². NSW Farmers is a strong advocate for sustainable growth and economic prosperity for regional NSW. While we support new opportunities for jobs and industry in the regions, this cannot be at the expense of the environment, food security or the autonomous decision making of local communities.

When undergoing strategic planning in NSW it must be remembered the scarcity of good soil and reliable water on the Australian continent. Many Australians are not aware of this rarity, and this is evidenced by a planning system that has allowed low density housing, extractive industries and poorly planned environmental restrictions to permanently alienate some of our most productive land.

During a consultation period for a proposed new planning system for NSW³ in 2012, the Department of Primary Industries through the Primary Industries Ministerial Advisory Council (PIMAC) devised 8 key needs for the NSW agriculture and aquaculture planning systems. NSW Farmers fully supports and endorses these needs and we reproduce them below. NSW Farmers Association policy on land use planning is reflected in the following principles:

1. Sufficient flexibility to accommodate a variety of activities allowing for modifications;
2. Provisions to enable growth in industries and recognition that not all land is equal;
3. Sufficient provisions so that existing use can continue. Appropriate mechanisms to avoid pressure for land use change arising from unreasonable nuisance complaints;
4. If community needs change and a decision is made to re-zone land, it should be done through a full cost benefit process and provide sufficient lead time to transition;
5. Recognition of the positive effects such as provision of ecosystem services and scenic amenity enabling rural based tourism, and provision that protect these amenities;

² NSW Parliamentary Research Service Statistical Indicators *Agriculture in NSW (July 2012) Statistical Indicators 4/12* (Nathan Wales) available at [https://www.parliament.nsw.gov.au/prod/parlament/publications.nsf/key/AgricultureinNSW\(July2012\)/\\$File/Agriculture+in+NSW+Statistical+Indicators+No+4+2012.pdf](https://www.parliament.nsw.gov.au/prod/parlament/publications.nsf/key/AgricultureinNSW(July2012)/$File/Agriculture+in+NSW+Statistical+Indicators+No+4+2012.pdf)

³ See http://planspolicies.planning.nsw.gov.au/index.pl?action=view_job&job_id=5927

6. Sufficient provisions so that agriculture and aquaculture are not impacted by the externalities of other industries;
7. Consistency in application of planning rules across the State and a streamlined DA process;
8. Recognition that the competition for access to resources from other land uses varies across the state; 'tailoring' of approaches to better balance these competing demands⁴.

NSW Farmers is advocating for a stronger theme in protecting and promoting rather than restricting food and fibre produce in regional planning policy at all levels, local, regional and state.

⁴ Rebekah Gomez-Fort, Policy Manager , Office of Agricultural Sustainability and Food Security, NSW Department of Primary Industries, PowerPoint presentation, *New Planning System Presentation to and discussion with the agriculture and aquaculture industries*, Meeting host: PIMAC, 25 June 2012.

On-farm management and development

For about twenty years to varying extents, farmers as caretakers of the land have been subjected to legislation that is focused on the preservation of individual native species without due regard to the reality of active natural resource management and sustainable agriculture. At the time of writing, the *Native Vegetation Act 2003* is the legislation which is currently limiting productivity. In 2013 NSW Farmers commissioned polling⁵ to sense community attitudes to the growth of farming and the limitations of the biodiversity legislation. Respondents were sought from Western Sydney, other Metropolitan areas (Sydney, Newcastle and Wollongong) and regional NSW. Key findings included that residents of all parts of NSW think that rural economic growth is important (over 90%) and farming should lead this growth (over 60%).

The survey also showed that there is a high level of trust in farmers and belief in their green credentials- farmers are the most trusted group from a long list of different professions including doctors, teachers and politicians. 85% of respondents believe that farmers care about the long-term sustainability of their land, and 60% trust farmers to do right by the environment. 81% of respondents thought that it is unreasonable that farmers have to seek permission to clear weeds from their land, and over 80% thought that it is unreasonable that native vegetation restrictions are costing the average farm \$165,000 a year, and the NSW economy \$1.1 billion a year.

Another key finding relevant to this inquiry was that 75% of residents from all areas of NSW favour a regional approach to vegetation clearing control, as opposed to a case by case approach for each individual farm, using state-wide legislation.

We appreciate that the NSW Government is currently reviewing the Native Vegetation Act with an aim to replace it with a Biodiversity Conservation Act as per an independent panel's report of 2014⁶. However we are aware wary that the drafting of the new legislation will not be truly in line with the Panel's recommendations in all areas, in particular , planning on a regional-scale. To NSW Farmers this is undoubtedly one of the most important areas of reform, moving to regional or district scale using assessments that factor in triple-bottom-line outcomes *that are relevant to that region*. If in the unfortunate event that the biodiversity review results in legislation that is not able to be applied at a regional scale, we urge the members of the standing committee on state development to recognise this issue in a regional planning context.

⁵ Auspoll *Native Vegetation Campaign: Community attitudes towards restrictions and impacts of the Native Vegetation Act 2003* April 2013. Please contact NSW Farmers for a copy of the polling.

⁶ Independent Biodiversity Legislation Panel *A review of biodiversity legislation in NSW Final Report* December 2014 available at <https://www.environment.nsw.gov.au/resources/biodiversity/BiodivLawReview.pdf>.

Relevant terms of reference⁷:

- (a) Opportunities to stimulate regional development under the planning framework including through legislation, policy, strategy and governance,
- (b) Constraints to regional development imposed by the planning framework, and opportunities for the framework to better respond to regional planning issues.

Recommendation 1: That on-farm development opportunities are assessed at a regional or district level using triple-bottom-line considerations that are relevant to that region.

⁷ NSW Parliament Legislative Council Standing Committee on State Development *Inquiry into regional planning processes in NSW* (Terms of Reference) available <http://www.parliament.nsw.gov.au/prod/parlment/committee.nsf/0/AF819E11D264CC43CA257EAC00187430>

Local planning

NSW Farmers opposed the transition to the standard instrument local environmental plan (LEP) starting in 2011 because of fears of council's ability to unilaterally apply inappropriate zoning within local government areas (LGAs) and importantly, over farm land, without due consideration of the effects of the re-zoning. Unfortunately our members' fears were realised when many local councils⁸ in coastal LGAs converted a significant amount of farm land to environmental zones (E2 - environmental conservation, E3 - environmental management, and E4 - environmental living) in draft plans, and some (for example, the Coffs Harbour Shire Council) gazetting finalised plans with no consultation at all.

The application of the standard instrument has been a long battle of the local NSW Farmers' members proving that the land that they are actively farming is in fact most appropriately zoned rural, in order to avail themselves of the proper biodiversity management tools available in state wide environmental legislation.

In October 2014, the NSW Government released a final recommendations report which was a result of an inquiry into environmental zones in the five local government areas of Ballina, Byron, Tweed, Kyogle and Lismore. The report contains a number of improvements to the way that Council's are currently applying e-zones, however it still allows for an e-zone or mapping control to be placed over farm land where it may be entirely unnecessary and inappropriate to do so.

Despite some local authorities demonstrating a more flexible and practical interpretation of the standard instrument, others are applying it as written and failing to tailor locally appropriate standards and guidelines for agricultural land. Furthermore, NSW Farmers remains concerned that most local authorities do not routinely provide nor conduct detailed analysis of the social and economic impacts of the proposed LEPs on local business, local landholders and the local economy.

In regional settings, Local Government should be able to demonstrate to their rate payers including farmers how they are to facilitate the development of farm businesses and the prosperity of the farming community.

Relevant terms of reference

- (d) The effectiveness of environmental planning instruments including State Environmental Planning Policies and Local Environmental Plans (including zoning) to stimulate regional development, and opportunities to improve their effectiveness,**
- (e) Opportunities to increase delegations for regional councils in regard to the planning making processes**

⁸ For example, Ballina, Byron, Tweed, Lismore, Kyogle, Coffs Harbour, and Palarang local government areas.

Recommendation 2: The regional planning process must incorporate a more flexible approach at a local level, guided by strategic plans that recognise the value of agriculture socially, environmentally and economically.

Recommendation 3: Provide regional planning policies that promote rather than restrict food and fibre production, and importantly that prohibit the local council application of environmental zones over farm land.

Peri-urban planning and ‘right to farm’

Zoning land for agriculture does not protect the ongoing viability for the production system unless it is complemented with measures that preserve the ability of farmers to use their land productively. In the Sydney Basin and in other highly populated areas, we have seen the progressive economic sterilisation of agricultural land as neighbourhood complaints and local government regulations prevent farmers from conducting basic farming activities.

Local governments must recognise and plan for the realities for agricultural land use when making zoning decisions that will place residential areas closer to agricultural production. Promotion of the industry to the Local Government Authority is key to achieving this, and would be best placed in regional planning documents. Agricultural businesses can create higher levels of noise, dust and odour than might be expected by purchasers of residential property. This can often mean that agricultural enterprises providing top quality fresh produce to the area can be the subject of a large number of complaints, causing pressure on the business owner and potentially making food production untenable.

In a Memorandum of Understanding (MOU) between NSW Farmers and the NSW Government in early 2015, the NSW Government committed to the development of a right to farm policy for NSW. Since that commitment, the NSW Department of Primary Industries has developed a right to farm policy which includes principles of a right to farm for the information of local planning authorities, as well as a means to collect data and information about right to farm instances. NSW Farmers welcomes this policy and it is viewed as a genuine effort to address increasing land use conflict particularly at the rural urban fringe. It is hoped that this information will be able to be used to form a solid case for a legislated right to farm in the future.

Recommendation 4: Legislate a right-to-farm in NSW which would protect farmers against lawsuits for lawful and accepted farming practices, particularly in peri-urban areas.

Farmers in all areas of NSW also experience complaints either through the council or directly from the complainant on a number of basis- ranging from offensive smells of stock and stock feed to visual amenity of netting for example. Whilst there may not be any legal basis for the claim the complaints continues to cause pressure and stress on farming families. Sometimes this is exacerbated by local councils taking action against the farmer which actually has no legal basis.

Case study – right to farm

In 2015 a NSW Farmers’ member on the central coast was required to move cattle to a front paddock due to severe flooding of the paddocks where the stock were normally contained. Even though the temporary containment of this stock in the front paddock was perfectly legal, the neighbours complained repeatedly to both the farmer and to council about the smell and

the visual amenity of the cattle. The Council wrote to the farmer demanding that the farmer move his stock or face significant penalties. The farmer was most distressed when the Council took this action. This stress was cumulative as the farmer was already under significant pressure because of the floods. Within 3-4 weeks the flood mitigation work was completed and the stock were moved back to their original paddock, however the concern remains that the Council so readily took coercive action against the farmer even where the law was clear on the farmer's ability to temporarily contain stock in that area. Whilst we believe that community awareness programs could improve community members' knowledge of farming practices, we believe that councils in regional areas need information to improve their responses when dealing with both everyday farming activity and emergency, or out of the ordinary, practices.

Recommendation 5: Create clear directions on principles of the right to farm for local councils.

Transferable development rights (TDR)

Given the value of peri-urban agriculture in providing near to market food and fibre, in particular fresh produce, it is critical that a new planning system look at ways to enable farm land to take precedence over urban expansion. One method of addressing this which has been successful in overseas jurisdictions is a system of transferable development rights (TDR). The NSW Farmers Horticulture committee policy makers have termed this proposal an 'Agricultural Enterprise Scheme' or the 'Sydney Basin Farming Credit Scheme.'

This system would allow farmers to sell non-farming development valuations of their properties into other locations and realise the value of these rights without exercising them directly on their land. NSW Farmers' Horticulture Committee and Sydney Basin members believe that the AEC approach would be attached to the enterprise and based on the turnover of the enterprise (as opposed to a TDR approach which is intended to be attached to the land). The AEC scheme is not intended to replace the recognition of agricultural land across local plans and within zones, but rather to create a conducive environment for the protection and promotion of agricultural land that is valuable and located in close proximities to urban areas.

Agricultural Enterprise Scheme/Sydney Basin Farming Credit Scheme

The Agricultural Enterprise Scheme (AEC)/Sydney Basin Farming Credit Scheme (SBFCS) are comparable to the City of Sydney's Heritage Floorspace Scheme (HFS) which 'provides an incentive for the conservation and ongoing maintenance of heritage items in central Sydney by allowing owners of heritage buildings to sell unused development potential from their site, known as heritage floor space...When a heritage item owner completes conservation works they may be awarded HFS by the

City of Sydney. The awarded HFS can then be sold to a site that requires it as part of an approved development application. The money raised offsets the costs of conserving the heritage item⁹.

Similarly, AEC's could be established in the planning controls of the new local plans. They would be a private agreement between the owner of agricultural enterprise credits and the buyer, administered by the authority. The owner would apply for credits through the planning controls, based on the turnover of the enterprise. Enabling credits to be purchased ensures the continued promulgation of agricultural product on certain lands for near to market produce. The TDR approach safeguards peri-urban land for agricultural production, and the AEC/SBFCS goes one step further by ensuring land is put into productive use. The AEC scheme would capture NSW's need to reward and safeguard the economic, social and environmental efforts of farmers.

Recommendation 6: Create a system of transferable development rights (or an agricultural enterprise scheme) to protect highly fertile and productive land in peri-urban areas, particularly in the Sydney Basin.

⁹ See <http://www.cityofsydney.nsw.gov.au/development/application-guide/heritage-conservation/heritage-floor-space-scheme>

State significant development (strategic regional land use)

NSW Farmers' has serious concerns with the Strategic Regional Land Use Policy (SRLUP) which was a state wide policy rolled out in 2012, designed to protect strategic agricultural land and water resources, and provide certainty to landholders and miners¹⁰. It is the position of the NSW Farmers Association that the SRLUP is failing to do that. Recently we saw this illustrated in the state-approval of the Shenhua Watermark Coal project located amidst some of NSW and Australia's most productive and strategically important agricultural land. Even more recently, in a Planning and Assessment Commission (PAC) determination on an extension of an open-cut coal mine project located in NSW's Hunter Valley, the PAC made the following observations about the process at hand:

" During the course of its review the Commission has identified a number of areas of the NSW planning framework that could be improved or enhanced, in the context of the issues confronted on this application.. Greater clarity and planning certainty needs to be provided to the mining industry, the community and other industries that exist within mining regions.

NSW Planning and Environment, NSW Department of Industry's Division of Resources and Energy and other relevant government **agencies need to collaborate to develop a strategic framework for the coordinated release of exploration licences** and a suite of effective planning tools to provide reasonable exclusion zones or buffers to protect other industries and sensitive land uses within those parts of the state that are rich in coal, gas and/or mineral reserves.

In particular.. resources need to be allocated to allow relevant Departments to undertake the work required to:

- i. identify sensitive land uses and resources (such as important agricultural land, water resources, places of special Aboriginal cultural significance or of significant conservation value) that warrant protection from mining; and
- ii. to determine appropriate buffers, exclusionary zones or preservation measures for those land uses and areas of other significant value;

.. the Gateway process needs to be strengthened and its remit widened to ensure it has the cap..¹¹
(NSW Farmers' emphasis)

If it weren't evident before, NSW Farmers believe that with the PAC itself expressing a lack of confidence in the system, it is plainly obvious that the Strategic Regional Land Use policy is not fulfilling its objectives of protecting agricultural land, and importantly providing certainty to not only landholders and rural communities, but mining companies as well.

¹⁰ See <http://www.nsw.gov.au/initiative/strategic-regional-land-use>

¹¹ NSW Government Planning Assessment Commission *Drayton South Open Cut Coal Project Review Report* November 2015 page v available at file:///C:/Users/moara/Downloads/Drayton_South_Review_-_Main_Report.pdf

We are aware that there is significant reform occurring in the area of extractive industry assessment and regulation. NSW Farmers submits however, that these reforms will not deliver what has been committed to by Government and nor will these reforms work strategically as an overall package to deliver better land use in NSW. NSW Farmers has recently made representations to the Premier that the interaction between the Department of Planning & Environment and the Division of Resources & Energy appear to be lacking on these issues, and that the role of the Department of Primary Industries needs to be enhanced.

There are some positives that are coming out of the reform, mostly relating to individual landholder rights and processes in companies gaining access to private land for the extractive activity. However, we believe that the work that is currently being undertaken represents to us a huge opportunity lost to deliver meaningful and balanced reform in the mining and CSG policy areas.

In the lead up to the development of the SRLUP in 2011, NSW Farmers developed a proposal for a “traffic light approach” for the assessment of mining and gas approvals. To this day it remains a relevant and much needed policy solution for truly up-front assessment of mining and gas approvals. **Appendix 1** is a copy of that draft proposal in the form of a flowchart.

Relevant terms of reference:

- (f) opportunities for strategic planning to assist in responding to challenges faced by communities in regional areas including through Regional Plans**
- (h) pathways to improve decision making processes for regional development proposals, including increasing the use of complying development, improvement negotiation processes for voluntary planning agreements, and reducing costs associated with assessment.**

Recommendation 7: Using regional planning policies, identify areas of NSW containing highly productive and sensitive natural resources that are inappropriate to mine at this time.

Recommendation 8: Provide community certainty through regional planning policies by identifying areas of NSW where mining/gas extraction may or may not be appropriate depending on further assessment.

Conclusion

NSW is currently experiencing extensive and promising reform across a number of natural resource management and land use planning contexts. It is important to look at these reforms operating as a whole and whether they are able to contribute to Government's goal to boost agricultural productivity by 30% in the next 5 years. There is also a lot of reform occurring in the resources sector which arguably creates more bureaucracy without delivering any real change to the way land use conflict is assessed and regulated into the future. We urge Government to adopt a truly upfront and strategic approach. Certainty for everybody would be improved, the mining sector as well as landholders and rural communities.

NSW Farmers believes that better , more strategic decisions should be being made at a local level, including opportunities for on-farm , sustainable development, and properly weighted local environmental plans using considerations that are relevant to the region in which the plan operates. We wholeheartedly welcome this inquiry and we look forward to the committee's findings.

Appendix 1 – Conceptual model of Assessment Pathways for Mining Projects- NSWFA Proposal

