

**Submission
No 48**

INQUIRY INTO REGIONAL PLANNING PROCESSES IN NSW

Organisation: Baiada
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The logo for Baiada, featuring the word "Baiada" in a white serif font on a dark blue rectangular background.

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11 April 2016

Standing Committee on State Development

Parliament House
Macquarie St
Sydney NSW 2000

Attention: The Director- Standing Committee on State Development

Dear Sir/Madam,

RE: SUBMISSION IN RELATION TO REGIONAL PLANNING PROCESSES IN NEW SOUTH WALES

Thank you for the opportunity to prepare a submission to the Standing Committee on State Development concerning the Inquiry into Regional Planning Processing in NSW.

Baiada Poultry Pty Limited is part of the Baiada Group of Companies (Baiada) including the Steggles business. Baiada is a privately owned Australian company which provides premium quality poultry products across Australia. Baiada's operations include broiler farms (meat chickens), breeder and rearing farms, feed milling, hatcheries, processing plants, protein recovery, administration and research. Baiada's products include the sale of live poultry (including breeding stock), poultry feed, fertile eggs, day old chickens, primary processed chicken (raw), processed chicken products, and pet food.

The company has its head office at Pendle Hill, 30km west of Sydney CBD, with major operating centres located both in regional New South Wales and in other regional centres across Australia. Baiada has a current employee base of approximately 7,000 people. As a result of the ongoing growth in demand for poultry in Australia as well as the potential for further expansion into overseas markets, Baiada has been actively investing significant capital into the regional areas as part of the expansion of our NSW operations. In fact, in recent years Baiada has injected approximately \$385 million in capital in its two main regional centres, namely Tamworth and Hanwood.

As a result of this expansion program, Baiada is regularly required to work within the legislative planning and approvals framework established under the *Environment Planning and Assessment Act 1979*. Based on these experiences, we provide the following submission to the Standing Committee and welcome the opportunity to raise a number of key issues which we believe can assist in strengthening regions, stimulate regional development, remove unnecessary delays and risks and improve business confidence to invest in the regions. There are many occasions where growth and investment that will create jobs is delayed or jeopardised because of the rigidities or inefficiencies of the existing planning regime.

Please find in the following sections, the key points of this submission, under the relevant Terms of Reference for the Inquiry.

(a) Opportunities to stimulate regional development under the planning framework including through legislation, policy, strategy and governance.

S94A Infrastructure Charges: Section 94A charges represent a disincentive to regional development and more flexibility should be allowed for Councils to offset charges against works required as part of the Development.

In accordance with Section 94A of the *Environment Planning and Assessment Act 1979*, Councils are able to regulate Development Contributions to recoup the costs associated with the provision of public amenities,



public services and infrastructure for the community. Section 94A charges are typically applied by Regional Councils at the maximum rate of 1% of the cost of carrying out the development.

Section 94A charges represent a disincentive to regional development and more flexibility should be allowed for Councils to waive charges where the Applicant is investing in a project which will generate jobs, stimulate local economic activity and support the regional community.

At a minimum, the infrastructure charges should be able to be offset against any upgrades to public infrastructure required to be undertaken by the Applicant as part of the development (e.g. trunk water and sewer mains or road works) as these will also have a public benefit.

If it can be demonstrated that the project will bring significant benefits to the local area there should be the flexibility for Council's to consider these upgrades in lieu of S94 charges.

(b) Constraints to regional development imposed by the planning framework, and opportunities for the framework to better respond to regional planning issues

Designated Development (EIS) Triggers: The Designated Development Triggers for a number of Rural Activities and Rural Industries are too low and need to be reviewed with a view to increasing thresholds.

For example, the threshold for Designated Development for Poultry Farms (Livestock Intensive Industry) under Schedule 3 of the *Environmental Planning and Assessment Regulation 2000* is only 250,000 birds which is less than a viable commercial farm. This low threshold triggers the requirement to prepare an Environmental Impact Statement (EIS) which can significantly delay projects as well as subjecting the application to third party appeal rights for even minor projects. In this regard, it is suggested that the trigger for designated development be increased to 500,000 birds.

It should be noted that Poultry Farms under 500,000 birds would still trigger assessment by Council as well as being listed as integrated development (where over 250,000), requiring assessment by the EPA under the *Protection of Environment Operations Act 1997* and issue of an Environmental Protection Licence, which will provide adequate protection to the community from potential impacts.

Other rural industries are also subject to low Designated Development triggers and would benefit from being reviewed include:

- Agricultural Produce Industries;
- Livestock Intensive Industries; and
- Livestock Processing Industries.

As a result of current market realities and the high volume and low margin of primary products, there is a need for all rural industries to increase production and efficiency wherever possible. There is currently a disincentive for businesses to undertake even relatively minor expansions of existing operations due to the costs associated with preparing an EIS and the risk of third party appeals. Accordingly, an increase in the Designated Development thresholds for rural activities will encourage greater investment and an increase in production.

State Environmental Assessment Requirements (SEARs): SEARs (Terms of Reference) received from government departments in relation to a proposed EIS are often generic, raise irrelevant issues and require the Applicant to expend time and money on matters which have no bearing on the project.

When an EIS is triggered, the Department of Planning & Environment (DOP&E) provides an opportunity for various government departments (e.g. EPA, DPI, Office of Water, RMS) to provide State Environmental Assessment Requirement (SEARs) which need to be addressed in the EIS prepared by the applicant.

The requirements received from these government departments are often generic and raise numerous issues which are not relevant to the actual project. Due to the wording of the Act, the Applicant is required to address all State Environmental Assessment Requirements within the EIS. This results in unnecessary expense and time delay, addressing generic items which are not directly applicable to the development.

It is recommended that greater responsibility be placed on the Department of Infrastructure and Planning as well as the other departments to ensure that the SEARs are relevant and reasonable to the project being considered.

EPA Odour Assessment Guidelines and Assessment Processes: The assessment of Odour Impacts in relation to rural developments is restricting the ability for expansion.

The assessment of Odour Impacts in relation to Intensive Farming, Rural Processing and similar regional and rural developments is becoming increasingly strict and harder to achieve compliance. The current EPA Guidelines and Assessment processes are applied differently in each regional office and by different officers within these offices, resulting in the goal posts continually changing and providing no certainty to applicants.

Under the current *Technical Framework - Assessment and Management of Odour from Stationary Sources in NSW* managed by the EPA, there is no ability for EPA officers to apply discretion/common sense and are hamstrung by strict and overly arduous requirements.

Under the current framework, if odour modelling shows a potential or even marginal non-compliance at a single rural dwelling it is considered sufficient grounds for the EPA to reject a Development Application for a major rural development that could employ hundreds of people and mean the loss of millions in regional investment. The ability to find sites that comply with conservative and increasingly strict odour requirements quarantines large expanses of rural areas from intensive agricultural and rural industry which support the surrounding community and are an important source of employment and economic activity.

Similarly, when expanding existing operations, more flexibility in the EPA's framework is required to allow applicants to achieve no worsening of impacts than currently experienced, or implement only reasonable and feasible treatments rather than trying to achieve compliance with contemporary criteria that would apply to these operations regardless of whether they are located within a rural or metropolitan area.

For example, as part of upgrades at processing plants (which have an historic presence in their location), we are often able to achieve an improved odour outcome for the nearest residents compared to the current situation; however this is sometimes not supported by the EPA because the baseline against which these improvements are measured means that those residences may already not achieve the required odour compliance criteria.

It is recommended that a review of the current framework be undertaken to provide greater flexibility for consideration of a range of factors in their assessment including the existing operations, the rural nature of the surrounding areas and relevant and feasible management and mitigation measures.

NSW Office of Water: Water use is highly regulated and should not be re-assessed as part of the Development Assessment process.

Ground water and surface water usage is highly regulated and subject to water access licenses, water sharing plans, groundwater works approvals, transfer approvals and more. Any water users have the right to use water provided they comply with the relevant license conditions without further assessment.

If the owner was to use the same water entitlements for irrigation of crops, there would be no further assessment required, however when a DA is triggered, the applicant is often required to demonstrate that supply is sufficient, extraction will not impact on groundwater and surface water ecosystems, the use of water will not impact on other peoples entitlements, take into account climate change and resolve other considerations.

Specific assessments in relation to the ability for specific water licence allocations and extraction rates to be catered for by specific water sources are undertaken by the Office of Water prior to the granting of licences or other related water supply works or groundwater works.

The Applicant should not need to provide further justification beyond demonstrating that appropriate water entitlements / licenses are obtained, and that proposed operations will operate within the conditions of any entitlements and licences held.

(c) The suitability of a stand-alone regional planning Act

Stand-Alone Regional Planning Act

The Terms of Reference for the Inquiry identify that there is the potential for a “stand-alone” planning Act that would focus on planning issues for regional areas. As outlined in other parts of this submission it is our experience that rural activities and rural industries are often “caught up” in standardised provisions that are more suited to metropolitan areas but do not provide flexibility to take into account the different planning and development context of regional NSW. The potential for a Regional Planning Act is supported as it provides the opportunity to provide different provisions for regional and metropolitan areas and provide more flexibility for decision makers to apply local regional knowledge to a planning application.

It is important to ensure that a stand-alone Act does not duplicate or complicate existing assessment processes and provides a clear approval pathway for regional development.

State Environmental Planning Policy (SEPP) for Regional Development

As an alternative to a stand-alone Act, a well drafted SEPP (Regional Development) or variation to the existing SEPP No. 30—Intensive Agriculture could be sufficient to provide alternative provisions that apply to development of rural activities and rural industries, which would provide greater flexibility for consent authorities to weigh up the commercial and regional benefits of the proposed development against potential environmental and social impacts.

It is envisaged that the SEPP could include the following:

- Alternate provisions that are applied to the assessment of rural activities and rural industries in regional areas;
- Identify particular areas (e.g. Poultry Precincts) where intensive animal husbandry is supported and planned accordingly;
- Remove the designated development trigger for appropriate uses in specific zones; and
- Consent authorities have the authority to properly assess the commercial and regional benefits of a project.

This approach is strongly supported and shifts the focus from treating regional development as “inappropriate” development to a genuinely supported and preferred land use.

(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

Protection of Rural Dwellings: Higher levels of protection of rural dwellings under various planning instruments are limiting the ability for rural activities to be undertaken in rural zones.

There are increasingly higher levels of protection of rural dwellings within rural zones under regional Local Environmental Plans and Integrated Authorities guidelines and frameworks, particularly in terms of tolerance criteria for odour, noise and traffic which limits the ability for rural activities to be developed in rural zones. The result of this situation is that a single rural dwelling may quarantine large expanses of rural areas from intensive agricultural and rural industry as a result of potential noise, odour or dust impacts.

It is also important to note, that rural land is not static and the inclusion of land rural zone does not mean current low intensity rural grazing and agriculture intended to continue in perpetuity. LEPs and other planning documents need to acknowledge that there is always the potential for change of land use and infrastructure demand (e.g. road use) to higher intensity agricultural activities consistent with the structural changes required to function as a modern food producer.

Further, as part of recent EIS and Development Applications, we have been asked to consider potential “future dwellings” as part of odour assessments where there is a theoretical possibility that a house may be constructed in the future on surrounding rural lots. The nature of rural uses, spanning multiple rural lots, and the general provision to allow one rural dwelling per lot, can result in proposed developments considering a large number of ‘future potential dwellings’ in sparsely populated rural areas that will not accommodate such dwellings.

In addition, the impacts on rural dwellings is typically only of interest to the assessing authorities when a DA is triggered even though a range of exempt rural activities (i.e. activities that don't need a DA) may have similar or worse impacts but are largely unregulated.

There is also a need for LEPs and other planning documents to ensure that the Consent Authority for development encroaching or in proximity to rural land is cognisant that it may have reverse amenity impacts on rural activities. In this regard, it is recommended that Consent Authorities, as part of the assessment of a development application, place significant weight on the potential creation of a land use conflict that may reduce the agricultural value and production potential of surrounding rural lands. Further, it is also recommended that a "reverse amenity" condition or covenant be imposed that recognises the presence and use rights of the rural activity, acknowledges that impacts may occur (e.g. noise, night time truck movements, odour) and limits to ability for complaints to be made in the future.

While we of course appreciate that there is a need to balance the requirements of the agricultural sector with rural dwellings it is important to note that the delay or refusal of a project because of a small number of dwellings can have significant impacts on regional economies. The impact on a few dwellings may result in hundreds of jobs never being created and investment moving elsewhere. The holistic picture needs to be considered when balancing the needs of industry and dwellings.

(f) Opportunities for strategic planning to assist in responding to challenges faced by communities in regional areas including through Regional Plans

At a high level, Regional Plans should support rural development and make it clear that the expansion of rural activities and rural industries is critical to the economic growth of our regions. While successful in ensuring Local Environmental Plans (LEPs) reflect regional issues, Regional Plans without appropriate statutory provisions are not as successful in driving rural development at the ground level. As such, stronger statutory measures such as a stand-alone Act or a SEPP are preferred.

We trust that the above information will assist the Standing Committee in their Inquiry into Regional Planning Processing in NSW. If there are any matters that need further clarification please feel free to contact myself on the details below to discuss further.

We welcome the inquiry and look forward to working with the State Government in delivering better economic outcomes for the regions.

Yours Faithfully,

Elaine Dickson
Chief Risk Officer

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