

**Submission to the  
NSW Parliamentary Standing Committee  
on State Development**

**~ Inquiry into the NSW Planning Framework ~**

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## 1 INTRODUCTION

The NSW Farmers' Association (the 'Association') welcomes the opportunity to lodge a submission to the Inquiry into the NSW Planning Framework.

The Inquiry has the following terms of reference:

- (a) *the need, if any, for further development of the NSW planning legislation over the next five years, and the principles that should guide such development,*
- (b) *the implications of the Council of Australian Governments reform agenda for planning in NSW,*
- (c) *duplication of processes under the Commonwealth Environment Protection and Biodiversity Act 1999 and NSW planning, environmental and heritage legislation,*
- (d) *climate change and natural resources issues in planning and development controls,*
- (e) *appropriateness of considering competition policy issues in land use planning and*
- (f) *development approval processes in NSW,*
- (g) *regulation of land use on or adjacent to airports,*
- (h) *inter-relationship of planning and building controls, and*
- (i) *implications of the planning system on housing affordability.*

The Association will comment on all of the above terms of reference with the exception of term (g). Specific Association Planning Policy is given at Attachment A.

## 2 TERM OF REFERENCE (A) - FURTHER DEVELOPMENT OF THE LEGISLATION

The Association believes that the central question for the Inquiry should be whether problems with the planning system should be addressed via ongoing amendments to the EPA Act or by fundamental regulatory reform.

The Association agrees with the finding of the *Inquiry into the NSW Planning Framework: Discussion Paper* (the Paper), that thirty years of amendment to the Environmental Planning and Assessment Act 1979 (EPA Act) and the "proliferation" of other natural resource management legislation has resulted in a "complex" planning system.

For well over a decade, Government has been attempting to address chronic problems associated with the NSW planning framework. The Association notes the list of major reforms given in the Paper. None of the reforms, however, have focussed on the core problem which is constructing a legal framework that allows administrators to optimise the allocation of scarce land and water resources at local, State and national scale.

Further development of the planning legislation should commence with a detailed and objective analyse of current planning challenges. These include:

- The over-concentration of population in the Sydney Basin and the coastal zone with resulting pressure on resources, including farmland and water;
- The worst housing affordability ratios in the OECD;
- Implementing effective strategies for decentralisation and regional development;
- The proliferation of rival planning frameworks at different scales – eg property vegetation plans, catchment plans, water sharing plans, local Government plans;
- Resolving jurisdictional conflicts between local Government and state Government, and between the many 'silo' state agencies responsible for planning outcomes (DoP, DECC, DWE, DPI);

- Identifying and protecting the production values of agricultural land and water, particularly in peri-urban regions and the most arable regions of the State;
- Finding an equitable alternative to transferring the costs of biodiversity conservation to the farm sector (as currently occurs via environmental zonings, clearing controls etc);
- Establishing a strong integrated framework of scientific and technical information about the core values at stake in decision processes; and
- The progressive erosion of the agricultural potential of the State - with strong global demand for food and fibre, agriculture is a sector of increasing importance to the NSW economy yet Government policy does not appear to acknowledge this in practical effect.

From the point of view of farmers, the Government does not appear to have a clear vision of where agriculture fits in the NSW landscape, particularly in the more fertile, better watered peri-urban regions, which are also regions close to markets with the lowest transport overheads. It is essential that all decision makers involved in the planning process understand that retaining a viable and diverse agricultural sector in NSW involves a great deal more than preventing subdivision of agricultural land.

Zoning land for agriculture does not protect agriculture unless this goes hand-in-hand with measures that preserve the ability of farmers to use their land productively. In the Sydney region and up and down the coast we have seen the progressive economic sterilisation of agricultural land as neighbourhood complaints and local Government regulations prevent farmers from conducting necessary farming activities. The result is swathes of vacant paddocks zoned for agriculture, excluded from development, but effectively useless except as "Green space". With no farm income to pay for its upkeep, this land typically becomes breeding ground for weeds and feral animals.

Likewise, the government appears to have given little consideration to the cumulative economic impacts of biodiversity controls imposed on farm land.

### **2.1 Regulatory reform the key to efficient administration**

Since the mid 1990s the Government has acknowledged the problems of "red tape" afflicting the State and has made numerous attempts to correct the problems. Each agency has its own set of single-issue legislation to administer, augment and advocate. This greatly contributes to the difficulty of achieving integrated planning processes and outcomes. There have been in the order of six unsuccessful attempts since 1994 to amalgamate agencies and establish an integrated planning framework.

Current administrative areas are as follows:

- Department of Environment and Climate Change – biodiversity, climate change, pollution and national parks
- Department of Primary Industries - mining and agriculture
- Department of Water and Energy – bulk water
- Lands - Crown lands, land title
- Planning - statutory planning (plus bits of all of the above)
- Local Government - can potentially override all of the above in DCPs and LEPs.

While it is practical to focus on the detail of administration of specific resources and issues within distinct agencies, this must be underpinned by a legal framework that prevents overlap and contradiction. There is no such legal framework in NSW.

Until an integrated legal framework is provided, restructuring the agencies is essentially a futile exercise. Likewise, efforts to improve integration across agencies are certain to be

ineffective so long as the various natural resource and planning Acts are at cross purposes. To illustrate, DECC may acknowledge the net biodiversity benefits of an integrated landscape plan that involves biodiversity trade offs, but would be prevented from approving such a plan by biodiversity legislation it administers that forbids such tradeoffs (the Native Vegetation Act 2003 and the Threatened Species Conservation Act 1995).

## **2.2 Proposal for a 'Master' Natural Resources and Planning Act**

The Association believes that consideration should be given to developing a single master Natural Resources and Planning Act that establishes the core process and principles and authority for allocating and managing land, water and biodiversity<sup>1</sup>. Single issue, subsidiary Acts covering biodiversity, water, mining and statutory planning would be developed to sit beneath and refer to this master Act.

Establishing a sound framework of legislation – a framework that addresses the difficult tradeoffs and compromises that underlie resource allocation processes will make it possible to reconfigure the agencies in removing overlap and conflict. This in turn will underpin the streamlining of process and the long promised “one stop shop” for approval processes.

The current Department of Planning ('DoP') is in a difficult position as it does not have the mandate or resources to properly plan for NSW in any strategic sense. The detail of local planning is determined by local Government. Macro strategic planning decisions, particularly with regard to regional development, are subject to so many gatekeepers and conflicting processes that little of strategic value can be achieved.

For example, in regional NSW we have Local Environmental Plans, Catchment Action Plans, Regional Conservation Plans, Threatened Species Recovery Plans, Water Management Plans and so on. These plans are not integrated within a tiered model, nor can they be inter-related in a common format. In this environment, strategic planning becomes dysfunctional – it remains at best at a vague, motherhood level.

Part 3A has been created in theory to enable strategic decisions to be made and to cut through 'red tape', but instead is being used to make expedient, ad hoc decisions and in effect has introduced an additional layer of dysfunction.

The reforms suggested above are profound and would involve restructuring or replacing dozens of items of legislation. The task has been proposed before and has been rejected as too daunting. At this juncture in the history of NSW, the Association believes that the task can no longer be deferred. Progressive piecemeal renovation and extension of the legislation over decades has resulted in a shambling mess. The problem is not just the EPA Act, it is the whole set of legislation in the natural resource and planning space.

This investment in legal reform is, in the view of the Association, equally important as investment in physical infrastructure. In brief the benefits would be:

- Better and more timely decision making;
- The enabling conditions for removing red tape, providing 'one stop shop' Government services and consolidation of agencies;
- Increased capability for strategic planning;
- Increased certainty and direction with regard to investment in physical infrastructure (road, rail, broad band etc); and

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<sup>1</sup> Note that the Association considers biodiversity to be a natural resource.

- Cost savings in the delivery of Government computing services<sup>2</sup>

The Association encourages the Standing Committee on State Development to commission a concise critical review of previous attempts to achieve integration involving interviews with the relevant past Director Generals, as their insights could be invaluable. The Association also encourages the Inquiry to undertake a comparative review of legal and administrative arrangements in other jurisdictions, including overseas.

### **2.3 Preserving farmers' ability to farm**

As noted above, zoning land for agriculture does not protect agriculture unless this goes hand-in-hand with measures that preserve the ability of farmers to use their land productively. In the Sydney region, and up and down the coast, we have seen the progressive economic sterilisation of agricultural land as neighbourhood complaints and local Government regulations prevent farmers from conducting necessary farming activities.

The Association recommends that the Inquiry considers regulatory measures that provide explicit rights to farmers to emit noise, dust, and other pollution in association with their activities (see section 8.2). Farming is an industrial activity and many migrants to rural areas only value farm land as 'part of the view' and fail to understand or accommodate the nature of the industrial area they have moved into.

Also essential to preserving farmer's ability to farm is reform of water and biodiversity legislation.

### **2.4 Protecting agricultural water resources**

The current water legislation treats agricultural water under a different planning framework to urban water. Agricultural water is shared from a limited pool. In contrast, urban water supply can be expanded by the reallocation of water from the agricultural pool. In short, urban water takes priority over agricultural water and there is no orderly planning process for regulating how this priority is applied. The practical consequence is that government can render irrigated agriculture uneconomic, if not impossible, before making serious investment in urban water recycling and other measures that may be unpopular with the urban electorate.

To illustrate the problem, under the Metropolitan Water Plan (MWP) the NSW government sanctioned the Upper Nepean (Kangaloon) borefield project to provide a supplemental groundwater resource for urban Sydney in times of severe drought.

This plan (currently shelved) would have potentially catastrophic impacts on local agriculture and the natural environment, and typifies the current imbalanced approach to planning.

Irrigation is essential to intensive, high-value agriculture and the NSW agricultural economy. Long-term planning and related regulatory reform is essential to ensure that a sufficient proportion of the State's scarce water resources remain available for agriculture, particularly in crisis situations such as drought.

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<sup>2</sup> Currently Government IT departments struggle to support legislation that was written without consideration of the role of modern information technology. A large proportion of routine administration can be automated provided that the legislation is written with that potential in mind. The regulatory reform process should therefore include IT consultants at the earliest stages to ensure that logical, clear and computable processes drive the development of the 'black letter' law.

## **2.5 Environmental zonings**

Rezoning farm land for environmental protection is a crude tool increasingly being applied in coastal and peri-urban NSW for achieving conservation and connectivity outcomes at least-cost to Government. Such rezoning reduces farmers' production options and prevents agricultural development and adaptation to changing conditions. Importantly for Government, the cost of habitat conservation is transferred onto the farmer.

To illustrate, a coastal Local Government with a rapidly expanding population needs to release land for new housing development but under State policy must also deliver a contribution to NSW biodiversity objectives. With the approval of the Department of Planning, it rezones open woodland owned by Council for high-density development, which it then sells to a housing company. The housing company uses Biobanking to clear the land. Simultaneously, Council rezones adjoining private farm land with identical open woodland for Environmental Conservation (E2). While the Shire's strategy for achieving biodiversity outcomes was legal, many people would consider it unjust. With regard to cost transfer, it can be seen that the Council had a clear choice – it could have turned the land it owned into a public conservation reserve, with associated ongoing management costs – or it could achieve similar conservation outcomes by requiring the farmer to retain habitat.

Not only is this conservation strategy inequitable, it overrides the intent of the Native Vegetation Act 2003, which was intended to provide a practical regime for management of vegetation on farm land. This Act contains measures such as the right to clear regrowth and the ability to clear vegetation to undertake routine farming activities, including the management of farm roads and fence lines. These rights are overridden by an E2 zoning.

Likewise, if local Government decides that it wants to introduce a tree protection order or some other ordinance designed to control native vegetation management, it can impose this over rural land, overriding the Native Vegetation Act. Such measures have been imposed in many coastal and 'green change' Shires, where Council staff are responding to new residents wishing to protect their views, and who have little appreciation of the needs of farmers.

## **2.6 Landscape Planning**

In rural areas, land is the means of production and not just the place where production is located. In urban areas a factory or house occupies a parcel of land. In contrast, a farm is the parcel of land and the nature and attributes of that land are integral to its production capacity. To obtain full value from farm land, the planning system must be responsive to the biophysical limits and opportunities presented by specific parcels of land.

A different methodology and legal foundation is required for statutory planning in rural areas, one that is more flexible, more dynamic and which accommodates intensive local landscape planning processes. Any reform of NSW planning law should consider in detail the Landscape Planning methodology pioneered by the American planner, Ian McHarg in the 1960s, as well as examples in Australia and overseas where this has been applied to support statutory planning in rural areas.

Landscape planning involves creating map layers of important values in the subject landscapes, then running decision criteria through those values to develop planning scenarios. This process allows the optimisation of landscapes via an objective and scientifically informed scenario development process. Instead of a landscape divided more or less arbitrarily into zones, you have a landscape where the agriculture, the

biodiversity conservation and housing development can be distributed in optimal locations and at intensity that better reflects the capability of individual parcels of land. Much more flexibility is possible in this mosaic approach regarding the density and nature of landuse.

To illustrate, a minimum lot size such as 100 ha is a typical device in conventional planning in rural NSW. Imposition of such an arbitrary rule, however, means that land with poor soil and water, is treated the same as land with excellent soil and water.

A parcel of excellent land – eg alluvial river front land - could easily accommodate several diverse, high-intensity agriculture enterprises at lot sizes far smaller than 100ha, which would be good for the local economy. Such subdivision within a rural zoning is prevented, however. Conversely, the only viable use for the poor land in the same region is low intensity farming, but a viable unit for such an enterprise is more than 100ha. In the later case, subdivision to 100ha blocks proceeds and the land becomes a grid of neglected rural residential blocks with weed problems – blocks far larger than the new owners need or can effectively manage. This scenario is being played out across NSW. The economic inefficiency of a subdivision model based on standard lot sizes and its potential to stifle regional development is obvious.

The Association has welcomed recent moves to introduce more flexibility in this regard but this only the beginning of the reforms needed.

## **2.7 Collaborative planning in rural landscapes**

Scenario-based Landscape Planning is an effective way to engage with the broadest possible range of stakeholders. Very few people can relate to the schedules, rules and tables that comprise conventional plans. Most people can readily understand and relate to scenarios presented in map form.

A political challenge when implementing landscape planning is that the process requires an explicit reconciliation of the key values, potential resource allocation conflicts and the tradeoffs required to resolve them.

For example, in the case of biodiversity, it would not be sufficient to develop for NSW a map of priority conservation areas and corridors, and call this “a biodiversity conservation plan”. Instead, the optimal result from a purely biodiversity conservation view point needs to be balanced with optimal outcomes for other key values including agricultural productivity, infrastructure, urban settlement and regional development.

Building a multi-criteria optimisation requires achieving agreement about priorities among stakeholders. This is a challenging task that involves the full commitment by all key decision makers and a willingness to make constructive compromises.

Such compromises, however, are currently prevented by native vegetation and threatened species legislation and by environmental zones. Current biodiversity policy relies on clearing bans at property scale and environmental zones at LEP scale. It is impossible to optimise landscapes when key elements in potential tradeoffs are locked down.

Consequently, the Association believes that a commitment to landscape planning will entail fundamental reforms to the native vegetation and threatened species legislation and a lifting of environmental zones.

## **2.8 Knowledge and information issues**

Landscape planning as a formal planning methodology is information intensive and requires a major upfront investment in a Geographic Information Systems (GIS)<sup>3</sup> enabled, integrated data base covering all important factors – geology, water, biodiversity, soil, through to infrastructure and cultural sites. The resulting data base and GIS system, however, is not a ‘once off’ project. It is the infrastructure needed to underpin all future planning and resource management processes.

Rapid improvements over the past decade in the power and pricing of GIS, database, networking, remote sensing and satellite technology are converging to make multi-criteria spatial planning an affordable option for Governments. Integrated spatial planning is becoming the norm in Europe and the USA and there is no reason, other than jurisdictional silos in NSW Government, why the planning activities of DECC, DWE, DPI, DOP and local Government are not already underpinned by a scalable, shared spatial information resource. While a few critical data bases such as property information are shared in a standard form, the great majority of biophysical data is not.

The Natural Resources Commission, among other parties, has commented on this issue. For NSW to move ahead with effective regional planning, the data integration problem must be resolved. There needs to be one body that holds, manages and distributes to users (agencies, local Government etc) all of the GIS data needed for effective spatial planning (including the biophysical and natural resource data). Given that respective line agencies have tried and failed to achieve this, perhaps consideration should be given to establishing a single purpose body to provide this service to all agencies.

## **2.9 Principles to guide regulatory reform**

The Association supports:

- simplification of land use planning to reduce duplication, cost and time delays,
- land use planning decisions being made at a local level using local data and consultation, and
- the use of alternative dispute resolution mechanisms prior to any court proceedings for land use conflict issues.

The Association believes that the following principles should be adopted:

- All planning, environmental and natural resource instruments should operate according to identical overarching principles and processes established under a Master Natural Resource and Planning Act;
- The legislation must establish clear decision processes, authorities and accountabilities that remove all possibility of jurisdictional conflict;
- The black letter law must be written to enable its ‘computability’. In other words, the drafters must consult with computing professionals to ensure that decision processes and data requirements are clear and fully defined. This is essential to enabling electronic service delivery and “one stop shop” customer solutions;
- The law must be fair - current asymmetries regarding the ease of obtaining approval for different sectors must be removed;
- Planning in rural areas must be inherently flexible to reflect the unique biophysical characteristic of land units and the dynamic nature of agricultural production techniques;

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<sup>3</sup> Geographic Information Systems enable the analysis, presentation and management of information in map form. All Councils and many Government agencies operate GIS systems. Unfortunately, most of these systems are not interconnected and the data within them is not collected to shared standards and cannot readily be integrated.

- Agricultural zonings must provide clear rights to conduct agricultural activities notwithstanding amenity impacts on neighbours;
- The legislation must provide genuine resource security to farmers;
- The ‘triple bottom line’ principles established by the Bruntland report, “Our Common Future” must be carried through into the detail of all decision processes. In other words, determinations must genuinely balance social, economic and environment values. This would entail removing the power of current environmental instruments, such as the Threatened Species Conservation Act, to disregard social and economic considerations and deliver determinations solely on the basis of biodiversity values
- Water planning must be integrated with landuse planning and the rules governing urban and bulk water fully integrated. Currently a ‘magic pudding’ approach is taken to urban water, with no policy limits on urban water being subtracted from the pool of irrigation water. This removes the base incentive to manage and use urban water more efficiently;
- Biodiversity planning must be integrated with land and water planning under a triple bottom line model. By locking down individual specimens, present biodiversity legislation largely prevents the optimisation of landscapes to maximise the efficiency of land allocation for biodiversity, agricultural and urban outcomes;
- The role of local communities in local landuse planning decisions must be preserved; and
- Alternative dispute resolution mechanisms must be available prior to any court proceedings for land use conflict issues.

### **3 TERM OF REFERENCE (B) COUNCIL OF AUSTRALIAN GOVERNMENTS REFORM AGENDA**

The Association is concerned that the COAG agenda in this regard appears to be restricted to development approval processes.

The Association believes that COAG should also address mechanisms for delivering nationally integrated planning and natural resource management. This would entail the establishment of a consistent legal and administrative framework across all tiers of Government. A Master Act approach is proposed above for NSW. Potentially, such a Master Act could be developed collectively by the States and Commonwealth under the auspices of COAG. A precedent for this has been partially established by the Water Act 2007.

The Association believes the harmonisation of natural resource, planning and environmental legislation is an urgent economic priority for NSW and Australia. The existing EPBC Act would not be a suitable vehicle for achieving this and a new Act and different conceptual approach would be required.

The global financial crisis has underlined the need for Australia to improve the efficiency of its administrative processes and to provide a coherent framework for private and public sector investment. Effective investment in transport and communication infrastructure, in regional development, in utility scale renewable energy and a reconfigured national grid, and increased biodiversity connectivity, are all contingent upon harmonisation of planning across jurisdictional boundaries.

#### **4 TERM OF REFERENCE (C) DUPLICATION OF PROCESS UNDER FEDERAL AND NSW LEGISLATION**

The Association's primary concern is the quality of decision processes. Currently, poor processes are being duplicated across all tiers of Government, compounding the inefficiency. In some cases the Commonwealth defers its powers to NSW processes so the removal of duplication is not, in of itself, a solution.

The Association understands a bilateral agreement exists whereby the Commonwealth has referred matters of National Environmental Significance to be handled under the State legislation of Part 3A of the EP&A Act. Given the weaknesses of the Part 3A process, this is not a satisfactory arrangement.

The Association has called on the Federal Government, via the National Farmers Federation, to treat mining development in the Liverpool plains and resulting threats to water and agricultural resources as a matter of national significance that warrants higher order assessment that is likely to be delivered under NSW law.

#### **5 TERM OF REFERENCE (D) CLIMATE CHANGE AND NATURAL RESOURCE ISSUES**

Climate change adaptation must be driven by industry, based on practical research and development, and not via a 'top down' Government process.

The Association is opposed to the use of the current planning system to constrain landuse so as to achieve climate change and biodiversity outcomes. For example, the Association opposes the zoning of land for Environmental Conservation and would oppose the zoning of land to achieve carbon sequestration outcomes.

A significant current concern to the Association is Government policy, including taxation incentives, designed to encourage the establishment of carbon plantations. These incentives distort the land market and will result in the loss of agricultural land to forestry with potentially devastating effects on some rural towns.

The environment movement sees a synergy between bio-sequestration in trees and the creation of additional habitat for biodiversity. The energy sector sees a cheap source of offsets. Planners see more vegetation in the vista, which will surely please their urban and green change constituents. It is hard to see who is giving consideration to impacts on the production capacity of Australia's arable land and the viability of regional economies where typically 40% of economic activity is related to agriculture.

The carbon plantation solution to climate change typifies the lack of true strategic planning applied in rural Australia. Rural planning is complex because it involves tradeoffs between critical resources and values (eg water, land, biodiversity, food production). It is time that legislation and process is upgraded to accommodate this complexity.

The Association supports the optimization of natural resource allocation via collaborative landscape planning processes.

#### **6 TERM OF REFERENCE (E) COMPETITION POLICY**

The asymmetry between how biodiversity and planning laws are applied in rural and urban NSW may be a competition policy issue, as is the power of Government as a landholder to advantage itself via zoning policy.

Local Government has a competitive advantage over farmers in that it can constrain farmer's landuse by rezoning farm land for conservation while at the same time rezoning

similar land that Council owns for development (this is a common occurrence in coastal NSW).

The Association recommends that the Inquiry refers the above matters to the ACCC for investigation.

## **7 TERM OF REFERENCE (F) DEVELOPMENT APPROVAL PROCESSES**

The Association has called on the Government to reduce red tape and deliver the integrated, 'one-stop-shop' planning promised by NSW Government since 1994. As discussed above, this cannot be achieved without profound regulatory reform.

Furthermore, the Association is concerned that certain classes of corporate citizen appear to get favourable treatment under planning processes.

Current environmental legislation and planning policy supports development in urban and peri-urban NSW and largely prevents development in rural NSW.

Agricultural development typically involves gaining approval to clear native vegetation but the Native Vegetation Act 2003, coupled with threatened species legislation largely prevents clearing of vegetation. Approval is almost impossible to obtain without providing significant offsets on the same property (50:1 offset ratios are not uncommon) which are not always available.

Different rules apply for property developers in urban zonings. Developers can negotiate an offset wherever they can via an ad hoc process. Also, they can use the Biobanking system to purchase biodiversity credits. This allows developers to clear high value vegetation on urban land at a favourable exchange rate. This flexible methodology and favourable terms are not permitted on land zoned rural.

Likewise, mining companies have access to streamlined approval processes under Part 3A and appear to be able to clear what ever they need to. The Association has documented a case in 2006 where a hundreds of acres of threatened remnant vegetation was cleared felled for an open cut mine, while the neighbouring farmer could not gain approval to remove a single specimen of the same species from a paddock. This lack of symmetry undermines the credibility of the planning process.

### **7.1 Standard DA process**

The Association notes the proposed reforms of the Department of Planning from 2008 as:

- Removal of state wide and regional development from Councils to a Planning and Assessment Commission.
- Grading DAs for scale with more appropriate timescales for decisions according to level of complexity.
- Simplified appeal procedures for disputed matters involving timely local arbitration where possible to avoid court action.
- Mediation as a precursor to court action.
- Increasing the scope of complying and exempt development
- Improving the certification processes within Councils
- ePlanning, inter alia to improve tracking, enhancing certainty in rezoning, more delegation, and more realistic time scales in LEP preparation.

The Association is generally supportive of these proposals contingent upon the creation of effective processes for local input into state and regional development.

At present, many Councils have a backlog of unsettled Development Approvals for minor subdivisions and building alterations, some of which have been backlogged for years.

The reasons for such backlogs may include:

- The workload of Councils;
- Procedural and administrative duplication;
- Inefficient departmental and interdepartmental involvement in DAs;
- Variations in approval standards within and between councils; and
- Lack of accountability

The Association priorities for change in this sphere of planning include:

- Streamlining of DAs with respect to boundary changes in rural zonings
- The long-promised 'one stop shop' for approvals (contingent upon regulatory reforms discussed above)
- A uniform set of protocols prepared by Government agencies to distribute to Councils designed to accommodate the practical planning and approval needs of farmers, and to protect farmers' ability to conduct production activities.

## **7.2 Part 3A process**

The Association has major concerns about the implementation of Part 3A of the EP&A Act 1979, including lack of transparency, low standards for technical review, exclusion of community input and the lack of agricultural representation on the Planning Assessment Commission.

At this point, the perception of many farmers is that the purpose of Part3A is to facilitate decisions that are contrary to general policy principles and community wishes

### **Community engagement**

The Association understands that a core principle of NSW planning legislation is that the community can and should have a significant voice in planning decisions.

However, Part 3A dramatically reduces the involvement of the community in the decision making process and seeks to reduce the risk of concerned individuals or groups delaying or preventing significant development. The Minister for Planning and the Director General (DG) for the Department of Planning maintain the power to make all key decisions regarding significant development, with advice from expert panels, limited input from Government agencies and a reduced capacity for community input and appeal. <sup>4</sup>

The Director General has a significant amount of discretion with respect to the environmental assessment process. In defining what impacts the assessment should address, it is the DG who prepares the environmental assessment requirements for the proponent, having regard to any Ministerial guidelines on the subject and consulting with relevant Government departments. There is no requirement, however, for the Director General to incorporate those concerns into the assessment requirements. There is also no formal mechanism for the community to propose that particular issues should be included at this stage in the development approval. <sup>5</sup>

The Community only has opportunity to raise their concerns after the environmental assessment has been accepted by the DG who then makes the assessment public for at least 30 days, during which members of the public can make written submissions. This

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<sup>4</sup> Ratcliff, I, Wood, J., Higginson, S., 2007, Technocratic Decision- Making and the Loss of Community Participation Rights: Part 3A of the Environmental Planning and Assessment Act 1979, [http://www.edo.org.au/edonnsw/site/part3a\\_article.php](http://www.edo.org.au/edonnsw/site/part3a_article.php)

<sup>5</sup> Ratcliff, I, Wood, J., Higginson, S., 2007

would appear to be limited input for the community, considering that the DG has already concluded that the environmental assessment is adequate at this stage. (ibid)

### **Expert Panels – The Planning Assessment Commission**

The Association understands that the Independent Hearing Assessment Panel (IHAP) was replaced with the Planning Assessment Commission (PAC) in October 2008, which has eight part time members, who were appointed by the then Minister for Planning, the Hon. Frank Sartor.

The Minister is the responsible authority for the appointment of experts to the IHAP, and is responsible for final approval of the Plan. The Association understands that there were intentions of establishing a list of experts that may be drawn from for particular project assessments, however, that this list was never formally established.

There appears to have been no requirement to include agricultural/ rural representation when selecting commissioners for the new PAC. The Association seeks that a list of additional experts is formally established and that the process for establishing these members is completely transparent, including the disclosure of selection criteria for the members/ commissioners. The Association would also request that the selection criteria include representation of rural and regional areas, in proportion to land tenure in NSW.

The Association also requests that the Department of Planning make guidelines immediately available to explain how the Planning Assessment Commission is to function and how the terms of reference are to be set for the project review/ assessment.

### **Orange Agricultural Research Station**

Part 3A is being used to override local Government LEP and planning process to allow the State Government to sell and develop its agricultural research station southeast of Orange.

The wording of the Part 3A application does not refer to Council's opposition to the development and on the contrary infers that it would be consistent with Council policy. This seems disingenuous given that there would be no need for Government to resort to Part 3A if the proposal was supported by Council.

Council has invested in the infrastructure needed to support development north of the town and has released land in association with this. The Association is advised that the proposed development of research station is contrary to Council's own strategic planning and moreover, is likely to present difficulties to neighbouring farmers.

In addition to itself being high quality agricultural land, the site is adjacent to highly productive orchards. Following development, experience shows that neighbourhood complaints about noise, dust and smells typically result in restrictions on agriculture.

Irrespective of the merits of the land sale and development, the Association is concerned about the use of Part 3A to countermand local decision making and to disenfranchise local citizens. The situation is symptomatic of a planning system that fails to provide a coherent process to stakeholders and detracts from the ability of citizens to contribute to long term visions for their neighbourhood and region.

### **Liverpool Plains mining proposals**

One of Australia's most productive farming resources, the Liverpool plains in the Namoi Valley, is currently being developed for coal mining. The Liverpool plains have excellent fertile soils and excellent water supply.

They are also underlain with good quality coal, and their geographic location proximate to the Hunter coal mines and rail infrastructure makes them an attractive proposition for mining development. While there is plenty of coal further North West, and where the farming system is far less vulnerable, such coal is further from the port.

The cost and benefits of mining in the Liverpool plains warrants systematic analysis. It could be argued that since this is arguably Australia's most valuable and productive farming area due to its rich soils and abundant water, that a very low risk threshold for mining should apply.

Cost benefit analysis aside, a central question for the assessment process should be whether available science and data is adequate to prove that it is possible to extract the coal without jeopardising the farming resource. The ultimate planning decision should hinge on whether it is reasonable to definitively claim that mining will not result in damage to water quality and quantity in the catchment. As has been documented in the Southern Coal Fields inquiry, underground mining can fracture aquifers resulting in loss and/or pollution of ground and surface water.

Answering this question competently is not a trivial exercise. To do it 'on the run', in a time frame acceptable to the mining industry is probably impossible. This is because NSW has not made the upfront investment in science and information needed to underpin complex impact assessment processes involving ground water systems.

Currently, the ground water systems of the Namoi valley are poorly understood. The aquifers have not been mapped in detail; there is no comprehensive network of water monitoring bores; there is no robust data base that could enable an assessment team to make findings regarding the current condition of the resource, how the system works and how mining exploration and mining itself may impact on the water resource.

In short, there is no existing basis on which to make a truly informed decision about the degree of risk to the farming system.

In the absence of strong pre-existing data, an environmental impact study will be commissioned whereby 'best available' data is cobbled together. The Department of Water and Energy will be asked to provide an opinion on the basis of inadequate information, which may or not be heeded; the community will be consulted, but not necessarily listened to. It is quite possible that mining will go ahead and that in 20 year's time, the Liverpool plains will resemble the upper Hunter valley. As is well documented, the Hunter has experienced severe water pollution resulting from mining.

In summary, the major problems with the current Part 3A approval process are:

- Time constraints imposed on Government Departments to complete Impact Assessments
- Insufficient environmental baseline data for Government to make assessments
- Discretionary powers of Minister and Director General to choose either to use or not to use the assessment information and recommendations of Government Departments, and
- The lack of community input in defining what the development proposal should address, and also a lack of community consultation after the environmental assessment has been accepted.
- The absence of a mechanism for the appointment of rural/regional expertise to the PAC
- PAC Commissioners are appointed by the Minister's discretion.

The Association seeks an independent review process, which is independent of the Ministers Influence and that there be clear selection criteria for the appointment of members/commissioners.

Further, with regard to coal mining assessment and other projects which may have significant impacts on natural resources and farming systems, the Association seeks that the Government adopts the recommendations made in the report by the New South Wales Government on the impacts of coal mining in the Southern Coalfield.<sup>6</sup> These include the establishment of a reverse onus of proof, contingency planning, and improving the quality of scientific data. In this regard the Review Panel concluded that:

*Due to the extent of current knowledge gaps, the Panel considers that a precautionary approach should be applied to mining which might unacceptably impact highly-significant natural features. The Panel considers that the approvals process should require a 'reverse onus of proof' from the mining company before any mining is permitted which might unacceptably impact highly- significant natural features. In other words, the mining company must demonstrate, on the balance of probabilities, that identified highly- significant natural features would not be unacceptably impacted. (ibid p114)*

*Regulatory agencies should consider, together with the mining industry and other knowledge holders, opportunities to develop improved regional and cumulative data sets for the natural features of the Southern Coalfield, in particular for aquatic communities, aquifers and groundwater sources ... Coal mining companies should provide a minimum of two years of baseline environmental data, collected at appropriate frequency and scale, to support any application under either Part 3A of the Environmental Planning Assessment Act 1979 or for approval of a Subsidence Management Plan (ibid p115)*

## **8 TERM OF REFERENCE (H) INTER-RELATIONSHIP OF PLANNING AND BUILDING CONTROLS**

### **8.1 Dwelling entitlements**

Building controls typically do not accommodate the needs of farm businesses and farming families. The stability and continuity of farming families depends to a large extent on the ability to house family members on the property. Planning controls have become progressively more restrictive in this regard, however, with the removal of dwelling entitlements and restrictions on the creation of house blocks on farm land. Likewise, farmers must retain the ability to erect workers dwellings.

From the point of view of farmers, planners are applying urban values and rules to rural land without considering the differences in the social structure and economic realities of operating a farm. It is much easier to attract and retain good farm labour when you can provide housing on site. Most farm workers do not want to drive long distances from a rural town to a farm each day. Likewise, it is bad social policy to impose rules that effectively to banish grandparents to the nearest town because the next generation of the family is crowding out the house (and approval for an additional house is denied).

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<sup>6</sup> *Impacts of underground coal mining on natural features in the Southern Coalfield: strategic review, State of New South Wales through the NSW Department of Planning, 2008, p114.*

## **8.2 Urban/farm interface**

As stated above, zoning land for agriculture does not protect agriculture unless this goes hand-in-hand with measures that preserve the ability of farmers to use their land productively. In the Sydney Basin and on the coast we have seen the progressive economic sterilisation of agricultural land as neighbourhood complaints and local Government regulations prevent farmers from conducting basic farming activities.

It is a fact of life that urban people moving into farming regions do not understand that farming is an industrial activity. They see farmland as an attractive green landscape but have low or zero tolerance for farm structures such as sheds and greenhouses that affect their view, for the management of farm vegetation, or for the noise, dust and smells associated with farming activities.

Urban people expect and demand the same standards of amenity that they enjoyed in an urban setting. If the activities of their farmer neighbour bother them, they pick up the phone and complain to the authorities. The authorities are typically staffed by urban people who share the values and attitudes of the complainant. The result is progressively greater restrictions on farming operations.

To provide a current example, the Wollondilly Shire Council draft policy for the Construction and use of Igloos and Hothouses proposes to introduce 30 metre setbacks from any property boundary. The aim of this is to preserve views for new residential neighbours. This may sound a reasonable aim until you consider the actual consequences for farmers.

A typical horticultural enterprise in Wollondilly Shire occupies a 2 hectare (Ha) block with a shape of 100m x 200m (20,000 sq metres). The draft policy requirements of 30m minimum from any property boundary would take up 1.4Ha (14,400 sq m) of the block, leaving 40m x 140m – 0.56Ha (5,600sq m) for the owner to use for production. In other words, the policy would sterilize more than 70% of the property for productive use.

Such an outcome is clearly contrary to Wollondilly Shire's Economic Development Strategy, which includes an aim to "diversify and strengthen" the viability of farms in the Council area.

The draft Wollondilly Shire policy for the Construction and use of Igloos and Hothouses is typical of a failure by Government to balance the economic realities of farming with the demands of their urban constituents.

The following measures would help correct this imbalance and give clear guidance to local Government:

- Amend the model LEP to remove objectives relating to maintaining 'scenic amenity and the 'landscape quality of the area', and 'scenic qualities' for land zoned rural;
- Amend the model LEP to include protecting agricultural commerce as an objective for land zoned rural/residential;
- Require all new residential developments adjoining farm land to include permanent agricultural buffer zones established on the title of the parcel of land being developed/sold. The aim of this is to transfer the obligation to create and maintain effective setbacks onto the developer and future owner;
- Require that purchasers of residential or rural residential property be provided with a mandatory Section 149 Certificate that:

- details farming activities that will continue to occur in the neighbourhood, describes the ongoing impacts of these activities on amenity and affirms the ongoing right of farmers to undertake these activities
- notes that the Standard Local Environment Plan requires the consent authority to protect and maintain the neighbouring land for agricultural industrial use
- details any agricultural protection zones that exist on the title

The Association appreciates that the above measures would represent a significant departure from current policy and practice. Such measures, however, are essential to maintaining and growing the NSW farm sector, particularly in the fertile coastal zone.

Related to such measures, a public campaign may be needed to change urban attitudes to agricultural production and to explain the value of retaining agriculture in peri-urban landscapes. With regard to views, a good outcome would be to see attitudes change to the point that urban citizens value agricultural activity in the landscape as evidence of the economic vitality of their community. The appearance of a greenhouse on the ridge should be seen as a good thing, not as a blight on the view.

## **9 TERM OF REFERENCE (I) IMPLICATIONS OF THE PLANNING SYSTEM ON HOUSING AFFORDABILITY.**

The Association believes that major structural problems in our economy, including the worst housing affordability ratios in the OECD, are due to a failure to decentralise and support economic activity in regional NSW.

Improving housing affordability depends on establishing a regulatory framework and related investment strategy that genuinely supports regional development and decentralisation.

Commentators on NSW housing affordability typically call for the release more land close to Sydney and for fast tracking approval processes. In the view of the Association, such responses are likely to compound the problem.

Releasing more land in the Sydney basin will only serve to increase pressure on collapsing infrastructure and services. Failure over many decades to manage the growth of greater Sydney has placed a crippling burden on the State budget. A consequence of this is neglect of the investment in infrastructure and services needed to stimulate regional development and enable decentralisation.

When considering the decentralisation challenge, the Association believes that Government has given insufficient attention to the impediments to regional development - impediments that could be removed via changes in policy and without need for major expenditure.

Strategic planners cannot rely on the 'sea change' and 'green change' trends to drive decentralisation. On the contrary, planners need to remove policies that enable this new rural population to work against the viability of agriculture by making complaints and pushing for local Government controls that prevent farmers from operating their businesses efficiently.

Agriculture contributes in the order of 40% of economic activity in regional NSW. Agriculture is one of the few sectors in the global economy with strong prospects for growth. It follows that strategic planning policy must be supportive of agricultural activity and development.

The Association sometimes get the impression that the Government and strategic planners see agriculture as somehow belonging to the past – as an industry that is moribund, has no long term future and is nothing to do with ‘progress’. In fact, Australian agriculture is a globally competitive, state-of-the art industry, with strong prospects for growth as Asian markets for high-quality protein and other produce expand.

If Government were truly committed to decentralisation, it would:

- establish a policy framework that enables farming to coexist with urban development in the fertile coastal zone
- remove the constraints on agricultural development discussed in this submission
- remove the cost-burden associated with habitat conservation on farm land
- support innovation and investment in farming
- support new industries in regional NSW that are synergistic with farming.

For example, construction of a utility scale thermal power station and associated manufacturing facility in a town like Dubbo or Moree would create thousands of jobs across a diversity of pay scales and professions. An injection of stimulus package funds into such initiatives would pay far reaching social and economic dividends.

In conclusion, the solution to Sydney’s housing affordability and infrastructure woes is policy and investment that supports true diversity of employment in regional NSW and a strong base agricultural economy.

### **9.1 Conclusion**

The Association believes that planning for agriculture should be a priority strategic issue for NSW Government.

From the point of view of farmers, the Government does not appear to have a clear vision of where agriculture fits in the NSW landscape, particularly in the more fertile, better watered peri-urban regions.

Zoning land for agriculture will not protect agriculture unless this goes hand-in-hand with measures that preserve the ability of farmers to use their land productively in peri-urban neighbourhoods, and which preserve farmers’ access to water resources.

Likewise, zoning farm land for environmental conservation will not achieve good conservation outcomes. What is needed is a landscape planning model that respects farmers’ production needs and engages farmers in true conservation partnerships.

The NSW agricultural industry wants to take advantage of surging demand for quality food products in Asia and build on our excellent research and innovation base to lead the world in sustainable farming technologies. This in turn can help to drive decentralisation and the creation of new employment in regional areas.

Both investment and innovation are being stifled, however, by current planning, natural resource and biodiversity legislation.

The vision that the agricultural sector has for itself currently is not shared by planners or policy makers. The Association hopes that the Inquiry will give serious consideration to mechanisms that may help policy and planning professionals to engage with the issues raised above and to work with the farm sector in developing solutions.

In this regard, the Association would welcome opportunities to participate in technically based strategic planning processes that address regulatory reform, regional development and decentralisation issues.

The Association believes that it also would be beneficial to have a well-resourced rural team within the Department of Planning and, also, rural and regional representation on expert review panels.

## **NSW FARMERS' ASSOCIATION PLANNING POLICY**

### **Planning in rural areas**

The Association supports:

- a) the simplification of land use planning to reduce duplicity, cost and time delays;
- b) land use planning decisions being made at a local level using local data and consultation;
- c) the usage of alternative dispute resolution mechanisms prior to any court proceedings for land use conflict issues;
- d) the retention of dwelling entitlements in perpetuity;
- e) provisions for the erection of workers dwellings on productive agricultural land;
- f) the removal of clauses within Local Environmental Plans which impose or facilitate native vegetation provisions in excess of the Native Vegetation Act; and
- g) the implementation of 5 year reviews of all rural Local Environment Plans.

That the Association requires, in order to minimize rural/urban interface land use conflicts from future rural/residential and commercial/industrial [development], subdivisions proposed for agricultural lands should:

- a) be near urban centres;
- b) ensure rural/residential land use is commensurate with being residential use;
- c) where possible, be located on the lower quality lands;
- d) have a preference for clustered development;
- e) not significantly impact upon existing natural resources; and
- f) not significantly impact upon existing agricultural industries.

The Association opposes the imposition of environmental zonings, such as wild life corridors on private land.

### **Land use planning principles**

Land use planning decisions must be based on genuine extensive consultation along with independent objective information such that the rights and needs of affected farmers and rural communities are maintained and protected.

The NSW planning reforms should effectively address the needs of rural industry and rural communities, specifically so as to ensure that:

- (a) existing land use rights of farmers are protected and compensation is provided for any regulatory restrictions on the traditional uses of rural land in NSW, including threatened species and native vegetation legislation;
- (b) land subdivisions properly address impacts on water resources and rights to farm;

(c) regional strategies and local environment plans are developed with full community consultation and the results of the consultation are in fact reflected in the final plan; and

(d) any restrictions on rural land use resulting from regional strategies, local environmental plans and environmental legislation are preceded by appropriate regulatory impact statements.

The Association opposes the extended powers of the Minister for Planning through the Environmental Planning and Assessment Amendment Bill 2006 to remove the planning powers of a council unless a proper independent evaluation of the councils' performance has been undertaken.

### **Proposed Standard LEP**

The Association opposes the use of the Local Environment Plan (LEP) planning instrument to standardise Local Government planning throughout the State, because it distances land use planning decision making from the communities which they affect, and makes farmers vulnerable to future arbitrary land use planning decisions

The Association sought the following amendments:

- Changes to the LEP cannot be made without consultation;
- Section 54 3(b) of the Standard LEP includes 'economic' grounds;
- Prospective decisions by consent authorities on the zoning of agriculture/intensive agriculture/rural residential or rural small holdings land are:
  - the subject of extensive and genuine consultations with the affected stakeholders at each stage of the decision making process which includes independent and objective analysis of key agricultural and socioeconomic factors; and
  - based on consideration of objective productive standards that include soil type, terrain, size, location, water access/availability and current and prospective economic returns;
- Farmers affected by zoning decisions have the right of appeal firstly through a binding alternate dispute resolution process with a right for further appeal through the Land and Environment Court;
- Agricultural activity is protected from the unreasonable impact of residential developments;
- The implementation of the consent authority of effective measures to protect agriculture activity from residential interference requires:
  - relevant developments to be accompanied by a study of the prospective socio-economic impacts on agricultural activity which is publicly available during the consultation process;
  - ii) neighbouring development to establish buffer zones on the developer's land to minimize future land use conflict with bordering agricultural enterprises; and
  - iii) a mandatory Section 149 Certificate that:
    - warns prospective buyers of the potential loss of amenity from agricultural activity
    - notes that the Standard Local Environment Plan requires the consent authority to protect and maintain land for agriculture
    - explains to prospective purchasers the purposes of buffer zones as well as the advantages of maintaining the buffer into the future.
- The LEP legal instrument be amended in Section 10 (i.) in regard to the objectives for development in zones for 'rural residential' to include the additional objective of protecting agricultural commerce conducted in accordance with zoning; and (ii) in regard to the objectives for development in zones for 'agriculture', the deletion of the objective of maintaining 'scenic amenity and the landscape quality of the area', and 'scenic qualities'

- The rural zoning allows reasonable flexibility for changes in the type of agricultural activity conducted on the zoned land without the need for development applications to consent authorities.

### **Rezoning of Land Use**

The Association calls for:

- notification of all non-complying landholders in a similar manner to development applications, of any proposed rezoning of land use by local or state Governments; and
- a right of appeal against any such rezoning in the Land and Environment Court.

### **Reference Groups for LEPs**

The Association has extreme concern about the lack of farmer participation in the development of new LEPs in NSW.

Councils should form reference groups for the development of draft LEPs and ensure that representatives from rural industries are included in these reference groups.