

Land use planning - Discussion paper

The purpose of this discussion paper is to obtain the views of members regarding rural land use planning so the Association can advance their interests.

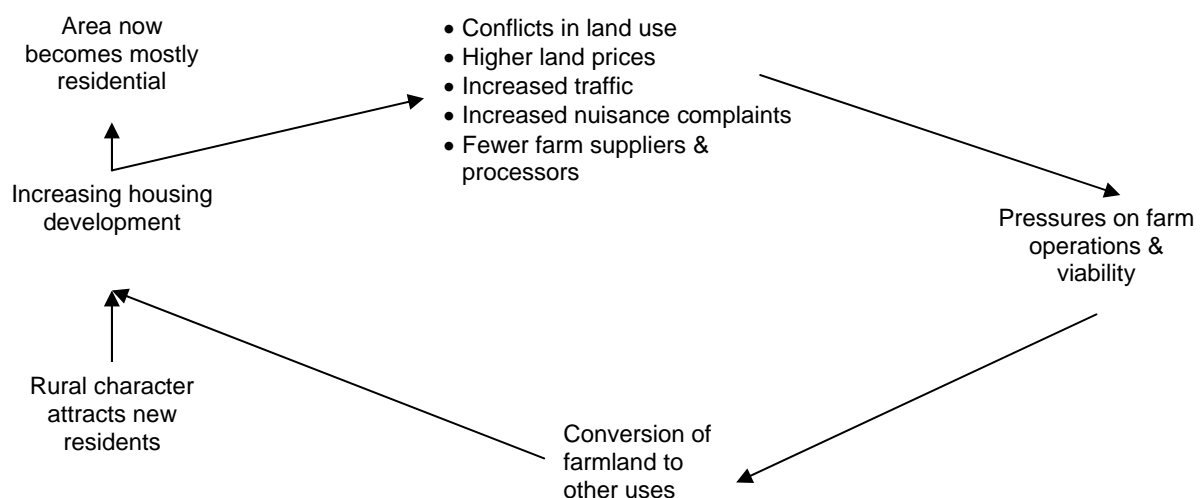
Farmers are requested to read the discussion paper, complete the brief survey and to send the document back to NSW Farmers' Association care of Dougal Gordon Fax 02 8251 1750 or e-mail gordond@nswfarmers.org.au before the 4th December 2006.

Land use planning issues are increasingly impacting upon farmers and the farming community as subdivision, rural residential development, urban encroachment, the intensification of agriculture and Government legislative intervention upon the rural/ urban interface occur. The increased incidence of land use conflict is a natural by-product of this trend, an outcome which will inevitably worsen as competition for finite land resources intensifies into the future.

Traditionally agricultural land use planning issues were mainly prevalent in the regions surrounding major metropolitan centres along the coast. This is not surprising given that 85% of Australia's population is located in these areas, however in more recent times a number of factors have led to agricultural land use planning issues being experienced throughout Australia.

Planning legislation in NSW is governed by the *Environmental Planning and Assessment Act 1979*. This Act sets out the state, regional and local environmental plans to guide planning and development decisions. Planning in agricultural regions is generally covered by Local Environmental Plans (LEPs) within which Local Councils use zoning and development regulations to control how land is used. The State Government has also recently developed a Standardised LEP in which all NSW Local Government's must use as a template to amend their LEPs within the next 2-5 years. The Standardised LEP aims to impose a common set of provisions, zones and definitions across all NSW LEPs while allowing flexibility for Local Governments to determine provisions such as minimum lot sizes.

The following graph details the cycle surrounding the conversion of agricultural land to rural residential development. The cycle also demonstrates the influence of this transition on agricultural operations, on farm investment and local agricultural economies.



Source: Daniels and Bower, 1997, *Holding our ground: Protecting America's Farms and Farmland*.

Increases in wealth and city based work pressures are driving more city dwellers to pursue rural lifestyles. Similarly, as transport infrastructure and telecommunication technology improves access to rural areas, State and Local Governments are coming under increasing pressure to house and service this population. Given this pressure, it is of no surprise that farmers (who own 74% of land in NSW) are experiencing unprecedented urban encroachment and land use conflict.

This encroachment is occurring in some of the most productive agricultural land with regions surrounding major urban centres in Australia accounting for almost 25% of Gross Value of Agricultural Production (despite comprising less than 3% of Australian agriculture land area).¹

Unfortunately, the relocation of farming to other locations is constrained by water availability, distance to markets, soil fertility, climate and restrictions on clearing native vegetation. With respect to the latter, farmers wishing to develop alternative farming areas are being prevented from doing so by clearing controls that prevent them from removing trees, or from converting native pasture into cropping country.

Historically, the major land uses in Australia have been urban, industrial, mining, agriculture, forestry and conservation/ recreation. Over the past century, conservation land use has evolved from the setting aside of small areas of land for nature reserves, to a major park system covering 7% of Australia. In more recent times, as the political power and influence of the 'green' movement has increased, the reserve system has been aggressively extended onto farm land via the imposition of threatened species and native vegetation conservation legislation, and local government instruments such as wildlife corridors and tree preservation orders.

In NSW, threatened species legislation provides a mechanism for identifying and listing threatened ecological communities and species. All new development (eg urban, mining and agricultural) must be assessed to determine its impacts on these species. Before native vegetation can be cleared it must be demonstrated that it does not comprise a threatened species or habitat for threatened species, or (and this is only permissible in certain circumstances) that an adequate offset has been provided.

Farmers are increasingly impacted by legislation which impacts upon the daily operations of their business and the land use planning area is no exception. In NSW, there is also conflict between the authorities administering the various items of environmental legislation and the legislation itself. The main statutory planning legislation, the *Environmental Planning and Assessment Act 1979* is administered by Local Government and the Department of Planning. The *Native Vegetation Act 2003* is administered by Catchment Management Authorities, with the Department of Natural Resources responsible for compliance. The *Threatened Species Conservation Act* and the *Protection of the Environment Operations Act* are administered by different arms of the Department of Environment and Conservation. There is significant overlap between the operation of these items of legislation and a general failure to clarify the jurisdiction and accountabilities of the responsible authorities. Also missing, are practical mechanisms for resolving land use disputes in an equitable and timely manner.

As stated previously, the Standardised LEP has granted the responsibility for determining issues such as minimum lot sizes for subdivision up to Councils within their LEP's. Notably the Department of Planning retains the right to approve LEP's and in doing so ensures that there is appropriate rigour in the determination of minimum lot sizes. Unfortunately poor Local Government decision making has often resulted in land use conflict and court action despite neighbouring farmers warning of such concerns during the consultation period. The Canowindra, Cowra, Mudgee and Orange regions have all experienced extensive subdivision which has led to land use conflict. In many of these cases extensive subdivision has also created concerns regarding future water availability, access to electricity, sewage contamination of waterways, poor weed management, increased bushfire risk, damage caused by wild dogs, the creation of unsightly

¹ Change and continuity in peri-urban Australia, Houston

shanty communities and potential biosecurity concerns. However Local Government cannot be solely to blame for such problems as poor State Government management of National Parks and state forests has also led to weeds, wild dogs and bushfire issues on neighbouring agricultural land.

Problematically, there is a divergence of views among farmers regarding subdivision. For instance, some farmers wish to retain the ability to subdivide their agricultural land to provide a potential income source if required with the average age of farmers, drought, declining agricultural terms of trade and rising land prices providing additional incentives in this regard. Other farmers conversely believe that agricultural land should not be unduly fragmented by subdivision as this reduces the amount of productive land available for agriculture, increases the potential for land use conflict while increasing land prices making it more difficult for other farmers to buy land to gain economies of scale. Most Councils when drafting their LEPs are developing their minimum lot size provisions based on the advice of the Department of Primary Industries, local community consultation and the ability to service the lots with essential infrastructure eg roads, water, electricity etc.

The issue of dwelling entitlements (for land holdings smaller than the stipulated LEP minimum lot size) is also becoming contentious. Some Councils have proposed a 5 year sunset clause which forces farmers to lodge development applications within 5 years if they wish to build a dwelling. The aim of such a clause is to limit the number of land holdings that can have dwellings built on them in future so that the potential for land use conflict is mitigated. While other Councils in their draft LEPs have chosen to retain such dwelling entitlements in perpetuity, the Department of Planning's assessment panel (which approves LEPs) has so far indicated its desire for such a clause despite the lack of any requirement within the EP&A Act or Standardised LEP.

Some Councils are also using LEPs and/ or Development Control Plans to deter farming development in their region under the guise of preventing land use conflict. This is most prevalent with respect to intensive industries where Councils are imposing the maximum Development Application (DA) approval requirements irrespective of the size of the development or potential environmental risk. The time delays to also assess DAs is hampering investment and therefore stifling rural economies. These issues have created additional and unnecessary cost imposts on such businesses at a time when they are struggling to compete against subsidised imports and/ or are experiencing debilitating reductions in profit margins as a result of the exertion of market power by other supply chain participants.

While recent trends suggest a centralisation of planning powers by the State Government, Councils still retain the ability to legally impose native vegetation provisions within their LEP which are in excess of the Native Vegetation Act. For instance due to loopholes in the Native Vegetation Act and Standardised LEP, Councils can create instruments including Tree Preservations Orders and wildlife corridors that nullify routine agricultural management activity and regrowth exemptions provided under the Native Vegetation Act. This is a significant concern with many examples prevalent particularly in coastal areas throughout the state.