

Submission on the Agricultural Land Use Planning Strategy Options Paper

March 2021

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Opening

Local Government NSW (LGNSW) is the peak body for local government in NSW, representing NSW general purpose councils and related entities. LGNSW facilitates the development of an effective community-based system of local government in the State.

LGNSW welcomes the opportunity to provide feedback on proposals to address various 'policy problems' outlined in the Agricultural Land Use Planning Strategy Options Paper. Councils and joint organisations have acknowledged and quantified in their submissions the significant contribution of agriculture to their local and regional economies and also to the national economy. Councils are also cognisant of the importance of agriculture in the fabric of their rural regional and communities, providing direct employment and employment through service industries and contributing to the lifestyle that draws many people to live in our rural areas.

In preparing this submission LGNSW has received feedback from councils across the state, ranging from the far north coast, mid-coast and south coast, to New England and the central west, and south of the state, as well as from councils on the fringe of and within the greater Sydney region.

This submission was endorsed by the LGNSW Board in April 2021.

Background

The Agriculture Commissioner released an Issues Paper in August 2020. It is understood that the Options Paper builds on the earlier work of the Agriculture Commissioner's review of the Right to Farm Policy which identified four 'policy problems':

1. There is no definition, identification or development protections for State Significant Agricultural Land (SSAL) which is leading to this land being lost to non-agricultural uses;
2. There is no simple, accessible and impartial mechanism for farmers to resolve land use conflict regarding their operations;
3. The planning framework does not reflect the needs of agriculture; and
4. Local government plays a crucial role in regulating agricultural land use but can be risk averse and as a result can struggle to deliver broader NSW Government objectives to promote investment and jobs growth.

The Options Paper offers a further set of considerations under the following three topic areas.

1. Minimise the loss of productive capacity;
2. Reduce and manage land use conflict; and
3. Support the growth of agriculture and regional economies.

General comments

Diversity across the state

Local government recognises the importance of protecting agricultural land. Submissions from the sector individually highlight the significant contribution of agricultural land and the economic and social benefits of agricultural activities within and beyond each local government area.

Councils have indicated their general support for improvements to the planning framework for agricultural land use across the state, but LGNSW's consultation with members has shown

there is a spectrum of views. For example, there are varying opinions about how a new agricultural land use policy and improved use of mapping could potentially be applied. It must also be acknowledged that there are differences in the extent and intensity of agricultural activities that councils deal with in their daily planning and development roles. While these largely sit within the rural and regional areas of the state, there are also agricultural areas within metropolitan Sydney which may warrant recognition. The resources and skills available within local government also vary across the state, with some having greater agricultural land use expertise than others.

LGNSW acknowledges the Commissioner's consultation with local government to date. It is important the Commissioner gives regard to the diversity of views, expertise and resources in councils before landing on any state-wide policy framework and deciding how it should apply (for example whether provisions should be voluntary or mandatory). Councils have the benefit of day-to-day experience with these issues and as such, are well-placed to identify practical challenges and resourcing issues that should be fully considered before any policy changes are finalised.

While there are diverse views, there are also some consistent themes from a local government perspective. These are noted below:

- A one-size-fits-all blanket approach to the policy framework will not work – local government needs a flexible approach to implementing planning controls relating to rural land protection, to ensure that responses are tailored to and proportionate to the local land use context.
- In general, councils acknowledge the informal advice and support that is currently provided by the Department of Primary Industries (DPI), and would welcome additional guidance and data/evidence about agricultural operations to support their strategic planning and development decisions.
- Councils are under-resourced in general, and this is particularly acute in rural and regional areas. The practical reality of this is that any new proposals that would require councils to take on additional responsibilities or tasks would need to be accompanied by more resources and support. (For example, councils have indicated that they would not have resources available to undertake their own mapping.)
- Strategic objectives in regional, district and local plans to protect valuable agricultural land are often overridden by other priorities, particularly urban development and housing pressures.

Councils have a regulatory role in managing land use conflicts and complaints and are always the first port of call for complaints triggered by land use conflicts.

Recommendation 1: LGNSW requests that the Agriculture Commissioner give due regard to the diversity of views from councils across the state and consult further with local government to ensure:

- *the final policy framework is flexible to enable local government to implement controls tailored to and proportionate to their local land use context; and*
- *the practical and resourcing implications of the framework are fully factored in.*

Policy problems

It is noted that the Options Paper poses 4 ‘policy problems’ which were identified in the Agriculture Commissioner’s Right to Farm Policy Review¹:

1. There is no definition, identification or development protections for State Significant Agricultural Land (SSAL) which is leading to this land being lost to non-agricultural uses;
2. There is no simple, accessible and impartial mechanism for farmers to resolve land use conflict regarding their operations;
3. The planning framework does not reflect the needs of agriculture; and
4. Local government plays a crucial role in regulating agricultural land use but can be risk averse and as a result can struggle to deliver broader NSW Government objectives to promote investment and jobs growth.

This submission, and those of our members, responds to the first three policy problems which have been extensively discussed in the Options Paper. However, LGNSW questions the commentary in point 4 that councils are risk averse in relation to regulation of agricultural land uses. There is no evidence provided in the Options Paper to support this statement and no discussion of options in the paper to address this particular issue. Councils acknowledge they play a crucial role in regulating land use, but consider this contention to be an unsubstantiated criticism, based on what amounts to anecdotal reports provided in the Right to Farm review².

Recommendation 2: *LGNSW requests that the commentary labelled ‘policy problem 4’ be removed or at a minimum, revised and supported with appropriate evidence.*

Response to Options

Issue 1: Minimise the loss of productive capacity

Rural Land Use Planning Policy

While councils have indicated their general support for a rural land policy, there are different views on what the policy framework should look like. Some question whether there is a need for another new policy and suggest that the existing Right to Farm Policy could be updated as an alternative. LGNSW is of the view that there is merit in at least considering such an approach, given the general undertakings by government to simplify the planning system.

Councils are also mindful that any new policy or strategy to protect agricultural land should be an enabler for development and investment in agriculture, not a barrier. It will be important to avoid unintended consequences that could be detrimental to local and regional and economic development.

Recommendation 3: *LGNSW suggests that the Agriculture Commissioner liaise with the Department of Planning Industry and Environment to consider the merits and options of amending existing policies and directions for agricultural land use before committing to a whole new policy document.*

¹ file:///D:/Agriculture/Right-to-farm-policy-review-consultation.pdf

² Right to Farm Policy Review, December 2020, p 17

Mapping of State Significant Agricultural Land (SSAL)

Councils recognise that mapping of SSAL would provide valuable assistance to their planning and allow them to implement more specific local controls where necessary. However, there is a broad range of views about the realities and practicalities of such mapping. Key points include:

- Most councils could not undertake a mapping exercise without financial support from the State Government.
- Councils in general support the idea of state-led mapping but note that this must be 'ground-truthed' to ensure its accuracy.
- Some councils have expressed concerns about limitations with the proposed SSAL mapping (ie it may not be appropriate or applicable in all areas of the state) and problems of mapping based on biophysical methods. Significant agricultural land will be difficult to define as it varies depending on the specific sub-industry, location, access to services, proximity to markets etc. Productivity of the land may not always be the critical factor. Ultimately the definition of state significant agricultural land will not be one size fits all. The viability – and therefore significance - of agricultural land can also be affected by factors such as land size and ability to operate unimpeded within regulatory controls. Fragmentation of agricultural land can occur through the subdivision of larger farms into small lots, known in the rural zone as concessional lots.

LGNSW defers to councils' submissions for detailed commentary on the viability and practicality of different methods of mapping.

Recommendation 4: *The definition of significant agricultural land needs to allow for a variety of factors that may vary across NSW.*

Recommendation 5: *LGNSW requests that the Agriculture Commissioner recognise that councils are not resourced to undertake mapping of significant agricultural land and that if adopted, this task would need to be fully funded by the State government.*

Recommendation 6: *Any mapping that is to be used as a tool for decision-making in planning will require 'ground-truthing' to ensure its accuracy.*

Issue 2: Reduce and manage land use conflict

Resolution of disputes between neighbours on agricultural land is often difficult and can involve significant time and resources. Councils would therefore welcome assistance to reduce land use conflicts and facilitate resolution of farming/residential disputes.

The Options Paper has proposed various approaches involving new or expanded dispute resolution entities, but it does not acknowledge local government's regulatory role in managing disputes in the first instance. Councils investigate complaints to verify compliance with development consents (or compliance with the *Protection of the Environment Operations Act* (POEO Act) and follow up through compliance action where necessary.

LGNSW suggests the options be revised to recognise local government's key role in managing land use conflict and that before committing to the creation of a new entity or expansion of an existing one, greater consideration is given to how local government could be supported in its regulatory role.

Overall, minimising land use conflict is likely to require a number of measures working together, such as:

- having clear planning frameworks that recognise significant agricultural land;
- increasing community awareness of what to expect when living / working in agricultural areas;
- incorporating buffers into non-agricultural land approvals;
- Where buffers cannot be incorporated, provide guidance on alternatives, particularly for historical zoned residential land that cannot incorporate minimal buffer requirements;
- Mediation assistance.

Recommendation 7: *LGNSW suggests that the Agriculture Commissioner:*

- *revisit the options in the paper to recognise local government's regulatory role in managing disputes in the first instance; and*
- *before committing to a new or expanded dispute resolution entity, further consider how local government could be supported in its regulatory role.*

Recommendation 8: *LGNSW recommends that the Agriculture Commissioner implement a program of complementary measures to address land use conflict related to agricultural operations.*

Issue 3: Support the growth of agriculture and regional economies

Flexible planning controls

Due to the diversity across NSW, LGNSW advocates that planning requirements need to be flexible and allow for local decision making in response to the local context and conditions. Further, planning must cater for the continued diversification and evolution of agricultural uses (for example, as producers continue to innovate and introduce 'value-adds' or niche on-farm enterprises). Too stringent application of controls and limited zoning will inhibit this diversity.

Similarly, blanket state-wide approaches to planning provisions may present barriers to the establishment of agricultural uses and be inappropriate to local circumstances across NSW. However, at the same time, LGNSW recognises that certainty in the status of agricultural land and clarity around planning requirements such as buffer zones etc would assist agricultural businesses have the confidence to invest and set up in an area.

Resilience

The agricultural industry could also be encouraged by measures to support the longevity of the sector. For example, building the sector's resilience to equally substantial challenges such as climate change, land degradation, drought and water security. This would provide benefit to landholders as well as potentially minimise some of the land use conflict drivers.

The impact of climate change is affecting the ongoing viability of agricultural production and associated lands. Climate change scenarios will alter the nature of agriculture in a relatively short time frame. For example, biophysical attributes may be modified or degraded as a result of more fires and more droughts due to the effects of climate change. Councils are aware that farmers are already seeing these changes. The Options Paper makes no mention of climate change and this is a missed opportunity. Policies and principles designed to protect valuable agricultural land must be flexible to respond to climate change effects. Landholders and

councils will need assurance that where ongoing agricultural production is impacted by drought and other natural disasters, the policy enables mapping and land use plans to adapt accordingly if it is no longer deemed viable.

Recommendation 9: *LGNSW would like to see the NSW government encourage and assist farmers to adopt sustainable and environmentally friendly farming practices (e.g. chemical use and application, waste management, water use) as this may assist in the long-term sustainability and productivity of farming activities and also reduce land use conflicts.*

Recommendation 10: *The Options Paper should be revised to consider how climate change scenarios can be factored into agricultural land use policy, mapping and land use plans.*

Other matters for consideration

Agriculture in metropolitan areas

The Options Paper provides little direction on protection of agricultural land uses in the metropolitan area and makes no mention of the heritage values of market gardens in metropolitan areas. For example, this issue is pertinent at La Perouse in the Randwick LGA, which is home to a heritage-listed Chinese Market gardens zoned RU4 Primary Production Small Lots. The council advises that the state heritage listing in this instance provides greater level of protection and conservation of these important urban production areas than does the RU4 zoning or any other state government policies or provisions.

Some research studies³ have concluded that Australia's food security will increasingly depend on local urban agriculture and that urban agriculture presents an opportunity to support domestic food security, but scope to develop these food systems needs to be part of the urban design and planning processes of local and state governments. LGNSW acknowledges this may be out of the immediate scope of the Agriculture Commissioner's work, but given the importance of these metropolitan agricultural areas LGNSW considers it appropriate for the Options Paper to recognise their existence and clarify if they are within scope of the policy review.

Recommendation 11: *The Options Paper should be revised to recognise the existence of important metropolitan agricultural land and clarify whether they are within scope of the policy review.*

³ <https://www.futuredirections.org.au/publication/localising-food-production-urban-agriculture-in-australia/>

Conclusion

LGNSW wishes to reiterate that councils place significant value and attention on agriculture in their strategic planning, because for rural and regional councils in particular, it is such a large part of their communities and makes a significant contribution to their economy.

Implementing strategic plans that reflect what their community wants as well addressing State-driven planning objectives and targets can be a challenge for councils. In planning for and supporting their communities, councils work to balance the needs of the agricultural sector with the broader demands for economic investment and population growth.

This submission is informed by feedback from a range of councils and has highlighted the fact that while councils are broadly supportive, there are nevertheless varying responses to specific approaches posed in the Options Paper. A summary of the recommendations is provided in Attachment 1.

LGNSW supports work to identify significant agricultural land, and to recognise its status in the long term, and recommends that clarity in planning frameworks and mapping would assist councils in making decisions on development applications and facilitating strategic land use planning to support agricultural industries. Reducing land use conflict through clear planning, awareness and buffers will assist the stability and longevity of the agricultural industry.

LGNSW appreciates the Agriculture Commissioner's significant efforts to consult with councils to date. We would be pleased to assist the Commissioner with further consultation on the issues, particularly in clarifying some of the diverse views and reaching out to elected officials and senior staff within councils.

For further information, please contact [Jane Partridge](#), Strategy Manager - Planning, or [Susy Cenedese](#), Strategy Manager - Environment.

Attachment 1 – Summary of Recommendations

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