

LGNSW Submission on the Primary Production and Rural Development Explanation of Intended Effect (EIE)

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Opening

Local Government NSW (LGNSW) is the peak body for local government in NSW, representing all 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 make a submission to the Department of Planning and Environment's:

- *Primary Production and Rural Development, Explanation of Intended Effect*, October 2017; and the associated
- *Draft Planning Guidelines - Intensive Livestock Agricultural Development*, October 2017.

Introduction

The review of SEPPs

The Department of Planning and Environment (DP&E) has placed the *Primary Production and Rural Development - Explanation of Intended Effect* (EIE) on public exhibition. The EIE outlines the content of a proposed new State Environmental Planning Policy (SEPP) that will consolidate a number of existing SEPPs on primary production and rural land use planning matters. Much of the new SEPP will reiterate existing planning laws, with little change. The associated draft *Planning Guidelines – Intensive Livestock Agriculture Development* (Guidelines) will provide further guidance on the development assessment process for intensive agricultural activities.

The planning documents on exhibition are part of a wider review by DP&E of all SEPPs in NSW. DP&E intends to simplify and consolidate the current suite of SEPPs, under a series of themes, where possible removing out-dated laws and referring key provisions to Ministerial Directions and some detailed provisions to councils' Local Environmental Plans (LEPs).

LGNSW has long called for the reform of the SEPPs to reduce complexity, improve legibility and reduce the layers of plans that apply to a parcel of land. SEPPs currently:

- constitute another layer of plan making in the NSW planning system that is hard to access, navigate and interpret locally;
- are not well understood by the public, in comparison to council LEPs (while they are referenced in zoning certificates, whether they apply to the specific context or proposed development is not explained);
- may apply to diverse planning matters – both broad state-wide issues and matters of technical detail; and
- are used to override LEP provisions.

LGNSW supports the use of SEPPs as an integrated set of policies that provide the state's broad planning objectives, priorities and policy directions, as proposed in *A New Planning System for NSW: White Paper*, 2013.¹ We are concerned that this approach has not been adopted by DP&E in this review process.

¹ *A New Planning System for NSW: White Paper*, 2013, sections 5.2 and 5.3

The proposed changes

The new SEPP will consolidate the following five existing SEPPs:

- State Environmental Planning Policy (Rural Lands) 2008 (Rural Lands SEPP)
- State Environmental Planning Policy 30 - Intensive Agriculture (SEPP 30)
- State Environmental Planning Policy 52 - Farm Dams and Other Works in Land and Water Management Plan Areas (SEPP 52)
- State Environmental Planning Policy 62 - Sustainable Aquaculture (SEPP 62)
- Sydney Regional Environmental Plan 8 - Central Coast Plateau Areas (SREP 8)

The draft *Planning Guidelines – Intensive Livestock Agriculture Development* will provide guidance to the development assessment process on intensive agricultural projects. The guidelines also provide information on how to lodge a DA and the relevant requirements for approval.

The proposed SEPP mainly re-formats the current planning controls however there are some other subtle but significant changes proposed such as:

- key policy directions are to be removed from the SEPP and re-located under a Ministerial Direction (s117 of the Environmental Planning and Assessment Act) - including the planning principles that guide the re-zoning process of rural land;
- provisions to allow a farmer to more readily excise the farmhouse from the farm land on retirement, with subdivision below councils' minimum lot size, (this measure is to assist with succession planning and providing for retired farmers to age in place); and
- the revision of the definition for 'intensive livestock agriculture'.

LGNSW comments

1. Reducing the number of SEPPs

LGNSW fully supports the review of all SEPPs to reduce the overall complexity of the planning system by: regrouping SEPPs under themes, reducing the number of SEPPs and relocating local provisions to relevant LEPs, where possible.

However, LGNSW opposes shifting planning laws into s117 Ministerial Directions.

2. The use of Ministerial Directions

The proposed changes will require all rural planning and subdivision principles to be removed from the SEPP and be contained within a s117 Ministerial Direction. The reason given is to both strengthen the NSW Government's 'Right to Farm' policy and make greater use of a Ministerial Direction. While some planning principles are currently within the Ministerial Direction 1.5 – Rural Lands, LGNSW considers it more appropriate to relocate this material within the SEPP itself.

LGNSW strongly believes that removing policy direction from a SEPP, including planning principles in this case, undermines the rationale for, and 'backbone' of, the SEPP. The NSW Government's 'Right to Farm' policy is succinct and provides direction for rural and regional plan making for councils. This policy is readily able to be included in a SEPP.

LGNSW supports the approach to plan making proposed under *A New Planning System for NSW: White Paper* in 2013 as:

- the hierarchy of plans in NSW would be better integrated;

- the NSW SEPPs would ‘present the state’s broad planning objectives, priorities and policy directions’²;
- each subordinate plan would follow similar elements, where applicable, such as: vision, objectives, policies, actions and monitoring/reporting and delivery; and
- the system would create a ‘clear line of sight between each successive layer of planning’³, meaning that the policies and actions in one plan would be advanced in the subsequent plan in a consistent manner.

This approach considered SEPPs as the pinnacle of the hierarchy of plans for NSW with LEPs at the bottom rung and regional plans in between. This approach has been followed by the NSW Government with the recent strengthening of NSW regional plans and district plans in Sydney.

LGNSW is concerned that DP&E has significantly changed its approach to the role of a SEPP by moving all references to plan making policy to the s117 Ministerial Direction. This approach has been more widely adopted under the review process and will result in many new and updated Ministerial Directions being created on an increasingly wide range of plan making matters.

LGNSW believes this is a substantial shift and a backward step because it will:

- undermine the legitimate role of a SEPP as a plan to provide long term guidance to councils on planning issues of state and regional significance;
- reduce community consultation on plan making matters at a state level, because Ministerial Directions are not required to be placed on public exhibition in any form and can be amended with minimal notice;
- reduce the task of plan making to a Ministerial function more susceptible to the policy and political imperatives of the government of the day;
- reduce transparency, as Ministerial Directions are not identified on zoning certificates and not understood to be ‘plans’ within the hierarchy of plans under the EP&A Act; and
- make the planning system less clear – as Ministerial Directions are not well understood by the public and are difficult to find.

LGNSW seriously questions the increasing use of Ministerial Directions by the DP&E to deliver state planning policies. Where Ministerial Directions were once more sparingly used, in exceptional circumstances, it appears they are to now become the primary means of delivering planning policy direction to councils. SEPPs should have this role. LGNSW cautions the DP&E from taking such a short sighted view. The local government sector strongly urges DP&E to reconsider the increasing reliance on Ministerial Directions, as they will result in a more fragmented and less coherent planning framework, and one that increases the Minister’s discretion to interfere in local planning matters.

3. The right to excise the farmhouse

One of the more challenging issues for rural councils is managing communities’ expectations on the potential for subdivision of agricultural holdings of retired farmers. The proposed changes will allow subdivision to be permitted below councils’ minimum lot sizes, as specified in the LEP, for farmers planning retirement. This is a significant change from current practice.

LGNSW suggests the proposed policy be revised to clarify the purpose and better manage the possible negative outcomes of such a policy shift. There is private benefit in allowing a homestead to be separated from the farm as a business, on a farmer’s retirement. If this is the

² *A New Planning System for NSW: White Paper*, 2013, page 65

³ *Ibid.*, page 66

purpose of the policy shift, the size of the subdivision should be restricted to the curtilage of the dwelling plus an appropriate buffer, thereby reducing any negative impact on the scale and viability of the remaining farm as a business. However, if the DP&E allows the subdivision of the homestead to divide the farm in half, as proposed, both the remaining farm and homestead block may well become unsustainable.

We recommend the size of subdivision be restricted to the curtilage of the house (and driveway) plus an appropriate buffer. This would enable the house to be separated from the business, without undermining the viability of the farm as an agricultural activity, supporting the planning principle for rural land of preserving viable, productive farmland.

4. Planning guidelines

The proposed *Planning Guidelines - Intensive Livestock Agricultural Development* will be a useful tool for applicants and planning authorities to manage the development assessment process for intensive livestock developments, such as feedlots, poultry farms and pig farms. The Guidelines clarify the process and requirements for obtaining approval of these more controversial developments.

The Guidelines are based on the revised definition of 'intensive livestock development' under the new SEPP which appears to be reasonable. The definition does not affect the permissibility of the activity or where DA consent is required.

LGNSW suggests it would be helpful for applicants if the Guidelines provided more information on local planning requirements, such as:

- the potential impact of the development on adjoining land - likely matters of consideration for council; and
- where applicable, on whether an infrastructure levy may be required.

5. Advertising of SEPPs for 28 days

LGNSW recommends that preliminary SEPPs be routinely exhibited for 28 days in their final form, similar to the exhibition period for LEPs.

Conclusion

LGNSW supports the simplification of SEPPs, both reducing the number and the content within, as well as re-grouping the remainder into a series of SEPPs under general themes.

However, we oppose relocating the state's broad planning objectives, principles, priorities and policy directions to a series of Ministerial Directions. This undermines the purpose of a SEPP as a high level state plan, and decreases the transparency and clarity in the NSW planning system. Re-packaging the plan-making content of SEPPs and subjecting them to Ministerial discretion jeopardises the very intent of the SEPP review process which was to improve the planning system.

LGNSW supports SEPPs as integrated state policies that provide broad planning objectives, priorities and policy directions. That is not the function of a Ministerial Direction.

We likewise question the increasing use of Ministerial Directions to fast-track changes in policy and procedures that should be the subject of more strategic review processes.

LGNSW recommends that the proposal to subdivide farm dwelling from the farm business, below the LEP minimum lot size under the LEP, be reviewed to ensure that the continuing use of the remaining farm for agricultural purposes is protected. LGNSW recommends the size of subdivision be restricted to the curtilage of the house (and driveway) with a maximum area of, say, 5 hectares.

LGNSW supports the *Planning Guidelines - Intensive Livestock Agricultural Development* and recommends further information on council planning requirements would be helpful, including whether any infrastructure levies may be applicable.

On behalf of the sector, LGNSW recommends the final draft SEPP be placed on exhibition for 28 days as it constitutes an environmental planning instrument similar to a LEP (which requires public exhibition). This process would mean the sector knew what changes had been made and give councils more time to prepare for the pending changes. Exhibiting a preliminary SEPP would also enable DP&E to receive final feedback from councils on the detail before the SEPP becomes law.

Contact:

Jennifer Dennis, Senior Policy Officer, LGNSW: jennifer.dennis@lgnsw.org.au or 9242 4000.