

DEPARTMENT OF PRIMARY INDUSTRIES

OPTIONS PAPER AGRICULTURAL LAND USE PLANNING STRATEGY

AN ANIMAL LIBERATION SUBMISSION



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We acknowledge the
Traditional Owners of
country throughout
Australia and recognise
their continuing
connection to land, waters
and culture.

We acknowledge that this
document was written on
land stolen from and
never ceded by the
Gadigal People.

We pay our respects to
their Elders past, present
and emerging.





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ABOUT ANIMAL LIBERATION

Animal Liberation has worked to permanently improve the lives of all animals for over four decades. We are proud to be Australia's longest serving animal rights organisation. During this time, we have accumulated considerable experience and knowledge relating to issues of animal welfare and animal protection in this country. We have witnessed the growing popular sentiment towards the welfare of animals, combined with a diminishing level of public confidence in current attempts, legislative or otherwise, to protect animals from egregious, undue, or unnecessary harm. Our mission is to permanently improve the lives of all animals through education, action, and outreach.

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26 February 2021

Mr. Daryl Quinlivan
NSW Agriculture Commissioner
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We present this submission on behalf of Animal Liberation.

Animal Liberation is grateful to the NSW Agriculture Commissioner for the opportunity to provide the following submission in response to the Agricultural Land Use Planning Strategy Options Paper.

We request that it be noted from the outset that the following submission is not intended to provide an exhaustive commentary or assessment in response to the issues contained within the Options Paper.

Rather, our submission is intended to provide a general examination and responses to select areas of key concern. As such, the absence of discussion, consideration or analyses of any particular aspect or component must not be read as or considered to be indicative of consent or acceptance. For the purposes of this submission, Animal Liberation's focus covers aspects that we believe warrant critical attention and response.

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AS SOCIETY DEVELOPS, SO TOO MUST THE MANNER IN WHICH IT IS GOVERNED

1 INTRODUCTION AND PREFACE

BACKGROUND: DEVELOPMENT OF THE OPTIONS

- 1.1 In August 2020, the NSW Government appointed the NSW Agriculture Commissioner to lead the right to farm ('RTF') reforms with a focus on land use planning. The Commissioner's first priority was identified as conducting a review of the NSW Right to Farm Policy 2015 (DPI 2020b).
- 1.1.1 The proposed reforms to the planning framework draw upon the concept of an RTF in response to increasing land-use conflicts between farmers and residents impacted by their operations. Studies have indicated that devising a system which is amicable to each side is difficult insofar as each "possesses such contrary expectations about the use of their land" (Sinclair 2003).
- 1.1.2 Historically, RTF laws seek to address these conflicts in a range of ways. Most commonly, however, these include the development of mechanisms to "supersede" nuisance claims and the commencement of provisions which "favour agricultural uses of land above all others" (Lapping et al. 1983). As forthcoming sections of this submission will reveal, RTF laws in other nations have attempted to do so explicitly. In NSW, nuisance laws are generally derived from case law rather than statutes or legislation (EDO 2014). Provisions intended to override nuisance claims have been particularly pertinent in areas with increasing urban populations and a history of agricultural operation (Paterson 1990). Globally, these conflicts have escalated as the amount of available land has decreased and the population has increased (Dowell 2011). In response, RTF laws have increased in scope and content across many jurisdictions worldwide.
- 1.1.3 Though the provisions outlined above are common components of RTF laws, other elements include trespass claims and the commencement of stronger penalties geared primarily against animal activists (Griffith 2015; Moraro 2019). The development of such provisions is in response to rising interest and concern for animal issues and are a further culmination of the ongoing push for "ag-gag" laws across Australia (i.e., laws which aim to legislatively prevent or "gag" discussions on controversial elements of the agriculture sector via suppressing activist or private investigative activity) (Morton et al. 2020).
- 1.1.4 For more on RTF and "ag-gag" laws in the context of reforms to existing legislation, see Box 1.

1.2 The Options Paper explains that the RTF Review identified “ongoing issues impacting agriculture in land use planning” (DPI 2020a). It found that though the NSW Government had delivered or was in the process of delivering on the actions outlined in the NSW RTF Policy, it cited feedback from stakeholders who identified concerns surrounding land use conflict as “significant and increasing” (DPI 2020b). This corresponds with findings published elsewhere which have identified increased conflict between sectors due to competition for land and concerns regarding access to finite resources (Commonwealth of Australia 2011; Commonwealth of Australia 2017). As a result, the NSW Agriculture Commissioner has recommended an Agricultural Land Use Planning Strategy (‘ALUPS’) to address these. The following submission provides responses to the range of options included in the Strategy.

1.3 The Review identified four (4) “policy problems” which directly correspond to those outlined in the Options Paper. These are outlined below (DPI 2020b). Each of these was previously identified in a range of supporting reports outlined in Appendix A. As such, the present Options Paper replicates the concerns previously outlined in the 2020 RTF Review (DPI 2020a; DPI 2020b). It can reasonably be characterised as an attempt to further incorporate RTF and ‘ag-gag’ policies in the planning framework. The identified problems include:

- 1.3.1 the lack of a definition, identification, or development protect for State Significant Agricultural Land (‘SSAL’);
- 1.3.2 the lack of a simple, accessible and impartial mechanism for farmers to resolve land use conflict;
- 1.3.3 the planning framework as not reflective of “the needs of agriculture”;
- 1.3.4 that local government plays an important role in the regulation of agricultural land use yet is perceived as “risk averse”.

1.4 In response to these concerns, the Options Paper contains a series of nominated actions intended to rectify the problems identified in subsections 1.2.1-4. The Commissioner is seeking public feedback on these options, which are catalogued under three (3) distinct “Chapters”. These can be understood as the broad intention of the proposed reforms. The Chapters and their corresponding policy problem, as per the Options Paper, are outlined below (PTO):

1.4.1

Problem A

The NSW Government has no policy on the definition of SSAL and how it should be developed.

Intervention A

Minimise the loss of productive capacity. See section 4 for further discussion.

1.4.2

Problem B

There is no simple, accessible and impartial mechanism for farmers to resolve land use conflict regarding their operations.

Intervention B

Reduce and manage land use conflict. See section 5 for further discussion.

1.4.3

Problem C

The planning framework does not reflect the needs of agriculture.

Intervention C

Support agriculture to recover and grow. See section 6 for further discussion.

PRELIMINARY COMMENTS

1.5

The Options Paper was compiled following initial feedback from "invited" participants and the resulting prescribed policy problems and options have been based on this feedback. Animal Liberation believes the use of selective and limited feedback, which will ultimately form government policy direction and legislation, will invariably impede sound policymaking and can lead to flawed policy direction, resulting in ongoing adverse consequences and conflicts.

1.5.1

The consultation which formed the identification of policy problems and the compilation of options included in the Options Paper present as narrow in scope, and appears to have prioritised meat and livestock industry interests over other interests, including plant-based agriculture, in line with the state government's policy direction and economic priorities. The government's policy direction has continued to demonstrate an obvious bias towards the private interests of commercial intensive agriculture, mining and forestry. This is neither an objective nor reasonable approach, nor is such an approach in the best interests of the broader NSW public. This approach also fails to adopt

- 1.5.1 and apply a whole-of-government application in line with sound policy formation and direction.
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AGRICULTURAL PROTECTION LAWS

B1/1 As outlined elsewhere in this submission, RTF legislation has been enacted in many parts of the world and have been increasing in line with rising land-use conflict associated with agricultural operations (Hamilton 1998). These are fundamentally designed to protect the agriculture sector and its various industries from detrimental outcomes stemming from such conflicts and preserve land for agricultural purposes (Ruhl 2000; Laverty 2008).

B1/1.1 In so doing, they seek to erode or deprive landowners of the right to bring action against disruptive operations (Heckler 2012). RTF principles form the basis and constitute the models the Options Paper cites as potential blueprints for a conflict or dispute mediation service (DPI 2020a). This, coupled with the duplication of the concerns identified in the RTF review in the present Options Paper, indicates that the present reform can be legitimately characterised as an attempt to further furnish RTF in state policy.

B1/2 Concerns regarding any justification for special treatment afforded to an increasingly industrialised and financially powerful industry are often legitimised by claims of necessity (i.e., food is a necessity and those producing it should be offered increased legislative protections in order to retain or preserve the sector's productivity). While this may appear to provide a compelling justification for reforming the law when it appears to be at odds with the viability of the agriculture sector and the primary role of government in ensuring that its population has access to sufficient resources, this cannot accommodate exceptionalism solely on the basis of protecting the economic vitality of agricultural industries (Schneider 2010).

B1/2.1 Similar conclusions have been reached following proposals to afford the sector other preferential protections under the law. During the NSW Inquiry into Landowner Protection from Unauthorised Filming and Surveillance, for example, a joint submission made by fourteen (14) media organisations maintained that providing special treatment for the agriculture sector “seeks to protect landowners who are already afforded more than adequate protections”. It concluded that “the people of New South Wales are better served by existing legislation which addresses the cause of the issue [...] rather than extending further protection” (AAP et al. 2018).

Others identified the proposal as an attempt to consolidate "ag-gag" style laws in NSW (Druce 2018). Such laws are a related form of "farm protection" legislation that seeks to effectively outlaw the capture and release of information harmful to the agricultural sector, particularly farm animal production (Broad 2014; Ceryes and Heaney 2018). Critics have alleged that such laws are attempts to conceal the controversial practices of these industries behind "a veil of secrecy" (Fiber-Ostrow and Lovell 2016). Studies have found, however, that an awareness of these laws effectively diminishes trust in the industry and subsequently increase support for additional regulatory burdens (Robbins et al. 2016).

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2 THE PLANNING FRAMEWORK

BACKGROUND AND PRELIMINARY REMARKS

- 2.1 Although council representatives attended conventions prior to Federation, the Australian Constitution contains no recognition of local governments (Aulich and Pietsch 2002; Kelly 2011). Similarly, the Constitution makes no mention of “the environment” (Anton et al. 1993).
- 2.1.1 At the closing of the nineteenth century, there was no formal recognition in Australian jurisprudence that the environment represented an important consideration (Thomas 2010). By the early 1980s, however, studies had concluded that the “patterns of thinking and acting [which] were established in the nineteenth century [...] provide the basis for, as well as the constraints on, the local government system” (Power et al. 1981). One of these constraints related to the planning process and the lack of formal consideration for the environmental impacts arising from developments regulated by the planning framework (Power 1975).
- 2.2 The NSW planning framework has undergone substantial and sustained reform in recent years (Ruming and Gurrán 2014). These will not be exhaustively recounted here as elements of these reforms will be incorporated into relevant sections of the submission, particularly as they apply to the nominated options contained in the supporting paper.
- 2.2.1 In general, the first legislative planning framework was introduced in 1945 via a series of amendments to the Local Government Act 1919 (Park 2010). In 1980, the Environmental Planning and Assessment Act (‘EP&A Act’) became the first piece of planning legislation in NSW whose objects explicitly included balancing economic, social and environmental outcomes came into effect (McFarland 2011). This has subsequently been amended several times with different stakeholders viewing the amendments differently (Ruming 2011a; Ruming 2011b). As the Options Paper explains, the Act sets out requirements for several elements of strategic planning, including Regional Plans, District Plans and Local Strategic Planning Statements (‘LSPSs’). It also notes the hierarchy between these, explaining that while this creates clear regional objectives it also permits local governments to consider and engage local context within the framework (DPI 2020a).
- 2.2.2 There have been significant challenges levelled against the state of planning law in NSW (McFarland 2011). Some of these are included in the Options Paper. Others have suggested that these directly contravene the original objectives of the EP&A Act insofar as they maintain that there has been “a failure of the current system to balance

- 2.2.2 social and environmental considerations against the Government's desired economic and statistical outcomes" (EDO 2010). Such challenges have been appropriated by previous State Governments as opportunities to promote sweeping reforms (Sherval and Graham 2013). These include reforms that led to significant changes in the planning framework for extractive industries. Many such reforms are marketed as "sustainable economic growth" while minimising competing land uses (see, for example, the NSW Government's 2012 Green Paper and the 2013 White Paper). The present reform package, therefore, follows a familiar trajectory.

COMMUNITY INVOLVEMENT AND PARTICIPATION IN THE PLANNING PROCESS

- 2.3 Experts in the field of land use planning and policy have identified principles to improve or harness greater positive social, cultural and environmental outcomes. These include "the provision [of] opportunities to establish and develop coordinated approaches" in order to "enable continuous participation of interested communities in the policy and planning processes". Such experts, however, note that such principles are not being effectively facilitated by governments. Rather, they are being "actively diminished" (Thackway 2018).
- 2.3.1 There has been notably limited awareness of the long history of poor decision-making on land use planning across every level of government. Similarly, there has been limited understanding concerning the benefits of land-use managers or practitioners engaging in mutual inquiry and collective learning via collaboration with stakeholders from a range of fields, including environment, health, nutrition and education (Thackway 2018). This is in stark contrast to the beneficial relationships built between Departments and industry or sector representatives.
- 2.4 Historically, reforms to planning processes have been preceded by assertions about what the public wants or expects from such a system (Dunn et al. 2009). As such, the community has been central in the planning framework and its regulatory regime.
- 2.4.1 Prior to 1979, planning law provided the public with little "meaningful opportunity to participate in planning decision making" (EDO 2010). Prior to the commencement of the Environmental Planning and Assessment Act 1979 ('EP&A Act', "environmental land-use planning in New South Wales was characterised by strong technocratic influences, with strategic land-use planning dominated by [the] central government" (Lipman and Stokes 2008). As a result, citizens enjoyed few avenues with which to be involved in the planning system or have a role in the assessment of development proposals.

- 2.4.2 The EP&A Act was thereby intended to “not only provide information to the public but that the system should allow the community’s needs and inspirations to be reflected in planning proposals”. Following the commencement of the Act, it was believed that the new regulatory regime would “cement the role of the public” (EDO 2010). Critics have maintained that while the Act ostensibly continues to promote such objectives, significant amendments and reforms have led to a “more centralised and less participatory decision-making” system (McFarland 2011).
- 2.4.3 At a local government level, the precursor to the Department of Planning, Industry and Environment (‘DPIE’) has previously published reports expressly intended to act as guides for engaging the community in environmental planning and decision-making processes. Such documents acknowledged that local governments across Australia had realised that the community plays an important role in maintaining the environment and, as a result, many had developed ways to “foster public participation in planning and decision-making”, were “actively listening to the knowledge and ideas of community members” and were increasingly “facilitating their role” in the process (DEC 2006).
- 2.5 These democratic principles have increasingly undergone a metamorphosis wherein community consultation led by local governments have been critiqued as “public relations” exercises intended to steer public opinion, particularly in order to provide the pretence of open dialogue and democracy in the development assessment and approval process (Beder 1999).
- 2.5.1 Given the political impetus and influence of special interest or lobby groups behind the current reform package, it is reasonable to believe that the present consultation process represents the machinations outlined above. Despite this, we expect this submission and its contents to be duly considered and incorporated in the forthcoming report relating to the proposed reforms.
- 2.5.2 There are several elements contained within the proposed reforms that would significantly erode or remove the role of communities in the planning process. These will be further discussed in the following sections of this submission.

A HISTORY OF SKEPTICISM AND MISTRUST

- 2.6 Over the past two decades, state governments across the country have enacted reforms to planning processes explicitly designed at “streamlining and simplifying planning frameworks” which select stakeholders had critiqued as “uncompetitive and overly-regulatory” (Dunn et al. 2009). Broadly, these have been

- 2.6 characterised as efforts to “cut red tape”, principally in order to make the system more accessible to increased investment. A similar impetus is recognised as being behind the present reform package. Though this has not been unique to the agriculture sector, the present reforms represent a significant attempt to drastically remove obstacles to development by adopting policies beneficial to its industries.
- 2.6.1 There has been a steady and long-lasting recognition of public distrust in the NSW planning framework. By 2012, the NSW Government had acknowledged that “public confidence in the integrity of the processes for making land-use planning decisions” had been “seriously eroded”. Such an insight had been “clear for several years” when the findings and recommendations of the NSW Planning System Review were published that year. Indeed, “broad public distrust” was identified as one of three key imperatives for reform (NSW Government 2012).
- 2.6.2 While the EP&A Act was considered by some to avail citizens of opportunities to be involved in the planning process, sections of the Act were identified by others as key components which perpetuated public distrust. The NSW Government found that a section of the Act effectively “set aside much of the community engagement processes” and identified this as exacerbating “the erosion of public confidence” in the planning framework (NSW Government 2012).
- 2.6.2 These concerns were also present during proposed changes to the NSW planning system in 2017. These were justified at the time as “red tape-busting” initiatives. However, the NSW Independent Commission Against Corruption (‘ICAC’) identified a range of concerns with the proposed reforms. Key amongst these was the commencement of reserve power permitting the planning secretary to intervene in disputes and provide approval on behalf of government agencies. Such increased powers were designed to “fast-track” approvals for integrated developments prior to consent. ICAC held that such changes would offer the Secretary “significant discretion” over approvals and place the office holder in a “vulnerable” position open to “undue influence” (Visentin 2017). ICAC’s concerns regarding the 2017 planning system reforms echoed previous warnings regarding lobbying in NSW. In 2010, ICAC published a report which concluded that strategic and targeted lobbying was likely to occur where high levels of discretion are available concerning high-value decisions (ICAC 2010; Visentin 2017).
- 2.6.3 Feedback to the Issues Paper of the present reform package identified notable absences of key areas of concern to community members. The Planning Institute of Australia (‘PIA’), for example, held in its submission to the Issues Paper that the scope of the proposed planning strategy “excludes issues” relating to a range of important factors,

- 2.6.3 including the environment and biodiversity. The PIA maintained that “land-use planning does not occur in a vacuum” and that such considerations which were “of particular interest to rural landowners, farmers and community members” should be included (PIA 2020).

CONCLUSION

- 2.7 Local Government Councils are self-governing and councillors are elected by local communities. To impede and restrict the fundamental goals and objectives of the third tier of government would undermine democracy. In many rural NSW regions, frustration and distrust continue as a result of the NSW Government’s previous forced council amalgamations.
- 2.8 It is our legitimate and informed concern that the reforms proposed in the Options Paper represent the realisation of policy changes which the agriculture sector has expended considerable energy in lobbying towards achieving and if accepted and put into practice, would constitute a substantial regression in NSW planning policy. Rather than seeking to provide solutions that benefit or protect the broader community, such reforms would position the agriculture sector as its sole beneficiaries. Nor do the proposed reforms practically seek to mediate land-use conflicts stemming from the practices or operations of industries in the agriculture sector. Rather, they seek to unfairly prioritise the sector to the detriment of the community, the environment and the vast ecological communities within it.
- 2.8.1 For more on the agriculture sector and its various interest groups, see **Box 2: The Australian Agriculture Sector Lobby and Special Interest Groups** on pages 13–16 below.

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THE AUSTRALIAN AGRICULTURE SECTOR LOBBY AND SPECIAL INTEREST GROUPS

- B2/1 Government negotiations with sectoral elites and special interest or lobby groups are a fixture of Western democracy in the 20th century (Daugbjerg and Feindt 2018). In general, a lobbyist can be described as someone who advocates for the interest of others, particular industries or sectors (Holyoke 2014). These networks often use their representative function to influence or advocate for the development of policies beneficial to their respective stakeholder group or clientele (Browne 2001). In the context of a declining agriculture sector, it is reasonable to associate ongoing attempts to secure the development of beneficial State policies with the machinations of a strong special interest group that actively lobbies for their passing (Sheingate 2011).
- B2/1.1 While political support for the agriculture sector does not necessarily equate to political support for specific policies which favour it, studies have concluded that the sector “does not suffer from a lack of political support” (Lockie 2015). There is a diverse and wide range of agriculture associations that lobby on the behalf of industries in the sector to influence and pass favourable policies (Queensland Government 2021). A sample of these is provided in Appendix C.
- B2/1.2 Studies have shown that the power of the farming lobby and associated special interest groups are major determinants of the extent to which politics support transparency in policy-making and ultimately influence whether structural reforms are realised (MacLaren 1992). Examples from other significant sectors, such as the carbon lobby, reveal the power and influence of these industry representatives in guiding policy development (Curran 2011; Crowley 2013; Ali et al. 2020).
- B2/2 Lobby and special interest groups form one element of “the policy stream”, a metaphor used to illustrate how issues come to dominate political agendas and translate into policy change or development. Such representatives advocate for particular interests, such as the agriculture sector, in order to raise the perceived importance of issues. These can be characterised as problems that require the development of solutions via policy (Howlett 1998).

B2/2.1 The concept of a policy stream has been a prominent feature of academia for some time. It has been used to analyse why agriculture is not regularly included in climate change debate or policy development elsewhere in the world (Smith and Williams 2009). The original theory using the metaphor of a stream applicable to the policy process defines it as relational insofar as the concept of three “streams” is used to conceptualise the development of governmental policy (Kingdon 2003).

B2/2.2 These include a “problem” stream which frames and sets agendas, a “politics” stream which involves a battle for power, resources and influence and a “policy” stream which negotiates the nature and type of particular policies, principally between government bodies, their agents and other interest groups (Smith and Williams 2009; Knaggård 2015; Cairney and Zahariadis 2016). The “problem” stream is associated with issues regarded as public insofar as the government is regarded as the authority expected to resolve them (Béland and Howlett 2016).

B2/3 The issues identified in the Options Paper can be regarded as components of this stream. The “politics” stream contains factors that influence political processes and outcomes, including interest group advocacy (Béland and Howlett 2016). The machinations of the agriculture sector and its representative groups can be found in this characterisation. Finally, the “policy” stream includes the examination of the issues identified in the “problem” stream and generate proposals or solutions to these (Béland and Howlett 2016). This process can be identified in the Options Paper via the development of a range of alternatives that seek to provide beneficial policies for the agriculture sector in NSW.

B2/3.1 Though these usually operate on different paths they may converge and present a limited “window of opportunity” which can be capitalised upon to trigger policy change. That is, the “policy window” opens when a problem is tied to a solution and the prevailing political climate registers support for policy change (Smith and Williams 2009; Béland and Howlett 2016).

B2/3.2 The influence of interest groups or lobby representatives has been identified as “policy entrepreneurs” who proffer solutions that are beneficial to their stakeholders (Kingdon 2003). Such representatives can “work behind the scenes for years by ‘softening’ a policy idea” (Smith and Williams 2009). However, when new data, studies or evidence is offered in support of such ideas and there is an indication that external forces warrant a change in accordance with these solutions, special interest groups can strategically use their accrued resources, connections and funding to

B2/3.2 introduce a favourable policy (Farley et al. 2006). For example, studies have suggested that this is a significant reason why agriculture is not included in climate change policy (Smith and Williams 2009).

B2/4 Australian studies suggest that interest groups lead well-funded campaigns to “lobby government, support those departments sympathetic to the continued development of industry and sway public opinion” (Rosewarne 2003). Highly organised industry lobby groups have been identified as a principal reason for Australia’s defiance on adopting a proactive climate policy, for example, and are associated with resistance to agreements that could obstruct the continual growth of their industries (Pearse 2007; Crowley 2010). Such groups can weaponise their resources to create “bogeymen” during campaigns to influence policy direction (Hamilton 2001). Such campaigns often “dwarf” comparable spending by groups representing the environment, animals or other non-commercial interests (Gartrell 2018; Ali et al. 2020).

B2/4.1 The lobbying of agriculture sector interest groups in the development of RTF policies are a relevant recent example, particularly insofar as the leading state lobby group has publicly identified its development as a “key achievement” (NSW Farmers 2020a; NSW Farmers 2020b). The latter was significantly assisted by the lobbying of the national body (Mahar 2019). It is likely that the percentage is overshadowed more concerning the relative outlay vis-a-vis the agriculture sector and the animal welfare or protection community. Indeed, it would be substantially more so if government allocation of industry-beneficial messaging and policy development is taken into consideration (Fearing and Matheny 2007).

B2/4.2 In conjunction with this push for RTF laws, industry interest groups actively campaigned for increased penalties or action against activists seeking to expose or educate the public on issues pertinent to the sector. Such campaigns are often supported by sympathetic politicians. Following moves to increase penalties specific to animal rights activists, NSW deputy premier John Barilaro publicly stated that “vigilantes who are entering our farmers’ property illegally are nothing short of domestic terrorists” (Barilaro 2019). Similarly, MP Adam Marshall stated that “the government is putting these vigilantes and thugs on notice” (Forrest 2019).

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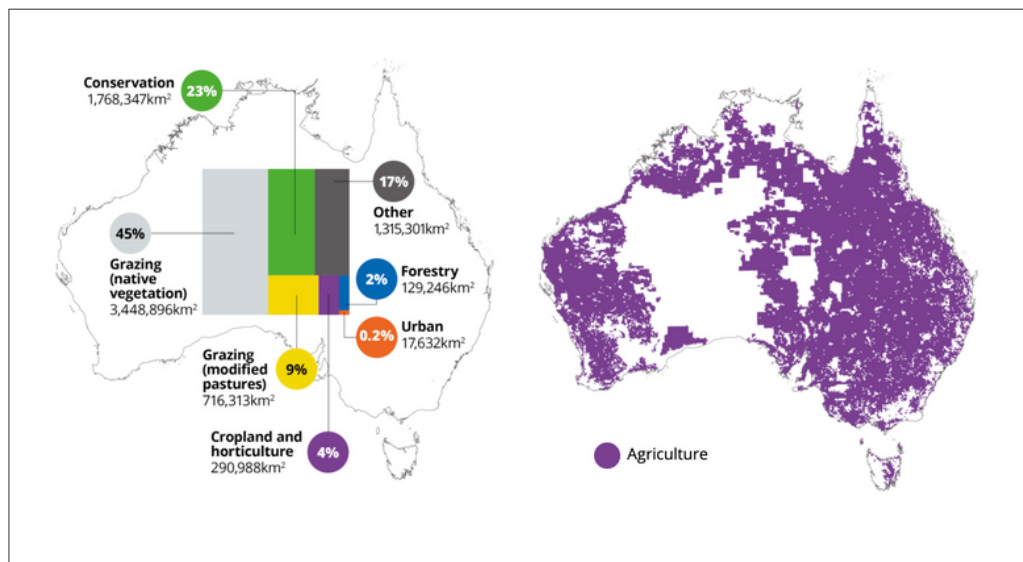
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3 THE STATE OF AGRICULTURE IN NSW

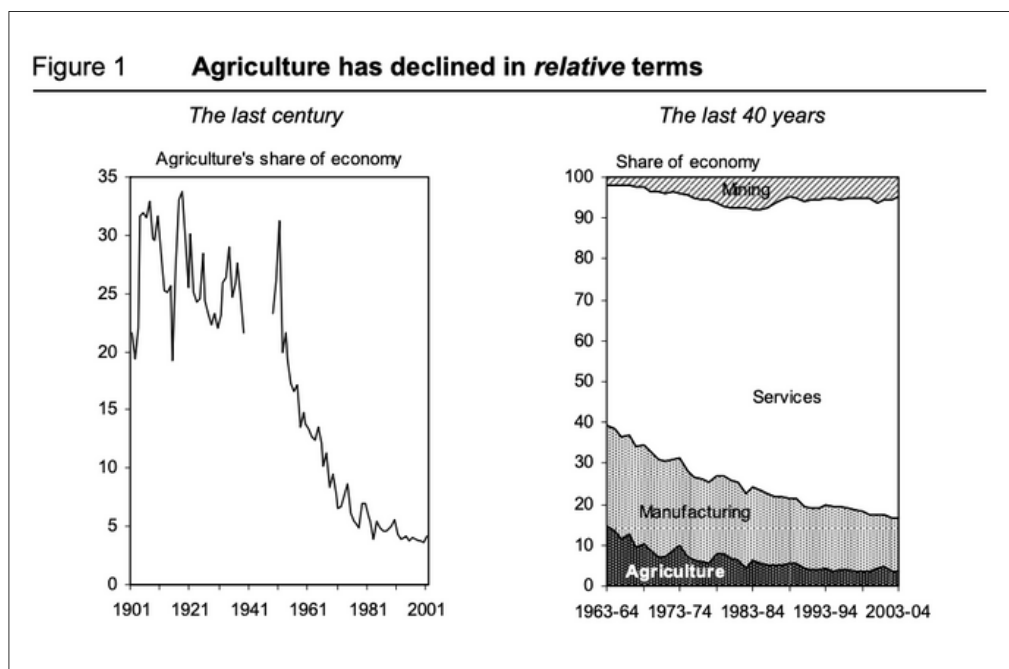
BACKGROUND AND PRELIMINARY REMARKS

- 3.1 The manner in which land is appropriated has a profound impact on climate, soil, water, vegetation and biodiversity. As such, there is a strong correlation between patterns of land use and environmental, economic and social conditions. Land use policies and planning are central to debates in Australia concerning a range of issues, including climate change and cumulative environmental impacts (Thackway 2018).
- 3.2 While the Options Paper successfully articulates the range of concerns the Department has compiled on behalf of the agriculture sector, it neglects to mention several significant points to situate the present context of the sector within the broader history of agriculture.
 - 3.2.1 It is acknowledged that the Options Paper applies to the agriculture sector as a whole and therefore includes a diverse range of industries. For the purposes of this submission, however, the focus will be on the animal production industries of the sector. We note that this cohort of the sector is the prime appropriator of land and maintain that such a focus is warranted.



Source: ClimateWorks Australia

3.2.2 The sector has experienced significant change. While agriculture has historically played a dominant role in Australia's economy and enjoys strong narrative power as a result, its relative importance and value have declined (Vanclay 2003). This is despite a concurrent increase in output. This steady decline represents a fall from a 14% GDP share in the 1960s to only 6% in the 1980s. It has since declined further, with concurrent declines in employment figures (PC 2005).



Source: Productivity Commission (2005)

3.2.3 In 2003-04, the agriculture sector employed less than 5% of the workforce (PC 2005). By 2016, this figure had dropped to 2.2% (Binks et al. 2018). Based on this downward trajectory, assessments indicate as few as 100,000 Australians remain employed in farming (Barr 2000). This corresponds with the steady decline in “family farms” and the ageing demographics of their workforce (Foskey 2005; ABS 2006; Falkiner et al. 2017).

3.2.4 Following intensification and industrialisation of most agricultural operations and the sector more generally, farms are fewer and larger with production concentrated on larger operations (PC 2005). This corresponds to worldwide agriculture trends (McGreal 2019). While the overall structure of the sector has been recognised as influencing its performance, traditional operations face difficulties associated with this trend and problems with successfully succeeding their operations within their familial unit (Welsh 1996; Falkiner et al. 2017). This is further problematised by the demographics outlined in subsection 4.4.1 (i.e., the age and ageing of the Australian farming population).

- 3.2.5 Recent NSW Government inquiries have indicated that these structural problems are significantly compounded by declining viabilities in production sectors, a disinclination to continue in expending resources in an unviable sector and increasing environmental factors (see the recent Inquiry into the Long-term Sustainability of the Dairy Industry in New South Wales, for example).
- 3.3 These profound shifts have occurred over the preceding five decades as Australia's rural population and the proportion of land used for agriculture has concurrently declined (PC 2005; PC 2011).
- 3.3.1 Approximately 12% of Australians remain in small towns or rural areas (Infrastructure Australia 2019; World Bank 2021). The ongoing surge in the global population and forecasts indicating Australia's growth are expected to place additional development pressure on available land (Commonwealth of Australia 2016; Searle 2017). This is compounded by the finite nature of resources, infrastructure and opportunities elsewhere in the world and subsequent upticks in migration (Harley 2018).
- 3.3.2 It is reasonable to conclude that the land use conflict which forms a key concern of the proposed reforms will continue and increase in the coming years. By 2041, DPIE estimates that regional populations will increase to 3.5 million in response to a net annual population increase of over 1% (DPIE 2020a; DPIE 2020b). It is unclear how the proposed reforms will successfully mitigate these in relation to the projected significant increases in regional populations and increasingly limited resources.

IMPACTS ON THE ENVIRONMENT

- 3.4 Australia's terrestrial environment has been markedly altered since European invasion (Rolls 1997; Bradshaw 2012; Cook 2021). By the 1890s, a substantial amount of land had been cleared for agriculture (Lunt and Spooner 2005). The clearing of land remains a significant threat to a range of values, including biodiversity and ecological health, to this day (Wintle et al. 2005; Evans 2016). Most land appropriated for agriculture in Australia is used for the extensive grazing of cattle or sheep (Saltzman et al. 2011).
- 3.4.1 Centuries of economic growth and the vast land-use the Options Paper acknowledges as required to appropriate natural resources, particularly for agricultural operations, have put increasing pressures on the ecological systems that support human well-being (Hatfield-Dodds et al. 2015). Given the rate of species decline in Australia, pressure on biodiversity is a primary national problem often felt at state or local levels (Preece 2017).

3.4.2 Despite having one of the worst extinction rates in the world and the development of environmental legislation intended to protect biodiversity and prevent further species loss, studies have found that there is little evaluation of its efficacy despite ongoing destruction or fragmentation of habitat critical for threatened species survival (Ward et al. 2019). Others have challenged the outcomes of a policy intended to control land clearing, noting that despite their enactment rates remain significant (Evans 2016). Agriculture has been positively identified as a key stressor (Hatfield-Dodds et al. 2015). Habitat loss through land clearing for agriculture is a leading threat to terrestrial biodiversity in Australia (Aplin 2005; Millar and Roots 2012; Neldner 2018). It is a primary contributor to low variations in the abundance and diversity of fauna and has been implicated in several species extinctions (Abensperg-Traun et al. 1996; Short 1998; Johnstone et al. 2010).

3.4.3 Studies have indicated that conflict between agricultural and other land uses have escalated in part due to fragmentation (PC 2016). Though this is noted in the Options Paper, the sole concern of this recognition is upon limited opportunities for expansion in the agriculture sector (DPI 2020a). It is reasonable to conclude that the inclusion of fragmentation in the Options Paper is limited to the viability of and access to an area for agricultural development and does not consider the impacts of fragmentation in any other way, including those outlined above. This represents a significant element absent in the formulation of the nominated options contained within the reforms proposed. Similarly, it represents an attempt to encode a regressive policy within the planning framework despite existing flaws in biodiversity protection legislation.

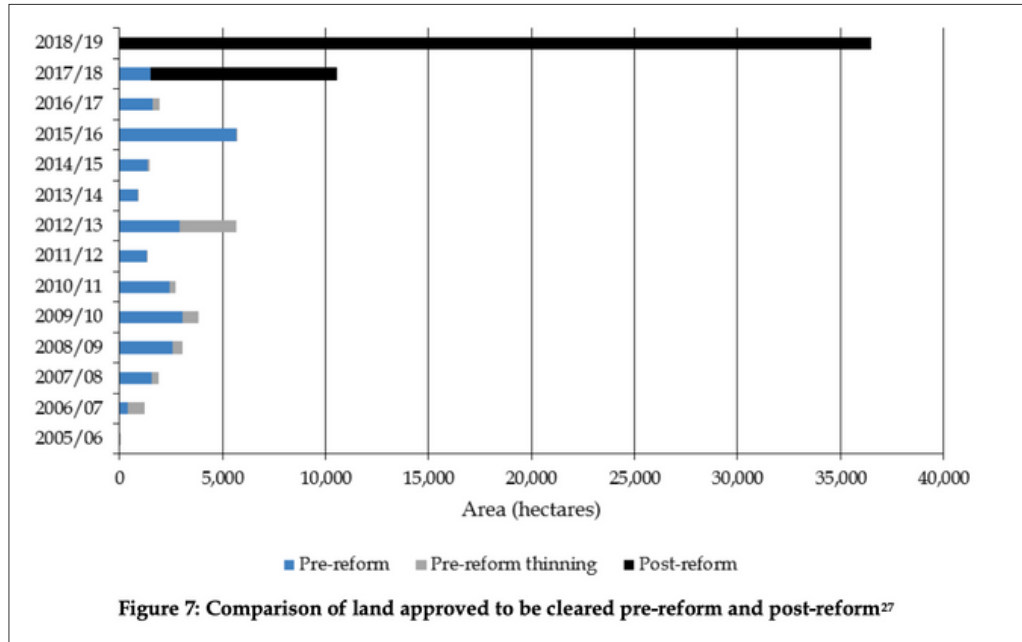
3.5 As outlined above, the agriculture sector represents a key threat to biodiversity protection across the country. This has been particularly pronounced in NSW following the implementation of the Land Management and Biodiversity Conservation reform package of 2017 which led to soaring land-clearing rates which rose by up to 60% (Cox 2020a). The agriculture has been implicated in much of these.

3.5.1 The Natural Resources Commission ('NRC') issued a scathing report in July 2019 revealing statistics that show over 37,000ha of land was approved for clearing in the last financial year alone. This represents a rate almost 13 times higher than the annual average for the decade (NRC 2019). In addition, approvals rose over 70% after laws were changed in 2019, representing a rise from 25,457ha during the final quarter of 2018 to over 43,000ha in the first three months of 2020 (Morton 2020).

3.5.2 Despite such significant acceleration rates, the NSW Government announced proposed amendments to further

3.5.2

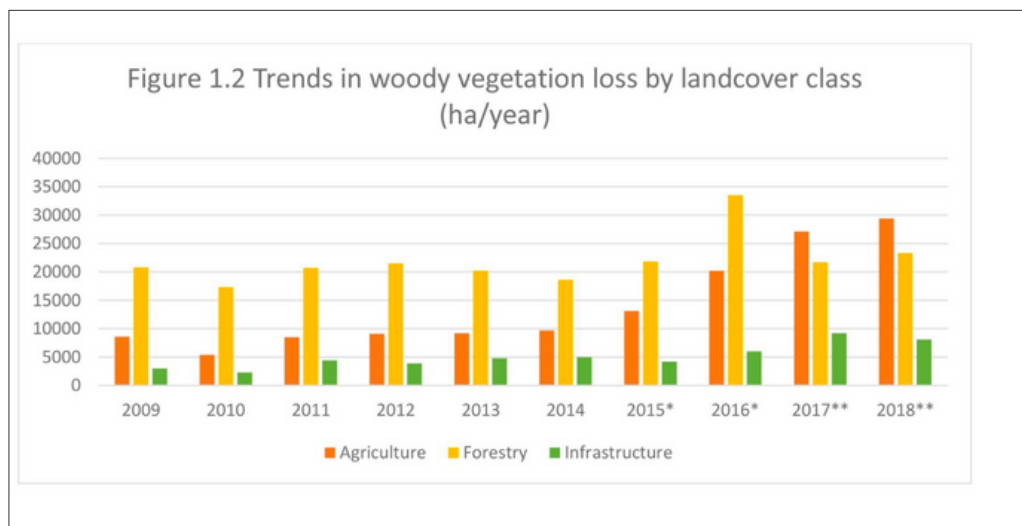
permit clearing without approval on rural properties under the guise of reducing risks associated with bushfires. Assessments by WWF-Australia found that if all property holders cleared the maximum amount permissible under these amendments, close to 45,000ha of forest would be threatened in four local government areas alone. Thousands of hectares are high-quality koala habitat (Cox 2020b).



Source: Natural Resources Commission (2019)

3.5.3

Analysis indicates that the agriculture sector has taken advantage of weakened native vegetation controls. Data indicates that across the state farmers have “more than double[d] the pace of deforestation of the previous decade” (Hannam 2020). Approximately 50% of the land cleared in 2018 was due to the agriculture sector, surpassing the previous forerunners of many years, namely the forestry and infrastructure sectors (DPIE 2020c).



Source: Department of Planning, Industry and Environment (2020)

- 3.6 In addition to the impacts briefly outlined above, animal agriculture poses an array of threats to the environment. These include significant contributions to the greenhouse gases ('GHGs') which contribute to the greenhouse effect and cause global warming (Smith 2005; White and Hall 2017). This includes direct emission production and impacts associated with land clearing and deforestation (Bristow and Fitzgerald 2011).
- 3.6.1 Reports from reputable world organisations have highlighted the impact the agriculture sector has on the environment, noting that it is responsible for over a third of methane and the majority of nitrous oxide emissions worldwide (Steinfeld et al. 2006). Waste from animal production systems has been identified as contributing as much as 50% of the global nitrous oxide ('N₂O') emissions caused by the broader agriculture sector (Oenema 2005). The United Nations has concluded that animal agriculture, particularly the industrialised sector, is "one of the top contributors to what has come to be considered the most serious environmental problem of our time" (Bristow and Fitzgerald 2011).
- 3.6.2 The average global temperature today is estimated to be over 1°C hotter than pre-industrial levels and recent years are among the hottest ever on record (Twine 2017). Estimates suggest that there may be a further rise in average temperature by up to 4°C by 2061 (Betts et al. 2011). Evidence suggests that global warming is increasing the amounts of emissions produced by animal production facilities (Schauberger et al. 2018)

CONCLUDING REMARKS

- 3.7 Never before has the use of land for agriculture and the inherent land-use conflicts this engenders been more prevalent as an increasingly important public interest issue. The Options Paper has failed to consider the serious issues involving degradation of soil, water and biodiversity or the concept of sustainability. These considerations are critical in an age of environmental science and in recognition that a proportion of NSW land has become unproductive through decades of poor management practices and inadequate oversight by authorities and government.

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4 CHAPTER ONE: MINIMISE THE LOSS OF PRODUCTIVE CAPACITY

BACKGROUND AND PRELIMINARY REMARKS

- 4.1 The following section of this submission will outline the proposed options regarding the series of concerns outlined in subsection 1.4.1. The broad policy problem identified in relation to Chapter 1 and its selection of options is the absence of a definition, identification or development protections for State Significant Agricultural Land ('SSAL'). The Options Paper maintains that this problem is "leading to this land being lost to non-agricultural uses". The following section will briefly outline the relevant elements of the planning framework and discuss the nominated options. It will conclude with a series of modest recommendations.
- 4.2 Briefly, the Options Paper provides an overview of agriculture in the NSW planning framework. It explains that land use in NSW is regulated via a zoning system under the Standard Instrument - Principal Local Environmental Plan ('Standard Instrument LEP').
- 4.2.1 Traditionally, LEPs have varied between different LGAs insofar as each local government created its own zones, objectives and permissible uses (EDO 2013). However, in 2005 the NSW Government amended the law and required LEPs to become standardised (Williams 2013). In 2006, the Standard Instrument LEP ('SILEP') program was launched to "simplify and streamline development plan and control formats" (Wilkinson et al. 2015). This reform package also standardised the language of development plans by providing 35 land-use zones and over 200 land-use definitions (Ruming and Davies 2014).
- 4.2.2 These land-use zones are grouped according to eight (8) broad categories: rural, residential, business, industrial, special purpose, recreation, environment and waterway. In practice, the allocation of a zone should reflect the principal intended use of the relevant land. The Standard Instrument also contains a land-use table that sets the objectives of these zones and the types of development that are permitted without consent, permitted with consent or prohibited.
- 4.2.3 The amendments outlined in subsection 3.1.1 allow the Planning Minister to stipulate the form and content of a LEP by issuing a 'standard instrument'. Under the Standard Instrument, the Planning Minister may issue directions ('section 117 Ministerial Directions'). While the Standard Instrument is not a LEP itself, it functions as a template

4.2.3 which outlines the form and content which all LEPs must adopt and abide by (EDO 2013). An example of these will be discussed further below in response to a component of the Options Paper proposing its amendment.

4.3 Despite these amendments and the existence of several zones which encourage agricultural development (i.e., 'RU1', 'RU2' and 'RU4') and others that permit it (i.e., 'R5' and 'E3'), the Options Paper laments that "there is no specific zone for agriculture" (DPI 2020a). The fact that zones that were not expressly intended for agricultural development permit it indicates that the sector is already enjoying a level of support in the policy framework not initially intended (i.e., the land use table contained within the Standard Instrument were intended to act in setting the type of development permissible) (EDO 2013).

4.3.1 In support of its identification of a lack of a specific agriculture zone in the planning framework, the Options Paper explains that rural zones can accommodate a broad range of development types. It maintains that such zones are treated as "the 'default zone'" for land use outside urban settlements. As such, the Options Paper argues that these zones can become "catch-all zones where various potentially conflicting uses can be clustered together" (DPI 2020a).

4.3.2 In addition, the Options Paper explains that agriculture operations often require larger areas of land and greater access to natural resources and various markets, infrastructure and labour sources. It concludes by combatively claiming that "under the current zoning system agriculture competes for land with other land uses" (DPI 2020a).

4.4 It is important to emphasise that "rural" does not define the use of land; it defines its character (Sinclair 2003). As such, it attracts an array of uses. No one use can or should be considered dominant. Nor should one be inserted as such in the planning framework.

4.4.1 The Options Paper explains that despite intentions to prevent fragmentation of rural land in the current planning framework, this continues to occur and is described as "inevitable in some cases". While studies have indicated that conflict between agricultural and other land uses have escalated in part due to fragmentation, the Options Paper states that "planning outcomes can also change the landscape in ways that are not desirable" (PC 2016; DPI 2020a). Though it is understood that the intent of this statement is designed to highlight adverse impacts on the ability of the agriculture sector to consolidate and keep land in spite of public opposition (i.e., via the negation or curtailing of nuisance reports), the opposite may be

4.4.1 surmised as being a chief concern of landholders whose right to express and take action against agricultural operations by lodging these complaints is strategically undermined by many of the options presently proposed.

4.4.2 Though the use of the term “fragmentation” in the Options Paper clearly relates to the splintering of land from a planning position, it is important to note that this inherently causes substantial habitat modification. This is further outlined in the previous section of this submission. The evidence contained in Section 3 presents a rational case for the maintenance or strengthening of existing development regulation, particularly as it applies to the agriculture sector.

THE OPTIONS: OUTLINE

4.5 The Options Paper nominates a series of non-statutory and statutory mechanisms with corresponding options for Chapter 1. These are as follows:

4.5.1 The non-statutory mechanisms include the development of a policy on rural land by the NSW Government via the following options:

Option 1	Identified Production Areas
Proposal	The NSW Government to identify production areas across the State
Option 2	Monitoring and Reporting of Loss of Rural Land
Proposal	The NSW Government to monitor land use change and the loss of rural land that is best suited to agriculture
Option 3	Education
Proposal	The NSW Government to support local government councils and planners understand the needs of agricultural operations.

The statutory mechanisms include a series of options to “minimise the loss of productive capacity”. These include:

Option 4	Identification of SSAL
Option 4A	State Agricultural Land Use Planning Policy
Proposal	The NSW Government to implement a policy on rural land through guidance material, plus various changes in the planning framework, including filling the schedule in the PPRD SEPP.
Option 4B	State Agricultural Land Use Planning Policy and SSAL Criteria
Proposal	The NSW Government to implement a policy on agricultural land through guidance material, plus various changes in the planning framework, including a list of criteria that defines SSAL in Schedule 1 in the PPRD SEPP.
Option 4C	State Agricultural Land Use Planning Policy and SSAL Map
Proposal	The NSW Government to implement a policy on agricultural land through guidance material, plus various changes in the planning framework, including considerations and a map of SSAL in Schedule 1 in the PPRD SEPP.
Option 4D	State Agricultural Land Use Planning Policy and SSAL Map (Council opt-in)
Proposal	The NSW Government to release a guiding policy on agricultural land and a map of SSAL which is optional for councils to adopt.

Option 5	Controlling land use in rural zones
Proposal	The NSW Government to prohibit zone changes or non-agricultural uses on agricultural land except in certain tightly defined circumstances or through a stringent exceptions process.
Option 6	Department interventions
Option 6A	DPI approval of developments on SSAL and IPAs
Proposal	The NSW Government to require councils to get agreement from DPI before deciding on the development of non-agricultural uses on SSAL and in IPAs.
Option 6B	DPI advice in relation to development on SSAL and IPAs
Proposal	The NSW Government could require councils to seek formal advice from DPI for the development of non-agricultural uses on SSAL and in IPAs.

THE OPTIONS: GENERAL

4.6 In comparison to other land uses, agriculture and agricultural production enjoys a significant level of freedom, flexibility and support across existing land zones. It is however the case that as traditional agriculture, intensive agriculture and other types of primary production, including the commercial breeding of dogs, can be undertaken on land zoned "RU1 Primary Production", "RU2 Rural Landscape" or "RU4 Primary Production Small Lots", zone objectives encourage primary production and land conflicts occur as a result.

4.6.1 To suggest that SSAL is being lost to non-agricultural uses due to no definition, identification or development protections for SSAL is inaccurate. The EP&A Act requires the development of Local Strategic Planning Statements (LSPSs) and planning proposals seeking to amend local plans must also consider the LSPSs objectives.

- 4.7 Biophysical Strategic Agricultural Land ('BSAL') is land identified as including high-quality soil and water resources capable of sustaining high levels of productivity. BSAL plays a critical role in sustaining the State's \$12 billion agricultural industry. A total of 2.8 million hectares of BSAL has been identified and mapped at a regional scale across the State (DPIE n.d.).
- 4.7.1 In October 2013, 1.74 million hectares of BSAL were mapped in the Upper Hunter and New England North West regions alone. In January 2014, the NSW Government finalised mapping for an additional one million hectares of BSAL across the rest of the State (DPIE n.d.).
- 4.8 More often than not, SSAL is being lost as a result of State Government's own policy direction and large-scale developments designed for political, commercial and economic return. This includes but is not limited to mining and forestry. The highly controversial rezoning of SSAL in the Tweed region for the development of a new hospital is a good example (Todd 2018; Koenig 2019a; Koenig 2019b).
- 4.9 The current planning framework is contributing not only to the fragmentation of rural land, it is increasingly causing extensive fragmentation of sensitive environmental land.
- 4.9.1 The strategic planning framework should clearly articulate the intended future use of rural land and recognise the importance of sustainable and non-polluting agricultural development which uphold and abide by environmental regulations, including resource and biodiversity protection. Current gaps, variations and personal interpretations frequently result in inconsistent interpretation and flawed decision making, leading to adverse outcomes for important agricultural land. This is increasingly exemplified by an increase in intensive animal agriculture ventures.
- 4.10 Rural type lands across NSW vary significantly and to apply a "one size fits all" SSAL approach will be fraught with inconsistencies. A guide outlining SSAL would be better accommodated in Local Environmental Plans ('LEPs'). However, such a guide must give equal consideration of and protection to resources, including but not limited to surface and groundwater, environment and biodiversity.
- 4.10.1 A SSAL guide or policy should not be informed by a fragmented approach that prioritises agriculture and primary production over state and public dependent resource and environmental protection, or where that agriculture is contributing to further fragmentation of land or un-sustainable practices.

THE OPTIONS: DISCUSSION

OPTION 1: Identify Production Areas

- 4.11 The ongoing use of certain agricultural land for intensive agriculture, particularly animal agriculture, in a proposed cluster or intensive agriculture zone is fraught with potential issues including increased land conflict disputes and frequent over-use of resources such as water.
- 4.11.1 Overwhelming scientific evidence confirms we are facing enormous challenges with climate change, an increasing loss of fauna and flora species and serious issues with diminishing resources, notably water security. The Options Paper does not adequately consider or reflect the views of the broad and diverse community and the increasing level of public concern about our shared environment and how we manage and protect this environment and resources including land, soil, water, groundwater and biodiversity.
- 4.11.2 Farming or agricultural production frequently and increasingly involves profit-driven intensive animal agriculture, including the intensive farming of animals raised for human consumption and use, and even the production of companion animals in puppy factories and other unsustainable or unethical farming ventures, such as water extraction mining and broad scale mining.

OPTION 2: Monitoring and Reporting Loss of Rural Land

- 4.12 The Government should, through its own state and regionally significant development activities and Local Government Councils', monitor land-use change, loss or fragmentation of land best suited to agriculture and primary production. Such monitoring must prioritise sustainable practices, resource security and avoiding land risks and impacts to environmentally and biodiversity sensitive land.
- 4.12.1 One mechanism could include requiring all NSW council's to list on a NSW DPI register any DA which involves agriculture or primary production, including any Designated or Integrated status. This register should be according to LGA and also fully accessible to the public.
- 4.12.2 We support the concept of rural zone protections but not if it is limited to the notion of agricultural production and personal commercial return. Land zoning should prioritise the notion of good stewardship and inherent protection including environmental protection. Increased environmental protection is more urgent than ever before and the current strain on NSW koala populations is just one of many examples. The retention of agricultural land goes far beyond the future of agriculture in NSW. This is also about our

- 4.12.2 "shared" environment and all who depend on her. However, any rezoning of agricultural or primary production land should always involve public consultation and include a 28 day public exhibition period.
- 4.12.3 The notion of "sustainability" must be clarified to better explain and demonstrate what this concept actually means, particularly in light of the scientific advice about the degradation of soil, water including groundwater, air quality and the cumulative risks and impacts with land clearing and animal agriculture farming including the serious increasing pollution issues. The identification and protection of key land through a clearer regime of planning policy and mapping and buffer controls should not merely rely on the land being agricultural land. Such an approach must have a more strategic focus on the shared environment and the environment in general, notably climate change and destructive farming practices.

OPTION 3: Education

- 4.13 To suggest or imply that qualified and experienced planning staff don't understand agricultural practices and planning highlights a fundamental misunderstanding and minimisation of the expertise held by planning staff. Planning proposals that involve complex assessment can also be referred to an Independent Hearing and Assessment Panel (IHAP).
- 4.13.1 We agree ongoing education and skills improvement is very important for all planning staff and decision-makers. Frequently, the issues lay with decisions made by councillors. Recently one NSW councillor made the following comments, or words to this effect, during a council meeting which was determining a controversial development proposal: "While I have some concerns, we have always approved agriculture in the region and accordingly I must vote in favour of the development." The matter ended up in the Land & Environment Court.

OPTION 4: State Agricultural Land Use Planning Policy ('SALUPP')

- 4.14 A broad policy, such as that suggested in the Options Paper, which prioritises agriculture and primary production over resource security and environmental protection will fail and does not recognise the loss of SSAL through government's own activities and support for particular activities.
- 4.15 While mandatory consideration should be applied in the planning framework, such as the Secretary's Environmental Assessment Requirements ('SEARs'), such an application would need to include additional criteria to that included at present. This should include

- 4.15 mandatory consideration of climate change, the environment and wide-spread views on animal welfare.
- 4.16 Statutory changes and the exact mechanism, such as the Ministerial Local Planning Direction 1.5, an agricultural impact statement ('AIS'), proposed amendments to the PRRD SEPP or the Standard Instrument LEP would require public consultation.

OPTION 4A and 4B: State Agricultural Land Use Planning Policy and State Significant Agricultural Land Criteria/Map

- 4.17 Concerning the proposal to implement a policy on agricultural land which includes mandatory considerations in the planning framework and the provision of councils with a list of criteria to create their own maps narrows the scope to apply the policy to land identified as SSAL and could include considerations for land surrounding SSAL.
- 4.18 Criteria for SSAL could comprise biophysical and climatic or locational characteristics. It could also compromise the importance of land to other agricultural industries. The below components could make up SSAL:
- 4.18.1 Biophysical Strategic Agricultural Land (BSAL);
 - 4.18.2 Expanded BSAL (up to 12% of the State);
 - 4.18.3 Irrigated lands;
 - 4.18.4 Existing agricultural land mapped for its importance (i.e., North Coast farmland);
 - 4.18.5 Land zoned RUI, RU2 or RU4 in the Metropolitan Rural Area.
- 4.19 The land above covers a range of land that is largely finite in supply (irrigated and BSAL) or provides other strategic advantages to agricultural industries not reliant on the land's biophysical characteristics. Identification of SSAL would enable stronger planning controls to be applied specifically to SSAL or require an RUI Primary Production zone be applied to land identified as SSAL. These stronger planning controls could also be incorporated in considering developments on land neighbouring SSAL.
- 4.20 This option would rely on councils conducting their own mapping if a map was desired. Alternatively, proponents could be asked to verify that their land is not classified as SSAL land to avoid the policy applying if pursuing non-agricultural development. Such verification procedures may be onerous and require extensive soil analysis and research rather than reference to a map.

4.21 The proposed strategy and many of the proposed options already strongly conflict with various farming bodies who are concerned about climate change and are endeavouring to tackle these challenges. Further, the strategy and options appear to strongly conflict with other state and federal strategies and plans which support tourism and sustainable growth in tourism and economic strength and prosperity from tourism development.

4.21.1 It is complete hypocrisy for the NSW Government to imply they wish to protect agricultural land in light of its role in ignoring the status of land deemed significant agricultural land in the Tweed electorate which was then rezoned to allow the development of a new hospital site.

CONCLUDING REMARKS

4.22 Over recent years the NSW Government has continued to actively, aggressively and systematically dismantle important and key environmental protection legislation in an approach that reflects political and economic short-term gain for a minority whilst ignoring the substantial large-scale risks and long-term permanent impacts upon an already stressed and stretched environment. If the government continues to ignore critical environmental considerations, all NSW citizens will be negatively impacted. This will include food and water security and economic sustainability and prosperity.

4.22.1 The nominated options, including Option 1, present a potentially dire future of the state of NSW becoming littered with industrialised agricultural zones and subsequent overexploited, uninhabitable dead zones. No one, apart from the minority employed in these ventures, will wish to reside in let alone visit these areas. Those who would normally invest in rural or regional regions will invest elsewhere. This will include everyday essential services that employees and their families would rely on, including teachers, medical services and the retail facilities that sell the products of these industries.

4.22.2 The Options Paper does not adequately consider or reflect the views of the broad and diverse community and the increasing level of public concern about our shared environment and how we manage and protect this environment and resources including land, soil, water, groundwater and biodiversity.

4.22.3 Similarly, the Options Paper has underplayed other issues altogether including the "social" implications. If we don't embrace the sentiments of the "precautionary principle" in regards to land management and associated policy and planning instruments, including for agriculture; and adequately and urgently address the scientific warnings

- 4.23.3 about climate change, the matter of agricultural land will be a moot point.
- 4.24 Fundamentally, we maintain that society and the manner in which it is governed must move away from the culture of land ownership being a right to extract and contribute to ongoing environmental destruction. This includes policies which make this easier to do so for a minority who will gain commercially. Council would gain 'awareness' through reference to current and ongoing legal reforms around the world which are promoting the recognition and protection of key environmental considerations such as water catchments
- 4.24.1 Similarly, we need to ensure the policy direction and laws designed to protect our integrated and shared environment and biodiversity cannot be compromised by political, commercial, or vested interests. This starts with strong legislation from our decision makers and includes the views put forward by Local Government Councils on behalf of the communities which elect them.
- 4.25 Additional underlying issues which continue to fester and which directly relate to the Options Paper, the Right to Farm policy, policy direction and reforms adopted by the NSW State Government includes the weaponising of the RTF policy against rural and regional communities. This weaponising is giving rise to the increase in community resistance, and land conflict under the Right to Harm banner.
- 4.26 We believe the level of protection for agricultural land and whether this should be proportionate to the broad quality of land and/or the scarcity of land should be considered very carefully and should not pave the way for overproduction of either quality or less quality agricultural land. Ongoing destructive farming practices and production cannot continue and should not be supported in any instance.

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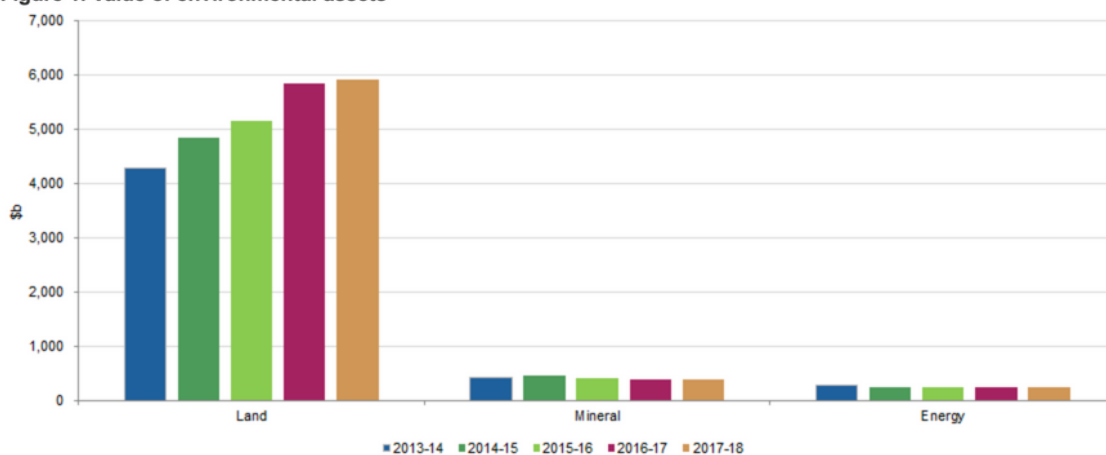
5 CHAPTER TWO: REDUCE AND MANAGE LAND USE CONFLICT

BACKGROUND AND PRELIMINARY REMARKS

- 5.1 Landscapes often mean distinctly different things and are defined in different ways by different people or stakeholders. Such definitions often depend on a range of personal or cultural concepts (Greider and Garkovich 1994). That is, the same area may mean different things to a real estate developer, a farmer, a hunter or a conservationist. In each example, personal politics influence the overall intent of the area. This illustrates one facet of the source of land use conflicts.
- 5.2 Land-use conflicts can be defined as “any dispute or harm which results when one person interferes with the way another person wants to use [their] land” (Lisansky and Clark 1987). Such conflicts occur when stakeholders have opposing or incompatible interests and are often the result of changes to the social or physical environment (Brown and Raymond 2013). Typically, they span six (6) general types, including noise pollution, visual blight, health hazards, nature conservation, preservation and changes to the general area (von der Dunk et al. 2011).
- 5.2.1 Though rural and regional NSW has traditionally been “defined by the relatively harmonious coexistence of competing land uses” wherein agricultural, manufacturing, service and mining sectors have “operated side-by-side”, such a balance and inter-sectoral cooperation have become increasingly fractured (Askew and Askland 2016). Conflicts over land use have intensified in line with the rising rates of urbanisation, decreasing land availability and increasing proximities between land uses (Lisansky 1986; Alford and Richardson 2019). They are generally assessed via an analysis of changes of areas of land cover, which establishes the basis of other options contained within the Options Paper (i.e., statutory mechanisms under the “minimising loss to productive capacity” chapter and the proposal to map SSAL) (Izakovičová et al. 2018; Pošiváková et al. 2018).
- 5.2.1 The development of zoning ordinances and land use controls, such as those outlined in section 4 of this submission, are mechanisms used to “identify and separate potentially incompatible land uses” (Brown and Raymond 2013). Despite these, conflict with the agriculture sector has amplified in recent years. Much of this is related to the expansion of metropolitan centres and the increase in the population in these areas (Henderson 2005).

5.3 Land is identified as a key national asset in assessments made by government agencies, including the Australian Bureau of Statistics ('ABS'). For example, for the 2017-18 financial year, the ABS reported that the net value for total environmental assets increased by 1%, with land accounting for significantly more than minerals, energy and timber combined. In total, land is identified as accounting for 90% of the total value of Australia's environmental assets (ABS 2019). Soil underpins the value of many land-use assessments (Williams 2015).

Figure 1. Value of environmental assets



Source: Australian Bureau of Statistics (2019)

5.3.1 Though options concerning the creation and adoption of a Rural Land Use Planning Policy in the Options Paper maintain that some industries in the agriculture sector do not require as a prerequisite for development, the use of limited natural resources, land use conflict is particularly pronounced regarding the use of high-quality soils (McKenzie 2018; DPI 2020a).

THE OPTIONS: OUTLINE

5.4 The Options Paper nominates a series of options relating to the perceived policy problem. These include options to improve dispute resolution mechanisms (Options 1-3 under subsection 5.3.1), options to develop new dispute resolution mechanisms (Option 4 under subsection 5.3.2). These are as follows:

5.4.1

Option 1	Expand the jurisdiction of existing dispute resolution bodies
Option 2	Create a new dispute resolution body
Option 3	Create a new or expanded agricultural disputes jurisdiction in a court or tribunal

Option 4

Expand the remit of the Independent Planning Commission ('IPC')

THE OPTIONS: GENERAL

- 5.5 The Options Paper explains that land-use conflicts relate to issues between the activities of an agricultural operation and the impact this has on neighbours or other impacted parties. This is compatible with the definition offered in subsection 5.2 above. Conflict and its resolution in favour of proponents of the agriculture sector represents a priority of the present reform process.
- 5.5.1 The Options Paper notes that the first priority of the NSW Agriculture Commissioner was the commission of a review of the NSW RTF Policy 2015. As it relates to land use disputes and conflict, the review found that councils are “often the first port of call” for complainants seeking to report such conflict. This was so in instances in which the issue was under the remit of other government agencies, such as the Environment Protection Authority ('EPA') (DPI 2020a).
- 5.5.2 The finding that local councils are often the first authority contacted in the event of land use conflict led to the provision of several options relating to the development of “State-backed mediation services” (DPI 2020a). Such a mechanism was promoted in the DPI-funded research report, “Managing Farm-Related Land Use Conflicts in NSW”, published by the Australian Farm Institute ('AFI') in 2020 (AFI 2020). The Options Paper explains that there have been requests for the development of these services to observe and aid in the resolution of land use disputes. Though it acknowledges the existence of several services which offer mediation of this kind, such as the Australian Disputes Centre, Community Justice Centres and those associated with the NSW Small Business Commission, it maintains that such services “may not have specific agricultural disputes resolution expertise” (DPI 2020a).
- 5.5.3 The Options Paper maintains that the requirements concerning the provision of evidence for agricultural developments are often “far and beyond what would be expected in a tenancy dispute or a standard family relationships dispute” (DPI 2020a). Such a characterisation neglects to account for the inherently different nature of the conflicts in question, however. The examples provided and offered as evidence of a perceived imbalance in the level of evidence required for agricultural developments are interpersonal insofar as they primarily relate to conflict between people in a preexisting relationship. Conflict of the kind under consideration may involve interpersonal disputes

5.5.3 yet these extend beyond this sphere to include environmental and/or social values issues. Examples of the latter may include disagreements with industrial development in a particular location within a given region (Brown and Raymond 2013). As such, they relate to a broader segment of the population, including biodiversity, future generations and the ability for those generations to enjoy a stable and productive ecosystem. As the subsections below reveal, these also relate to public health. As such, the characterisation of an unfair or inequitable conflict resolution system identified in the Options Paper constitutes a misleading attempt to equate incomparable disputes, represents a red herring and must be balanced using the significant consequences such conflicts contain.

5.6 While it may be reasonable to challenge the legitimacy of legislation or regulatory provisions if they are at odds with social values or whose provisions declined in their relative applicability, it is not appropriate to do so when these are designed and implemented to protect collective welfare from harmful activities or the by-products of these activities (Fuggle 1990).

5.6.1 Evidence outlined elsewhere in this submission reveals that the agriculture sector is adept at exploiting opportunities when regulation is weakened. It is reasonable to maintain that the characterisation of the dispute resolution process as prejudiced against the agriculture sector is an attempt to further weaken existing regulatory mechanisms in favour of the sector. Enabling such a fiat would be to the detriment of applicants with sound claims against their operations, a threat to public health and would represent a significant disservice to those who have encoded protections for the benefit of existing and future generations.

5.7 The Options Paper maintains that the DA approval process can be lengthy and costly for applicants, especially if a consent authority “requests unreasonable information or standards [...] be met in response to complaints” concerning the development of a new or expanded operation. In proposing the development of several mechanisms to improve or expand the availability of mediation services to aggrieved applicants seeking consent for agricultural developments, such as those outlined above and detailed below, the Options Paper cites the often technical nature of agricultural disputes. For example, these often require complex reports relating to odour, noise and pollutants. While it is true that many DA’s comprise several hundred pages of such reports, a discussion on the validity and importance of these is provided below.

DISCUSSION: GENERAL

5.7 Of the generalised types of complaint outlined in subsection 5.2 above, the “Right To Farm Agricultural Land Use Survey” prepared for the DPI and included in the evidence base of the Options Paper

5.7 acknowledges that land-use conflict concerning agricultural operations is often related to noise and odour (Goodall 2018). The latter has been acknowledged as unavoidable in many animal production practices (Abbozzo et al. 1996). This is strongly associated with feed, urine, faeces and manure and has become increasingly so as operations have intensified (Le et al. 2005). Though it has been a constant element in animal production systems, it was not seriously considered until the odour and emissions from intensive operations caused serious nuisance and corresponding public health problems (Schenker et al. 1991; Donham 2000; Iverson et al. 2000).

5.7.1 Though the aforementioned Survey notes that odour is one of “the most common triggers for complaints” against agricultural operators, it fails to mention the validity and seriousness of these allegations (Goodall 2018). The air in animal confinement facilities contains a range of potentially harmful gases, odours, dust particles and microorganisms (Harry 1978; Olson and Bark 1996; Heederik et al. 2007). These are discharged via ventilation into the surrounding environment, exposing the environment and the health and welfare of humans or other animals (Cambra-López et al. 2010; Quintana et al. 2020). This includes the animals and workers inside the infrastructure itself (Crook et al. 1991; Sigsgaard et al. 2020).

5.7.2 Despite this, a review conducted by the Australian Government found that only seven Australian studies assessing worker exposure to harmful airborne particulates in animal agriculture operations had been undertaken. Some of these, however, were prepared for industry groups in response to evidence that most studies focused on animal health, not worker welfare (Holyoake 2002). The same review concluded that “it is well accepted that [...] farmers often experience respiratory symptoms” due to exposure to harmful materials and that “epidemiological studies support these conclusions”. Despite this, the review found that “no Australian respiratory health studies have been undertaken that relate directly to measured airborne contaminant exposures” (Reed et al. 2006).

5.7.3 The risks outlined above extend to the wider community. Residents may be exposed to potentially harmful bacteria, viruses and pollutants as a result of animal production practices (Smit and Heederik 2017). In some areas of the world these exceed the combined contributions from all other kinds of pollution (Bauer et al. 2016). Studies have shown that people living near agricultural facilities have been exposed to infectious diseases transmitted via farmed animals and exposures to bacteria that are resistant to antibiotics (Graveland et al. 2010; Casey et al. 2014). Similarly, those living in proximity to such facilities are exposed to air pollutants, such as dust and ammonia, which affect the airways and result in decreased lung functioning

- 5.7.3 (Borlée et al. 2015; Bos et al. 2016; Borlée et al. 2017; Friedl et al 2017). These threats remain regardless of State or industry attempts to codify their production and dissemination as by-products of “normal farm practices”.

DISCUSSION: DISPUTE RESOLUTION

- 5.8 Any new dispute resolution mechanisms, such as those nominated in the Options Paper, must duly, transparently and independently account for the serious nature of the threats outlined above. Reference to existing examples elsewhere in the world have not done so and the risks remain. Independent experts in relevant fields must be sequestered to provide impartial evidence and the relevant industry must be obliged to respond and adhere to such findings. This represents a rational adjunct to the suggestions made in the Options Paper.
- 5.8.1 If accepted, the suggestion to add dispute resolutions to existing services via the creation of a separate agricultural division and the stated requirement to incorporate expertise in the agriculture sector without imposing legislative changes must also facilitate the expertise of public health experts. In conjunction, these could accurately and transparently assess the nature of the grievance, facilitate an independent study of the potential or existing threats and provide a balanced response which does not solely benefit the sector. Similar measures must be considered under other nominations, such as the expansion of NSW Fair Trading or community justice centre mediation services. The inclusion of joint expert evidence under Option 3 of the proposal to expand a jurisdiction in the Land and Environment Court (‘LEC’) offers one avenue to ensure that this occurs.
- 5.8.2 Similarly, any development of a new dispute resolution body must incorporate experts on public health to provide impartial and evidence-based advice on the range of threats outlined above. The models cited by the Options Paper do not provide this public health mechanism and are considered insufficient as a result. These must also incorporate clarity on the concept of “normal farm practices”. Modest recommendations on this are provided below.

DISCUSSION: "NORMAL FARM PRACTICES" AND PUBLIC HEALTH PROTECTION

- 5.9 There is increasing evidence and sound science indicating that the consumption of animal products is detrimental to human health, particularly concerning the use of antibiotics and other chemicals (Phillips 2003; Silbergeld et al. 2008; Marshall and Levy 2011; Wolk 2016). Governments often act to shape food systems for economic

5.9 and public health reasons (Godfray et al. 2018). Though access to adequate food can be reasonably regarded as a requisite component of the human right to health care, the adverse by-products of its production cannot be detached from such considerations (Deckers 2016). The accepted concept and principle of protecting public health in the context of animal production practices must be incorporated. This presents a range of concerns associated with the concept of “normal farm practices” which relates to environmental health and its impacts on public health.

5.9.1 While there are many definitions of public health and the importance placed on environmental health varies accordingly, it is based on the perspective that while health impacts individuals, its origins are socio-political (Nathanson 1996). This is shown by the influence of political pressure on the development of RTF laws, the concept of “normal farm practices” and the development of reforms seeking to protect access to land at the expense of various democratic principles, such as public health and community participation in the planning framework. As a result, the focus must be on populations and the legislation enacted to protect and sustain positive public health outcomes (Whiley et al. 2019). This necessarily includes and provides for its protection.

5.10 The concept and definition of what constitutes a “normal farm practice” must be amended to detach serious public health impacts which result from the operation of agricultural facilities. We note that the definition is not defined in detail in the models nominated by the Options Paper (Carey et al. 2018). This implies that it requires explicit consideration in the context of the proposed reforms. In so doing, the Department must consider that evidenced risks to public health associated with agricultural production practices should not be included or considered “normal” insofar as they are often in direct contravention of the objectives of several pieces of State legislation and international covenants to which Australia is bound.

5.10.1 For example, the objectives of the Public Health Act 2010 are to protect and promote public health, control risks, promote the control or spread of infectious diseases, monitor conditions affecting public health and recognise the role of local government in protecting public health (NSW Government 2017).


5.10.2 The right to health and its protection is contained in article 12(1) of the International Covenant on Economic Social and Cultural Rights (‘ICESCR’). Australia has been a party to the ICESCR since 1976 (DFAT 2009). Though it contains no definition of “health”, the UN Committee on Economic Social and Cultural Rights (‘CESCR’) has advised that the right to health is not simply a right to be healthy (see CESCR General Comment No. 14). As such, the right contains

- 5.10.2 freedoms and entitlements which include “the right to a system of health protection which provides equality of opportunity for people to enjoy the highest attainable level of health” (Attorney- General’s Department n.d.).

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**As we break their
spirits, our own spirits
are broken**

as we sow, we reap

Tuttle (2016)

6 CHAPTER THREE: SUPPORT THE GROWTH OF AGRICULTURE AND REGIONAL ECONOMIES

BACKGROUND AND PRELIMINARY REMARKS

6.1 Previous sections of this submission have outlined the current state of agriculture in NSW. Many of the components included in this chapter have also been briefly referred to in previous sections. As such the following section will briefly outline and respond to the corresponding options in Chapter 3 of the Options Paper.

THE OPTIONS: OUTLINE

6.2 The Options Paper nominates a series of options relating to the perceived policy problem, options to improve consistency (Options 1-3 under subsection 6.2.1) and options to support industry growth through the planning framework (Options 4-5 under subsection 6.2.3). These are as follows:

6.2.1

Option 1	Clarification of agricultural land use definitions
Proposal	The NSW Government to revise and update definitions in the Standard Instrument LEP
Option 2	Expansion of exempt and complying developments
Proposal	The NSW Government to expand the list of exempt and complying developments in agriculture;
Option 3	Buffer guidelines
Proposal	The NSW Government to establish a guideline to clarify and consolidate buffer requirements across industry and LGAs

6.2.2

Option 4 Agent/initiator of change principle

Proposal The NSW Government to introduce the agent of change principle and reverse the onus of buffer requirements to new/ encroaching developments

Option 4 Amend regulations on public submissions

Proposal The NSW Government to amend the planning regulation to guide local governments on how to consider submissions.

THE OPTIONS: GENERAL

6.3 Chapter 3 focuses on improving consistency of land use definitions, (Option 1), expanding exempt of complying developments (Option 2), buffer guidelines (Option 3), developing an agent or initiator of change principle (Option 4) and amending regulation on public submissions (Option 5). Each of these are grouped under the broad policy theme of supporting the growth of agriculture and regional economies.

6.4 As described elsewhere in this submission, the agriculture sector currently enjoys a considerable level of support not seen in comparable sectors. This is evidenced by the relationships industry groups have fostered with government departments and existing policies that support their productivity and profitability.

6.4.1 The Federal and State Government also substantially supports the sector by providing assistance via a range of schemes to primary producers. Historically, this has included statutory marketing arrangements, tariffs, adjustment assistance, research and development support, drought relief and tax concessions (PC 2005). An array of policies have supported the sector for many decades, including those encouraging investment via subsidies, building infrastructure and price-control mechanisms (Chen 2016).

6.4.2 Recently, this has included substantial drought assistance packages from the NSW Government and ongoing financing initiatives from the Federal Government (Bernasconi and Thackray 2020; DAWE 2020a). Political parties strenuously lobby the Federal Government for such assistance (Wright

- 6.4.2 and Bagshaw 2019). Similarly, state lobby groups or commodity councils pressure for sector benefits, including exemptions and other government support schemes (NSW Farmers n.d.; Chen 2016). Other vehicles include Federal research and development corporations ('RDC's) which partner with industries and specific legislation, such as the NSW Rural Assistance Act (PC 1998; DAWE 2020b).
- 6.4.3 Such support extends beyond official schemes, however. Government departments, including the DPI, have previously been embroiled in policy agreements with agriculture industries. In 2018, it was revealed that the DPI had allowed standards to be "stage-managed" by the poultry industry which benefited the interests of producers (Thomas 2018).
- 6.5 As previous sections of this submission have explained, the present reform package represents strong support for the sector in the policy framework. As we have maintained, we believe that this represents the weaponising of the RTF policy against rural communities with corresponding threats to democratic representation and public health. The remainder of this section will provide brief responses to the nominated options relating to supporting the growth of the agriculture sector and regional communities in NSW. As section 3 outlined, the overwhelming majority of land use in the agriculture sector is associated with animal production. As such, this will form the basis of the responses.

THE OPTIONS: DISCUSSION

Option 1: Clarification of agricultural land use definitions

- 6.6 This section of the Options Paper focuses on improving consistency across LGAs builds upon the previous overview outlined in section 4. This includes land use definitions under the Standard Instrument LEP and the land use tables contained in LEPs (DPI 2020). It reiterates many of the concerns previously discussed in section 4 (i.e., that uncertainty is alleged to exist in definitions which may lead to variations in how planning is enforced at a local level).
- 6.6.1 This alleged "ambiguity" is noted as being updated and clarified under the Primary Production and Rural Development ('PPRD') SEPP in 2019. This includes objectives concerning the identification of State SSAL to "simplify the regulatory process" and objectives to "encourage sustainable agriculture" (DPIE 2020). The stated objectives of the SEPP are to facilitate the "orderly" use and development of land for primary production purposes and to reduce conflict "by balancing primary production, residential development and the protection" of a range of natural or ecological values, including native vegetation, biodiversity and water resources.

- 6.6.2 While the proposal to review land use definitions to "accurately reflect the impacts of development" is gauged upon perceived hindrances on the agriculture sector, we maintain that any such review must be in the spirit of the existing SEPP and prioritise balancing interests, including natural and ecological values. We emphasise that the sector has been adept at exploiting amendments to legislation and regulations, particularly as they apply to land-clearing (Hannam 2020).
- 6.6.3 Similarly, the characterisation of certainty in terms of providing "a level playing field for all agricultural producers" must not be exclusively or beneficially applied to animal agriculture. As such, it must be equitably applied to emerging industries, including plant-based production.

Option 2: Expansion of exempt and complying developments

- 6.7 This section of the Options Paper focuses on enabling the NSW Government to consult on supplemental developments to agricultural facilities and proposes these be classified as exempt or complying (DPI 2020). It notes that this could be achieved at a local government level via the education of planning practitioners on "modern agricultural practices", including advice on "what should be considered acceptable on rural zoned land" and therefore not requiring the creation and submission of a development application ('DA'). The Options Paper cites "orchard netting, frost fans, construction of cattle shelters, robotic dairies and feed pads" as examples of possible supplementary developments not requiring a DA.
- 6.6.3 The concept of educating experienced practitioners on "what should be considered acceptable" and what constitutes "modern agricultural practices" is concerning as there is no indication nor definition in the Options Paper concerning what this actually means in practice. That is, there is no reference to what practices would be classified as constituting "acceptable". Ultimately, such education must be considered and presented for public consultation and be informed by independent experts to ensure that the provision of materials is not biased. Enabling industry representatives to define what is "acceptable" presents substantial risk and must be scrutinised.

Option 3: Buffer guidelines

- 6.7 This section of the Options Paper proposes the establishment of a guideline to "clarify and consolidate" existing buffer requirements "across industry and LGAs". It notes that buffers are a mechanism stakeholders identified as inconsistently applied and maintained across LGAs, including reference to the AFI's 2020 land-use conflict report (DPI 2020; McRobert et al. 2020). While the Options Paper

- 6.7 acknowledges that DPI currently provides recommendations on buffer areas, it maintains that these are optional and not applicable to all operations. It argues that this can cause land-use conflict (DPI 2020).
- 6.7.1 Buffer zones are areas of land between properties to minimise impacts of land use (Wells 2018). Aside from reiterating references to buffer zones contained in the AFI report, the Options Paper offers no substantial clarity on this proposal. The focus is on reducing conflict yet neglects to consider their value in environmental protection. For example, it fails to identify the value and importance of such practices in reducing pollution, particularly in water sources, associated with the by-products of production (Muscutt et al. 1993; Dosskey 2002; Yuan et al. 2009). Similarly, it neglects to reference the value of buffers in environmental protection, including in reducing erosion, increasing biodiversity and protecting habitats (Lovell and Sullivan 2006). Given the threats to biodiversity across Australia, these are important considerations not present in the proposals. In peri-urban or rural-urban fringe areas, buffers have been identified as important by farmers, academics and residents (Sullivan et al. 2004).
- 6.7.2 Any guidelines concerning buffer requirements must extend beyond their use in minimising conflict. They must transparently and thoroughly address environmental protection, particularly of environmentally sensitive areas. The absence of detail in the Options Paper necessitates this be emphasised in order to ensure that any guidelines follow best practice and sound science.

Option 4: Agent/initiator of change principle

- 6.7 This section of the Options Paper proposes the introduction of the agent of change principle and a reversal of the onus of buffer requirements on new or encroaching developments. It maintains that the agent of change principle is established in Victoria and elsewhere in the world. It explains its function as shifting "the responsibility of mitigating nuisance to the introductory land use" and, in the context of agricultural operations, this would mean shifting this onus onto new developments. Similarly to other proposals contained within other options, it is suggested that its implementation could be achieved via educating planning practitioners. It also cites potential amendments to council development control plans ('DCPs') or amending statutory environmental planning instruments. Finally, it proposes requiring introductory land uses to apply mandated buffers to existing agricultural operations (DPI 2020).

6.7.1 While the agent of change principle has been included in general land-use guidelines, such as the Northern Territory's Guideline on 'Recommended Land Use Separation Distances', it has principally been applied to music venues (see the City of Melbourne's 2014 'Music Strategy 2014-17', the City of Sydney's 2017 discussion paper on 'Planning for Culture and the Night-Time Economy' or the Western Australian Planning Commission's 2018 public consultation paper on 'Planning for Entertainment Noise', for example). It was, however, included in RTF proposals by the Victorian Department of Environment, Land, Water and Planning in May 2020. In this paper, it was similarly included as an option under the proposed RTF laws (DELWP 2020). Given the absence of comparable policies from which to draw substantiated conclusions, it is important that such a principle be assessed by relevant experts and that any associated findings be provided for public feedback. Such assessments should take into account the environmental and public health concerns we have outlined in previous sections of this submission.

Option 5: Amend regulation on public submissions

6.8 This section of the Options Paper proposes amendments to the planning regulations to guide local government councils on the consideration of public submissions. It maintains that such amendments could "ensure that consideration is consistent with the aims of the EP&A Act and its focus on environmental impacts". While the Options Paper acknowledges that "most councils and their planners would already have the expertise to appropriately consider such submissions", it maintains that "regulated guidance" could offer councils support in making decisions when they are "faced with political pressure and broader public opposition". It maintains that such opposition may be "based on issues unrelated to the immediate impact of the proposed development", including objections on animal welfare grounds (DPI 2020).

6.8.1 The proposal to amend regulations on public submissions is concerning, especially in the context of the broader themes of the proposed reforms. It appears to be an attempt to stifle the democratic system by limiting public participation in the planning process. This is particularly concerning given the explicit reference to objections to intensive agricultural developments. While it is understood that animal welfare does not currently apply to the development application process or subsequent decision-making, objections to intensive agriculture involve a vast array of unrelated concerns. These include those cited elsewhere in this submission, particularly environmental harm and public health.

6.8.2 Under Schedule 1 of the EP&A Act, there is a range of mandatory community participation requirements. These include minimum public exhibition periods for plans and applications. Under Division 3, the Act mandates that plans or applications may not be determined until after the mandatory exhibition period and submissions may be made during this time. Similarly, the Act mandates notification of decisions and the reasons for decisions, including determinations by consent authorities. Importantly, this also requires public notification of "how community views were taken into account in making the decision". These are distinctly democratic principles that enable the public to participate in the process. These must be prioritised regardless of the nature or content of submissions. As has been emphasised, it is understood that at present animal welfare issues are not within the scope of development applications or their determination. Environmental and public health concerns are within this scope and the public must have the opportunity to express these prior to determination.

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Regulation of Australian Agriculture (Productivity Commission Inquiry Report (2016))

Right to Farm Agricultural Land Use Survey - Final Report (University of Technology Sydney 2018)

Fresh Food Pricing Report - Portfolio Committee No. 1 (Premier and Finance 2018)

Best Practice Land Use Planning (AgriFutures Australia 2019)

Land Use in Rural Zones: Tweed and Cabonne Shires - Final Report, (Askland et al. 2019)

Rural and Regional Planning: NSW (Planning Institute of Australia 2019)

Land Use Conflict in NSW (Australian Farm Institute 2020)

APPENDIX B

SAMPLE OF AGRICULTURE SECTOR INTEREST GROUPS & ASSOCIATIONS

AgForce Queensland

Agribusiness Australia

AgriFutures Australia

Animal Health Australia

Australian Beef Industry Foundation

Australian Chicken Growers Council

Australian Chicken Meat Federation

Australian Dairy Farmers

Australian Dairy Industry Council

Australian Egg Corporation

Australian Farm Institute

Australian Livestock and Rural Transporters Association

Australian Livestock Export Corporation

Australian Livestock Markets' Association

Australian Lot Feeders' Association

Australian Meat Industry Council

Australian Meat Processor Corporation

Australian Pork Limited

Australian Wool Innovation

Boer Goat Breeders' Association of Australia

Cattle Council of Australia

Dairy Australia

LIVESTOCK INDUSTRIES (CONT.)

Fisheries Research and Development Corporation

Goat Industry Council of Australia

Meat and Livestock Australia

National Farmers' Federation

Northern Territory Cattleman's Association

NSW Farmers

Pastoralists and Graziers Association of Western Australia

Primary Producers SA

Queensland Dairyfarmers' Organisation

Queensland Farmers' Federation

Queensland Seafood Industry Association

Red Meat Advisory Council

Sheep Producers Australia

Tasmanian Farmers and Graziers Association

Victorian Farmers Federation

WA Farmers

WoolProducers Australia



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