



***State
Environmental
Planning
Policy
(Primary
Production
and Rural
Development)
2019***

*Responses to submissions
report*

February 2019

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Contents

Introduction	4
Purpose of report	4
Background	4
Summary of proposals	4
Consultation	5
Submissions	6
Summary of key issues and responses by themes	7
Rural subdivision for the purposes of primary production	7
Thresholds for intensive livestock agriculture	8
Temporary and emergency events	9
Sustainable Aquaculture	9
Artificial Waterbodies	10
Ministerial Direction – Rural Lands 1.5	10
State significant agriculture	10
Definitions	11
Application of rural planning and subdivision principles to peri-urban areas	11
Other Concerns	12

Introduction

Purpose of report

This report details feedback received to the exhibition of the Explanation of Intended Effects (EIE) for a proposed Primary Production and Rural Development package of reforms and includes a summary of responses to key issues outlined in submissions.

Background

Primary production is one of NSW largest industries and a significant contributor to the NSW and national economies, reaching an estimated output of \$17.5 billion in 2017/18.¹ The proposed Primary Production and Rural Development package of reforms recognises the significance of primary production and rural development in NSW by establishing a planning framework that provides certainty, confidence and consistency to support investment in new and existing primary production and other rural land-uses.

An Explanation of Intended Effects (EIE) was placed on public exhibition outlining the proposed reforms on 23 October 2017 and submissions were invited until 15 January 2018. The suite of documents on exhibition also included a draft Planning Guideline for Intensive Livestock Agriculture, FAQs and a fact sheet relating to subdivision of rural land for primary production.

Summary of proposals

The planning policies and reforms outlined in the EIE recognise the significance of primary production and rural lands through planning mechanisms that seek to:

- support investment in sustainable agricultural development
- reduce land use conflict
- facilitate an adaptive approach to new and emerging agricultural practices, technology and industries
- protect environmental values.

The EIE considered the following SEPPs:

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

¹ [https://www.dpi.nsw.gov.au/__data/assets/pdf_file/0011/845804/nsw-primary-industries-output-reaches-\\$17.5b.pdf](https://www.dpi.nsw.gov.au/__data/assets/pdf_file/0011/845804/nsw-primary-industries-output-reaches-$17.5b.pdf)

The reform package outlined in the EIE proposed to update and repeal provisions in the above SEPPs and consolidate certain updated provisions from those SEPPs into a new State Environmental Planning Policy (Primary Production and Rural Development) 2019 (the new SEPP).

In consolidating the above policies, the EIE proposed the transferal of some existing provisions into the new SEPP and some into the Standard Instrument Local Environment Plan (SILEP) and non-standard LEPs, where required.

The EIE also considered transferring plan-making requirements to Ministerial Directions (formerly s117 directions) under the Environmental Planning & Assessment Act 1979 (EP&A Act). Additionally, the EIE proposed to repeal some existing provisions where they are no longer relevant or needed and update various definitions in the SILEP and EP&A Regulation to ensure consistency across the planning system.

The Department of Planning and Environment (the Department) concurrently released a draft Planning Guidelines—Intensive Livestock Agriculture Development (Guideline). This Guideline is designed to assist applicants and planning authorities to understand the assessment requirements and navigate the development application process for intensive livestock developments, such as feedlots, poultry and pig farms.

Consultation

The EIE and Guideline were placed on public exhibition on 23 October 2017 and submissions were invited until 15 January 2018. The suite of documents on exhibition included the EIE, the draft Guideline, FAQs and a fact sheet relating to subdivision of rural land for primary production.

Several targeted stakeholder briefings were undertaken during the exhibition including:

- 9 Regional and 2 Sydney sessions for Local Government attended by approximately 80 people,
- a public session in Cessnock attended primarily by local industry, and
- individual presentations for key industry stakeholders including the Primary Industries Ministerial Advisory Council and Intensive Agriculture Consultative Committee, NSW Farmers Association, and Local Government NSW.

Feedback received during exhibition was used to refine the policy proposals.

Submissions

The Department received a total of 115 formal submissions to the proposed package of reforms.



The submissions received, excluding those requesting confidentiality, have been published and are available on the Department's [website](#).

Matters raised by stakeholders (council, individual, industry, agencies and environment groups and non-government organisations) varied. Overall there was a high level of support for the consolidation of instruments and improvement to the planning provisions for agricultural land uses to reduce duplication, complexity and improve clarity. The response to the Guideline was overwhelmingly positive with several submissions suggesting minor improvements.

Concerns predominantly focused on subdivision of rural land and the enforcement issues associated with residual lots for primary production. Other commonly raised themes included thresholds for intensive livestock agriculture, the definition of intensive livestock agriculture, the utilisation of provisions regarding state significant agriculture, the identification of environmentally sensitive land and the consideration of small-scale primary production and agriculture in peri-urban areas.

Summary of key issues and responses by themes

Submissions received to the exhibition of the Primary Production and Rural Development package of reforms are summarised into the following key themes:

- Rural subdivision for the purposes of primary production
- Thresholds for intensive livestock agriculture
- Temporary and emergency events
- Sustainable aquaculture
- Artificial waterbodies
- Ministerial Direction – Rural Lands 1.5
- State significant agriculture
- Definitions
- Other concerns.

Rural subdivision for the purposes of primary production

The EIE proposed to repeal clause 9 of the Rural Lands SEPP to remove duplication with clause 4.2 of the SILEP, as both of these clauses provide flexibility in the application of development standards for subdivision proposals in rural zones. It was also proposed to revise clause 4.2 to clarify that a lot created as a part of a subdivision for primary production purposes which contains an existing dwelling, does not need to meet minimum lot size requirements. This was the most commonly raised issue in the submissions with 69 of the 115 submissions received identifying this issue. Almost all submissions on this issue opposed the proposal including strong objections from the Department of Primary Industries, NSW Farmers Association, the Planning Institute of Australia and the majority of councils who provided a submission.

Issues Raised:

- Respondents argued that this was not a clarification but a totally revised approach,
- most respondents on this issue deem the proposal to represent a change in how they have interpreted and applied their LEPs, and many regarded the proposal as a reintroduction of concessional lots,
- the principal concern was that the suggested approach would lead to land fragmentation and land use conflict, particularly if dwellings were created on the new lot contrary to its intended use for primary production,
- some argued that these changes would have the unintended consequence of allowing the gradual conversion of properties into small rural lifestyle blocks, causing an increase in land values and the risk of purchasers acquiring the lot with little farming experience,
- many were concerned that the provisions would enable 'double dipping', and introducing covenants as proposed would not be effective in preventing land from being further subdivided via the clarified clause as they do not operate in perpetuity and impose an administrative burden on councils,
- some proposed a thorough review of what constitutes 'primary production purposes' is undertaken,
- some stakeholders requested the formation of a working group, made up of council representatives, representatives from industry and other government agencies to test possible options to deliver flexibility

for farmers through subdivision while minimising fragmentation and the potential for land use conflict, and

- a small number of respondents supported the proposal, mostly on the basis that they allow farmers to generate some income from subdivision.

Response:

Given (1) the feedback received during and after exhibition on the issue of rural subdivision for primary production; and (2) the complexities associated with the risk of 'double dipping', the proposed amendment of the clause has been deferred.

The Primary Production and Rural Development package will proceed, while this matter is deferred. This will allow for additional consideration and consultation of alternatives that will provide farmers with flexibility in managing their land, both for primary production and to make the best use of an existing dwelling on the property.

This would not prevent the repeal of the Rural Development SEPP as Clause 9 is duplicated in the existing Clause 4.2 of the SILEP, which means that councils will continue to have the power to assess and determine applications having regard to the merits and circumstances of each application.

The Department will consider the best approach to further consult with affected stakeholders to identify an appropriate solution.

Thresholds for intensive livestock agriculture

The EIE proposed to transfer and expand thresholds for development permitted without consent for livestock industries contained in SEPP 30 into a new model clause in the SILEP. This includes thresholds for poultry farms, pig farms, cattle farms, sheep and goat farms, to ensure that small commercial operators in low-risk locations are not subject to onerous levels of regulation.

Issues Raised:

- Some respondents questioned whether the thresholds for development consent proposed in the EIE are appropriate and some suggested that a more thorough review of existing thresholds should be undertaken to understand if there are opportunities for a tiered approach, including thresholds for exempt, complying, local and designated development for intensive livestock agriculture,
- some respondents supported the implementation of thresholds but disagreed with the proposed thresholds,
- some respondents argued that small-scale enterprises should require development consent to account for the biosecurity risks and cumulative impacts on the environment and some argued that thresholds should be determined at the LGA level, and
- on the issue of determining thresholds, many called for consistency with other policies, legislation and guidelines.

Response:

In response to feedback received during exhibition, and in line with advice provided by DPI, additional conditions have been added to the application of the thresholds for development consent to align them with existing provisions and thresholds in the *Environmental Planning and Assessment Regulation 2000*. These include (in addition to the originally proposed conditions) specific locational provisions that require the development to be more than 100m from a natural waterbody, and more than 500 metres from a residential zone in order to use the exemptions.

Temporary and emergency events

SEPP 30 currently provides that temporary livestock feeding and housing arrangement following droughts, fire or similar events do not require development consent. The EIE included a proposal to retain the intent of this provision but differentiate between emergency events and routinely husbandry uses and extend the provision to cover all types of commercial livestock agriculture. It also included a proposal to clarify that development consent is not required for stock containment facilities to assist with pasture management during drought periods and emergencies, and the capture and holding of feral goats.

Issues Raised:

- Some submissions called for more information regarding when the temporary provisions should be applied and more clarity regarding the terms temporary and emergency, and
- some submissions sought clarification regarding the accreditation/audit process for goat depots and the need to consider excluding goat depots in environmentally sensitive areas.

Response:

A factsheet on the provisions related to temporary arrangements for drought and other emergency events has been developed and will be published together with the new SEPP to clarify when stock containment areas and other temporary housing and feeding arrangements may be utilised.

On the issue of the accreditation/audit process for goat depots, the new SEPP will align with the definition of goat depot in new biosecurity legislation. The SEPP will also clarify that goat depots located in environmentally sensitive areas, within 100 metres of a natural watercourse or within 500 metres of a residential zone will require development consent.

Sustainable Aquaculture

SEPP 62 regulates natural water-based aquaculture (other than oyster aquaculture). The EIE proposed to transfer existing provisions in SEPP 62 into the new SEPP and the Standard Instrument LEP, clarifying terms such as land-based aquaculture and marine waters aquaculture.

Issues Raised:

- Concerns were raised in relation to the interim arrangements with the NSW Marine Water Sustainable Aquaculture Strategy which at the time of exhibition was not finalised and the need for other transparent and accountable processes for identifying sensitive areas to be excluded from aquaculture when the SEPP comes into operation.

Response:

The NSW Marine Waters Sustainable Aquaculture Strategy was published in December 2018 providing clear direction on the development of marine aquaculture in NSW. The Strategy complements the successful NSW Land Based Sustainable Aquaculture Strategy and the NSW Oyster Industry Sustainable Aquaculture Strategy. The new SEPP is structured in a way that supports the implementation of the NSW Marine Water Sustainable Aquaculture Strategy.

Artificial Waterbodies

The EIE proposed to transfer provisions in SEPP 52 into the new SEPP, the Regulations and the Standard Instrument LEP.

Issues Raised:

- There were eight submissions on this issue, calling for clearer controls on the construction of farm, dams and a thorough review of the current exemptions.

Response:

After exhibition, additional areas for simplification of the policy intent in SEPP 52 were identified. The new provisions respond to submissions calling for the further simplification of the policy by removing outdated terms such as 'farm plans', simplifying the area of operation of the SEPP and linking it to the Water Management Act 2000 and inclusion of a map of East Cadell into the SEPP.

Ministerial Direction – Rural Lands 1.5

The EIE outlined proposed new draft planning principles to be included in Ministerial Direction – Rural Lands 1.5 to support the delivery of the Right to Farm policy and to give clearer direction on the requirements for planning proposals affecting rural and environmental lands.

Issues Raised:

- There were divergent views regarding the proposed principles. Some submissions argue that it inadvertently prioritises agriculture over environmental protection; whereas other submissions argued the opposite case.

Response:

The proposed Ministerial Direction principles have been updated in consideration with submissions received during exhibition and further consultation with DPI.

State significant agriculture

The EIE proposes to retain the schedule for the identification of state significant agricultural land currently contained in the Rural Lands SEPP. While this schedule is not currently utilized, this will enable this schedule to be populated in the future after regional studies and mapping are completed.

Issues Raised:

- Some submissions questioned why the schedule of State Significant Agricultural Land in the Rural Lands SEPP remains blank, others questioned why no mapping to identify state significant agricultural has been published.

Response:

The schedule in the Rural Lands SEPP will be transferred into the new SEPP. This will maintain the existing opportunity to incorporate provisions for state significant agriculture into the SEPP in the future. Work is currently underway to map important agricultural lands in NSW, as identified in the actions of regional strategic plans.

Definitions

The EIE proposed to update the definitions of intensive livestock agriculture, extensive agriculture and feedlot to ensure consistency and reflect contemporary practices and emerging innovations in the industry.

Issues Raised:

- Some submissions argued that there is currently a lack of clarity and consistency in the interpretation of the definitions,
- many sought further clarification in relation to whether extensive agriculture is intended to capture free-range or low-density farming, with several submissions suggesting it should not while others held the opposing view,
- clarification was sought on the inclusions in extensive agriculture, for example, confirmation that pig farms and poultry farms, up to the threshold, are extensive agriculture, and
- some submissions called for the need to define pig farms and poultry farms.

Response:

In response to concerns about the lack of clarity regarding some of the definitions, the Guideline for Intensive Livestock Agriculture has been updated to include a new section that explains the difference between extensive agriculture and intensive livestock agriculture. New definitions have also been added to the SI LEP and SEPP, including a definition of pig farm and poultry farm and further updates to related terms such as dairy-farms have been undertaken in response to stakeholder concerns.

Application of rural planning and subdivision principles to peri-urban areas

The EIE proposed to update existing rural planning and subdivision principles in the Rural Lands SEPP and transfer them into Ministerial Direction 1.5 – Rural Lands, so they continue to apply to planning proposals which have the potential to affect land within a rural or environment protection zone. The EIE also proposed to expand the area of application of the principles to the Central Coast, on the basis that this local government area contains rural lands that warrant careful strategic consideration during the preparation of future LEPs.

Issues Raised:

- Some submissions requested that Sydney peri-urban areas should also be considered for the application of rural planning principles, given that these are important productive lands that provide food to the Greater Sydney Region,
- submissions by Hawkesbury Council and Wollondilly Council specifically requested that rural planning principles be applied to these two LGAs, considering the extent of peri-urban rural and environmental zoned land in these areas.

Response:

The land application area of the Ministerial Direction has been expanded to include the Central Coast, Wollondilly and Hawkesbury local government areas, as these areas contain rural and peri-urban lands that warrant careful strategic consideration. The Ministerial Direction will continue to exclude other parts of the Greater Sydney Region, Lake Macquarie, Wollongong and Newcastle.

Other Concerns

Submissions outlined a range of other matters regarding the proposed package. These include:

- concerns that there is an inconsistency between the definition of environmentally sensitive areas in the Codes SEPP, the Standard Instrument LEP and Environmental Planning and Assessment Regulation 2000, and
- concerns regarding blueberry production and other intensive horticulture cropping, and concerns that these industries are not properly regulated or controlled, despite associated environmental risks and visual and amenity issues.

Response:

The Department has reviewed and noted the range of other concerns outlined by stakeholders during the exhibition of the EIE. Some of these present an opportunity for future reform, in line with actions identified in regional and district plans. Some of these concerns require further consideration and additional consultation with local communities, industry, councils and other stakeholders.