



Department of
Primary Industries

Right to Farm Policy Review



Published by the NSW Department of Primary Industries

Right to Farm Policy Review
First published December 2020

More information www.dpi.nsw.gov.au

Reference number JTN16611

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Preamble

Land use change has long been central to economic development, initially through developing land to be suitable for agriculture, and more recently through the transition of that land to urban residential, public facilities and industrial use. Land use change continues to be important for economic growth, and the current regime is the basis for many asset values. Consideration of restrictions in this area requires great care and needs to allow responses to changes in markets, profitability and community needs.

Over the 2018-2019 financial year, agriculture contributed \$11.7 billion to the NSW economy, equating to 19 per cent of the total gross value of agricultural production in Australia (\$60 billion). Agriculture provides employment and economic stimulus in the regions. The agriculture industry is growing in output as a result of intensification, more efficient methods of production and generally strong global markets.

There is renewed interest by investors in agriculture, particularly in intensive systems, and governments have regularly and correctly identified food and fibre production, processing and manufacturing as growth opportunities.

Although the planning system has been amended regularly to respond to a growing population, economic downturns and the need to protect biodiversity, it has not kept pace with the changes in agriculture and its planning needs. There is a need for proactive planning to realise the potential growth in agriculture and food production through the planning framework. Investors have readily available options outside NSW and there is evidence of at least a perception that other Australian jurisdictions offer a more sympathetic environment for investments in this sector.

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Executive summary

In August 2020, the NSW Government appointed the NSW Agriculture Commissioner (**Commissioner**) to lead the next phase of the NSW Government's right to farm reforms with a focus on agricultural land use planning. The Commissioner's first priority was to conduct a review of the NSW Right to Farm Policy 2015 (**Review**).

This Review analyses recent consultation and sets out key findings and recommendations. The Review has found that the NSW Government has delivered or is delivering on each of the 15 actions in the Right to Farm Policy 2015. However, a range of reports and feedback from stakeholders indicate that (1) land use conflict is a significant and increasing issue for agriculture in NSW; and (2) land use planning issues extend beyond land use conflict.

The Review has found four policy problems that warrant further consideration:

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

The loss of agricultural land to non-agricultural uses pushes production further away from markets and critical infrastructure, and breaks up the rural landscape, reducing the production capacity of the land and making our food chains more vulnerable to shocks, such as the COVID-19 pandemic. Farmers can find themselves increasingly surrounded by residential land users who are sensitive to the noise and smells of farming which leads to conflict. The onus is often placed on farmers to respond to complaints about their operations and the lack of support in resolving complaints creates stress and anxiety for farmers. The complexity of the planning framework is overwhelming, costly and difficult to interpret. The inconsistency of how planning requirements are applied across councils can deter investment in new or expanding operations. A planning framework that incorporates the needs of agriculture will make it easier to interpret and ensure councils are supported in their decisions to promote and protect agriculture in their communities.

To address these problems, the Commissioner recommends the development of an Agricultural Land Use Planning Strategy (**Strategy**) for NSW. The Strategy should deliver on the NSW Government's commitment to retain a rural landscape that can function as a green break between urban centres and developments; and create a regulatory environment that supports agricultural investment and innovation along with the community's needs and reasonable expectations. Accompanying this document is an Options Paper: Agricultural Land Use Planning Strategy (**Options Paper**). The Options Paper proposes a range of options that could be included in the Strategy to address the above policy problems.

Forestry, private native forestry, biodiversity, drought, water and animal welfare are not in scope of this work.

The Right to Farm Policy Review

The Commissioner has assessed the progress of the 12 actions set out in the Right to Farm Policy 2015 and assessed that the NSW Government has delivered, or is delivering, on each of its commitments (**Attachment 1**).

In addition, the NSW Government has delivered the following initiatives to support the right to farm:

- passage of the Biosecurity Amendment (Biosecurity Management Plans) Regulation 2019 to address the biosecurity impacts of non-compliance with biosecurity management plans; and
- passage of the Right to Farm Bill 2019 which created standalone nuisance shield legislation preventing nuisance lawsuits from being brought in relation to established lawful commercial agricultural activities. The Bill also amended the Inclosed Lands Protection Act 1901 to increase penalties for aggravated unlawful entry on inclosed agricultural lands.

A range of recent reports identify land use conflict as an ongoing issue for agriculture in NSW (**Appendix 1**). These reports found that land use planning issues go beyond land use conflict. Other challenges include balancing protection of agricultural land and urban encroachment and addressing barriers to growth of the agriculture sector in the planning system.

In August 2020, the Commissioner conducted initial consultation to test the issues raised in these reports and discuss options for further protections for agriculture in the planning system. Representatives from 40 local councils, Local Government NSW, Planning Institute of Australia, NSW Farmers Association, the Intensive Agriculture Consultative Committee and various agriculture industry and mining industry stakeholders participated. Stakeholders were provided an issues paper that identified the following matters for discussion:

1. Long-term availability of productive agricultural land;
2. Making it easier to set-up and conduct business; and
3. Reducing land use conflict and supporting dispute resolution.

Stakeholders were given the opportunity to complete a survey and provide written submissions. 32 submissions were received and the participants who gave the Commissioner consent to publish are set out in **Appendix 2**.

The consultation findings are considered in detail below.

Consultation summary and issues analysis

This section analyses stakeholder feedback on the matters raised in consultation. The Commissioner considers that these issues should become components of the Strategy.

Issue 1: Long term availability of productive land

Policy problem: There is no definition, identification or development protections for State Significant Agricultural Land which is leading to this land being lost to non-agricultural uses.

The 2019 AgriFutures Australia report, 'Best Practice Land Use Planning' (**AgriFutures report**) notes that Australia has experienced a 14 per cent decline (or loss of 106 million hectares) in land used for food and fibre production between 1973 and 2017. The report points to land fragmentation and subdivision of rural land as causes of this loss. The report notes that there is a need for a clear prioritisation of agricultural land in planning schemes to ensure that agriculture does not become squeezed between other (more profitable) interests.

The Australian Bureau of Agricultural and Resource Economics and Sciences (**ABARES**) reports that over a comparable period between 1977–78 and 2018–19, long-term agricultural productivity grew by one per cent per annum. The Riverina Joint Organisation (**Riverina JO**) attributed "improved farming practices, better use of technology and the adoption of more corporate practices in farming" as driving this increase in productivity despite the loss of productive land.

ABARES has also noted that recent strong gross value of production growth has been mainly based on improved prices which are unlikely to persist indefinitely, and there is a need to increase production and productivity to maintain longer term growth. The planning system has a central role in achieving this outcome.

The NSW planning system seeks to balance competing land uses for the greatest benefit of the state. In NSW however there is no consolidated state-wide policy to guide consent authorities and developers on the importance and use of agricultural land. The NSW Government signalled its intention to develop specific planning controls for State Significant Agricultural Land (**SSAL**) in the State Environmental Planning Policy (Primary Production and Rural Development) 2019 (**PPRD SEPP**). The PPRD SEPP is aimed at identifying State Significant Agricultural Land (**SSAL**) for the purpose of ensuring the ongoing viability of agriculture on that land, having regard to social, economic and environmental considerations.

In the consultation survey, 82 per cent of respondents agreed or strongly agreed that the protection of agricultural land should be regulated by the NSW Government. Cessnock City Council's submission reflected the views of those respondents in writing that:

The absence of a definition or criterion for determining and policy for guiding the management of state significant agricultural land has resulted in significant problems when planning for, managing and conserving agricultural land across the state. Identifying state significant agricultural land would be beneficial for both statutory and strategic planning processes, providing councils with a substantial legislative position to enforce when making planning decisions particularly of a strategic nature.

There are naturally pressures to convert rural land to residential and other uses as towns, cities and populations grow. In the absence of a comprehensive state policy on the use of agricultural land, there is a risk of land being lost to non-agricultural uses in an ad hoc and unplanned way. Several respondents including the Riverina JO noted that it is “reasonable to assume that there must be a tipping point, where efficiency increases cannot offset loss of land”. Where agriculture is located will become increasingly important to ensure resilience to climate change, access to developing markets, critical infrastructure and desirable biophysical characteristics.

Australia is a net exporter of food, exporting more than half our agricultural produce, and providing more than 90 per cent of our own fresh fruit and vegetables, meat, milk and eggs. Current growth trends in agriculture suggests that with appropriate investment and regulation the sector can continue to supply Australian and overseas markets for many years. The loss of some agricultural land is unlikely to lead to food supply and production problems.

The case for improving the regulation of agricultural land is based on two objectives. The rural landscape provides green spaces between urban centres and in some cases industrial areas and improves the general amenity of urban developments. Secondly, it provides space which allows compliant agricultural operations to operate without unreasonable constraints and creates the opportunities for realising the growth potential of the sector.

The protection and enhancement of rural land in the Sydney Metropolitan Area is widely recognised as important by stakeholders and is included as an objective in the Greater Sydney Region Plan. The AgriFutures report however points to current trends that indicate rural lands are increasingly under pressure due to increased competition for peri-urban sites resulting from population and urban growth. Preserving agriculture in these areas will require more assertive policy and land use regulation.

Improved regulation of productive agricultural land could:

- retain productive land around high population densities, improving the quality of our landscape and urban amenity, and reduce risks of shocks to supply chains;
- appreciate the small percentage of rural land that is capable of high quality and quantity food and fibre production;
- ensure a diverse range of locations and climates for food production are maintained, to enable a range of local foods to be grown; and
- enable the primary production sector to continue to support regional and rural economies, providing employment and income.

It should be acknowledged that there are differing interests within the agriculture industry relating to land use change. At different stages of a landowner’s career they may rationally both oppose subdivision of rural land and then seek that subdivision later. It is clear from consultation and the evidence available that there is a need for clarity on the future direction of agricultural land use and what rural lands need to be prioritised for this use. This policy should be based on long-term community interests and retaining valuable primary production land rather than on the financial interests of individual landowners. Greater clarity on the intended future use of land and more consistent land use decisions will assist over time in reducing speculation about changes in land use zoning and the resulting increased land values.

Identifying State Significant Agricultural Land

Stakeholders showed strong support during consultation for the identification of SSAL. With Australia's population predicted to reach 48 million in the next 50 years, Cessnock City Council noted that the "long-term availability of productive agricultural land is paramount to the future of agriculture in NSW, to the viability of many industries as well as the long-term security of the state's food bowl".

Land use pressures caused by urban encroachment and land fragmentation on productive agricultural land are not unique to NSW. Several other Australian jurisdictions have taken steps to identify and protect their most productive land for agriculture. Victoria, Queensland, Tasmania, Western Australia and South Australia already have, or are in the process of implementing, policies that identify and protect productive agricultural land. This is also a global trend. These policies are set out in **Appendix 3**.

In NSW's two existing Ministerial Directions (**Directions**), 1.2 and 1.5, decision makers are asked to consider the impacts of rezoning proposals on rural land. Stakeholder feedback suggests there is not enough guidance to inform decision makers about the value of certain agricultural land and the impacts of proposed development on surrounding agricultural land. Additionally, for towns to grow there is a need for some areas of rural land to be consumed, and as such many proposals are often inconsistent with these Directions. While the Directions support such inconsistencies to enable this growth, the inconsistencies undermine the Directions strength and validity.

To be more effective, both in perception and practice, these Directions need to apply a higher standard of agricultural prioritisation for high quality or SSAL, while acknowledging the need for towns to consume some less productive areas of the rural landscape when planned strategically and making the best use of the land resource. During consultation, stakeholders agreed that identifying SSAL will help decision makers in applying the Directions, inform strategic plans that set the future direction of land use and could also inform further changes to policy settings if required.

During consultation, there were differing views about exactly how to define SSAL and how the planning framework could continue to balance a range of competing interests. Stakeholders were clear that soil quality is only one of many considerations in defining SSAL. Moree Plains Shire Council noted that identifying SSAL is not "simply a matter of intrinsic soil fertility and access to water but is a complex interplay of natural and human factors". Each agricultural industry is different and has different needs. Stakeholders identified a number of critical needs for agricultural production, such as:

- Proximity to market (Hawkesbury City Council noted that its proximity to Sydney has significance in relation to availability, quality and costs of produce, and is in decline);
- Access to water, transport and energy;
- Access to employees in sufficient numbers and with appropriate skills, including access to appropriate elements of the education system;
- Soil fertility and structure (including type and depth);
- Climate and microclimate (in particular regional characteristics);
- Infrastructure access and provision (rail, road and telecommunications); and
- Proximity to processing facilities.

Issue 2: Reducing land use conflict and supporting dispute resolution

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

The 2019 Planning Institute of Australia's report, 'Rural and Regional Planning (NSW)' describes land use conflict as "arguably, the most immediate planning issue facing rural and regional NSW." The 2020 Australian Farm Institute's report, 'Managing farm-related land use conflicts in NSW' (**AFI report**) notes that land use conflict can cause landowners and operators to suffer significant economic consequences. The most severe impacts from these disputes are largely not financial but rather relate to mental health, social and physical amenity, industry decline and erosion of trust.

Land use conflict often arises in the agricultural context due to urban encroachment into farming areas. Intensive agriculture systems also increase the chance of noise, odour, spray drift and other outputs of farming practices interacting with surrounding land users. There is also a lack of awareness of acceptable farming practices, which can drive complaints. The 2018 University of Technology Sydney's Report, 'Right to Farm Agricultural Land Use Survey' (**UTS report**) found that at least 50 per cent of complaints to councils that participated were about compliant agricultural activities. The AFI report also provides examples of complaints about compliant agricultural activities regarding noise, visual amenity, odour, spray drift and feedlots.

Many industry and council participants called for broader community awareness of accepted farm practices. However, some participants suggested that the ongoing benefits of community awareness programs are limited. For example, one participant made the following observations:

In our experience, unless awareness programs are conducted routinely any gains and benefits are temporary at best. Council planning staff have a high turnover rate and Councillors come and go. Unless councils and their staff are regularly engaged and educated about agricultural practices little will be gained by improving awareness. Similarly, the community in which these conflicts occur are not static and change regularly with new entrants and changes of ownership. Unless community awareness programs can cater for the dynamic nature of both councils and residents it is doubtful that long term gains can be achieved.

During consultation the main types of land use conflict discussed by stakeholders were those arising from compliant agricultural activities, and those arising from red tape leading to delays in predevelopment approvals.

| Type | Trigger | Complainant | Dispute resolution | Common Issues |
|-------------|--|---|--|--|
| Operational | Nuisance complaint against existing operations. | Neighbour or local resident | Council EPA Courts and tribunals | Even when an operation is compliant, evidence indicates that the time and cost of responding to the complaint and obtaining expensive consultant reports to defend operations can be prohibitive and discourage good operating practices. |
| Development | Expansion of existing operation, diversification or new operation. | Local residents, political activists, international activists, NGOs, industry, general public | Council Courts and tribunals | A consent authority either does not approve, requests unreasonable information or entertains unreasonable objections in relation to a development application for a new or expanded agricultural operation, in some cases for protracted periods of time |

Most of the examples provided during consultation related to existing operations. However, it is likely that the cumulative loss of new investments has a greater long-term impact on the rural economy.

While evidence of agricultural land use conflict is largely anecdotal, practitioners consider it a serious problem. There is no quantitative or qualitative data that measures the extent of the problem or the effectiveness of the current system of dispute resolution. There are no reporting obligations for councils, and it is complex to measure the absence of something (in this case, the agricultural investments that do not proceed because of operational or development disputes). The lack of quantitative data was a concern to some stakeholders who questioned how the problem could be accurately diagnosed and how success could be measured without a baseline.

Councils manage complaints against agricultural practices in a variety of ways. Coffs Harbour City Council encourages dialogue between disputing parties but connects parties to community justice centres if the issue persists. However, many industry participants indicated that the process of managing complaints is often unclear and thwarted by a lack of agricultural expertise on the part of the council managing the dispute. A great deal of effort may be required to justify normal and compliant practices even if these practices are considered 'best practice' in that industry.

In addition, dispute resolution can be costly. Small scale farming operations do not meet the threshold for State Significant Development and therefore cannot access dispute solution avenues offered by the Independent Planning Commission. Over the last 10 years, 81 per cent of agricultural and aquaculture building jobs approved in NSW were small in scale, worth between \$50,000 and \$250,000 (ABS, Building Approvals, Australia, September 2020). Further, smaller operators are unlikely to escalate disputes through costly court processes because of the

disproportionate costs. There is a gap in the dispute resolution framework that can respond to smaller scale disputes through cost-efficient avenues.

Stakeholders expressed their frustration around councils' perceived priority on mitigating complaints, rather than ensuring the complaints were justified. Councils are required by the *Environmental Planning and Assessment Act 1979 (EP&A Act)* to consider all submissions made on a development application, irrespective of the location or experience of the individual relative to the development. During consultation stakeholders gave examples of neighbours and vexatious complainants lobbying against agricultural development to council, causing significant delays and anxiety for the operator. One council noted:

Unless council staff have a sound understanding of the operational requirements of intensive livestock industries, which is typically not the case, then resolutions usually take the form of enforcing changes to the business to appease complainants. These changes often take the form of restrictions to operations which impact on the profitability and viability of some of these enterprises.

The complaints can result in increasing thresholds to be met, changed operations or additional costs on a farmer either through fines or defending their operations with reports from consultants.

When asked who should 'manage' agricultural land use conflict, over 70 per cent of stakeholders considered it the NSW Government's responsibility. Stakeholders also identified local councils and self-resolution as appropriate forums to manage conflict. The UTS report notes that most operational disputes are reported to councils, who then refers the matter to other government agencies including the NSW Environment Protection Authority (56 per cent); NSW Local Land Services (36 per cent); NSW Department of Primary Industries (28 per cent) and the NSW Office of Environment and Heritage (25 per cent). There is no clear pathway to resolve disputes and this suggests that improvements can be made to existing arrangements.

Alternative dispute resolution for land use conflict

Improved education and awareness for new residents moving to rural areas on the realities of living in rural areas was posed by several stakeholders to address complaints about compliant activities. Stakeholders emphasised that education and awareness should occur before a purchase is made. Some councils already attach a statement to each Section 10.7 certificate explaining what is to be expected by purchasing land in a rural-based community. However, this occurs when the decision to purchase has already been made and as such may not have the required impact.

During consultation, stakeholders were asked whether improving community awareness of acceptable farm practices would reduce conflict fostered by a misunderstanding of compliant farm practices. Most stakeholders agreed that acceptable farming practices in NSW should be defined and act as a defence against private action and be used by regulators in carrying out their functions. Improving community awareness of acceptable farm practices is also a recommendation in the AFI report.

Stakeholders however did not have consistent ideas on how such guidelines could be implemented. One option posed was using existing codes of practice to form the basis of 'acceptable farm practice' guidance. Another option posed was adopting the approach taken in Ontario, Canada where a Normal Farm Practices Protection Board rules on what is 'acceptable'.

Most stakeholders agreed that NSW would benefit from a similar arrangement as the Canadian model (explained in more detail in the Options Paper accompanying this document). Several terms were used in these discussions including 'normal', 'acceptable', 'common', 'compliant', 'acknowledged' or 'recognised' farming practices.

There was broad support among stakeholders for improved education and awareness of agricultural practices and the importance of the agriculture sector for council planners/consent authorities. Some local councils noted that they do not feel confident interpreting statutory requirements and actively avoid risk and conflict. The implication is that projects and operating practices are not always assessed on their merits. The AFI report similarly recommends consistent training to address land use conflict (in councils and state agencies) regarding acceptable farm practices.

Other forums discussed included the Wollondilly Rural Industry Community Advisory Committee (**RICAC**). RICAC provides local producers and stakeholders an opportunity to discuss issues directly with Wollondilly Shire Council. RICAC has no legislative power but can develop initiatives to sustainably support agriculture in the region and opens a channel for the Wollondilly Shire Council to address potential issues with agricultural production on behalf of the community. A benefit of the RICAC is the opportunity for symbiotic education between farmers and community representatives on what farm activities are normal according to industry best practice, what are tolerable by sensitive receptors, and where the nexus of these lies.

Issue 3: Making it easier to set up and conduct business

Policy Problem: The planning framework does not reflect the needs of agriculture.

It is necessary for the planning system to set appropriately high standards for existing and proposed land use. However, there is a perception among some stakeholders that the NSW planning framework and the approach of local governments is restricting existing and expanding agricultural operations. Industry stakeholder, John Cordina noted in his submission that the planning system, “fails to support, protect and sustain agricultural development.” NSW Chicken Meat Council noted that “development applications for intensive animal industries are complex, expensive and lengthy. Extensive delays in the approval process are common, and the costs of progressing a DA [development application] for a poultry farm are substantial.” Cessnock City Council noted that the “complex nature of the NSW Planning framework can be hard to navigate” and that is also impacting the establishment and investment in new agribusiness in NSW.

This sentiment was however not shared by all stakeholders with perspectives differing based on industry type and council location. Coffs Harbour City Council in their submission disagreed that planning controls restrict (some) agricultural production, noting that it “considered that extensive agriculture is one of the least regulated land use activities within NSW, with no consent required.” Tweed Shire Council shared similar views noting that “agriculture remains largely unregulated with many agricultural activities not requiring development consent.” However, it is mainly intensive agriculture and broader agribusiness projects that are the subject of the concerns considered in this report.

Clarification of agricultural land use definitions

The NSW Chicken Meat Council noted that “there are significant inconsistencies between local councils in the interpretation of planning requirements for similar operations, and the time, difficulty and success in obtaining approval varies between local councils.” Numerous stakeholders commented on inconsistency in the definition of buffer zones and the triggers for development applications. Both Local Government NSW and Costa Berry Category submissions noted that clarity and consistency in the planning framework is important to “enable capital investment to redevelop and improve existing agricultural businesses as well as developing new business in agriculture.” In their submission Junee Shire Council noted that consistency across councils would increase industry certainty in developing operations that span several Local Government Areas (LGAs).

To address the ambiguity between LGAs, stakeholders recommended clarifying definitions in the Standard Instrument—Principal Local Environmental Plan (**Standard Instrument LEP**). The Riverina JO submission provided the example of the artisan food and beverage industry to illustrate the issue. The submission noted that the inclusion of the definition in the Standard Instrument LEP of ‘Artisan food and drink industry’ into the ‘light industry’ group term prevented the use in certain rural and environmental zonings across the state. In many instances it is appropriate for artisan food and beverage industries (such as a meadery or distillery) to be located in rural areas as a niche manufacturing and tourism activity that can provide an important value-add to on-farm primary production.

To achieve this however each council must amend their local environmental plans to make this use permissible in rural zones that do not permit light industry if they consider it warranted. While this process ensures the issue is considered strategically and allows the community to input into a decision that allows these types of light industrial uses in rural zones, it is a process that can take considerable time. This is coupled with a lack of guidance and ministerial directions for the application of rural and environmental zones. This can be remedied by amending the land use definition to more accurately reflect the impacts of development.

There was a clear appetite for changes to the definitions and Standard Instrument LEP to improve consistency in decision making and relate the regulation to the appropriate activity in a more precise way. Both Tamworth Regional Council and Riverina JO submissions pointed out that consistency should not be confused with conformity and that councils should still be able to consider local factors (Tamworth Regional Council Submission, RJO Submission).

Expansion of exempt and complying developments

Submissions from Costa Berry Category, Junee Shire Council and Leeton Shire Council noted that there was scope to expand the list of exempt and complying developments in the Standard Instrument LEP, particularly for agricultural developments ancillary to existing operations of farms. This was seen by stakeholders as a tool available to the NSW Government to make it easier to conduct agricultural business and to give some certainty within the planning sector to attract new investment in agriculture in NSW.

One council officer noted that many councils do not want to require development consent for agriculture but “view it as a potential option to proactively deal with disputes because it can enforce better setbacks to constrained areas (which reduce likelihood of complaint) give unambiguous parameters to enforce compliance around (e.g. conditions of consent) and fill a perceived gap in interest from NSW Government in actually undertaking regulatory compliance of agriculture.” The options posed in the accompanying Options Paper aim to avoid this approach.

Buffer guidelines

Numerous stakeholders identified ‘buffer’ requirements and preservation as an essential tool in managing potential conflict. Some suggested that clearer guidance from the NSW Government on buffers to make it easier for existing operations to conduct business. Several stakeholders noted that buffers can be an effective way to limit the interaction between agricultural activities and housing and other incompatible uses like education and health facilities (John Cordina, Port Stephens Council, Mid-Coast Council, Tweed Shire Council, Wollondilly Shire Council, PIA).

In their submission Port Macquarie-Hastings Council noted that:

in preparing planning proposals, the determination of separation buffers is generally subjective and often disputed by proponents who argue for buffers based on current rural land uses and conditions... Clear State guidance like that provided for other land uses and infrastructure, or definition of separation buffers within a local planning direction, the Standard Instrument (Local Environmental Plans), or a State policy document, is needed to provide greater certainty on this requirement.

Tweed Shire Council advocated for a mandated approach where clear “policy framework and triggers are required to ensure appropriate buffers to agricultural production in the event of urban encroachment. These buffers should be built into the planning and assessment framework and mandated to occur on the land being developed, not the adjoining farmland.” Stakeholders were clear that the responsibility of providing adequate buffers needs to be shared and not the sole responsibility of the farming landholder.

This is an area that clearly warrants more work, and even modest improvements are likely to yield significant benefits.

Agent of change principle

To support industry growth in the planning framework some stakeholders suggested the adoption of the ‘agent of change principle’. Coffs Harbour City Council noted that this means that:

consideration should be given to whichever land use came first and that the landholder or business (i.e. the agent) introducing a new land use should be held responsible for managing the impact of that change. Residences next to grazing land which then gets converted to intensive plant agriculture will experience a host of new issues associated with living next door to the new use.

Some planning controls seek to apply this principle in certain circumstances, such as clause 5.16 of the Standard Instrument LEP, however, the principle could be more broadly applied and given more strength.

Development proposal submissions

During consultation stakeholders raised concerns about how the planning system requires handling of submissions against development proposals. The NSW planning system emphasises community participation in the development process with an object of the EP&A Act being “to provide increased opportunity for community participation in environmental planning and assessment”. This is a strength of the system and essential to identifying potential impacts of a development and measures to mitigate those impacts. However, a lack of understanding of industry practice and their impacts creates a risk of determining authorities giving weight to objections on reasonable development impacts.

The NSW Chicken Meat Council noted that “there is over-emphasis given to the rights of the complainant as compared to the farmer and that there are inadequate mechanisms to identify and deter vexatious complainants (or complainants with ulterior motives).” During consultation industry stakeholders said that they were experiencing vexatious complaints from submissions from people or organisations who are ideologically opposed to the proposed development and do not live or own land in the vicinity of the proposal and its potential impacts. Councils do have discretion to discount irrelevant submissions and submissions are only one of several considerations required to assess the impact of a development under the EP&A Act. But it is perceived by the public that consent authorities do not discount these submissions, nor do they place the onus on the complainant to demonstrate the direct impact for projects on private land.

Issue 4: Assisting local government to deliver broad state government objectives

Policy Problem: Local government plays a crucial role in regulating agricultural land use but can be risk averse and as a result can struggle to deliver broader NSW Government objectives to promote investment and jobs growth.

Almost all transactions involving a change in agricultural land use, including new associated investments, are below thresholds that trigger the involvement of the Independent Planning Commission or Regional Planning Panels. They are usually of local but not State-significance and are therefore governed by councils. The issues discussed so far in agricultural land use planning have arisen from the cumulative impact of the individual decisions of councils.

There are varying capabilities and resources amongst LGAs. They are experienced in handling their local land use issues and employ professional planners to make some decisions and provide advice. Some LGAs have experienced long term financial and staff resourcing stress and many are careful to minimise their exposure to legal risk in exercising their planning responsibilities on financial and other grounds. This creates incentives for decision-making that is not always based on achieving an optimal balance of economic development and broader long-term community interests through rigorous application of the principles, strategic plans and processes in the NSW planning system.

The planning system is designed so that Local Environment Plans (LEPs) implement the land use vision and planning priorities identified in regional plans and local strategic planning statements. To amend LEPs, either the local council or a proponent prepares a planning proposal, which is then referred from council to the NSW Government for a Gateway Determination.

Anecdotally, where some proponent-led proposals are contentious, councils may refer these proposals to the NSW Government for a decision to avoid legal or political challenges which council may struggle to resource or respond to. However; EP&A Act provides that the proposal submitted to NSW Government is a product of council, and as such government assumes council supports the proposal. This perception can influence the assessment undertaken by the Department of Planning, Industry and Environment (DPIE) prior to determination.

The assessment considers regional and State planning objectives across a wide range of issues that can be directly at odds in practice, meaning proposals can be inconsistent with one objective but consistent with other objectives resulting in uncertainty. The Gateway Determination process allows for the Minister (or a delegate) to determine whether a planning proposal should proceed and without there needs to be a variation made. As part of the Gateway Determination, DPIE may request further studies to be undertaken, public consultation, agency consultation and establishes a timeframe within which a final decision on LEPs amendment should be made.

In submissions and during consultation with both councils and industry representatives we heard concerns about capacity to make consistently optimal planning decisions, and the impact this has on both councils and potential investors.

While not a uniformly held view, councils generally expressed a desire for a regulatory system within which they could make more confident and consistent decisions. Most consider that the current system, and in some cases their own internal capacity, does not allow them to do this.

This report does not propose LGA reform or changes to the role of LGAs in the planning system. However, several changes to the system have been identified that could assist LGAs to deliver improved outcomes. Public feedback will be sought on a range of options to address the issues uncovered in the Review.



Key findings and recommendations

In summary, key findings from consultation highlighted the following issues:

- **Land use conflict is increasing as both population and the food production sector grow** – despite the absence of specific evidence it seems to be generally accepted that the agriculture sector is in a growth phase and experiencing both increasing constraints and growing pains in the form of land use conflict and pressure to sustain existing important agricultural land;
- **SSAL should be identified and prioritised for agriculture where possible** – SSAL should be identified and protected in some form, but SSAL will be different for each agricultural industry. Without a regulatory regime that gives stronger support to primary production, urban encroachment will subsume land used for agriculture in many areas of the State;
- **Better education around agricultural practices is needed for both new residents and local government land use planners** – agricultural practices are misunderstood and this can drive land use conflict;
- **Industry is seeking active policy from the NSW Government** – better awareness and definition of normal and lawful farming practices and the importance of agriculture would assist in limiting potential conflict and in resolving existing conflicts;
- **Councils are seeking more guidance from the NSW Government** – there are concerns about consistency in local government decision making and the incentive for overly cautious decision making even when projects promise local jobs. Many councils would like to see more support and coordination from the NSW Government in managing land use conflict with farmers, including clear and consistent guidance on the interpretation of planning requirements;
- **Farming is a long-term business and operators need reasonable certainty about the regulation of land use** – there are concerns that obstacles in the planning framework, including land use conflict and protracted appeal processes, are deterring investment. Improvements are possible, including to ensure a consent approval is valid irrespective of future development; and
- **There is very little data available on the loss of agricultural land, incidence of land use conflict and economic opportunities foregone** – the absence of a systematic method to identify agricultural land means its use and loss cannot be monitored and policy development relies on anecdotal evidence. In this project we have found similar views are widely held by stakeholders which provides confidence in the use of that evidence.

The Review recommends that an Agricultural Land Use Planning Strategy for NSW be developed to address the ongoing issues of land use conflict, loss of agricultural land and ensuring that NSW is a competitive and attractive place to do business.

The Strategy's aim should be to deliver the NSW Government's commitment to deliver strong regional development by supporting a successful rural landscape that provides diversity of land use and local amenity; and creates a legislative and regulatory environment that is supportive of agricultural investment and innovation.

Attachment 1: Progress of the Right to Farm Policy

| Right to Farm Policy Action | Progress to date | Opportunity for further action |
|--|---|--|
| REINFORCING RIGHTS AND RESPONSIBILITIES | | |
| <p>The NSW Government will implement the Right to Farm Policy to support farmers in exercising their right to farm.</p> | <p>The NSW Right to Farm Policy has been operational since 2015.</p> | <p>The Minister for Agriculture and Western New South Wales has tasked the Commissioner to investigate an Agricultural Land Use Planning Strategy to build off the Right to Farm Policy.</p> |
| <p>The NSW Government will work with agricultural industries in NSW to support their efforts in establishing and maintaining best practice and minimise land use conflicts.</p> | <p>The Intensive Agriculture Consultative Committee (IACC) was established to provide advice to the NSW Government on issues relating to land use conflict, planning impediments for primary producers and how to manage the impact on future production in the Sydney Basin.</p> <p>All local governments were provided with a Right to Farm policy statement for attachment to Section 10.7 certificates under the EP&A Act.</p> <p>NSW DPI provided input to pig and poultry industry projects to develop nationally aligned development requirements.</p> <p>NSW DPI developed an issues paper and followed up recommendations for the poultry industry facing disruption by housing growth in the Sydney Basin.</p> <p>NSW DPI and other Government agencies continued to hold regular meetings with NSW Farmers regarding right to farm issues.</p> | <p>Initial targeted consultation run by the Commissioner has indicated broad support for guidelines that define best practices which can be used to defend agriculture from nuisance complaints. This will be explored further in the NSW Agricultural Land Use Planning Strategy.</p> |
| <p>The NSW Government will encourage and support all participants in rural industry to promote good agricultural practice, technological and practical developments of modern farming equipment and techniques and good neighbour practices.</p> | <p>NSW DPI provided planning and technical advice to proponents of intensive agriculture industry developments such as poultry farms, piggeries, feedlots, dairies and protected cropping.</p> <p>NSW DPI regularly developed and updated its' Prime Facts documents making them freely available on the NSW DPI website.</p> | <p>See above.</p> |

Right to Farm Policy Action

Progress to date

Opportunity for further action

ESTABLISHING A BASELINE AND ONGOING MONITORING AND EVALUATION

The NSW Government will work with local councils and other stakeholders to identify and monitor complaints related to farming in relevant LGAs.

The University of Technology Sydney completed three land use surveys to establish a baseline and ongoing monitoring and evaluation of land use complaints. The surveys investigated the type and extent of agricultural land use conflict across NSW, how councils manage this conflict and how councils can be supported in conflict management. The research was overseen by a reference group comprising of NSW Farmers, Office of Local Government, Local Government NSW and NSW DPI.

As part of the Commissioner's consultation the need for alternative dispute resolution was discussed. Councils discussed that they do not have capacity to identify and monitor complaints related to farming. Councils' focus is on mitigating complaints rather than ensuring acceptable practices are implemented (AFI report, 5). The NSW Agricultural Land Use Planning Strategy will explore gathering an evidence base on both loss of agricultural land and land use conflict.

STRENGTHEN LAND USE PLANNING

The NSW Government will develop a suite of Regional Plans that identify regional priorities for growth, including for primary industries, as well as providing direction on managing land use conflicts.

The DPIE finalised a suite of Regional Plans, making it the first time the entire state has been covered by strategic land use plans. The Regional Plans set the framework, vision and direction for strategic planning and land use.

NSW DPI will continue to assist DPIE to identify opportunities for agriculture in the Regional Plans and Special Activation Precincts.

Regional plans have been launched for the following regions:

- Central Coast
- Central West and Orana
- Hunter Region
- Illawarra Shoalhaven
- New England North West
- North Coast
- Riverina Murray
- South East and Tablelands
- Far West

The Regional Plans are accompanied by Implementation Plans that set out governance, tasks, responsibilities and timing for delivery of the Regional Plan; and a Delivery, Coordination and Monitoring Committee (DCMC) to oversee implementation of the vision, goals and actions in the Regional Plan.

To further support the delivery of the Regional Plans, NSW DPI is in the process of drafting regional profiles on agricultural industry needs and opportunities which will inform the development of future land use planning strategies.

| Right to Farm Policy Action | Progress to date | Opportunity for further action |
|-----------------------------|------------------|--------------------------------|
|-----------------------------|------------------|--------------------------------|

NSW DPI released the *Buffer Zones to Reduce Land Use Conflict with Agriculture – An Interim Guideline* to assist development proponents and consent authorities to build appropriate buffer zones into developments.

DPIE has also finalised a suite of Special Activation Precincts that is a dedicated area in a regional location identified by the NSW Government to become a thriving business hub that among many things will provide investors with streamlined planning and environmental approvals

Special Activation Precincts have been launched for the following regions:

- Parkes
- Wagga Wagga
- Snowy Mountains
- Moree
- Williamtown

The NSW Government will work with local councils to identify any additional measures required to assist their efforts in best practice land use planning to address land use conflict issues.

NSW DPI representatives have attended regional planning forums and presented on the Right to Farm Policy implementation at:

- Riverina and Murray Regional Organisation of Councils, Riverina Eastern Regional Organisation of Councils and Central NSW Regional Organisation of Councils planner meetings;
- Intensive Agriculture Workshop for Riverina and Murray LGAs planning staff;
- Council workshops/committees in Tweed, Narrandera, Cootamundra-Gundagai, Wollondilly, Coffs Harbour, Byron Bay, Moruya, Bellingen;
- NSW Farmers committees and regional branches;
- Industry group meetings (including blueberries, dairy, pigs and poultry).

During initial targeted consultation, councils discussed the need for more guidance from the NSW Government on the interpretation of planning requirements for agricultural development. There is potential for the NSW Agricultural Land Use Planning Strategy to target parts of the planning framework that are unclear.

Right to Farm Policy Action

Progress to date

Opportunity for further action

ENSURING CURRENT REVIEWS OF ENVIRONMENTAL PLANNING INSTRUMENTS INCLUDE CONSIDERATION OF OPTIONS TO ENSURE BEST LAND USE CONFLICT AND TO REDUCE CONFLICTS

The NSW Government will review current land use planning mechanisms and instruments, with the aim of delivering a planning policy framework that supports the management of current and future farming practices.

NSW DPI collaborated with the DPIE in drafting the new PPRD SEPP to:

- Enhance and update Ministerial Direction 1.5 – Rural Lands rural planning and subdivision principles to consider the Right to Farm Policy and aim to achieve a balance between rural needs including farming and development, and to reduce the risk of land use conflict and rural land fragmentation;
- Develop planning guidelines on intensive livestock agriculture development; and
- Develop a fact sheet on temporary arrangements for drought and other emergency events to address key planning questions about temporary arrangements for drought and other emergency events.

NSW DPI contributed to the Large-Scale Solar Farm Guidelines to minimise land use conflict associated with alternative energy infrastructure developments on Rural Zoned land.

NSW DPI released the *Buffer Zones Guideline to Reduce Land Use Conflict with Agriculture – An Interim Guideline* to assist development proponents and consent authorities to build appropriate buffer zones into developments.

NSW DPI convened an interagency working group with government representatives from the DPIE and the Department of Regional NSW. The working group are reviewing the planning framework to identify opportunities to further support farming operations and reduce land use conflict.

Consultation revealed that there are further improvements needed to the planning framework to make it easier to set-up and expand agricultural businesses. Opportunities for reform will be addressed in the NSW Agricultural Land Use Planning Strategy.

The NSW Government will review the findings of the current Legislative Council Inquiry into regional planning processes in NSW which is due to report in 2016 and consider the recommendations.

The NSW Government responded to the Regional Planning Inquiry, supporting all 23 recommendations. Recommendation 21 addressed working with NSW DPI, councils and stakeholders when developing regional plans to assist in identifying 'important agricultural land'.

The Commissioner heard during consultation that many industry groups and councils consider non-land characteristics important to agricultural production. This could include aspects such as proximity of a farm to markets or supply chains. The NSW Agricultural Land Use Planning Strategy will explore the definition of SSAL and how this can incorporate non-land characteristics.

IMPROVING EDUCATION AND AWARENESS

The NSW Government will enhance its current engagement with local government, and in consultation with other stakeholders, support councils' proactive management and education on land use conflict issues that arise from lawful farming practices

NSW DPI collaborated across government on the preparation of planning instruments including the PPRD SEPP, and the review of the Environmental Planning and Assessment Regulations to clarify and improve the regulation of agriculture and aquaculture.

NSW DPI presented on the Right to Farm Policy and other agricultural land use planning matters at DPE Roadshows at approximately 17 LGAs in 2017, 11 LGAs in 2018 and 16 LGAs in 2019 where the audience was principally local government representatives and developers.

NSW DPI worked directly with LGAs to ensure the value of agriculture to local and regional economies and the protection of resources that support agriculture were incorporated in Planning Proposals, Rural Land Strategies, LEP reviews, and Local Strategic Planning Statements (LSPS).

NSW DPI has contributed to reviewing most LSPS prepared in 2019-20 by regional LGAs and Sydney LGAs. Each LSPS is assessed for the value placed on agriculture in rural areas and consistency with the Right to Farm Policy.

Workshops were held with LGA planners and community advisory groups in the North Coast and Riverina to improve the awareness and understanding of council planners on the technical and planning requirements for intensive agricultural developments. At the Riverina workshop NSW DPI presented on various technical and planning requirements and facilitated discussion on different types of developments. Feedback from participants was positive regarding improved awareness and understanding and identifying specific contacts for further information.

In initial targeted consultation, councils have shown support for more guidance from the NSW State Government in managing land use conflict with farmers. This will be addressed in the NSW Agricultural Land Use Planning Strategy.

Right to Farm Policy Action

Progress to date

Opportunity for further action

CONSIDERING THE NEED FOR LEGISLATIVE OPTIONS, SHOULD ADDITIONAL GOVERNMENT INTERVENTION BE REQUIRED

The NSW Government will maintain its links with other jurisdictions to exchange information about developments in right to farm policy and legislation.

The NSW Government established the Agricultural Land Use Planning interjurisdictional group and a document sharing site has been maintained for sharing information across states.

Separate meetings were held between NSW DPI and Agriculture Victoria focusing on comparison of thresholds and triggers proposed in the Victorian intensive livestock planning reforms and the NSW SEPP proposal.

NSW DPI attended and presented at the Agriculture Victoria Improving Environmental Outcomes for Intensive Animal Industries Symposium in Melbourne, and the Dairy Systems Workshop, which is leading to data and land use planning tool sharing.

The NSW Government will report on the implementation of this policy on an annual basis.

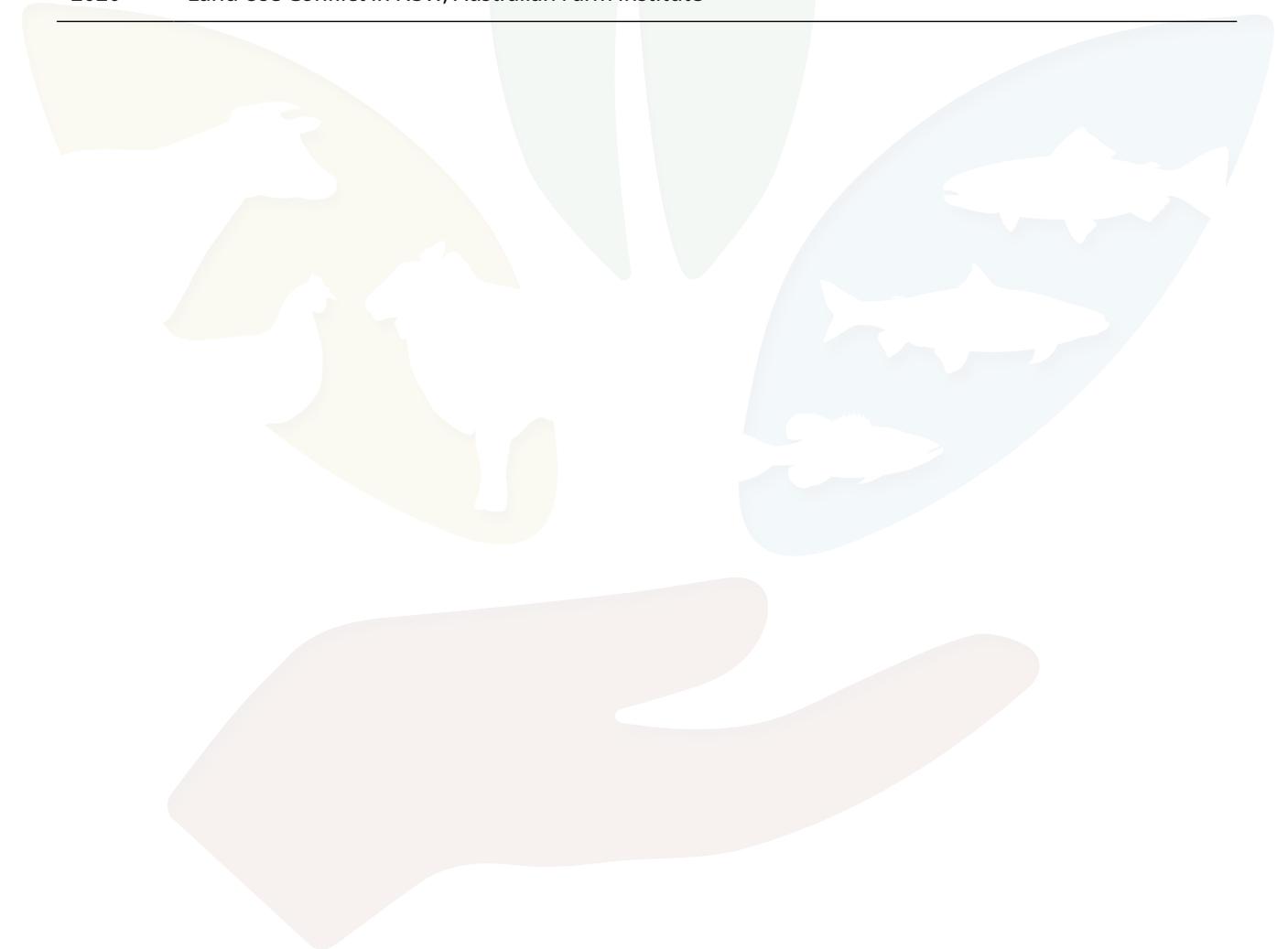
This review has been completed in place of the 2020 annual report.

The NSW Government will undertake a review after a period of two years of [AS4] data collection or earlier if the evidence demonstrates the need. This review of the policy will consider other jurisdictions and overseas experiences, as well as the outcomes of the Legislative Council Inquiry and determine if legislative options are necessary.

NSW DPI consulted with interjurisdictional colleagues about Right to Farm. A review of the Right to Farm Policy has now been completed.

Appendix 1: Evidence base

| Date | Report |
|------|--|
| 2016 | Regulation of Australian Agriculture, Productivity Commission Inquiry Report |
| 2018 | 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 |
| 2019 | Best Practice Land Use Planning, AgriFutures Australia |
| 2019 | Land Use in Rural Zones: Tweed and Cabonne Shires - Final Report, University of Newcastle and Department of Primary Industries |
| 2019 | Rural and Regional Planning (NSW), Planning Institute of Australia |
| 2020 | Land Use Conflict in NSW, Australian Farm Institute |



Appendix 2: Submissions

Submissions received with consent to publish

Association of Mining and Exploration Companies

Bathurst Regional Council

Camden Council

Cessnock City Council

Coffs Harbour City Council

Costa Berry Category

John Cordina, Managing Director, Cordina Chicken Farms Pty Limited

Junee Shire Council

Lake Macquarie City Council

Local Government NSW

Moree Plains Shire Council

NSW Chicken Meat Council

NSW Farmers Association

NSW Mining

Planning Institute of Australia

Port Macquarie-Hastings Council

Riverina Joint Organisation

Tamworth Regional Council

Tweed Shire Council

Wingecarribee Shire Council

Hawkesbury City Council

Leeton Shire Council

Appendix 3: Approaches in other jurisdictions

| Jurisdiction | Approach to identifying and protecting productive land for agriculture |
|-------------------|--|
| Tasmania | <p>In Tasmania, the Land Capability Classification System to assess, classify and map land according to its ability to support a range of crops on a long-term sustainable basis. Class 1 is the best land and Class 7 the poorest. Class 4 is considered marginal for cropping activities.</p> <p>The State Policy for the Protection of Agricultural Land seeks to protect prime agricultural land from conversion to non-agricultural uses. It achieves this by setting constraints as to how prime land can be used. Prime land is land that is classified as Class 1, 2 or 3 by the agricultural land classification system.</p> |
| Western Australia | <p>In Western Australia, high quality agricultural land is identified and mapped to assist state, regional and local planners recognise areas of Priority Agricultural Land (PAL).</p> <p>PAL is defined as “land of State, regional or local significance for food production purposes due to its comparative advantage in terms of soils, climate, water (rain or irrigation) and access to services.”</p> |
| Queensland | <p>Queensland has introduced legislation (supported by regulation) that identifies certain areas of regional interest and seeks to manage the impact and coexistence of resource activities and other regulated activities in those areas. These areas include strategic cropping area (SCA) that is mapped on a trigger map and priority agricultural area (PAA) that is mapped in regional plans.</p> <p>SCA is land that is, or is likely to be, highly suitable for cropping because of a combination of the land’s soil, climate and landscape features.</p> <p>PAA are strategic areas, identified on a regional scale, that contain significant clusters of the region’s high-value intensive agricultural land uses.</p> |
| Victoria | <p>The Victorian Department of Environment, Land Water and Planning is in the process of consulting on planning options to protect the long-term future of agricultural land in Melbourne’s green wedge and peri-urban areas to ensure these areas are protected for future generations. Consultation has been delayed due to COVID-19 restrictions.</p> |
| South Australia | <p>South Australia has introduced Environment and Food Protection Areas to protect vital food and agricultural lands surrounding metropolitan Adelaide and contain urban sprawl by reducing the ability to subdivide land for housing in these areas.</p> |