

An Independent Agriculture Commissioner

Options and discussion



A report by Daryl Quinlivan

SEPTEMBER 2023

Contents

Foreword	2
Executive Summary	3
1. Purpose of this Report	5
2. Background	6
2.1 NSW Agriculture Commissioner	6
2.2 NSW Government commitments.....	6
Protecting ‘higher quality’ farmland.....	7
Food security, productivity, and sustainability.....	8
3. An independent Agriculture Commissioner	10
3.1 Statutory appointment	10
3.2 The roles of Minister, Departments, and an independent Commissioner.....	11
4. Options	12
4. 1 Provision of advice	14
Option 1 – The provision of general policy advice	14
Option 2 – The provision of policy advice and the ability to initiate the Commissioner’s own work program	15
Option 3 - Policy advice, the ability to initiate own work program and information gathering powers to expand the range of potential areas of investigation	15
Assessment of Options 1-3	15
4. 2 Embedded in the planning system	16
Option 4 – Embedded in the planning system with statutory referral and oversight function... 16	16
Option 5 – Embedded in the planning system with decision-making powers	17
Assessment of Options 4-5	17
4. 3 Land use dispute resolution	18
Option 6 – Land use policy dispute resolution and mediation function	18
Option 7 – Land use policy dispute resolution, mediation, and arbitration function	18
Option 8 – Implement the Farm Practices Panel.....	19
Assessment of Options 6-8	19
4.4 Broader role to promote the interests of the agriculture sector within Government	20
Option 9 – Agricultural Production and Land Use	20
Assessment of Option 9	21
5. Summary of Consultation	22
6. Conclusion	23
Recommendation	26
Appendix A: Regulatory protection of agricultural land and the role of the Commissioner	27
Appendix B: Stakeholder consultation	29

Foreword

In July 2023, the Minister for Agriculture requested that I prepare a report investigating options for implementing an independent Agriculture Commissioner for New South Wales.

The potential role and functions, and the form the position of the Commissioner should take, has been discussed regularly as I consulted on my first two reports for Government. This report tests the views that have been put to me and assesses their practicality and how they might add value to the system that regulates land use and that is widely considered to need greater policy clarity and consistency in decision making.

In preparing this report I have consulted with stakeholders from the agriculture sector and Government agencies to test the reasoning and conclusions in this advice reflect contemporary thinking. Stakeholders were found to hold common views regarding how and where an independent Commissioner could most effectively improve the overall outcomes for rural land use.

This advice builds on my previous two reports, aligns with my previous findings, and provides a pathway for the Government to act on recommendations that will improve decision making and outcomes. This is a good time to be considering improvements in land use regulation because the strength and diversity of demands for land use change are accelerating and there is every reason to think the readily foreseeable rate and nature of change will severely test the capacities of land use regulators and communities to manage and adapt to this change.

I would like to thank those who have provided feedback, engagement and support as this report was prepared.

Daryl Quinlivan

29 September 2023

Confidentiality Statement

This report is not to be published or otherwise distributed without the permission of the Department of Regional New South Wales (DRNSW).

Executive Summary

The Minister for Agriculture, Regional and Western NSW requested a report identifying options to implement the Government's election commitment to appoint an independent NSW Agriculture Commissioner to provide increased 'protection' for NSW's higher quality farmland, ensure food security and a more sustainable and productive agriculture industry.

The issues that need to be addressed in this report have received extensive attention in recent years and this allowed this advice to be prepared with only limited engagement with stakeholders. These stakeholders provided similar contributions during this process as they have done during previous reviews of agricultural land use regulation and conflict.

The outcomes sought for the community from the activities of an independent Commissioner are a favourable operating and investment climate to support continuing agricultural sector growth, increased knowledge of our rural land assets used by the sector, and improved management of conflicts between producers and their operations and neighbours. These outcomes are sought at a time of increasing competition for rural land because of increasing population and demand for housing, associated demands from industrial and service providers, energy production, increased investment within the sector itself, and a need for land use change to improve carbon and biodiversity outcomes.

This report finds:

- The effectiveness of an Agriculture Commissioner under any option and scenario will largely depend on the Government providing clarity on its preferred approach to the competing priorities for access to agricultural land through an integrated land use policy, which provides consistency and confidence through planning and development decisions implementing this policy. Decisions about powers and resources for the Commissioner will logically follow if this clarity can be achieved.

To achieve this, it is recommended that the NSW Government considers the creation of an Agriculture Commissioner position through a staged process, and with the following functions and capacities:

1. Initially, appoint a Commissioner with a three year term to:

- a. Provide advice to the NSW Government and its agencies on agriculture and land use related matters, and other issues at the request of the Minister for Agriculture.
- b. Assist NSW Government agencies to develop a rural land use policy for Government consideration to address the matters identified in this and previous reports to the Government. The policy should be sufficiently detailed to provide guidance to land use regulators and planners on how to approach competing demands for land use and access from food and fibre producers, residential development, renewable energy developers, public infrastructure, biodiversity recovery and carbon sequestration. This policy should provide a basis for implementing relevant government policies in an efficient way, address potential third party impacts, and maintain the growth trajectory of the States food systems. Stakeholders consider that while these objectives are conflicting there is scope for improvements in all these areas with confident investment based on predictable planning outcomes.

- c. Assist the DPI to develop an ongoing system for defining, identifying, and mapping agricultural lands and its use throughout the State, co-ordinated with other State land use mapping processes and products.
- d. Assist DPI to design and conduct a pilot of the Farm Practices Panel with a volunteer agricultural industry to test its potential to reduce the growth in conflict between agricultural producers and neighbours on a broader scale.

2. Secondly, during the second half of the Commissioner's term introduce a Bill to the NSW Parliament to:

- a. Create a statutory office of the Agriculture Commissioner to give the position greater authority to influence policy and regulation relating to the NSW agriculture sector.
- b. Provide the Commissioner with sufficient powers to access information to facilitate the efficient conduct of performance assessments of agencies in implementing the Government's land use policy.

The rationale for recommending a two-step process and dealing with statutory powers in the second step is that this should not precede or be allowed to distract from the matters proposed in the first step.

1. Purpose of this Report

The purpose of this Report is to develop options and assess their merits to inform the NSW Government's implementation of its election commitment *'to ensure a strong and independent NSW Agriculture Commissioner to provide more protection for our best farmland, and ensure food security, and a more sustainable and productive agriculture industry'*.

The paper discusses the potential roles and functions that could be the responsibility of an independent Agriculture Commissioner (Commissioner) and considers the practical measures and implications associated with these options.

The role and functions of a Commissioner need to be considered in the broader context of NSW executive government, and the appropriate roles and functions of established government agencies and offices. Powers, resourcing, skill requirements and organisational arrangements all depend on a coherent role and function definition, and clear differentiation between an independent Commissioner and broader executive government.

It is also important to note that without policy and regulatory changes to the land use planning system, an independent Commissioner, with or without statutory powers, is likely to have negligible impact on land use planning decisions and 'protection' of agricultural land. Moreover, exercising any such powers will depend on the articulation of clear policies those powers are to be used to implement and advance. Therefore, an important consideration is how a Commissioner could be established as part of a broader package of agriculture and land use planning policies that support the Government's election commitment and improved planning outcomes. Agricultural land is necessarily the source of land for other community requirements, and its use cannot be considered or regulated separately from these other policy priorities, some of which are critical to the State's future.

There are a number of key questions that have been considered in developing this Report. Some receive only passing comment within this Report but will require serious scoping work once the Government has determined its preferred model as part of the implementation process. The questions include:

- What outcomes are being sought from the appointment of an independent Agricultural Commissioner?
- What specific functions will the Agriculture Commissioner need to undertake to achieve these outcomes?
- What powers, if any, will be required to enable these functions to be undertaken?
- If the functions and outcomes being sought would rely on changes to existing law governing the relevant planning decisions rather than the Agriculture Commissioner's powers, or require both, what are those amendments to the planning law?
- What skills and resources would the Agriculture Commissioner require to deliver the outcomes?
- What form should the independent Agriculture Commissioner's relationship with the NSW Government, Ministers and Departments take?

2. Background

2.1 NSW Agriculture Commissioner

The NSW Agriculture Commissioner was first appointed in 2020 to provide advice to the Minister for Agriculture and the NSW Department of Primary Industries (NSW DPI) on agriculture and land use conflict matters in accordance with specific terms of reference. The Commissioner's role was created on a contractual basis within the Primary Industries portfolio. The Commissioner, supported by the NSW DPI, has provided various ad hoc advices and two reports on land use conflict and the regulation of agricultural land within the NSW planning system.

The first report, *Improving the Prospects for Agriculture and Regional Australia in the NSW Planning System* (October 2021) looked at the increasing land use conflict caused by urban and industrial growth, and an agriculture sector also experiencing historically buoyant growth prospects. It found that the Planning system has limited capacity to minimise conflict arising from new developments and no direct mechanisms to manage conflict from existing land uses.

The second report, *Renewable Energy Generation and Agriculture in NSW's rural landscape and Economy* (November 2022) found that NSW generally, and the agriculture sector and rural economies, require a stable energy supply and that additional measures are required to improve the acceptance of rural landowners and communities to achieve the rollout of renewable energy and associated facilities/infrastructure that will deliver this stability. As financing does not appear to be a problem, social acceptance may be the most significant impediment to delivery of this energy policy.

2.2 NSW Government commitments

The election commitment is to

Ensure a strong and independent NSW Agriculture Commissioner to provide more protection for our best farmland, ensure food security and a more sustainable and productive agriculture industry.

The Government has advised that this role will include:

- identifying and protecting State significant agricultural land
- investigating, and providing assistance to Government on, the issues around renewable energy sites in NSW as they relate to food production and distribution systems and the growth of a sustainable agriculture industry in NSW.

Over the last decade, NSW Governments have been asked to consider various proposals for an Agriculture Commissioner with the capacity to influence and even intervene in land use change and conflict matters and decision making. The NSW Farmers Association has been the source of a number of these proposals. The general concern underlying these proposals has been that the Planning System prioritises other land uses over agriculture and that new policy measures and legal mechanisms are required to achieve land use outcomes conducive to ongoing agricultural industry growth.

Ministers considering regulation to reduce the conversion of higher quality agricultural land for other purposes such as industrial and housing development will need to consider the potential risk

to the delivery of other policy priorities. These include the rollout of land based renewable energy facilities and associated infrastructure and increased housing supply, which are largely supported by regional communities and benefit the agriculture sector. Another pressure is the extensive land use change that will be required to achieve carbon emission targets and improved biodiversity outcomes.

A key challenge for government is how to balance these competing objectives as the competition for access to suitable land increases. Agricultural land will necessarily be the source of land for these other requirements for the foreseeable future. It is also likely that future growth in the agriculture sector will be influenced more by access to capital and labour than land, although land is obviously critical for broadacre producers.

There are increased pressures and tensions over land use change within many rural and semi-rural communities, stemming from increasing populations and expanding economic bases in these areas. While individual projects are resisted by some, the underlying policy objectives of long-term regional economic development, diversifying rural economies, increased housing development renewable energy facilities, and other economic/industrial land uses are broadly supported. We do not have a coherent land use policy framework to guide decision making among these competing priorities.

It is not realistic to envisage reducing these pressures and tensions, but we should try to manage the increasing trajectory more effectively (as many governments around the world are trying to do) by protecting the legitimate interests of landowners operating conventional production systems using widely accepted and legal practices. At an individual land use level, the issues range from the capacity of adjacent and nearby landowners to limit land use options on aesthetic and disturbance grounds – in the case of renewable and other industrial projects it is other farming landowners seeking to do this - to urban and semi-rural residential landowners seeking to limit normal farming activities.

Protecting ‘higher quality’ farmland

There are long standing concerns that agricultural land is seen in the planning system¹ as land “available for development”. This has led to calls for improved land use regulation and developing knowledge about the location of our better-quality land that could inform that regulation. There are also concerns that increased regulation of land use would reduce landowners’ land use options and

¹ The NSW Planning System

Decisions on most developments on agricultural land are the responsibility of the Local Council. Projects over \$30 million will generally be determined by the Minister for Planning as State Significant Developments (SSD). These will include infrastructure projects and major industrial developments, including in the energy sector. In practice, most of these decisions are taken by delegates of the Minister in the Department of Planning etc.

The Independent Planning Commission is the consent authority for those SSD applications:

- that are not supported by relevant council(s), or
- where more than 50 unique public objections are received, or
- that have been made by a person who has disclosed a reportable political donation in connection with the development application.

Commissioners of the IPC are appointed by the Minister for their experience and expertise in a wide range of fields, including board governance, leadership and demonstrated decision making skills. There are currently two Commissioners with an agricultural background.

impair their land values and businesses, and that stronger regulation of agricultural lands will affect the delivery of other policy priorities such as increased housing supply.

Economic development has traditionally occurred through the conversion of the highest quality agricultural land to urban and industrial development – because we have generally settled and then developed the best land first. In NSW, this is most evident in the coastal zone, and many prospective investors in agriculture are now preferring to locate in inland NSW if that is feasible to reduce the risk of exposure to land use conflict.

At present there are limited planning ‘protections’ for agricultural land in NSW. The primary mechanism is the generic Rural Use planning/zoning arrangements administered by Local Government. These are not consistently applied or enforced across the State. Increased regulation of the use of this land at the property scale would require its definition, identification, and a regulatory regime to limit its conversion to other land uses. At present this mostly means housing development, renewable energy facilities, and other economic/industrial land uses. For some landowners, this also means intensive agricultural operations. More effective planning at a regional or landscape scale would require less precision but still more knowledge and data than is currently available to planners.

This regime and the evidence to support it would need to be in a sufficiently robust form to reliably inform landowners about their permissible land use options and support land use decisions. These decisions will reduce some asset values and impede commercial investments and could be expected to be challenged through the NSW Courts over time.

Data on land characteristics and use and the robust land classifications required for identification at a standard that will withstand reasonable scrutiny do not exist at present. However, the NSW DPI has commenced defining and identifying farmland, including mapping at a landscape level, and drafting a State Significant Agricultural Land Use Policy. This is the initial phase of a process that could be used to regulate rural land use more effectively if the policy and data at the appropriate scale becomes available in future. Land use planners and consent authorities have indicated that they would welcome this resource to improve planning outcomes.

Food security, productivity, and sustainability

NSW has experienced significant disruptions to food production and supply in recent years, with drought, the 2019/2020 bushfires, COVID-19 pandemic, and repeated flooding events across the state. The NSW Legislative Assembly's Committee on Environment and Planning has reported on challenges to food production and supply chains, and the need for planning to improve the reliability of food supply systems.² These are mainly whole of government issues outside the agriculture sector (transport, logistics, energy, etc) but the Commissioner could contribute to this work.

While primary producers in NSW operate with the ongoing challenges of seasonal variability and fluctuations in commodity prices, they are also facing increasing government, community and financial institutional pressures to build natural capital on-farm and better balance primary production with biodiversity and carbon outcomes. At a national level the Australian Government has responded to the Independent Review of the of the *Environment Protection and Biodiversity Conservation Act 1999* by responding with the *Nature Positive Plan: better for the environment*,

² NSW Parliament Legislative Assembly Committee on Environment and Planning, 2022. *Food production and supply in NSW*, Report 3/57 NSW Parliament Legislative Assembly Committee on Environment and Planning.

*better for business*³. In NSW, the recent independent review of the *Biodiversity Conservation Act 2016*, led by Dr Ken Henry AC, has found that the Act is failing to achieve its purpose and objectives, and makes a number of recommendations that seek to achieve nature positive outcomes. While these policy developments will present opportunities for primary producers in emerging markets for on-farm nature-based solutions, less agricultural land will be available for production operations in the future. It does not follow that this will have a material impact of state agricultural output and should improve the resilience of rural economies, but communities and businesses will need to plan for this future operating environment to optimise outcomes.

Landowners and primary producers will have a significant role to play in responding to climate change. As recognised in the recent *National Statement on Climate Change and Agriculture*, the sector is 'at the forefront of climate change impact and opportunities'⁴ and will be challenged to operate in a low-emissions future. The NSW Government has committed to legislating for a 50 per cent reduction in carbon emissions on 2005 levels by 2030, and to the establishment of a Net Zero Commission. The Commission will be responsible for developing the plan to achieve net zero emissions by 2050, and making recommendations and reporting to government in relation to these targets. The land use sector will figure prominently in this work and an Agriculture Commissioner is well placed to assist in ensuring an informed approach to decision making on these multiple policy objectives. An important objective in responding to climate change and the goal of net zero will be maintaining the industry's historically strong underlying performance. While the agriculture sector may not be required by this plan to achieve net zero emissions itself the scale of the reductions that will be required will be a very formidable challenge.

³ [Department of Climate Change, Energy, the Environment and Water, 2022, *Nature Positive Plan: better for the environment, better for business*, Department of Climate Change, Energy, the Environment and Water, Canberra, December. CC BY 4.0.](#)

⁴ Commonwealth of Australia 2023, *National Statement on Climate Change and Agriculture*, Department of Agriculture, Fisheries and Forestry, Canberra. CC BY 4.0. p.i.

3. An independent Agriculture Commissioner

Independence is generally understood to mean separation from executive government and a capacity to make decisions, undertake processes and provide advice without direction. Traditionally, independence has been demonstrated to exist through some form of secure tenure which could be statutory or contractual but is known to the interested public. In some cases, the capacity to initiate work without a specific authority from the government may also be considered important and this may not be seen as feasible under a non-statutory arrangement.

Making public policy cannot be an ‘independent’ function; it is a core government responsibility. However, its implementation, particularly if it involves regulation of some kind, can often require some level of independence. Access to advice from independent sources has also long been considered important in the development of major policies to assist in balancing interests and priorities where many of the available sources of advice might be self-interested or lacking the capacity to manage the full complexities of an issue.

Independence is therefore a tool that can be used to improve governance and the quality of decision making. It is not an objective or outcome in itself and, on its own, is not guaranteed to add value. It can be established in various ways, and how this should be done, depends largely on the purpose of that independence and the functions the Agriculture Commissioner is to undertake.

The ‘powers’ that will be required for the Commissioner similarly depend on the desired outcomes and functions of the role. Some powers could be provided through an appropriate authorising environment (i.e., Cabinet / Ministerial / Departmental direction and public statements on independence), while others would require a statutory basis.

The existing arrangement under which the Commissioner operates does not require any legal powers. Policy reviews/inquiries of the kind undertaken to date rely on expert and public participation, and this has generally been enthusiastic and thoughtful. On some matters that have commercial or other sensitive implications, there could be limitations because the Commissioner does not have the ability to compel government or non-government stakeholders to provide information, but this has not been a concern to date.

3.1 Statutory appointment

With an endorsed and publicly available Charter emphasising independence, an Agriculture Commissioner would have the authority to:

- provide policy advice to Parliament, Ministers and Government
- conduct inquiries, including consult with relevant government and non-government stakeholders and collect relevant data and information
- assist the development of strategies and plans, in collaboration with government and non-government stakeholders, and provide advice to local and strategic planning panels
- undertake limited performance assessments and/or reviews of legislative or policy settings that affect the agriculture sector
- provide a dispute resolution service, that is not legally binding.

New law would be required to create a statutory Agriculture Commissioner. The nature of that legislative mechanism would be guided by the government’s decision on the Commissioner’s functions.

Suggestions on how to provide a better enabling environment for agriculture through land use planning were included in the first report by the Agriculture Commissioner, *Improving the Prospects for Agriculture and Regional Australia in the NSW Planning System* (October 2021).

It is important to note that, if a policy decision were taken to strengthen controls over the conversion of agricultural land, new law/regulation would be required regardless of the role envisaged for the Commissioner. That is, a Commissioner requested by the Government to provide additional 'protection' for agricultural lands would have limited capacity to deliver this outcome regardless of their powers without some changes to way rural land use and change is currently regulated. This would be a major policy task, welcomed by some stakeholders and opposed by others.

A statutory appointment could enhance the role of the Commissioner in undertaking functions under a new policy framework such as:

- performance auditing and monitoring of government agencies on specific matters where agencies could be compelled to engage with and provide information to the Commissioner
- requiring planning agencies (Department of Planning, Housing and Infrastructure and local councils) to consult with the Commissioner. For example, on rural land use planning matters, and the development of strategic and regional plans.
- where analyses require access to commercial or other sensitive information, and it is necessary to be able to compel the provision of certain information. For example, to increase the range and depth of potential inquiries, reviews and/or audits. The use of any such powers would in turn create requirements for legal and administrative assistance which do not currently exist and would need to be resourced for those powers to be exercised responsibly
- providing powers to intervene in decision making processes. For example, in specific development approval processes to enforce prohibitions on incompatible land uses on designated higher value agricultural land
- undertaking dispute resolution services, including mediating and arbitrating, where the Agriculture Commissioner's determinations would be part of the legal framework for resolving issues.

3.2 The roles of Minister, Departments, and an independent Commissioner

Establishing an effective independent Commissioner will require a careful delineation of the intended relationship with executive government. A number of the functions which have been proposed for the Commissioner do not require the existence of an independent Commissioner and are arguably core functions of ministers and departments – such as determining and implementing policy and developing and managing knowledge products to inform decision making.

Advocacy on behalf of particular sectoral interests (agriculture in this case) is a political activity and the domain of industry organisations and those within government assuming that role within the executive – typically Ministers and departments working within a whole of government context. Individuals and organisations providing independent advice and having regulatory responsibilities are able to take the interests of particular sectors into account in their work but are generally required to do so in the context of broader public interests and established decision-making disciplines. Industry advocacy will generally be incompatible with these obligations, but the ability to apply an understanding of sectoral issues and interests to relevant policy and regulatory matters in an impartial way is an important asset in developing and implementing policy.

4. Options

A range of different functions have been proposed for the NSW Agriculture Commissioner. These functions would require different powers, skills, and resources. Some of these proposed functions could readily be accommodated within existing policy, regulatory and organisational frameworks, while others would require substantial changes in these areas.

The options considered in this advice are summarised in Table A. They are not mutually exclusive and there are some logical combinations that could be adopted. Some only make sense as part of a broader package of measures including stronger land use planning policies. While there has been a focus on potential Commissioner functions over the last few years the underlying theme in these discussions is generally more about a more effective land use policy and the role of a Commissioner in its implementation.

The discussion below sets out these separate options so that individual roles and functions can be assessed. These assessments are then drawn together to support a recommendation for the future role and functions of the NSW Agriculture Commissioner.

Note, Appendix A provides a more detailed discussion in relation to the regulatory protection of agricultural land and the potential role of the Commissioner.

Table A.

Provision of advice		
<p>Option 1:</p> <p>Provision of policy advice</p>	<p>Option 2:</p> <p>Provision of policy advice and the ability to initiate own work program</p>	<p>Option 3:</p> <p>Provision of policy advice, the ability to initiate own work program and information gathering powers to expand the potential areas of investigation</p>
Embedded in the planning system		
<p>Option 4:</p> <p>Embedded in the planning system with statutory referral and oversight function</p>	<p>Option 5:</p> <p>Embedded in the planning system with decision-making powers in relation to a specific class of matters (such as conversion of defined agricultural lands to another land use.</p>	
Land use dispute resolution		
<p>Option 6:</p> <p>Land use policy dispute resolution and mediation function</p>	<p>Option 7:</p> <p>Land use policy dispute resolution, mediation, and arbitration function</p>	<p>Option 8:</p> <p>The Farm Practices Panel or some alternative mechanism for defining acceptable farm operating practices to inform dispute resolution, development consent decisions and educate residential communities close to agriculture production systems.</p>
A broader approach to regulating agricultural land use		
<p>Option 9</p> <p>Provide oversight of planning matters involving agricultural land including implementing and monitoring compliance with State policies on the definition and identification of agricultural land, the regulation of its use and conversion, impact assessment processes for decisions affecting the agriculture sector generally and on the use of this land, and dispute reduction process such as Option 8 above.</p>		

4. 1 Provision of advice

Option 1 – The provision of general policy advice

This option is essentially the current arrangement where the Commissioner provides advice on request to the Minister for Agriculture and department on issues affecting primary production, and to the NSW Government generally through the Minister. This can take the form of inquiries, policy reviews, discussion papers and consultation with relevant internal and external parties. Some of this advice would have public visibility, others would be for internal use including Cabinet processes.

Additional advisory functions could include:

- the Government imposing a requirement on public authorities to seek and consider an opinion from the Commissioner on projects proposed to affect agricultural land – with that assessment/opinion based on a test addressing impact on agricultural industry, broader public interests, and other relevant matters. This approach is similar to existing policy advice role of NSW DPI which currently occurs sporadically.
- Agriculture sector impact assessments could be adopted as an additional requirement for NSW Government decision making processes, as could requirements to consult the Commissioner on specified matters. Requirements to consult are a common feature of internal government processes, and impact assessments on areas of special policy interest are established elements of many Cabinet processes for a range of specific policy concerns across society and the economy.

The effectiveness of requirements along these lines, like that addressing other special policy interests depends largely on the quality of the advice, which in turn depends on capacity and time available to produce influential analysis and advice. This can require significant resources.

A role of this kind would also require clarity about the relationship between the Commissioner's advice and that of the Minister and department, and appropriate co-ordination of advice from the Regional/Primary industries portfolio to the broader Cabinet and Government.

The independence of the Commissioner could be enhanced by a public statement by the Minister and demonstrated by the Commissioner in the execution of their role and delivery of advice to the Minister. Under this option, no specific powers or legislation are required. Resourcing would be provided by the Department of Primary Industries, as it is at present. The lack of powers and independent resourcing has not impaired the operations of the Commissioner's office to date in the provision of advice.

The effectiveness of a requirement along these lines, like that addressing other special policy interests depends largely on the quality of the advice, which in turn depends on capacity and time available to produce influential analysis and advice. This can require significant resources.

A role of this kind would also require clarity about the relationship between the Commissioner's advice and that of the Minister and department, and appropriate co-ordination of advice from the Regional/Primary industries portfolio to the broader Cabinet and Government.

As well as the policy areas for attention identified in the Government's election commitment, it has indicated an intention for the Commissioner to work with the NSW Net Zero Commissioner on relevant issues, such as renewable energy matters. This work is advisory and the type of

activity envisaged in this Option. Given the scale of land use change required to meet emissions reductions targets effective co-ordination with the land use sector will be essential.

Option 2 – The provision of policy advice and the ability to initiate the Commissioner’s own work program

Under this arrangement, the Commissioner would have the role and function as described in Option 1, with an additional capacity to initiate work and publish a work program following appropriate public consultation. This additional function would allow the Commissioner to consider and engage in work that stakeholders outside government consider require greater investigation.

This additional function would require no specific powers or legislation, although this could limit the matters the Commissioner could pursue.

Options 1 and 2 would allow the Commissioner to provide advice and make recommendations to the Minister on a wide variety of matters considered important to, and by, the agricultural sector. This might include assessing performance in implementing relevant policies and programs.

Option 2 would allow the Commissioner to work without a specific request from the Minister. While there would be a greater level of independence from the Minister and Department, it would be appropriate for the Commissioner to be required to consult with the Minister and department to co-ordinate priorities and resource allocations.

Option 3 - Policy advice, the ability to initiate own work program and information gathering powers to expand the range of potential areas of investigation

This option builds on Option 2 with the addition of information gathering powers to ensure the Commissioner has the capacity to review and/or investigate a wider range of matters that may have commercial or other sensitive dimensions, and have access to evidence to support effective performance monitoring among other things.

These powers would require new legislation and it would be necessary to define their purpose and the obligations on the Commissioner for the handling of documents and data secured through the use of these powers, as well as the additional processes and resources required if those powers are exercised. In addition to new legislation, protocols for the handling and use of documents and data secured under these powers would be required. An Office of the Commissioner could be established to provide the Commissioner with the resources required to manage this larger role and the obligations that would flow from the use of information gathering powers. Such an Office would require appropriate resourcing.

Assessment of Options 1-3

Some version of the Option 1 advising function seems an essential element of all effective potential Commissioner roles, and this view seems universally shared by stakeholders. The practical questions are therefore what additional functions could be added to enhance the effectiveness of the Commissioner in a cost-effective way, and how the independence of the office can be expressed more clearly.

It is hard to see a strong rationale for the Commissioner operating under a work program independent of the Government/Minister/Department's priorities (Option 2) with one possible exception. The Commissioner has to be useful and relevant so co-ordination of priorities with the Minister/department seems essential. However, if the Commissioner were given an explicit role in monitoring the implementation of policies and programs affecting the agriculture sector there would be a case for the Commissioner having the discretion typically available to auditors in selecting the subjects of those performance assessments.

The same logic would apply to the need for information gathering powers (Option 3). Most of the issues suggested for scrutiny where these powers would be needed involve commercial, industry structure and competition concerns. These are undoubtedly important issues for the agriculture sector but it is doubtful whether a state based Commissioner could add value to the work already undertaken by existing well established and resourced agencies (such as the ACCC) in these areas. However, a strong performance monitoring role requiring co-operation from a range of NSW and Local Government agencies may benefit from access to powers of some kind to encourage open and timely co-operation in providing evidence and documents. There are established models at the state and Commonwealth levels for providing access to documents and evidence.

4. 2 Embedded in the planning system

Many of the objectives and functions proposed for an Agriculture Commissioner are aimed at perceived deficiencies in the handling of agricultural lands and proposals for land use change within the planning system. Some of these proposals have envisaged locating the Commissioner within the Planning Department and system because this is seen as a way of increasing the Commissioner's influence in improving the regulation of agricultural lands.

Option 4 – Embedded in the planning system with statutory referral and oversight function

This option would provide the Commissioner a formal role within the planning system, with powers to oversight the regulation of agricultural land use and development, and provide advice to planning processes.

This role could take several forms, requiring a different legal basis and organisational arrangements depending on the precise function or outcome desired.

There could be an obligation on decision makers to seek advice from the Commissioner on land use planning and development applications which are proposing significant agricultural land use change, above some defined threshold. This would be a significant expansion of the advising function described in earlier options.

This would require the NSW Government to develop a land use policy which would form the basis for this advice, and a capacity for the Commissioner to determine which decision-making matters they would decide to engage with.

For larger developments assessed by the Planning Department and Independent Planning Commission (this would capture all commercial wind, and most solar developments,) there are several practical options that could be considered. To support these options the Commissioner could be located within the Department of Planning and integrated into its administration of the

planning system as part of a specialised agriculture unit. This could include a requirement to seek and consider an opinion from the Agriculture Commissioner on projects proposed to occur on agricultural land – with that assessment/opinion based on a test addressing impact on agricultural industry, broader public interests, and other relevant matters. This approach is similar to existing referrals of development proposals to NSW DPI Agriculture which currently occur sporadically.

Option 5 – Embedded in the planning system with decision-making powers

This option builds on Option 4 by providing the Commissioner with the capacity to intervene in planning processes with some form of decision-making role. This expanded role would rely on an effective policy framework, and most likely result in a capacity for the Commissioner to veto (rather than approve) those proposals not consistent with that policy framework.

Some submissions to the reviews undertaken by the Commissioner have proposed that the Commissioner have the capacity to intervene in planning decision making where required to enforce NSW Government policy on agricultural land use.

If the identification and mapping of higher value agricultural land could advance to the point where it could determine specific land uses, decisions (such as prohibitions on incompatible land uses on designated higher value land) could be a basis for the Commissioner exercising powers to intervene in specific development approval processes to enforce such prohibitions. This would mostly involve overriding decisions by local government authorities. This could only occur if the relevant land use policy and law, and the technical mechanisms to support it (data, mapping etc) were developed to the level necessary for decision making about quite small areas of land.

The requirement for ‘concurrence’ (a ‘concurrent’ approval) from the Commissioner on Development Applications based on the government’s land use policy has been suggested. This might seem attractive at first glance but has some flaws. If the Commissioner is acting under the same statutory test and assessments as the other decision makers, it is not clear that this would deliver different outcomes. The Commissioner would need to have the capacity to deal efficiently with a large number of cases, and there must be real doubt about how much value would be added for the likely resources required to ensure decision making is not simply slowed by an additional bureaucratic process. Where a concurrence is not issued the development must be refused by the decision maker. The Commissioner could then be called up in legal proceedings as a defendant of that decision so the legal basis for reaching different decisions would therefore need to be clear and robust. Concurrence is not a good governance model in most instances and should be avoided if possible. This model is increasingly being phased out by Government.

Assessment of Options 4-5

There have been regular calls for the Commissioner to play the roles envisaged in these options in recent years but there is little support from stakeholders for these models because their practical difficulties are clearly evident. These options would likely be incompatible with the critical advisory function discussed in earlier options because of the limits of cross portfolio advising and the primary focus on planning. It is also difficult to see how independence and agriculture sector perspectives could be exercised and sustained in these organisational models. There would also be a significant resourcing requirement to ensure the creation of these roles wasn’t adding to planning delays.

4. 3 Land use dispute resolution

Land use conflict between agricultural producers and neighbors, and between producers in some cases is a significant and increasing concern. This has led to consistent requests for the Commissioner to provide some form of dispute resolution service, but there is no convergence on a specific approach. There are three main potential options, which were considered in the 2021 advice on improved agricultural land use planning and conflict management

The Commissioner could provide a dispute resolution service in accordance with government land use policy. This could take several forms, requiring different powers, skills, and resources. Apart from the many practical matters these proposals suggest, the mechanisms and the associated legal regimes would need to be scoped to develop these options. There is clearly a demand for a service of this nature from those involved in and concerned about land use disputes.

Option 6 – Land use policy dispute resolution and mediation function

The Commissioner could provide a mediation service for disputes between producers, new project proponents, regulators and affected parties over plans and projects involving agricultural land use change.

There are existing mechanisms for escalation and appeal within the general planning and legal system, and there would need to be greater consideration as to how and at what point the Commissioner would add value to existing process.

Under this option mediation would not be decision making and would rely on goodwill for acceptance and implementation – so the decision-making entities and regulators would need to commit in some way to participating in these mediation processes. The Commissioner would also need to have the capacity to decline to mediate in cases where there is little scope to improve outcomes, and to manage a workflow that did not add to the already significant time pressures in the planning system.

Under this option, the Commissioner would need to have professional mediation experience and likely qualifications, which are very different to policy research and advising so these functions (and options) may be mutually exclusive.

Option 7 – Land use policy dispute resolution, mediation, and arbitration function

The Commissioner could provide an arbitration service for a defined set of matters outlined in Option 6. This option would be a significant escalation on other options on intervening in the planning system, with resulting escalations in the requirement for powers/legislation, resources, and policy clarity.

This would require a new legal regime within the planning system, a policy framework sufficiently detailed to support decision making, and professional skills and appropriate resourcing support.

Further, as decisions by the Commissioner would be appealable in the Courts, it is questionable what capacity there would be for the Commissioner to make determinations diverging from

those taken by regulators under the current law and policy. Expectations for greater protection for agricultural land use might rely more on changes to planning policy/regulation than the interventions of an Independent Commissioner.

Option 8 – Implement the Farm Practices Panel

The Agriculture Commissioner's 2021 report on land use conflict found that this conflict is increasing, and that in the absence of a direct and authoritative mechanism, dispute resolution relies largely on the skills of individual land use planning and local council employees. The Commissioner recommended establishing a process through a Farm Practices Panel to provide authoritative opinions on acceptable farm practices which could be used in resolving disputes and in considering development applications involving or adjacent to agricultural operations.

This recommendation drew on a growing body of experience in Australia and internationally as governments are testing various approaches to reducing the growth in land use conflict. The competition for land for production, industrial and residential uses is a global experience, as is falling public understanding of normal agricultural practices (which involve chemical use and can cause noise, odour, dust etc). Many governments are looking for ways to support the coexistence of production agriculture and other land uses in rural landscapes and at the margins of urban development.

Local Councils are currently responsible for mediating and arbitrating in disagreements about operating practices between agricultural producers and nearby residents. Generally, these nearby residents are residential or peri-urban in nature but are sometimes other primary producers. These disagreements usually relate to the production of noise, dust, odour, and the use of chemicals.

Across the state there are a large of number of these disputes at any point in time, with some concentrations around individual production facilities and industries (such as blueberries on the NSW north coast).

The Commissioner's 2021 report found that the current NSW arrangements do not have a direct mechanism or capacity to address the problem and largely rely on the capacities of individual Council employees to resolve disputes.

While there were some different views and experiences, a number of Councils advised the Commissioner that this was their most troublesome land use planning issue and it is was becoming increasingly difficult to manage as the gulf in understanding between urban residents and agricultural producers grows, and Council employees have become less familiar with production agriculture and its needs and practices.

The Commissioner recommended establishing a Farm Practices Panel to provide a source of authority on what operating practices producers should be able to use without concern about 'nuisance' actions, and what neighbouring residents and producers could reasonably expect. This could be used by Councils in resolving disputes and used as consent conditions for consistency and clarity for all parties.

Assessment of Options 6-8

The evidence for significant and growing land use conflict in NSW is clear and this recognition was the main motivation for the initial creation of the Agriculture Commissioner role. It is also evident

that our current approaches are not limiting the growth in this problem. The 2021 advice considered potential policy responses and in the consultations for this advice stakeholders indicated general support for that advice. Stakeholders accepted that there was limited value in attempting to deal with specific cases through mediation or arbitration and that a system wide approach along the lines of the proposed Farm Practices Panel would be more cost effective and sustainable.

In any case, it is not practical for the Commissioner to provide a dispute resolution service on request. The volume of requests would be overwhelming, and disputes of this kind should be addressed locally wherever possible. However, there could certainly be a role for the Commissioner in overseeing a statewide system like that based on the proposed panel.

4.4 Broader role to promote the interests of the agriculture sector within Government

Option 9 – Agricultural Production and Land Use

Under this Option proposed by a peak industry representative body, the Commissioner would assist the Minister and Department/s in implementing a whole of government policy to address the problems discussed throughout this paper and address impediments to the growth of the sector. The elements of this policy program would be:

- a whole of government vision for the future of the sector to deliver the growth agenda that has been adopted by Australian governments. The Commissioner's role would be to co-ordinate the development of this vision and promote its implementation across government.
- a statutory obligation on decision makers for planning policies and development approvals to take agricultural impacts into account in their decision-making processes. The Commissioner's role would be to provide advice on assessment processes and monitor compliance.
- a statewide system defining, identifying and mapping agricultural lands, and a policy on limiting land use change that would allow targets for preserving land uses to be developed. The Commissioner's role would be evaluation and monitoring implementation progress.
- the Commissioner leading or overseeing the development of a land use dispute resolution process along the lines in Option 8, based on defining and supporting routine farming practices.

The most important aspects of this option are the policy commitments that the NSW Government would make to implement this program. It is common for governments to require advice to Cabinets and Ministers to explicitly assess implications for specific groups in the community (which might include women, first nations citizens, etc) or parts of the broader economy (such as rural economies) where there concerns about the potential for conflicts with broader policy objectives to protect or promote these interests.

It would be feasible to oblige these advices to assess potential implications for the agricultural sector. There are many decisions that need to be made that have unavoidable adverse consequences for the sector and this requirement would ensure those consequences were assessed and taken into account, leading to more fully informed decisions.

Assessment of Option 9

This option would provide a welcome focus on more effective regulation of agricultural lands and a whole of government approach to the interests of the agriculture sector and regional economies in broader decision making.

The main concern with the option is that in developing a balanced approach to agriculture lands and industries the Government would also need to consider and reconcile the broader economic and social interests which themselves are creating many of these competitive tensions. An effective agricultural lands policy could only be implemented in practice as part of a broader integrated land use policy framework which also addresses food and fibre production, housing supply, industrial developments, carbon and broader environmental requirements. In other words, this Option is a useful start for developing a land use policy.

5. Summary of Consultation

Consultation with target stakeholders was undertaken in July and August 2023 and took place via direct meetings and targeted stakeholder webinars where participants were invited to discuss the proposed options and invited to provide feedback either during the meeting or in writing.

The targeted groups included NSW Government agencies, local government, and agricultural industry representatives. Two repeated webinars were held with local government representatives, while one webinar was held with participants from both intensive and extensive agricultural industries. Participants were provided with a briefing paper prior to the webinar, with a presentation further elaborating on key points.

While only targeted consultations were possible given the time available to deliver the report, the content was consistent with feedback provided during the Commissioner's two previous reports, with clear preferences for what stakeholders value and would seek from an independent Agriculture Commissioner model. The main themes and observations are described below.

There is a need to balance competing policy priorities

- Stakeholders identified that food production should be considered on an equal footing alongside other state priorities such as meeting the net zero goal and biodiversity conservation targets.
- Stakeholders understand that these priorities along with housing and industrial development will compete for land, and an independent Agriculture Commissioner would assist in ensuring that sustaining agricultural production and agricultural land use is given sufficient weighting in decision making processes.

There is value in establishing a Farm Practices Panel

- Both local government and agricultural industry stakeholders confirmed their support for some version of a Farm Practices Panel as a means of reversing the growing incidence of land use disputes affecting on producers in some areas.

It is important to have sound land use planning at a local and regional level and implement those plans consistently in making land use decisions in all their various forms

- Agricultural production is increasingly influenced by requirements unrelated to soil and water quality and access to technology and infrastructure need to be considered in planning for future food and fibre production.
- Stakeholders noted that while Regional Plans often recognised the importance of agricultural production to their regions, more effective mechanisms were required to translate this into consistent planning decisions along with regular performance monitoring.

Appendix B includes a list of stakeholders that were consulted in development of this report.

6. Conclusion

There appears to be general support for the objective of providing additional ‘protection’ within the planning system for higher quality agricultural land.

However, it is obvious that there are some very different ideas about what this should mean in practice, on the strength of this protection, how it might be provided, and the optimal trade-offs with other competing land uses and policy objectives. The most obvious examples of this are increased housing supply, particularly in the coastal zone, and renewable energy facilities and related infrastructure which will generally be built in rural areas. Agricultural lands will also be the source for improved biodiversity and carbon outcomes.

There is also a range of differing views about these policy priorities, and the appropriate weighting of the interests of landowners, neighbours, local and regional communities, and the State generally.

For those wanting to give priority to retention of existing land uses, the outcome of a stronger land use policy would be maintenance of land uses on higher quality land, with the Agricultural Commissioner assisting the Minister and Department to ensure a regime is implemented and maintained to achieve this.

For others, giving higher priority to regional economic development and diversifying those regional economies, planned land use change is essential. In this vision for rural NSW, the role of the Commissioner would be to contribute to improved planning policies and practices and assist in managing the unavoidable land use conflicts so that its impact on individuals, businesses and communities is minimised.

Stakeholders recognise that the starting point for delivering change in this area is a policy framework that is clear, implemented consistently, and its performance monitored regularly.

One of the central roles of government is balancing competing public objectives. The planning system is designed to provide a process for delivering this balance in practice, and in a way that can be applied throughout the state on a project-by-project basis. This is playing out presently as strong and competitive demand from various industries for rural land, looking to make significant and long-term investments. This includes from the agriculture sector itself. To increase the effectiveness of the planning system, clarity is required on the preferred balance and trade-offs in land use decision making processes and how the use of rural and agricultural land is to be regulated.

The effectiveness of the Commissioner under any option and scenario will largely depend on the Government providing clarity on its approach to agricultural land use within the planning system, and the cascading decisions about powers and resources required to reinforce these priority setting decisions.

An independent Agriculture Commissioner

The options identified in this advice are not mutually exclusive and this was clearly evident to stakeholders during consultation. A practical combination of elements among these options is likely to be the most cost effective and practical configuration for a future Commissioner and meet the expectations of what stakeholders see as the value in establishing that office.

In considering this advice the following principles have been used:

- Additional requirements that add time and effort to planning approval decision making processes need to add at least commensurate value to those decisions to be warranted. The NSW planning system is already considered to be overly complex and time consuming and adding to this would require a strong rationale.
- The Commissioner's focus should be on system wide approaches to the problems identified for their attention – engagement on individual cases is not likely to be an effective focus for the Commissioner.
- The Commissioner's work should add to that of the Minister and Department, not duplicate or conflict with those executive and governance functions. This will require clear delineation of the Commissioner's role.
- A statutory basis for the office is necessary for exercising decision-making responsibilities and would add to the authority of advisory and other roles not exercising executive functions, but also requires a strong rationale.
- In delivering the role/functions the Government should avoid duplication of functions undertaken by existing agencies, including at the national level.

During the preparation of this advice stakeholders provided similar feedback on concerns and priorities as they did on matters covered in previous advice by the Agriculture Commissioner to the NSW Government. This has provided reasonable confidence in the advice in this report despite the limited process for its development.

There seems general agreement that more effective regulation of agricultural lands and their use is needed. This has several dimensions:

- The most important is a strong and practical policy framework which provides clear guidance for regulators and landowners on how agricultural lands and land use should be regulated for the longer term. This cannot be a prohibition on land use change and the conversion of agricultural land for residential, public infrastructure and services, and industrial use. This land use change is essential, but it should occur in a more orderly, planned, and predictable way to preserve some landscapes and land uses, minimise the costs of providing infrastructure, etc, for others where land use change is anticipated, and seek to minimise land use conflict. The underlying productivity of land is one of many considerations in this planning and often not the most important.
- Improved regional planning which implements this policy.
- Consistent application of this policy and planning in development approval processes.
- Rigorous definition, identification and mapping of land uses so that the evidence and data available to inform the above processes is widely available to regulators and landowners.
- A more effective mechanism for addressing the conflicts arising from existing and evolving land uses already permitted by development approvals granted over many decades.
- A consistent approach to monitoring outcomes and the performance of land use policies, and of the agencies responsible for their implementation.

This is a challenge governments around the world are working on and how effectively it is addressed over time will influence our success in achieving seemingly incompatible policy objectives. These include adequate housing supply, reliable energy supply, modern and appropriate public services, efficient food production and distribution, and improved carbon and biodiversity outcomes. Improved planning and land use outcomes also implies the loss of some existing landowner rights

and entitlements – through larger lot size requirements and the loss of some dwelling entitlements incompatible with ongoing agricultural operations.

The practical question for this advice is therefore what contribution an independent Agriculture Commissioner can make to this central challenge for the NSW Government. Fortunately, there is a broadly shared view of this among stakeholders despite the range of options that have been proposed in recent years and discussed earlier in this advice.

Most importantly, there is minimal support for the Commissioner becoming a decision maker within the planning system, nor to be involved in individual planning approval cases and disputes. Instead, there is broad support for the Commissioner playing a State and system wide role advising and assisting the operation of that system as it involves agricultural lands, monitoring outcomes and the performance of that system and providing greater public visibility through reporting, etc.

Seen through this lens the range of feasible options narrows considerably, but there remain several choices open to Governments in creating a new office.

There seems universal support for the Commissioner continuing to provide advice on matters requested by the Minister and Department responsible for agriculture and this is the starting point for constructing the Commissioner's role. This means that the Commissioner should continue to be located in the agriculture portfolio.

The Government has identified a number of issues on which it may be seeking advice from the Commissioner including land use and planning, pathways to net zero emissions by 2050, regulation of renewable energy facility developments, and improving natural capital management in the rural landscape. The Commissioner should also have the capacity to advise the Planning Department and other relevant agencies on agriculture related matters.

The provision of advice on these issues should not require access to any legal powers. However, if the Commissioner were asked to monitor and report on the performance of the planning and broader State public policy operations in implementing and delivering agricultural land use policies, it would be desirable for the Commissioner to have a statutory basis to provide appropriate authority, and to have access to limited information gathering powers. Those powers should be limited to documents and data held by NSW Government agencies relevant to these performance assessments. There would be no need for access to private holdings to undertake these assessments.

Similarly, there seems little value in the Commissioner having the capacity to undertake investigations or reviews on matters not agreed with the Minister for Agriculture, with this same exception relating to performance assessments internal to the government. There is a coherent and important work program on the matters already identified for the Commission's attention over the next decade, and many of the other industry performance matters that have been suggested are more properly the responsibility of the NSW Government and Department than a small independent entity.

Stakeholders repeated earlier concerns about the growing incidence of conflict involving (and sometimes between) rural landowners and residential communities and industrial operations. The scale and broadly dispersed nature of this problem means that the Commissioner's engagement in individual cases is not seen as a practical and cost effective response to this problem. Instead, a system and statewide response is seen as necessary, with some mechanism for defining and authorising normal /acceptable/routine production practices, informing community expectations

about those practices, and providing some form of ‘protection’ for producers using those practices in a responsible way. In the absence of alternative propositions that could have emerged since the Commissioner reported on this issue in 2021, there seems to be strong support for testing the Farm Practices Panel model recommended in that report, possibly through one or more pilot programs before making decisions on its broader application.

Some of the elements of a more effective system for regulating agricultural land use will require additional resourcing to be successful. The most obvious example of this is the identification and mapping of land used for agricultural production, the nature of that land use and the attributes of the land. This will become increasingly important as the demand for that land for carbon sequestration and restoring biodiversity inevitably increases.

Recommendation

I recommend that the NSW Government considers the creation of an Agriculture Commissioner position through a staged process, and with the following functions and capacities:

1. Initially, appoint a Commissioner with a three year term to:
 - a. Provide advice to the NSW Government and its agencies on agriculture and land use related matters, and other issues at the request of the Minister for Agriculture.
 - b. Assist NSW Government agencies to develop a rural land use policy for Government consideration to address the matters identified in this and previous reports to the Government. The policy should be sufficiently detailed to provide guidance to land use regulators and planners on how to approach competing demands for land use and access from food and fibre producers, residential development, renewable energy developers, public infrastructure, biodiversity recovery and carbon sequestration. This policy should provide a basis for implementing relevant government policies in an efficient way, address potential third party impacts, and maintain the growth trajectory of the States food systems. Stakeholders consider that while these objectives are conflicting there is scope for improvements in all these areas with confident investment based on predictable planning outcomes.
 - c. Assist the DPI to develop an ongoing system for defining, identifying, and mapping agricultural lands and its use throughout the State, co-ordinated with other State land use mapping processes and products.
 - d. Assist DPI to design and conduct a pilot of the Farm Practices Panel with a volunteer agricultural industry to test its potential to reduce the growth in conflict between agricultural producers and neighbours on a broader scale.
2. During the second half of the Commissioner’s term introduce a Bill to the NSW Parliament to:
 - a. Create a statutory office of the Agriculture Commissioner to give the position greater authority to influence policy and regulation relating to the NSW agriculture sector.
 - b. Provide the Commissioner with sufficient powers to access information to facilitate the efficient conduct of performance assessments of agencies in implementing the Government’s land use policy.

The rationale for recommending a two-step process and dealing with statutory powers in the second step is that this should not precede or be allowed to distract from the matters proposed in the first step.

Appendix A: Regulatory protection of agricultural land and the role of the Commissioner

There are several options for increasing regulatory protection of agricultural land. These options range from stronger recognition of agriculture in the strategic planning framework, to statutory controls which influence the development application process.

The options for a stronger approach to regulating rural land use in the strategic planning framework start with increased recognition of agriculture in regional plans. Most regional plans that apply to land where agriculture is a prominent land use do recognise the importance of agriculture to the region. The Commissioner could be given a formal role in assessing whether this recognition is comprehensive and effective in draft Regional Plans.

There are specific measures that could be adopted to provide stronger protection for agricultural land against incompatible land uses.

Regardless of how the issue of ‘protecting’ agricultural land is approached its definition and identification is necessary. In the last few years this has been developing through the concept of State Significant Agricultural Land (SSAL). In time this land could be mapped in Regional Plans with any protections appropriate to deliver these plans. This could include higher thresholds to be met for proposals for land use change. The North Coast Regional Plan identifies Important Farmland and, in so doing, elevates its importance in strategic planning considerations. Other regional plans do not have a similar means of identifying significant farmland and the SSAL Map could provide this mechanism in time. The North Coast Plan does not address the critical issue of policy priorities where there are proposals for potentially conflicting land use change and very likely conflicting policy objectives. The Commissioner could play a role in assisting ministers provide direction to land use regulators on these conflicts.

It would also be possible to make a Ministerial Direction to ‘protect’ SSAL or create a process for resolving these conflicts more effectively in strategic planning. A Ministerial Direction has been in place for the Important Farmland in the North Coast region since 2007 (Direction 9.4 Farmland of State and Regional Significance on the NSW Far North Coast). It has the effect of preventing Important Farmland from being rezoned for urban purposes through ad hoc proposals and requiring consistency with the regional plan. This is believed to be limiting housing development in this flood free areas so its efficacy depends on your perception of land use priorities.

The current Ministerial Direction for rural land (Direction 9.2 Rural Lands) is more general in nature, dealing with a range of issues that relate to rural land and requiring the consideration of various matters without giving primacy to agricultural production or excluding land uses that are incompatible with agriculture. It is not considered to be effective in resolving policy and regulatory priorities. Responsibility for these mechanisms would not be appropriate for an independent Agriculture Commissioner but could be implemented in a broader package of agriculture and rural land use policy measures that include new Agriculture Commissioner arrangements.

It would also not be practical for the Commissioner to be given the role and capacity to intervene in individual development approval decisions by Local Councils. There are established processes for

dealing with these development approvals and the number and diversity of decisions of this kind that are contested would overwhelm capacity and the Commissioner would likely add little long-term value in any case, regardless of resources. At this level, additional land use preservation requirements could only be implemented effectively by the State Government as an obligation on Councils – once policy is settled and definition/identification and regulatory measures are ready for use.

To achieve a consistent approach across the state, changes to planning controls in either a State Environmental Planning Policy (SEPP) or the Standard Instrument - Principal Local Environmental Plan (SILEP) could be considered. Councils are able to make changes to individual local environmental plans (LEPs), and while local discretion and judgement is important it does lead to the currently variable and diverse approach to regulating agricultural land use. Achieving a more effective state wide system for regulating agricultural lands would require some greater statewide consistency and reduced local discretion. Changes to the planning controls could include:

- prohibitions on certain developments in certain locations such as a prohibition on certain non-agricultural land uses on land mapped as SSAL
- a requirement for consent authorities to consider certain matters prescribed in an environmental planning instrument in the assessment of a proposal
- requirements to consider certain guidance material for development proposals which may have an impact on agriculture
- reducing the range of land uses permitted without development assessment in the rural areas.

Each of these measures could also have negative impacts on investment in regional economies. The adoption of increased regulatory protection would need to be considered carefully in a broader environment in which governments and communities are also seeking an expansion in housing supply and an increased momentum in the rollout of renewable facilities and transmission infrastructure. These will largely occur on agricultural land and these conflicting objectives need to be resolved at a policy level before they can be regulated effectively.

The key point here is that the existence of a Commissioner, even in a more active decision making role, is not likely to be the main contribution to achieving the desired outcomes. Without policy and regulatory changes to the planning system an Agriculture Commissioner, with or without statutory powers, will have negligible impact on outcomes for agriculture. This limitation will occur as the existing decision-making parameters will not change and in the absence of new law which gives agricultural land use priority, land use planners, decision makers and the courts will follow precedents and enforce existing planning system outcomes.

Appendix B: Stakeholder consultation

Australian Chicken Meat Federation

Australian Lot Feeders Association

Berries Australia

Cotton Australia

Goulbourn Mulwaree Council

Gunnedah Shire Council

Kiama Municipal Council

Lake Macquarie City Council

Lithgow City Council

Liverpool Plains Shire Council

Local Government NSW

Narrabri Shire Council

Narromine Shire Council

NSW Department of Planning and Environment

NSW Department of Primary Industries

NSW Farmers Association

Office of Local Government NSW

Planning Institute of Australia

Ricegrowers Association of Australia

The Hills Shire

Warrumbungle Shire Council

Wollondilly Shire Council