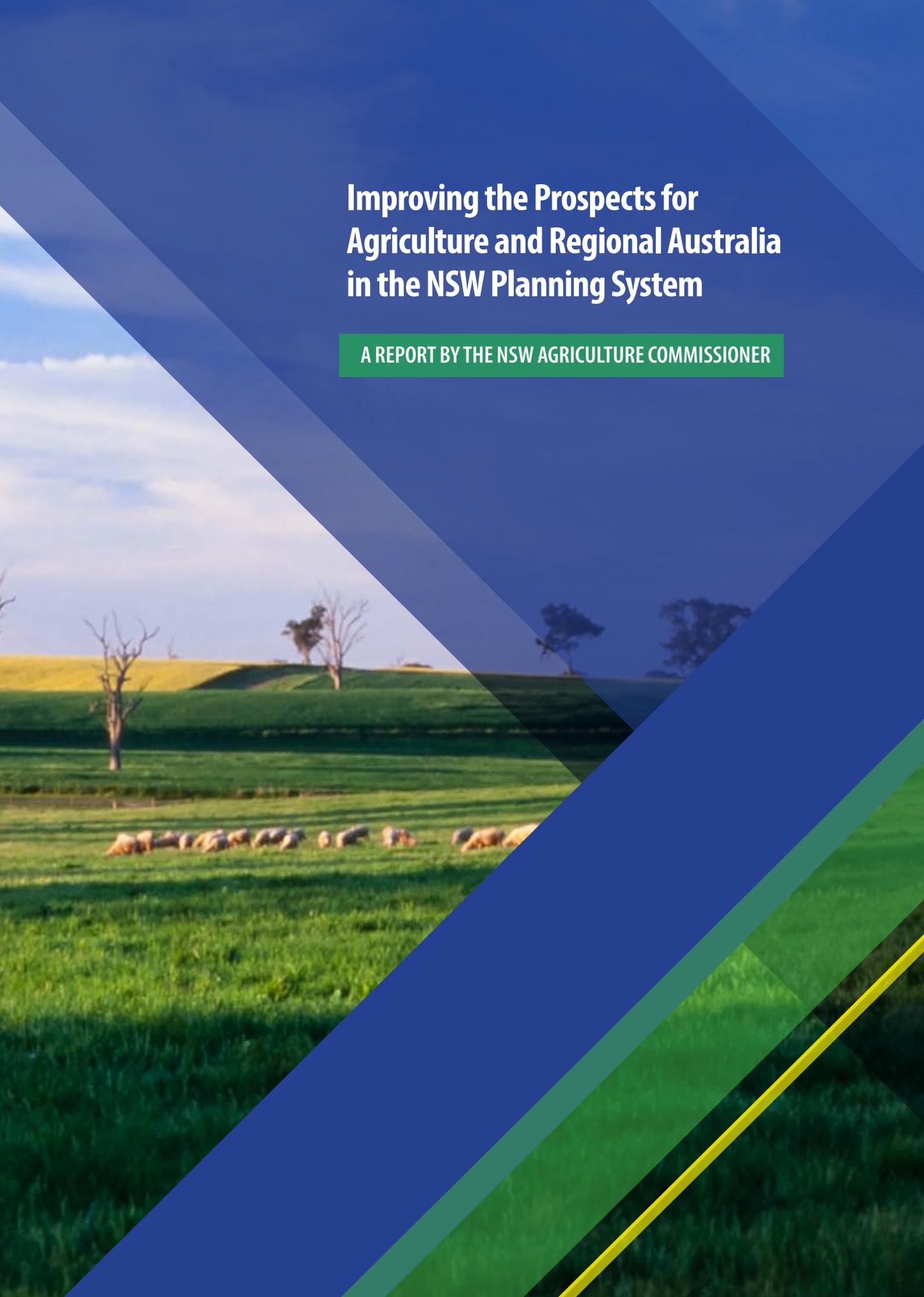


Improving the Prospects for Agriculture and Regional Australia in the NSW Planning System

A REPORT BY THE NSW AGRICULTURE COMMISSIONER



Foreword

Agriculture in NSW and generally in Australia is experiencing a resurgence – of profitability, sentiment, and interest from investors. This is making a significant difference to lives of many, and particularly those living in regional areas of the State.

The prospects for growth in food and fibre production are the strongest we have seen for many years. However, at the same time we are seeing strong underlying growth in our population, its urban footprint, and in the demand for rural residential developments. There is already significant conflict over land uses arising from these pressures and the expectation of those involved in and observing this conflict is that as these pressures grow so will the associated conflict. Conflict is a damaging experience for those involved, and affects the behaviour of those who see that their businesses are exposed to similar risks.

The planning system has the capacity to support a growth agenda for agriculture and regional NSW, and we can see from experiences in other countries and states of Australia that there are policy measures which can reduce the potential for land use conflict, with significant resulting social and economic benefits.

Staff from the Department of Primary Industries provided valuable assistance during this review. The review received 85 submissions in two rounds from many producers, their associations, councils and other interested parties. They were high quality contributions and some were the product of a significant amount of research and thought. This was supplemented by numerous discussions, structured seminars and conversations. This was the primary evidence used in the review and was essential to supporting the analysis and judgements in this report.

Daryl Quinlivan
NSW Agriculture Commissioner

15 July 2021

Contents

Foreword	2
1. Summary	4
2. Recommendations	9
3. Glossary	13
4. Introduction	15
4.1 How we engaged and who participated	15
4.2 Overview of issues raised during consultation	16
5. Agriculture and regional economic growth	24
5.1 Managing long-term productive capacity	24
5.2 Identifying and mapping State Significant Agricultural Land	30
5.3 Recognising strategic precincts for agriculture	34
5.4 Monitoring development and change in use of rural land	37
5.5 Technical amendments	40
5.5.1 Improving consistency in decision-making & reducing red tape	40
5.5.2 Streamlining the development application process	45
5.5.3 Buffer guidelines and the agent of change	47
5.5.4 Planning legacies and dwelling eligibilities	52
5.6 Education	54
5.7 Other matters to support the growth of agriculture and regional economies.	57
5.7.1 Energy, water, mining, biodiversity, forestry	57
5.7.2 Role of the NSW Agriculture Commissioner	58
6. Reducing and managing land use conflict	59
6.1 NSW Farm Practices Panel	59
6.2 Council reference group	65
7. Attachments	67
7.1 Attachment 1: Implementation framework for an NSW Agricultural Land Use Planning Strategy	67
7.2 Attachment 2: List of submissions on the options paper	68
7.3 Attachment 3: Example State Significant Agricultural Land Use Planning Policy	69
7.4 Attachment 4: Proposed changes to land use terms in the Standard Instrument - Principal Local Environmental Plan	71

1. Summary

The NSW planning system seeks to accommodate competing land uses for the benefit of the State and its residents. This means balancing very different and frequently conflicting considerations and priorities, including individual and broader community interests. For rural and peri-urban land this typically involves meeting demands for housing, industrial development, essential local and regional infrastructure and services, as well as production agriculture and conservation. It also means the provision of land for mines, quarries, and energy production and transmission. These developments may not be locally popular but are considered by the Australian, State, and local governments as essential to continuing economic and community development. The planning system also aims to maintain difficult to quantify community values such as the character of local landscapes and conservation areas.

There is a wide range of views and judgments about priority land uses and conflict arises over decisions taken in the past, those under consideration and anticipated in the future. Agricultural land use is figuring more prominently in land use planning, and there are increasing calls for a more structured and orderly way of managing planning issues affecting the agriculture sector. This is a global experience and governments are developing stronger policy responses to manage long-term land use objectives.

The main sources of these pressures are growing urban populations and an expanding urban footprint, a growing interest in rural residential development and lifestyles, and a renewed interest from producers and investors in the agriculture sector.

According to a 2019 Agrifutures report, Australia experienced a 14 per cent decline in land used for food and fibre production between 1973 and 2017, a loss of around 106 million hectares. In addition to land use change, agriculture in Australia has faced several challenges in recent years including more variable seasons, rainfall and water supply deficiencies, disruptions to market access for some products and widespread labour shortages. Despite these challenges, Australian agriculture is experiencing historically high prices, rising asset prices and investor interest. Productivity improvements and increased investment have meant the value of production has increased in spite the decline in land used for food and fibre production.

In 2017-18, NSW agricultural output was around \$13 billion, nearly 25 per cent of the value of our national production. Agriculture in NSW employs over 62,000 people,¹ mostly in the regions. It supports important downstream and upstream industries such as meat and fibre processing, milling, pressing, canneries, transport, and hospitality. It also supports complementary industries - including wineries, restaurants, and tourism - and promotes the health and wellbeing of our communities by providing access to some of the best quality produce in the world. The NSW Government is seeking to realise the growth opportunities in agriculture and supports the industry's objective of growing farmgate production to \$30 billion by 2030. Achieving this will largely depend on new investment in intensive and semi-intensive production systems. It would also support substantial growth in rural economies and employment.

1 Binks B, Stenekes N, Kruger H, Kancans R. Snapshot of Australia's agricultural workforce.

Land use change has always been central to economic development. The conversion of agricultural land to residential use will continue to accommodate NSW's growing population. The NSW Government's *Intergenerational Report 2016-17* estimates the NSW population will more than double by 2056 to 11.2 million, with net migration of around 41,000 per annum. The NSW 2041 Housing Strategy suggests that regional NSW will attract a larger share of that growth than it has in the past.

So, the two main sources of land use conflict are accelerating – increasingly intensive production practices and an expanding urban footprint accommodating this population growth. To meet the agriculture growth target and achieve the regional development that will result, the NSW Government will need to plan more assertively and explicitly for agriculture.

In the coastal and peri-urban zone this is necessary for other reasons. Viable commercial businesses based on agriculture are essential elements of the long-term pattern of land use communities and land use regulators are seeking. However, in these areas viability is a considerable challenge and will be more so as the size of these properties continues to fall. Landowners will want to operate more intensive production systems to achieve viability which in turn increases the risk of conflict. Planning agencies face enormous long-term challenges maintaining diverse land uses in these areas as the underlying forces are all moving in an opposing direction. The review's proposals to improve the management and mitigation of conflict will assist and strengthen strategic planning. However, strategic planning is only part of the solution as it won't address existing conflict and has been unable to avoid creating conflict to date. Recent experience indicates stronger planning and a new conflict reduction process are both required.

The planning system comprises a logical cascade of State, regional and local plans, and Ministerial Directions, reflecting State priorities, and regional/district and local strategic plans reflecting priorities at those levels. However, the complexity of the planning framework, dispersed decision-making, and the need to constantly resolve conflicting priorities means that planning at the strategic level struggles to direct project approvals and resolve these conflicts in a way that is sufficiently clear for the affected parties, including local governments as the main regulator in this area.

Councils wishing to prioritise agriculture do not feel that there is enough direction in the planning framework to strategically plan effectively for future agricultural land use. Furthermore, rural zones are often treated as a 'default zone' where conflicting and competing land uses are clustered together. There is insufficient guidance or incentive to cluster agriculture or provide appropriate land use settings to avoid conflict. A recommendation in this report is for a review of the permissible uses in the rural zones with the aim of refining the objectives to prioritise agriculture in the RU1 Primary Production zone across NSW.

The planning system can recognise agricultural land use explicitly, improve consistency of decisions made about this land and increase the confidence of current and future producers in their business planning. Policy settings that take advantage of the positive underlying economic fundamentals will make a lasting contribution to the health of our regional economies and communities. The recommendations in this report propose adjustments to the planning system to improve the regulatory environment for the agriculture sector, and

measures to reduce conflict between producers and the increasing number of neighbours unfamiliar with normal production systems.

While there has been little directly relevant data available for this review, there are common perceptions and experiences among the most closely involved parties – local governments and agricultural producers and their representatives. This has provided confidence that the review has identified genuine problems and that the proposed policy measures will be effective in reducing those problems or at least their current disturbing trajectory.

There was strong agreement from all parties involved that land use conflict and problems facing agriculture in the planning system warrant strong policy responses.

Increased land use conflict is not unique to NSW or Australia. Most Australian states and developed countries generally are grappling with urban growth, land use change and its consequences. This includes serious risks to the generally shared objective of maintaining diverse landscapes and providing appropriate separation of urban centres.

Significant land use change will continue in NSW as our population increases and disperses, solar facilities expand and other uses of rural land including carbon sequestration increase their footprints. Conflict is a debilitating experience for everyone involved and has a significant economic cost. Reducing these costs is an important policy goal in achieving growth.

The 2019 Planning Institute of Australia's report *'Rural and regional (NSW)'* describes land use conflict as *'arguably the most immediate planning issue facing rural and regional NSW'*. Several councils identified this conflict as their most troublesome issue, and many observed that it was getting worse. The Commissioner also heard from investors that NSW was becoming a less attractive jurisdiction for new projects because of complexities associated with planning approval processes and the risk of becoming embroiled in this conflict. The *Right to Farm Act 2019* goes some way in addressing land use issues confronting agricultural producers. This Act created a shield preventing nuisance lawsuits from being brought in relation to a lawful commercial agricultural activity. It provides this protection against civil suits only. This does not address the bulk of the land use conflict issues facing producers where normal every day practices are subject to complaints and potentially enforcement action under the *Protection of the Environment Operations Act 1997* or the *Local Government Act 1993*.

A variety of different measures have been adopted in Australia and internationally to address land use conflict. Some other jurisdictions have extended the logic of the *Right to Farm Act 2019* to provide a defence for producers using 'normal' practices in a responsible manner against complaints. The objective is to provide clarity for both producers and nearby residents on what practices are acceptable and what can reasonably be expected if you live near production agriculture. This provides an authorised framework for decision-making by land use regulators to improve consistency and predictability. This in turn provides confidence for investors that their businesses can operate without interference while they comply with these practices.

There is an opportunity to take advantage of investors' favourable sentiment toward agriculture and the Government's focus on growth in regional NSW. Success will require policy innovations and new regulatory mechanisms that recognise the importance of land

use planning for agriculture. There is local and international evidence that agriculture can co-exist with urban populations. The Netherlands, for example, has strategically planned for the use of rural land since 1945 and is now the world's second biggest agricultural exporter despite its small landmass.²

A critical recommendation in this report is the creation of a NSW Farm Practices Panel to provide much needed clarity about acceptable operating practices and increased incentives for producers to see those practices as an essential part of preserving their future capacity to operate successful businesses.

Other recommendations in this report aim for improved information for regulators and investors, streamlining the development approval process by clarifying definitions, making better use of the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Inland Code)* and digitising land use planning for farmers.

The planning system applies state-wide, but local conditions, operating realities and priorities vary widely, and this diversity is difficult to accommodate in a single system. The type and level of land use conflict, and local priorities differ dramatically across NSW. This report proposes increased adaptation of the planning system to address this diversity, particularly between inland and coastal areas. The NSW Government has already adopted this principle in creating special purpose precincts with bespoke planning measures such as the Regional Jobs Precinct and the Special Activation Precincts. The State has intervened to make decisions and streamline the development process in those areas but much of inland NSW has similar characteristics and development aspirations.

A central recommendation in this report is to develop a specific policy on agricultural land use. This would include identification of higher quality agricultural land and a State Significant Agricultural Land (SSAL) map that could be used consistently by councils and other agencies to inform strategic planning consistent with the State's growth objectives. A map and supporting policy are the first step to improving how agriculture is considered in land use planning. Once a policy and land identification are in place and have been publicly reviewed the Government should consider a statutory basis for this policy to ensure it becomes an entrenched element of case-by-case decision-making rather than guidance to assist decision-makers exercising discretion. Feedback to this review has been that "*another policy*" is unlikely to improve long-term decision-making although it is a necessary step towards this outcome.

While biophysical characteristics of land will always matter, future development will depend more on access to infrastructure and services, labour, processing capacity, connectivity, etc, and over time these considerations will need to feature more prominently in local planning and decision-making.

This report proposes short- and longer-term measures that would improve planning outcomes for agriculture and increase confidence for producers, investors, land regulators, as well as increase certainty for nearby residents about the nature of those operations. These measures would assist councils in managing their planning and conflict management functions. Councils and their staff bring considerable skill and commitment to these roles,

2 Boere EJ. *Economic analysis of Dutch agricultural land use in a changing policy environment* (Doctoral dissertation, Wageningen University).

but the scale and breadth of the conflict issues in particular requires a State and system-wide approach to supplement those individual skills.

Several other issues outside the terms of reference for this review were raised by stakeholders during consultation. A few submissions and discussions during the consultations argued that the Commissioner requires statutory powers to be effective. The issue of the Commissioner's functions is a matter for the NSW Government. The only comment the existing Commissioner would make is that improving policy, systems and structures that apply across the State is likely to have a much higher return for the public and agriculture sector than applying the same resources to the resolution of individual cases, however worthy they may be. More significant, however, were the concerns from landowners and their representatives about the handling of planning processes for new energy generation and transmission facilities, and major infrastructure projects such as the inland rail construction. The report includes some comments on these issues.

2. Recommendations

1. The NSW Government should take a phased approach to adopting a statutory State Significant Agricultural Land Use Planning Policy (SSALUP Policy). Initially, a policy should be released, following a public comment process, which is implemented through Regional Plans and which councils are directed to implement through strategic planning. Once a policy has been applied through the strategic framework and is seen to be contributing to improved decision-making about agricultural land use, the NSW Government should consider adopting further 'considerations' in the PPRD SEPP to provide councils with clear direction on how to respond to developments on and around SSAL. In addition, the NSW Government should provide councils a checklist of considerations to guide development decisions that impact agricultural land.

2. The objectives, permitted land uses and application of the RU1, RU2 and RU4 zone should be reviewed by DPIE and DPI to ensure there is a clear determination of priority for agriculture (and therefore other permitted uses) in these zones. Following this review the NSW Government should ensure there are clear policies governing land use and consideration of development proposals consistent with these zone objectives.

3. The statutory SSALUP Policy should be supported by a map of State Significant Agricultural Land (SSAL). As a starting point, the map should draw on existing and readily accessible data sets including: an expanded data set of Biophysical Strategic Agricultural Land (BSAL), irrigated lands and the North Coast Farmland mapping. Over time this should be supplemented with Identified Production Areas (see recommendation four) and other areas identified and zoned for higher value or specialised agricultural production.

- The mapping process should include a verification process, which would allow landowners to provide evidence to DPI that the land does not meet the SSAL definition. DPI would determine whether the map needs to be varied.
- DPI should exhibit an SSAL map alongside arrangements for how this land is managed, similar to the arrangements applied to the Far North Coast and Mid-North Coast Important Farmland Map.
- DPI should update the SSAL map as better information becomes available, with a formal review at least every five years.

4. The NSW Government should identify and promote Identified Production Areas (IPAs) to build on existing and potential comparative advantages of different regions to promote agricultural investment and growth. DPI should consult with relevant industries and councils on their development goals for agriculture and how IPAs could be implemented across NSW.

5. DPI should work with DPIE to monitor changes in rural zones and the effectiveness of strategic plans in influencing development decisions about agriculture and report annually on findings.

- Public reporting should aim to assess the rate of conversion of land in the RU1, RU2, and RU4 to a zone where agriculture is not permissible as well as monitor the conversion of rural land through State Significant Developments. This reporting should distinguish

any land classified as SSAL. The report should identify where changes are occurring and whether these conversions are consistent with the relevant Regional Plan. Any land being converted into zones where agriculture is permissible should also be monitored to understand the net land available where agriculture is permissible. Maps could be produced by DPI land use planners at a local government-level if requested by council.

- The data from the monitoring process could be used by the Government to:
 - Establish a baseline understanding of how much and where the rural land is located;
 - Determine the trend in conversion to zones where agriculture is not permissible;
 - Assess the consistency of rezoning with Regional Plans.
- A spot audit should be included in the annual report to test the consistency of development application outcomes with the relevant strategic planning framework in that area. Councils could also use this data to assess consistency with their Local Strategic Planning Statements or other strategic plans.

6. The NSW Government should seek to reduce red-tape for agricultural development and investment by:

- **DPIE working with DPI to investigate and revise the suitability of definitions of the following terms in the Standard Instrument - Principal Local Environmental Plan:**

- Beekeeping
- Equine breeding or training establishment
- Horticulture
- Intensive livestock and plant agriculture
- Plantation forestry for carbon sequestration
- Small on-farm abattoirs
- Urban agriculture

- **DPIE working with DPI to provide clarity and guidance on how ancillary development for agriculture works in the planning framework, with specific examples.** This may include a list of 'considerations' to guide interpretation.

7. The NSW Government should adopt the principle that development controls for inland NSW should be more accommodating of agricultural operations and development, and that the Inland Code is an appropriate mechanism for implementing this principle.

- DPIE should review the Inland Code and identify opportunities to expand exempt and complying developments and other regulatory concessions following the delivery of the localised precincts (e.g., Regional Job Precincts) and experience with their policy settings or within two years using the evidence available at that time.
- The NSW Government should extend the lessons from the bespoke planning settings in the Namoi Regional Job Precinct more broadly across inland NSW, to promote investment. Elements being considered for the Namoi Regional Job Precinct include reviewing legacy dwelling eligibilities, applying consistent buffer requirements, fast-tracking development and consent pathways, minimising incompatible land uses and simplifying integrated development assessments. If successful and applicable, the lessons from IPAs could be applied across inland NSW.

8. Subject to receipt and consideration of a positive business case, the NSW Government should support the digitisation of farm development planning through the Navigating Farm Developments Platform. DPIE Planning should provide technical input and assistance to help integration with the ePlanning and spatial portals. This would simplify the development application process, maximise investment potential and improve confidence in the planning system.

9. The NSW Government should require councils to consider buffer guidelines for agricultural operations in relevant development application approval process. This mandatory consideration, implemented through the Standard Instrument LEP, should also apply the agent of change principle so that established buffers are considered in neighbouring development decisions. This principle should also guide enforcement activities and responses to complaints made against farming activities.

- DPI should review existing buffer guidelines and work with industry and councils to ensure they reflect contemporary science, best practice and meet regulatory needs. Over time this could contribute to the work of the NSW Farm Practices Panel (recommendation 12). The ability of councils and proponents to identify where buffers are in operation should be improved and the function and integrity of existing buffer conditions in development consents reinforced.

10. The NSW Government should require councils to improve the integrity and effectiveness of their rural zoning arrangements by phasing out concessional dwelling eligibilities and existing holdings clauses in the rural zones and provide appropriate support to do so. Any land holder with an existing dwelling eligibility on a concessional allotment or existing holding could be given a period of five years to submit a development application before the eligibility is extinguished.

11. DPI in partnership with relevant NSW Government agencies should implement education programs for council planners, councillors and the wider public about agricultural land use planning needs and the planning instruments that support these uses. The education programs should be targeted to the audience and aim to:

- Educate council staff and councillors to improve planning and decision-making, issues covered should include:
 - Land use conflict
 - Rural Strategic Planning
 - Buffers
 - Rural worker dwellings and the importance of supply of agricultural labour
 - The practices and needs of particular agricultural industries.
- Educate the wider public to improve understanding of rural Australia and the operations of the agriculture sector, this will include revising the Living and Working in Rural Areas Handbook.

Over time these education materials should draw on the work of the NSW Farm Practices Panel (see recommendation 12).

12. The NSW Government should establish a NSW Farm Practices Panel which would assess and where satisfied endorse industry codes of practice, and in doing so advise all interested parties on what operating practices associated with land use conflict are 'normal' and should be acceptable.

In line, with the potential role and scope outlined in Box 1 (see section 6), the panel members should not have a representative or other close association with industries which develop codes, nor with their regulation, and be supported by appropriate technical expertise. It should be voluntary for industries to submit their codes of practice for assessment and these codes can be existing or can be crafted to reflect those practices subject to complaints. In assessing codes, the panel would have regard to current evidence of good practice in situ, contemporary science, compliance with relevant contemporary law (relating to industrial noise, chemical use, odour, water use, emissions, etc.), operating practices and regulatory experience and practice in other Australian and international jurisdictions. The codes would be regularly reviewed to ensure they keep up with evolving practices and regulatory developments. While they would have State-wide application, some codes could include regional modules to reflect different operating conditions and potential for, and source, of conflict. The codes would aim to provide a 'how to comply' manual, and reinforce rather than dilute existing environmental protections.

Compliance with an endorsed code of practice should be taken into account in complaints investigations and enforcement action (that is, in prosecutions, evidence of compliance or non-compliance with a code should generally be sound evidence that the producer has complied with the law) and the codes should provide a robust and consistent basis for consent authorities formulating development approval conditions. This could assist councils or other government authorities, such as the NSW Environment Protection Authority, in responding proportionately to complaints, ensure codes set out a means of complying with regulatory requirements, and encourage industries to maintain the currency of codes of practice.

Once the model is operating and seen to be delivering benefits the Government could consider recovery of the Panel's costs from the beneficiaries.

13. DPI should establish a Council Reference Group for the purpose of bringing councils together from across NSW to share experiences of agricultural land use conflict.

Through this forum, councils could use the community of practice to develop approaches to best address land use conflict and emerging agricultural needs. This body could be a mechanism for designing a process to collect data on land use conflict impacting producers and provide updates to DPI and other agencies on their findings.

Attachment 1 sets out an implementation framework for how the NSW Government can deliver these recommendations in phases.

3. Glossary

Term	Definition
Agricultural buffers	Agricultural buffers are areas of land set aside to provide separation between agricultural and sensitive land uses to minimise the impacts of the land uses on each other. These buffers can be vegetated to form a physical and visual barrier to mitigate impacts and improve amenity.
Agricultural land use conflict	For the purposes of this report, land use conflict refers to complaints arising from noise, odour, dust, light, and spray drift from an agricultural land use. Some agricultural practices present externalities that can be sources of nuisance complaints.
Agritourism EIE	Agritourism and Small-Scale Agriculture Development Explanation of Intended Effect
AIS	Agricultural Impact Statement
BSAL	Biophysical Strategic Agricultural Land i.e., land with high quality soil and water resources capable of sustaining high levels of productivity as mapped in <i>State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007</i> .
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
EPA	NSW Environment Protection Authority
Inland Code	State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Inland Code)
IPA	Identified Production Area
Legislated strategic plan	Refers to strategic plans provided for in the <i>Environment Planning and Assessment Act 1979</i> . Includes Regional Plans, Local Strategic Planning Statements and District Plans.
LGA	Local Government Area
LSPS	Local Strategic Planning Statement
POEO Act	<i>Protection of the Environment Operations Act 1997</i>
PPRD SEPP	State Environmental Planning Policy (Primary Production and Rural Development) 2019
Rural Zones	<p>RU1 Primary Production zone: A rural zone utilised primarily for primary production purposes. This includes commercial primary production, including extensive agriculture, intensive agriculture, intensive livestock and intensive plant agriculture, aquaculture, forestry, mining, and extractive industries.</p> <p>RU2 Rural Landscape zone: A zone for rural land used for commercial primary production such as grazing and other forms of extensive agriculture, or intensive plant agriculture that is compatible with ecological or scenic landscape qualities due to landscape constraints.</p> <p>RU4 Primary Production Small Lot zone: A zone for land which is to be used for commercial primary industry production, including emerging primary industries and agricultural uses that operate on smaller rural holdings.</p>

Term	Definition
SSAL	State Significant Agricultural Land
SSALUP Policy	State Significant Agricultural Land Use Planning Policy
Standard Instrument LEP	Standard Instrument - Principal Local Environmental Plan

4. Introduction

4.1 How we engaged and who participated

This project has included extensive stakeholder engagement. On 12 August 2020, an issues paper was released and explored through targeted consultation, 32 written submissions were received in response to the issues paper. Between 18 December 2020 and 12 March 2021 public consultation was conducted on an options paper which scoped solutions to the many problems facing producers in land use planning.

Public consultation on the options paper in 2021 included six online webinars where a total of 191 stakeholders attended. A survey was also made available via Facebook and the DPI website, which attracted 146 responses. A total of 53 written submissions were received from a range of council and industry groups and individuals (detail is included in **Attachment 2**). In addition to this process, the Commissioner met or spoke with many stakeholders to discuss land use planning issues for agriculture including councils, planning experts, peak industry groups, individuals, and government representatives both in Australia and abroad.



The Agriculture Commissioner would like to thank all participants for their contributions through submissions and consultations. The submissions were of high quality and essential to informing this review. The number and breadth of these submissions was sufficient to provide the Agriculture Commissioner with confidence that the judgements in this report are based on a sound understanding of the issues and the views of commercial producers, representative organisations, and land use regulators about feasible policy responses.

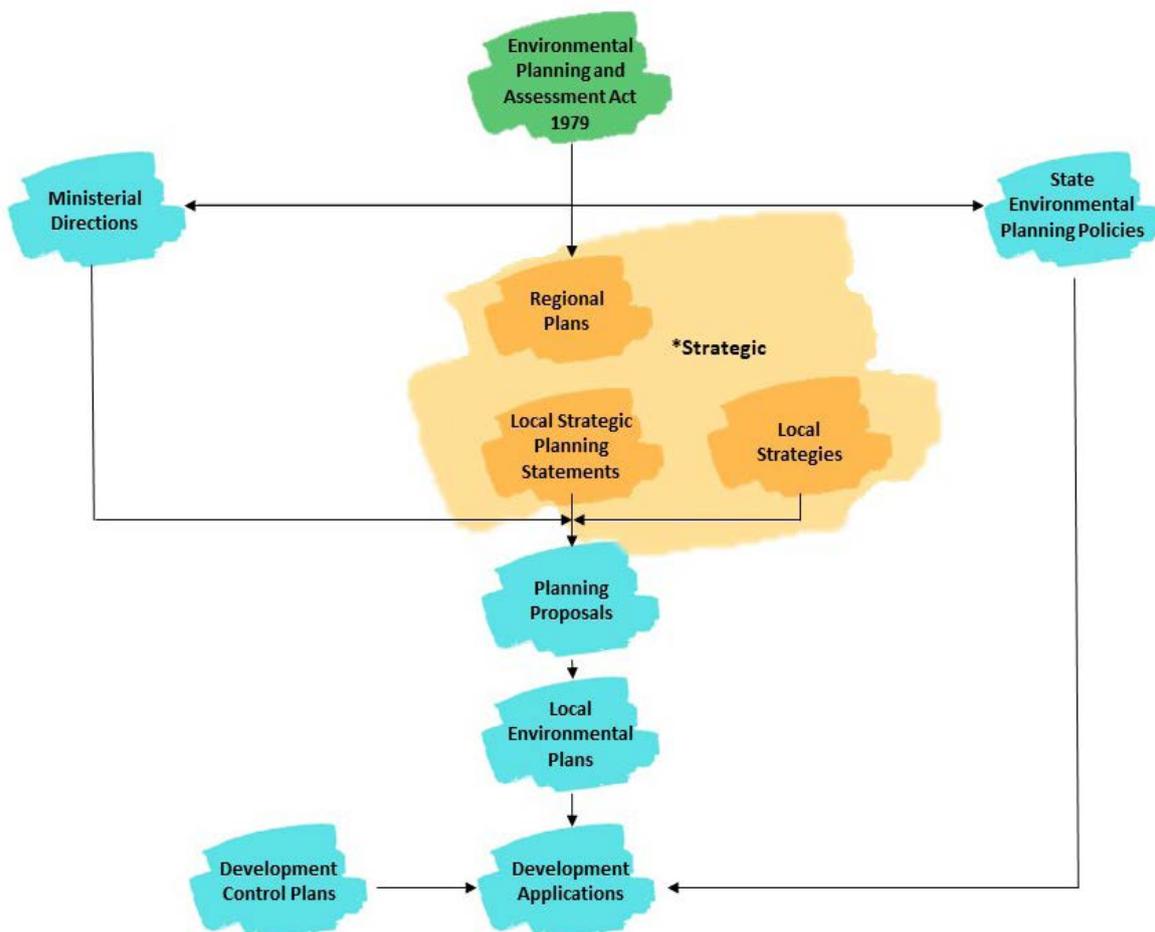
4.2 Overview of issues raised during consultation

A complex system that causes confusion

Consultation with a wide range of stakeholders revealed the challenges facing councils and land holders on agricultural land use planning and land use conflict. Concerns were raised by councils about complexity and inconsistency across various planning instruments, and rising incidence and severity of conflict about agricultural activities.

Landowners were concerned about inconsistency, protracted assessment processes and a lack of clarity on processes and requirements for development applications. Landowners and industry representatives expressed a view that there is a presumption of guilt when it comes to nuisance complaints, and that the focus is on appeasing complainants. However, it should also be noted that some complaints reflect legitimate concerns about practices that are not, or no longer, acceptable.

The *Environmental Planning and Assessment Act 1979* sets out the requirements for various layers of strategic planning that occur via Regional Plans, District Plans and Local Strategic Planning Statements (LSPs). Under the *Environmental Planning and Assessment Act 1979*, LSPs are required to implement Regional Plans. Planning proposals to amend local plans must also consider the LSPs objectives.



This hierarchy of strategic plans establishes objectives at the regional-level and then allows councils to incorporate local considerations in their planning processes. Ideally, the strategic framework should clearly articulate the intended future uses of identified rural land and recognise the role of agricultural operations on that land. This provides the context for case-by-case decision-making at the local-level. The evidence provided during this review indicates there are gaps and actual or potentially competing objectives in the strategic planning framework that can result in inconsistent interpretation and decision-making.

There is also perceived to be a disconnect between strategic planning and local decision-making on development applications which enables development to occur that is inconsistent with stated strategic objectives for agriculture. At the same time there is a growing gap between agricultural production practices and the community's understanding of modern food production systems.

The planning system has evolved over a long period of time, and as the basis for many past and anticipated commercial land use decisions, simplification is extremely difficult. However, there is merit in addressing inconsistencies and providing more direction to councils where an obligation is often seen as a 'consideration' that may or may not be followed. A good example of this is the responsibility of councils under the Ministerial Direction 1.5 to "... *minimise the potential for land fragmentation and land use conflict in rural areas...*" It was made clear from consultation that this is not seen as a direction that has precedence over other considerations or compels councils to consider the impact of encroachment on agriculture, particularly decisions that compromise existing buffers.

Agriculture and the planning framework

There is no specific land use zone for agriculture. Land uses are regulated by zones which are defined by the Standard Instrument - Principal Local Environmental Plan (Standard Instrument LEP). Each zone has a list of permissible and prohibited developments. Agricultural land is mostly zoned as RU1 Primary Production, RU2 Rural Landscape or RU4 Primary Production Small Lots, supported by zone objectives which encourage primary production. Agriculture can also occur in other zones including R5 Large Lot Residential and E3 Environmental Management which are not primarily meant for agriculture. Compared to residential or industrial zones, rural zones accommodate a broader range of development types from agriculture to residential and tourism facilities to mining and is often treated as the 'default zone' for land outside urban settlements. Therefore, they can be catch-all zones where various potentially conflicting uses can be clustered together.

In comparison to other land uses, agriculture generally requires larger tracts of land and access to natural resources such as soils and water, as well as access to markets, infrastructure, and labour. For intensive operations there is also a need to accommodate buffers to avoid impacting sensitive receptors. The current zones available to agriculture are not being consistently applied to meet those needs. While the planning framework seeks to prevent the fragmentation of rural land, this is still occurring and is inevitable to some extent. The cumulative impact of sub-division and fragmentation can have a serious impact on local agricultural production and supply chains. It can also gradually erode lot sizes so they become too small for viable agricultural businesses. The role of the rural zones in accommodating population growth, such as the NSW 2041 Housing Strategy, will always be

important but should be planned and managed in a strategic way to minimise the impact on agricultural land.

Land use regulation tries to base development decision-making on long-term community interests, but local decision-making can prioritise the financial interests of individual landowners. Landowners on undersized lots often wish to subdivide their land or sell to developers hoping to have the land rezoned for some form of urban development. The planning framework should be clear about planned and permitted future use of land and drive more consistent land use decisions through clear directives about agricultural land. This will assist over time in reducing speculation about changes in land use zoning and the resulting impact on land values.

Councils responsible for rural land work hard to plan and regulate for long-term community outcomes that include a future for agriculture. But in the absence of a clear direction defining agricultural land and how it should be managed for the longer-term, most stakeholders feel the need for a stronger State policy framework.

Changes to agricultural production

The long-term shift to more intensive production systems is inexorable and will be essential to meeting the NSW Government's growth objectives to 2030. Intensive agriculture is also the main source of conflict with surrounding land users because of the associated lighting, noise, dust, use of chemicals and odours generated by these activities.

The growth rates of some of the intensive industries over the last decade have been very impressive. Chicken is now the most consumed meat in Australia and some horticulture sectors, such as greenhouse tomatoes and blueberries, have become dietary staples. Protected Cropping Australia reports that the sector has grown more than 60 per cent annually over the last five years and now represents 20 per cent of the total value of vegetable and flower production. Other intensive operations such as feedlot preparation for slaughter have been instrumental to winning export market access for beef and attracting premium prices. Securing NSW's reasonable share of future growth in these forms of agriculture will generate substantial employment, especially in the regions, and improve the diversity and resilience of the economic base in those regions.

The NSW Environment Protection Authority (EPA) in its submission warned against significant exclusions from the current development approval process where there may be standards set for environment protection and human health. The EPA regulates some agricultural activities in accordance with the *Protection of the Environment Operations Act 1997* (POEO Act) and other environmental legislation, including the *Pesticides Act 1999*. The POEO Act identifies activities which require a licence. This includes most intensive agricultural activities such as irrigated agriculture, intensive livestock activities, and agricultural and livestock processing over certain thresholds. The EPA provides expert advice on air, water, noise, and waste considerations during the development approval process for these developments to help protect, restore, and enhance the quality of the environment. No recommendations in this report propose changes to the POEO Act.

The NSW Planning Framework can improve the confidence of current and future investors in NSW agriculture by providing assurances that well-designed projects can be approved within reasonable timeframes and not be hindered by ongoing complaints about compliant activities. The recommendations in this report would make a meaningful contribution to achieving these objectives.

Inland versus coastal planning needs

Land use planning objectives and priorities in coastal and peri-urban areas are very different to those for inland NSW, and 'agricultural land' has quite different functions. It became clear through consultation that the framework does not always recognise the different roles and needs of agriculture across NSW.

For the coastal and peri-urban zone where land use conflict is most evident, managing conflict and retaining green spaces in landscapes under pressure from a growing urban footprint is a priority issue. Communities and regulators generally share the view that urban development should be constrained and separated by other land uses including production agriculture. Planning policies reflect this objective. In coastal and peri-urban areas where urban development has been replacing agriculture there is a strong desire to maintain production agriculture for its contribution to the local landscape, supply of fresh produce and local economies. People value 'green spaces' in various forms and want them preserved to provide a diverse landscape in perpetuity. Most of this 'green space' is privately owned and highly valued land.

The value of amenity provided by green spaces is recognised by the NSW Government with a Premier's priority to build the accessibility of green public spaces for urban dwellers. But there is no government policy that recognises agricultural land in contributing to this broader amenity outcome.

The viability of small operations in these areas is a major concern. Viability can be achieved through intensive production systems, but these do not provide the bucolic landscape communities value and are the subject of most land use conflict. Councils are acutely aware of this problem and therefore encourage off farm income, value adding on farm and secondary business development to support the farming business. The NSW Government is also contributing with the recently released agritourism package. However, this type of activity can also create its own regulatory dilemmas as many proposed supplementary land use proposals are not compatible with agriculture and risk compromising production on neighbouring properties which may be facing the same viability concerns.

Like land use conflict, the viability of smaller farms near urban settlements is a global problem. Australian producers are familiar with European and US farm subsidies and other policy measures designed to preserve uncommercial agricultural land use and the resulting landscapes and communities. This is not dissimilar to some of our coastal land not being used intensively, as are the policy objectives of maintaining the landscape and 'traditional' land use patterns.

The development of protected and intensive production, particularly for horticulture is likely to be the future of viable agriculture on these smaller lots. These enterprises can co-exist with urban development if production practices are responsible and there is community

acceptance. But this will not occur organically, and the evidence provided to this review suggests that new policy and regulatory mechanisms will be required to achieve a lasting solution based on compatible land uses and practices accepted by the community.

Inland NSW, on the other hand, has great potential for further economic development in agriculture and related industries. While NSW occupies a very large area, the State has a largely urban and semiurban population and much of the agricultural production occurs close to those population centres. Inland councils share problems and concerns that are quite different to those in the coastal and peri-urban areas. Generally, and with some exceptions in areas around growing regional centres, the local communities, producers, and councils themselves are keen on economic development and improving the local and regional economic base - to support improved employment opportunities, resilience to the regular seasonal variations, and improved community services. Lower land values, less community conflict and improving infrastructure and connectivity have seen some intensive animal industries moving inland. Inland areas have a comparative advantage over coastal areas for these industries as they have more location options, space, and scope to manage conflicts through effective long-term planning and land use separation.

The NSW Government has accepted the principle that the planning system should be more receptive to new investment through locally appropriate policy settings that are being progressed through Special Activation Precincts and Regional Job Precincts.

Land use conflict

The impetus for this review came from the increasing awareness of impacts of land use conflict involving agricultural operations. Land use conflict can mean different things but in the context of this report refers to nuisance complaints, regarding, noise, odour, dust, light, and spray drift. Although there is little quantitative data about land use conflict, the data that does exist, anecdotal evidence and the views of land use enforcement agencies confirm that this is a real and increasing problem. According to the Australian Farm Institute's 2020 report *Managing Farm-Related Land Use Conflicts in NSW*, "...primary issues from these disputes are detrimental impacts on the mental health of the parties involved, fractures within communities, loss of faith in authorities and the alienation of productive land".

The messaging from councils and industry alike is clear, there is a need for the NSW Government to provide a more systemic mechanism for managing agricultural land use conflict. While councils and their staff give this issue priority and bring considerable individual skill and commitment to its management, this is no substitute for an effective system-wide arrangement that can change the worrying trajectory of land use conflict. This dilemma is not unique to NSW and other jurisdictions both nationally and internationally have moved to address the issue. There is a lot NSW can learn from looking elsewhere at established processes and adapting these mechanisms to suit the needs of local production and communities in NSW.

Renewable energy and an emerging conflict frontier

As a part of this consultation, stakeholders including the NSW Farmers Association, expressed significant concern about the development of renewable energy infrastructure and associated transmission capacity on agricultural land. This reflects concerns about landscape disturbance, impact on the value of nearby land, the potential for land use conflict and fragmentation or sterilisation of good agricultural land, uncertainty about decommissioning obligations and outcomes, and the inevitable creation of 'winners and losers.' The construction of large infrastructure amongst productive agriculture can create these risks and this is yet another example of the conflicting policy objectives that land use planning must confront. Early experience already suggests that as the scale of these investments grows dramatically positive responses to these local concerns will be important to winning community support for these necessary developments.

The NSW Government is aiming to focus renewable energy development through its *Electricity Strategy* and *Electricity Infrastructure Roadmap*. The Roadmap will deliver Renewable Energy Zones in the State's Central-West Orana, New England, South-West, Hunter-Central Coast, and Illawarra regions. This infrastructure will inevitably involve the use of agricultural land. There will be a transition phase as renewable developments respond to the opportunities in these locations, and landowners in these areas will be affected in different ways and react accordingly. The NSW Government should ensure that the impact on agricultural land is minimised where this is a realistic option, and communities are reassured about decommissioning arrangements and their other concerns where this is feasible. The DPIE is currently undertaking a public consultation process to do this.

Current projects that address some issues raised

Supporting producers to diversify

The NSW Government recently exhibited an Agritourism and Small-Scale Agriculture Development Explanation of Intended Effect (the Agritourism EIE). It proposed amendments to the NSW planning system to better enable 'agritourism' and small-scale agricultural development to be approved. It also sought to respond to natural disasters such as droughts and bushfires, and to simplify planning approvals for development or activities that have little or no environmental impact. The Agritourism EIE, once finalised, has the potential to respond to some of the issues raised during consultation, support the growth of regional economies, and assist with the viability problems confronting smaller properties. However, as noted earlier there are also genuine concerns about the risk of some agritourism ventures introducing new land use conflicts and further fragmenting the agricultural landscape. While clearly a desirable initiative care is needed to avoid unintended adverse consequences for nearby landowners.

Making the development application process clearer

DPI is running a pilot to digitise farm land use planning. This project has been initially funded by the Digital Restart Fund and offers landholders an overhead view of their property to determine the best location for proposed developments. This platform, if fully developed, could support producers and potential new investors to understand the development application process as it applies to their specific project, and streamline the approval process by ensuring they have prepared all relevant documents ahead of submitting their development application. It will also enable producers to maximise the potential of their land by giving them spatial awareness of regulatory restraints and opportunities (e.g., options for scale and positioning facilities and structures given buffer requirements). It would allow anyone to see how to work with regulatory constraints and options to maximise the capacity of new investments.

Testing locally crafted bespoke planning arrangements

The Regional Job Precincts project is an extension of the Special Activation Precinct program. Both projects provide planning support to help fast-track approvals to drive growth, investment, and development opportunities within regional NSW. The Regional Job Precinct initiative will drive local planning reform, investment, and new jobs in regional NSW. It will focus on targeted locations that are aligned with region-specific engine industries and businesses and are ready for development. The NSW Government works closely with councils to build on the long-term strategic planning work already done at a state and local-level. The Regional Job Precincts can help test different settings in the planning framework to deliver efficiencies for agriculture.

Capturing better data on the planning system

As a part of the 2020 NSW Planning Reform Action Plan, all councils will accept development applications, complying development certificate applications and post certificate applications through the NSW Planning Portal by 1 July 2021. The ePlanning portal will facilitate consistent collection of planning data which could be used to identify trends in agriculture development applications, or in development applications on agricultural land.

5. Agriculture and regional economic growth

5.1 Managing long-term productive capacity

Problem description:

There is no NSW Government policy on the priority, and preferred use, of agricultural land. As a result, many councils feel they do not have enough direction from the NSW Government on how to prioritise and plan for agriculture. Ad-hoc rezoning and approving dwellings throughout rural zones fragments the landscape which can affect land prices, impede agricultural expansion and produce conflict. The cumulative impact of this can have a serious impact on confidence to invest in local agricultural production and supply chains.

Evidence and what we heard:

There is a strong view among the agriculture sector and councils that there is a need for a NSW Government policy that recognises the importance of land for agriculture and clarifies how agricultural land use should be regulated in the planning system. Those councils with an agricultural presence looking to further promote agriculture in their local government area (LGA) expressed frustration with the lack of State-backing to prioritise agricultural land uses. Mid Coast Council pointed out that primary production and residential growth have both been targeted in the Hunter Regional Plan but that *"... there is a clear in-equity of how rural and agricultural land uses can be considered as being of equal value in both rezoning and development application processes."*

During consultation there were regular calls to 'protect' agricultural land. The measures discussed by stakeholders ranged from an outright prohibition on change of use of high-quality land to more rigorous planning and testing of proposals for converting land use, in particular to limit spill over consequences for other land users. There were several complementary objectives across stakeholder groups including:

- Growth in agricultural output
- Preservation of green space and containing urban sprawl
- Planning for new housing in a way that responds to environmental, employment and investment considerations, and population dynamics
- Planned and managed expansion of rural residential developments.

Councils recognised that there are a number of existing policies that relate to rural land including the *Local Planning Directions 1.2 Rural Zones and 1.5 - Rural Lands*, clause 5.16 in the Standard Instrument LEP, Regional Plans and local rural land strategies developed by individual councils. However, these policies are not always clear in definition or setting priorities, nor do they always compel councils to act. For example, the objectives for the RU1 zone in the Standard Instrument LEP include *'to minimise the fragmentation and alienation of resource lands'*, which while well intended, does not define 'fragmentation', 'alienation' or 'resource lands' leading to inconsistent or insufficient application of this objective. Tweed Shire Council, among others, suggested any new policy should not duplicate existing policies or create more confusion.

Councils looked for more clarity that would:

- assist and provide guidance for councils' strategic planning
- retain areas of agricultural land appropriate for local circumstances
- promote investment in agricultural activities and its associated economies
- ensure land continues to be available for long-term agricultural production to sustain Australia's growing population

A policy with a statutory requirement for consideration in all relevant planning decisions was preferred by stakeholders over a voluntary policy or guidance material because of a perception that the system already has too many policies that are not taken seriously or implemented effectively. Statutory policies that prioritise specific uses in the landscape exist, for example the NSW Oyster Industry Sustainable Aquaculture Strategy prioritises oyster farming in specific locations and sets the policy direction for operations at these sites.

Bega Valley Shire Council suggested a statutory mechanism would ensure consistency across NSW and this was supported by the Canberra Region Joint Organisation. The NSW Farmers also suggested that NSW Government agencies be subject to a policy governing the use of agricultural land. General support for a statutory mechanism was also caveated with the desire for the Government to consult with councils on the details of a policy before implementation. Cessnock City Council although supporting consistency in principle, suggested a policy should enable councils to retain local discretion. The planning framework seeks to strike a balance between local decision-making and State Government prescriptions. State intervention is usually warranted where there is a broader public interest to consider. In the case of agricultural land, there is a clear need for the State to ensure there is confidence to invest in agriculture, and to preserve mixed landscapes in areas experiencing housing growth.

"A Government policy on rural land could provide policy leadership... to reinforce region, district and local strategies."

Camden Council

"It is considered vital that the NSW Government start establishing clear policy directives with respect to rural land."

Goulburn-Mulwaree Council

"Not only would it be beneficial in its own right, it would provide a support base for councils to develop their own policies."

Wingecarribee Shire Council

DPI has expertise in land use planning affecting agriculture. Consultation explored whether it would be useful for DPI to approve (i.e., provide concurrence) or advise on non-agricultural development applications on agricultural land. The options paper also discussed if there should be a concurrence role for DPI in the decision-making process for rezoning SSAL. These options were proposed to utilise DPI's advice on contemporary agricultural practices. Submissions and other consultations generally did not support a concurrence model, as it would add another layer of complexity and consume more time in the development approval process. The Canberra Region Joint Organisation noted it would be *"...unnecessary if strong policy guidance is available for non-agricultural land development on SSAL."* Berrigan Shire Council suggested that many decisions subject to concurrence now go unanswered and that it is not a viable way to increase rigour in decision-making. There was more support for DPI taking an advisory role, which is already common practice.

In each area in which DPI could have a concurrence role (advice and decision-making) there was a strong preference for stronger policy over additional governance measures.

Consultation identified that the RU1 Primary Production zone is used inconsistently and enables conflicting land uses to be approved in that zone. The inconsistency stems from how the zone has been applied and the various land use tables used across NSW. While the objectives are mandatory, the Standard Instrument LEP also enables councils to add objectives for the zone provided they are not inconsistent with the mandatory objectives. Councils commented on which land use should be prioritised in the rural zone. The RU1 Primary Production zone allows other land uses that are already regulated by their own SEPP or unique zone, for example, forestry is permissible in RU1 but also has its own zone RU3. Tweed Shire Council pointed out that *"...zone objectives are not called up in the hierarchy of legislation and therefore may not have the weight in the NSW Land & Environment Court intended by the Department of Planning, Industry and Environment."*

Some stakeholders recommended establishing an Agriculture Zone that focuses solely on agricultural land uses. However, the problem seems to be the dilution of the intent of the RU1 Primary Production zone rather than a gap that requires a new zone to be established. Given the central role the RU1 zone plays in regulating land use for agriculture, the objectives in the RU1 Primary Production zone should be revised to ensure state-wide consistent application to preserve agricultural land use and support councils to prioritise agriculture where they choose to do so, i.e., reinforce local planning. The purpose of the RU1 Primary Production zone could be strengthened by the inclusion of mandatory objectives such as to:

- ensure the productive capacity and resource base for agriculture is recognised and managed for long-term agricultural production.
- allow the development of processing, service and value-adding industries related to agriculture and primary industry production.
- allow for non-agricultural land uses that will not restrict the use of other land in the locality for agricultural production.
- minimise the fragmentation and alienation of agricultural resource lands.
- prevent dispersed rural settlement to ensure it does not inhibit agricultural production and create unreasonable or uneconomic demands for the provision of public infrastructure or services.
- minimise conflict between land uses, particularly between agricultural land uses and other incompatible or competing land uses.

If councils applied the RU1 zone more consistently across NSW this would simplify the application of regulatory measures for RU1 land and support the monitoring of the use and change of use of this land. This would contribute to improved policy and outcomes over time.

The NSW Government first signalled an intention to develop specific planning controls for SSAL in 2008, this is retained in the *State Environmental Planning Policy (Primary Production and Rural Development) 2019* (PPRD SEPP). The PPRD SEPP aims to ensure the ongoing viability of agriculture on that land in the broader context of social, economic, and environmental considerations. There was a clear consensus in consultation that delivering this objective will require further amendments to the PPRD SEPP.

The options paper discussed the possibility of requiring an Agricultural Impact Statement (AIS) for non-agricultural developments on good agricultural land as part of a policy. Some councils queried whether an AIS was the right vehicle for ensuring the impacts on agriculture would be adequately considered. An AIS would be drafted by a proponent seeking to make a case that there is no impact on the land proposed for development. This assessment is not impartial. Moreover, the substance of that analysis will generally be required for the DA process in any case.

'Heads of consideration' were raised as an alternative to an AIS to apply in the PPRD SEPP and improve the assessment of impacts on agriculture. Heads of consideration could focus on land identified as SSAL or the RU1, RU2, and RU4 zones in lieu of an SSAL map and aim to:

- ensure that non-agricultural development does not materially adversely impact local agricultural production.
- minimise potential land use conflict between existing agricultural land uses and activities and proposed non-agricultural development.
- avoid encroachment on agricultural buffers or provide solutions on how to minimise land use conflict.
- require proponents of non-agricultural developments to identify and mitigate the potential impacts the proposed development may impose on, or experience from agricultural land uses and activities in the vicinity (see agent of change discussion below).

This kind of direction would enable councils to continue to lead on development assessments and would not increase the decision-making timeframes.

The agent of change principle is an established principle in land use planning but is not always applied in practice. The principle places the onus on proponents of new developments to recognise and mitigate any potential impact that their development may impose on, or experience from, the normal and legal operations of existing land uses in the vicinity. This is commonly seen in residential development where neighbouring properties cannot be built in a way that impacts solar access of neighbouring properties and is also applied in Victoria around music venues and managing noise complaints.

An agent of change principle was widely supported by stakeholders in consultation and the review considers that it should be a standard consideration in development application decision-making processes. It should also apply when investigating nuisance complaints against established operators. Considering operating buffers (see section 5.5.2) of existing farms would be the beginning of integrating the agent of change principle throughout agricultural land use planning.

Some submissions suggested that NSW explore Transferable Development Rights to compensate producers affected by a State policy on agricultural land. A similar system is applied in heritage conservation in NSW and is also used in the USA to permanently purchase development rights and preserve low intensity land use. However, a system that is focussed on addressing individual landowners' interests may not prevent the erosion of green space and productive capacity of the land. The Productivity Commission's *Inquiry Report into the Regulation of Australian Agriculture* echoes this risk. For these reasons Transferable Development Rights are not a solution to the current policy problem. In any case an attempt to 'buy out' development rights on a scale sufficient to make a difference is likely to be prohibitively expensive, despite the use of this mechanism in the USA.

An outline of an example State Significant Agricultural Land Use Planning Policy is included in **Attachment 3**. This reflects the key findings and suggestions from consultation.

Key findings:

- Councils are seeking more direction from the NSW Government on how to plan for agricultural land use and this review supports that request.
- Further policy guidance is not seen as likely to be effective in directing decisions or resolving competing objectives but could be an initial step towards a stronger regime.
- A policy with statutory backing is preferred to ensure it is implemented in practice and with reasonable consistency across NSW. Once a land use policy applying to clearly identified land has been developed and has been appropriately exposed to affected parties the Government should require councils to use the policy.
- A statutory policy will assist councils in understanding the difference between agricultural land and rural land generally and guide them when planning for this land across all levels of planning and decision-making.
- In addition to a map and statutory policy, the RU1 zone objectives should be reviewed to ensure primary production is prioritised (rather than miscellaneous residual land uses). Councils could then use this zone consistently for areas of agricultural production.

Recommendation:

1. The NSW Government should take a phased approach to adopting a statutory State Significant Agricultural Land Use Planning Policy (SSALUP Policy). Initially, a policy should be released, following a public comment process which is implemented through Regional Plans and which councils are directed to implement through strategic planning. Once a policy has been applied through the strategic framework and is seen to be contributing to improved decision-making about agricultural land use, the NSW Government should consider adopting further 'considerations' in the PPRD SEPP to provide councils with clear direction on how to respond to developments on and around SSAL. In addition, the NSW Government should provide councils a checklist of considerations to guide development decisions that impact agricultural land.

2. The objectives, permitted land uses and application of the RU1, RU2 and RU4 zone should be reviewed by DPIE and DPI to ensure there is a clear determination of priority for agriculture (and therefore other permitted uses) in these zones. Following this review the NSW Government should ensure there are clear policies governing land use and consideration of development proposals consistent with these zone objectives.

5.2 Identifying and mapping State Significant Agricultural Land

Problem description:

There is no definition and identification of SSAL, which makes it difficult for councils to strategically plan for agriculture at a regional and local level. The PPRD SEPP has a vacant schedule (Schedule 1) for SSAL raising questions about the role of mapped agricultural land in the planning system.

Evidence and what we heard:

During this review consultations there was a near universal agreement on the need for an effective definition and identification of SSAL. A map is seen by planning authorities, particularly councils, as an essential component of agricultural land use planning, just as it is for other land uses. Namoi Unlimited commented that *“consistent mapping would...give investors and the community certainty about where agriculture will continue to operate.”* Eighty-two per cent of survey respondents supported using a map alongside an agricultural land use planning policy. A map would provide a basis for clearer local planning and manage expectations around what land use is prioritised and where. It would also ensure that a policy is applied where it counts most by targeting a relatively small subset of rural land rather than all rural land. This would also give councils flexibility in how other rural land that is not identified and mapped may be used for other purposes including housing.

Ad hoc agricultural land mapping has been conducted for some specific purposes, and in some local and regional strategic plans because those communities wished to actively promote agricultural land use in their area. This means there are already some maps for agricultural land available at various scales and for various purposes. These include Biophysical Strategic Agricultural Land (BSAL) mapping and the Far North Coast and Mid-North Coast Important Farmland Map. Several Regional Plans committed to mapping important agricultural land in 2015 and DPI began this process but has not released a final product. This process was put on hold to determine if the map would be suitable to define SSAL. Given the reliance of the planning system on maps, some form of map will be required to make a SSALUP Policy effective.

Bega Valley Shire Council suggested the NSW Government was best placed to complete mapping but suggested collaboration with councils to ensure consistency and accuracy across NSW and to ensure that ‘regionally significant’ agricultural land is captured.

Other stakeholders highlighted the sensitivity of any mapping process and requested to be consulted on implementation, including the Riverina & Murray Joint Organisation, Queanbeyan Palerang and Coffs Harbour City Council. Goulburn-Mulwaree Council suggested mapping, although supported, needs to be done in coherence with strategic planning for long-term residential growth corridors. Stakeholders recognised that a standardised approach to mapping across the State might not be fully effective and any map and supporting policy should allow for fine-tuning at a local level.

Councils want a map that could be applied at a cadastral (i.e., property) scale. Tweed Shire Council pointed out that a scale of 1:100,000 could only be used at a property of at least 40ha. Current Government maps, including the BSAL map and the Far North Coast and Mid-North Coast Important Farmland Map are at a regional scale. Although a map at a regional scale may be less accurate at the margins it is still a good guide for councils to understand where that land is in their LGA so they can plan for the clustering of land uses. A regional scale map was supported by NSW Farmers.

The Far North Coast and Mid-North Coast Important Farmland Map is a good example of how a regional scale map can reduce the rate of rezoning of agricultural land. Approximately 150-200 ha of farmland mapped as State or Regionally Significant Farmland has been rezoned from rural zones between 2015-2020 (not including parcels of land less than 5ha). There is 381,998 ha of mapped State and Regionally Significant Farmland on the North Coast. By comparison, the Illawarra Shoalhaven region which has no map, saw approximately 380 ha of its RU1 and RU2 land rezoned to other uses in the same period. The North Coast converted less agricultural land despite having a dwelling target 25 per cent higher than the Illawarra Shoalhaven region.

DPI has the capacity to release a map of SSAL based on existing data sets, which include:

- An expanded BSAL dataset (which covers up to 12 per cent of the State);
- Irrigated lands; and
- Existing agricultural land mapped for its importance (i.e., North Coast farmland)

Many stakeholders emphasised the importance of a map that could capture the strategic locations critical for agriculture, such as areas with good access to infrastructure, processing facilities, labour, and markets. This emphasises that land use and its regulation cannot be an entirely static process and developments in other areas can improve the utility and productivity of agricultural land and landowner options. This would effectively create new high-quality land for producers.

The initial map for SSAL should use existing data sets as a starting point. Although the proposed SSAL map would initially capture mostly biophysical characteristics the map should be improved over time to capture these increasingly critical location characteristics and production options.

A verification process for the map data is necessary to avoid land being captured inaccurately or land being left out. Landowners should be able to provide evidence that their land does or does not meet the defining criteria to be mapped as SSAL. The adaptability of the map would enable it to be fine-tuned over time and respond to environment changes that may impact biophysical characteristics of the land.

Landholders will be keen to understand how the SSAL map interacts with their property, and perhaps more importantly whether identification as SSAL will change the development potential of their land. To ensure landowners are fully informed, DPI should exhibit the SSAL map alongside arrangements for how SSAL will be managed. This will offer stakeholders an opportunity to understand any potential consequences and comment on the proposal. The arrangements for how SSAL is managed could be based on a State-wide version of the approach taken for the Far North Coast and Mid-North Coast Important Farmland Map. It is covered by a Ministerial Direction and its objectives are:

- a) *to ensure that the best agricultural land will be available for current and future generations to grow food and fibre,*
- b) *to provide more certainty on the status of the best agricultural land, thereby assisting councils with their local strategic settlement planning, and*
- c) *to reduce land use conflict arising between agricultural use and non-agricultural use of farmland as caused by urban encroachment into farming areas.*

The PPRD SEPP has a vacant schedule (Schedule 1) for SSAL. Once stakeholders have confidence in the identified SSAL and map and how it will be used, the Government could consider using the SSAL map to fill the PPRD SEPP vacant schedule or removal of that schedule.

NSW Farmers suggested incorporating conservation principles and biodiversity values into mapping agricultural land. Issues regarding biodiversity are outside the scope of this project and discussed in section 5.7.1 of this report. The Environment, Energy and Science group in the DPIE recently reviewed the Biodiversity Offsets Scheme to support a better functioning market with reliable pricing of credits, and to prevent any unintended distortions in market valuations.

Improved identification and mapping of agricultural land will assist in developing better mapping of rural land generally, including conservation areas and landscapes on which agriculture and biodiversity assets co-exist.

Key findings:

- A map is needed to identify SSAL and guide planning for the use of this land.
- DPI should prepare and release a draft map, consult with councils on the map and how it will be used before it is finalised, and make a verification process available for councils and affected parties.
- Consideration of the map in legislated strategic planning processes including Regional Plans and Local Strategic Planning Statements should be mandatory.
- Arrangements for use should be based on the approach taken for the Far North Coast and Mid-North Coast Important Farmland Map.
- The map should be initially based on biophysical characteristics and other relevant existing data sets but improved over time to capture locational attributes essential to the agriculture industry.

Recommendation:

3. The statutory SSALUP Policy should be supported by a map of State Significant Agricultural Land (SSAL). As a starting point, the map should draw on existing and readily accessible data sets including: an expanded data set of BSAL, irrigated lands and the North Coast Farmland mapping. Over time this should be supplemented with Identified Production Areas (see recommendation four) and other areas identified and zoned for higher value or specialised agricultural production.

- The mapping process should include a verification process, which would allow landowners to provide evidence to DPI that the land does not meet the SSAL definition. DPI would determine whether the map needs to be varied.
- DPI should exhibit an SSAL map alongside arrangements for how this land is managed, similar to the arrangements applied to the Far North Coast and Mid-North Coast Important Farmland Map.
- DPI should update the SSAL map as better information becomes available, with a formal review at least every five years.

5.3 Recognising strategic precincts for agriculture

Problem description:

Viable agriculture is not just dependent on biophysical characteristics. Attributes such as access to infrastructure, transport services, power supply, processing facilities, markets and skilled labour are increasingly important. In many cases local culture and special expertise developed over a long period are critical to the success of local industries. Identifying locations which have these attributes could assist councils and industries to effectively cluster these industries, which can reduce costs (public and private), and commercial and regulatory risks. This is particularly relevant for intensive production systems where we expect to see significant growth.

Evidence and what we heard:

Biophysical characteristics do not capture other influences on the viability of agricultural businesses. Cowra Council pointed out that concentrating on biophysical characteristics *"...is a simplistic view (that) may not truly represent the length and breadth of the importance agricultural enterprises in this Region and further west of NSW."*

The term 'Identified Production Area' or IPA was used in consultation to refer to the identification and mapping of locations which have demonstrated or potential capacity for specialised production systems. Examples of these frequently cited are wine, dairy, forestry, berries, poultry, pome, and stone fruit growing, where congregation provides benefits such as access to processing capacity, shared infrastructure and equipment, skilled labour, or tourism. Submissions from industries and councils considered there would be significant benefits in planning for the growth of these areas in a more focussed way to assist existing organic growth.

Both councils and industry representatives advocated for an SSAL map that identifies IPAs, with 78 per cent of survey respondents supporting or strongly supporting this approach. The Costa Group submission agreed that *"the identification of productions areas across the State is important to enable them to be properly considered within planning frameworks. This process must acknowledge that new agricultural technologies and more intensive farming methods do not necessarily depend on traditional agricultural values and inputs such as soil type."* Similarly, the Queanbeyan-Palerang Regional Council agreed that *"identifying and mapping these production areas ensures they are appropriately catered for within the planning framework."*

The *NSW Oyster Industry Sustainable Aquaculture Strategy* (2016) identifies and maps areas of NSW where oyster aquaculture is a *"suitable and priority outcome"*. These locations were identified by considering the location, and environmental and socio-economic factors. A similar approach could be pursued for agriculture.

Stakeholder submissions weren't specific about how IPAs should be treated in the planning framework. Cessnock City Council thought it important to make a clear distinction between state significant production areas, like the Hunter Valley Wine Region, and other more 'generic' agricultural land. Regulatory encouragement can both preserve the advantages businesses have operating in these areas and make the most of growth opportunities. These areas will generally be of regional rather than national significance but some bespoke planning at the

state-level, perhaps through the PP&RD SEPP and/ or Regional Plans, can provide confidence to new and existing investors.

Based on feedback from consultation, there are several factors that could define an IPA, including:

Economic	The area has established agricultural industries that contribute significantly to the regional economy.
Location	The area is the only or most suited location in the nation/state/region where that industry can operate due to a combination of climatic and locational factors.
Interdependency	The area and the industry it supports are a critical component of the supply or processing chain of related agricultural industries.
Infrastructure	The area has, or is proposed to have, significant public and private investment in infrastructure necessary for that industry in that area.

IPAs could target specific industries but would need to remain flexible and evolve in response to market demand and externalities. In doing so, IPAs would not only support historically successful industries but provide encouragement for active planning for future success.

During consultation stakeholders recommended the implementation of intensive farming precincts, specific agricultural zones, and similar concepts to use planning instruments to build on demonstrated regional and local strengths. The consultation paper discussed an option to control land uses in the rural zone, but the concept of IPAs was strongly preferred. This was especially the case for inland NSW where there is scope for significant growth of many production industries, and generally strong community support for these local industries.

Identifying IPAs would assist in ensuring appropriate provision is made for their growth and upstream/downstream needs across local government boundaries. This is a more complex mapping process and would require further development and consultation with councils to do this at a State-level. As an interim step, the IPA process could start at a smaller scale looking at specific locations or industries. DPIE is embarking on precincts policies that include locally specific planning arrangements to provide investment certainty and expedite establishment, e.g., the Regional Job Precinct in the Namoi. As an immediate step the NSW Government could use this precinct to test some of the settings suggested in this report that could then be applied across all inland NSW, IPAs, and other special growth regions elsewhere in NSW.

Planning controls that could be pursued in an IPA (and the other projects involving bespoke planning such as the Regional Job Precincts) raised during consultation include:

- **legacy dwelling eligibilities** - An IPA could introduce a sunset provision to extinguish legacy dwelling eligibilities, reducing the risk of future fragmentation and constraints on growth that councils cannot presently control. It is difficult for councils to know how many legacy dwelling eligibilities exist or where they are located. These legacy caveats can compromise the value of otherwise sound strategic planning and decision-making by councils.

- **consistent buffer requirements** - An IPA could incorporate stricter buffer requirements or 'reverse buffers' to help minimise nuisance complaints or conflict between incompatible land uses. Reverse buffers as applied in other jurisdictions such as Ontario in Canada, avoid new developments involving sensitive receptors in agricultural buffer zones. This means there is mutual recognition by both the producer and neighbour of the importance of the buffer.
- **fast-tracking development and consent pathways** - the development approval process can involve lengthy delays and significant costs for applicants. To help assist and accelerate investment in IPAs, development controls could be established to use the fast-track development and exempt and complying pathways.
- **minimising incompatible land uses** - to minimise the potential for nuisance complaints or conflict arising between incompatible land uses, an IPA planning regime could restrict incompatible land uses (e.g., residential or tourism developments).
- **streamlining integrated development processes** – the approval process for designated development could be expedited by simplifying the content of environmental assessments to target triggers relevant to a specific site.

Key findings:

- There is potential through the planning system to improve the growth prospects of agriculture in the regions.
- IPAs would be a mechanism to provide regulatory encouragement for industry development and growth in these cases.
- An IPA should encourage the clustering of regionally significant industries. They should recognise areas with existing capacity or potential for production that leverages local strengths.
- IPAs should provide regulatory encouragement for agriculture to accommodate industry development and maximise opportunities for growth.
- More consultation is needed on what should define an IPA and how it should be treated in the planning framework.
- Over time, the SSAL map should be expanded to include IPAs.

Recommendation:

4. The NSW Government should identify and promote Identified Production Areas (IPAs) to build on existing and potential comparative advantages of different regions to promote agricultural investment and growth. DPI should consult with relevant industries and councils on their development goals for agriculture and how IPAs could be implemented across NSW.

5.4 Monitoring development and change in use of rural land

Problem description:

It is not currently possible to quantify the impact non-agricultural development on 'agricultural land' has on agricultural production in NSW, and the aggregate answers may not mean very much. There is also no review process to establish the effectiveness of strategic planning in influencing development decision-making at a local level. There was a general concern from stakeholders that the small incremental nature of land use changes was obscuring a more significant cumulative change that was irreversible and inconsistent with stated policy and planning.

Monitoring and reporting on long-term trends that reflect changes to the supply of agricultural land could help establish an evidence base on the scale of the issue, assess the impact on agricultural operations, and lead to adjustments in land use policy settings, particularly in the coastal zones where retention of much of this land is so important to the long-term character of this part of NSW.

Evidence and what we heard:

Almost all stakeholders (86 per cent of survey respondents) supported the NSW Government monitoring and reporting of the loss of land where agriculture is permissible. The State and councils have no oversight of how much agricultural land is available and at what rate it is being converted to other land uses.

Berrigan Shire Council suggested that when the NSW Government is monitoring land use change it also include change in the use of rural land assessed at a point in time as 'best suited to agriculture.' Bega Valley Shire supported monitoring and reporting but suggested more investigation be done to understand what the land is used for or future capabilities. Canberra Region Joint Organisation thought monitoring and reporting on the loss of rural land is vital to making informed decisions about agricultural land use policy, but further recommended that this reporting system also incorporate and have regard to rural subdivision, which can fragment existing rural land. This idea was backed by Goulburn-Mulwaree Council which noted that monitoring "*should also include monitoring of rural subdivision and agricultural land fragmentation.*"

Rural land will be required to accommodate growing urban and rural residential populations, as well as state significant and local infrastructure. Monitoring and reporting on the changes to the stock of agricultural land should not be used to prevent development in these zones. It will help to determine if councils are making development decisions consistent with their strategic plans and the SSALUP Policy supporting the SSAL map. This data would provide a baseline to monitor the rate of change, understand where that change is occurring and provide a basis for assessing whether strategic plans need to be revised or implemented more rigorously.

Councils are currently not consistently applying the RU1 zone to agricultural areas which means a range of zones will need to be captured in a fully developed monitoring regime (including RU1, RU2 and RU4). It would be thorough to consider monitoring re-zoning across

all these zones and comparing the rates of change generally to the rates of loss of SSAL. It is also important to note that not all conversion of rural land to other zones means a loss of agricultural production. Infrastructure and connectivity improvements lift productivity opportunities for producers and where measurable should be recognised in any monitoring and reporting process.

Targets for retention of land for production were proposed in several submissions. Targets can be a key performance indicator of the success of public policies in contributing to the growth and health of regional communities. However, there is not currently an evidence base to set meaningful targets. Targets would also need to be applied on a regional and local scale to be an effective guide to decision-makers in their land use policies and decisions as regulators. As more data becomes available from the mapping and monitoring processes local targets could be considered.

Unlike monitoring changes to land use zones, monitoring land use change itself is a complicated task. Effective monitoring would rely on all councils reporting to the State when they become aware of a conversion of land use in the rural zone to some other purpose. This could not be achieved by State agencies alone. Namoi Unlimited suggested if a policy is applied voluntarily that reporting on every land use change would create complexity and 'red-tape' for councils that already recognise the value of agriculture and agricultural land.

Any monitoring and reporting arrangements need to be practical and cost effective. DPIE Planning can extract data on land use changes in the rural zones where it relates to State Significant Development or State Significant Infrastructure. DPI can also access the stock of zones across NSW using GIS software. Junee Shire Council recommended that this reporting be built into the incoming Planning Portal system to aid consistency in reporting across LGAs. It was also suggested that the NSW Government distribute planning information about rural land availability to councils to aid in strategic planning. DPIE should be ensuring all this data can be effectively captured by existing planning portals.

Key findings:

- There would be benefit in monitoring rural land change over time given the value of the assets involved and their importance to the economic and social health of rural NSW, and much of urban NSW as well.
- Monitoring local land use change is not practical at present as the NSW government does not have a single source of data on local development approvals for non-agricultural uses in zones where agriculture is permissible.
- A monitoring program should begin with the data and evidence that is available and develop over time as improvements become cost effective.

Recommendation:

5. DPI should work with DPIE to monitor changes in rural zones and the effectiveness of strategic plans in influencing development decisions about agriculture and report annually on findings.

- Public reporting should aim to assess the rate of conversion of land in the RU1, RU2, and RU4 to a zone where agriculture is not permissible as well as monitor the conversion of rural land through State Significant Developments. This reporting should distinguish any land classified as SSAL. The report should identify where changes are occurring and whether these conversions are consistent with the relevant Regional Plan. Any land being converted into zones where agriculture is permissible should also be monitored to understand the net land available where agriculture is permissible. Maps could be produced by DPI land use planners at a local government-level if requested by council.
- The data from the monitoring process could be used by the Government to:
 - Establish a baseline understanding of how much and where the rural land is located;
 - Determine the trend in conversion to zones where agriculture is not permissible;
 - Assess the consistency of rezoning with Regional Plans.
- A spot audit should be included in the annual report to test the consistency of development application outcomes with the relevant strategic planning framework in that area. Councils could also use this data to assess consistency with their Local Strategic Planning Statements or other strategic plans.

5.5 Technical amendments

5.5.1 Improving consistency in decision-making & reducing red tape

Problem description:

There are farm structures that are low risk and necessary for the productive use of the land that can require costly and time-consuming development applications even if their construction and use have no implications outside the property. This is caused by either ambiguous or absent land use definitions, confusion over the meaning of an 'ancillary development,' and arbitrary restrictions on the scale of on-farm developments. This creates inconsistency and equity concerns for agricultural businesses across the State, and 'red tape' that is no longer serving its original purpose. It almost certainly also leads to a lot of unapproved structures as the required approvals are not sought.

Evidence and what we heard:

Stakeholders including Hawkesbury Council, Riverina & Murray Joint Organisation, Byron Shire Council and Namoi Unlimited were supportive of clarifying and expanding definitions. Ninety-three per cent of survey respondents agreed there should be consistent and easily interpreted agricultural land use definitions which apply across NSW. The list of land uses in the Standard Instrument LEP does not cover all land uses relevant to agriculture, nor do the definitions comprehensively describe potential agricultural structures and activities. Some agricultural definitions were updated and clarified with the introduction of the PPRD SEPP in 2019 but significant ambiguity remains. Ambiguity in definitions leads to variations in how planning requirements are enforced across LGAs. This can deter investment by adding additional layers of complexity to varying operating standards.

Definitions of the following terms were proposed by stakeholders for **clarification** in the dictionary to the Standard Instrument LEP:

- Artisan food and drink industry
- Beekeeping
- Dairy
- Farm building
- Horticulture

Definitions of the following terms were proposed by stakeholders for **inclusion** in the dictionary to the Standard Instrument LEP:

- Agritourism
- Agricultural activities on acid sulfate soils on coastal floodplains
- Cellar door (cider)
- Essential farm infrastructure
- Equine breeding or training establishment
- Intensive farming (outside of livestock agriculture, such as insect farming)
- On-site rural workers dwellings
- Plantation forestry for carbon sequestration
- Poultry hatchery

- Responsible farming practice
- Small on-farm abattoirs or onsite processing facilities
- Urban agriculture

DPI analysed each of these definitions and has provided advice to DPIE (see **Attachment 4**). One stakeholder recommended improving the definition of onsite rural worker dwellings but there were no suggestions or analysis of the problem provided in written submissions. The issue of a lack of accommodation for seasonal workers was noted in the submission by Berries Australia but it's not clear how the current definition of this development is a hindrance. DPI would welcome further advice from stakeholders on this issue. Responsible farming practices is another definition that has been assessed as out of scope of the planning framework. A definition of 'responsible farming practices' would not comprise a land use and is therefore an operational matter rather than a regulated land use. This issue is taken up in Section 5 of this report.

The benefit of adding definitions to cover more agricultural land uses is that councils and development applicants are clear on how these land uses should be regulated. This could reduce the need for development applications – which is a saving for both proponents and councils. However, definitions may freeze an agricultural practice in time and exclude future practices. Any list of definitions will also be inadequate at the margin by omission. Improving and updating definitions should be an ongoing process.

The Cessnock City Council and the Law Society of NSW recognised the need for a 'future-proof' definition that could capture evolving structures and industries and enable producers to easily adopt new technologies and practices without the need for a Development Application. Goulburn-Mulwaree Council suggested that definitions should focus on environmental outcomes rather than the practice. While this is generally a sound principle the planning framework is built on land use definitions that define the land use and not the outcome, and this may well introduce more ambiguity and greater variability in outcomes.

It is also likely that if defined by principle or characteristics, definitions will be interpreted at a local level, unavoidably involving some inconsistency. Another option raised by Goulburn Mulwaree Council was a requirement to specify reasons why applications cannot be refused, rather than relying solely on either discretionary development assessment processes or exempt/complying mechanisms. This is an established practice in the *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004*.

The definition of an 'ancillary' structure was raised by multiple stakeholders. According to the Planning Circular PS 13-001, '*...if a component serves the dominant purpose, it is ancillary to that dominant purpose...*'. There is a level of uncertainty for councils in determining how to apply this concept to agricultural uses. If something is not defined, it is often assumed by councils that a development application is required rather than assuming the structure is ancillary to a use which often does not require consent. Wider application of ancillary development provisions would allow producers to develop their business facilities and structures without development approvals, but councils need further guidance when it should be used.

Hornsby Shire Council raised concerns about ancillary development permitting non-agricultural uses that would drive further land use conflict. They proposed the non-agricultural development in agricultural areas should demonstrate a 'proof of nexus' between

the land uses to warrant consent. This is a reasonable concern, but this approach could unreasonably limit producers' ability to diversify their incomes and promote their products. The application of this concept in the Hornsby Shire will be monitored for its success and could be considered at a later stage.

Expanding the exempt and complying development framework was also widely proposed as an option in consultation to support growth and improve consistency. Several councils supported more agricultural structures being included in the exempt and complying development framework, including the Yass Valley Council and the Ballina Shire Council. Suggestions raised by stakeholders that would be suitable for the exempt and complying development included:

- Netting structures, poly tunnels and analogous structures (regardless of footprint)
- Accommodation for farm workers
- Installation or re-design of shade structures or feed bunks
- Small farm dams
- Production activities and assets of processing, storage, and handling
- Educational facilities, farm tours, farm stays and accommodation and farmgate sales

DPIE is exploring the last three points above as part of the Agritourism EIE.

Interestingly, some of these options, such as netting structures, were raised as needing definitions in the Standard Instrument LEP. Fifty-nine per cent of survey respondents agreed development approval requirements for low impact, everyday farm activities should be streamlined or removed. This suggests that there is a range of agricultural activities that stakeholders would like to see freed up in the planning framework but there is no consensus on how this should be achieved.

New South Wales' 'exempt' pathway allows developments to proceed without any approvals. The 'complying' development pathway is a combined planning and construction approval for straightforward projects that can be determined by a council or an accredited private certifier. These approvals can be issued in as little as 20 days. DPIE Planning reports that a third of development applications in 2015-16, were fast-tracked through complying development pathways. However, using the exempt and complying development framework for low impact structures such as netting may still over complicate the development process by requiring private certification. It is preferred by some stakeholders that the use of the concept of ancillary development be strengthened.

Ballina Shire Council, Hornsby Shire Council, Shoalhaven City Council, and the EPA recognise the importance of balancing the need to reduce red tape and support development without being too broad where it may lead to inappropriate developments. Accommodation for farm workers is one proposal deemed unsuitable for inclusion as an exempt development in the Code because of the risk generated by the use of these dwellings for ongoing residential purposes or tourist facilities that may increase land use conflict.

Byron Shire Council thought the expansion of exempt and complying developments could allow for a more localised response – to support the use of precincts where local authorities are trying to develop industry aggregations, which could include bespoke zoning or overlay maps. The NSW Government has pursued a similar approach through the Special Activation Precincts and Regional Job Precincts. The NSW Government has also recognised the different

planning needs of inland and coastal councils with the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Inland Code)* (the Inland Code). The capacity of the planning framework to respond to local needs has been proven through these processes and the scope of this local adaptation could be extended considerably.

Councils had no strong views about the effectiveness of the Inland Code in supporting agricultural development. Although it includes some agricultural structures, councils suggested that the Code is more targeted at residential development. There is therefore an opportunity for the Code to introduce more farm-specific infrastructure as an exempt or complying development in inland areas. However, it is important that the settings for complying development should reflect the risk of the development.

CASE STUDY: Silo development – essential for production

Under clause 2.32E(g) of the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*, a land holder is limited to construction of five silos for the purposes of storing grain. As a result, the sixth and subsequent silos trigger the need for development approval. This is clearly not a regulation that reflects modern operating practices, or even government policies which encourage drought preparedness. Silos are a required structure for most livestock and grain businesses, and it is not uncommon for a farming business to require many more than five silos. The minimal risks associated with silos can be managed through the complying development standards. The number of silos permissible under the Code should not change how the environmental risks are managed.

The discussion with stakeholders on definitions, ancillary structures and exempt and complying development has made it clear there is a need for more consistency and certainty in how agricultural developments are regulated in the planning framework.

Key findings:

- There are several agricultural practices that should be defined in the Standard Instrument LEP to enable tailored planning pathways (see **Attachment 4**).
- Land use definitions should be clear, so they are easy to use by planners but not viewed as an exhaustive list.
- Land use definitions should be reviewed regularly to reflect developing operating practices. The NSW Farm Practices Panel recommended by this review (recommendation 12) would be well placed to assist.
- There is a lack of information around when structures are ‘ancillary.’ Information should be made available so that it is clear to councils when structures are ancillary and when they serve their own purpose.
- Industry is looking for more consistent application of planning requirements across LGA boundaries. Removing the need for development approval for low impact structures would reduce ‘red tape’ and business costs.

- The Inland Code could be used more ambitiously to support streamlined development regulation of agriculture in a way that would reflect economic priorities in this part of NSW.

Recommendation:

6. The NSW Government should seek to reduce red-tape for agricultural development and investment by:

- **DPIE working with DPI to investigate and revise the suitability of definitions of the following terms in the Standard Instrument - Principal Local Environmental Plan:**
 - Beekeeping
 - Equine breeding or training establishment
 - Horticulture
 - Intensive livestock and plant agriculture
 - Plantation forestry for carbon sequestration
 - Small on-farm abattoirs
 - Urban agriculture
- **DPIE working with DPI to provide clarity and guidance on how ancillary development for agriculture works in the planning framework, with specific examples.** This may include a list of 'considerations' to guide interpretation.

7. The NSW Government should adopt the principle that development controls for inland NSW should be more accommodating of agricultural operations and development, and that the Inland Code is an appropriate mechanism for implementing this principle.

- DPIE should review the Inland Code and identify opportunities to expand exempt and complying developments and other regulatory concessions following the delivery of the localised precincts (e.g., Regional Job Precincts) and experience with their policy settings or within two years using the evidence available at that time.
- The NSW Government should extend the lessons from the bespoke planning settings in the Namoi Regional Job Precinct more broadly across inland NSW, to promote investment. Elements being considered for the Namoi Regional Job Precinct include reviewing legacy dwelling entitlements, applying consistent buffer requirements, fast-tracking development and consent pathways, minimising incompatible land uses and simplifying integrated development assessments. If successful and applicable, the lessons from IPAs could be applied across inland NSW.

5.5.2 Streamlining the development application process

Problem description:

The development application process for agriculture is complex and can often be delayed due to complaints being made by the public or councils asking for supplementary information.

Evidence and what we heard:

Landholders expressed frustration with the complexity of development applications and the ability of politically motivated and self-interested interests to influence or delay decision-making on their applications. They noted that public submissions are not always well informed but can still be influential. There was not a shared view on how to address perceived gaps in understanding in a development approval process. Seventy-three per cent of survey respondents agreed council processes should consistently consider and weight/prioritise public submissions. Councils generally argued that they do prioritise submissions that deal directly with a development's content or are from parties directly affected by the application.

It was recommended by some stakeholders that submissions on a development application provide names and addresses to ensure some accountability for the content of the submission. This would however not stop people using false details and there would be privacy concerns of sharing personal details if public submissions are published for transparency.

Cessnock Council also suggested that some residents live elsewhere and use their property as a holiday house or rental property. These residents should still be able to express concerns about developments impacting their properties despite not being permanent residents. The planning framework encourages public engagement irrespective of someone's location. This is because some developments may have wider impacts that impact the amenity of a locality that people may visit often or use for recreational or non-residential purposes.

All councils should be adopting internal policies that prioritise public submissions that are from directly affected parties and engage with the content of a development application, over those making values-based or political judgements about the development proposal. They should make those policies known to ratepayers and development proponents. It is important that all participants in a development application and approval process are accountable for their contributions.

To streamline development processes Cordina Chickens recommended that a template be adopted for intensive livestock developments which *"...recognises the operational constraints of intensive livestock agriculture and which outlines the fundamental assessment processes for such developments."* This would give producers reassurance they know what to expect from the process. There is clearly merit in a more standardised and predictable process which is largely known at the outset. Councils raised the idea of mandating pre-development meetings which can help inform a proponent of the process and required documents before

an application is lodged. However, this could add to development approval timeframes and not all councils would have the resources to provide this service.

Tamworth Council highlighted that community concerns can arise when a development application is submitted, despite earlier engagement between the proponent and the likely affected stakeholders. This can be frustrating for the proponent; if they were better informed of likely feedback, they could prepare information to support the application. Tamworth Council suggested that consultation could be required before a development application is submitted.

Consultation is mandated as a part of the development application process for State Significant Development. Requiring prior consultation for all approvals would likely be onerous and unnecessary for smaller development applications. Councils already exhibit development applications for public comment and requiring prior consultation could further slow the development application process.

Nevertheless, there are different assessment practices across councils making the development approval process difficult and unpredictable and there would be benefit from sharing these experiences in a more systematic way.

The Navigating Farm Developments platform being developed and tested by DPI at present has the potential to address some of these concerns. The platform allows proponents to determine the site options for a development on their property and to identify specific information that may be needed to support their development application. A digital platform for producers is a potential vehicle to deliver better informed applications and streamlined approval processes without burdening proponents or councils.

Key findings:

- All participants in a development application and approval process should be accountable for their contributions.
- Councils generally prioritise public submissions based on proximity and potential direct impacts. They should make their policy for handling submissions publicly available to improve confidence in their administration of the development application process.
- The development application process should be simplified for producers and standardised to the extent possible so there is increased transparency and consistency for all parties.

Recommendation:

8. Subject to receipt and consideration of a positive business case, the NSW Government should support the digitisation of farm development planning through the Navigating Farm Developments Platform. DPIE Planning should provide technical input and assistance to help integration with the ePlanning and spatial portals. This would simplify the development application process, maximise investment potential and improve confidence in the planning system.

5.5.3 Buffer guidelines and the agent of change

Problem description:

Buffers are a key tool for land use regulators in avoiding and minimising land use conflict at a property- and neighbourhood-level. Their use should be considered in all relevant development approval processes. However, there are no clear buffer rules for different agricultural industries and where buffers are applied, they are often not accepted by neighbours or in considering subsequent developments.

DPI has developed guidelines for buffer areas between certain types of agricultural operations and conflicting land uses. However, these are not mandatory and not applicable for all farming operations. They would also benefit from a review to ensure they incorporate current science and best practice from other jurisdictions

Councils are not compelled to consider agricultural buffers and there are no consequences for building within an established buffer. Construction of residences within a buffer introduces new sensitive receptors to the area and produces land use conflict.

Evidence and what we heard:

Buffers are recognised by councils as an effective tool for helping to reduce land use conflict but could be far more effective if they were supported by better analysis and applied rigorously. Rural buffers are also widely used to provide for green 'wedges' which retain some natural environment and amenity around built up areas.

Stakeholders and the 2020 Australian Farm Institute's report, *'Managing farm-related land use conflicts in NSW'* identified that buffers are not being applied and maintained consistently between LGAs. All stakeholders recognised the importance of buffers and wanted more done to improve how they are applied. Eighty-nine percent of survey respondents agreed that the NSW Government should produce further guidance to clarify and consolidate buffer requirements for various agricultural industries across all LGAs.

Both Bega Valley Shire Council and Goulburn-Mulwaree Council suggested a land use strategy explore what mandatory minimum and maximum buffers could look like. Mandatory buffers will not always be achievable, particularly in peri-urban areas where lot sizes may be too small to accommodate distance-based buffers and other mitigation measures may be necessary. Tweed Shire Council suggested that a consistent framework for buffers be established so that they can be determined in a consistent way across NSW.

Cessnock City Council and Byron Shire Council suggested that buffers should respond to changes in industry practices and reflect industry best practice. The Riverina Joint Organisation emphasised the risk of a 'one-size-fits-all' approach to buffers. Canberra Region Joint Organisation recommended consent authorities be given discretion as to the suitability of buffer distances between two developments on a case-by-case basis, imposing consent conditions to reduce the risk of land use conflict where this is possible.

The issue of developments being built within operating buffers was often raised as an issue where the 'agent of change' principle could be applied. The Department of Environment, Land, Water and Planning in Victoria conducted a review of separation distances in 2019 and identified the importance of effective buffers applied consistently and equitably in an agricultural context. The concept of self-contained buffers has been raised through this review. This process has highlighted the importance of buffer guidelines being regularly reviewed, based on best practice and taking into account community expectations.

CASE STUDY: Feedlot development stifled by neighbouring dwelling

A large feedlot development was not pursued in regional NSW due to a dwelling approval being unexpectedly sought and approved on a neighbouring commercial operating farming property.

The proposed feedlot site was well suited to the development due to its topography, water, access to labour and strong support from the local community and Council. However, during extensive consultation on the proposal, a dwelling was approved to be built near the boundary of an adjacent property, within the exclusion zone around the proposed feedlot site.

The feedlot proponent assessed that the risk of future potential land use conflict with the dwelling could jeopardise the operation of the feedlot. The Council estimated the economic loss to the area to be more than \$700 million over 10 years, with 75 direct jobs and flow-on employment opportunities for 125 in the local area and 345 in the region lost. The project proponent has other site options in other States and regions.

Stakeholders shared their experiences of established operations which suddenly became the subject of action by the council or the EPA as a result of new neighbouring or changing land uses around them that have encroached on previously established buffers. In some cases, complying development rules have enabled new dwellings to be established without the neighbouring landholder's knowledge. This has introduced new sensitive receptors and ultimately made the producer non-compliant with recommended buffer standards as well as noise and odour regulation. In other cases, there is a change in neighbouring ownership and new residents are less tolerant of the smells and noises of agricultural production which again increases the likelihood of enforcement action against producers.

Goulburn-Mulwaree Council suggested it may also be suitable to include a principle of mutual responsibility, requiring consideration of the impacts of the future development potential of adjoining land. An expression of interest style system could also be instituted to allow agricultural operations to declare an intention to use a site for intensive agricultural development to prevent such an instance from occurring, prior to lodging a development application.

Eighty-eight per cent of survey respondents agreed new developments should be responsible for accommodating buffer needs of existing neighbouring agricultural operations. The responsibility for mitigating potential nuisance from normal and legally compliant agricultural operations should ideally rest with the proponent of the new introduced land use. There will unavoidably be a need for change in some localities, and the agent of change principle may not be appropriate in all circumstances. There would need to be capacity for local judgement in applying this principle in these cases and the buffer guidelines should assist councils.

CASE STUDY: Neighbouring noise complaints impact best practice

A specialty herb and produce grower established in 2008 began using fans in 2016 to improve its production. Circulating air is considered best practice to prevent mould and fungus. Neighbours on the adjacent property have regularly complained about a constant humming noise from the fans and power generator. The neighbouring house was built in 2016.

The business is operating in accordance with its council approvals. To mitigate concerns, the business replaced all its fans with lower noise fans and reduced the number of fans. Responding to these complaints through legal costs and mitigation measures has imposed a significant financial and emotional cost on the grower.

In 2021 the NSW Land and Environment Court ruled that the noise emanating from the grower was unreasonable, and the grower was ordered to comply with an Operational Noise Management Plan to ensure the noise does not exceed more than 5dB above background noise when measured as an Equivalent Continuous Sound Level (LAeq) over 15 minutes. The grower was also required to install acoustic barriers and impose limitations on certain plant and machinery locations and operation times. There is perhaps more work to be done to understand if noise standards are set at the right levels for agriculture if it means best practice can't be followed.

CASE STUDY: Proposal to rezone land near three poultry farms to enable residential development

A 2020 planning proposal is seeking to rezone RU1 Primary Production land to RU5 Large Lot Residential and reduce the minimum lot size to enable 38 rural residential allotments. The proposed site has three poultry farms nearby. Chicken farming is an important part of the local economy.

The proposal has a high risk of causing land use conflict as the allotments are within 500m of neighbouring poultry sheds. Any resulting land use conflict will impose costs on the established producers as they may need to commission professional reports on noise and odour modelling to appease future complainants.

Applying the existing buffer guideline could help to mitigate this risk. It recommends a minimum of 1000m buffer for intensive chicken operations. At the very least, planning authorities should be considering how a buffer could be applied to suit the site.

Buffer recommendations in NSW should be reviewed to improve their scientific rigour and ensure that all industries can access these guidelines. The separation distances themselves should be able to respond to the unique circumstances of a development and the site conditions.

Other jurisdictions are working on this issue given its significance as a planning and development assessment tool, and the relevant science, along with operating practices and technologies are constantly developing.

Key findings:

- Buffers are a very important tool to reduce conflict and their effective use is seen by almost all interested parties as essential.
- Buffer guidelines should be easy to access, be based on contemporary science industry best practice, and draw on analyses and experience in other jurisdictions.
- The existing guidelines should be updated and should have more formal recognition in the planning framework. They must also be applied in a flexible way to reflect local conditions and surrounding land uses.
- A comprehensive policy for agricultural land use planning should recognise the agent of change principle and require consideration of buffers in the Standard Instrument LEP because at present it is the most used and effective case by case mechanism for minimising land use conflict.
- The agent of change principle could apply only to those zones where agriculture is permissible.
- Complaints should not be escalated if the complainant has initiated the change in land use or occupation status.

Recommendation:

9. The NSW Government should require that councils consider the use of buffers for agricultural operations in relevant development application approval process.

This mandatory consideration, implemented through the Standard Instrument LEP, should also apply the agent of change principle so that established buffers are considered in neighbouring development decisions. This principle should also guide enforcement activities and responses to complaints made against farming activities.

- DPI should review existing buffer guidelines and work with industry and councils to ensure they reflect contemporary science, best practice and meet regulatory needs. Over time this could contribute to the work of the NSW Farm Practices Panel (recommendation 12). The ability of councils and proponents to identify where buffers are in operation should be improved and the function and integrity of existing buffer conditions in development consents reinforced.

5.5.4 Planning legacies and dwelling eligibilities

Problem description:

The rural landscape is increasingly being fragmented by residential development which affects rural land values, introduces sensitive receptors potentially incompatible with agriculture and may make agricultural operations unviable. Fragmentation is mostly driven by decisions to reduce minimum lot sizes or enable dwellings on undersized lots.

Evidence and what we heard:

Fragmentation of agricultural land is one of the primary factors reducing its capacity for continuing productive agriculture and is already identified as an area of concern in the Standard Instrument LEP. However, as discussed earlier, it is not clear how councils should identify and address *'the fragmentation and alienation of resource lands.'* Fragmentation of rural land can lead to competition for the land from other land uses and 'sterilise' future land use options. On the other hand, small lots are in demand from those seeking a rural lifestyle and can benefit local communities if provided in a planned way.

Each council can set their own minimum lot size. Usually lots below the minimum lot size do not have dwelling eligibility. However historical policies on dwelling eligibilities in some cases, remain in place despite changed local planning policies. These historical eligibilities result from planning decisions in the 1960's – 1980's, where they provided compensatory development rights (concessional allotments) and building rights (existing holdings) for landholders when planning controls were introduced.

The problem created by these eligibilities is that they can undermine local and regional planning. Significant projects consistent with local objectives can be frustrated and even prevented from proceeding by the use of these legacy eligibilities. It is difficult to know how many of these eligibilities exist or their location, which means the risks they present cannot be 'managed' by councils. Councils would need to assess each lot and the planning instrument under which it was created to know how many exist in their area. With hundreds of thousands of lots in each LGA this would be an unsurmountable task.

The potential for dwellings to pop up randomly throughout the rural zone because of these historical settings presents a real risk to effective local strategic planning. The continued use of these dwelling eligibilities has seen adverse outcomes for agriculture and the integrity of the planning system generally. Not only are more sensitive receptors introduced to the rural landscape, but agricultural assets can be impaired. There have been attempts by councils to extinguish unused entitlements through sunset provisions, with some but limited success. Landholders who are aware of concessional arrangements on their properties naturally tend not to support the loss of these entitlements.

Larger rural lot sizes have been recommended by some stakeholders to better avoid land use conflict and provide good buffers with surrounding land uses. The minimum lot size for rural land is often a reflection of historical policy and not based on contemporary evidence. Achieving the minimum lot size does not guarantee that the land will continue to be used for agriculture as the size of the lot may not be commercially viable. There is also some evidence

that minimum lot sizes can be too large – too small to be viable for a commercial business but too large for effective hands-on management. With continuing pressure for small lots and rural residential developments policy development by councils would benefit from research into minimum lot sizes.

Key findings:

- Introducing unplanned residential activity in the rural zone should be avoided.
- New dwellings established on small lots as a result of historical dwelling eligibilities fragment the rural landscape, introduce sensitive receptors, and undermine efforts for effective local strategic planning.
- It is difficult for councils to know how many eligibilities could be activated but it is believed to be a large number, in most cases not known to the landowner or council.
- State intervention is needed to support councils to remove the transitional arrangement of concessional lots to improve the integrity of local planning.

Recommendation:

10. The NSW Government should require councils to improve the integrity and effectiveness of their rural zoning arrangements by phasing out concessional dwelling eligibilities and existing holdings clauses in the rural zones and provide appropriate support to do so. Any land holder with an existing dwelling eligibility on a concessional allotment or existing holding could be given a period of five years to submit a development application before the eligibility is extinguished.

5.6 Education

Problem description:

Land use planners prepare strategic plans and undertake assessments and make recommendations on proposals for agricultural activities or those which impact agricultural land. While professional land use planners working with the agriculture sector are generally well informed the review heard that staff turnover and local complexities mean familiarity with local production needs is an ongoing challenge for councils. Improving the capability of local planners to understand agricultural practices and planning needs would improve consideration of agriculture in the planning process. There is a separate problem with the growing detachment and gap in understanding between production agriculture and the urban and even rural residential communities close to those operations.

Evidence and what we heard:

Education was highly supported across all stakeholder groups to target a range of audiences including council planners, councillors, Government officials and the public living near agricultural operations. Eighty six per cent of survey respondents supported improving the education offering. Education is critical in assisting planners to understand the planning needs of agriculture but also to encourage peaceful co-living between different land users in the rural zone. But it was emphasised strongly that education alone is only a minor part of a solution to land use conflict, and stronger regulatory mechanisms are also necessary.

The main issues stakeholders identified as needing more education include:

- General principles for agricultural land use planning, particularly regarding the use of buffers and avoiding fragmentation.
- Determining appropriate buffer requirements for different operations.
- Operating needs of an agricultural business that must be taken into account in a development approval, such as hours of operation and vehicle movements.
- Risks involved with different types of agricultural operations, including noise and odour but also visual amenity and water use.
- Effective means of mitigating land use conflict through site planning and design.
- Understanding how to use the Land Use Conflict Risk Assessment guide.
- The reasonable expectations of agricultural producers operating near dwellings in rural and peri-urban environments.
- The reasonable expectations of those neighbouring residents and communities about local producers and their operations

DPI could offer more support to council planners on the potential impacts of new agricultural developments, and on the impacts of non-agricultural developments on agricultural operations. It is the proponent's responsibility to detail in their application the operational components of an agricultural development, but a sound assessment of that application requires knowledge of agriculture and the needs and practices of agricultural businesses. These support services could include advice on clarification of industry requirements and interpretation of planning law. Currently, DPI issues a range of guidance and information material and can support councils to understand technical elements of agricultural development applications as well as providing advice on strategic planning for rural areas.

This support could be offered through an education program. The education program could focus on two audiences:

- Local government planners and planning consultants to increase their understanding of the complexities and needs of agriculture and how these can be managed through the planning system.
- The wider public and communities adjacent to producers in particular, to improve understanding of modern agricultural practices to offset to some extent a growing detachment from rural Australia and the agriculture sector.

Ballina Shire Council recommended, in developing such programs, that particular attention be given to specific examples illustrating where understanding the particular need of agricultural enterprises might materially affect the decision-making process associated with development assessment or preparation of local strategic plans.

Improved education and awareness for new residents moving to rural areas on the realities of living in rural areas was proposed by several stakeholders to assist in addressing the growing incidence of 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. It was proposed that this approach could be required across NSW. However, the Section 10.7 certificate is issued when the decision to purchase has already been made and would not deliver continued education about contemporary agricultural practice.

Key findings:

- The NSW Government through DPI should provide councils with education that supports them to understand, interpret and apply planning instruments relating to agriculture.
- Councillors also need education about how to positively plan for agriculture.
- Councils and the broader public would benefit from understanding more about agricultural operations and how this is relevant in land use planning generally.

Recommendation:

11. DPI in partnership with relevant NSW Government agencies should implement education programs for council planners, councillors and the wider public about agricultural land use planning needs and the planning instruments that support these uses. The education programs should be targeted to the audience and aim to:

- Educate council staff and councillors to improve planning and decision-making, issues covered should include:
 - Land use conflict
 - Rural Strategic Planning
 - Buffers
 - Rural worker dwellings and the importance of supply of agricultural labour
 - The practices and needs of particular agricultural industries.
- Educate the wider public to improve understanding of rural Australia and the operations of the agriculture sector, this will include revising the Living and Working in Rural Areas Handbook.

Over time these education materials should draw on the work of the NSW Farm Practices Panel (see recommendation 12).

5.7 Other matters to support the growth of agriculture and regional economies.

5.7.1 Energy, water, mining, biodiversity, forestry

Several policy areas outside the scope of this review of the planning framework were raised in submissions and broader consultations. This review has already covered a wide range of issues, and these other important issues could be addressed in further phases of a planning policy review.

Stakeholders including the NSW Farmers Association, regularly expressed significant concern about the development of renewable energy infrastructure and associated transmission capacity on agricultural land. It's clear that there is significant anxiety in some communities affected by energy and infrastructure developments. This reflects concerns about landscape disturbance, impact on the value of nearby land, the potential for land use conflict and fragmentation or sterilisation of good agricultural land, uncertainty about decommissioning obligations and outcomes, and the inevitable creation of 'winners and losers.'

There is a pressing need for this energy supply and the required transmission infrastructure. As always, those who are directly affected can be expected to have strong feelings about these projects, and they can raise policy conflicts when they are located on land currently in production. On the other hand, energy infrastructure is a source of diversified income for landowners, independent of the variable income streams associated with agriculture.

This is yet another example of the conflicting policy objectives that land use planning must confront. Early experience already suggests that as the scale of these investments grows, dramatically positive responses to these local concerns will be important to winning community support for these necessary developments.

The NSW Government has released an *Electricity Strategy and Electricity Infrastructure Roadmap* which will establish five Renewable Energy Zones - in the Central-West Orana, New England, South-West, Hunter-Central Coast, and Illawarra regions. Clustering this infrastructure is an efficient model for planning as it will minimise the physical footprint and costs. This infrastructure will inevitably involve the use of agricultural land.

There will be a transition phase as renewable developments respond to the opportunities in these locations, and landowners in these areas will be affected in different ways and react accordingly. The NSW Government should ensure that the impact on agricultural land is minimised where this is a realistic option, and communities are reassured about decommissioning arrangements and their other concerns where this is feasible. The DPIE is currently undertaking a public consultation process to do this.

There are existing review processes on some of the other matters raised during consultation including water, forestry, and mining. These include issues relating to water, mining, biodiversity, and forestry including the Regional Water Strategies, Private Native Forestry Review, and the Biodiversity Offsets Scheme. This review has not considered these issues in any detail but endorses the principle and practice that these projects should be based on rigorous regional and local planning and accepts that it is not possible to address the concerns of all affected parties.

5.7.2 Role of the NSW Agriculture Commissioner

The NSW Agriculture Commissioner was appointed in August 2020 and was asked to undertake a review of elements of the NSW planning system as they affect the agriculture sector. The Commissioner does not have any statutory powers and does not need them to undertake tasks of this nature. Individuals and organisations with an interest in these issues have been generous with their contributions and the gaps that exist in the evidence base result from the absence of data rather than unwillingness to make it available. Information gathering powers would not have improved the evidence base in this report.

A few submissions and discussions during the consultations argued that the Commissioner requires statutory powers to be effective. The key issue is what functions the Government wants the Commissioner to perform. If they are reviews aimed at improving policy and decision-making systems, such as this one, no powers beyond the Government's general and public support are required. If the Commissioner were asked to intervene in individual cases and provide a mediation or arbitration role some powers would likely be required to undertake those tasks in an efficient and timely way.

The issue of the Commissioner's functions is a matter for the NSW Government. The only comment the existing Commissioner would make is that improving policy, systems and structures that apply across the State is likely to have a much higher return for the public and agriculture sector than applying the same resources to the resolution of individual cases, however worthy they may be.

6. Reducing and managing land use conflict

6.1 NSW Farm Practices Panel

Problem description:

There is no simple, accessible, and impartial mechanism for producers, complainants and individual Councils to resolve land use conflict. The management of this important and increasingly difficult problem is therefore mostly dependant on the skill and commitment of those Councils and their staff. While this is considerable in many cases and will be important in any future management scenario, these arrangements on their own are not a sustainable way to handle a problem of this nature.

Land use conflict can have a significant impact on the economic and emotional resilience of agricultural producers and their businesses, the communities in which they operate, and on nearby urban communities. Although we have not been able to quantify the incidence and significance of this conflict it seems to be universally accepted that this is a major and increasing problem. This was one of the main rationales for commissioning this review. These have also been the subject of numerous studies and inquiries.

As this is an issue that relates to existing businesses and their operations, as well as new investments, it is the most significant economic issue considered in this report. Moreover, it affects the wellbeing of communities in which it is occurring.

Apart from the underlying trends of population growth and movement, and increasing investment in intensive systems, the difficulties associated with this conflict include:

- A growing lack of understanding and acceptance by urban and semi urban dwellers of agriculture production practices. It is worth noting that a majority of the community complaints are believed to be about compliant operations and practices. According to the Australian Farm Institute's 2020 report, *"...many conflicts are fostered by misunderstanding of what constitutes a 'normal' farm practice"*;
- A lack of clarity and source of authority in determining what are 'normal' or acceptable farming practices for councils, potential complainants and in many cases producers themselves;
- Pressure on councils to approve developments which reduce the separation of dwellings and production systems;
- Pressure on councils to approve opportunities for non-farm or ancillary income from owners of land that is not of commercial scale and struggling for viability;
- A small minority of producers who do not adhere to industry standards, are not subject to effective enforcement and compliance incentives, and undermine the work of most producers to avoid this conflict;
- The onus is perceived to be on producers to appease the complainant and defuse conflict rather than testing the merits of the complaint.

Evidence and what we heard:

As noted elsewhere in this report land use conflict and its consequences can be observed globally and in most Australian jurisdictions. It is obvious why this should be so and why there would be a perception that it is becoming more difficult to manage. The underlying pressures of growing populations, and urban and rural residential developments are powerful. In addition, more recently we have seen renewed interest in investment in the agriculture sector based on high prices and expectations of strong global demand for some time. Much of this investment will be in intensive production systems and, given the viability problems in coastal areas noted earlier in this report, landowners in that zone will want to make these investments to improve their commercial performance. This will inevitably bring increased concerns about noise, odour, and the visibility of these operations.

In 2018, the University of Technology Sydney released the report, 'Right to Farm Agricultural Land Use Survey.' This captured survey data from councils over three years and revealed the scope of agricultural land use conflict. Councils generally considered that they were doing their best to manage these issues locally, but many were struggling and concerned about current trends and the impact on their communities. They also considered that there were no available mechanisms that would make a material difference to this trajectory. Despite being widely considered a significant problem there is no ongoing data collection on the type, scale and trends in conflict that could inform future policy.

The options paper sought feedback on how to improve the management of land use conflict involving agriculture. The conflict experienced in coastal areas is generally different in scale and intensity to that experienced west of the divide. The main type of conflict experienced in coastal areas involves nuisance complaints against established operations while the conflict inland can involve disputes over development applications. The options paper included options using an existing dispute resolution body and establishing a new dispute management body.

Stakeholders were sceptical about the effectiveness of using an established dispute resolution body, even with adaptations to suit this purpose. Most emphasised the importance of any resolution body or mechanism having agricultural expertise, being affordable to access and able to deal with matters quickly.

Stakeholders did not support any version of the Land and Environment Court option, primarily due to cost. Some other existing bodies were suggested in written submissions, such as Regional Planning Panels and Local Planning Panels but they did not attract much support. Regional Planning Panels are focused on complex regionally significant developments and Local Planning Panels are responsible for determining sensitive, complex, and high-value Development Applications with a high corruption risk, sensitivity, or strategic importance. Similarly, the Independent Planning Commission's role is not related to this form of land use conflict, and it is hard to see how it could feasibly be adapted to provide a service in this area without detracting from its primary mission. These bodies have been established to solve entirely different problems.

In Victoria, a Panel of Animal Industry Experts has been established to provide guidance on development application standards to both councils and producers/investors. This panel provides expert advice on what development approval conditions could be applied given

comparable agricultural operations. Although this model incorporates agricultural expertise it is an advisory body and only provides advice on proposed developments rather than disputes arising from existing operations. It therefore addresses only part of the problem we are examining here.

Stakeholders called for dispute resolution dedicated to intensive industries, because of the significant amount of land use conflict these operations can face. However, all agriculture industries would benefit from minimising land use conflict and resolving it quickly when it occurs.

The options paper also explored models of new agriculture-specific dispute resolution bodies. Some councils and landholders were strongly supportive of a new dispute resolution body that has the power to assess and settle disputes. Goulburn-Mulwaree Council suggested that a body like the Ontario model would be useful and could be pursued as a trial to see how farming practices could be defined for protection from legal appeal processes.

In the province of Ontario, Canada the Normal Farm Practices Protection Board was established under the *Farming and Food Production Protection Act 1998* to hear and rule on farm practices matters. The Board has the power to inquire into and resolve a dispute involving an agricultural operation and to determine what constitutes a normal farm practice. The Act provides that a farmer is *'not liable in nuisance to any person for a disturbance (odour, dust, flies, light, smoke, noise, and vibration) resulting from an agricultural operation carried on as a normal farm practice'*. A 'normal farm practice' is defined by the Board. The members of the Board represent a range of agricultural industries and experts. The vast majority of cases are resolved through a form of mandatory mediation before matters escalate to the Board for arbitration.

Stakeholders generally supported a process which 'authorises' acceptable or normal industry practices without more regulation, red tape or duplication of existing industry codes of practice. There was some concern that defining acceptable farming practices could freeze operations in time and create an ongoing cycle of defining what sits above and below the line of acceptability. This is a risk but should be manageable and a minor problem compared to the conflict it would address.

In February 2021, the Australian Farm Institute released a report on *'Managing farm-related land use conflicts in NSW'*. A key conclusion in this report is the need for the acceptance and defence of State-wide acceptable agricultural practices by government, agencies, and industry. The report identified that many agricultural land use conflicts are fostered by misunderstanding of what constitutes a 'normal' farming practice, and most are about legally compliant practices. Agricultural disputes can be very technical, often requiring complex expert reports into odour, noise, and water management. It is clear that any body tasked with resolving agricultural disputes requires access to technical expertise and has the capacity to make judgements about the acceptability of the conduct or practices involved.

This review recommends the creation of a NSW Farm Practices Panel. It should be composed of people with appropriate technical capacity (such as public policy, law, science (including environmental sciences), commercial operations, etc.) and independent of the industries typically involved in land use conflict. Its principal task would be to assess and where satisfied endorse industry codes of practice. Codes would need to comply with current laws,

adopt contemporary practices, and address those operations and activities that are the subject of complaints. The codes would provide valuable reference and guidance material for producers, regulators, and communities. The scope of a NSW Farm Practices Panel is outlined in Box 1 below. The endorsed codes would be available for producers and councils to use in development consent decision-making. Compliance with endorsed codes should be taken into account in any legal proceedings. This would provide a much-needed incentive for compliance with publicly scrutinised and documented industry practices.

Once the Panel has been established and its work is seen to be contributing to better overall management of this conflict, the NSW Government should assess the potential benefits of enhancing its role. The developing experience in other countries and Australian jurisdiction would assist in that assessment.

There has been some concern about the work required to develop codes of practice. Codes of practice and conduct are widely used by industries themselves to improve practices and community acceptance. They are also used in legal regimes such as those administered by the Australian Competition and Consumer Commission for a range of industries. There are codes in place for a variety of agriculture industries in NSW already, as well as in other jurisdictions, and there is a lot of material available for industries which decide to participate in this scheme if it is implemented. In any case, the key judgement industry sectors would need to make is whether the cost and effort required to develop a code of sufficient quality is warranted by the potential long-term net benefits.

This review has found that the policy measures recommended below would fill a large gap and offer benefits for all the parties affected by land use conflict. The key principle it would follow is that producers using legally compliant and responsible practices should have reasonable confidence in operating their business, and potential complainants should have access to authoritative information about their reasonable expectations of those producers.

Box 1: Potential role and scope of an NSW Farm Practices Panel

The purpose of the NSW Farm Practices Panel is to reduce land use conflict by assessing and endorsing industry codes of practice and in doing so provide an authoritative resource on what operating practices commonly associated with land use conflict are 'normal' and should be regarded as acceptable. This will support the delivery and implementation of key actions in the Agricultural Land Use Planning Strategy by providing clarity for all affected parties and increase the incentive for producers to comply with those practices.

The Panel should:

- Invite agricultural production industries to submit Codes of Practice for assessment and endorsement if they meet the Panel's expectations.
- work with government (including the NSW EPA, NSW Environment Energy and Science, DPI and DPIE), councils, industry stakeholders and the community generally through an open public process to assess proposed industry codes of practice for consistency with relevant legislation.

- draw on international and domestic practice and contemporary science in assessing codes.
- encourage industries that do not have established codes to develop them as a means of codifying the reasonable expectations communities can have of producers.
- establish a process to ensure the farming practices are regularly reviewed for currency and accuracy, including considering requests to amend codes to reflect new practices.
- in the process of reviewing codes of practice, balance the needs of the agricultural community with the health, safety, and environmental needs of local communities.
- endorse the code so that it may be used confidently by producers and enforcement agencies in their management of conflict and used by consent authorities in considering development applications.

The Panel members should be appointed by the Minister for Agriculture for three-year terms. The members should be independent of agriculture industries and the Government agencies involved in this area of regulation.

Key findings:

- Land use conflict is sufficiently serious to warrant a focused policy response, and as the problem is widely seen to be getting worse, early intervention is desirable.
- While Councils and the NSW EPA do a good job managing complaints and balancing needs of communities, existing enforcement is largely complaint-based and is therefore inevitably seen as ad-hoc, reactive and not focussed on persistently non-compliant behaviour unless it becomes the subject of complaint. This review did not test the veracity of this perception but it is clearly held strongly by some stakeholders.
- Some existing mechanisms or bodies work to reduce and resolve this conflict, but the adaptations that would be required to make them more effective in this role would be significant and risk reducing the performance of these bodies in their primary tasks.
- There is therefore a strong case for a new entity focussed on this specific problem.
- The body should be adequately resourced to ensure compliant production practices are well defined and understood, and producers using these practices are able to operate with confidence, and communities are clear on what they can expect from neighbouring producers.
- A new body should build on existing codes of practice and recognise regional variations of industry practices. It may endorse only those elements of broader codes that relate to land use conflict.
- It should also play an education role to promote expected practices from different agricultural industries.
- A new model should aim to increase the industry sectors' sense of responsibility for their own community interests and increase peer group pressure on non-compliant operators by providing an increased incentive for compliance.

Recommendation:

12. The NSW Government should establish a NSW Farm Practices Panel which would assess and where satisfied, endorse industry codes of practice, and in doing so advise all interested parties on what operating practices associated with land use conflict are 'normal' and should be acceptable.

In line, with the potential role and scope outlined in Box 1, (see section 6), the panel members should not have a representative or other close association with industries which develop codes, nor with their regulation, and be supported by appropriate technical expertise. It should be voluntary for industries to submit their codes of practice for assessment and these codes can be existing or can be crafted to reflect those practices subject to complaints. In assessing codes, the panel would have regard to current evidence of good practice in situ, contemporary science, compliance with relevant contemporary law (relating to industrial noise, chemical use, odour, water use, emissions, etc.), operating practices and regulatory experience and practice in other Australian and international jurisdictions. The codes would be regularly reviewed to ensure they keep up with evolving practices and regulatory developments. While they would have state-wide application, some codes could include regional modules to reflect different operating conditions and potential for, and source, of conflict. The codes would aim to provide a 'how to comply' manual, and reinforce rather than dilute existing environmental protections.

Compliance with an endorsed code of practice should be taken into account in complaint investigations and enforcement action (that is, in prosecutions, evidence of compliance or non-compliance with a code should generally be sound evidence that the producer has complied with the law), and the codes should provide a robust and consistent basis for consent authorities formulating development approval conditions. This would assist councils and other government authorities, such as the NSW EPA, in responding proportionately to complaints, ensure codes set out a means of complying with regulatory requirements, and encourage industries to maintain the currency of codes of practice.

Once the model is operating and seen to be delivering benefits the Government could consider recovery of the Panel's costs from the beneficiaries.

6.2 Council reference group

Problem description:

Councils deal with land use conflict differently and do not have an organised and regular point of reference to assist them in resolving conflict. Some councils have systems in place, based on guidance from the NSW Ombudsman's Office, but this is not consistent across the State. The differing understandings of council staff of agricultural practices and local pressures can mean similar cases in different areas can have very different outcomes. In the absence of any centralised data collection process, it is hard to improve professional and industry knowledge and improve decision-making.

Evidence and what we heard:

Consultation occurred with a wide range of councils from coastal and inland LGAs. The differences in land use planning needs for agriculture are driven by the composition of zones, lot sizes and population densities. There is nevertheless a sufficiently common experience to suggest there would be a lot to be gained from a more structured and consistent mechanism for sharing experiences and knowledge among council planners. This would cover for example, approaches to planning, conflict resolution and education initiatives.

The potential role and scope of a Council Reference Group are outlined in Box 2. Terms of Reference for the Group could be developed in collaboration with interested councils.

Box 2: Potential role and scope of a Council Reference Group

The purpose of the land use conflict Council Reference Group is to improve the management of land use conflict and support the delivery and implementation of key actions in the Agricultural Land Use Planning Strategy. The Group will consist of representatives from councils who can participate voluntarily. Activities would include:

1. *Investigating ways to best address agricultural land use conflict.* This would include workshopping different processes for resolving land use conflict with agriculture and setting up a process for monitoring, recording, and reporting on steps taken to resolve land use conflict with farmers and the success of these steps in resolving the conflict. Note, the Group could report to the NSW Farm Practices Panel.
2. *Providing advice to, and seeking advice from, DPI and the NSW Farm Practices Panel on land use conflict.* The Group could have input into revision of material that guides their work, such as the NSW Ombudsman's complaint handling guidance for councils.
3. *Monitoring agricultural land use conflict to help determine the scale of the issues and establish a body of evidence for improved management of agricultural land use conflict in NSW.* This would include sharing evidence and experiences of instances of agricultural land use conflict and setting up a process for recording, monitoring, and reporting on instances of agricultural land use conflict and trends over time. The Group should continue to meet until a data set over a period of at least three years is established to enable councils to compare land use conflict trends over geographical space and time.

Key findings:

- There are different types of land use conflict and varying methods used across the State to resolve this conflict.
- More data is needed to understand the scope and trends of land use conflict impacting producers.
- Councils would benefit from sharing experiences and ideas in how to manage land use conflict.
- Council planners could help educate one another about agricultural operating needs through a group forum.

Recommendation:

13. DPI should establish a Council Reference Group for the purpose of bringing councils together from across NSW to share experiences of agricultural land use conflict.

Through this forum, councils could use the community of practice to develop approaches to best address land use conflict and emerging agricultural needs. This body could be a mechanism for designing a process to collect data on land use conflict impacting producers and provide updates to DPI and other agencies on their findings.

7. Attachments

7.1 Attachment 1: Implementation framework for an NSW Agricultural Land Use Planning Strategy

Phase	Rec	Summary of recommendation implementation	Department(s)
Phase 1	1	Conduct public consultation on the identification and mapping of State Significant Agricultural Land (SSAL), and an associated management arrangement implemented through the strategic framework and concepts to identify Identified Production Areas. (recommendations 1, 3, and 4)	Department of Primary Industries (DPI)
	5	Establish a system to monitor changes in rural zones and the effectiveness of strategic plans in influencing development decisions about agriculture. Begin annual reporting on findings.	DPI, Department of Planning, Industry and Environment (DPIE) and Councils
	8	Prepare a costed business case and seek Cabinet approval of the Navigating Farm Developments Platform.	DPI and DPIE
	11	Implement education programs for council planners, councillors and the wider public about agricultural land use planning needs and the planning instruments that support these uses.	DPI, DPIE and Environment Protection Authority (EPA)
	12	Prepare a costed business case and seek Cabinet approval to implement a Farm Practices Panel to provide clarity on the acceptability of farming practices by assessing and endorsing industry codes of practice and determining what operating practices associated with land use conflict are 'normal' or acceptable.	DPI, DPIE, EPA and Office of Local Government (OLG)
	13	Establish a Council Reference Group to bring councils together from across the State to share experiences of agricultural land use conflict.	DPI and OLG
Phase 2	2	Review the RU1, RU2 and RU4 zone objectives, permitted land uses and application.	DPIE and DPI
	3	Publish a map of State Significant Agricultural Land (SSAL) along with statutory policy (State Significant Agricultural Land Policy)	DPI and DPIE
	6	Revise and investigate the suitability of clarifying and introducing new land use terms in the Standard Instrument LEP.	DPIE and DPI
	6	Provide clarity and guidance on how ancillary development for agriculture works in the planning framework, with specific examples.	DPIE and DPI
	10	Support councils to improve the integrity and effectiveness of their rural zoning arrangements by phasing out concessional dwelling eligibilities and existing holdings clauses in the rural zones.	DPIE
Phase 3	4	Commence identification of Identified Production Areas (IPAs) and consultation for inclusion within the SSAL map.	DPI, Department of Regional NSW and DPIE
	7	Work with the Regional Job Precinct Project Control Group to explore agriculture-specific planning settings.	DPI, Department of Regional NSW and DPIE
	9	Review existing buffer guidelines to ensure they reflect contemporary science, best practice and meet regulatory needs.	DPI and DPIE
Phase 4	7	Review the Inland Code to be more accommodating of agricultural operations and development and identify opportunities to expand exempt and complying developments and other regulatory concessions.	DPIE and DPI
24 months after Phase 1		Review of implementation and outcomes.	DPI

7.2 Attachment 2: List of submissions on the options paper

1. Animal Liberation
2. Anne Kraefft
3. Audrey & Gordon Tremain
4. Australian Lot Feeders Association
5. Australian Pork Limited
6. Ballina Shire Council
7. Bega Valley Shire Council
8. Bernard Wonder
9. Berries Australia
10. Berrigan Shire Council
11. Byron Shire Council
12. Camden Council
13. Carol Richard
14. Central NSW Joint Organisation
15. Cessnock City Council
16. Chris & Ruth Norris
17. Clarence Valley Food Inc.
18. Coffs Harbour City Council
19. Costa Group
20. Cowra Council
21. Goulburn Mulwaree Council
22. Hawkesbury City Council
23. Henry Ridge
24. Hornsby Shire Council
25. Hugh Cooke
26. James Jackson & Susan Smith
27. John Maguire
28. Julia McKay
29. Junee Shire Council
30. LGNSW
31. Mid Coast Council
32. Namoi Unlimited
33. Nathan Kesteven
34. NSW Environment Protection Authority
35. NSW Farmers Dubbo Branch
36. NSW Farmers
37. Oz Group Co-op Limited
38. Planning Institute Australia
39. Port Stephens Council
40. Queanbeyan-Palerang Regional Council
41. Riverina and Murray Joint Organisation of Councils
42. Regional Development Australia
43. Riverina Joint Organisation
44. Rural Industry Community Advisory Committee of Wollondilly Shire
45. Shoalhaven City Council
46. Southern Cross University
47. Sydney Peri Urban Network of Councils
48. The Hills Shire Council
49. The Law Society of NSW
50. Troy Hollis
51. Tweed Shire Council
52. Wingecarribee Shire Council
53. Yass Valley Council

7.3 Attachment 3: Example State Significant Agricultural Land Use Planning Policy

A State Significant Agricultural Land Use Planning Policy (SSALUP Policy) would improve decisions on the use of SSAL through all levels of legislated strategic planning (Regional Plans, Local Strategic Planning Statements and District Plans), including planning proposals which must be consistent with strategic planning documents. The SSALUP Policy will guide planning decision-makers on what arrangements should apply to land identified and mapped as SSAL (and any other land that may become subject to these arrangements) and implemented through legislated strategic planning.

The SSALUP Policy **should**:

- ✓ apply to land mapped as SSAL;
- ✓ guide planning authorities on how to plan for agriculture in strategic planning where it is identified as a priority land use;
- ✓ set NSW Government expectations about what considerations will be used in making decisions affecting this land, where this land has been identified as a priority;
- ✓ be sufficiently flexible to also be applied by councils seeking to prioritise agriculture in their local government area on non-SSAL land.

The SSALUP Policy will **not**:

- × seek to ban any land uses, but rather apply a greater level of consideration to non-agricultural land uses on SSAL;
- × alter the permissibility of developments permitted under an environmental planning instrument, as mining is permitted under the Mining SEPP;
- × replace environmental impact assessment requirements in the *Environmental Planning and Assessment Act 1979*.

An SSALUP Policy could require that:

When undertaking strategic planning or considering a planning proposal that interacts with the SSAL map, a planning decision-maker should consider the following:

- The role of agriculture in regional economic growth and local amenity where SSAL is present;
- Any conversion of agricultural land to a non-agricultural use should be in accordance with the relevant Regional Plans, Local Strategic Planning Statements, and local land use strategy. Planning proposals should always be consistent with the strategic policy framework;
- Non-agricultural land uses on, and surrounding SSAL, should be planned and approved in a way that minimises the impact on agriculture and the potential for future land use conflict;

- Strategic planning that prioritises agriculture should consider:
 - The availability of natural and other upstream and downstream resources that agriculture depends on (including secondary industries, services, and infrastructure);
 - Regional and local comparative advantages in agricultural production, including opportunities for future growth;
 - Reinforcing existing safeguards for agriculture production and processing such as buffers, minimum lot sizes and restrictions on incompatible land uses;
 - Consistently zoning land and identifying agricultural activities as the preferred land use in that zone.

7.4 Attachment 4: Proposed changes to land use terms in the Standard Instrument - Principal Local Environmental Plan

Term	Current definition	Problem	Proposed solution
Existing land use terms			
Artisan food and drink industry	<p><i>a building or place the principal purpose of which is the making or manufacture of boutique, artisan or craft food or drink products only. It must also include at least one of the following—</i></p> <p>(a) <i>a retail area for the sale of the products,</i></p> <p>(b) <i>a restaurant or cafe,</i></p> <p>(c) <i>facilities for holding tastings, tours or workshops.</i></p> <p>Note— See clause 5.4 for controls in industrial or rural zones relating to the retail floor area of an artisan food and drink industry.</p>	<p>'Artisan food and drink industry' is a type of 'light industry' land use.</p> <p>This means that where 'light industry' is prohibited in a rural zone 'artisan food and drink industries' will also be prohibited unless they are specifically listed as permissible.</p> <p>Where a zone is an 'open zone' and 'light industry' is prohibited 'artisan food and drink industries' cannot be undertaken as innominate development.</p>	<p>De-couple 'artisan food and drink industry' from the 'light industry' group term to allow 'artisan food and drink industries' to be undertaken with consent in open zones.</p>
Dairy	<p>dairy (pasture-based) means a dairy that is conducted on a commercial basis where the only restriction facilities present are milking sheds and holding yards and where cattle generally feed by grazing on living grasses and other plants on the land and are constrained for no more than 10 hours in any 24-hour period (excluding during any period of drought or similar emergency relief).</p> <p>dairy (restricted) means a dairy that is conducted on a commercial basis where restriction facilities (in addition to milking sheds and holding yards) are present and where cattle have access to grazing for less than 10 hours in any 24-hour period (excluding during any period of drought or similar emergency relief). It may comprise the whole or part of a restriction facility.</p>	<p>The current definitions for dairies in the SI LEP do not reflect the operational changes occurring in the industry.</p> <p>These changes include the use of feed pads and a trend to more intensive dairying practices.</p>	<p>Changes to the definitions to reflect the industry practices could be as follows:</p> <p>dairy (pasture-based) means a dairy that is conducted on a commercial basis where cattle generally feed by grazing on living grasses and other plants on the land and are constrained in a restriction facility, including on a feed pad, for no more than 8 hours in any 24-hour period (excluding during any period of drought or similar emergency relief or due to seasonal management requirements).</p> <p>dairy (intensive) means a dairy that is conducted on a commercial basis where cattle are constrained in a restriction facility, including on a feed pad, for more than 8 hours in any 24-hour period (excluding during any period of drought or similar emergency relief or due to seasonal management requirements). It may comprise the whole or part of a restriction facility.</p>

Term	Current definition	Problem	Proposed solution
Farm building	<i>a structure the use of which is ancillary to an agricultural use of the landholding on which it is situated and includes a hay shed, stock holding yard, machinery shed, shearing shed, silo, storage tank, outbuilding or the like, but does not include a dwelling.</i>	<p>There is ambiguity as to whether the definition of a farm building includes structures such as crop netting/ tunnels and frost fans.</p> <p>The SILEP separately defines 'farm buildings' from the agricultural uses they are ancillary to. However, being ancillary means they are legally permissible according to the permissibility of the dominant use. Separating farm buildings from their dominant use has caused confusion as to what consent requirements apply.</p>	<p>1. Delete the definition from the SILEP. Clarifying that permissibility of farm structures remains aligned with the dominant use of the land for farming.</p> <p>Consider retaining definition in Codes SEPP for purposes of exempt code depending on ancillary clause. Ancillary clause preferred.</p> <p>2. If retained suggested definition removes specific examples enabling broader application:</p> <p>Farm building means a structure the use of which serves the primary purpose of agriculture on the landholding on which it is proposed but does not include a dwelling.</p>
Horticulture	<p><i>means the cultivation of fruits, vegetables, mushrooms, nuts, cut flowers and foliage and nursery products for commercial purposes, but does not include a plant nursery, turf farming or viticulture.</i></p> <p>Note - horticulture is a type of intensive plant agriculture</p>	<p>The definition of horticulture covers all forms of horticulture from traditional open orchards to controlled environment greenhouse horticulture. These different forms of horticulture have different impacts on the surrounding environment and the increased occurrence of intensive horticulture in greenhouses. Other structures warrant separate definitions.</p>	<p>New definitions could include:</p> <p>Horticulture – the cultivation of fruits, vegetables, mushrooms, nuts, cut flowers and foliage for commercial purposes, where the plants are grown in natural ground but does not include a plant nursery, turf farming or viticulture. It does not include intensive horticulture or controlled environment horticulture.</p> <p>Intensive horticulture - the cultivation of fruits, vegetables, mushrooms, nuts, cut flowers and foliage for commercial purposes, where the plants are either grown in natural ground or some other medium and within a building or structure that may include a structure comprised only of netting supported by posts and/or wires.</p> <p>Controlled environment horticulture - the cultivation of fruits, vegetables, mushrooms, nuts, cut flowers and foliage for commercial purposes, within a building or structure where the climate (temperature and humidity) is controlled or partially controlled such as a green house.</p>
Beekeeping	<i>beekeeping</i> means a building or place used for the keeping and breeding of bees for commercial purposes.	<p>Beekeeping is included as a type of 'extensive agriculture'. Beekeeping is very different to the other types of extensive agriculture such as cropping, grazing or pasture-based dairy because it has very different impacts and can be co-located in outdoor public recreation areas, environmental conservation areas or on roof tops in urban areas.</p>	<p>De-couple beekeeping from the 'extensive agriculture' definition to allow it to be undertaken with consent in open zones as an innominate use.</p>

Term	Current definition	Problem	Proposed solution
Animal boarding or training establishment	<i>means a building or place used for the breeding, boarding, training, keeping or caring of animals for commercial purposes (other than for the agistment of horses), and includes any associated riding school or ancillary veterinary hospital.</i>	<p>The land use “Animal boarding or training establishments” excludes commercial horse agistment.</p> <p>This means that the only other land use term that would apply to commercial horse agistment is ‘intensive livestock agriculture’.</p> <p>Horse agistment on a commercial basis is not considered to be similar to other forms of intensive livestock agriculture (e.g. feedlots, pig farms and poultry farms) and ‘intensive livestock agriculture’ is often prohibited in zones where commercial horse agistment may be appropriate.</p>	<p>A new definition of ‘equine breeding or training establishment’ is considered necessary. It is suggested the definition should be:</p> <p><i>a building or place used for the breeding, boarding, training, keeping or caring of horses for commercial purposes, and includes any associated riding school or ancillary veterinary hospital.</i></p>
Proposed new land use terms			
Agritourism	Nil	<p>Many submissions suggested the need for definitions relating to agritourism such as:</p> <p>Rural function center (farm events, weddings and functions)</p> <p>Farm gate sales or activities / roadside stalls / farm retail</p> <p>Farm stay accommodation (glamping and short-term or overnight camping)</p> <p>Food and nature-based tourism / farm tours / rural tourism (consistent with the operation of rural enterprises).</p>	Agritourism land uses are being addressed in the Agritourism and Small-Scale Agriculture Development EIE being progressed by DPIE and therefore have not been further explored by this process.

Term	Current definition	Problem	Proposed solution
<p>Agricultural activities on acid sulfate soils on coastal flood plains</p>	<p>Nil</p>	<p>Shoalhaven City Council suggested a definition for agricultural activities on acid sulfate soils on coastal floodplains to clarify the requirements for consent under Clause 7.1 of the Standard Instrument LEP.</p> <p>Under clause 7.1, development consent is required for carrying out works below the natural ground surface. Activities such as ploughing and harvesting crops potentially need development consent. To date, no complaints about this have been received, but if they were to, Council may be required to act. This could significantly affect agricultural operations.</p>	<p>Subclause (6) of clause 7.1 excludes the need for consent for any works which are not likely to lower the water table.</p> <p>It is considered that ploughing and harvesting crops is not likely to lower a water table and therefore would not require consent.</p> <p>Subclause (4) also excludes the need for consent if “a preliminary assessment of the proposed works prepared in accordance with the Acid Sulfate Soils Manual indicates that an acid sulfate soils management plan is not required for the works, and</p> <p>the preliminary assessment has been provided to the consent authority and the consent authority has confirmed the assessment by notice in writing to the person proposing to carry out the works.”</p> <p>Industries such as the sugar cane industry have established protocols for farming activities on acid sulfate soils.</p> <p>It is considered that there are sufficient exclusions in the clause to deal with the various scenarios and to exclude farmers from requiring consent for normal cropping or harvesting practices.</p> <p>A new definition is not considered necessary.</p>
<p>Cellar door (cider)</p>	<p><i>cellar door premises means a building or place that is used to sell wine by retail and that is situated on land on which there is a commercial vineyard, and where most of the wine offered for sale is produced in a winery situated on that land or is produced predominantly from grapes grown in the surrounding area.</i></p>	<p>The definition relates only to wine and does not enable the establishment of a cidery on a property which grows apples or pears.</p>	<p>Possible solutions:</p> <ol style="list-style-type: none"> 1. Make changes which enable artisan food and drink industry as an innominate permissible use in open zones. 2. Rely on the proposed definition of ‘farm gate activities’ proposed in the Agritourism and Small-scale Agriculture Development EIE. 3. Introduce a new land use definition such as ‘farm produce retail premises’, for example, <p><i>Farm produce retail premises means a building or place that is used to sell food or drink by retail and that is situated on land on which there is a commercial orchard or commercial agricultural production, and where most of the food or drink offered for sale is produced predominantly from produce grown on the land or in the surrounding area and processed on the site.</i></p>

Term	Current definition	Problem	Proposed solution
Essential farm infrastructure	<p>Nil. The SILEP contains a definition of 'farm building'</p> <p><i>farm building means a structure the use of which is ancillary to an agricultural use of the landholding on which it is situated and includes a hay shed, stock holding yard, machinery shed, shearing shed, silo, storage tank, outbuilding or the like, but does not include a dwelling.</i></p>	<p>The definition of farm building does not include all potential infrastructure which may be essential to the operation of a farm. Where a zone is a closed zone, innominate land uses are prohibited.</p>	<ol style="list-style-type: none"> The preferred approach is to clarify structures on farms which are ancillary to the farming operations as discussed for farm buildings (above). To account for 'essential farm infrastructure' the definition of 'farm building' could be clarified by removing the examples: <p><i>farm building means a structure the use of which is ancillary to an agricultural use of the landholding on which it is situated, but does not include a dwelling.</i></p>
Intensive farming	<p><i>intensive livestock agriculture means the keeping or breeding, for commercial purposes, of cattle, poultry, pigs, goats, horses, sheep or other livestock, and includes any of the following—</i></p> <p>a) dairies (restricted),</p> <p>b) feedlots,</p> <p>c) pig farms,</p> <p>d) poultry farms,</p> <p><i>but does not include extensive agriculture, aquaculture or the operation of facilities for drought or similar emergency relief.</i></p> <p>- means any of the following—</p> <p>a) the cultivation of irrigated crops for commercial purposes (other than irrigated pasture or fodder crops),</p> <p>b) horticulture,</p> <p>c) turf farming,</p> <p>d) viticulture.</p>	<p>The definitions do not provide for the growth of new intensive farming operations such as insect farms.</p> <p>This means such land uses need to rely on being innominate uses in open zones.</p> <p>Camden Council suggested exploring an alternative description to the word intensive.</p>	<p>Some possible options</p> <p><i>light agricultural production facility means a building or place used for the production of agricultural produce whether plants or animals for commercial purposes and that does not interfere with the amenity of the neighborhood by reason of noise, vibration, odour, dust, wastewater, waste products, or otherwise.</i></p> <p>This could be a subset of extensive agriculture but is also permissible in urban zones e.g. industrial.</p> <p>The introduction of a new definition of Insect Agriculture:</p> <p><i>Insect agriculture means the commercial growing of insects in an enclosed environment.</i></p> <p>Insect agriculture could be a subset of 'agriculture' and could also be permitted in industrial zones.</p> <p>See also 'Urban Agriculture' below.</p>
On-site rural workers dwelling	<p>A definition for rural workers dwelling exists in the SILEP.</p> <p><i>rural worker's dwelling means a building or place that is additional to a dwelling house on the same lot and that is used predominantly as a place of residence by persons employed, whether on a long-term or short-term basis, for the purpose of agriculture or a rural industry on that land.</i></p>	<p>Wingecarribee Council suggested a new land use term for on-site rural workers dwellings to enable on site farm accommodation, similar to enabling secondary dwellings under the Affordable Housing SEPP provided that the accommodation is used for that purpose.</p>	<p>It is considered the existing definition of rural worker's dwelling in the SILEP is adequate.</p>

Term	Current definition	Problem	Proposed solution
Plantation forestry for carbon sequestration	<p>Plantation and exempt farm forestry is defined by the <i>Plantation and Reafforestation Act 1999</i> as</p> <p>plantation means an area of land on which the predominant number of trees or shrubs forming, or expected to form, the canopy are trees or shrubs that have been planted (whether by sowing seed or otherwise):</p> <p>a) for the purpose of timber production, or</p> <p>b) for the protection of the environment (including for the purpose of reducing the salinity of the land or otherwise repairing or improving the land, for the purpose of biodiversity conservation or for the purpose of acquiring or trading in carbon sequestration rights), or</p> <p>c) for any other purpose,</p> <p>not principally for the purpose of the production of food or any other farm produce other than timber.</p>	<p>Byron Shire Council suggested consideration be given to defining types of plantation forestry for carbon sequestration that may have irreversible impacts on the soil characteristics and the productive capacity.</p>	<p>Plantation forestry and exempt farm forestry is covered by the <i>Plantation and Reafforestation Act 1999</i> (PR Act).</p> <p>It is considered that plantation forestry for carbon sequestration would meet the definition of a plantation under the PR Act.</p> <p>Section 47 of the PR Act turns off any requirement for consent under the EP&A Act 1979.</p>
Poultry hatchery	<p>Nil</p>	<p>There is no definition of a poultry hatchery in the SILEP. Hatcheries are very different from poultry farms in that they do not feed or rear chicks. Eggs are brought into the facility, incubated, hatched and immediate shipped to growers within 24 hours.</p> <p>Hatcheries are capable of operating in buildings in industrial zones and do not need to be limited to rural zones.</p> <p>Hatcheries are not forms of intensive livestock agriculture as the birds are not fed or reared on site.</p>	<p>It is preferable that the poultry hatchery be a stand-alone definition however if they must be included in a group term then the “rural industries’ group term is considered to be the preferred option.</p> <p>Suggest inclusion of a new definition</p> <p>Poultry Hatchery means a building or place used for the incubation and hatching of poultry eggs for commercial purposes but does not include any subsequent feeding or rearing of chicks.</p>
Responsible farming practices	<p>Nil</p>	<p>Not defined.</p>	<p>It is considered that ‘responsible farming practices’ would not comprise a land use which would necessitate development consent because they would not necessarily be unique to the land. Instead, they would be an operational matter. It is considered that a definition for responsible farming practices is not required in the land use planning framework.</p>

Term	Current definition	Problem	Proposed solution
<p>Small-scale abattoirs e.g., rabbits</p>	<p><i>livestock processing industry means a building or place used for the commercial production of products derived from the slaughter of animals (including poultry) or the processing of skins or wool of animals and includes abattoirs, knackeries, tanneries, woollscours and rendering plants.</i></p>	<p>Small scale abattoirs for boutique meat production is a potential growth area.</p>	<p>The current definition of livestock processing industry appears to be suitable and does not contain any restrictions on scale or the type of animal processed.</p> <p>The issue may relate to the approval pathway for small scale livestock processing industries. The Agritourism and Small-Scale Agriculture Development EIE is examining the potential for this type of development as complying development and has questioned the relevance of locational criteria which trigger the designated development pathway.</p> <p>It is considered that no further work is necessary pending the completion of the Agritourism and Small-Scale Agriculture Development EIE work.</p>
<p>Urban agriculture</p>	<p>Nil</p>	<p>The Sydney Peri-urban Network of Councils encouraged the investigation of innovative agricultural land use definitions, including urban agriculture.</p> <p>For instance, no current definition would allow an 'insect farm', meaning they could only be developed in open zones as an innominate use.</p>	<p>Suggested definitions could include:</p> <p><i>Urban Agriculture means the keeping or breeding, of animals or the cultivation of plants for commercial purposes, in a building or place in an urban area, and that when carried out and when all measures proposed to reduce or minimise its impact on the locality have been employed, does not interfere with the amenity of the neighbourhood by reason of noise, vibration, odour, dust, waste water, waste products, or otherwise, and includes any of the following—</i></p> <ul style="list-style-type: none"> <i>a) insect farming,</i> <i>b) hydroponic food production</i> <i>c) aquaponics etc.</i> <p><i>but does not include extensive agriculture, aquaculture, intensive plant agriculture or intensive livestock agriculture.</i></p> <p><i>'Urban agriculture' could be permitted in Industrial zones.</i></p>



Improving the Prospects for Agriculture and Regional Australia in the NSW Planning System - a report by the NSW Agriculture Commissioner

Published July 2021

More information
NSW Agriculture Commissioner - agcommissioner@dpi.nsw.gov.au

www.dpi.nsw.gov.au

DOC21/189651

© State of New South Wales through Regional NSW 2021. The information contained in this publication is based on knowledge and understanding at the time of writing (July 2021). However, because of advances in knowledge, users are reminded of the need to ensure that the information upon which they rely is up to date and to check the currency of the information with the appropriate officer of the Department of Regional NSW or the user's independent adviser.