



**Submission to the NSW Government in response to delivery of the  
*Strategic Regional Land Use Policy***

**May 2012**

**NSW Farmers' Association  
Level 25, 66 Goulburn Street  
Sydney NSW 2000**

**Charles Thomas**

Policy Manager, Land Use and Regulatory Affairs

Ph: (02) 8251 1856

Email: [thomasc@nswfarmers.org.au](mailto:thomasc@nswfarmers.org.au)

## **EXECUTIVE SUMMARY**

NSW Farmers welcomes the opportunity to provide input to the delivery of the *Strategic Regional Land Use Policy* (SRLUP). NSW Farmers is Australia's largest state farming organisation and the peak representative voice for commercial farm businesses in NSW. Agriculture in NSW is worth over \$9 billion annually and employs over 70 000 full time workers.<sup>1</sup> Our farmers are custodians of over 70% of the NSW land mass and world leaders in sustainable agriculture.

NSW Farmers has played a key role in the development of the SRLUP. Beginning in 2009, NSW Farmers representatives entered discussions with the NSW Minerals Council and then Shadow Minister for Primary Industries and Energy, the Hon. Duncan Gay MLC. This was in response to growing community concern about the unprecedented scale of minerals and coal activity, and the expansion of the coal seam gas industry in NSW.

### **A worthwhile challenge**

Moves by the NSW Government to address the imbalance between agriculture and the extractive industries are strongly supported by NSW Farmers. The difficulty of delivering this reform is not made easier by the lack of strategy and discipline with which successive previous governments have granted exploration rights across the state.

NSW Farmers' policy position has not changed since entering initial discussions on this issue. We are not opposed to development of the mining and coal seam gas industries, we are simply seeking smart development. While the NSW land management framework has served us well in the past, it is not capable of taking into account the scope and pace of current activity and its cumulative impacts. The primary risk of not taking a strategic approach to land use conflict is degradation or exhaustion of the land and water resources relied on for the production of food and fibre and the impact on regional communities.

### **Where the draft documents fall short**

NSW Farmers continues to strongly support effective regional planning and an aquifer interference policy as the appropriate mechanisms for dealing with land use conflict between agriculture and the extractive industries. However, the draft documents contain a number of exceptions and flaws that in our view will undermine the government's objectives of protecting our water resources and strategic agricultural land from inappropriate mining and coal seam gas development. Importantly, this can be fixed, and this submission outlines a number of solutions.

---

<sup>1</sup> Australian Bureau of Statistics, 2007

## Improving the draft documents to meet expectations

### *Draft Regional Land Use Plans*

- **The mapping of strategic agricultural land needs to be revisited** – the data relied upon to develop the maps has been found to be outdated and incomplete. This submission outlines steps to improve the mapping.
- **Land use decisions must be made upfront, before exploration** – exploration processes can be invasive as well as resulting in uncertainty for rural businesses. An effective gateway process must be put in place before exploration.
- **Consultation on the public benefit test needs to happen** – the NSW Government must release the public benefit test component of the Gateway for public consultation.
- **Remove the cabinet override provision** – the ability for Cabinet to override gateway determinations must be removed from the final plans.
- **Plan ahead for infrastructure** – the draft plans must identify infrastructure corridors for the electricity, rail and pipeline infrastructure associated with mining and coal seam gas development.

### *Draft Aquifer Interference Policy*

- **Simplify the Aquifer Interference Policy** - the Aquifer Interference Policy must be redrafted to create a more understandable document.
- **Apply the Aquifer Interference Policy state wide** – there is no justification for restricting protection to 'Biophysical Strategic Agricultural Land'.
- **Remove exemptions for exploration activities** – exploration involves identified risks to water resources. The proposed exemptions need to be removed to achieve genuine protection of water resources.
- **Remove exemptions for projects subject to the gateway** – the ability for the Gateway to override independent aquifer interference approvals must be removed.
- **Redefine 'highly productive groundwater'** – the definition of 'Highly Productive Groundwater' must be changed from 5L/s to 2L/s.
- **Explain and consult further on zones and criteria** – NSW Farmers would like further details on how the criteria have been set.

## **SUMMARY OF RECOMMENDATIONS**

### **RECOMMENDATION 1**

*NSW Farmers recommends that the Office of Environment and Heritage's 'Inherent General Fertility' data set be disregarded.*

### **RECOMMENDATION 2**

*NSW Farmers recommends that the Land and Soil Capability methodology be released for an inclusive and high quality peer review process.*

### **RECOMMENDATION 3**

*NSW Farmers recommends that a new mapping effort, starting with target areas, be undertaken using all available soil data – including data held by farmers and their advisors.*

### **RECOMMENDATION 4**

*NSW Farmers recommends that new soil surveys be carried out where necessary through a funding process that attracts the best available soil scientists.*

### **RECOMMENDATION 5**

*NSW Farmers recommends that any additional soil surveying be carried out to ensure consistency with the latest CSIRO Australian Soil Resource Information System mapping initiatives.*

### **RECOMMENDATION 6**

*NSW Farmers recommends that revised maps take into account the contrasting requirements of various agricultural land uses (for example grain growing and wine grape production).*

### **RECOMMENDATION 7**

*NSW Farmers recommends that all new data collection, including collection by the mining and coal seam gas industries, is carried out in a manner consistent with the latest national standards and performed by accredited soil science professionals.*

### **RECOMMENDATION 8**

*NSW Farmers recommends that any project assessment mechanism have the ability for landholders outside mapped SAL to request an assessment by the Office of Food Security and Agricultural Sustainability as to their eligibility.*

### **RECOMMENDATION 9**

*NSW Farmers recommends that the Minister for Planning and Infrastructure establish a technical working group to look at options for a pre-exploration gateway process.*

### **RECOMMENDATION 10**

*NSW Farmers recommends that the State Environmental Planning Policy (State and Regional Development) 2011 be amended to classify all invasive exploration activities as state significant development.*

### **RECOMMENDATION 11**

*NSW Farmers recommends that the Draft Plans be amended to include detailed decision making parameters for the Gateway Panel and examples to demonstrate application of these parameters.*

#### **RECOMMENDATION 12**

*NSW Farmers recommends that the proposed cumulative impact assessment methodology be submitted for independent peer review prior to being released for consultation.*

#### **RECOMMENDATION 13**

*NSW Farmers recommends that the Stakeholder Reference Panel receive a detailed briefing on the operation of the proposed cumulative impact assessment methodology prior to it being released for public consultation.*

#### **RECOMMENDATION 14**

*NSW Farmers recommends that to account for the bright long-term prospects for agriculture in the public benefit test, the methodology include:*

- projections at a local and state scale for periods of 25, 50 and 75 years;*
- an estimate which accounts for the likelihood and duration of long term damage inherently associated with extractive industries and forecasts the socio-economic costs for the duration of that damage;*
- a sensitivity analysis to encapsulate outcomes for an optimistic, pessimistic and median forecast for prices and production of agricultural commodities; and,*
- an assessment of the impacts on local and state infrastructure and service use including access to rail and ports for agricultural commodities, and public services of health and education.*

#### **RECOMMENDATION 15**

*NSW Farmers recommends that the public benefit test and cost benefit analysis components of the Gateway be put out for public consultation for at least eight weeks.*

#### **RECOMMENDATION 16**

*NSW Farmers recommends that the cabinet override provision for exceptional circumstance projects be removed from the draft plans.*

#### **RECOMMENDATION 17**

*NSW Farmers recommends that exclusion zones be established over areas which clearly meet the criteria for strategic agricultural land.*

#### **RECOMMENDATION 18**

*NSW Farmers recommends that any modelling on the costs and benefits of an exclusion zone approach to land use planning for extractive industries be released to inform public discussion on this issue.*

#### **RECOMMENDATION 19**

*NSW Farmers recommends that the draft Strategic Regional Land Use Plans include consideration of infrastructure corridors to limit the impact of proposed mining and coal seam gas related infrastructure on private landholdings.*

#### **RECOMMENDATION 20**

*NSW Farmers recommends that the draft Aquifer Interference Policy be redrafted with the aim of simplifying the document and clarifying the assessment pathway and criteria.*

#### **RECOMMENDATION 21**

*NSW Farmers recommends that the final Aquifer Interference Policy be amended to apply to all water sources in NSW, not just those underlying Biophysical Strategic Agricultural Land.*

#### **RECOMMENDATION 22**

*NSW Farmers recommends that the exemption for exploration activities be removed from the final Aquifer Interference Policy.*

#### **RECOMMENDATION 23**

*NSW Farmers recommends that the exemption within the draft Aquifer Interference Policy for projects which have received development consent or a gateway certificate be removed in the final policy.*

#### **RECOMMENDATION 24**

*NSW Farmers recommends that stakeholders be given clarification on the basis for the distance-based zoning model used.*

#### **RECOMMENDATION 25**

*NSW Farmers recommends that the definition of 'Highly Productive Groundwater' be amended from 5 litres per second to 2 litres per second.*

#### **RECOMMENDATION 26**

*NSW Farmers recommends that the NSW Government continue to facilitate detailed discussions between stakeholders and the NSW Office of Water as it finalises the Aquifer Interference Policy.*

#### **RECOMMENDATION 27**

*NSW Farmers recommends that practical, working examples of how the Aquifer Interference Policy will apply to minerals, coal and coal seam gas activities be included in the Aquifer Interference Policy.*

#### **RECOMMENDATION 28**

*NSW Farmers recommends that the NSW Office of Water make recommendations on penalties for consideration by the Stakeholder Reference Group prior to finalisation of the Aquifer Interference Policy.*

#### **RECOMMENDATION 29**

*NSW Farmers recommends that a schedule of security deposits be developed for inclusion in the Aquifer Interference Policy.*

#### **RECOMMENDATION 30**

*NSW Farmers recommends that co-regulatory Codes of Practice be developed for minerals, coal and coal seam gas activities, not limited to the exploration phase.*

#### **RECOMMENDATION 31**

*NSW Farmers recommends that a plain-English flowchart be developed to explain the exploration and production process for minerals, coal and coal seam gas, addressing land access, environmental, water, chemicals and community engagement issues.*

#### **RECOMMENDATION 32**

*NSW Farmers recommends that the Code be amended to more appropriately reflect the legislation that governs CSG activities in NSW.*

#### **RECOMMENDATION 33**

*NSW Farmers recommends that the Code include more meaningful information on the treatment, storage, transportation and disposal of produced water.*

#### **RECOMMENDATION 34**

*NSW Farmers recommends that a Code of Practice for minerals, coal and coal seam gas be developed to exemplify best practice behaviours and practices that go beyond regulatory standards to improve community confidence in extractive industries.*

#### **RECOMMENDATION 35**

*NSW Farmers recommends that examples of innovative access agreement clauses and requirements be provided in the draft Code of Practice for CSG, rather than limiting suggestions to those already provided via legislation.*

#### **RECOMMENDATION 36**

*NSW Farmers recommends that the draft Code emphasise the importance of meeting with landholders at mutually suitable times, dates and locations to commence discussions on access agreements.*

#### **RECOMMENDATION 37**

*NSW Farmers recommends that the Code of Practice include additional examples of what may give rise to compensation when negotiating an access agreement, such as impacts on water quality and supply; impact on land values etc.*

#### **RECOMMENDATION 38**

*NSW Farmers recommends that the Code of Practice stipulate that the provision of details on any chemicals brought onto or stored on the landholder's property be provided in real-time.*

#### **RECOMMENDATION 39**

*NSW Farmers recommends that the community engagement section of the Code of Practice be broadened to include engagement prior to the granting of exploration licences.*

#### **RECOMMENDATION 40**

*NSW Farmers recommends that the list of key stakeholders for community engagement be broadened.*

#### **RECOMMENDATION 41**

*NSW Farmers recommends that the decision to proceed with the establishment of community advisory committees factor in the number of existing and proposed committees within the region so as to avoid unnecessary drain on the community.*

#### **RECOMMENDATION 42**

*NSW Farmers recommends that staff from all relevant Government agencies – not just the Division of Resources and Energy – be made available to community consultative committees as required.*

#### **RECOMMENDATION 43**

*NSW Farmers recommends that community advisory committees not be disbanded if and when projects go into the production phase.*

#### **RECOMMENDATION 44**

*NSW Farmers recommends that the NSW Government play a more active role in pushing for NICNAS certification of hydraulic fracturing chemicals.*

#### **RECOMMENDATION 45**

*NSW Farmers recommends that a register be established to provide information to landholders about the chemicals being brought onto their property by mining and coal seam gas companies.*

**RECOMMENDATION 46**

*NSW Farmers recommends that the NSW Government expedite its review of the Mining Act 1992 and Petroleum (Onshore) Act 1991 with a view to strengthening landholders' property rights.*

**RECOMMENDATION 47**

*NSW Farmers recommends that the NSW Government work with stakeholders to implement the recommendations from the GPSC No. 5 Inquiry into Coal Seam Gas.*

**RECOMMENDATION 48**

*NSW Farmers recommends that the NSW Government assess the applicability of the GPSC No. 5 recommendations to the mining industry and the Mining Act 1992 and make similar changes where appropriate.*



## **TABLE OF CONTENTS**

<b>EXECUTIVE SUMMARY .....</b>	<b>2</b>
<b>SUMMARY OF RECOMMENDATIONS .....</b>	<b>4</b>
<b>TABLE OF CONTENTS .....</b>	<b>9</b>
<b>1. POLICY CONTEXT .....</b>	<b>10</b>
1.1 Background to the SRLUP .....	10
<b>2. DRAFT REGIONAL PLANS .....</b>	<b>10</b>
2.1 Aims .....	10
2.2 Defining Strategic Agricultural Land .....	11
2.2.1 Draft Inherent General Fertility of NSW .....	11
2.2.2 Interim Land and Soil Capability Mapping .....	12
2.2.3 Improving mapping of biophysical strategic agricultural land .....	13
2.3 The Proposed Gateway Process .....	15
2.3.1 Uncertainty for rural business .....	15
2.3.2 Risks to strategic agricultural resources .....	16
2.3.3 Case Study 1: Kahlua Test Pilot Production site (coal seam gas) .....	18
2.3.4 Case Study 2: Bickham Coal Bulk Sample (coal exploration) .....	19
2.4 Rectifying the Gateway Process .....	20
2.4.1 Application and weighting of the gateway criteria .....	23
2.4.2 Cumulative impact assessment .....	23
2.4.3 Public benefit test .....	24
2.4.4 Cabinet override .....	25
2.5 Exclusion Zones .....	25
2.6 Infrastructure provisions .....	26
<b>3. AQUIFER INTERFERENCE POLICY .....</b>	<b>28</b>
3.1 Scope .....	29
3.1.1 Application to areas outside biophysical strategic agricultural land .....	29
3.1.2 Exemptions for exploration activities .....	30
3.1.3 Exemptions for projects subject to the Gateway .....	30
3.1.4 Applicability to agricultural water use .....	31
3.2 Zones and Minimal Harm Criteria .....	32
3.3 Clarification of practical application .....	33
3.4 Penalties and security for rehabilitation .....	33
<b>4 DRAFT COAL SEAM GAS CODE OF PRACTICE .....</b>	<b>34</b>
4.1 Intent .....	34
4.2 Access Agreements .....	37
4.3 Community Engagement .....	39
<b>5 NEXT STEPS IN RESTORING BALANCE .....</b>	<b>41</b>
5.1 Testing of chemicals brought onto farms .....	41
5.2 A new approach to land access .....	42
5.3 Acting on Upper House recommendations .....	42
<b>6 CONCLUSION .....</b>	<b>43</b>

## 1. POLICY CONTEXT

### 1.1 *Background to the SRLUP*

NSW Farmers released its *Framework for Sustainable Development: Planning for Agriculture and Extractive Industries* (the Framework) on 26 October 2010.<sup>2</sup> The Framework was the culmination of many months of policy debate and analysis by NSW Farmers. The Framework recommended a five-step process to deliver adequate protection for agricultural land and water resources and farmers' property rights. The Framework also advocates the introduction of a pause on new mining exploration and production licences as a transition to the proposed new strategic planning framework.

The Framework promoted statewide, upfront strategic planning as a tool to resolve the current conflict over mining and coal seam gas development in areas of productive agricultural land and water resources. The Framework informed the negotiations between NSW Farmers, the NSW Minerals Council and the NSW Liberals and Nationals in the lead up to the 2011 state election. NSW Farmers was pleased to see these principles picked up in the *NSW Liberals and Nationals Strategic Regional Land Use Policy* – a majority of which was common ground between the parties to those negotiations.

The Election Policy was very well received by NSW Farmers, which delivered strong and public pre-election support for the Coalition based on its platform of restoring balance between agriculture and the extractive industries. It is therefore of enormous concern that the implementation of the Election Policy is diverging so dramatically from what was promised and intended pre-election.

NSW Farmers remains entirely committed to seeing the critical process of upfront planning and water protection delivered in a way that meets the needs of rural communities.

=====//=====

## 2. DRAFT REGIONAL PLANS

### 2.1 *Aims*

NSW Farmers strongly supports the need for upfront regional planning to give communities certainty about how their region will change over time, and enable the planning system to allocate land resources efficiently and sustainably.

The stated objectives of the draft plans are also welcomed by NSW Farmers (see excerpt below). Unfortunately, the proposals within the draft plan will fail to meet any of these stated objectives due to the ongoing uncertainty and risk inherent of a post-exploration gateway assessment.

---

<sup>2</sup> NSW Farmers' *Framework for Sustainable Development* is available at [http://www.nswfarmers.org.au/data/assets/pdf\\_file/0007/67633/Mining\\_Brochure\\_small.pdf](http://www.nswfarmers.org.au/data/assets/pdf_file/0007/67633/Mining_Brochure_small.pdf)

**Objectives**

- *Ensure protection of strategic agricultural land and the water resources it relies on.*
- *Ensure security and clarity for agriculture and mining and coal seam gas industries.*
- *Ensure a balanced use of land by competing industries.*
- *Provide enhanced future opportunities for sustainable mining and agricultural activities.*

Page 19, New England North West Draft Strategic Regional Land Use Plan

It appears to be common ground between all stakeholders that some level of increased protection ought to be applied to areas of high agricultural productivity. NSW Farmers position is that this can only be successfully delivered on an upfront basis before investment in potentially damaging projects commences.

## **2.2 Defining Strategic Agricultural Land**

NSW Farmers is aware that planning determinations based on land productivity are always going to be controversial within the farming community. The fact is that the intensity of mining and coal seam gas development on high value agricultural land is currently far greater than elsewhere in the state, which warrants tougher planning rules in these important areas to ensure our best land and water resources are not placed at risk by mining and coal seam gas activities.

NSW Farmers is broadly supportive of the aim of mapping our best land resources based on their biophysical characteristics, and also identifying areas which are critical to the success of our iconic rural industries. Identifying these areas is an important step towards a planning system which values and protects strategic agricultural resources.

Unfortunately the collection of data to underpin the mapping of agricultural land has been chronically underfunded by successive state governments over a number of years. The methodologies for the two primary datasets relied on for the mapping of biophysical strategic agricultural land are scientifically dated. This has meant that many areas of NSW with strong agricultural production have been excluded from the draft mapping.

### **2.2.1 Draft Inherent General Fertility of NSW**

NSW Farmers obtained expert advice as to the scientific validity of the Office of Environment and Heritage's Draft Inherent General Fertility Mapping of NSW. On examination of the NSW Natural Resources Data Directory we were advised of a number of deficiencies.<sup>3</sup>

Many grey, red and brown clay soils found throughout both the New England North West and Upper Hunter plan areas have been categorised as 'Moderate Fertility'. This categorisation is based on work by Charman (1978) which stated that "*The grey, red and brown clays also*

<sup>3</sup> Based on methodologies available at [www.environment.nsw.gov.au/soils/index.htm](http://www.environment.nsw.gov.au/soils/index.htm)

*have a somewhat better chemical status than the other soils within this group, but many of them are sufficiently hardsetting for seedling emergence to be restricted. The high clay contents and strongly coherent nature of the subsoils restrict water and root penetration”.*<sup>4</sup> This assessment by Charman was accurate at the time it was made in the context of 1970s agriculture. At that time few farmers retained stubble and practiced conservation farming techniques such as minimum tillage. This and uncontrolled field traffic led to soil compaction and in turn the issues with water penetration and plant formation identified by Charman. The widespread adoption of conservation farming practices since then has seen vast improvements in soil structure. Currently red, brown and grey clays support some of the most productive cotton and grain enterprises in the state’s North West.

NSW Farmers supports further work being done, including examination of farmer-held data sets from these excluded regions to demonstrate that soil condition and crop performance in these areas is, at a minimum ‘Moderately High’ rather than ‘Moderate’ in a global context.

Also excluded are the alluvial soils alongside the Gwydir River ESE of Pallamallawa in the North West. NSW Farmers is advised that the 8 to 10 metre deep alluvial soils found in that area are deeper and more versatile than many of the black vertesols mapped as ‘High Fertility’ in the draft mapping. As an example of this versatility the area is home to Australia’s largest pecan plantation with 700 mature trees on one property generating important income, employment and exports for the region. This is an example of the size of some areas, which have failed to be identified using the Inherent General Fertility of NSW mapping.

### 2.2.2 Interim Land and Soil Capability Mapping

The NSW Natural Resources Data Directory explains that the work of Murphy et al. has informed the methodology for the Land and Soil Capability (LSC) Map.<sup>5</sup> Stakeholders have found it difficult to properly evaluate the accuracy of the Land and Soil Capability Map because the source data has not been made publically available. We understand that it is likely to be based on the Office of Environment and Heritage’s SPADE database.<sup>6</sup>

On a practical level it is difficult to conduct a visual assessment of the coverage of data using the SPADE database because each soil sampling site is represented by a solid triangle (see Figure 1). Many of the soil samples represented on the database do not have sufficient data to inform the LSC criteria. Some areas have simply suffered from a lack of sampling. One example of this is the Wee Waa area which we understand is likely to meet the LSC criteria but has not had the groundwork done to properly assess its characteristics. The map in Figure 1 shows that some entire districts of the New England North West have not had samples uploaded to the SPADE database. NSW Farmers would appreciate the amendment of the SPADE database to utilise colour coding based on the completeness of the data recorded at each sampling site and to remove markers which do not represent real soil information.

<sup>4</sup> Charman PEV (1978) *Soils of NSW: Their characterization, classification and conservation*. Soil Conservation Service Technical Handbook No. 1

<sup>5</sup> Murphy B, Taylor S (2008) *Land and Soil Capability – How we safely manage the land* (Central West Catchment Management Authority, Wellington); <http://cw.cma.nsw.gov.au/OurNaturalAssets/soil.html>

<sup>6</sup> Found at <http://www.nratlas.nsw.gov.au/wmc/custom/homepage/home.html>

NSW Farmers understands that the current methodology for the LSC mapping has not yet been peer reviewed. There are a number of issues that would need to be resolved if this is to be accepted as the standard for state-wide agricultural land use studies. These include:

- a. **Compaction** – the LSC system has not taken compaction levels into account. This is a critical factor which influences water intake and storage, plant growth and nutrient uptake.
- b. **Sodicity** – structural stability of the soil in water is an important productivity factor. Structural stability in the subsurface and subsoil is not taken into account except in Category 5 in conjunction with slopes 10-25%.
- c. **Waterlogging** – the terms ‘well drained’, ‘wet’ and ‘waterlogged’ are not defined within the LSC Table or Glossary.
- d. **Soil water holding capacity** – soil water holding capacity and organic matter content are not included in Table 1, despite their importance from a farm management perspective.
- e. **Soil acidity** – the water pH threshold of 6.0 for Categories 2 to 4 has been set too low. 5.5 pH (CaCl<sub>2</sub>) would be more relevant to cropping enterprises in the New England North West and Upper Hunter. Outside of Category 5 there is also no distinction between topsoil acidity and subsoil acidity, which can have important production implications.
- f. **Nutrient deficiencies** – shortages of nutrients such as phosphorus and sulphur are not included in the scheme, despite their fundamental importance. One exemption exists in Category 5 in conjunction with soils where pH is <5.5.
- g. **Wind hazard** – the various rainfall and wind hazard categories listed in the LSC Table have not been defined.
- h. **Existing erosion** – more precision is needed in scoring existing erosion damage, for instance the radius that should be used from the sampling site when including observations such as gully erosion.
- i. **Salinity hazard** – the parameters for linking electrical conductivity to salinity categories have not been provided in Table 1.
- j. **Enterprise adjustment** – Table 1 does not enable thresholds to be adjusted based on the various needs of the enterprise in question. The LSC should have a mechanism to take into account the land use (cropping, pastures, horticulture etc.) and adjust capability scores accordingly.

### 2.2.3 Improving mapping of biophysical strategic agricultural land

Unfortunately the maps in the current draft plans fall short of modern best practice mapping. Due to a lack of funding it appears that the best available soil science expertise has not been utilised in the development of the maps.

NSW Farmers makes the following recommendations to ensure the mapping is of suitable quality to make informed planning decisions.

**RECOMMENDATION 1**

*NSW Farmers recommends that the Office of Environment and Heritage's 'Inherent General Fertility' data set be disregarded.*

**RECOMMENDATION 2**

*NSW Farmers recommends that the Land and Soil Capability methodology be released for an inclusive and high quality peer review process.*

**RECOMMENDATION 3**

*NSW Farmers recommends that a new mapping effort, starting with target areas, be undertaken using all available soil data – including data held by farmers and their advisors.*

**RECOMMENDATION 4**

*NSW Farmers recommends that new soil surveys be carried out where necessary through a funding process that attracts the best available soil scientists.*

**RECOMMENDATION 5**

*NSW Farmers recommends that any additional soil surveying be carried out to ensure consistency with the latest CSIRO Australian Soil Resource Information System mapping initiatives.*

**RECOMMENDATION 6**

*NSW Farmers recommends that revised maps take into account the contrasting requirements of various agricultural land uses (for example grain growing and wine grape production).*

**RECOMMENDATION 7**

*NSW Farmers recommends that all new data collection, including collection by the mining and coal seam gas industries, is carried out in a manner consistent with the latest national standards and performed by accredited soil science professionals.*

**RECOMMENDATION 8**

*NSW Farmers recommends that any project assessment mechanism have the ability for landholders outside mapped SAL to request an assessment by the Office of Food Security and Agricultural Sustainability as to their eligibility.*

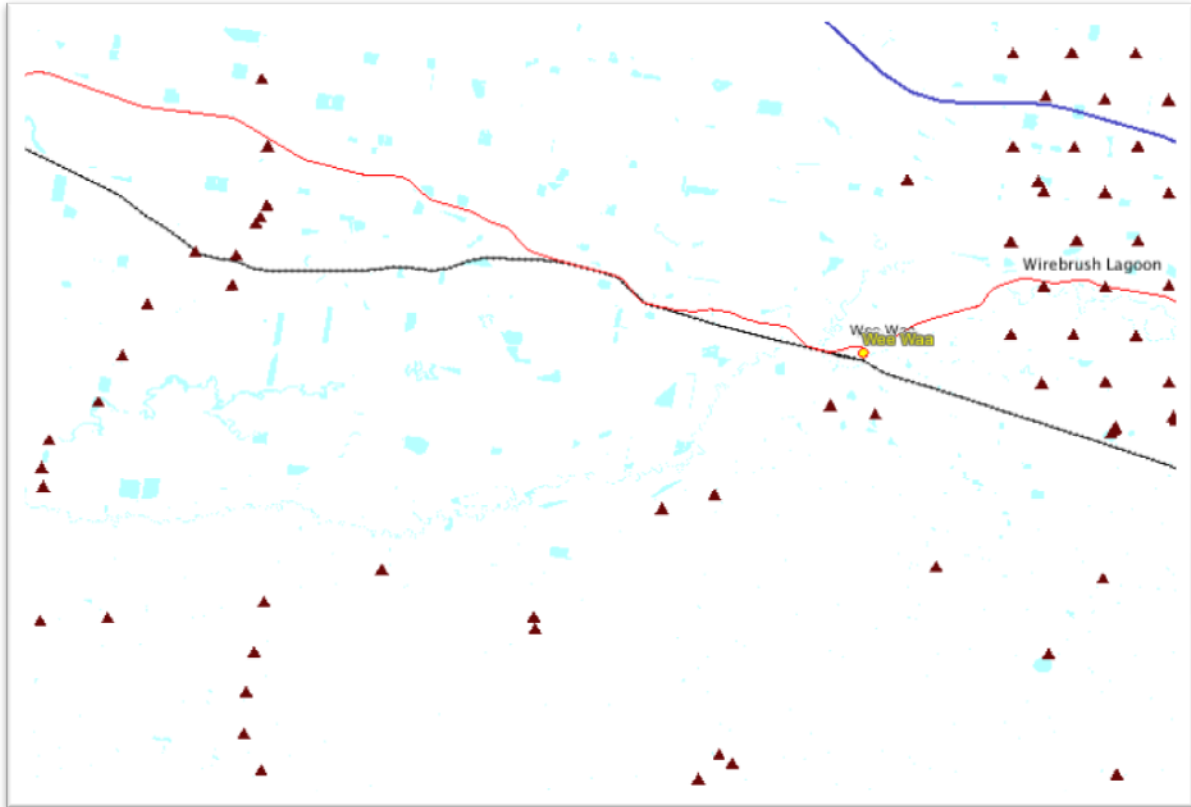


Figure 1 - soil sample sites in the Wee Waa district (SPADE database, accessed 9 May 2012)

## 2.3 The Proposed Gateway Process

The Proposed Gateway Process (the Gateway) in its current form is a divergence from stated Coalition Policy for a number of reasons:

1. it will not identify and protect sensitive areas upfront;
2. it does not contain a process for cumulative impact assessment;
3. it will not deliver certainty for industries or communities;
4. it will not apply ahead of granting exploration licences; and,
5. it does not involve the Department of Primary Industries, or Office of Food Security, in a decision making role.

NSW Farmers is alarmed that this level of divergence from the Government's stated objectives has been allowed to occur without a full and public justification for the NSW Government's reasons for doing so.

### 2.3.1 *Uncertainty for rural business*

NSW Farmers' primary concern is the continued environment of uncertainty for farm businesses in NSW, nearly 100% of which are covered by titles and applications for minerals, coal and coal seam gas exploration.<sup>7</sup> The draft Gateway Process (the Gateway) will allow exploration to proceed in areas which, after the Gateway is applied, may be off limits for extraction. This will continue to cloud investment decisions for many thousands of farm businesses while they wait to see how the Gateway applies to their land. Similarly, this

<sup>7</sup> Approximation based on Minview data, NSW Division of Resources and Energy, <http://www.minerals.nsw.gov.au/mv2web/mv2>, accessed 9 May 2012



fails to deliver certainty for extractive industries which might seek to explore in areas of Strategic Agricultural Land (SAL).

The Gateway will allow exploration in areas where the appropriate action required to protect strategic agricultural land is to exclude minerals, coal and gas industry activities. NSW Farmers sees this as a flawed piece of public policy which will see the agricultural and extractive industries bear the costs of exploration for no future benefit.

While there is currently no hard data available, NSW Farmers is aware of anecdotal evidence from its members of the effect exploration has on decisions to upgrade farm infrastructure, expand land holdings and proactively deal with succession planning. With exploration often taking several years to deliver a concrete outcome the effect on farm productivity should not be understated.

### 2.3.2 Risks to strategic agricultural resources

In addition to needless uncertainty, there is also the potential for lasting physical damage to strategic agricultural land and water resources. A great deal of invasive exploration can occur without being captured under the *State Environmental Planning Policy (State and Regional Development) 2011* (SRD SEPP), including all exploratory drilling, bulk sampling and, in the case of coal seam gas, test pilot production for up to 5 wells.<sup>8</sup> NSW Farmers raised concerns about this when the SRD SEPP was on exhibition, however this feedback was not reflected in the final version. A typical exploration programme can involve dozens of drill holes, with some such as the current Standard Iron project in Lockhart involving up to 1,500 holes.<sup>9</sup> Drilling can reach depths of over 1km – well past the groundwater systems relied on for agricultural and domestic water supplies.

Most other states have documented and sought to mitigate these risks through development of public guidelines and codes for exploratory drilling.<sup>10,11,12</sup> For instance, Western Australia's *Guidelines for the Protection of Surface and Groundwater Sources During Exploratory Drilling* states:

- “Aquifers may be contaminated by entry through open boreholes by run-off water from the surface, such as in saline and industrial areas;
- Aquifers containing useable-quality water being connected by drillholes to aquifers with inferior-quality water or to leakage zones. Cross flow may be induced by natural pressure differences or pressure differentials induced by pumping;
- Uncontrolled flow of pressure aquifer water through drillholes between aquifers of different quality water or through uncontrolled flow to wastage at the surface.”<sup>13</sup>

<sup>8</sup> *State Environmental Planning Policy (State and Regional Development) 2011*, cl 5 and 6

<sup>9</sup> Standard Iron Pty Ltd, Review of Environmental Factors for Lockhart Exploration Project – RW Corkery & Co. Pty Limited

<sup>10</sup> SA Primary Industries and Resources. 2006. *Minerals and Energy South Australia, Earth Resources Information Sheet: Mineral exploration drillholes – general specifications for construction and backfilling.*

<sup>11</sup> NT Department of Resources. 2011. *Construction and rehabilitation of exploration drill sites.*

<sup>12</sup> QLD Department of Environment and Resource Management. 1995. *Rehabilitation of areas containing shafts, boreholes or audits.*

<sup>13</sup> *Guidelines for the Protection of Surface and Groundwater Sources During Exploratory Drilling*, WA Department of Mineral and Petroleum Resources, page 2



We acknowledge the current efforts of the NSW Government in developing drilling standards for the coal seam gas industry and look forward to their public release. NSW Farmers remains concerned however that despite acknowledging the risks of exploratory drilling on one hand, the government will allow these activities to go ahead without being captured by the Regional Land Use Plans or Aquifer Interference Policy which are aimed at safeguarding land and water resources. We are equally concerned that the drilling and well construction standards will be confined to the coal seam gas industry when the community is equally concerned by the drilling practices of companies exploring for coal and other minerals.



Figure 2 - exploratory drilling in Central West NSW

In addition to concerns with drilling and well construction, there are physical impacts to the surface of land associated with exploratory activities that are not appropriate for areas zoned for food and fibre production. These include soil compaction, interference with crops and pastures, disturbance of livestock and subsidence associated with substandard borehole rehabilitation. While best practice requires avoidance and, where possible, rehabilitation of land surface impacts, history has shown that the best intentions of explorers are not enough to avoid interfering with the conduct of farm businesses, and unforeseen impacts are commonplace.

Advanced stages of exploration have known long term impacts on agricultural productivity. The regulatory framework for CSG enables 'test pilot production' to be carried out under an exploration licence without a development application. This can involve the construction of holding tanks, workers' accommodation, roads, pipelines and gas flares, and operate around the clock for two years. Case Study 1 contains details of a typical test pilot production development.

In the case of coal and other minerals, bulk sampling is often used to demonstrate the commercial viability of a project. This can involve developing a smaller open cut or underground mine for the extraction of coal or ore samples. Case Study 2 outlines the Bickham Bulk Sample project as an example of invasive exploration.

NSW Farmers strongly opposes developments on the scale of test pilot production and bulk sampling falling both outside the scope of Part 4.1 of the *Environmental Planning and Assessment Act 1979* and the strategic regional land use framework. These activities operate over a number of years and have a noticeable impact on the community and potentially on land and water resources. Given their similarity to full scale production proposals it is difficult for the community to accept that insufficient information exists to make

a gateway determination prior to invasive activities like this going ahead. Similarly, there is a great deal of informed scepticism about the lack of independent assessment required to undertake invasive exploratory activities. The current delegation of Part 5 approvals to the Division of Resources and Energy (DRE) with no role for either the planning system or the state's water regulator leads to a perceived conflict of interest between the DRE's role in facilitating and promoting the extractive industries, and its duty to act in the best interests of the environment and rural communities in a regulatory capacity.

NSW Farmers submits that if it is accepted that strategic agricultural land and water is worth protecting, a decision on whether or not it falls within that protection should be made prior to invasive industrial processes being carried out. Applying a gateway only to state significant proposals under the current *State Environmental Planning Policy (State & Regional Development) 2011* will ensure that is not the case.

In short, NSW Farmers cannot support a model for protecting strategic agricultural land which will continue to allow substantive exploration for minerals, coal and petroleum despite the Gateway potentially prohibiting extraction in the same area.

### 2.3.3 Case Study 1: Kahlua Test Pilot Production site (coal seam gas)

The Kahlua CSG Pilot has resulted from an exploration licence (PEL 1) granted in 1993 to Australian Coal Bed Methane Pty Ltd. The licence was granted under current processes which do not take into account community feedback when granting licences. The licence is now operated by Santos Ltd under a farmin agreement with the title holder. Under PEL 1, Santos is guaranteed access to hundreds of properties (by agreement or through arbitration) to conduct seismic and other studies without further approval.



Figure 3 - aerial view of the Kahlua test pilot production site

#### *Phase 1 drilling programme*

Santos were given an approval by the Division of Resources and Energy in 2008 to drill 26 core holes, despite the company's own review outlining potential damage to several creeks. Their approval allowed them to remove the top soil from over 70 hectares of private farm land, use 2 megalitres of water and establish flares for escaping gas. The company's review also noted potential contamination of surface and ground water sources associated with the drilling.

#### *Test pilot production*

Following completion of the initial drilling programme, Santos was granted further approval to drill four pilot wells at the site. To complete each well, Santos had to construct:

- access tracks;
- a 1 hectare clearing;
- mobile offices;
- flaring towers;
- drilling sumps;
- worker accommodation;
- contoured drains;
- water storage tanks;
- pipelines; and,
- a water treatment plant.

During the 60 day drilling period the site was manned by 40 people and operated 24 hours per day. A 10 megalitre holding tank was constructed to secure the waste water extracted, and Santos predicts that the four wells could fill one of those tanks every fortnight.

Santos' proposal notes the potential for pilot testing to lead to cross-contamination of aquifers, loss of shallow groundwater resources, impacts on aquifer recharge, and decreased water quality through the release of chemicals.<sup>14</sup>

#### *Current and proposed approval pathways*

The granting of exploration licences does not require community feedback to be taken into account. The Kahlua project was developed without needing to lodge a development application due to exemptions to planning laws and the fact that it falls beneath the 5 well criteria for state significant development. Under the proposed policies this development could be developed on SAL without being subject to the proposed Gateway or AIP.

#### 2.3.4 Case Study 2: Bickham Coal Bulk Sample (coal exploration)

The bulk sampling project by the Bickham Coal Company has been strongly opposed by the local community. It is directly adjacent the Pages River and threatens the air quality, water supply and visual amenity of the Upper Hunter's thoroughbred industry.

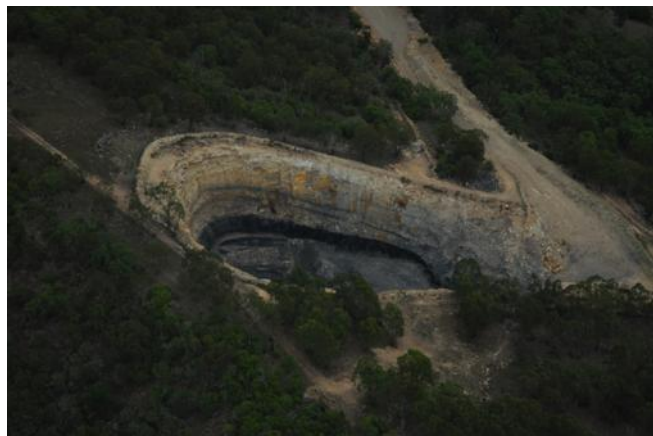


Figure 4 - aerial view of the remaining Bickham bulk sample site

The aim of the bulk sample project was to remove a 25,000 tonne coal sample for test burning by overseas purchasers. To remove the sample, Bickham received approval from the Division of Resources and Energy to blast and excavate to a depth of 90 metres and remove 330,000 cubic metres of overburden. The Review of Environmental Factors lodged by the Bickham Coal Company, which formed the basis of its approval, highlighted a number of knowledge gaps about potential long-term impacts on groundwater and the nearby Pages River.<sup>15</sup> A

<sup>14</sup> Review of Environmental Factors, Kahlua Test Pilot Wells – Santos, page 48

<sup>15</sup> Bickham Coal Company Pty Ltd, Review of Environmental Factors for Removal of Bulk Sample – Hunter Development Brokerage

further study prepared by WorleyParsons for the Upper Hunter Progress Association found a series of likely long term water impacts would result from full scale mining at the site.<sup>16</sup>

NSW Farmers acknowledges that this particular development would potentially exceed \$30 million in capital costs, which would now trigger a Gateway assessment, however this will not always be the case. Monetary planning triggers are susceptible to inaccurate upfront budget estimations and the community needs clarity around the sorts of impacts which will give rise to a full planning assessment process.

---

## **2.4 Rectifying the Gateway Process**

NSW Farmers remains committed to finding a way forward to deliver workable land use plans and water protections across NSW. We acknowledge that this is a difficult reform for any government to deliver and is being attempted in the context of record levels of exploration - approved by successive governments without any strategy or discipline.

NSW Farmers believes land use plans at a regional scale are the most appropriate way to deal with the present land use conflict. However, to achieve their stated objectives of delivering certainty for rural businesses and communities, and protecting our most productive agricultural areas, they have to be truly upfront. The proposal to place a gateway between exploration and mining does not make that determination any more 'upfront' in a practical sense to anyone other than the proponent. To landholders and communities who will still endure a decade long exploratory programme the proposed Gateway will not appear any more upfront than the normal development assessment process.

Throughout the consultation process for the implementation of the SRLUP, NSW Farmers has consistently advocated that its preferred method for protecting strategic agricultural land is a 'traffic light model', whereby regional land use plans establish three zones:

- **Exclusion zones** – where enough information exists to rule out mining and coal seam gas activity on the basis of unique sensitivity or agricultural productivity.
- **Buffer zones** – areas identified through regional scale mapping as having the potential to meet the criteria for unique sensitivity or agricultural productivity, or that come within a specified distance of those areas.
- **Exploration zones** – areas which are more likely to be suitable for mining and coal seam gas exploration and development, pending a thorough assessment of potential water impacts.

We have also indicated that in place of the proposed post-exploration gateway, we would also accept a model without upfront exclusion zones provided the gateway was brought forward to prevent inappropriate exploration of SAL.

Figure 5 (see Page 22) gives a visual representation of how this process might work. Mapping would identify a small portion of a region where licences may not be awarded or

---

<sup>16</sup> Bickham Coal Mine Project, Scone. Assessment of Water Resource Management Issues, WorleyParsons 2009

renewed due to that land's unique biophysical characteristics. It would also identify areas where exploration licences can be granted without being subject to a gateway assessment. Between these two would lie a 'buffer zone' where conditional licences could be granted for the purpose of preliminary exploration while obtaining further information about the biophysical characteristics and agricultural productivity of that area. Once sufficient data was to hand the Office of Food Security would recommend a course of action to the Gateway Panel, which would then decide whether or not a mining lease or petroleum production lease could be granted over the exploration licence area. This determination would be made as early as possible in the exploration process to maximise certainty for both the explorer and the landholder.

**RECOMMENDATION 9**

*NSW Farmers recommends that the Minister for Planning and Infrastructure establish a technical working group to look at options for a pre-exploration gateway process.*

**RECOMMENDATION 10**

*NSW Farmers recommends that the State Environmental Planning Policy (State and Regional Development) 2011 be amended to classify all invasive exploration activities as state significant development.*



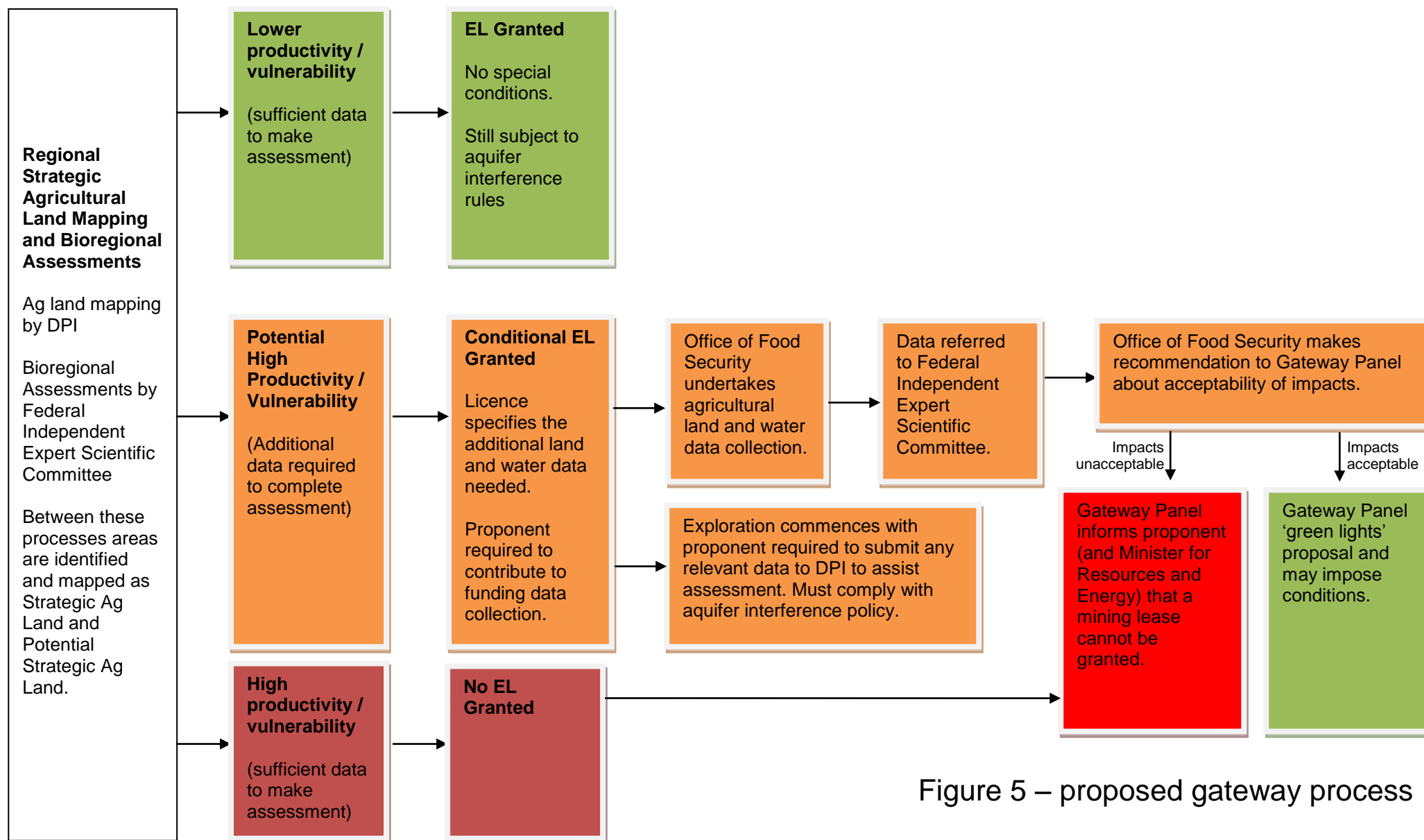


Figure 5 – proposed gateway process

#### 2.4.1 Application and weighting of the gateway criteria

There is a great deal of uncertainty about exactly how the Gateway will operate in practice. The draft plans do not stipulate decision making rules for the Gateway Panel to abide by, including the weighting of various criteria and the parameters for the acceptability of impacts.

NSW Farmers understands that this uncertainty is a common cause of concern among stakeholders and would welcome the inclusion of rules and examples to demonstrate how the decision making process is intended to operate in respect of various mining and coal seam gas proposals.

#### **RECOMMENDATION 11**

*NSW Farmers recommends that the Draft Plans be amended to include detailed decision making parameters for the Gateway Panel and examples to demonstrate application of these parameters.*

#### 2.4.2 Cumulative impact assessment

Members of NSW Farmers are keenly interested in the assessment of cumulative impacts to ensure the health of communities and environments as mining and coal seam gas development takes place. We note the commitment in the draft plans to establish a model for cumulative impact assessment and the establishment where possible of limits on certain impacts. NSW Farmers acknowledges that a great deal of work has been put into the model developed by the Namoi Catchment Management Authority and look forward to government working closely with that body to ensure they take full advantage of that work.

We recommend that before it is implemented in the draft plans, any cumulative impact assessment methodology be made available for a peer review process. NSW Farmers recognises that integrating cumulative impact assessment would make these plans almost unique worldwide and applauds the government for taking the time to develop real cumulative assessment for rural communities. It is important that the best expertise is used through a peer review process to ensure the outcome is well informed and scientifically defensible.

#### **RECOMMENDATION 12**

*NSW Farmers recommends that the proposed cumulative impact assessment methodology be submitted for independent peer review prior to being released for consultation.*

**RECOMMENDATION 13**

*NSW Farmers recommends that the Stakeholder Reference Panel receive a detailed briefing on the operation of the proposed cumulative impact assessment methodology prior to it being released for public consultation.*

**2.4.3 Public benefit test**

NSW Farmers is keenly interested in the methodology being developed for the public benefit test and cost benefit analysis components of the Gateway and the draft plans. NSW Farmers is pleased to have been given the opportunity to meet with the consultants at an early stage of the development process and had a constructive discussion on factors to be considered in their methodology.

The primary concern for NSW Farmers is that agriculture might be unfairly prejudiced by any short-term economic modeling. For instance an open cut coal mine might deliver substantial economic returns over a 30 year period but permanently reduce the productivity of that land from that point forward. It is possible that if left to productive agriculture, both land uses would deliver the same cumulative output over a 70 year timeframe, with agriculture then becoming the economically favourable option in the longer term.

There is also significant uncertainty about the long term outlook for commodity prices. The long term fundamentals for agricultural commodities are strong with an increasingly wealthy global customer base and continued global population growth. As a world leader in food exports positioned in the fastest growing region this presents a great opportunity for the farm sector to increase export earnings through higher soft commodity prices.

**RECOMMENDATION 14**

*NSW Farmers recommends that to account for the bright long-term prospects for agriculture in the public benefit test, the methodology include:*

- *projections at a local and state scale for periods of 25, 50 and 75 years;*
- *an estimate which accounts for the likelihood and duration of long term damage inherently associated with extractive industries and forecasts the socio-economic costs for the duration of that damage;*
- *a sensitivity analysis to encapsulate outcomes for an optimistic, pessimistic and median forecast for prices and production of agricultural, mineral and petroleum commodities; and,*
- *an assessment of the impacts on local and state infrastructure and service use including access to rail and ports for agricultural commodities, and public services of health and education.*



**RECOMMENDATION 15**

*NSW Farmers recommends that the public benefit test and cost benefit analysis components of the Gateway be put out for public consultation for at least eight weeks.*

**2.4.4 Cabinet override**

The current draft policies enable cabinet to declare a project to be an 'exceptional circumstance project' which would exempt that project from the requirement to obtain a gateway certificate.<sup>17</sup> NSW Farmers holds concerns about the potential for this power to be used to undermine the objectives of the strategic regional planning process. We understand the justification put forward by government ministers that there may be circumstances where government needs to act outside regular planning rules to ensure the best interests of NSW are safeguarded. NSW Farmers believes that in extraordinary cases cabinet would have the power to introduce legislation which would override or change usual planning processes – and given our understanding that the draft plans will be introduced via delegated legislation this would not prove a prohibitive hurdle for any government.

NSW Farmers would strongly prefer that this provision was removed from the final plans to avoid any temptation by future governments to arbitrarily override the sustainable land use framework being developed through the strategic regional land use policy. If the decision is made to ignore this recommendation we believe that strict criteria about its usage should be included in the draft plan to define the sorts of projects which would trigger an exceptional circumstance exemption.

**RECOMMENDATION 16**

*NSW Farmers recommends that the cabinet override provision for exceptional circumstance projects be removed from the draft plans.*

**2.5 Exclusion Zones**

NSW Farmers continues to believe that the best policy solution in terms of delivering protection of strategic agricultural land and certainty to the agricultural and extractive industries, is to establish exclusion zones for mining and coal seam gas activity over high conflict areas. Small areas of both the New England North West and Upper Hunter are likely to be regarded as so iconic and valuable from an agricultural perspective that it would deliver certainty and peace of mind to have them protected upfront.

NSW Farmers does not accept the argument that inappropriate mining activity should be allowed on the basis that NSW citizens have a right to the benefits of their mineral wealth. Firstly, from the perspective of intergenerational equity, current generations do not have the right to exploit all known mineral reserves and leave nothing for future generations. In

<sup>17</sup> Draft Strategic Regional Land Use Plan for the New England North West and Upper Hunter, page 86

the interests of sustainable resource extraction it is appropriate that some amount of coal seam gas, coal and other minerals is left in the ground to benefit future Australians.

Secondly, acknowledging that current exploration and extraction techniques are not appropriate for areas of strategic agricultural land will not necessarily quarantine these resources permanently. As mining techniques continue to improve and technologies like coal seam gas are proven, future governments will be free to review exclusion zones and make decisions based on the safety record of those practices. The practical effect may be that by exploiting our resources strategically, we ensure that our most sensitive and productive areas are eventually mined with our most advanced and least invasive technology.

Economic modelling to demonstrate the cost of this policy has not been made available to the public to enable an informed debate on the merits of exclusion zones. NSW Farmers notes modelling prepared for the NSW Minerals Council by PriceWaterhouseCoopers as part of this process (the PWC Report) assumes no projects will proceed on SAL – effectively modelling an exclusion zone scenario.<sup>18</sup> However this is of limited value in assessing the true impacts of an exclusion zone approach. The PWC Report does not account for any increase in exploration and development in non-SAL areas as a result of current proposals on SAL not being progressed. NSW Farmers does not believe that 100% of the capital currently available to proposed projects, many of which are in their infancy, would not be reinvested in resources projects elsewhere in the state. For this reason, in addition to the flawed assumptions about the operation of the Gateway Process, this modelling is grossly exaggerated.

**RECOMMENDATION 17**

*NSW Farmers recommends that exclusion zones be established over areas which clearly meet the criteria for strategic agricultural land.*

**RECOMMENDATION 18**

*NSW Farmers recommends that any modelling on the costs and benefits of an exclusion zone approach to land use planning for extractive industries be released to inform public discussion on this issue.*

## **2.6 Infrastructure provisions**

NSW Farmers is pleased that an entire chapter of both draft regional plans is devoted to infrastructure. However, whilst the infrastructure chapters summarise the current status of key road and rail infrastructure in the regions, and briefly address other key infrastructure such as significant dams, hospitals and the National Broadband Network,

<sup>18</sup> Impacts of the draft strategic regional land use plans on coal mining and regional and NSW economies, PWC 2012

there is no discussion of the potential for infrastructure corridors to provide a more integrated and efficient solution into the future.

NSW Farmers submits that preferred infrastructure corridors be identified in the draft regional land use plans to limit the number of landholders burdened by new infrastructure such as pipelines, rail spurs and additional power lines.

The proposed Eastern Star Gas Narrabri-Wellington pipeline highlighted a myriad of issues pertaining to the planning of pipeline routes, as well as construction and compensation issues. Similarly, the proposed Young to Wellington gas pipeline is highlighting the need for public lands to be better utilised for major infrastructure projects. In both projects, community opposition could have been reduced – or even avoided – had the proponent responded meaningfully to the advice of landholders to site the pipeline adjacent to major transport routes rather than traversing private properties. NSW Farmers strongly supports pipelines being required to utilise public lands where possible.

**RECOMMENDATION 19**

*NSW Farmers recommends that the draft Strategic Regional Land Use Plans include consideration of infrastructure corridors to limit the impact of proposed mining and coal seam gas related infrastructure on private landholdings.*

### 3. AQUIFER INTERFERENCE POLICY

One of NSW Farmers' absolute priorities in the debate about minerals, coal and coal seam gas activities is ensuring the quality and quantity of the precious ground and surface water - so fundamental to sustainable food and fibre production - is maintained or improved. Farmers' concerns about potential impacts on water resources are well-founded, with the National Water Commission warning that "if not adequately managed and regulated, [the coal seam gas industry] risks having significant, long-term and adverse impacts on adjacent surface and groundwater systems".<sup>19</sup> Similarly, in the case of mining, the National Water Commission has warned that "where water systems are approaching or at full allocation, current and future mining developments could, if not adequately managed and regulated, impact on surface water or groundwater systems at a regional scale".<sup>20</sup> The Commission has also identified a number of future priorities for mining and water, advising that "wherever possible, mining activities should be incorporated into State and territory water planning and management regimes from their inception", and that "Wherever possible, mining activities should operate under the same rules and regulations as other water users".<sup>21</sup> As outlined in Section 10.4.4 of this submission, agricultural water users and irrigators have a range of regulatory requirements, including the drilling of bores.

The development of a draft aquifer interference policy (AIP) represents a positive leap forward in protection of water resources from mining and coal seam gas activities. Though the provisions for aquifer interference approvals were introduced in the *Water Management Act 2000*, until now they have not been switched on – leaving a serious gap in the protection intended by that act.

While we welcome this important step toward implementing protection for water resources, we believe a number of improvements must be made to reflect the expectations of the community and to meet the objective of protecting water resources.

There is broad consensus that the draft AIP is a difficult document to comprehend. There is ongoing uncertainty about how many provisions would operate in practice to the extent that there appear to be some contradicting statements throughout that require clarification. NSW Farmers is concerned that unless the document is simplified there is scope for misinterpretation at an administrative level, a lack of certainty for the extractive industries, and a lack of clarity within the community about exactly what protections are being delivered.

---

<sup>19</sup> National Water Commission (2010) *Position Statement: Coal Seam Gas and Water*  
[http://www.nwc.gov.au/resources/documents/Coal\\_Seam\\_Gas.pdf](http://www.nwc.gov.au/resources/documents/Coal_Seam_Gas.pdf)

<sup>20</sup> National Water Commission (2010) *National Water Commission Mining position statement*  
[http://www.nwc.gov.au/\\_\\_data/assets/pdf\\_file/0006/9726/Mining\\_PS3.pdf](http://www.nwc.gov.au/__data/assets/pdf_file/0006/9726/Mining_PS3.pdf)

<sup>21</sup> *ibid*

**RECOMMENDATION 20**

*NSW Farmers recommends that the draft Aquifer Interference Policy be redrafted with the aim of simplifying the document and clarifying the assessment pathway and criteria.*

Further, NSW Farmers holds serious concerns about the application of the policy. While we understood all areas of NSW would be covered, the current proposal is restricted to water underlying biophysical SAL. There are also a number of exemptions for exploration activities, and projects which have been subject to the Gateway – between which it is difficult to identify a scenario where an aquifer interference approval would actually be required for a mining or coal seam gas project.

In addition to our comments in this submission, NSW Farmers is also a member of the NSW Irrigators' Council and fully endorses the comments put forward in its submission.

**3.1 Scope****3.1.1 Application to areas outside biophysical strategic agricultural land**

The Election Policy and associated media releases state definitively that the AIP would apply statewide to protect all water resources from mining and coal seam gas activity. NSW Farmers acknowledges that the draft AIP is part of 'Stage 1' of the AIP rollout and that government has committed to implement 'Stage 2' statewide. The view of our members is that justification for a staged rollout appears to be lacking and without clear timeframes for the implementation of Stage 2 we cannot support the majority of NSW being excluded from protection under the draft AIP.

NSW Farmers believes that all water resources deserve the benefit of upfront assessment before they are placed at risk, including those outside Biophysical SAL. In many cases the reduced access to quality water sources outside areas of Biophysical SAL make farm businesses more susceptible to changes in water availability caused by mining and coal seam gas activity.

Further, if the government's aim is simply to restrict protection to the defined areas of Biophysical SAL, then this cannot be successfully achieved while restricting the AIP to those areas. Underground water resources are enormously complex and insufficient work has been carried out to fully understand the connectivity of aquifers across the state or even within the New England North West or Upper Hunter plan areas. Without a full understanding of the interaction between these water sources we cannot be sure that drilling or mining activity taking place kilometers away from Biophysical SAL will not have an impact on the water resources underlying the mapped area.

On that basis NSW Farmers believes that the draft AIP should be amended to apply statewide to all water sources as was originally intended by the Election Policy.

**RECOMMENDATION 21**

*NSW Farmers recommends that the final Aquifer Interference Policy be amended to apply to all water sources in NSW, not just those underlying Biophysical Strategic Agricultural Land.*

**3.1.2 Exemptions for exploration activities**

NSW Farmers is alarmed that exploration activities have been exempted from the provisions of the draft AIP. As we covered earlier in this submission, exploration activities for coal seam gas, coal and other minerals are known to have the potential to harm ground and surface water resources (see Part 1.8.2). The community expectation from this process is that any risks to groundwater associated with mining and coal seam gas activity will be subject to a scientific and independent upfront assessment before proceeding.

NSW Farmers notes that a Review of Environmental Factors is currently lodged for invasive exploration activities, to satisfy the requirements of Part 5 of the *Environmental Planning and Assessment Act 1979*. As we mentioned earlier there is a low degree of community confidence in this process due to the perceived conflict of having the Division of Resources and Energy as the consent authority. NSW Farmers had welcomed a role for the NSW Office of Water in this process through the AIP which we imagine would be conducted simultaneously to the existing REF process. For this reason we reject the assertion that including protection for exploratory activities would substantially increase the regulatory burden on mining and coal seam gas companies.

Excluding potentially hazardous exploration activities from any assessment under section 91 of the *Water Management Act 2000* is out of keeping with the 'water management principles' found in section 5 of that act – most importantly that cumulative impacts will not be taken into account. This could lead to serious cumulative impacts where, for example, intensive coal seam gas exploration involves extract water from coal seams across a large portion of a catchment while only taking less than 3ML per year at each well.

**RECOMMENDATION 22**

*NSW Farmers recommends that the exemption for exploration activities be removed from the final Aquifer Interference Policy.*

**3.1.3 Exemptions for projects subject to the Gateway**

The AIP is intended under the *Water Management Act 2000* to act as a standalone regulatory instrument administered by the NSW Office of Water. NSW Farmers is concerned by the proposal to integrate water protections into the Gateway process at the expense of a standalone aquifer interference approval. Given the lack of clarity around how the Gateway Panel will consider the various factors included in the Gateway, there is

a perception that projects will be allowed to proceed despite serious risks to surface and groundwater sources.

NSW Farmers is of the opinion that in addition to undermining the objectives of the AIP, the ability for the Gateway process to exempt a project is legally questionable. Part 4.1 of the *Environmental Planning and Assessment Act 1979*, which was introduced to replace Part 3A of that act, lists certain legislative approvals which are not required for state significant development projects. Section 89J(1)(g), introduced with these reforms exempts various approvals under the *Water Management Act 2000* but specifically excludes aquifer interference approvals from that exemption. It is clear from the wording of the section that parliament intended all state significant development to be subject to the AIP. NSW Farmers therefore questions the ability of a state environmental planning policy to implement a Gateway process which would undermine the intention of Part 4.1 of the *Environmental Planning and Assessment Act*.

On this basis NSW Farmers strongly recommends that the exemption for state significant projects be removed.<sup>22</sup> This would enable the AIP to operate as a standalone approval as was intended by the Election Policy, the *Water Management Act* and the *Environmental Planning and Assessment Act*. It would also restore community confidence that the AIP process would guarantee the acceptability of impacts on water resources by mining and coal seam gas activities.

#### **RECOMMENDATION 23**

*NSW Farmers recommends that the exemption within the draft Aquifer Interference Policy for projects which have received development consent or a gateway certificate be removed in the final policy.*

#### **3.1.4 Applicability to agricultural water use**

There has been considerable public, private and political commentary suggesting that coal seam gas drilling is no more invasive than a farmer drilling a bore. Aside from the differences in scale, depth and intensity, the fact remains every water bore drilled for farming and irrigation purposes goes through a process comparable to an aquifer interference approval. NSW Farmers is firmly of the view that including agricultural water use in the aquifer interference framework would be a duplication of existing provisions found in section 90 of the *Water Management Act 2000* in relation to water supply works approvals. Under existing laws, farmers are required to apply for a water supply works approval through the NSW Office of Water (NOW) prior to the construction or operation of any pumps, bores, spearpoints or wells. As part of the approval process, the Office of Water assesses the suitability of the location and, if the application is successful, imposes conditions aimed at avoiding and minimising adverse impacts of the works. These conditions are binding on both the landholder and the licensed driller engaged to carry out the construction. Following construction, further reports must be lodged with NOW to

<sup>22</sup> See first exemption in Part 2.4, *Draft NSW Aquifer Interference Policy – Stage 1*, page 27



confirm the construction details of the bore and water quality within two months of completion.

### **3.2 Zones and Minimal Harm Criteria**

The minimal harm criteria outlined in the AIP are extremely difficult to interpret. While we are happy to be convinced that this is necessary to implement comprehensive protections for water resources, at the outset we believe these need to be simplified in the interests of certainty for both extractive industries and the community.

We are concerned that the 'Protection Zones' identified in Appendix 1 are based on vertical measurements, when in a practical sense the more relevant measurement would be a volumetric one. There are also issues with defining the zones by reference to the distance from the point of the aquifer interference activity. NSW Farmers would like to meet with the drafters of the policy to understand how these distances were devised and what scientific work has been relied upon so that we can seek independent advice on its validity.

The definition of 'Highly Productive Groundwater' used in the policy, which informs the level of protection in each zone, is set at a level which will exclude a vast majority of productive groundwater sources in NSW. NSW Farmers submits that a flow rate of 2L/s would be a more reasonable reflection of the types of flows capable of sustaining high value agricultural production. One factor that has influenced our position on this matter is the understanding that because 2L/s is sufficient for most agricultural purposes, farmers have only drilled their bores to depths sufficient to meet this flow rate. However, this is not necessarily a reflection of the potential of an aquifer. Flow rates are often a function of bore design rather than aquifer quality and therefore a lower flow rate trigger is appropriate to ensure all high quality water sources are given appropriate protection.

#### **RECOMMENDATION 24**

*NSW Farmers recommends that stakeholders be given clarification on the basis for the distance-based zoning model used.*

#### **RECOMMENDATION 25**

*NSW Farmers recommends that the definition of 'Highly Productive Groundwater' be amended from 5 litres per second to 2 litres per second.*

NSW Farmers is continuing to consult with leading water experts on the specifics of how the zoning and minimal harm criteria should be finalised and we look forward to continuing a dialogue with the NSW Office of Water about how this can be achieved.



**RECOMMENDATION 26**

*NSW Farmers recommends that the NSW Government continue to facilitate detailed discussions between stakeholders and the NSW Office of Water as it finalises the Aquifer Interference Policy.*

**3.3 Clarification of practical application**

Given the technical nature of the draft Aquifer Interference Policy, and the ‘rapid evolution’ that NSW Farmers understands the draft policy experienced over Christmas 2011, the document is now extremely difficult to understand from the perspective of its practical application. NSW Farmers has engaged the expertise of hydrogeologists in reviewing the document, looking not only at the minimal harm criteria (see below), but also the likelihood of the policy applying under different scenarios. From meetings with the NSW Minerals Council and APPEA, NSW Farmers understands that these organisations have similarly consulted their members and technical experts as to how the policy would operate in practice, and the types of scenarios in which the policy would apply. It appears that there is a great deal of confusion as to how the policy will operate in practice, which highlights a clear need for practical examples to be provided in the draft policy.

**RECOMMENDATION 27**

*NSW Farmers recommends that practical, working examples of how the Aquifer Interference Policy will apply to minerals, coal and coal seam gas activities be included in the Aquifer Interference Policy.*

**3.4 Penalties and security for rehabilitation**

The draft AIP makes reference to penalties to be imposed on proponents who do not comply with their obligations under the finalised AIP. NSW Farmers believes that there should be a discussion about the level of penalties imposed prior to these being finalised and implemented in the final regulation.

NSW Farmers supports the collection of security deposits by the NSW Office of Water to ensure approval-holders meet their obligations and to make provision for landholders affected by any unforeseen impacts of mining and coal seam gas activities. NSW Farmers believes clarity should be provided about the quantum of the proposed deposits to give the community certainty about the financial capacity for rehabilitation and to enable an informed discussion about the rates between various stakeholders. We believe this should be done through the development of a schedule detailing the security deposit rates for corresponding risk categories.

**RECOMMENDATION 28**

*NSW Farmers recommends that the NSW Office of Water make recommendations on penalties for consideration by the Stakeholder Reference Group prior to finalisation of the Aquifer Interference Policy.*

**RECOMMENDATION 29**

*NSW Farmers recommends that a schedule of security deposits be developed for inclusion in the Aquifer Interference Policy.*

=====//=====

## **4 DRAFT COAL SEAM GAS CODE OF PRACTICE**

### **4.1 *Intent***

The proposed development of a Code of Practice for Coal Seam Gas (CSG) was first raised with NSW Farmers in September 2011. As communicated at the time, NSW Farmers was concerned that the development of this document was being conducted separately to the formal Stakeholder Reference Group (SRG) process, and as such, separate to the policy debate and community consultation discussions taking place with all key stakeholders. NSW Farmers advised the Department of Planning immediately upon learning of the development of the Code, firstly to advise the Department of a separate process being undertaken by the Division of Resources of Energy, and secondly, to recommend that the process be brought into the overarching SRG process. NSW Farmers also raised this formally at the next SRG meeting in an attempt to bring the development of the Code within the SRG process. This was ultimately unsuccessful.

As raised in the first meeting with the authors of the Code, it is unclear what the purpose, scope and intent of the Code is. As explained in the Australian Codes of Practice Database<sup>23</sup>, Codes of Practice in Australia tend to fall into three categories, namely:

- “voluntary agreements where a group of companies or an industry sector agree to abide by a particular code;
- quasi-regulation where the code may be developed by industry in cooperation with government; or
- co-regulation where the code describes required performance or behaviour or specify acceptable means of meeting broader performance based obligations and there are penalties for non-compliance with the code”.

It is not clear from the Draft Code which of the above – if any – apply to this Code. NSW Farmers had understood that the intention of this Code would be to outline recommended practices beyond the minimum regulatory standard. Whilst this is the case for recovery of legal fees for example, it is certainly not the case for community engagement, explorer

<sup>23</sup> Codes of Practice (2003) <http://codes.bli.net.au/Codes.asp>

behaviour or land access practices recommended in the Draft. Examples such as “CSG companies are required to hold a Water Access Licenses under the Water Management Act” simply reiterate what is already law, not an example of best practice behaviour.

Given the scale and intensity of activity associated with minerals, coal and coal seam gas across the state, and the fact that land access and community engagement differ little between the three sectors, it remains inexplicable that a Code be developed for CSG alone. There was a clear commitment in the *Strategic Regional Land Use Policy* to “consult with the community prior to the tender for a Coal and Coal Seam Gas Exploration Licence and provide information about what exploration involves so that the community are the first to hear about any potential exploration activity” (p3). As such, it is important that a Code of Practice be developed for minerals, coal and coal seam gas activities.

Similarly, recognising the myriad of minerals, coal and coal seam gas titles across the state, and their different stages of development, it is important that these Codes not be limited to the exploration phase. Whilst important to lay solid foundations during the exploration phase, NSW Farmers rejects the suggestion that positive initiatives such as the creation of community consultation committees be disbanded upon completion of the exploration phase, as suggested in the draft Code (p12).

#### **RECOMMENDATION 30**

*NSW Farmers recommends that co-regulatory Codes of Practice be developed for minerals, coal and coal seam gas activities, not limited to the exploration phase.*

NSW Farmers has conducted dozens of member meetings, town hall meetings and joint meetings with mining/CSG companies in the past few years in an attempt to educate landholders and the broader community about their rights and obligations when confronted by the prospect of minerals, coal and/or coal seam gas activities in their region. As outlined in previous submissions, NSW Farmers filled this gap – at cost – in the absence of Government advice or assistance in this area. This was the driver for NSW Farmers applying – unsuccessfully – for a Government-funded Industry Liaison Officer to assist landholders who have been forced to engage in a process they have no control over, similar to Government-funded positions in Queensland. It was hoped that the Code of Practice would ultimately minimise the need for such meetings. However, by limiting the draft Code to exploration activities; limiting the draft Code to coal seam gas; limiting the draft Code to land access issues; and confusing its purpose, NSW Farmers is concerned that the draft Code will only add to confusion on the ground for landholders, communities and new entrants to the industry.

There is clearly a need for simple, plain-English material outlining the minimum regulatory requirements of explorers and miners, not only from a land access perspective, but also an environmental, water, chemicals and community engagement perspective. NSW Farmers submits that this could be as simple as a flow-chart, outlining the steps that a

company must take from the title application process onwards, perhaps with indicative timeframes (particularly in the case of legislated timeframes such as the 28 days to appoint an arbitrator).

**RECOMMENDATION 31**

*NSW Farmers recommends that a plain-English flowchart be developed to explain the exploration and production process for minerals, coal and coal seam gas, addressing land access, environmental, water, chemicals and community engagement issues.*

On a related issue, in the 'What legislation governs CSG activities in NSW' section of the draft Code (p4), the *Petroleum (Onshore) Act 1991* is the only legislation listed. This is an incredibly narrow perspective. Whilst the *Petroleum (Onshore) Act 1991* is relevant from a land access perspective, it does not address the myriad of issues associated with the coal seam gas sector. There are many other pieces of legislation that are relevant, such as the *Environmental Planning and Assessment Act*, *Water Management Act*, *Protection of Environment Operations Act*, *Rural Fires Act* etc.

**RECOMMENDATION 32**

*NSW Farmers recommends that the Code be amended to more appropriately reflect the legislation that governs CSG activities in NSW.*

The draft Code is also remarkably limited in its discussion of issues of enormous importance and interest to landholders, such as the treatment, storage and disposal of produced water. Simply stating that "CSG companies must not avoid treatment or disposal by storing water with the intention of having it evaporate" (p3) is not only dismissive of the importance of the issue, but also, a serious downplaying of the ban on evaporation ponds. Landholders want – and deserve – detailed information about how produced water will be treated, stored and transported, particularly noting the tendency of CSG companies to publicly promote the potential to use this water for irrigation and other purposes. Farmers have strict water quality and food safety requirements that necessitate detailed knowledge of water quality parameters. NSW Farmers submits that the Code should provide far greater information on this issue.

**RECOMMENDATION 33**

*NSW Farmers recommends that the Code include more meaningful information on the treatment, storage, transportation and disposal of produced water.*

NSW Farmers strongly supports the notion of a Code of Practice that encourages explorers and miners to go beyond minimum regulatory standards by outlining behaviours and practices that exemplify best practice standards. On the basis of member feedback, it is clear that some operators are performing far better than others in terms of community engagement, land access negotiations etc. Commending these operators and

exemplifying their behaviour would encourage other operators to 'raise the bar' to the benefit of landholders, the community, and the industry alike. However, examples of 'best practice' as listed in the draft Code such as "ban[ning] illicit drugs from work camps" are hardly 'best practice' – this is the law for all citizens. It is concerning at best that the authors of the draft Code believe that complying with the law is 'best practice'. Examples such as covering the costs of landholders wishing to undertake independent water testing before, during and after a coal seam gas project would be far more appropriate for such a document.

**RECOMMENDATION 34**

*NSW Farmers recommends that a Code of Practice for minerals, coal and coal seam gas be developed to exemplify best practice behaviours and practices that go beyond regulatory standards to improve community confidence in extractive industries.*

**4.2 Access Agreements**

As recognised in the draft Code, access agreements are enormously important in establishing the best possible start to what can be a 20-30 year relationship (or more) between the landholder and the operator. NSW Farmers is disappointed that the section on access agreements reiterates the minimum regulatory standards as per the Petroleum Onshore Act rather than providing examples of innovative clauses and requirements that could be negotiated between the parties, such as banning the movement of heavy machinery when children are walking to the school bus stop; avoiding harvest and sowing periods etc.

**RECOMMENDATION 35**

*NSW Farmers recommends that examples of innovative access agreement clauses and requirements be provided in the draft Code of Practice for CSG, rather than limiting suggestions to those already provided via legislation.*

NSW Farmers recently finalised negotiations with the NSW Minerals Council on a template access agreement for minerals. Whilst this template agreement has not yet been launched, it will provide a working example for landholders and explorers/miners to commence discussions from, with members having the confidence that it represents a starting point for further refinement. This should minimise the time and hence costs associated with obtaining legal advice and making any revisions to the draft agreement. Whilst NSW Farmers has not yet commenced formal negotiations with the Australian Petroleum Production and Exploration Association on a template access agreement for coal seam gas, it is hoped that these discussions will commence in the coming months. It should be noted that this process will take many months, and as such, the draft Code should be more pragmatic in its language, which erroneously states that a template "is being drawn up".

NSW Farmers is concerned that the draft Code does not suggest that the explorer discuss with the landholder the most suitable time, date and venue to hold an initial meeting to commence discussions on an access agreement. Whilst some landholders may feel most comfortable negotiating in a familiar environment, others are reluctant to have explorers on their property and would prefer to meet at a neutral location. Whilst this may seem a quite trivial issue, given the importance of making the best possible start, particularly in communities where there is considerable angst about the industry, it is advisable to do the landholder this small courtesy. Members have raised multiple instances where explorers have contacted them at inappropriate times (always out of business hours), or arrived at the property unannounced.

**RECOMMENDATION 36**

*NSW Farmers recommends that the draft Code emphasise the importance of meeting with landholders at mutually suitable times, dates and locations to commence discussions on access agreements.*

NSW Farmers is pleased that the draft Code acknowledges the importance of compensation in access agreement negotiations, particularly the acknowledgement that landholders' time is valuable and hence time associated with negotiating access agreements should be compensable. However, the following section (p9) is far too brief in terms of explaining what gives rise to compensation. Whilst in agreement that "compensation should also be paid to offset the inconvenience, noise and deprivation of part of their land", it does not acknowledge potential impacts on water quality, water supply, impact on productive potential, impact on land values, impact on roads and other built infrastructure on-farm, impact on improvements etc. Whilst not advocating the inclusion of an exhaustive list of compensation issues, it is important to at least acknowledge what should be key considerations for landholders.

**RECOMMENDATION 37**

*NSW Farmers recommends that the Code of Practice include additional examples of what may give rise to compensation when negotiating an access agreement, such as impacts on water quality and supply; impact on land values etc.*

NSW Farmers welcomes the references in the draft Code to the importance of keeping landholder informed about progress, variations in exploration activities and details of any chemicals brought onto or stored on the landholder's property. However, in the case of chemicals data, timeliness is key. Landholders need real-time data for the purposes of their quality assurance programs and to comply with their workplace health and safety requirements.



**RECOMMENDATION 38**

*NSW Farmers recommends that the Code of Practice stipulate that the provision of details on any chemicals brought onto or stored on the landholder's property be provided in real-time.*

NSW Farmers notes the suggestion in the draft Code that “many solicitors aren’t familiar with the provisions relating to access arrangements [and] may sometimes advise the landholder they have to go along with the access arrangement provided by the explorer” (p9). Whilst this may have been the case in a very small number of instances in the past, NSW Farmers submits that the situation is improving markedly, in no small part owing to initiatives such as the two-day seminar on access agreements that NSW Farmers organised and hosted in June 2011 to upskill lawyers in reviewing access agreements. Once again, this was initiated by NSW Farmers in the absence of any similar initiatives from the Government. Rather than criticising the legal profession, as NSW Farmers suggests this section of the draft Code does, it would be more helpful to encourage landholders and operators to engage with lawyers who have appropriate expertise in minerals, coal and/or coal seam gas access agreements, perhaps by way of the register suggested in the same section of the draft Code. As a member of the Law Society of NSW Rural Issues Committee, NSW Farmers looks forward to being formally consulted on the possibility of having a register of lawyers who have been trained to advise landholder on access arrangements.

**4.3 Community Engagement**

It is important to note at the outset that community engagement is fundamental to all elements of the Strategic Regional Land Use Policy, not just the draft Code of Practice. Noting the intent in the original policy that “the granting of exploration licences will be made more transparent and the community will be given a say on coal and coal seam gas exploration licence applications” (p2), it is curious that the ‘Keeping the community informed’ section makes suggestion about community engagement *after* the awarding of exploration licences.

**RECOMMENDATION 39**

*NSW Farmers recommends that the community engagement section of the Code of Practice be broadened to include engagement prior to the granting of exploration licences.*

NSW Farmers notes that the draft Code lists a number of examples of ‘good consultation’ (p12), including the identification of key stakeholders. The stakeholders identified in this section ie local residents and property owners, the local council and other government agencies, are generally already recognised as key stakeholders. It would therefore be more helpful to list stakeholders who are also important, but commonly overlooked, such

as the Rural Fire Service, Livestock Health and Pest Authorities, Catchment Management Authorities, established community groups, Country Women's Association etc.

**RECOMMENDATION 40**

*NSW Farmers recommends that the list of key stakeholders for community engagement be broadened.*

Whilst enormously supportive of the discussion in the draft Code regarding the establishment of community advisory committees, NSW Farmers is keen to ensure that stakeholders are not faced with the burden of providing representation and having their time heavily invested in multiple committees in areas where there are multiple proponents, particularly if there are minerals, coal *and* coal seam gas titles across the one region.

**RECOMMENDATION 41**

*NSW Farmers recommends that the decision to proceed with the establishment of community advisory committees factor in the number of existing and proposed committees within the region so as to avoid unnecessary drain on the community.*

The draft Code notes that Division of Resources and Energy staff are "made available" to attend community consultative committee meetings and "provide advice and information when required" (p12). NSW Farmers submits that the attendance and advice of other Government agencies such as the NSW Office of Water, Department of Health, Office of Food Security and Agricultural Sustainability etc should be made available to these committees on an as-needs basis, noting that community concerns are often related to issues such as water, agricultural, health and cumulative impacts.

**RECOMMENDATION 42**

*NSW Farmers recommends that staff from all relevant Government agencies – not just the Division of Resources and Energy – be made available to community consultative committees as required.*

Still on the issue of community advisory committees, NSW Farmers strongly opposes the suggestion in the draft Code that committees "be disbanded if and when the project goes into the production phase". It is critically important – particularly from a corporate knowledge and continuity perspective – that stakeholders remain engaged in the process.

**RECOMMENDATION 43**

*NSW Farmers recommends that community advisory committees not be disbanded if and when projects go into the production phase.*



## 5 **NEXT STEPS IN RESTORING BALANCE**

Proper upfront planning and protections for water resources are critically important if both mining and agriculture are to continue prospering in NSW. Having said that, there are some critical further steps that need to be taken to ensure that sustainable food and fibre production on the land's surface is valued appropriately and not interfered with on terms unacceptable to the farmer.

### **5.1 *Testing of chemicals brought onto farms***

The recent National Toxic Network's report on hydraulic fracturing (fracking) chemicals<sup>24</sup>, which suggested that only 2 of the 23 most commonly used fracking chemicals had been tested by the National Industrial Chemicals Notification and Assessment Scheme (NICNAS), neither of which had been tested in-situ for the purposes of fracking, does little to address these concerns. Whilst CSG companies are required to list on their websites the chemicals intended to be used in fracking, this is meaningless if these chemicals have not been tested by the national regulator, nor the cumulative effect when they are mixed together, in the volumes expected to be used. Further, the report went on to state that Benzene, Toluene, Ethylbenzene and Xylene (a carcinogenic group of chemicals known collectively as BTEX) are found naturally within coal seams. While the NSW Government has prohibited CSG companies from introducing these chemicals during the drilling and fracking processes, the report concluded there is a risk that CSG production or exploration will cause naturally occurring BTEX chemicals to migrate into agricultural aquifers or into the air.

This is extremely concerning for those primary producers involved in food production, as (for example) cattle producers are required to list on their National Vendor Declaration any chemicals that the cattle may have come in contact with. If there is a leak and fracking chemicals leak into water that stock are drinking, the trade implications for Australia could be dire.

Under current land access laws farmers do not have the ability to demand terms requiring companies to provide information about the chemicals being brought onto their property. There is also no information available about the safety of those chemicals.

NSW Farmers would like to see the government play a more active role in promoting the assessment of hydraulic fracturing chemicals by NICNAS. Further, we would like to see a register established to allow landholders to access information about chemical use on their property to enable farmers to meet their market assurance requirements.

#### **RECOMMENDATION 44**

*NSW Farmers recommends that the NSW Government play a more active role in pushing for NICNAS certification of hydraulic fracturing chemicals.*

<sup>24</sup> <http://ntn.org.au/wp-content/uploads/2011/07/NTN-CSG-Report-July-2011.pdf>

**RECOMMENDATION 45**

*NSW Farmers recommends that a register be established to provide real time information to landholders about the chemicals being brought onto their property by mining and coal seam gas companies.*

**5.2 A new approach to land access**

The current land access framework is fundamentally flawed. By guaranteeing licence holders access to private land, the *Mining Act 1992* and *Petroleum (Onshore) Act 1991* undermine landholders' ability to negotiate commercial terms of access to suit their particular business.

The Election Policy included clear commitments to review these acts with a view to strengthening landholder's property rights. NSW Farmers strongly supports this review being carried out in the short term to look at better ways to balance exploration with landholder's property rights. We submit that the best way to ensure explorers work proactively with landholders is to give landholders the right to refuse access for exploration. We look forward to a detailed review process to explore the merits of this approach.

**RECOMMENDATION 46**

*NSW Farmers recommends that the NSW Government expedite its review of the Mining Act 1992 and Petroleum (Onshore) Act 1991 with a view to strengthening landholders' property rights.*

**5.3 Acting on Upper House recommendations**

NSW Farmers provided detailed input to the inquiry by General Purpose Standing Committee No. 5 into coal seam gas. We note that the final report from that inquiry reflects a great deal of our input in its recommendations. Given the bipartisan support for many of these recommendations, NSW Farmers would like to see the NSW Government act quickly in response to the report and take steps to see the recommendations implemented. NSW Farmers would appreciate being involved in any ongoing consultation about how these recommendations might be implemented in detail. We also strongly support the government assessing the suitability of these recommendations for application to the mining industry, and the *Mining Act 1992*.

**RECOMMENDATION 47**

*NSW Farmers recommends that the NSW Government work with stakeholders to implement the recommendations from the GPSC No. 5 Inquiry into Coal Seam Gas.*

**RECOMMENDATION 48**

*NSW Farmers recommends that the NSW Government assess the applicability of the GPSC No. 5 recommendations to the mining industry and the Mining Act 1992 and make similar changes where appropriate.*

=====//=====

## **6 CONCLUSION**

NSW Farmers continues to strongly support effective upfront planning for the extractive industries and independent protection for water resources. By accepting responsibility for implementing these reforms, the NSW Government has an historic opportunity to set NSW on a path of balanced and sustainable land use. The draft documents released to implement the *Strategic Regional Land Use Policy* include a number of provisions which will restrict their scope and applicability to the point that they will fail to meet their stated objectives.

This submission outlines solutions to the problems which have been strongly highlighted by NSW Farmers and the broader community during the consultation period. These recommendations are not intended to unnecessarily restrict mining and coal seam gas activity. Our aim is to ensure that these developments are conducted in a strategic and sustainable manner which does not place the long term interests of our rural communities second to short term profits.

NSW Farmers is looking forward to continuing productive and proactive discussions on how the NSW Government can finalise the regional plans for the Upper Hunter and New England North West, Aquifer Interference Policy, and Coal Seam Gas Code of Practice, in a way that will meet community expectations and the objectives of the *Strategic Regional Land Use Policy*. We are confident that the solutions we have put forward represent a workable compromise between the various stakeholders to these reforms and thank the government for the opportunity to provide detailed input to this process.