SUBMISSION TO STATE ENVIRONMENTAL PLANNING POLICIES REVIEW

1. BACKGROUND

The sugar industry in NSW is based primarily on the Clarence, Richmond and Tweed River flood plains in the Northern Rivers region. Overall sugar cane is grown on approximately 35,000 ha of land which by its very location is subject to flooding and inundation. Flood mitigation and effective drainage are critical to the long term sustainability of sugar cane production and this has since the early fifties been provided by a system of flood mitigation infrastructure and a network of drains.

Over the years the ownership, operation and maintenance of this infrastructure has changed and we now have a situation where three quite distinct models exist across the three Rivers.

- Clarence River – Flood mitigation Clarence Valley Council (includes levees, flood gates and drains below flood gates); Mitigation drains - Clarence Valley Council; Farm Drains – sugar cane farmers under LEP exemption in relation to Acid Sulfate Soils.

- Richmond River - Flood mitigation Richmond River County Council (includes levees, flood gates and drains below flood gates); Mitigation drains - RRCC; Farm Drains – sugar cane farmers under LEP exemption in relation to Acid Sulfate Soils.

- Tweed River - Flood mitigation Tweed Valley Council (includes levees, flood gates and drains below flood gates); Mitigation drains – various Drainage Boards (previously Drainage Unions); Farm Drains – sugar cane farmers under LEP exemption in relation to Acid Sulfate Soils.

Over the last 5 years the Northern Rivers region has experienced excessive rainfall events which have resulted in significant impacts on the industry destroying cane and soybean crops across a wide area and also impacting on infrastructure. The significant loss of sugar cane also flows through to the milling and refining sector which have suffered significant financial losses as a result. The impact of the wet weather is compounded by the mainly two-year cropping cycle in NSW which is unique to the Australian sugar industry.

In 2013 consecutive floods resulted in losses estimated at $69 million to the industry of which $29 million applied to the growing sector and $40 million applied to the milling/refining sector. At that time it became very clear that drainage was a critical issue and that the poor maintenance of drainage infrastructure was a key issue that was contributing to losses in the sugar industry. Some examples are outlined in the photographs below:

Figure 1: Poorly maintained flood outlet

Figure 2: Poorly maintained inlets to flood gates.

Note: The mark on the star picket in figure 1 shows the depth of water below the floodgate. The floodgate is 1.6m in diameter.

Figure 3: Poorly maintained drain below floodgate.

Arising from this, the NSW Sugar industry partnered with NSW DPI in a project to develop a flood resilience strategy for the sugar industry.

See http://www.dpi.nsw.gov.au/__data/assets/pdf_file/0007/535444/flood-ready-cane-farming-strategic-plan-nsw-north-coast.pdf

Part of this process involved engagement with the various stakeholders involved in the management and maintenance of drainage and flood mitigation infrastructure in the cane growing areas. This included local government, NSW Office of Water, NSW Fisheries, NSW DPI and EPA.

During discussions with the various stakeholders a number of issues became clear. These included:

- Limited funding for the maintenance and upgrading of critical infrastructure. For example, RRCC has a maintenance grant allocated annually – this has not increased for 17 years).

- Rural flood mitigation and drainage is treated as a low priority by local and state authorities.

- Significant confusion and uncertainty as to who was responsible for what in relation to drainage.

- Complex regulations and the interpretation thereof in relation to what appeared to be relatively simple, low risk activities involving drain cleaning. This was particularly evident at the critical point where a farm drain fed into an outlet that was controlled by a flood gate. (This matter is discussed further in detail below).

- The introduction of SEPP regulations had resulted in significant restrictions being placed on some land owners. This resulted in severe restrictions being placed on the maintenance of drains, which had been undertaken by Drainage Unions for decades, to the extent that the

productivity and value of cane farms was being significantly impacted. (This matter is discussed further in detail below).

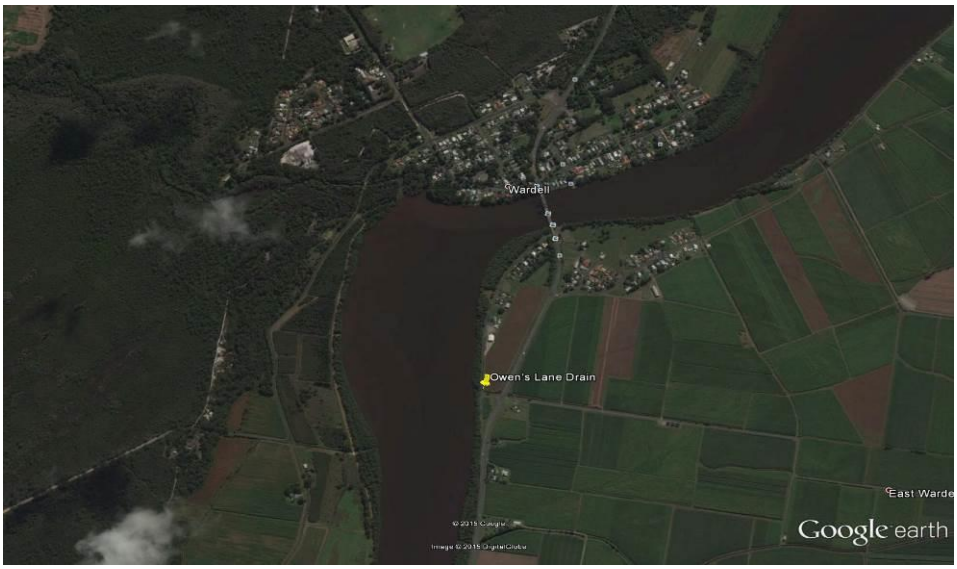
- Significant delays of up to 6 months in response times to drainage requests as a result of complex regulations, uncertainty and a disconnect between the assessed risk and the actual risk associated with that work. (This matter is discussed further in detail below).

2. Case Studies

The following case studies are intended to highlight the impact on the sugar industry in general and certain land owners in particular of some of the issues discussed above.

2.1 Owen's Lane Drain

The perverse outcomes and unintended consequences of the current arrangements are best demonstrated by a recent example. The Owen's Lane drain is situated about a kilometre south of Wardell – see picture below:



The drain provides critical drainage to 140 ha of cane land that supplies cane to the Broadwater mill. The nine cane farmers who benefit from the drain undertake routine maintenance on the drain upstream of the floodgate as required at their own expense. Once in about every ten years they undertake major maintenance. This was planned to occur in 2014.

As explained above, in order to ensure a proper outcome it is imperative that all of the drain is cleaned, including that section below the floodgate, if the benefits of the maintenance are to be realised. As such the growers approached the RRCC in August of 2014, well in advance of the wet season, and requested that the section of drain that they had control over be cleaned. The section of drain involved is about 140m in total length and is intersected by Owen's Lane and the Pacific Highway meaning that the actual length of drain that needed to be cleaned was about 55m. This consists:

- River to Owen's Lane – 20m
- Owen's Lane to Pacific Highway – 20m
- Pacific Highway to floodgate – 15m

Detail of the layout and extent of the drain is outlined in the picture below:

The work required to be undertaken by RRCC involved the removal of about 20m^3 of sediment and some vegetation from the drain that were impeding water flow. Under the right circumstances and with the correct equipment a farmer would get the job done within half a day at a cost of about $500 and make sure that any acid sulfate soil issues were properly managed - job done.

Under the current regulatory framework it took RRCC **SIX MONTHS** just to get the necessary approvals from the various land owners, local authorities and state authorities before they could begin the work. The work was eventually undertaken in March 2015 at who knows what cost but it would have been tens of thousands of dollars.

Clearly this is unacceptable and cannot be what is intended by the State and local government environmental planning policies when it comes to routine small scale activities of this nature. The regulatory and cost burden imposed is quite obviously way in excess of the environmental risks posed and some balance must be restored.

2.2 Cudgen 'Creek' Drain

The Cudgen Drainage Union was formed in 1913 to build and maintain a system of drains for local agriculture. The drainage union has maintained the drains for 100 years. The drain originally dug by the union is now considered as a 'creek' by state departments meaning approvals must now be sought for any works. The image below clearly shows the location of the drain and its proximity to Cudgen Lake and the SEPP14 wetland that has been declared under the State Environmental Planning Policy. The section marked in yellow shows the section of drain that runs through the SEPP14 area that was, until the introduction of the SEPP, cleaned on a regular basis by the drainage union via an easement that runs along the drain on the northern side.

In about 2006 a major fire swept through the Cudgen Nature Reserve causing trees to fall into the main channel leading to Cudgen Lake (highlighted in yellow above). The landowner (National Parks) has not removed the trees with the result that water flow has been significantly impeded. This has resulted in poor drainage of the benefitted area leading to prolonged flood impacts on both agricultural land and local roads upstream including the Pacific Highway. The loss to the local sugar industry since 2007 is estimated at $200,000.

The affected section of drain falls within a national park and landowners upstream of this are now required to seek the necessary approvals, which could include an Environmental Impact Assessment, to address a situation which they have previously managed under the powers bestowed under the *Drainage Act 1939* and the *Water Management Act 2000* and the *Water Management Regulation 2011*.

The cost and complexity of addressing the issue is beyond most individuals or organisations which now have to deal with meeting with the requirements of:

1. Water Management Act
2. Fisheries Management Act
3. Threatened Species Conservation Act
4. National Parks and Wildlife Act
5. Native Vegetation Act
6. Environmental Planning and Assessment Act
7. Local Councils

As mentioned above, the Cudgen Drainage Union has historically been able to maintain the full length of the drain without requiring additional approvals. The issue has been overly complicated by State Environment Planning Policies and the interpretation thereof. The drainage union does have an ongoing Development Approval to remove weeds but not fallen logs (which are considered fish habitat) or sediment that has accumulated behind the logs (this is considered dredging).

The situation that Cudgen Drainage Union finds itself in raises the following questions:

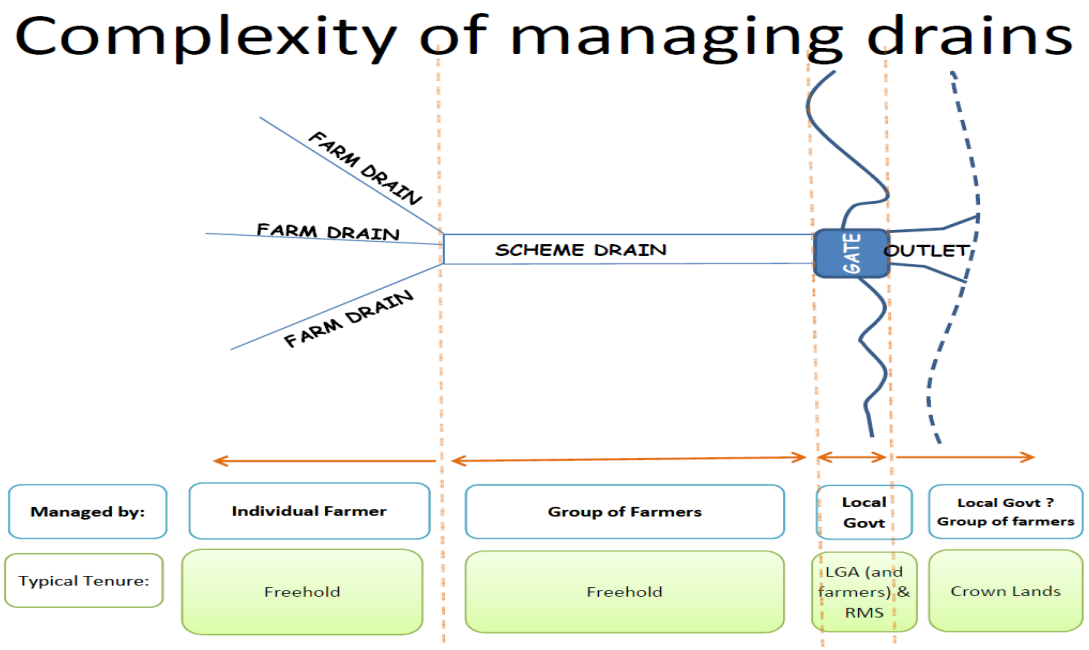
- Is this what was intended by the State Environmental Planning Policies?
- How can some trees falling in a drain in a SEPP 14 area end up with peoples' livelihoods being threatened and the value of the farms being significantly reduced?
- Are fish more important than farmers?
- Is the regulatory regime meant to be so complex and rigid?

- Surely the long standing rights of the Drainage Union need to be respected and protected?
- There must be a better and simpler way of doing this taking into account the actual risks and the interests of all stakeholders?

3. So who is responsible?

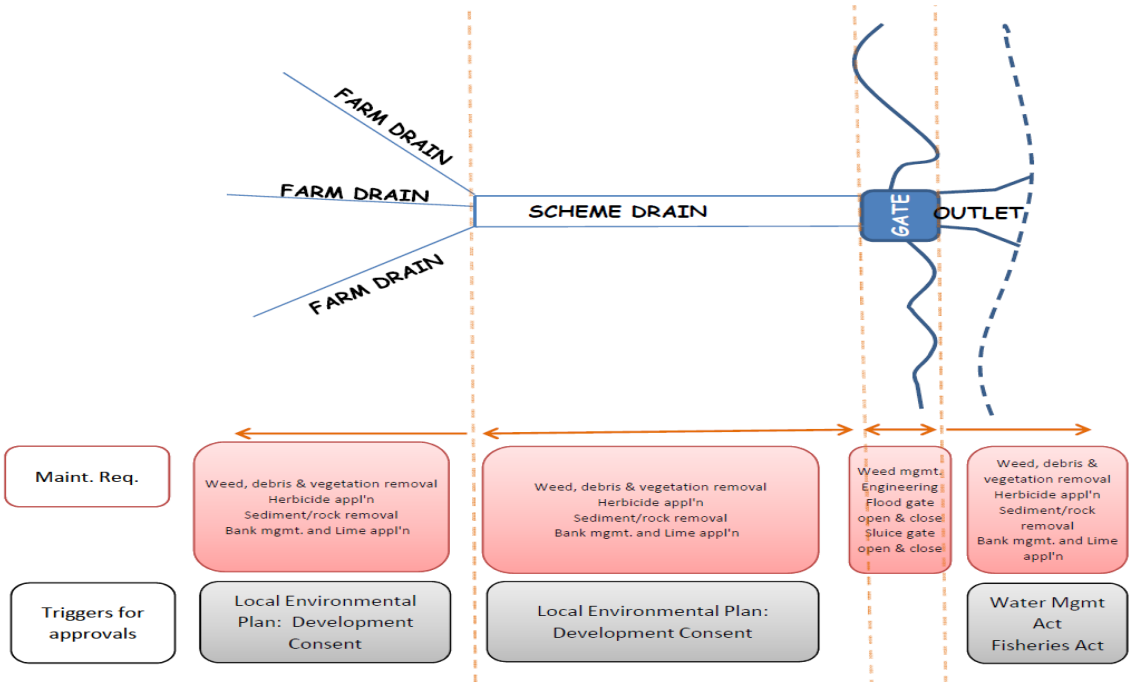
A critical issue that impacts on effective drain maintenance is 'who is responsible?' This is particularly relevant at the point where farm drains meet the flood gate which drains to a river. This is a critical point not only because it is the point of maximum complexity from a regulatory perspective, but also it is the point at which the effective operation of a drainage network is determined. In other words, the farmers upstream of this point can have the best maintained drains in the State, but if the floodgate is not working (as per Figure 1 above) or the drain downstream of the floodgate is not adequately maintained (as per Figure 3 above), the drainage system simply doesn't work.

This is complicated by land tenure and regulations. In relation to land tenure a typical situation is demonstrated in the diagram below:



In the above example the issue of ownership, accountability and responsibility from the flood gate to the end of the outlet is overly complex and unclear. This results in necessary and generally straightforward maintenance falling into the 'too hard basket' to the detriment of upstream landowners.

The regulatory requirements that pertain to the various elements of a drainage network differ markedly, require different levels of consent and can or cannot involve State and local government approvals depending on circumstances. This is outlined in the diagram below:



As mentioned above, the NSW Sugar Industry is self-regulated for the management of earthworks and drainage maintenance in acid sulfate soil risk areas. A Memorandum of Understanding (MOU) between the Department of Planning and the NSW Sugar Milling Co-operative (NSWSMC) sets out procedures and obligations in relation to sugar industry self-regulation and the sugar industry has an exemption under local LEPs for on-farm drain maintenance. The MOU also constitutes approval of the NSW Sugar Industry Best Practice Guidelines for Acid Sulfate Soils. Under the terms of the MOU an audit and compliance process is specified. An assessment of acid management practices by NSWSMC members is required to be undertaken annually.

These arrangements allow sugarcane farmers to undertake necessary drain maintenance with minimal government involvement. Compliance has been monitored through an annual audit involving state and local government officers. The results of those audits have shown a very high level of compliance for many years which underscores the value and logic behind a Code of Practice approach to what are fairly routine matters.

However, the critical issue in this is that a two tiered approach has been developed – a simple self-regulated one for the farmers and a complex highly regulated one for the local authorities. This has resulted in an inefficient outcome that is having a significant detrimental impact on the sugar industry. A better solution needs to be sought that ensures that the drainage networks operate as intended without impacting negatively on other stakeholders and the environment. The Code of Practice model has been demonstrated to work and should be endorsed.

4. NSW Sugar Industry Position

Based on our experience over the last three years and as evidenced above, the NSW Sugar Industry is strongly of the view:

- That the State Environmental Planning Policies Review is long overdue;
- That State Environmental Planning Policies are overly complex;
- That State Environmental Planning Policies pose a significant impediment to productivity;

- That State Environmental Planning Policies are predicated on the precautionary principle and thereby ignore the actual risks posed which results in excessive regulatory and compliance conditions being imposed on landowners and business;

- That State Environmental Planning Policies do not achieve the required balance between the intent of government and the needs of the public, industry and the environment;

Therefore the proposal by government to the North Coast Regional Environmental Plan is endorsed and supported.