Submission on the
Explanation of Intended Effect –
Primary Production and
Rural Development
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About NSW Farmers

A profitable and sustainable New South Wales farming sector

The NSW Farmers’ Association is Australia’s largest state farming organisation representing the interests of its farmer members.

Farmers across New South Wales produce more than $15 billion worth of food and fibre every year, representing around one quarter of Australia’s total agricultural output. Our state’s unique geography means a wide variety of crops and livestock can be cultivated and nurtured. NSW Farmers is Australia’s only state-based farming organisation to represent the interests of farmers of all agricultural commodities – from avocados and tomatoes, apples, bananas and berries, through grains, pulses and lentils to oysters, cattle, dairy, goats, sheep, pigs and chickens.

Our focus is not just on issues affecting particular crops or animals – it extends to the environment, biosecurity, water, economics, trade and rural and regional affairs. We also have an eye on the future of agriculture; we are advocates for innovation in agriculture, striving to give our members access to the latest and greatest innovations in research, development and extension opportunities. Our industrial relations section provides highly specialised advice about labour and workplace matters.

Our regional branch network ensures local voices guide and shape our positions on issues which affect real people in real communities. Members are the final arbiters of the policies of the Association – through our Annual Conference and elected forums such as Executive Council, members can lobby for the issues which matter to them and their community to become Association policy. Our issue- and commodity-specific Advisory Committees are elected by members to provide specialist, practical advice to decision makers on issues affecting the sector. We are proudly apolitical – we put our members’ needs first.

In addition, NSW Farmers has partnerships and alliances with like-minded organisations, universities, government agencies and commercial businesses across Australia. We are a proud founding member of the National Farmers’ Federation.
Executive summary

NSW Farmers welcomes the Department of Planning and Environment’s review of the Environmental Planning and Assessment Act 1979 (the EP&A Act) and State Environment Planning Policy (Primary Production and Rural Development) 2017 (the SEPP) and related planning reforms. NSW Farmers appreciates the opportunity to respond to the Explanation of Intended Effect. The planning system in NSW, as it currently stands is confusing, inconsistent and difficult for community members to engage with. The review’s focus on reducing administrative burden and complexity, and creating a more transparent and modern planning system is, in our view a critical step forward in resolving many issues which, if not resolved early, plague the entirety of the process.

The NSW Department of Primary Industries’ Strategic Plan of 2015 to 2019 aims to increase the value of primary industries within NSW by 30% by 2020. However pressure from urban expansion, environmental restrictions and conflict between agriculture and the extractive industries has led to serious declines in the amount of land in productive use across the state. NSW Farmers is a strong advocate for sustainable growth and economic prosperity for regional NSW.

NSW Farmers policy position is that the NSW planning scheme must go further in protecting and supporting agricultural land use in NSW, and changes to the SEPP must reflect this. We recommend changes to the process of identifying and protecting state significant agricultural land, and the approach to new or expanding agricultural developments, particularly intensive livestock developments. NSW Farmers is advocating for a stronger theme in protecting and promoting, rather than restricting food and fibre production in regional planning policy at all levels, local, regional and state.

Our Association does query the timeframe that has been chosen to review the Primary Production SEPP. There are currently a number of changes happening to the various pieces of planning legislation and policy in NSW. For example, there are amendments to the EP&A Act being debated in the NSW Parliament, during the consultation period for the Regulation Review Issues Paper (November 2017). There are also a number of significant reforms to the Environmental Assessment process for major projects proposed (the EIA improvement project), which have been developed over the past two years, with that consultation period concluding in September 2017. We understand that the Department is currently reviewing submissions and stakeholders are unclear on the outcomes that may occur from this process.

In this environment, it is extremely difficult for NSW Farmers’ members to engage with this process of reform, and it is also highly likely that the Department will be required to change its approach to this review in the coming months when the above proposals are progressed. To alleviating these

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issues we strongly encourage the Department to exhibit the draft SEPP and engage in further consultation, having regard to the fact that feedback on the Explanation of Intended Effect is of limited usefulness due to the lack of clarity with other reforms and the lack of detail provided on many aspects of the reform.
Recommendations

NSW Farmers recommends that:

1. A proactive approach must be taken to identify State Significant Agricultural Land for the new SEPP to be practical in this area.

2. The proposed rural subdivision is not supported, and we suggest that a greater focus is placed on efforts to minimise the fragmentation of productive rural lands and reduce the risk of land use conflict.

3. The planning principles proposed to be included in Ministerial Direction 1.5 – Rural Lands are reformed to strengthen the recognition of the importance of agriculture and primary production in the development process.

4. The proposed intensive and extensive agriculture definitions are amended to provide producers with clarity. The amendments must include the development of specific definitions for ‘emergency’, ‘seasonal’ and ‘supplementary’ feeding.
   — We requests that these amendments occur through an additional and more detailed consultation process.

5. The proposed thresholds for intensive livestock agriculture need further amendment and this must be conducted through greater consultation with the relevant industries. We request that amendments are made to:
   — Incorporate management of biosecurity risk.
   — Reduce the proposed thresholds for pig and poultry farms.
   — Increase the proposed threshold for sheep and goat feedlots.
Policy Context

NSW Farmers is advocating for a stronger theme in protecting and promoting food and fibre produce in regional planning policy at all levels, local, regional and state. Whilst we recognise that the existing objectives of the Primary Production and Rural Development SEPP, as described by the Explanation of Intended Effect, go some way towards supporting primary production, it is our view that there is no clear indication as to how economic, social and environmental considerations should be weighed. We are concerned that the language pertaining to the protection and promotion of primary industries should be strengthened to reflect triple bottom line considerations. For example, we suggest that to “recognise the significance of agriculture and primary production” is not as strong as the expressed “aim to protect environmental value”.

It is the position of NSW Farmers that the SEPP should expressly state that agricultural interests in this context are to be escalated.

Right to Farm

NSW Farmers acknowledges the Government’s statement reaffirming its support of sustainable agriculture and commitment to rural development that facilitates agricultural enterprises, businesses and related sectors as well as its reference to the Right to Farm Policy in the Explanation of Intended Effect. The NSW Government’s Right to Farm Policy recognises the need to take steps to build the capacity of industry and rural communities to respond to challenges arising from changing land uses in rural and regional areas that can lead to conflicts. Indeed, one of the specifically identified benefits of the proposed reforms is to “assist in delivering NSW Government commitments in support of current and future farming practices, including management of land use conflict.” In the absence of any regulatory force being given to the Right to Farm Policy, it is unclear how the reforms practically propose to accomplish this.

Having regard to the lack of detail in the Explanation of Intended Effect as to the practical implementation of the NSW Government’s Right to Farm Policy, NSW Farmers is very concerned as to the practical security that the SEPP will afford to the state’s agricultural industry, noting that the Right to Farm Policy itself presently has no legislative force.
The new Primary Production and Rural Development SEPP

State Significant Agricultural Land
NSW Farmers emphasises the importance of strategic plans that recognise the value of agriculture socially, environmentally and economically. The planning system in NSW must allow for specific consideration of agriculture in effectively integrating economic and environmental considerations in the decision making process.

An under-appreciation for good soil and a reliable source of water for farming land is probably evident in the fact that our planning system has allowed low density housing to permanently sterilise some of our most productive farming land. Further focus should be given to identify sensitive land uses and resources, such as important agricultural land and water resources that need to be protected.

The new SEPP proposes to support sustainable agriculture by providing for future recognition and protection of State Significant Agricultural Lands, carrying forward this policy from previous regulation. We note that no State Significant Land has been identified under existing regulations to date, although it is not clear to us why this is the case. NSW Farmers is of the position that a more proactive approach must be taken to identifying State Significant Agricultural land if the new SEPP is to have any practical effectiveness in achieving its stated objectives of supporting and recognising the significance of agriculture and primary production.

Land Uses Exempt from Development Consent

Intensive livestock agriculture exemptions – temporary and emergency events
SEPP 30 currently offers development consent exemptions to cattle feedlots or piggeries established temporarily or in the event, or immediate aftermath of an emergency, for example flood and fire. The new SEPP will retain these provisions, and expand them to all forms of intensive livestock. The SEPP will also permit non-emergency temporary enclosures (eg weaning pens) to be developed without requiring consent as long as they are not located in environmentally sensitive areas and are further than 500m from any associated dwellings. We support these exemptions being retained and expanded, as they provide important support to producers in difficult situations.

NSW Farmers submits that to ensure total clarity regarding what constitutes exempt uses, definitions of ‘temporary’ and ‘emergency’ are needed. Following an emergency situation, it may be necessary to house livestock in a temporary enclosure for an extended period of time while the necessary structures are rebuilt. This could take over twelve months, in the case of intensive
livestock systems and it is important that producers can manage their livestock appropriately during this time.

*Management of Goats*

It is proposed that a provision be included to make ‘goat depots’ exempt from development consent. NSW Farmers supports this proposal but recommends that the terminology be changed from ‘feral’ to ‘rangeland’, to reflect the terminology used by the Australian goat industry.
Proposed amendments to other planning legislation

Ministerial Direction – Rural Lands 1.5
The current Rural Lands SEPP contains a number of rural planning principles to provide direction to planning authorities. It is proposed to update these principles and move them into the Ministerial Direction 1.5 – Rural Lands\(^2\), as this is the most appropriate instrument to provide direct instructions on the preparation of a Local Environmental Plan (LEP). This Direction already requires planning authorities to ‘protect the agricultural production value of rural land’, and in conjunction with the planning principles will provide clear direction on how to complete this objective.

NSW Farmers supports the proposed update of these principles to include a greater emphasis on agricultural production. During the consultation period, it was indicated that these principles will be prioritised to help councils make their assessments and decisions. While not listed in order of importance, each principle has been specifically worded to convey the priority planning considerations. NSW Farmers questions whether the wording as it stands instructs councils to consider environmental factors ahead of agriculture. The current wording instructs to “protect environmental values” and this suggests a higher priority that agriculture, which is supported by wording of “support farmers” or “recognise the significance of agriculture”. We suggest that in a SEPP designed to provide guidance on primary production and rural development, the importance of promoting agriculture while taking sustainability factors into consideration is paramount, and the planning principles should accurately reflect this.

Another issue to note is that Direction 1.5 excludes a list of councils in the Greater Sydney area, including key peri-urban areas of Camden, Wollondilly and Hawkesbury, as well as Newcastle and Wollongong. These regions contain areas of important peri-urban agriculture as well as the site of Sydney’s housing/suburban expansion, and this can lead to conflicts during the development application process. It is important that these councils are also guided by principles that support the continuation of agricultural land use where applicable.

Standard Instrument LEP
Rural Subdivision for Agricultural Purposes.
According to the Explanation of Intended Effect, the Rural Lands SEPP will be revised to clarify that a lot created as part of a subdivision for primary purposes, and which contains an existing dwelling, does not need to meet minimum lot size requirements. Whilst NSW Farmers recognises that this

\(^2\) Local Planning Directions, Section 117(2) of the Environmental Planning and Assessment Act 1979 - http://www.planning.nsw.gov.au/~/media/Files/DPE/Directions/section-117-local-planning-directions-2017-08-05.ashx
may support some farmers transitioning to retirement and business succession planning by enabling them to stay in their existing dwelling while selling, leasing or making other arrangements for the use of their primary production lot, we are very concerned that this approach will contribute to further fragmentation of productive agricultural landscapes and increased land use conflict.

NSW Farmers is also concerned how any controls will withstand future challenges. This concern is heightened in light of the apparent lack of detail in the Explanation of Intended Effect pertaining to safeguards against the aforementioned issues. NSW Farmers would request that the Government prioritise its efforts to minimise the fragmentation of productive rural lands and reduce the risk of land use conflict.

**Intensive and Extensive Definitions**

The distinction between intensive and extensive livestock operations is fundamental to providing clarity on the developments that require consent and those that do not. The definitions within the current planning system have not provided the requisite clarity and reform is required. The need for reform has been clearly illustrated by producers not realising that their operations are defined as intensive and require consent. This has resulted in some operations unknowingly contravening development requirements.

NSW Farmers welcomes the opportunity to reform these definitions and provide clarity on the operations that require development consent. We acknowledge that aspects of the proposed definitions are an improvement to the status quo however further amendments are required, to be developed through greater consultation, to provide sufficient clarity.

**Definition of ‘intensive livestock agriculture’**

The proposed ‘intensive livestock agriculture’ definition removes the reference to the proportion of nutritional requirements that are provided by externally sourced feed. The use of ‘externally sourced feed’ as the principal indicator for an intensive agricultural operation has created confusion amongst producers and proven to be an ineffective measurement. The suggested reform is for intensive operations to be defined either on the basis of specific industries, with pig and poultry farms, or in contrast to extensive livestock systems, with dairies (restricted) and feedlots.

NSW Farmers supports the change to clearly define pig and poultry farms as intensive operations. These changes provide clarity that all pig and poultry farms require consent, provided that the thresholds numbers are met, and this will minimise the risk of operations running without the required approval. Also the change in terminology from ‘piggeries’ to ‘pig farms’ is appropriate, as it provides an inclusive definition that clearly encapsulates the wide variety of production systems that operate in NSW.

NSW Farmers does not believe that the proposed intensive definition for feedlot and dairies (restricted) is sufficient, as the operations that fall within the scope of the definition is not
sufficiently clear. The proposed feedlot definition focuses on the confinement of livestock and the use of this as the indicator of an intensive operation is not appropriate, as there are a number of vital management practices in extensive operations that could be encompassed. These extensive operations practices must not be defined as intensive and the proposed definition must clearly illustrate that they are not included.

Finally, the current definition of dairies (restricted) only refers to cattle operations. We suggest that it is important that the current reform encompass developments that may arise in the future and suggest including goat and sheep. Restricted goat and sheep dairy operations are not currently in existence but it is important that they are encapsulated, so that if such developments arise then there is a clear framework for this to occur within.

**Definition of ’extensive agriculture’**

NSW Farmers believes that the proposed extensive agriculture definition does not provide sufficient clarity and requests that significant changes are made through a further consultation process.

The proposed extensive definition uses the terminology ‘where the animals eat plants growing on the land’ as the critical aspect to determine extensive operations. This definition fails to provide clarity on when pasture based dairies and red meat operations that provide additional feed, move from extensive to intensive operations. An increasingly important management technique for producers in extensive operations is to provide additional feed to livestock, due to seasonal conditions and also to ensure adherence with market specifications. These strategies are employed on both a seasonal and potentially a longer term basis depending on the operation. We request that the proposed extensive definition is amended to clearly include these management techniques.

To assist in reforming the extensive definitions, we suggest examining the examples in other jurisdictions. The Victorian government has redefined extensive agricultural operations in terms of grazing animal production and expressly included definitions for ‘emergency’, ‘seasonal’ and ‘supplementary’ feeding. The express inclusion of these three definitions provides clarity and fundamentally ensures that vital extensive management practices do not need development consent.

The proposed extensive agriculture definition includes ‘supplementary and emergency feeding’ but these are not defined, and ‘seasonal feeding’ is not expressly included. NSW Farmers requests that ‘seasonal feeding’ be expressly included within the extensive agriculture definition, and that all three feeding situations (emergency, seasonal and supplementary) are expressly defined within the Standard Instrument LEP.
Thresholds and heads of consideration for intensive livestock agriculture

It is important for planning regulations to provide clarity to proponents and councils about when development consent for intensive livestock development needs to be sought, and what matters need to be considered during the application process.

It is proposed that the thresholds be transferred from the SEPP to the Standard Instrument LEP, and expanded to include all types of intensive livestock production. The proposed thresholds are:

- a cattle feedlot or dairy (restricted) able to accommodate 50 or more head of cattle
- a pig farm able to accommodate 200 or more pigs or 20 or more breeding sows
- sheep or goat feedlots with capacity to accommodate 200 animals or more
- egg or poultry production facilities able to accommodate 1000 or more birds
- any cattle, sheep or goat feedlot, dairy (restricted), pig farm, or egg or poultry production facility located within 500 metres of a dwelling not associated with the development or in an environmentally sensitive area.

It has not been made clear how these threshold numbers were determined, and what factors were taken into consideration.

The proposed thresholds only appear to consider the impact of the potential development on the environment; however there are a range of issues that should be considered to determine whether a new development requires consent. Among these is the biosecurity risk the development poses to neighbouring properties. The NSW Government has passed the Biosecurity Act 2015, introducing the concept of a General Biosecurity Duty which aligns with the NSW Biosecurity Strategy of shared responsibility. For industries such as pork and poultry, close proximity to neighbouring farms can be a huge disease risk both to the farms and the industry at large. A key concern is that currently pork and poultry operations are being established without a requirement for development consent or notification of the relevant council. The establishment of these operations poses a biosecurity risk when occurring near other pork and poultry farms. This biosecurity risk needs to be more appropriately managed through both the planning system and by the primary industries sector.

NSW Farmers recommends that the proposed regulations be amended to ensure that the biosecurity risk is partly managed through the planning regulations. The first amendment required is that the thresholds must be amended to create a buffer zone with pre-existing operations.

For example:

any cattle, sheep or goat feedlot, dairy (restricted), pig farm, or egg or poultry production facility located within 500 metres of a dwelling not associated with the development or in an environmentally sensitive area, or within X kilometres of an existing and related operation.

The appropriate buffer zone distance would need to be developed through further consultation with the relevant livestock industries.
The second amendment is that biosecurity risk be included in the heads of consideration, requiring proponents to identify and address risk management strategies as part of the development application process.

**Pig Farms**

NSW Farmers requests that the proposed thresholds for pig farms are decreased.

The original SEPP 30 stated that the threshold for development consent for a piggery was 200 pigs or 20 sows. This number has been rolled over into the new planning thresholds without regard for the different risks posed by different production systems. It is important that all production systems have gone through the appropriate levels of planning matching their potential impact on the environment and the community around them. The proposed threshold for pig farms does not accurately account for this. For instance 200 pigs on a free range property could potentially have a greater environmental impact than 200 housed in sheds, where the impact can be more actively managed or eliminated (such as odour, effluent, noise). Therefore it is important that this threshold number has been determined in a way that addresses the potential risks involved from a planning, environmental and biosecurity perspective.

The recent proposed reforms to Victorian planning regulation for agriculture outlined a different system for pig farms. In certain rural zones, no development permit is needed for small pig farms if they meet certain conditions for herd and land size, and if they also adhere to the requisite setbacks. The herd and land sizes were identified through Australian Pork Limited’s (APL) Nutrient Balance Calculator for Outdoor Rotational Piggeries and their *National Environmental Guidelines for Rotational Outdoor Piggeries*, using this research to determine land carrying capacity and the threshold at which council oversight and approval would be required to ensure the appropriate planning standards are being met.

NSW Farmers would support further investigation into the Victorian planning regulations and the APL guidelines to determine the most appropriate threshold numbers for pig farms in NSW, and better align the planning regulations in each state.

**Egg or Poultry Production Facilities**

NSW Farmers requests that the proposed thresholds for poultry farms are decreased.

For the poultry industry, the size of the operation does not necessarily correlate to the impact that operation could have on the community and industry as a whole. Small scale farms established without planning consent have no oversight to ensure they are meeting appropriate environmental and biosecurity risk management criteria. The proposed threshold limit for egg and poultry facilities should be lowered to match the appropriate environmental and biosecurity risk. For egg production
in particular, operations below 1000 layer hens are actually significant commercial businesses and should be required to meet the appropriate checks and balances of the local planning system.

The Victorian planning recommendations propose that a permit be sought for a poultry farm over 200 birds (excluding emus and ostriches). NSW Farmers supports lowering the threshold and suggests consideration should be given to matching the Victorian regulations, to appropriately meet the environmental and biosecurity risk as well as streamline planning regulations between the two states.

Buffer zones between intensive operations should also be implemented within the planning process to ensure that councils and the NSW government are aware of any poultry farms operating near one another. The Australian Veterinary Emergency Plan Enterprise Manual for the Poultry Industry also notes the design of a poultry enterprise should be ‘appropriately isolated to aid and control endemic diseases’\(^3\). The plan also notes that a distance of 3-5 kilometres between poultry farms is recommended. Further consultation is required with the relevant industries to determine the most appropriate buffer distance to reduce any risk of rapid spread of disease while enhancing government’s knowledge of intensive agricultural operations.

**Feedlots**

NSW Farmers requests that the proposed threshold numbers for sheep and goat feedlots is increased. The proposed level of 200 head is not appropriate, as it is too low and not comparable to the threshold for a cattle feedlot. We recommend that the number is increased to demonstrate an equivalency with the cattle feedlot threshold and on this basis we suggest increasing the threshold to 500 head.

**Environmentally Sensitive Areas**

NSW Farmers notes that definitions relevant to environmentally sensitive areas will remain unchanged, subject to any legislative references being updated. In regards to the identification of environmentally sensitive areas, NSW Farmers stresses the need to avoid enabling Councils to independently identify environmentally sensitive land over private land, without appropriate checks and balances. NSW Farmers emphasises the need for landholder consultation in circumstances where an environmentally sensitive area may be identified on their property. The process that will be involved and level of accountability that will be imposed on Councils is not apparent from the Explanation of Intended Effect.

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\(^3\) Pg 45, *Australian Veterinary Emergency Plan Enterprise Manual for the Poultry Industry (Version 3.1)*
Planning Guidelines – Intensive Livestock Agricultural Development

NSW Farmers supports the development of these guidelines to clarify the planning process for both proponents and councils.

NSW Farmers particularly notes the suggestion that proponents seek a ‘pre-lodgement meeting’ with councils to discuss development applications before any formal submission is made. Owing to the importance of such engagement we would recommend that all developments be required to undertake an early consultation process. This early engagement is crucial, and it is important for proponents to engage with councils prior to the submission of the formal development application.

NSW Farmers also notes a number of suggestions for improvement.

Regionally Significant Development
The guidelines need to more clearly articulate when a Joint Regional Planning Panel can be requested/convened to consider regionally significant development so that proponents and councils can identify when this becomes an option. Under Schedule 4A, Clause 10 of the **EP&A Act**, a proponent can request a Joint Regional Planning Panel be convened for developments between $10million and $20million worth of capital investment value. Proponents need to be aware of when this becomes an option for them to consider.

While outside the scope of this review, NSW Farmers would also support a review of how the Joint Regional Planning Panels operate and when they can be convened. Development can be regionally significant in terms of the economic and social contribution to the region and community beyond capital investment. For intensive agricultural developments, these can also be difficult for one council or one planner to assess, requiring expertise to determine the technical elements. Therefore there would be value in councils collaborating to make determinations on important intensive agriculture developments.

Industry guidance
This section needs to clearly identify the industry body that is able to provide advice on planning issues, for example identifying that Australian Pork Limited created the piggery guidelines and can provide further advice to either councils or proponents if required. In the case of the dairy industry, proponents should be encouraged to contact Dairy Australia to seek advice, in lieu of published planning guidelines.

Planning Timelines
The guideline document should include an example timeline stating legal or approximate processing times for all stages of the planning process. Producers need to have a clear understanding of what timeframes they will need to be working within and the process the council needs to be following.
Conflict Resolution Procedures
If the development application process stalls or proponents are unhappy with the process, there needs to be a clearly identified means to resolve the issue. We recommend conflict resolution processes are clearly identified within the guidelines.
Conclusion

A balanced triple bottom line approach to agricultural developments must be adopted by the NSW Government in all planning processes, if it is realistically going to promote sustainable growth and economic prosperity for regional NSW. NSW Farmers encourages the Government to strengthen direct consideration to the protection and promotion of the agricultural sector to effectively integrating economic and environmental considerations in the decision making process.

As our submission has detailed, NSW Farmers is supportive of the current review process but further work is needed to ensure that the development system has clarity and produces functional outcomes. The proposed Primary Production and Rural Development SEPP offers improvements to the current scheme but further amendments are required. We strongly request changes to the definitions for intensive and extensive agricultural operations and also to the threshold numbers, to ensure that the appropriate operations are required to gain consent.