Primary Production and Rural Development

Explanation of Intended Effect

OCTOBER 2017
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NSW Department of Planning and Environment
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This Explanation of Intended Effect (EIE) has been prepared for the purposes of section 38 of the Environmental Planning and Assessment Act, 1979 (the EP&A Act) to explain the intended effect of the proposed State Environmental Planning Policy (Primary Production and Rural Development) 2017 (the SEPP) and related planning reforms.

This follows a review of existing SEPPs:

- State Environmental Planning Policy (Rural Lands) 2008 (Rural Lands SEPP)
- State Environmental Planning Policy 30 - Intensive Agriculture (SEPP 30)
- State Environmental Planning Policy 52 - Farm Dams and Other Works in Land and Water Management Plan Areas (SEPP 52)
- State Environmental Planning Policy 62 - Sustainable Aquaculture (SEPP 62)
- Sydney Regional Environmental Plan 8 - Central Coast Plateau Areas (SREP 8)

This EIE is presented in the following parts:

**Part 1 - Executive summary**

Part 1 discusses the broader policy and planning framework, the proposed package of planning reforms (including the new SEPP), its objectives and a summary of how the key policy changes will address priority issues.

**Part 2 – The new SEPP**

Part 2 provides information on the provisions to be included in the proposed Primary Production and Rural Development SEPP.

**Part 3 – Proposed amendments to other planning legislation**

Part 3 provides detail on the changes proposed to other instruments, including Ministerial Directions and the Standard Instrument LEP, which are essential parts of the overall planning package.
Policy context

Primary production is one of our biggest industries and a significant contributor to the NSW and national economies\(^1\). The industry is highly diverse, including plant cultivation, rearing animals for meat and other products, and production of fish and other water-based species such as oysters. To ensure the industry continues to be productive and innovative it needs land, access to water, resources, infrastructure, employees and security to sustain ongoing investment. The industry applies best practice environmental management to support long-term sustainability of the environment and the sector.

Primary production and land management are also critical to a range of business sectors that contribute to regional economies and employment, such as agricultural processing and sales facilities; marketing; rural wholesale and retail businesses; rural tourism and the visitor economy. In 2013-14 the value of extended primary industries to the NSW economy was estimated to be over 14 per cent of Gross State Product\(^2\).

In addition, NSW has large areas suitable for the development of water and land-based aquaculture with access to high quality surface water, groundwater, estuarine and marine waters. The NSW Government aims to support environmentally sustainable expansion of this industry, which provides significant economic and community benefits\(^3\).

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Embracing change and meeting challenges

Our agricultural industries are undergoing significant change and face a range of pressures to their continued success. That includes the use of emerging technologies and techniques, uncertain economic conditions, and a variable climate. Primary producers also face challenges from changing land uses in rural and regional areas that can lead to conflicts, including increased sensitive uses such as dwellings. This can occur when other land use requirements adversely affect farming practices (such as odour and noise limits) and also where different types of agricultural uses may not be entirely compatible in the same area.

Even with best practice management some farming operations can have residual noise, light, dust and other impacts that affect neighbours. A key part of minimising the chance of land use conflict occurring is mutual respect, recognition of the need to co-exist, and compliance with laws and regulations governing land use.

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 these challenges (Box 1).

It is essential to the future health of agricultural industries that the NSW planning framework provides certainty, confidence and consistency to support investment in new and existing primary production. A robust and flexible land use planning framework can provide strategic direction, identify suitable land uses, and provide for efficient environmental assessment processes.

Given the significant economic and social benefits of rural activities in NSW, the planning framework has a particular role in managing competing rural land uses to prevent land use conflict. It must also acknowledge that not all rural land is used for primary production and that there are opportunities for targeted settlement and housing that protect an area’s rural character; retain important scenic and environmental values; or allow development for resource extraction, energy generation and forestry.

Importantly, the planning system must recognise that land considered agriculturally unproductive may become productive in the future, with changing technology or practices, new crops, or proximity to markets. Similarly, some currently productive lands may face challenges associated with changing climate and weather patterns, new crops, changing technology and access to markets, and emerging trends in food consumption.

The planning policies and reforms outlined in this Explanation of Intended Effect (EIE) recognise the significance of primary production and rural lands through planning mechanisms that seek to:

- support investment in sustainable agricultural development
- reduce land use conflict
- facilitate an adaptive approach to new and emerging agricultural practices, technology and industries
- protect environmental values.

Package of reforms

The range of issues facing primary industry and rural communities require planning responses targeted at the right level and using the most effective mechanism in the NSW planning framework. Attachment A provides an outline of the planning framework. The policies and proposed reforms outlined in this document include:

- transferring and amending provisions currently located in existing SEPPs to a new Primary Production and Rural Development SEPP
Part 1 – Executive summary (cont’d)

• transferring some provisions from existing SEPPs to the Standard Instrument LEP
• updating various definitions in the Standard Instrument LEP and EP&A Regulation to ensure consistency and reflect contemporary practices and understanding
• repealing some existing SEPP provisions where they are no longer relevant or needed to support planning objectives related to sustainable agriculture and rural land management.

Key aspects of the reforms and changes to current policy are summarised in the table in Attachment B. Specific detail on all the proposals is provided in Parts 2 and 3 of this EIE. The proposed package of reforms will replace the following existing SEPPs:

• State Environmental Planning Policy (Rural Lands) 2008 (Rural Lands SEPP)
• State Environmental Planning Policy 30 – Intensive Agriculture (SEPP 30)
• State Environmental Planning Policy 52 – Farm Dams and Other Works in Land and Water Management Plan Areas (SEPP 52)
• State Environmental Planning Policy 62 – Sustainable Aquaculture (SEPP 62)
• Sydney Regional Environmental Plan 8 – Central Coast Plateau Areas (SREP 8)

The planning policy and planning provisions currently contained within these SEPPs is detailed in Attachment C. The suggested approach to transition provisions into a new SEPP or other instrument are in Attachment D. Attachment E includes an outline of proposed revisions to key definitions and clauses related to intensive livestock agriculture and extensive agriculture.

The development of this package of proposed reforms has provided an opportunity to review existing provisions in planning instruments, to consider their relevance for the future, and to make decisions about whether planning directions are best located in a state or local level plan.

In addition, it has also taken account of key policy and planning initiatives that are directly relevant to the future of rural land use and the agricultural sector. That includes the NSW Right to Farm Policy (Box 1), Regional Plans, industry development strategies, recommendations of the NSW Legislative Council report Regional planning processes in NSW, legislative reforms related to biodiversity conservation, and ongoing work to identify and map important agricultural lands to inform planning decisions.

Rationale for locating planning provisions

Planning provisions for rural land use and agriculture are currently contained in five SEPPs (see above). There are also provisions in the Standard Instrument LEP, Ministerial Directions issued under section 117 of the EP&A Act, and key definitions located in various regulatory instruments. This fragmented approach is inefficient and does not provide a clear planning framework.

The proposal set out below to prepare a new Primary Production and Rural Development SEPP is an important mechanism to provide a consolidated package of planning provisions. In determining the matters that should be addressed by the new SEPP, the review has been informed by the guiding principle that a SEPP is to make provision for matters that are of state or regional planning significance.

Wherever possible, matters related to determining the permissibility of development and decision-making processes should be included in LEPs. The Standard Instrument LEP provides the primary mechanism to achieve this outcome and to ensure consistency across local government areas. As described below, that means that there are a range of provisions currently included in existing SEPPs that are proposed for transfer to the Standard Instrument LEP (with appropriate updating and amendment). This will support the overall planning system objective of making it as easy as possible for local communities and industry to locate and be aware of the planning provisions that apply in their local areas.

It is recognised that there are a number of local government areas where non-Standard LEPs still apply in various “deferred areas”. To ensure consistency, the same provisions that are to be transferred from existing SEPPs to the Standard Instrument LEP will, where relevant, also be inserted into LEPs for deferred areas.
Benefits of proposed reforms

The package of planning reforms discussed in this document is an outcome of the review of five existing SEPPs which were prepared between 1986 and 2008 to address a range of agricultural and rural land uses. The proposals will:

- ensure planning provisions are up-to-date and provide support for primary industry and rural communities in meeting contemporary and emerging challenges
- improve the efficiency of planning processes, ensuring provisions are positioned at the appropriate level in the planning framework and in the most effective planning instrument to achieve the intended policy outcome
- assist in delivering NSW Government commitments in support of current and future farming practices, including management of land use conflict.

The planned repeal of the five SEPPs, together with the transfer and updating of provisions that remain relevant into the new SEPP or other existing planning instruments, will remove unnecessary duplication and overlap. This will support faster and streamlined project assessments and approvals.

Related reforms

The NSW Government is also currently implementing a range of legislative and policy reforms to deliver a modern approach to land management and biodiversity conservation. That new framework sets outs requirements in relation to the clearing of native vegetation and the related biodiversity offsets scheme. It includes arrangements to allow landholders to undertake clearing and management of native vegetation that supports more productive farming methods and systems, while responding to environmental risks.

Landholders wishing to clear native vegetation as part of a primary production activity will need to ensure they have considered any specific assessment or approval requirements under the Biodiversity Conservation Act 2016 or Local Land Services Amendment Act 2016.

Supporting information

Feedback from industry and key stakeholders has identified the need for improved planning guidance material for farmers and councils. This is particularly in relation to the assessment and approvals process for intensive livestock agriculture operations. The Department of Planning and Environment is developing guidelines to assist both applicants and planning authorities to follow best practice approaches (Box 5).
As discussed in Part 1 of this EIE, the new SEPP is a key element in the overall planning reform package. In combination with a suite of proposed reforms to other planning instruments (Part 3), the new SEPP supports the objective of locating planning provisions in the part of the NSW planning framework where they will be most effective.

The proposed new SEPP will form part of the broader land use planning framework in NSW, as summarised in Attachment A.

**SEPP aims**

The proposed aims of the new Primary Production and Rural Development SEPP will support sustainable agriculture and aquaculture by:

- facilitating the orderly, environmentally sustainable, and economic use and development of land for primary production and rural development
- encouraging sustainable aquaculture, including use of a risk-based approach to environmental assessment
- providing for future recognition and protection of State significant agricultural lands
- providing simplified assessment requirements for low impact land uses, and routine and emergency irrigation works.

**Sustainable aquaculture**

Planning provisions for sustainable aquaculture are currently in SEPP 62. Apart from obsolete self-referencing provisions, all provisions under SEPP 62 will be kept and continue to apply State-wide.

Some provisions for pond-based, tank-based and oyster aquaculture will be transferred to the Standard Instrument LEP, as these relate to land use permissibility controls, identification of the consent authority and development assessment. These matters are discussed in Part 3 below.

**Natural water-based aquaculture**

SEPP 62 currently includes requirements for ‘natural water-based’ aquaculture (other than oyster aquaculture). These allow this type of aquaculture with development consent if it complies with site location and operational requirements set out in Schedule 2 of the SEPP. There are currently no requirements specified in the Schedule.

The intent of these provisions will be retained in the new SEPP. The new SEPP will clarify that natural water-based aquaculture includes ‘marine waters aquaculture’. This type of activity typically occurs in the coastal waters of the State, outside the jurisdiction of local councils (although it may also include some land-based operations).
Locational requirements for marine waters aquaculture will be considered for inclusion in a Schedule to the new SEPP following completion of the NSW Marine Waters Sustainable Aquaculture Strategy. This is currently being prepared by the Department of Primary Industries. The Schedule will identify areas where marine waters aquaculture is not permissible, such as certain environmentally sensitive locations.

Once the locational requirements are included, the SEPP will provide that marine waters aquaculture may be undertaken with development consent by a private individual or organisation, or without development consent if undertaken by a public authority. For projects requiring development consent that are in coastal waters of the state, these will then be assessed as State Significant Development consistent with existing requirements of the State and Regional Development SEPP 2011. For activities being undertaken by public authorities (such as marine waters aquaculture research projects) these will be considered in accordance with the environmental impact assessment requirements of Part 5, EP&A Act or as State Significant Infrastructure.

There may be a time lag between introduction of the new SEPP and inclusion of locational requirements in a Schedule to the SEPP, while the NSW Marine Waters Sustainable Aquaculture Strategy is being finalised. If this occurs, proposals for natural water-based aquaculture (including marine waters aquaculture) will continue to be assessed in accordance with existing requirements of the EP&A Act.

**Project profile analysis**

The proposed new SEPP will retain the requirement (in SEPP 62) for a project profile analysis to be undertaken for aquaculture development. The analysis is a matrix of environmental and operational criteria that ranks the level of environmental risk in relation to site location and operational attributes of aquaculture development. It must be consistent with relevant aquaculture industry development plans prepared under the Fisheries Management Act 1994.

The project profile analysis can determine the degree of risk associated with an aquaculture use to assist in the assessment process. Aquaculture development identified through this project profile analysis as potentially high level risk (Class 3) will continue to be designated development. Those identified as lower level risk (Classes 1 and 2) will remain non-designated.

Proposals that are assessed as State Significant Development or State Significant Infrastructure will not require a project profile analysis, as they will already be subject to comprehensive assessment via preparation and exhibition of an environmental impact statement.

**Advertising requirements**

The proposed new SEPP will retain existing advertising requirements for non-designated development (currently in SEPP 62). Class 1 or 2 aquaculture development will therefore continue to be assessed as advertised development.

**Consent authority**

The proposed new SEPP will confirm consent authority arrangements for marine water-based aquaculture development applications. These will become operational once locational requirements for marine based aquaculture are included in the SEPP, following finalisation of the NSW Marine Waters Sustainable Aquaculture Strategy.

Projects in coastal waters of the state by a private individual or organisation will then be assessed as State Significant Development. For these developments, the consent authority will be the Minister. For marine water-based aquaculture activities by a public authority, these will be approved by the relevant determining authority (if assessed under Part 5, EP&A Act) or by the Minister for Planning for State Significant Infrastructure.

**Referrals**

The proposed new SEPP will continue to require referral to the Secretary of the Department of Primary Industries before a development application for aquaculture is determined. This will ensure expert advice is available to the consent authority, and that the proposal is considered in the context of other surrounding activities, including oyster aquaculture and priority oyster aquaculture areas, and to support compatible uses.

**Compliance with the NSW Oyster Industry Sustainable Aquaculture Strategy 2016**

The consent authority will continue to be required to take into consideration the NSW Oyster Industry Sustainable Aquaculture Strategy under the proposed new SEPP. This means it must consider existing and future oyster aquaculture development (if within a
priority oyster aquaculture area) when assessing development applications.

**State Significant Agricultural Land**

The Rural Lands SEPP currently makes provision for the identification of State Significant Agricultural Land. No land has been identified under these provisions to date.

This provision is proposed to be retained and included in the new SEPP. This will provide continued opportunity for the SEPP to identify agricultural land of state significance, following the outcomes of regional and local planning processes.

The provision in the new SEPP will enable identification and appropriate protection of State Significant agricultural land, by listing in a Schedule to the SEPP.

**Land uses exempt from development consent**

**Artificial waterbodies**

SEPP 52 currently contains provisions requiring development consent for artificial waterbodies (such as farm dams) above certain size thresholds in identified irrigation areas and districts. These provisions will be transferred from SEPP 52 to the Standard Instrument LEP, as discussed in Part 3 below. Related amendments to transfer designated development provisions from SEPP 52 into the EP&A Regulation are also discussed in Part 3.

The new SEPP will identify exemptions for smaller-scale, low risk artificial waterbodies within irrigation areas and districts. These will draw on existing exemptions in SEPP 52, with improvements to reflect current practice with respect to environmentally sensitive areas. The new SEPP will therefore specify that development consent is not required for artificial waterbodies in irrigation areas and districts that:

- have a storage capacity of less than 15 megalitres (consistent with existing requirements in SEPP 52)
- are not in environmentally sensitive areas (as defined in the Exempt and Complying Development Codes SEPP 2008).

The new SEPP will also highlight that an approval or license from the Department of Primary Industries may still be required under the Water Management Act 2000, and any relevant Maximum Harvestable Right Dam Capacity Order.

**Routine maintenance of farm dams and works**

The new SEPP will continue to ensure that certain routine maintenance of an artificial water supply or drainage channel in irrigation areas and districts does not require development consent. This is consistent with Clause 7 of the existing SEPP 52.

**Maintenance and emergency irrigation work**

The new SEPP will continue to enable irrigation corporations to carry out maintenance and emergency works without requiring development consent. This is based on Clause 8 Emergency and routine work by irrigation corporations of the existing SEPP 52.

**Intensive livestock agriculture exemptions**

**Temporary and emergency events**

SEPP 30 currently allows for cattle feedlot or piggery uses such as temporary agistment or housing, or feeding or housing during or immediately following a drought, flood, fire or similar emergency, to be exempt from requiring development consent.

The new SEPP will retain the exemption for feeding or housing following an emergency event. This provision will be extended to apply to all forms of intensive livestock agriculture (including dairy (restricted), sheep, goats and poultry).

This reflects the need for clear State-wide direction to support industry and rural communities during and after these types of events.

For non-emergency temporary agistment or housing, or weaning, dipping and similar activities, the SEPP will also retain and extend the exemptions to include all types of intensive livestock agriculture. These developments will not require development consent, so long as they are not located in environmentally sensitive areas (as defined in the Exempt and Complying Development Codes SEPP) or close to adjoining dwellings that are not associated with the development. Consideration will be given to whether the
SEPP needs to clarify the meaning of “temporary” for the purposes of these provisions.

**Pasture management during dry periods**

Stock containment areas (sometimes referred to as ‘drought lots’) are fenced areas where livestock can be held, fed and watered for a limited duration to protect soil and pasture resources on a property. They are an increasingly important management tool for farmers during prolonged periods of poor seasonal conditions.

As noted above, clause 6 of SEPP 30 currently provides that development for cattle feedlots (and piggeries) does not require consent if is for temporary agistment or housing, or following an emergency event.

The new SEPP will clarify that the provision applies to the temporary use of stock containment areas, generally on the same basis as outlined above.

**Management of goats**

It is proposed to include a provision in the new SEPP to make ‘goat depots’ exempt from development consent. These are enclosures to contain feral goats before their sale or slaughter and are fully accredited under assurance programs overseen by AUS-MEAT. The activity involves relatively short holding times, minimal facilities and generally smaller numbers of animals, and is considered to have low environmental risk. Capturing and holding feral goats assists with management of natural resources and biodiversity conservation.

It is proposed that new goat depots, and their use and operation, will be exempt if they are not located in environmentally sensitive areas (as defined in the Exempt and Complying Development Codes SEPP), or in proximity to sensitive receivers such as dwellings.

**Consent authority in the Unincorporated Area**

SEPP 30 – Intensive Agriculture currently identifies the Western Lands Commissioner as the consent authority for intensive livestock agriculture development on land in the Western Division of NSW that is not within a local government area. The new SEPP will provide that the Minister for Planning will undertake the future consent authority functions for these developments in the unincorporated areas of the state, once the Crown Land Management Act 2016 commences.

**Definitions**

All words and expressions in the SEPP are to have the same meaning as they have in Standard Instrument, except for those listed below which will be separately defined in the new SEPP.

The new SEPP will include the following:

- existing definitions in SEPP 62 related to aquaculture, such as ‘natural water-based aquaculture’, ‘oyster aquaculture development’ and references to published industry strategies
- existing definitions in SEPP 52, such as ‘irrigation corporation’, ‘emergency work’ and ‘routine maintenance’
- general administrative definitions to ensure the new SEPP accurately references current legislation, agencies and statutory positions (such as the Secretary of the Department of Planning and Environment).

Definitions in the the Standard Instrument LEP that are proposed for revision, such as ‘intensive livestock agriculture’, ‘extensive agriculture’ and ‘feedlot’, are discussed in Part 3 of this document. Attachment E also includes draft revised definitions for these terms.

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As discussed above, a package of complementary reforms is proposed to deliver planning system improvements that support sustainable agricultural development and rural land use.

This part of the EIE discusses related amendments that are proposed to the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation), Standard Instrument LEP, Ministerial Directions and LEPs.

Ministerial Direction - Rural Lands 1.5

Rural planning and subdivision principles

The current Rural Lands SEPP contains rural planning and subdivision principles. Ministerial Direction 1.5 - Rural Lands (issued under section 117 of the EP&A Act) requires that a planning proposal (a local environmental plan) in identified LGAs that affects rural or environment protection zones, or minimum lot sizes in these zones, must be consistent with the principles.

There is an ongoing need to provide strategic direction in land use planning and to support delivery of the Right to Farm Policy. The proposal is to revise the principles to reflect NSW Government policy and to give clearer direction on the requirements for planning proposals affecting rural lands.

Draft revised principles are outlined below. These emphasise the need for planning proposals to support the rights of farmers to carry out farming activities, and ensure rural land is maintained as a resource for the benefit of current and future generations. Proposals to alter minimum lot sizes will be assessed to ensure they take account of long-term implications for land fragmentation and land use conflict. In addition, a planning proposal for rural residential purposes will also require appropriate consideration of the availability of relevant services and demand and supply factors.

Draft planning principles

A planning proposal that will affect land within an existing or proposed rural or environment protection zone, including alterations to zone boundaries or changes to minimum lot size, must be consistent with the following principles.
All planning proposals must:

- be consistent with any applicable regional plans of the Department of Planning and Environment or any applicable local strategy endorsed by the Secretary
- recognise the significance of agriculture and primary production to the State and rural communities, including the social and economic benefits of rural land use and development
- aim to protect environmental values, having regard to maintaining biodiversity, the protection of native vegetation, cultural heritage, and the importance of water resources
- consider the natural and physical constraints of the land
- promote and protect opportunities for investment in productive, diversified, innovative and sustainable rural economic activities
- support farmers in exercising their right to farm
- prioritise efforts to minimise the fragmentation of rural land and reduce the risk of land use conflict, particularly between residential land uses and other rural land uses.
- consider the social, economic and environmental interests of the community.

In addition to the above, a planning proposal seeking to change minimum lot sizes must also demonstrate that it:

- is consistent with the priority of minimising rural land fragmentation and land use conflict
- will not adversely affect the operation and viability of existing and future rural land uses and related enterprises, including supporting infrastructure and facilities that are essential to rural industries or supply chains
- where it is for rural residential purposes:
  - is appropriately located taking account of the availability of human services, utility infrastructure, transport and proximity to existing centres
  - is necessary taking account of existing and future demand and supply of rural residential land.

The final planning principles will be included in Ministerial Direction 1.5, rather than the new SEPP, as this is the appropriate mechanism to provide direction on the preparation of a LEP.

The planning principles will apply to the same land to which the existing Rural Lands SEPP applies, with one additional area included: rural zoned land in the Central Coast LGA. These areas are proposed to be included as they contain rural lands that warrant careful strategic consideration during the preparation of future LEPs. Until local strategic planning is finalised for the Central Coast area, it is appropriate for the principles to apply.

### Box 2 – How and when will the principles be applied?

The rural planning and rural subdivision principles must be applied by councils during the preparation of LEPs (a planning proposal) affecting rural or environment protection zoned land in areas subject to the SEPP (in the Central Coast LGA this will only apply to rural zoned land). That may include preparation of an entirely new LEP or an amendment to an existing LEP, such as a rezoning or a change to minimum lot sizes.

As required by Ministerial Direction 1.5 Rural Lands, a planning proposal must be consistent with the principles.

#### Standard Instrument LEP

**Rural subdivision for agricultural purposes**

Clause 9 of the Rural Lands SEPP provides for flexibility in subdivision standards for primary production purposes in rural zones. The provisions are replicated in clause 4.2 of the Standard Instrument LEP.

Clause 9 of the Rural Lands SEPP will be repealed. This will remove duplication with clause 4.2 of the Standard Instrument LEP, which will be retained.

Clause 4.2 will also be revised to clarify that a lot created as part of a subdivision for primary production purposes, and which contains an existing dwelling, does not need to meet minimum lot size requirements. This will support, for example, farmers transitioning to retirement and business succession planning by enabling a farmer to stay in their existing dwelling while selling, leasing or making other arrangements for use of the primary production lot.

To avoid long-term risks of land fragmentation, the Standard Instrument LEP will provide mechanisms to limit potential for the new primary production lot to be repeatedly subdivided over time. Similar arrangements to prevent ‘double-dipping’ are already in cl.4.5 of the Standard Instrument LEP, including the use of covenants as a condition of development consent.

**Rural subdivision or rural dwelling houses**

Clause 10 of the Rural Lands SEPP currently specifies matters to be considered when determining development applications for rural subdivision or rural dwelling houses.
The heads of consideration remain relevant and will form the basis for a new model clause in the Standard Instrument LEP. The Standard Instrument LEP is considered the appropriate mechanism as the provision relates to specific development assessment requirements that should be common to all LEPs.

It is recognised that dwelling houses in rural zones can be approved as complying development under the Exempt and Complying Development Codes SEPP. The new model clause will not change this. It will only apply to dwelling house proposals that are not complying development and require a development application to the local council.

**Definition of ‘intensive livestock agriculture’**

The current Standard Instrument LEP definition of ‘intensive livestock agriculture’ lists some types of livestock, such as cattle and goats, and then refers to ‘other livestock’. It is proposed to incorporate sheep in the list of livestock that are specifically mentioned. This is a minor change which reflects that sheep can be intensively farmed in feedlot operations. Thresholds for the size of sheep feedlot operations that will require development consent are discussed below.

The source of feed is also referred to in the current definition. It is proposed to remove the reference to the proportion of nutritional requirements that are provided by externally sourced feed from the definition. It is not considered necessary to include the source of feed (external or internal) in order to differentiate between extensive and intensive agriculture. This is because the definition of ‘extensive agriculture’ already refers to the grazing of livestock and pasture-based dairy.

A further minor change is also proposed, to refer to ‘pig farms’ rather than ‘piggeries’. This reflects a simpler, plain English approach, acknowledging that in common usage a piggery is defined as a pig farm. Importantly, it will also clarify that all types of pig farming are intensive livestock agriculture, including free range operations.

A draft revised definition of ‘intensive livestock agriculture’ is provided in Attachment E.

It is also proposed that supporting guidance material will be developed to assist farmers and local councils appropriately plan for and assess intensive livestock agriculture proposals (Box 5). This will provide practical guidance on the planning application process, including when a development application is required, and what matters need to be considered.

**Definition of ‘extensive agriculture’**

As discussed above, the current definition of extensive agriculture includes reference to the ‘grazing of livestock’ and pasture-based dairies, to distinguish the activity from intensive livestock agriculture. The supply of supplementary feed (such as hay) to complement paddock feeding is also standard practice in extensive agriculture, as is temporary penning of animals for weaning or dipping.
To ensure the differences between intensive and extensive agriculture remain clear, and to recognise the above standard operating practices, it is proposed to make minor amendments to the definition of extensive agriculture.

These will clarify:

• grazing and pasture-based dairy operations refer to when animals eat plants growing on the land
• there are standard operations that occur as an incidental part of extensive agriculture, such as supplementary and emergency feeding, and temporary penning or housing of animals for weaning, dipping or related purposes.

A draft revised definition of ‘extensive agriculture’ is provided in Attachment E.

**Improve the definition of a feedlot**

The Standard Instrument LEP definition of a ‘feedlot’ can be improved by:

• removing references to the type of feed, consistent with the revised definition of intensive livestock agriculture (see above)
• clarifying that it applies to all activities associated with a feedlot operation, not just those elements that are related to meat or fibre production
• reiterating that it does not include extensive agriculture.

The proposed amendments will illustrate a clear difference between extensive and intensive agriculture land uses, making it easier for industry and applicants to prepare assessments and support greater clarity in development applications.

A draft revised definition of ‘feedlot’ is provided in Attachment E.

**Thresholds and heads of consideration for intensive livestock agriculture**

**Current situation**

The Standard Instrument LEP requires intensive livestock agriculture to be permissible with or without consent in the RU1 zone. The Standard Instrument LEP does not include size thresholds for intensive agriculture operations that require consent.

However, SEPP 30 states that development consent is required for cattle feedlots above 50 animals and piggeries with 200 or more pigs or 20 or more breeding sows. Below these thresholds, development consent is not required.

In practice this means that small-scale cattle feedlots and piggeries (below the above thresholds in SEPP 30) are the only type of intensive livestock agriculture that does not require planning approval. All other commercial intensive livestock operations, including small scale operations, require development consent regardless of size or location.

Proposed thresholds for a range of intensive livestock operations are discussed below. These will provide clarity for industry and councils and ensure fair and reasonable assessment processes apply.

**What planning instrument will be used?**

The thresholds for consent and heads of consideration for intensive livestock agriculture will be revised and transferred from SEPP 30 as they are appropriately located as a new model clause in the Standard Instrument LEP. The new Standard Instrument LEP clause would be compulsory if ‘intensive livestock agriculture’ is permitted with consent in a council’s LEP.

**What types of intensive livestock activities will require consent?**

Cattle feedlots and pig farms meeting existing size thresholds in SEPP 30 will continue to require consent in the new model clause for the Standard Instrument LEP.

Given the growth in egg production and its consequent potential environmental impact, it is proposed to include commercial egg production and poultry meat production (whether housed or outdoor) in the new Standard Instrument LEP clause to make it subject to development consent. Thresholds are proposed below to ensure small scale and low-risk operations are not unnecessarily regulated.

The new Standard Instrument LEP clause will also include ‘dairy (restricted)’ as requiring development consent where it has capacity for 50 head of cattle. As noted above, this is consistent with the existing SEPP 30 size threshold for a ‘cattle feedlot’.

In addition, the new Standard Instrument LEP clause will recognise that development consent is required for other types of contemporary intensive livestock operations, such as goats and sheep. Again, size thresholds will apply (see below).
The new Standard Instrument LEP clause will apply to new developments applications that reach the required triggers (discussed below). Existing lawful operations may continue without the need to obtain development consent, subject to the existing use provisions of the EP&A Act.

**What will the thresholds be for development consent?**

The proposal to update and transfer the SEPP 30 thresholds and matters for consideration into the Standard Instrument LEP reflects greater awareness of the risks associated with a range of commercial intensive livestock agriculture, including biosecurity, and the need for a consistent and fair approach across industries. Exemption thresholds will ensure that small commercial operators in low-risk locations are not subject to inappropriate levels of regulation.

It is proposed that development consent will be required for commercial operations involving:

- 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 (Box 4).

A draft outline of a proposed Standard Instrument LEP clause is at Attachment E.

As noted in Part 1, landholders wishing to clear native vegetation as part of a primary production activity will need to ensure they have considered any specific assessment or approval requirements under the Biodiversity Conservation Act 2016 or Local Land Services Amendment Act 2016.

**How will the development consent thresholds affect designated development?**

Schedule 3 of the EP&A Regulation identifies certain types of intensive livestock agriculture requiring development consent as ‘designated development’. These require preparation and assessment of an environmental impact statement (EIS) before consent can be granted. These will remain in place and are not affected by the above thresholds for development consent.

In practice this will mean:

- intensive livestock agriculture operations less than the proposed development consent thresholds above will not require development consent
- operations that exceed these thresholds or are in an environmentally sensitive area will require a development application and the granting of development consent
- certain operations that require development consent will be considered designated development under the EP&A Regulation, and require an EIS (as is currently the case).
Part 3 – Proposed amendments to other planning legislation (cont’d)

What will be the heads of consideration?

For developments requiring consent, the heads of consideration in the Standard Instrument LEP clause would be modelled on the existing clause 7 of SEPP 30.

Matters to be considered may include:

• impacts of odour on residential and other land uses in the vicinity
• potential for water pollution
• potential for soil degradation
• site suitability
• measures proposed to mitigate potential adverse impact.

Artificial waterbodies in environmentally sensitive areas

To ensure appropriate environmental assessment of artificial waterbodies that are between 15 and 100 megalitres, and within environmentally sensitive areas, SEPP 52 currently requires the consent authority to consider a Statement of Environmental Effects and a farm plan provided by the applicant.

The intent of this provision will be transferred to the Standard Instrument LEP as a new model clause for use in irrigation areas and districts. It will include a new definition for ‘farm plan’ to take account of legislative changes made since SEPP 52 commenced.

Artificial waterbodies exceeding 100 megalitres in storage capacity in sensitive locations will remain as designated development.

Standard Instrument definitions for ‘water reticulation system’ and ‘water storage facility’

The Standard Instrument LEP currently contains the definitions for water reticulation system and water storage facility. Both definitions list a ‘reservoir’ as an example of what describes this type of land use. To distinguish between the two definitions, it is proposed to remove the reference to reservoir from the definition for ‘water reticulation system’.

SREP 8 and local planning for the Central Coast

The Central Coast Regional Plan 2036 sets the regional planning priorities and provides the strategic framework for local planning. Community consultation during preparation of the Regional Plan identified a range of land use conflict concerns, and support for greater rural lands protection and emphasis on agricultural development.

The Regional Plan recognises the value of agricultural lands and the importance of maintaining a critical mass of agricultural industries and related supply chains. It includes actions to identify and protect important agricultural land, plan for ongoing productive use of lands and use local plans to avoid land use conflicts.

Box 5 – Planning guidance for farmers and local councils

It is recognised that there would be benefit in providing farmers and local councils with clear information on the planning approvals process as it applies to intensive livestock agriculture.

It is proposed to develop a straightforward, plain English guideline that explains when planning approvals are required, what types of matters proponents and decision-makers should consider, and how the community and neighbours can have a say. The guidelines will aim to:

• improve awareness of best practice planning approaches
• assist farmers in developing and documenting new projects that require planning approval
• help councils assess development applications
• promote better on-the-ground outcomes for farm operations and environmental management.

Permissibilities for aquaculture

Clauses 7 and 7A of SEPP 62 identify zones where pond-based and tank-based aquaculture is permissible with consent or prohibited. Schedule 1 of SEPP 62 includes site and operational requirements that a development must comply with. As these provisions apply to council areas across the State, it is appropriate that they are transferred to the Standard Instrument LEP together with the definitions for pond-based and tank-based aquaculture.

Similarly, clauses in SEPP 62 providing that oyster aquaculture is permissible with consent, identifying the appropriate consent authority, and requiring consideration of relevant industry development strategies, will also be transferred to the Standard Instrument LEP.

It is proposed to develop a straightforward, plain English guideline that explains when planning approvals are required, what types of matters proponents and decision-makers should consider, and how the community and neighbours can have a say. The guidelines will aim to:

• improve awareness of best practice planning approaches
• assist farmers in developing and documenting new projects that require planning approval
• help councils assess development applications
• promote better on-the-ground outcomes for farm operations and environmental management.

What will be the heads of consideration?

For developments requiring consent, the heads of consideration in the Standard Instrument LEP clause would be modelled on the existing clause 7 of SEPP 30.

Matters to be considered may include:

• impacts of odour on residential and other land uses in the vicinity
• potential for water pollution
• potential for soil degradation
• site suitability
• measures proposed to mitigate potential adverse impact.

Artificial waterbodies in environmentally sensitive areas

To ensure appropriate environmental assessment of artificial waterbodies that are between 15 and 100 megalitres, and within environmentally sensitive areas, SEPP 52 currently requires the consent authority to consider a Statement of Environmental Effects and a farm plan provided by the applicant.

The intent of this provision will be transferred to the Standard Instrument LEP as a new model clause for use in irrigation areas and districts. It will include a new definition for ‘farm plan’ to take account of legislative changes made since SEPP 52 commenced.

Artificial waterbodies exceeding 100 megalitres in storage capacity in sensitive locations will remain as designated development.

Standard Instrument definitions for ‘water reticulation system’ and ‘water storage facility’

The Standard Instrument LEP currently contains the definitions for water reticulation system and water storage facility. Both definitions list a ‘reservoir’ as an example of what describes this type of land use. To distinguish between the two definitions, it is proposed to remove the reference to reservoir from the definition for ‘water reticulation system’.

SREP 8 and local planning for the Central Coast

The Central Coast Regional Plan 2036 sets the regional planning priorities and provides the strategic framework for local planning. Community consultation during preparation of the Regional Plan identified a range of land use conflict concerns, and support for greater rural lands protection and emphasis on agricultural development.

The Regional Plan recognises the value of agricultural lands and the importance of maintaining a critical mass of agricultural industries and related supply chains. It includes actions to identify and protect important agricultural land, plan for ongoing productive use of lands and use local plans to avoid land use conflicts.
The Regional Plan also identifies a priority action to address land use needs west of the M1 Pacific Motorway to provide integrated and adaptable outcomes for natural assets, productive lands and rural lifestyles. This includes areas that are currently subject to the provisions of SREP 8 Central Coast plateau areas.

The above matters will inform and have a strong influence on the preparation of future LEPs for the Central Coast.

It is proposed that SREP 8 will remain in place until new local environmental plans for the Central Coast are progressed to address these issues. However, clause 11 will be repealed as part of this current reform package as it deals with planning proposal matters already addressed through Ministerial Directions issued under section 117 of the EP&A Act.

**Environmental Planning and Assessment Regulations**

**Consistency of definitions**

The Standard Instrument LEP definition of ‘intensive livestock agriculture’ is slightly different to the term ‘livestock intensive industries’ in the EP&A Regulation. It is proposed to amend the Regulations to be consistent with the Standard Instrument LEP.

**Designated development thresholds for intensive livestock agriculture**

The designated development thresholds in the Regulations will be updated to include ‘egg production’ as one of the activities of poultry farms. This will align with the changes made to the Standard Instrument LEP as discussed above.

**Designated development thresholds for artificial waterbodies**

SEPP 52 currently provides thresholds for artificial waterbodies that make them designated development if:

- it is to be carried out in an environmentally sensitive area and the storage capacity of the artificial waterbody is 100 megalitres or more, or
- it is not to be carried out in an environmentally sensitive area, but the storage capacity of the artificial waterbody is 800 megalitres or more.

It is proposed that these thresholds are retained and transferred to the Regulations.

**Designated development thresholds for horses**

It is proposed to amend the Regulations to include the threshold for horses in a separate subclause. This is needed as horses are currently listed under the subclause that refers to feedlot operations. However, horses are not fed in this manner. A separate subclause will ensure an appropriate threshold is included for designated development for proposals involving 400 horses more.
This Explanation of Intended Effect describes a package of complementary reforms to update and improve the operation of the NSW planning framework as it applies to primary production and rural development. As a package, these reforms will assist in promoting environmentally sustainable agriculture and rural land uses into the future, recognising the significant benefits of a strong rural sector that delivers development and environmental outcomes. Collectively, they will also support delivery of commitments in the NSW Government’s Right to Farm Policy.

The proposal for a draft new SEPP, providing strategic direction and guidance, is one feature of the package. It is accompanied by a range of measures to revise the Standard Instrument LEP, Ministerial Directions, EP&A Regulation, and related planning instruments. This is consistent with broader objectives to simplify and streamline planning and assessment requirements, and to ensure that planning provisions are located at the right level and in the most appropriate instrument where they can achieve policy objectives in a clear, transparent way.

Highlights of the proposals in this document include:

- the inclusion of planning principles in Ministerial Direction 1.5, to guide and inform the preparation of LEPs affecting rural land
- retention of a mechanism to identify and protect agricultural lands of State significance
- inclusion of a Standard Instrument LEP clause providing heads of consideration for rural subdivision and rural dwelling proposals
- retention of existing aquaculture provisions either in the Standard Instrument LEP or new SEPP
- revisions to key definitions to reflect contemporary practice and ensure consistency
- transfer of development consent requirements for intensive livestock agriculture into the Standard Instrument LEP, and clarification of size and location thresholds to ensure fair and appropriate environmental assessment
- retain and extend provisions to support industry and community during emergency and similar events
- retain provisions enabling low-risk irrigation works to occur without development consent
- ensure that the repeal of existing provisions related to the protection of certain lands on the Central Coast are considered in the context of the Regional Plan and forthcoming LEP process.

The planning reforms proposals will be further considered and refined following stakeholder consultation and assessment of public submissions.
### Attachment A - Planning framework

The proposed new SEPP will form part of the broader land use planning framework in NSW, as summarised below.

<table>
<thead>
<tr>
<th>Land Use Planning Instrument</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Environmental Planning and Assessment Act 1979</strong></td>
<td>The Environmental Planning and Assessment Act 1979 (the EP&amp;A Act) is the legislative umbrella for land use planning in NSW. It provides for environmental planning instruments that establish the controls to regulate agriculture, aquaculture and other rural development land uses. These controls also prevent unplanned residential development in rural areas.</td>
</tr>
<tr>
<td><strong>SEPP Primary Production and Rural Development</strong></td>
<td>The new SEPP will be the primary environmental planning instrument for primary production and rural development. It will ensure the planning objectives of the EP&amp;A Act are implemented in NSW. The SEPP will support NSW Government planning policies and development assessment processes for agriculture, aquaculture, strategically planned housing in rural areas and other ancillary land uses.</td>
</tr>
<tr>
<td><strong>Regional and district plans</strong></td>
<td>Regional and district plans provide the strategic framework to plan for each region and district’s future housing, jobs, infrastructure, commercial, cultural and educational centres and healthy environment. District Plans are a fundamental way to manage Sydney’s smart growth. They are the link between the State Government’s Greater Sydney Region Plan – A Plan for Growing Sydney – and councils’ Local Environmental Plans. The draft District Plans for Sydney were released for exhibition in November 2016. While the new SEPP will have state-wide application, it will mostly apply outside the Greater Sydney Region. Relevant regional plans will also apply and provide direction on agricultural development and rural land planning.</td>
</tr>
</tbody>
</table>
Ministerial Directions

The Minister issues a local planning direction under section 117 of the EP&A Act to direct a public authority in the making of a Local Environmental Plan (LEP).

Council LEPs will need to align with the objectives of the relevant local planning direction, and LEP controls and provisions should be consistent with the aims of the new SEPP.

Local Environmental Plans

Local Environmental Plans (LEPs) guide planning decisions for local government areas. They include zoning and development controls that provide a framework for the way land can be used. LEPs shape the future of communities and ensure local development is undertaken appropriately.

LEPs, and amendments to LEPs, begin with a planning proposal, usually prepared by the local council. Proponents can request a review if a council decides not to support a rezoning request or does not make a determination within 90 days.

Community consultation is essential to the process and the relevant planning authority, usually the local council, will review all submissions before a final LEP is made.

The final LEP is published on the NSW legislation website and becomes law once approved by the Minister for Planning or their delegate, or the Greater Sydney Commission if the LEP applies to land within the Sydney metropolitan area.

Development control plans (DCPs) often provide additional details relating to development standards and character.

Development Control Plans

The role of Development Control Plans (DCPs) is to provide guidance to applicants and planning authorities on how development proposals should give effect to aims of environmental planning instruments (such as the LEP), facilitate permissible development, and achieve zoning objectives for the land. A DCP typically provides additional details relating to development standards and character.

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<td>Local Environmental Plans</td>
<td>Local Environmental Plans (LEPs) guide planning decisions for local government areas. They include zoning and development controls that provide a framework for the way land can be used. LEPs shape the future of communities and ensure local development is undertaken appropriately. LEPs, and amendments to LEPs, begin with a planning proposal, usually prepared by the local council. Proponents can request a review if a council decides not to support a rezoning request or does not make a determination within 90 days. Community consultation is essential to the process and the relevant planning authority, usually the local council, will review all submissions before a final LEP is made. The final LEP is published on the NSW legislation website and becomes law once approved by the Minister for Planning or their delegate, or the Greater Sydney Commission if the LEP applies to land within the Sydney metropolitan area. Development control plans (DCPs) often provide additional details relating to development standards and character.</td>
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### Additional Government Policies

<table>
<thead>
<tr>
<th>Policy</th>
<th>Description</th>
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<tbody>
<tr>
<td><strong>Right to Farm Policy</strong></td>
<td>The Right to Farm Policy supports farmers’ right to farm. It addresses land use conflicts that arise from lawful agricultural practices and works to prevent this occurring through strategic planning.</td>
</tr>
<tr>
<td><strong>Maintaining land for agricultural industries – Department of Primary Industries Policy 0-104</strong></td>
<td>This policy guides the planning system to provide certainty and security so that agricultural enterprises can respond to future market, policy, technology and environmental changes.</td>
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</tbody>
</table>

### Relevant References

<table>
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<tr>
<th>Description</th>
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<tr>
<td><strong>Various</strong></td>
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</table>
### Attachment B – Summary of key policy proposals

<table>
<thead>
<tr>
<th>Priority issues</th>
<th>Response</th>
<th>Change to current approach or policy</th>
<th>Planning outcome</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Recognise the significance of rural land uses and rural land</strong></td>
<td>Planning principles are currently in the Rural Lands SEPP. These will be updated and included in Ministerial Direction 1.5. The proposed principles are outlined in Part 3 of this EIE. They will apply to the same LGAs that are currently subject to the provisions of the Rural Lands SEPP.</td>
<td>Yes - the principles will be revised.</td>
<td>Proposals to amend existing LEPs or prepare a new LEP affecting rural lands will have to be consistent with the principles. That will include planning proposals seeking to change minimum lot sizes. This avoids duplication between the SEPP and Ministerial Directions. It ensures that requirements for LEPs are in one location.</td>
</tr>
<tr>
<td><strong>Support sustainable industry development</strong></td>
<td>The updated planning principles will also be extended to include rural lands in the Central Coast LGA. These areas are currently excluded from the Rural Lands SEPP. Clause 11 of SREP 8 will then be repealed as all requirements related to the preparation of LEPs will be in the Ministerial Directions.</td>
<td>Yes – the principles are being extended to rural lands in the Central Coast</td>
<td>As above, this will remove duplication across planning instruments and ensure that the Ministerial Directions are the key source of guidance for LEPs.</td>
</tr>
</tbody>
</table>
### Enable identification of important state significant agricultural lands.

<table>
<thead>
<tr>
<th>Priority issues</th>
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<th>Change to current approach or policy</th>
<th>Planning outcome</th>
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<tbody>
<tr>
<td>Enable identification of important state significant agricultural lands.</td>
<td>The existing mechanism to identify agricultural lands of state significance will be included in the new SEPP. A similar provision is currently in the Rural Lands SEPP.</td>
<td>No</td>
<td>This will maintain scope for the SEPP to identify and protect agricultural land of state significance as required in the future, building on the outcomes of Regional Plans and on-going agricultural land mapping.</td>
</tr>
</tbody>
</table>

### Minimise risks of land use conflict and rural land fragmentation

<table>
<thead>
<tr>
<th>DEVELOPMENT ASSESSMENT PROVISIONS</th>
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<th>Future proposals for agricultural subdivision will be dealt with by standard provisions in all LEPs.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Clause 9 of the Rural Lands SEPP and clause 4.2 in the Standard Instrument LEP both currently provide flexibility in subdivision for agricultural purposes in rural zones.</td>
<td>Clarification of the minimum lot size for a lot containing an existing dwelling will be provided, and a mechanism to prevent ‘double-dipping’ will be included.</td>
<td>No</td>
<td>This will remove duplication between the existing SEPP and the Standard Instrument LEP and clarify application of the clause.</td>
</tr>
<tr>
<td>Clause 9 of the Rural Lands SEPP will be repealed. Clause 4.2 of the Standard Instrument LEP will be retained.</td>
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<td></td>
<td>Future proposals for agricultural subdivision will be dealt with by standard provisions in all LEPs.</td>
</tr>
<tr>
<td>Clause 4.2 will be revised to clarify that a lot created by a subdivision which contains an existing dwelling does not need to meet the minimum lot size.</td>
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<td></td>
<td>This will remove duplication between the existing SEPP and the Standard Instrument LEP and clarify application of the clause.</td>
</tr>
<tr>
<td>Matters to be considered in development applications for rural subdivision and rural dwellings are currently in cl.10 Rural Lands SEPP. These will be transferred to the Standard Instrument LEP (and remaining non-standard LEPs).</td>
<td>The proposed matters to be considered are outlined in Part 3.</td>
<td>No</td>
<td>All LEPs will require future development applications for rural subdivision and rural dwellings to consider and take into account the identified matters.</td>
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<td>This will ensure consistency in approach and provide clarity to communities and industry.</td>
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<tr>
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<tr>
<td>Existing provisions in SREP 8 deal with the assessment of development applications on prime agricultural land, extractive industries, rural tourist facilities, land clearing and rural residential development. Apart from clause 11, SREP 8 will remain in place until new LEPs for the Central Coast are proposed. Clause 11 of SREP 8 will be repealed as it deals with plan making issues already addressed through Ministerial Directions.</td>
<td>No</td>
<td>The relevance of these provisions, and related existing mapping, will be considered during forthcoming local strategic planning.</td>
<td></td>
</tr>
<tr>
<td>Clauses 7 and 7A of SEPP 62 identify permissible zones for pond-based and tank-based aquaculture, with site location and operational requirements in Schedules 1 and 1A. These and related definitions will be transferred to the Standard Instrument LEP. Part 3 of this EIE has more information.</td>
<td>No</td>
<td>Pond-based and tank-based aquaculture will continue to be permissible in the applicable zones in all LEPs state-wide, subject to meeting the location and operational requirements. This will ensure consistency in approach and ensure communities and industry understand the requirements in their local areas.</td>
<td></td>
</tr>
<tr>
<td>Provisions to guide the assessment of aquaculture projects based on risk, and advertising and referral requirements are currently in SEPP 62. These will be transferred to the new SEPP.</td>
<td>No</td>
<td>Requirements related to assessing environmental risk and determining assessment and consultation pathways will be appropriately located in the new SEPP.</td>
<td></td>
</tr>
<tr>
<td>Provisions for natural water-based aquaculture will be moved from SEPP 62 to the new SEPP. Marine waters aquaculture will be recognised as a type of natural water-based aquaculture. Locational criteria will be considered for inclusion in a Schedule to the SEPP once identified in the forthcoming NSW Marine Waters Sustainable Aquaculture Strategy.</td>
<td>No</td>
<td>Natural water-based aquaculture proposals, including marine waters aquaculture, will be permissible with consent (for proposals from private individuals or organisations) or without consent (activities by public authorities) if they comply with the locational criteria, once these are included in a Schedule to the SEPP following finalisation of the NSW Marine Waters Sustainable Aquaculture Strategy.</td>
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<tr>
<td>Ensure key definitions are consistent and reflect contemporary industry practice</td>
<td>Revise the Standard Instrument LEP definitions of ‘intensive livestock agriculture’, ‘extensive agriculture’, ‘feedlot’, ‘water reticulation system’ and ‘water storage facility’. The proposed changes are discussed in Part 3 of this EIE.</td>
<td>Yes</td>
<td>The definitions will recognise relevant industries, clarify that the source of feed is not a key criterion, and avoid duplication of terms for water infrastructure projects.</td>
</tr>
<tr>
<td>Ensure development assessment requirements for intensive livestock agriculture apply fairly and reflect environmental risk</td>
<td>A new model clause in the Standard Instrument LEP will clarify development consent thresholds for intensive livestock agriculture. Some thresholds (for cattle feedlots and piggeries) are currently in SEPP 30. The provisions in the Standard Instrument LEP will clarify that egg and poultry meat production, sheep and goat feedlots, and dairy (restricted) are uses requiring development consent when certain thresholds are met. The proposed thresholds will ensure that small-scale, low-risk enterprises do not require consent, subject to satisfying locational criteria. For example, poultry farms below 1,000 birds will not require consent unless they are located in sensitive areas. Consequential amendments to the designated development provisions of the EP&amp;A Regulation will be undertaken. These proposals are discussed in Part 3.</td>
<td>Yes</td>
<td>All LEPs that provide for intensive livestock agriculture will include common provisions that identify thresholds for when development consent is required. This will provide clear guidance on those enterprises that do not require development consent, avoiding unnecessary regulation of low-risk projects. This will ensure consistency in approach and provide clarity to communities and industry.</td>
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<tr>
<td>Support industry and communities during emergency or weather-related events</td>
<td>SEPP 30 currently provides that temporary livestock feeding and housing arrangement following droughts, fire or similar events do not require development consent. The new SEPP will retain the intent of this provision, but differentiate between emergency events and planned uses. It will also clarify that consent is not required for stock containment facilities to assist with pasture management during dry periods, and the capture and holding of feral goats.</td>
<td>Yes – with respect to goats.</td>
<td>Rural industries and local communities will be supported during periods of weather and emergency event-related stress. Environmental values will be protected by specified limits.</td>
</tr>
<tr>
<td>Enable timely undertaking of essential low-risk irrigation work</td>
<td>Provisions to enable irrigation corporations to carry out maintenance and emergency works without requiring development consent will be included in the new SEPP. This is consistent with existing provisions in SEPP 52.</td>
<td>No</td>
<td>Irrigation corporations will continue to be able to undertake essential maintenance and emergency works without development consent. Corporations will still have to comply with any other applicable regulatory requirements.</td>
</tr>
<tr>
<td>Enable appropriate assessment of artificial waterbodies</td>
<td>Provisions identifying artificial waterbodies in irrigation areas and districts that require consent will be included in the Standard Instrument LEP. These are currently in SEPP 52. The designated development provisions of the EP&amp;A Regulation will be revised to take account of thresholds currently in SEPP 52.</td>
<td>No</td>
<td>LEPs that apply to irrigation areas and districts will have standard provisions identifying development consent requirements for artificial waterbodies in these locations. Designated development provisions will be located in a single location in the EP&amp;A Regulation.</td>
</tr>
</tbody>
</table>
Attachment C – Existing SEPPs

**Rural Lands SEPP**

The Rural Lands SEPP was released in 2008 in response to the recommendations of the Central West Rural Lands Panel, who were responsible for ensuring the protection of agricultural lands was balanced with other interests such as rural residential development. The review undertaken by the Panel noted that concessional lot provisions had been misused in the past, resulting in the unplanned creation of rural residential lots occupied by rural lifestylers next to large commercial farms. This had led to unintended impacts such as fragmentation of rural land, land use conflicts and increased demand for infrastructure and services in remote areas. To address this issue, the SEPP directly amended LEPs by removing provisions that permitted subdivision for concessional lots.

The SEPP applies state-wide except for specified metropolitan local government areas.

The Rural Lands SEPP acknowledges the importance of agricultural land. It introduced rural planning principles and rural subdivision principles to guide local councils when preparing local planning strategies, local environmental plans or when determining development applications.

In summary, the SEPP:

- sets parameters for rural subdivisions for agricultural purposes and housing at the plan making and development application stages
- implemented measures to reduce land use conflicts
- removed ‘concessional lot’ provisions from local plans.

The SEPP also provides mechanisms to identify state significant agricultural land (Part 4) and establish rural lands planning panels (Part 5). These parts of the SEPP have not been used.

Ministerial Direction 1.5 Rural Lands applies to all planning proposals to which the Rural Lands SEPP applies. Direction 1.5 requires any planning proposal within a rural or environmental zone, or a proposal that changes the existing minimum lot size within a rural or environmental zone, to be consistent with the rural planning principles and rural subdivision principles in the Rural Lands SEPP.

**SEPP 30**

SEPP 30 was introduced in 1989 when lot feeding was predominantly cattle-based. It specifies thresholds for when development consent is required for certain livestock, sets out matters to consider when determining a development application for cattle feedlots or piggeries and confirms that the definition for ‘rural industries’
includes composting facilities. SEPP 30 does not apply to land covered by State Environmental Planning Policy (Western Sydney Parklands) 2009.

Under SEPP 30, feedlots for over 50 head and up to 1,000 head of cattle and piggeries with the capacity for 200 or more pigs or more than 20 breeding sows require development consent.

There are also separate thresholds for certain larger-scale or higher types of intensive livestock proposals, which require preparation of an Environmental Impact Statement. These “designated developments” are set out in Schedule 3 of the EP&A Regulation. For example, designated development includes: a feedlot for over 1,000 head of cattle; piggeries of more than 2,000 pigs; and poultry farms with more than 250,000 birds.

**SEPP 52**

SEPP 52 was released in 1998 to regulate farm dams and other constructed waterways within identified irrigation areas and districts, including a channel or lake, defined as ‘artificial waterbodies’ under the planning system. It aims to appropriately consider and assess the environmental impacts associated with these types of development.

SEPP 52 sets out the consent requirements for ‘artificial waterbodies’ in irrigation areas and districts including those that can be carried out without consent, those that require consent, and those that are designated development and require an Environmental Impact Statement.

The SEPP identifies the local council as the consent authority for ‘artificial waterbodies’ proposed in an environmentally sensitive area where the storage capacity is between 15 and 100 megalitres, although some exemptions apply. It also clarifies that consent is not required when the ‘artificial waterbody’ has a storage capacity of less than 15 megalitres and is not within 40 metres of a public road, watercourse, wetland or any tree clearing operations.

SEPP 52 identifies the following as designated development requiring an Environmental Impact Statement:

- an artificial waterbody with a storage capacity of 800 megalitres or more that is not located in an environmentally sensitive area (the same meaning as in Schedule 3 (Designated development) under the EP&A Regulation).

SEPP 52 also enables irrigation corporations to carry out maintenance and emergency works without requiring development consent. SEPP 52 applies to specific irrigation areas, mostly along the Murray-Darling and in the NSW Central West. This includes Wentworth, Murray River, Wakool, Murrumbidgee, Berrigan, Conargo\(^6\), and Forbes Councils.

Prior to SEPP 52, land and water management plans were prepared for the intensively managed agricultural land in irrigation areas of southern NSW. These responded to the threat of broad scale landscape degradation from rising water tables. The plans provided an integrated strategy of farm and district-scale works, education, monitoring and research and development programs, with a community–government implementation agreement. They aimed to facilitate adoption of better farm practices.

When SEPP 52 was introduced, the majority of land in the irrigation areas covered by SEPP 52 had high water tables and sodic subsoils. As such, all works in these areas relating to small artificial waterbodies were classified as designated development under Schedule 3 of the EP&A Regulation and required consent. This included relatively minor and occasionally urgent earthworks to enhance or remediate structures that convey and store irrigation and drainage water. SEPP 52 provided exemptions for some types of works, particularly in areas covered by land and water management plans.

Subsequent to the commencement of SEPP 52 various legislative reforms, such as introduction of the Water Management Act 2000, have meant that references to “land and water management plan areas” and “farm plans” in the SEPP are now outdated.

**SEPP 62**

SEPP 62, released in 2000, to establish permissibility and regulate pond-based, tank-based and oyster aquaculture development in NSW. It establishes a graduated assessment regime and minimum performance criteria for aquaculture development based on the potential

\(^6\)Since June 2016 Conargo has been merged with Deniliquin to form Edward River Council.
environmental impact, and identifies certain aquaculture development as designated development where there are potential environmental risks.

SEPP 62 adopts and references the NSW Land Based Sustainable Aquaculture Strategy 2009 which provides information to investors, government agencies and the community on the management and the integrated approvals process so that projects can be established and operated to meet sustainability objectives. It also references the NSW Oyster Industry Sustainable Aquaculture Strategy, which identifies areas within NSW estuaries where oyster aquaculture is suitable and a priority outcome. The Strategy formalises the industry commitments to environmentally sustainable practices and specifies water quality requirements for oyster growing. It has been updated recently to include best practice standards on lease marking and tidiness required by new types of cultivation.

The Standard Instrument LEP refers to the definition of aquaculture as having the same meaning as in the Fisheries Management Act 1994, which is:

• cultivating fish or marine vegetation for the purposes of harvesting the fish or marine vegetation or their progeny with a view to sale
• keeping fish or marine vegetation in a confined area for a commercial purpose (such as a fish-out pond) but does not include:
• keeping fish or marine vegetation in a pet shop or in an aquarium for exhibition (including an aquarium operated commercially)
• maintaining a collection of fish or marine vegetation for anything other than a commercial purpose, or as prescribed by the regulation.

The variety of aquaculture systems for growing fish, crustaceans, other invertebrates and marine vegetation includes land-based aquaculture defined under the Fisheries Management Act as:

• pond-based aquaculture - aquaculture undertaken predominantly in ponds, raceways or dams, but not including natural water-based aquaculture
• tank-based aquaculture - aquaculture undertaken exclusively in tanks, but not including natural water-based aquaculture.

SREP 8

SREP 8 was introduced in 1986 to:

• provide a basis for evaluating competing land uses to protect prime agricultural land from other competing land uses
• protect the natural ecosystems of the Central Coast plateau areas and maintain opportunities for wildlife movement across the region
• encourage agriculture on land having high agricultural capability
• protect regionally significant mining resources and extractive materials from sterilisation and enable development for the purposes of extractive industries in specific locations
• discourage rural residential development in the Central Coast plateau areas.

SREP 8 applies to the mapped Central Coast plateau areas which includes prime agricultural land. This prime agricultural land is further defined by class, based on the differing biophysical characteristics and resources of the land. It is also defined by the suitability of the land for different agricultural uses.

The Gosford/Wyong Local Environmental Plan 2001 was prepared to address issues around the development of extractive industry and rural tourist facilities on prime agricultural land. SREP 8 confirms that councils have a consent role on prime agricultural land for extractive industries and rural tourist facilities within locations mapped in Gosford/Wyong Local Environmental Plan 2001 – Central Coast Plateau Areas. While this LEP has been repealed, the map is still legally enforced through clause 6(6) of the SREP.
## Attachment D – Existing clause analysis and proposed action

### Summary of proposals for existing planning provisions (noting some transferred provisions may also be amended)

**Rural Lands SEPP 2008**

<table>
<thead>
<tr>
<th>Transferred to proposed new SEPP</th>
<th>Cl 2(a) and (c) Aims of Policy</th>
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<tbody>
<tr>
<td></td>
<td>Cl 4 Land to which this Policy applies</td>
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<td>Cl 12 Objects of Part</td>
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<td></td>
<td>Cl 13 State significant agricultural land</td>
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<td>Schedule 2 State significant agricultural land</td>
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<tr>
<td>Transferred to s.117 Direction</td>
<td>Cl 7 Rural Planning Principles</td>
</tr>
<tr>
<td></td>
<td>Cl 8 Rural Subdivision Principles</td>
</tr>
<tr>
<td>Transferred to another SEPP or EP&amp;A Regulation</td>
<td>Nil</td>
</tr>
</tbody>
</table>
**Explanation of Intended Effect**

**Primary Production and Rural Development**

### Transferred to Standard or non-Standard Instrument LEP

- Cl 10 Matters to be considered in determining development applications for rural subdivisions or rural dwellings

### Not transferred

- Cl 1 Name of Policy
- Cl 2 (b), (d) and (e) Aims of Policy
- Cl 3 Definitions
- Cl 5 Relationship with other environmental planning instruments
- Cl 6 Repeal of Schedule
- Cl 9 Rural subdivision for agricultural purposes
- Cl 11 Amendment of concessional lot provisions
- Cl 14 Functions of panels
- Cl 15 Constitution of panels
- Cl 16 Members of panels
- Cl 17 Alternate member
- Cl 18 Term and other conditions of office
- Cl 19 Vacancy in office
- Cl 20 Pecuniary interests
- Cl 21 Procedure at meetings
- Cl 22 Quorum
- Cl 23 Existing development applications

### SEPP 30 – Intensive agriculture

#### Transferred to proposed new SEPP

- Cl 5 Consent authority (to clarify consent authority arrangements for the unincorporated area of NSW)

#### Transferred to another SEPP or Regulation

- Nil
### Transferred to Standard or non-Standard Instrument LEP

| Cl 2 Aims, objectives etc
| Cl 6 Development for the purpose of cattle feedlots or piggeries
| Cl 7 Consideration of development applications for cattle feedlots or piggeries – propose to include as part of a new model clause under Part 5 of the Standard Instrument LEP. The clause will be compulsory if intensive livestock agriculture is permitted with consent in any zone under the Standard Instrument LEP.  

### Not transferred

| Cl 1 Name of Policy
| Cl 3 Application of Policy
| Cl 4 Inconsistency between instruments
| Cl 5 Consent authority (with the above exception)
| Cl 8 Composting facilities and works
| Cl 9 Rural industries

### SEPP 52 – Farm Dams and Other Works in Land and Water Management Plan Areas

| Transferred to proposed new SEPP | Cl 6 (2) Consent required for certain artificial waterbodies
| Cl 7 Consent not required for certain routine maintenance
| Cl 8 Emergency and routine work by irrigation corporations

| Transferred to another SEPP or EP&A Regulation | EP&A Regulation 2000
| Cl 6(4) Consent required for certain artificial waterbodies

| Transferred to Standard or non-Standard Instrument LEP | Cl 6(5) Consent Required for certain artificial waterbodies – include as a mandatory provision under a Standard Instrument LEP
**Attachment D – Existing clause analysis and proposed action (cont’d)**

### Not transferred
- CI 1 Name of Policy
- CI 2 Aims of Policy
- CI 3 Land to which Policy applies
- CI 4 Definitions
- CI 5 Relationship to other environmental planning instruments
- CI 6(1) and (3) Consent required for certain artificial waterbodies
  - Schedule 1 Irrigation areas and districts
  - Schedule 2 Areas (or parts of areas), Heads of Agreement and land and water management plans
  - Schedule 3 (Repealed)

### SEPP 62 – Sustainable aquaculture

**Transferred to proposed new SEPP**
- CI 3 Aim etc of Policy
- CI 4 Definitions (most)
- CI 5 Land to which this Policy applies
- CI 5A Development to which this Policy applies
- CI 5B Interpretation – reference to land use zones
- CI 6 Relationship to other environmental planning instruments
- CI 8 Natural water-based aquaculture (other than oyster aquaculture) permissible with consent
- CI 9 Consent authority for permissible aquaculture (as it relates to natural water-based aquaculture)
- CI 10 Consent authority to take aquaculture industry development plan into consideration (also to be included in Standard Instrument LEP)
- CI 12 Project profile analysis
- CI 13 Categorisation of development having regard to project profile analysis
- CI 14 Designated development
- 15 Advertised development
- 15A Application of Part
- 15B Consultation with Director-General of Primary Industries
- 15C Development consent may be refused if development adversely affects oyster aquaculture
- 15D NSW Oyster Industry Strategy to be considered (also to be included in Standard Instrument LEP)
- CI16 Existing development
  - Schedule 2 Natural water-based aquaculture
### Transferred to another SEPP or EP&A Regulation

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<th>Clause</th>
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### Transferred to Standard or non-Standard Instrument LEP

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<tr>
<td>Standard Instrument LEP</td>
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<tr>
<td>Cl 4 Definitions (pond and tank-based aquaculture)</td>
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</tr>
<tr>
<td>Cl 7 Pond-based and tank-based aquaculture permissible in certain zones with consent</td>
<td></td>
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<tr>
<td>Cl 7A Extensive pond-based aquaculture development permitted without consent in certain zones</td>
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<tr>
<td>Cl 8A Oyster aquaculture development permissible</td>
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<tr>
<td>Cl 9 Consent authority for permissible aquaculture (for proposals where council is the consent authority)</td>
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<tr>
<td>Cl 10 Consent authority to take aquaculture industry development plan into consideration</td>
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<tr>
<td>15D NSW Oyster Industry Strategy to be considered</td>
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<tr>
<td>Schedule 1 Pond-based and tank-based aquaculture</td>
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<td>Schedule 1A Extensive pond-based aquaculture</td>
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### Not transferred

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<th>Clause</th>
<th>Description</th>
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<tbody>
<tr>
<td>Cl 1 Name of Policy</td>
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<tr>
<td>Cl 2 Commencement of Policy</td>
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<tr>
<td>Cl 11 Other aquaculture development prohibited</td>
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<tr>
<td>Cl 18 Application of amendments made by SEPP</td>
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</tr>
<tr>
<td>Cl 19 Application of amendments made by SEPP No 62 – Sustainable Aquaculture (Amendment No 3)</td>
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### SREP 8 Central Coast Plateau Areas

<table>
<thead>
<tr>
<th>Clause</th>
<th>Description</th>
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<tbody>
<tr>
<td>Transferred to proposed new SEPP</td>
<td>Nil</td>
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<tr>
<td>Transferred to another SEPP or EP&amp;A Regulation</td>
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</tr>
</tbody>
</table>
### Transferred to Standard or non-Standard Instrument LEP

- CI 1 Name of Plan
- CI 2 Aims, objectives etc.
- CI 3 Land to which plan applies
- CI 4 Definitions
- CI 5 Relationship to other environmental planning instruments
- CI 6 Prime agricultural land
- CI 7 Extractive industries
- CI 8 Clearing of land
- CI 9 (Repealed)
- CI 10 Rural residential development

Note: these provisions will be considered for transfer during preparation of LEPs for the Central Coast. They will be repealed from SREP 8 once the relevant LEP is finalised.

### Not transferred

- CI 11 Special provisions – draft local environmental plan applications
**Detailed treatment of existing planning provisions**

**State Environmental Planning Policy (Rural Lands) 2008 (Rural Lands SEPP)**

**Provisions proposed to be retained**

**Clause 2 Aims of Policy and Clause 4 Land to which Policy applies**

The following aims under Clause 2 will be transferred to the proposed new SEPP:

- to facilitate the orderly and economic use and development of rural lands for rural and related purposes
- to implement measures designed to reduce land use conflicts.

These support orderly development for primary production and seek to reduce land use conflict by supporting primary production, while recognising that rural settlements need to be planned for and managed to allow economic and social benefits.

Clause 4 identifies land to which the policy applies and identifies exempt local government areas. The intent of Clause 4 is proposed to be transferred to the new SEPP.

**Clause 7 Rural Planning Principles and Clause 8 Rural Subdivision Principles**

These clauses recognise the importance of primary production to the NSW economy and will be updated and integrated into Ministerial Direction 1.5. The principles support farming communities and recognise the need to minimise land use conflicts and agricultural land fragmentation.

**Clause 9 Rural subdivision for agricultural purposes**

Clause 9 regulates rural subdivision for agricultural purposes by providing parameters for subdivision in rural zones. This gives landowners some opportunities to redevelop in that zone. The clause is replicated as standard Clause 4.2 Rural subdivision under the Standard Instrument LEP.

It is proposed to repeal Clause 9 of the SEPP. Clause 4.2 of the Standard Instrument LEP will be retained. Clause 4.2 is also proposed to be transferred to non-Standard Instrument LEPs to apply to land that is not yet covered by the Standard Instrument LEP.

In addition, clause 4.2 will be revised to clarify that a lot created by a primary production subdivision that contains an existing dwelling does not need to meet minimum lot size requirements. A mechanism will be provided to limit future risk of on-going land fragmentation of the primary production lot. This will be similar to the ‘double-dipping’ provisions that exist in cl.4.5 of the Standard Instrument LEP.

**Clause 10 Matters to be considered in determining development applications for rural subdivisions or rural dwellings**

Clause 10 aims to minimise rural land use conflict. When a proposal to subdivide or erect a dwelling house on rural land is received by a consent authority, it must consider the following:

- a) the existing uses and approved uses of land in the vicinity of the development
- b) whether or not the development is likely to have a significant impact on land uses that, in the opinion of the consent authority, are likely to be preferred and the predominant land uses in the vicinity of the development,
- c) whether or not the development is likely to be incompatible with a use referred to in paragraph (a) or (b),
- d) if the land is not situated within a rural residential zone, whether or not the development is likely to be incompatible with a use on land within an adjoining rural residential zone,
- e) any measures proposed by the applicant to avoid or minimise any incompatibility referred to.

Under Part 3A (Rural Housing Code) of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008, the erection of a dwelling house may be approved as complying development in various rural land use zones.

It is appropriate that the considerations remain in place for rural subdivision proposals and rural dwellings that are not complying development. The provisions of clause 10 Rural Lands SEPP will be revised and transferred into the Standard Instrument LEP as a new model clause. The clause will be mandatory for a council to adopt if the LEP contains land in RU1, RU2, RU3, RU4 and RU6 rural zones, R5 residential zone, or an environment protection zone, except E1.
Part 4 State significant agricultural land

Part 4 relates to the protection of State significant agricultural land. While no land has been identified since its introduction, the proposed new SEPP will retain the intent of this part so that State and regionally important agricultural land can be included and the requirements considered as part of assessing development applications in the future.

Provisions not proposed to be transferred

Part 1 Preliminary

Clauses 1 Name of Policy, 3 Definitions, 5 Relationship with other environmental planning instruments and 6 Repeal of Schedule relate exclusively to the operation of the Rural Lands SEPP and will be repealed. Likewise, the aims set in current Clause 2(b) and (d) are self-referenced and there is no need for them to be retained.

The aim in Clause 2(e) relating to concessional lots in rural subdivisions is outdated as Schedule 1 of the SEPP was repealed previously. Without Schedule 1 there is no need for this clause and it is proposed to be repealed.

Part 5 Rural lands planning panels

Part 5 establishes rural lands planning panels and details their functions and operational matters. The panels were to provide advice to the Secretary of the Department of Planning and Environment about certain rural lands development applications for subdivision or new dwellings that contravene a development standard. As no panels have been established under this part of the SEPP to date, and other mechanisms such as State Environmental Planning Policy 1 (Development Standards) and Standard Instrument LEP Clause 4.6 Exception to development standards provide a framework for considering non-compliance with development standards, Part 5 of the SEPP is not proposed to be retained.

State Environmental Planning Policy 30 – Intensive Agriculture (SEPP 30)

Provisions proposed to be retained

Clause 5 Consent Authority

Clause 5(b) identifies the Western Lands Commissioner as the consent authority for development applications with the Western Division.

Provisions proposed to be transferred to the Standard Instrument LEP

Thresholds within Clause 6(1)

Existing thresholds for cattle feedlots and piggeries will remain. The term ‘piggeries’ will be revised to ‘pig farms’.

Egg production is not specifically recognised as an activity of poultry farms and has previously been interpreted as a development not requiring development consent. Given

Exemptions under Clause 6(2)

SEPP 30 provides that certain cattle feedlot or piggery uses are exempt from requiring development consent:

• temporary agistment or housing
• feeding or housing arrangements immediately following a drought, flood, fire or similar emergency
• in the case of feedlots only, weaning, dipping or similar husbandry purposes.

It is proposed to retain this provision and transfer it to the new SEPP, with extension to cover all types of intensive livestock agriculture.

Since the SEPP was introduced the use of stock containment areas has increased as a means to protect pasture and soils during poor seasonal conditions (but not necessarily associated with drought). The new SEPP will also clarify that temporary use of stock containment areas does not require development consent.

It is also proposed to make ‘goat depots’, which are an enclosure to contain feral goats before their sale or slaughter and fully accredited under the Livestock Production Assurance program managed by AUS-MEAT Limited, exempt from development consent. Capturing and holding feral goats assists with management of natural resources and biodiversity conservation. The nature of the activity with relatively short holding times, minimal facilities and generally smaller numbers of animals has a low environmental impact.

Explanation of Intended Effect

The Crown Lands Management Act 2016 introduced changes to land management in the unincorporated areas of NSW. The new SEPP will contain a provision identifying the appropriate consent authority for intensive livestock agriculture development in these parts of the state, consistent with provisions of that Act.

Schedule 2 of the Environmental Protection Regulation 2008, under QLD Environmental Protection Act 1994 defines poultry farm as a prescribed environmental relevant activity that has potential environmental risks.
the growth in egg production and its consequent potential environmental impact, it is proposed to include egg production as well as poultry meat production (whether housed or outdoor) in the new Standard Instrument LEP clause to make it subject to development consent.

The clause will introduce a threshold for exemption for a poultry farm of less than 1,000 birds (including chickens, turkeys, ducks, geese, game birds or ratites) unless the development meets certain criteria related to sensitive locations. This regulatory approach has already been successfully implemented in other states. These requirements will mitigate potential environmental risks while enabling farms with small flock numbers to be regulated similar to other industries (pig farms and feedlots).

The new clause is also proposed to include ‘dairy (restricted)’. A threshold of 50 head of cattle is proposed as this is consistent with the existing SEPP 30 threshold for cattle feedlots. This will provide a consistent approach to regulation of intensive livestock industry.

The clause will identify a threshold of 200 for sheep and goat feedlot operations that require development consent. This will remove any uncertainty about the scale of operation that requires consent.

In addition, the new clause requires development consent for commercially operated intensive livestock agriculture of any size if located within sensitive locations.

Clause 21(4) Livestock intensive industries, Schedule 3 Designated development under the EP&A Regulation will be updated to include egg production as one of the activities at large poultry farms, in addition to production of meat birds, layers or breeders, to be consistent with the new Standard LEP clause.

Matters for consideration under Clause 7

Clause 7 of SEPP 30 currently provides matters for a consent authority to consider when determining whether or not to grant consent to a development application for the purposes of ‘intensive livestock agriculture’ as follows:

a) the adequacy of the information provided in the statement of environmental effects or, if it is a designated development, an environmental impact statement accompanying the development application, and
b) the potential for odours to adversely impact on the amenity of residences or other land uses within the vicinity of the site, and
c) the potential for the pollution of surface water and ground water, and
d) the potential for the degradation of soils, and
e) the measures proposed to mitigate any potential adverse impacts, and
f) the suitability of the site in the circumstances, and
g) whether the applicant has indicated an intention to comply with relevant industry codes of practice for the health and welfare of animals, and
h) The consistency of the proposal with, and any reasons for departing from, the environmental planning and assessment aspects of any guidelines for the establishment and operation of cattle feedlots or piggeries published, and made available to the consent authority, by the Department of Primary Industries and approved by the Secretary of the Department of Planning and Environment.

These provisions are proposed to be transferred to the new Standard Instrument LEP clause.

Provisions not proposed to be transferred

Clauses 1 Name of Policy, 2 Aims, objectives, etc., 3 Application of Policy and 4 Inconsistency between instruments relate specifically to the operation of SEPP 30 and will not be retained once SEPP 30 is repealed.

Clause 8 Composting facilities and works is covered by the Standard Instrument LEP definition for rural industry. As this definition includes a reference to composting facilities and works, Clause 8 is no longer required where a Standard Instrument LEP applies and will be transferred to relevant non-Standard Instrument LEPs.

Clause 9 Rural industries clarifies the characteristics of industry and rural industry land uses. These definitions are clarified in the Standard Instrument LEP and will be dealt with in the same way as Clause 8 depending on whether the Standard Instrument LEP applies or not.

State Environmental Planning Policy No 52 (Farm Dams and Other Works in Land and Water Management Plan Areas) (SEPP 52)

Additional regulatory process

Councils rely on the Department of Primary Industry – Water to regulate farm dams through their licensing process under the Water Management Act 2000 (WM Act) - which requires:
• water supply work approval for a dam or other water supply work if it meets the relevant definition in the WM Act
• controlled work approval or, when commenced, flood work approval for works which fall within the definition of flood work
• approval for controlled activities such as excavation or deposition of material in, on or under waterfront land.

The licensing process under the WM Act will continue to apply and is unaffected by this review.

Provisions proposed to be retained

Clause 6 Consent required for certain artificial waterbodies

It is proposed that the threshold for small scale low impact dams in Clause 6(2) be transferred to the new SEPP with a revised, contemporary approach to identifying sensitive areas. That is, new dams in irrigation areas and districts that have a storage capacity of less than 15 megalitres will continue to be exempt from needing planning or building approval, so long as they are not located in environmentally sensitive areas (as defined in the Exempt and Complying Development Codes SEPP).

Clause 6(4) in SEPP 52 currently sets the threshold for designated development as follows:

• it is to be carried out in an environmentally sensitive area and the storage capacity of the artificial waterbody is 100 megalitres or more, or
• it is not to be carried out in an environmentally sensitive area but the storage capacity of the artificial waterbody is 800 megalitres or more.

It is partly covered by the provisions in Schedule 3(4) under the EP&A Regulation which specifies that any work relating to artificial waterbodies is designated development and requires development consent including an Environmental Impact Statement if it is:

• an artificial waterbody that has a maximum aggregate surface area of water of more than 0.5 hectares that is located in or within 40 metres of a natural waterbody, wetland or an environmentally sensitive area or within areas of high water tables or acid sulfate, sodic or saline soils; or
• an artificial waterbody that has a maximum aggregate surface area of water of more than 20 hectares or a maximum total water volume of more than 800 megalitres; or
• an artificial waterbody from which more than 30,000 cubic metres per year of material is to be removed.

It is proposed to amend Schedule 3(4) of the EP&A Regulation to incorporate the threshold provisions of SEPP 52 to capture all aspects of Clause 6(4).

Clause 6(5) applies to development of artificial waterbodies in irrigation areas and districts that have a storage capacity between 15 and 100 megalitres and are located in an environmentally sensitive area. These intermediate scale farm dams require applicants to submit a Statement of Environmental Effects and a farm plan when applying for development consent. The intent of this clause remains relevant and is proposed to be transferred to relevant Standard Instrument LEPs as a model clause. As noted above, environmentally sensitive area will be defined as described in the Exempt and Complying Development Codes SEPP.

Clause 7 Consent not required for certain routine maintenance

Clause 7 ensures that certain routine maintenance of certain infrastructure in irrigation areas and districts does not require development consent. This provision will be transferred into the new SEPP to ensure the ability for certain maintenance works to occur without consent on land in these locations will continue, meaning consent is not required for:

• small artificial waterbodies in non-sensitive locations, such as those used for the purpose of storing water run-off for reuse
• routine maintenance of an artificial water supply or drainage channel.

Clause 8 Emergency and routine work by irrigation corporations

SEPP 52 does not require irrigation corporations to seek development consent for routine maintenance and emergency works, with the exception of works that involve demolition affecting certain heritage items.

The intent of this provision is still required and is proposed to be transferred into the new SEPP.

Provisions not proposed to be transferred

Clauses 1 Name of Policy, 3 Land to which Policy applies and 5 Relationship to other environmental planning instruments relate specifically to the operation of the existing SEPP 52 and are not required when the SEPP is repealed.
Clause 4 Definitions includes definitions that have been superseded by the Standard Instrument LEP. For example, SEPP 52 defines ‘artificial waterbody’ differently to the Standard Instrument LEP for the same land use, while land and water management plans are no longer used and are not defined in the Standard Instrument LEP. Therefore, this clause can be repealed.

State Environmental Planning Policy 62 (Sustainable Aquaculture) (SEPP 62)

Provisions proposed to be retained

Given the detailed regulations under SEPP 62 made before the introduction of the Standard Instrument LEP, it is proposed that all provisions except minor provisions will be retained and either transferred/integrated into the proposed new SEPP or the Standard Instrument LEP.

Apart from the clauses discussed below, the majority of SEPP 62’s provisions will be transferred into the new SEPP.

Clauses 7 and 7A – Pond-based and tank-based permissibility in certain zones

Clauses 7 provides for the permissibility of pond-based and tank-based aquaculture in certain standard zones, and clause 7A provides for the permissibility extensive pond-based aquaculture in certain standard zones. Part of Schedules 1 and 1A provide exceptions to these permissibilities where these types of development are not considered to be suitable, irrespective of the zone (for example, National Park, critical habitat, significant wetlands. and land affected by 1:100 flood events).

It is proposed to transfer the permissibilities into the relevant Standard Instrument LEP land use tables as mandatory permitted with consent and prohibited land uses, and the relevant conditions from the notes in Clause 7 and exclusions from Schedules 1 and 1A will form the basis of a new Standard LEP model clause. Transferring these provisions to the Standard Instrument LEP will align with the State Government’s priority to devolve planning regulation to the local level land use and ensure permissibilities within an LGA will be contained in one centrally located area.

To support the above permissibilities, it is proposed to introduce standard definitions of pond-based, extensive pond-based, and tank-based aquaculture into the Standard Instrument LEP. These definitions will be based on the relevant definitions in SEPP 62 and the Fisheries Management Act.

It is proposed that the operational requirements for pond-based and tank-based aquaculture in Schedules 1 and 1A are transferred into the new SEPP.

Clauses 10 and 15D – consideration of aquaculture industry development plans

These clauses require consent authorities to give consideration to relevant aquaculture industry development plans. These will be included in both the new SEPP and the Standard Instrument LEP.

Provisions not proposed to be transferred

Clauses 1 Name of Policy and 2 Commencement of Policy relate specifically to the operation of the SEPP 62 and are not required when the SEPP is transferred to the new SEPP.

Clause 18 Application of amendments made by SEPP is a saving provision for Amendment No 1 made in 2002 which is now outdated and will be repealed.

Clause 19 Application of amendments made by SEPP No 62 – Sustainable Aquaculture (Amendment No 3) refers to Part 3A (Major Infrastructure and other projects) of the Planning Act, which has since been repealed.

Sydney Regional Environmental Plan 8 (Central Coast Plateau Areas) (SREP 8)

Provisions proposed to be transferred to a relevant LEP

Clauses 1-10, and associated mapping, will be considered for transfer to a relevant LEP as part of forthcoming local strategic planning for the Central Coast.

Subject to the conclusion of local planning processes, clauses in SREP 8 will be repealed.

Provisions not proposed to be transferred

Clause 11 Special provisions – draft local environmental plan applications

This clause requires council to consider a range of aims or objectives when preparing any amendment to a council’s LEP. These matters are adequately addressed in existing Ministerial Direction 1.2 Rural Zones, mandatory clauses of Gosford and Wyong LEPs (Land Use Table and Cl 4.2 Rural Subdivision), through general aims of these LEPs, additional local provisions and through appropriate zoning based on strategic plans.

For these reasons, clause 11 is no longer needed and will be repealed.
Attachment E – Outline of revised definitions and clauses

The following are provided for discussion purposes only. Any final revisions will be considered after analysis of public submissions and further review.

Existing definitions are in the Standard Instrument LEP. Proposed deletions are shown in ‘strike-through’ format. Additional new wording is shown as underlined text.

**Intensive livestock agriculture – draft revised definition**

*Intensive livestock agriculture* means the keeping or breeding, for commercial purposes, of cattle, poultry, pigs, goats, sheep, horses or other livestock that are fed wholly or substantially on externally-sourced feed, and includes any of the following:

(a) dairies (restricted),
(b) feedlots,
(c) piggeries pig farms,
(d) poultry farms, but does not include extensive agriculture, aquaculture or the operation of facilities for drought or similar emergency relief.

**Extensive agriculture**

*Extensive agriculture* means any of the following:

(a) the production of crops or fodder (including irrigated pasture and fodder crops) for commercial purposes,
(b) the grazing of livestock for commercial purposes, where the animals eat plants growing on the land,
(c) bee keeping,
(d) a dairy (pasture-based), where the animals eat plants growing on the land,
(e) supplementary and emergency feeding, and temporary penning or housing of animals for weaning, dipping, or related purposes, that is incidental to the grazing of livestock or a dairy (pasture-based).

**Feedlot – draft revised definition**

*Feedlot* means a confined or restricted area that is operated on a commercial basis to rear and fatten cattle, sheep or other animals, fed (wholly or substantially) on prepared and manufactured feed, for the purpose of meat production or fibre products, but does not include a poultry farm, dairy, or piggery pig farm, or extensive agriculture.
Intensive livestock agriculture – development consent requirements

As discussed in Part 3, a clause is proposed for inclusion in the Standard Instrument LEP to clarify the type and scale of intensive livestock agriculture that requires development consent. This will transfer existing provisions for cattle and pig farms from SEPP 30, and address other types of operations.

The following is a draft outline of matters to be included in a clause.

Development consent is proposed to be required for:

• a cattle feedlot or dairy (restricted) having a capacity to accommodate 50 or more head of cattle, or

• a pig farm having a capacity to accommodate 200 or more pigs or 20 or more breeding sows, or

• sheep or goat feedlots having a capacity to accommodate 200 animals or more, or

• egg or poultry production facilities having a capacity to accommodate 1000 or more birds, or

• a cattle, sheep or goat feedlot, dairy (restricted), pig farm, or egg or poultry production, where the operation or facility is located,

  • within 500 metres of a residence not associated with the development

  • within an environmentally sensitive area (as defined in the Exempt and Complying Development Codes SEPP).