



## PLANNING SYSTEM

State environmental planning policies

<b>Circular</b>	PS 08-002
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<b>Related</b>	

# State Environmental Planning Policy (Rural Lands) 2008

The purpose of this circular is to explain to local councils the key planning provisions of State Environmental Planning Policy (Rural Lands) 2008, and the supporting section 117 Direction issued by the Minister under *Environmental Planning and Assessment Act 1979*.

### Background to the SEPP

Agriculture is a significant industry worth approximately \$7.3 billion to the economy of NSW (2006-07) and contributes 79,000 jobs to the State's workforce. The ongoing orderly and economic development of the rural lands in NSW is vital to the State economy.

In addition to the importance of agriculture to the State's economy, the proper planning of rural lands provides opportunities for rural lifestyle, settlement and housing, which contribute to the social and economic welfare of rural communities.

In February 2007, the NSW Government established the Central West Rural Lands Panel to advise on rural land use in the Central West Region of NSW. This panel was chaired by former State MP and Minister Garry West and also included NSW Farmers' Association president Jock Laurie, Local Government and Shires Associations secretary Bill Gillooly and former Department of Planning Director-General Gabrielle Kibble.

The Ministers for Planning and Primary Industries released the Report of the Central West Rural Lands Panel in Bathurst on 22 August 2007.

The major recommendations of the Panel included:

- retaining existing minimum lot sizes, which may be varied by councils but only based on appropriate criteria
- retaining existing rights to build new homes on rural land based on subdivisions that have already been approved

- preparation of a new State environmental planning policy (SEPP) to support a strategic approach to rural planning across councils and manage land-use conflicts
- removal of concessional lot provisions on rural land – which have been misused in the past – through a SEPP
- establishing an Independent Hearing and Assessment Panel to advise councils on development applications that fall outside of normal planning controls but may be subject to exceptional circumstances within appropriate criteria
- requiring new local environmental plans (LEPs) to recognise the changing face of agriculture, such as smaller farms, share farming, leasing or farms that may consist of a number of separate holdings
- the outcomes of the Panel could be extended across other rural areas within the State.

In response to the Panel's findings, State Environmental Planning Policy (Rural Lands) 2008 (the SEPP) has been prepared. The SEPP is the first component in implementing the outcomes of the Central West Rural Lands Panel. It is accompanied by this circular and a new section 117 Direction to improve planning outcomes in rural areas of NSW. In addition, minor amendments have been made to section 117 Direction 1.2 – Rural Zones and Direction 2.1 – Environment Protection Zones to ensure no inconsistencies exist between these and the new Direction.

The SEPP applies to all councils listed in Attachment A.

## Overview of the SEPP

The aims of State Environmental Planning Policy (Rural Lands) 2008 are to:

- facilitate the orderly and economic use and development of rural lands for rural and related purposes
- identify Rural Planning Principles and the Rural Subdivision Principles so as to assist in the proper management, development and protection of rural lands for the purpose of promoting the social, economic and environmental welfare of the State (refer Attachment B)
- implement measures designed to reduce land use conflicts
- identify State significant agricultural land for the purpose of ensuring the ongoing viability of agriculture on that land, having regard to social, economic and environmental considerations
- amend provisions of other environmental planning instruments relating to concessional lots in rural subdivisions.

In general the SEPP achieves this by:

- introducing rural planning principles to provide guidance for local councils when preparing new comprehensive LEPs or amending LEPs in respect to rural and environment protection zones
- introducing rural subdivision principles to provide guidance for local councils which seek to vary existing minimum lot sizes in rural and environment protection zones
- enabling subdivision of rural land for the purpose of primary production below the minimum lot size without allowance for a dwelling
- introducing heads of consideration for the assessment of land use conflict when councils consider development applications in rural areas
- removing concessional lot provisions from LEPs to minimise land use conflicts and fragmentation of rural lands
- enabling the Minister to identify State significant agricultural land and limit certain types of development on such land
- enabling the Minister to establish rural lands planning panels to provide advice to the Director-General on developments that propose to vary development standards.

## Rural planning principles

The rural planning principles in the SEPP identify the range of matters that should be considered when preparing LEPs for rural areas. Planned outcomes for rural lands should enable economic opportunity, protection of resources and environmental values, opportunities for a range of

housing types in appropriately planned locations and the efficient provision of infrastructure.

In general the principles require councils to have regard for social, economic and environmental planning considerations when preparing a new LEP.

Section 117 Direction 1.5 – Rural Lands requires that when a council prepares an LEP for land within a rural or environment protection zone it needs to be consistent with the rural planning principles listed in clause 7 of the SEPP.

## Rural subdivisions and dwellings

In respect of rural subdivision, the SEPP:

- introduces rural subdivision principles to be considered when a council seeks to review minimum lot size(s) in a rural or environment protection zone
- enables the subdivision of rural land for the purpose of primary production (no dwelling) below the minimum lot size applying to the land
- removes provisions relating to concessional lot style subdivision from environmental planning instruments.

### Minimum lot size

The SEPP does not require councils to review their minimum lot size(s) or change those lot sizes in an existing LEP. Councils may transfer the existing minimum lot size(s) currently applying in its local government area into a new LEP. If more than one minimum lot size applies in the rural areas all lot sizes are to be transferred to the new LEP unless a review is undertaken in accordance with the rural subdivision principles.

Alternatively, a council may voluntarily choose to review its minimum lot size(s) when preparing its new comprehensive LEP in accordance with the Standard Instrument or when undertaking a review of its rural lands planning provisions.

Section 117 Direction 1.5 – Rural Lands requires that where a council seeks to review its minimum lot size it does so in accordance with the rural subdivision principles.

If a council chooses to review the minimum lot size provisions it can consider a range of lot sizes that may be appropriate for its rural areas. This response may better reflect the existing or emerging trends of agriculture in the local government area and assist in providing a range of appropriately located housing opportunities.

The Minister may direct a council under section 55 of the *Environmental Planning and Assessment Act 1979* (the Act) to prepare an LEP to review the minimum lot size(s) within its local government area. If this does occur the review must be in accordance with the rural subdivision principles.

### **Rural subdivision for agricultural purposes**

Clause 9 of the SEPP provides flexibility in the application of standards for subdivision in rural zones to allow land owners a greater chance to achieve zone objectives that facilitate primary production.

The SEPP provides that land may be subdivided for the purpose of primary production to create a lot of a size smaller than the minimum prescribed lot size that applies to the land. A lot can not be subdivided for primary production under this provision of the SEPP if a dwelling is already erected upon it. A dwelling can not be built on a lot created for primary production under this provision of the SEPP.

### **Removal of concessional lot provisions**

As noted by the Central West Rural Lands Panel, concessional lot provisions have in many instances in the past been misused. The provision has resulted in the unplanned creation of rural residential lots occupied by rural lifestyleers located next to large commercial farms. As such concessional lots have resulted in a range of unintended impacts e.g. fragmentation of rural land, land use conflicts and increased demand for infrastructure and services in remote areas.

The SEPP has the effect of directly amending each LEP by removing the provisions that permit subdivision for concessional lots or the like. The amendments to each LEP affected are listed in schedule 1 of the SEPP.

Councils are encouraged to undertake strategic planning for the provision of rural residential development to provide opportunities for rural lifestyle in appropriate locations in rural areas.

### **Dwellings in rural areas**

The SEPP does not affect any provisions within an LEP that permit the erection of a dwelling within a rural or an environment protection zone, other than provisions that allow for the erection of a dwelling on a concessional lot. In respect of the latter, the SEPP includes saving provisions, which save dwelling entitlements on concessional lots (refer below 'Transitional Arrangements' section). This means that any lot that has a dwelling entitlement under the LEP retains that dwelling entitlement. This gives effect to the Department's policy position that it is reasonable to preserve such entitlements.

When preparing its new LEP a council may decide to change or sunset its dwelling provisions. Where a council does decide to change or sunset their dwelling provisions it will need to be mindful of the equity implications of such an approach and ensure that proposed changes are broadly communicated in the community.

To assist councils the Department is preparing a clause to assist in including dwelling provisions in rural areas when preparing a new LEP in

accordance with the Standard Instrument. This clause will be forwarded to councils when finalised.

### **Rural land use conflict**

The inappropriate siting of rural residential development and residential uses in rural areas often results in land use conflict between rural and non rural uses that impact on farm activities. The SEPP requires that before granting consent the consent authority must consider any impacts the development will have on other uses in the locality. This provision applies when the consent authority considers a subdivision that could result in the erection of a dwelling or an application to erect a dwelling.

When considering an application to which this clause of the SEPP applies the council should have regard to current and emerging trends in agriculture, including current trends to transition from extensive agriculture to intensive agriculture such as horticulture and intensive livestock in some locations.

### **State significant agricultural land**

The SEPP provides that the Minister for Planning may list in schedule 2 of the SEPP lands that are of agricultural significance to the State. This provision provides the opportunity to protect important land that has State or regional significance and is likely to be utilised in exceptional and limited circumstances.

Land that may be included in this schedule is agricultural land of State or regional significance, which may be under pressure for uses not compatible with the current agricultural use and where its protection will result in a public benefit.

If land is included in the schedule the provision(s) listed in the schedule relating to carrying out development override any relevant provision(s) in an environmental planning instrument applying to the land, e.g. the schedule may delete a land use permitted on the land or impose a higher minimum lot size for the erection of dwelling than in the current environmental planning instrument.

The SEPP as gazetted does not list any land in schedule 2.

### **Rural lands planning panels**

The SEPP provides that the Minister may establish a rural lands planning panel. A panel may be established for a region, one or more local government areas, or for all of the local government areas to which this SEPP applies.

The purpose of a panel is to provide advice to the Director-General on rural lands development applications that contravene a development standard under State Environmental Planning Policy No 1 – Development Standards or clause 4.6 of the Standard instrument. For the purposes of the SEPP a rural lands development application

means an application for development consent to subdivide land or erect a dwelling on land in a rural or an environment protection zone or on land within a rural residential zone that adjoins a rural zone.

At the time of gazettal of the SEPP no panels have been established.

### **Transitional arrangements**

The SEPP contains a saving provision covering development applications, which were lodged but not determined before the commencement of the SEPP. Councils will be able to determine these applications as if the SEPP had not been made. It is recommended that councils have regard to the aims of the SEPP, the rural planning principles, and the rural subdivision principles when considering any development application under the transitional arrangements.

A savings provision in relation to dwelling entitlements on concessional lots has been inserted in each EPI amended by the SEPP. The provision preserves the ability to erect a dwelling in the following circumstances:

- the concessional lot was created before the SEPP commences, or
- development consent was granted for the concessional lot before the SEPP commences (e.g. there is a valid development consent), or
- if a development application to create a concessional lot is still being determined when the SEPP commences, then a dwelling can be erected if council grants development consent to create the lot.

### **Further information**

A copy of State Environmental Planning Policy (Rural Lands) 2008 is available from the Parliamentary Counsel Office's website at [www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au) – 'In Force' database.

For further information please contact the relevant Department of Planning Regional Office. Office contact details are available at [www.planning.nsw.gov.au/aboutus/contactus.asp](http://www.planning.nsw.gov.au/aboutus/contactus.asp).

Note: This and other Department of Planning circulars are published on the web at [www.planning.nsw.gov.au/planningsystem/practicenotes.asp](http://www.planning.nsw.gov.au/planningsystem/practicenotes.asp)

### **Authorised by:**

Sam Haddad  
Director-General

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#### **Important note**

This circular does not constitute legal advice. Users are advised to seek professional advice and refer to the relevant legislation, as necessary, before taking action in relation to any matters covered by this circular.

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**Attachment A – Land to which State Environmental Planning Policy (Rural Lands) 2008 applies**

Albury  
 Armidale Dumaresq  
 Ballina Shire  
 Balranald Shire  
 Bathurst Regional  
 Bega Valley  
 Bellingen  
 Berrigan  
 Bland  
 Blayney  
 Bogan  
 Bombala  
 Boorowa  
 Bourke  
 Brewarrina  
 Broken Hill  
 Byron  
 Cabonne  
 Carrathool  
 Central Darling  
 Cessnock  
 Clarence Valley  
 Cobar  
 Coffs Harbour  
 Conargo  
 Coolamon  
 Cooma-Monaro  
 Coonamble  
 Cootamundra  
 Corowa  
 Cowra  
 Deniliquin  
 Dubbo  
 Dungog  
 Eurobodalla  
 Forbes  
 Gilgandra  
 Glen Innes Severn  
 Gloucester  
 Goulburn Mulwaree  
 Greater Taree  
 Greater Hume  
 Great Lakes  
 Griffith  
 Gundagai  
 Gunnedah  
 Guyra  
 Gwydir  
 Harden  
 Port Macquarie-Hastings  
 Hay

Inverell  
 Jerilderie  
 Junee  
 Kempsey  
 Kiama  
 Kyogle  
 Lachlan  
 Leeton  
 Lismore  
 Lithgow  
 Liverpool Plains  
 Lockhart  
 Maitland  
 Mid-Western Regional  
 Moree Plains  
 Murray  
 Murrumbidgee  
 Muswellbrook  
 Nambucca  
 Narrabri  
 Narrandera  
 Narromine  
 Oberon  
 Orange City  
 Palerang  
 Parkes  
 Port Stephens  
 Queanbeyan  
 Richmond Valley  
 Shellharbour  
 Shoalhaven  
 Singleton  
 Snowy River  
 Tamworth Regional  
 Temora  
 Tenterfield  
 Tumbarumba  
 Tumut  
 Tweed  
 Upper Hunter  
 Upper Lachlan  
 Uralla  
 Urana  
 Wagga Wagga  
 Wakool  
 Walcha  
 Walgett  
 Warren  
 Warrumbungle  
 Weddin  
 Wellington  
 Wentworth  
 Wingecarribee  
 Yass Valley  
 Young

## **Attachment B – Rural Planning and Rural Subdivision Principles**

### **Rural Planning Principles**

#### **The promotion and protection of opportunities for current and potential productive and sustainable economic activities in rural areas.**

*In planning for rural areas councils should ensure that zoning and development controls within LEPs protect the range of current rural uses, i.e. agriculture, forestry and extractive industries, which contribute to the local, regional and State economy. Planning controls should be flexible to provide opportunities for changes in agriculture, existing industries and potential economic activities. This can be achieved through adopting a range of appropriate zones, minimum lot sizes and land use that support current and future rural land uses.*

#### **Recognition of the importance of rural lands and agriculture and the changing nature of agriculture and of trends, demands and issues in agriculture in the area, region or State.**

*Economic activities in rural areas make a significant contribution to the NSW economy. Agriculture, itself, contributes approximately \$7.3 billion to the economy of NSW (2006–07). Future planning for these areas is key to the social, economic and environmental sustainability of rural areas. Planning for rural areas should recognise the trends and ongoing change to agriculture including changing farm sizes, agricultural sector restructuring, and changes in farm practices and productivity and provide appropriate controls in LEPs to achieve this outcome.*

#### **Recognition of the significance of rural land uses to the State and rural communities, including the social and economic benefits of rural land use and development.**

*The proper management and development of rural areas have significant social and economic benefits to local rural communities and the broader State community. Planning for rural areas should recognise the significance of rural land uses and provide a range of planning responses, such as zoning, land uses and strategically planned housing opportunities that do not conflict with rural uses. The role of agriculture, including new and innovative forms, and appropriately located rural housing in facilitating the social and economic rejuvenation of local communities is an important factor to consider.*

#### **In planning for rural lands, to balance the social, economic and environmental interests of the community.**

*Rural lands have a range of social, economic and environmental values including agriculture, extractive resources, water resources, environmental services (such as water quality management), tourism, housing, conservation, landscape values and sustaining rural communities. At times these values may compete with each other, however sound strategic planning can avoid conflict. For instance introducing appropriate farm-based*

*tourism uses to rural zones can permit tourism activity and the associated economic benefits while at the same time complement the existing agricultural activity. Planning for these areas should seek to ensure a balance is achieved between these values to achieve the proper management of rural land and reinforce opportunities for rural communities.*

#### **The identification and protection of natural resources, having regard to maintaining biodiversity, the protection of native vegetation, the importance of water resources and avoiding constrained land.**

*Planning for rural areas should ensure that appropriate environmental values and natural resources are identified in the planning process and protected appropriately through zoning and planning controls, including the use of environment protection zones to protect important rural landscapes where soundly justified. This includes protection, management and restoration of areas of high ecological, scientific, cultural or aesthetic values (such as areas of native vegetation, riparian areas and habitats of native flora and fauna, including threatened species, populations and ecological communities).*

*The new Standard Instrument (Local Environmental Plan) Order 2006 reinforces the importance of environment protection zones in promoting and protecting environmental conservation and management. The range of land uses which are appropriate in environment protection zones should reflect the characteristics and capability of the land. The Department is drafting a practice note on the use of environment protection zones in Standard LEPs.*

#### **The provision of opportunities for rural lifestyle, settlement and housing that contribute to the social and economic welfare of rural communities.**

*Rural areas are increasingly under pressure for lifestyle housing opportunities. This demand for rural housing has both social and economic advantages and disadvantages for rural communities. Planning should identify a range of housing choices within rural areas including urban areas, rural lifestyle and housing associated with rural activities. Housing opportunities should be determined through a strategic planning process to avoid land use conflict, avoid constraints, fragmentation of rural land and provide access to appropriate infrastructure and services. The provision of a reasonable quantity of rural lifestyle development opportunities in strategically appropriate locations can be an important factor in reducing the pressure for lifestyle housing on important agricultural land.*

#### **The consideration of impacts on services and infrastructure and appropriate location when providing for rural housing.**

*In planning for housing in rural areas the costs and impacts to the community, councils and State government of providing access to services and infrastructure needs to be considered. The costs to local councils for basic services such as roads*

*(including maintenance), water, garbage collection etc, should be a significant factor in considering proposals in remote locations.*

**Ensuring consistency with any applicable regional strategy of the Department of Planning or any applicable local strategy endorsed by the Director-General.**

*Where an applicable regional strategy or endorsed local strategy provides outcomes and actions relevant to rural areas for the preparation of a LEP, councils should ensure LEPs are consistent with and implement those outcomes and actions.*

**Rural Subdivision Principles**

**Minimisation of rural land fragmentation.**

*Unplanned rural subdivision through inappropriate planning controls can result in fragmentation of rural lands which can result in lots sizes which do not reflect the needs of rural land uses, potential conflict with existing agriculture, and land prices reflecting residential demand rather than agricultural potential. Future planning should avoid controls which result in fragmentation of rural lands. A range of lot sizes can be considered based on agricultural suitability and capability, trends in agriculture, land ownership patterns, commercial sustainability, impact of current lot sizes on future land uses, environmental constraints, and infrastructure provision.*

**Minimisation of rural land use conflicts, particularly between residential land uses and other rural land uses.**

*Residential and non rural uses in rural areas often result in land use conflicts with existing rural uses, such as agriculture, extractive industry, forestry, food processing, or transport. Planning for rural areas should consider possible land use conflicts at both the land use planning (LEP) and development application stage. Consideration of the location of future urban and rural residential areas, existing rural uses, a range of lot sizes, permissible land uses within zones, setbacks and buffers should be undertaken when preparing new LEPs and reviewing lot sizes. The heads of consideration in clause of 10 of the SEPP are also relevant in this regard.*

**The consideration of the nature of existing agricultural holdings and the existing and planned future supply of rural residential land when considering lot sizes for rural lands.**

*A review of lot sizes should consider the size and pattern of existing rural holdings and their related economic activities. A review may result in a range of lot sizes that meet the requirements for primary production, existing and future, and rural housing opportunities. Future opportunities for rural residential development should be strategically planned and located to avoid potential land use conflicts, be easily serviced and provide for a sufficient quantity and range of rural housing needs.*

**The consideration of the natural and physical constraints and opportunities of land.**

*A review of rural lot sizes should have regard to existing environmental values and natural resources, including the agricultural viability of the land. Future controls for lot size should reflect such constraints and be developed to reflect these constraints and opportunities where appropriate.*

*These considerations should also aim to:*

- *minimise impacts on the natural environment, including avoiding increased fragmentation of native vegetation and habitats of threatened flora and fauna (including threatened species, populations or communities)*
- *avoid inappropriate development in areas which may be constrained due to biodiversity, land and water values.*

**Ensuring that planning for dwelling opportunities takes account of those constraints.**

*Any review of minimum lot sizes that will permit the subsequent erection of dwellings should ensure that lot sizes are an adequate size to permit dwellings and manage any constraints, including the need for appropriate buffers to any surrounding agricultural uses.*