15 January 2018

Tim Archer
Director, Planning Frameworks
Department of Planning and Environment
PO Box 39
SYDNEY NSW 2001

Dear Tim,

**PIA Submission: Primary Production & Rural Development SEPP (EIE)**

The Planning Institute of Australia (PIA) appreciates the opportunity to comment on the Explanation of Intended Effects (EIE) for the consolidated Primary Production and Rural Development State Environmental Planning Policy (‘PPRD or Rural SEPP’). PIA has drawn insights from a working group of expert practitioners from local government and private practice across regional NSW.

PIA supports the rationalisation of rural development and primary production planning matters within a single SEPP as well as the transfer of certain regulation to the Standard Instrument Local Environmental Plan (SILEP).

PIA recognises the importance of primary production to the state economy and the livelihood and wellbeing of workers and residents especially in regional NSW.

In particular, ‘the right to farm’ policy has implications for planning to ensure that land use conflicts are avoided and that productive uses of land are maintained.

The potential for the PPRD SEPP to depart from the widespread interpretation of the Rural Lands SEPP (cl 9) to enable the creation of de facto concessional lots is our key concern. PIA asserts that small rural lots with dwellings represent a substantial and growing risk to the productive use of land -and this will lead to rural land use conflict which the ‘right to farm’ policy seeks to avoid.

PIA has responded to the EIE under a series of key issue headings identified by our working group and outlined below.
### ISSUES BY PIA RAISED ON PPRD SEPP

#### Rural subdivision
- There should be a distinct and clearly explained rationale for minimum lot sizes in different regions based on local and regional appreciation of sustainable and productive primary production land uses.
- The EIE presents few initiatives which would facilitate a more holistic development and management of rural land. Agricultural land does not work in isolation of other land-uses, these synergies often critical to the functioning of agricultural properties and the character of rural localities.
- Incentives for lot reconsolidation to encourage agricultural uses are supported.
- Any subdivision should ensure sufficient separation / buffers between a house site and adjacent lot rural land uses on other lots.

#### Planning for rural areas in transition
- Rather than rely on potentially inappropriate flexibility in subdivision controls, PIA supports rigorous strategic planning to establish the best controls for areas in transition away from a pure rural production.
- Transitioning (eg especially tourist) areas should be the subject of specific rezoning investigation (ie a primary production zone versus a rural landscape zone) – rather than being eroded under the current rural zoning.
- Consider zoning for smaller lot subdivision in areas under transition (subject to strategic planning investigation), but only by creating lots which explicitly can accommodate a dwelling.

#### Potential to create ‘de facto’ concessional lots is opposed
- A lot below the nominated minimum lot size (MLS) should not be created – an explicit prohibition on a dwelling in the planning instrument is entirely appropriate to meet the aims of the SEPP – particularly to protect productive capacity.
- The proposed Clause 4.2 SILEP modification does not clarify concern that rural subdivision can occur that results in residue lots below minimum size with a dwelling allowance – relying on a covenant to restrict dwelling right on other lot.
- The proposed modification of SILEP Cl 4.2 (5) and the removal of Clause 9 of the Rural Lands SEPP 2008 will impact on the interpretation of the phrase "a dwelling cannot be erected on a such a lot" (refer 2008 Rural Lands Inquiry).
- There is a current interpretation among practicing planners (and promoted by DPE) that subdivision below the nominated MLS should not give rise to a new dwelling expectation on the residue lot. This is entirely appropriate, and subdivision should not be allowed to occur even where a s88B covenant is proposed on the residue to prevent a dwelling.
- The use of a s88B instrument is inappropriate and would be ineffective - due to the ability for the EPI to suspend the operation of a covenant under s23 of the Act.
- The potential for further rural subdivision below MLS that could be triggered by the proposed revisions could impact rural productivity (contrary to SEPP aims) – and give rise to amenity concerns / conflicting uses from new residents, elevate rural land price and promote speculation.
- Experience by practicing planners is that there will be a misguided expectation that any new rural lot can accommodate a dwelling. This will impose a significant burden on local government planners who must keep track of a very complicated site history. This onerous task continues to lead to disputes and would continue to be a major distraction from proactive planning.
- On a separate point, any secondary dwellings / detached dual occupancy (not subdivided) should be associated with and close to the main dwelling.

#### Planning Policy Guideline / Circular covering:
- An approach for excising lots – must not create expectation of an additional dwelling opportunity (unless consolidation leads to a new agricultural allotment). meeting the development standard.
• How to regulate development in RU1 and RU2 which are already below min lot size and are primarily used for low cost housing or tourist accommodation.

### Key definitions / thresholds in SILEP – for requiring development consent

• Further industry and council consultation is required to set the right threshold criteria (for different areas) in relation to the definition and quantities of rural uses requiring consent – especially in relation to intensive agriculture and the numbers of animals involved (eg why 1,000 chickens).

• Further stakeholder consultation (eg using existing committee forums) is also required to refine and test key definitions included in the SEPP in relation to:
  - Agribusiness
  - Environmentally Sensitive Areas
  - Important agricultural land (relevant definitions for different regions with reference to available mapping and soil resource)
  - Boundary adjustment
  - Intensive livestock
  - Perennial watercourse - re exclusions

### Principles of the SEPP

• The principles of the SEPP should enable local inclusions to reflect rural priorities included in the regional and local plans.

• The ‘right to farm’ should not be interpreted in isolation of all other rights and expectations relating to rural land. These considerations and competing objectives should be addressed in regional plans – especially how rural production and the rural landscape considerations interact.

• A more holistic objective binding the value of agricultural land to the social, economic, environmental and governance characteristics of the locality would help to demonstrate that the new SEPP is about integration rather than isolation.

### Reference to (incomplete) mapping

• Implications for ‘prime agricultural land’ – useful sources of mapping need to have a clear status.

• Set out what is the expected (pixel) resolution of mapping to be used (NB 40ha resolution 1:100,000 - is too coarse for Eastern NSW - Also non-contiguous areas should be included so as not to exclude whole properties in highly productive areas).

• A consistent approach is needed - it is noted that mapping is both incomplete, non-standardised and definitions are contested – some LGAs have available and use:
  - Regionally Significant Farmland (eg Tweed)
  - State Significant Farmland (eg Clarence)
  - Important Agricultural Land (North Coast Regional Plan) – a weaker term
  - Also: other soil and agricultural capability mapping

### Other matters raised

• PIA would appreciate the opportunity to see the full wording of SEPP alongside EIE to comment effectively.

• We will be seeking further advice on the application of the draft SEPP to Western Sydney.

• PIA offer no comments on the aquaculture aspects of the SEPP.

Please contact David Broyd, the Chair of our Policy Committee (0419 142 350) on any aspect of our submission.

Yours sincerely,

David Broyd  
Chair Policy Sub-committee, PIA NSW

cc. Stuart Withington