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The Farmers' View of New South Wales Rural Planning Policy

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The purpose of this paper is to evaluate both the philosophy and the practice of land use planning in New South Wales from the viewpoint of the farming community. It commences with a statement of existing Livestock and Grain Producers' Association (LGPA) policy in relation to land use planning, and note is given to recent resolutions put forward regarding the role of the Department of Environment and Planning (DEP) and the *Environmental Planning and Assessment Act*. This is followed by a detailed examination of the objectives of the *Environmental Planning and Assessment Act, 1979*, and from this we draw implications about how planners should be going about their tasks.

The conclusion is drawn that it is most unlikely that the requirements of the Act can ever be satisfied from planning instruments which operate at the State or regional level. Instead the focus of planning instruments should be directed towards the level of local government, and a number of recommendations in relation to the design of Local Environmental Plans are given.

The views of the farming community towards rural land planning policy in N.S.W. are best summed up by the existing policies of the LGPA:

The Association opposes any arbitrary Government restrictions on:

- (i) land use
 - (ii) land transfers; and
 - (iii) minimum subdivision areas,
- and advocates the continuation of market forces to be the primary determinant of land use patterns with the proviso that hobby farmers or developers should pay the full costs of services provided for their benefit.

and

The Association opposes compulsory environmental management land use constraints without the payment of proper compensation to landholders

whose rights would thereby be denied.

Behind these policy statements is a strong endorsement of market forces as the guiding principle of land use determination in agriculture. Farmers are not keen on the idea of planning or planners interfering with the conduct of their private interests, as the following resolutions to be put to the 1986 LGPA Annual Conference testify:

That within the general context of overall and environmental planning, the Association oppose the introduction of undue compulsion and creeping bureaucratic infringement on the right of a landholder to do with his land what he wishes.

Presumably the rights of female landholders are also encompassed by this resolution. Even more telling was the resolution that:

"the Association seek

- (i) the abolition of the Department of Environment and Planning; and
- (ii) rescission of the *Environmental Planning and Assessment Act, 1979*."

Both of these resolutions have been referred to the next meeting of the LGPA General Council to be held on 7-9 October 1986.

How is it that Ministers of the Crown and their humble servants in the bureaucracy could have devised land use policies which arouse such antagonism and opposition amongst farmers? Could it be that the planners have somehow got it wrong? Some lessons from history are probably useful here. Many farmers are mindful of the damage created by past land utilisation policies which encouraged closer settlement of farming country and the consequent subdivision of large land tracts. The objectives of the closer settlement schemes were many, but they included the (then) socially acceptable goals of populating the interior and raising the level of agriculture production. There can be little doubt that the closer settlement policies were successful in achieving both these objectives, but we now know that they also sowed the

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seeds of many of the farm sector problems we have today. One very telling example of this is the observation by senior officers of the Rural Assistance Board in N.S.W. that the fundamental cause of poor viability amongst Rural Adjustment Scheme applicants is small farm size. The small farm problem is a direct legacy of the "wisdom" of an earlier generation of politicians and bureaucrats that may not be fully corrected for at least another generation.

With the benefit of hindsight, we can now see that the policies of earlier generations were wrong because they encouraged land settlement patterns which were totally inconsistent with the emerging trend in market forces. What is at issue is whether we should now be repeating these same mistakes.

We had the example earlier this year of the Regional Environmental Plan drawn up by DEP for the Kosciusko Region (Department of Environment and Planning 1985). Most of the proposals relating to agricultural land use in this document involved the quarantining of farm land from legitimate market forces. According to DEP, the justification for these proposals was that it is desirable to plan to protect traditional commercial agriculture in the rural areas while at the same time enabling alternative uses related to growth in tourism to the region.

This hardly constitutes justification for the excessive controls that the Kosciusko Plan embodied and rather than feeling "protected", the practitioners of commercial agriculture in the region rightly saw the Plan as an explicit threat. The (then) Premier Mr Wran wisely rejected the Kosciusko Plan as an "appalling" document. (N. K. Wran 1985, pers. comm.).

We need to bear in mind the findings of previous investigations into land use policy principles as outlined in Balderstone *et al.* (1982) Report on Rural Policy and the Rural Green Paper (Harris *et al.* 1974) which established that:

- there is no reason in principle to treat land differently from other inputs in agricultural production: in general its use should be determined by the best prospective return, both now and in the future;
- technological improvement has meant,

and continues to mean, that land is a decreasing restraint on the capacity of agriculture to produce;

- the diversion of a minute proportion of Australia's farming land to "hobby" purposes is not a threat to Australia's agricultural potential; and
- market forces should generally determine land use patterns, with the proviso that hobby farmers should pay the full costs of services provided for their benefit.

The people who worked on these Task Forces were no fools, and it would seem that for any Minister or bureaucrat to want to impose their will on the market process they would need to have some good justification. To date, nothing has been forthcoming.

In the jargon of economists, much of the philosophy behind NSW planning proposals has been predicated upon (i) the presumption of market failure, and (ii) the hierarchical question of public versus private interest in land use determination. What we have seen so far is basically a policy of "bureaucracy knows best".

Section 5 of the Environmental Planning and Assessment Act sets out the following *objectives* which a particular Environmental Planning Instrument is designed to achieve. These are:

- (a) to encourage –
 - (i) the proper management, development and conservation of natural and man-made resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment;
 - (ii) the promotion and co-ordination of the orderly and economic use and development of land;
 - (iii) the protection, provision and co-ordination of community service and facilities; and
 - (iv) the protection of the environment;
- (b) to promote the sharing of the responsibility for environmental planning between the different levels of government in the State; and
- (c) to provide increased opportunity for public involvement and participation

in environmental planning and assessment.

As they stand, these objectives are certainly worthy of consideration, not just for the social and economic outcomes that are sought, but also because of the use of terms such as "encourage", "promote", and "provide increased opportunity".

The real problems emerge when well-intentioned bureaucrats attempt to turn these guiding principles into practice. Taking again the case of the Kosciusko Draft REP, the entire planning instrument rested on the *presumption* that the aggregate social and economic outcome would be substantially worse in the absence of a detailed REP than in its presence. This presumption must in all cases be properly investigated and as a minimum requirement, all impacts should be fully costed. As it turned out, the Kosciusko Draft REP was not neutral with respect to the distribution of likely gains and losses and it was the failure of the DEP to consider these distributional impacts that led to such strong opposition.

If planners are to remain consistent with Section 5 of the EPA Act of 1979, then I would suggest they spend a bit more time examining the words "for the purpose of promoting the social and economic welfare of the community . . ." in S.5(a)(i). In order for this Section to be satisfied, it is incumbent upon the planner to demonstrate that social and economic welfare *will* be promoted as a consequence of a particular planning instrument.

For this to happen, the planners must be able to state clearly two scenarios: one which will apply in the absence of the planning instrument and one which will apply in its presence. On the basis of these two scenarios, our elected representatives and indeed, the community, would then be able to judge fairly whether the provisions of the proposed planning instrument were justified. They would be able to tell for instance, whether in aggregate the gainers were able to compensate the losers and they would know what mechanisms are in place to ensure that adequate and full compensation was enacted.

With the planning instruments put forward so far, not one of these essential requirements has been forthcoming. It is

not surprising therefore that rural landholders have maintained strong opposition to the views of the Department of Environment and Planning.

In a very real sense, the failure of the Department to fully assess the cost and compensation implications of its proposals may be regarded as a denial of natural justice for the many individuals whose livelihoods have become less certain under the Department's planning processes. If the Department were to fully discharge its responsibilities under S.5(a)(i) of the EPA Act (as outlined above) we could have more confidence that it was reacting to real problems rather than to its perceptions of what problems may be.

Take for example the draft Local Environmental Plan put forward by DEP earlier this year to guide the activities of Local Government bodies. The workings of the draft LEP contain a number of *prohibited* activities on certain areas of land which do not appear to have resulted from any rational consideration of the objectives listed above. For instance, under the heading of Zone No. 1(a) (which covers Small Rural Holdings) we find that the list of prohibited activities includes boarding houses, commercial premises, motor showrooms, residential flat buildings, shops and tourist facilities. How on earth this list was drawn up is beyond me, but it would be interesting to see how the planners would go about justifying these prohibitions in the light of S.5(a)(i).

The theme of presumption is also clearly evident in comments made by the Minister for Agriculture, Fisheries and Lands, Mr J. R. Hallam, at a Land Use Seminar at Inverell in March of this year. According to the Minister, planning policies must ensure that our limited prime cropping and pastoral lands are kept available for long term agricultural use. He went on to say, however, that because of difficulties in the amalgamation of small agricultural holdings into larger, more efficient blocks (the "small farm" problem), prime agricultural land has been lost to the industry.

There is simply no evidence for this statement. What has been lost because of the small farm problem are the size economies that are embodied in traditional broadacre agriculture. This does not mean

that the production capacity of the land resource itself has in any way been diminished.

Indeed, it is important to recognise that in NSW agriculture there are two fundamentally opposing trends at work that are determining land use patterns. One is the process of *extensification* which does involve property amalgamation and which has been most evident in the broadacre sectors of the rural economy. This process is largely technology-driven and has been characterised by increases in the area operated per individual landholder. The other process is towards *intensification*, and it has also involved increased application of technology but with less dependence on land area as a critical determinant of profitability. Whether or not a parcel of land should be directed towards either of these processes is something that we believe should be left to the market to decide.

In view of these divergent trends, it is therefore worrying to see Mr Hallam claiming that farm amalgamation is the most effective form of rural adjustment in the longer term. The Minister cannot be unaware that the dynamics of farm adjustment are much more complex than the simple process of lumping two adjoining properties together, and it is inappropriate that he should endorse the philosophy of land use planning on this oversimplified view.

So where does this leave us with the land use planning process? It needs to be recognised that we are not starting with a clean slate and that the mess of previous planning instruments needs to be cleaned up. For this reason it is sensible that Local Governments move towards the adoption of some type of Local Environmental Plan (LEP) if only to clean up the restrictions and inconsistencies inherent in the old Interim Development Orders and the like.

But what also needs to be recognised is that if planners are to remain consistent with the EPA Act in the sense outlined above, then this is more likely to occur with planning instruments developed at the local level than at the regional or State levels. Past experience indicates that the diversity and complexity of both land capabilities and development pressures

effectively preclude a proper evaluation of options at any level above that of local government. And as indicated above, if planners are not capable of properly evaluating planning instruments in an explicit cost-benefit framework, they have no justification for proceeding with that planning instrument.

But in moving towards a more rational basis for land use planning at the local level, and in view of the comments made above, it is essential that the mistakes of the past not be repeated. The following LEP guidelines are therefore proposed:

1. Rural LEPs should contain no reference to minimum subdivision areas. None of us can honestly pretend to know enough about these complex market forces to be able to impose such restrictions from above.
2. There should be no attempt to limit to prescribed areas developments carrying a dwelling entitlement.
3. There should be no attempt to prescribe prohibited developments relative to individual zones.
4. In considering subdivision applications, Councils should have regard to the preservation of prime crop and pasture land, but this should not preclude other desirable development objectives.

The enveloping clause regarding preservation of prime crop and pasture land should be expanded upon by the local government authority (Council) in a Rural Development Control Plan. The important point here is that the Council may determine its own consultation processes with the Department of Agriculture on the basis of a set of workable guidelines. In the case of development applications for land which imply continued agricultural use, the consultative process with the Department of Agriculture should be that of "assumed concurrence".

Where the development application involves a unit dwelling entitlement, the consultative process between council and the Department of Agriculture should be that of a "delegation" role. This is, the Council *may* refer development applications to the Department of Agriculture for advice only, with 21 days maximum for response. Where the development applica-

tion involves multiple subdivisions with attaching dwelling entitlements on land of Classes 1, 2 and 3, the consultative process between the Council and the Department of Agriculture should be a "consultation" role. That is, the Council should be *required* to refer such development applications to the Department of Agriculture without being bound by any recommendation from the Department, and with 21 days maximum for response.

Finally, the responsibility remains with the Council to fully evaluate all development applications under the "with-without" scenarios developed above. Section 5 of the EPA Act exists for a good reason and the sooner that it is applied by planners in a rigorous manner the better.

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Should Agricultural Land be Protected from Sub-Division? – Economic Considerations

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Zoning is a coercive act on the part of the State whereby landholders lose certain exclusive, or private, property rights. At the same time, new property rights are created which are held in common. These newly issued rights enable the conversion of an open, or uncontrolled access resource – such as the amenity value of a neighbourhood – to property held in common. The property rights taken usually include the right to sell land for any end-use. It may include restraint on subdivision. The newly created right held in common is typically also enjoyed by the very land owners who have been deprived of exclusive rights. Thus, while such land owners may lose by the taking, they stand to gain by the granting of the new rights. Whether they are net beneficiaries as the result of the exchange is, of course, an empirical question. Further, the losers of the private exclusive rights may not be the sole owners of the new collective right. In such a situation they could be net losers even if the value of the collective rights exceeds that of the lost private rights.

We are all familiar with examples of zoning, particularly in the urban context where industrial development may be constrained to certain areas, perhaps to prevent "undesirable" externalities from interfering with the amenity value of residential areas. For similar reasons, subdivision is constrained, or certain types of dwelling (*e.g.* high rise apartments) are not permitted, in some residential areas. Undesirable externalities are uncompensated ill-effects imposed by one party on another. In the present context they could be the erosion of the value of the amenity of a neighbourhood by crowding, the creation of noise, smell or other pollution.

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