



Submission to the
Productivity Commission
~ Business Regulation Benchmarking-
Role of Local Government ~

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NSW Farmers' Association Background

The NSW Farmers' Association (the Association) is Australia's largest State farmer organisation representing the interests of its farmer members – ranging from broad acre, Livestock, wool and grain producers, to more specialised producers in the horticulture, dairy, egg, poultry, pork, oyster and goat industries.

Introduction

NSW Farmers welcomes the opportunity to respond to the Business Regulation Benchmarking: Role of Local Government inquiry. There are many areas encompassed within this investigation that are of significance to farmers across the State. Although the most common interaction between farmers and Local Government hinges on rates, the relationship between this unique small business and local council is diverse in terms of regulatory requirements. In this submission a number of issues that impact on farming and are pertinent to local government regulation are raised, including road infrastructure, planning and On-Site Sewer Management Systems.

In NSW, a conundrum exists given the local government's role in the enforcement of state and federal legislation, and their limited ability to influence or set legislation. However, NSW Farmers supports the following arguments against providing local governments with a regulation making power:

- a. The cost implication upon local government should it have regulation making power.
- b. It can have adverse implications for farm productivity and efficiency, due to duplication of regulation.
- c. The likely increased antagonistic tension between local government and rate payers caused by local regulation.
- d. A commensurate reduction in the concentration of local government upon core responsibilities of efficiently providing services the local rate paying community.

Given these comments however, for local governments to undertake the policing and implementation functions they also need to be provided with commensurate funding sources for without the resources of government departments and other agencies, the regulation by local government is severely hampered and limited to the resources of the Council of the time. Furthermore without defined long term funding commitments the implementation of legislation or other activities will be hampered by short term planning and uncertainty.

Local Government Rates

Although it should be noted that within NSW the ability for a Local Government to implement their own regulation is limited, there still remains inefficient business cost structures across the State. Most notably is the regulation surrounding rate-pegging. Although the overall revenue collected by Councils is set by the Minister for Local Government, the proportion of where the revenue is sourced from is not defined. This leads to varying levels of farmland rates across the State. The ability for Councils to alter the percentage of their revenue garnered from residential, farmland, business and mining rates distorts incentives to operate businesses across different regions.

Focusing on agriculture, varying farmland rates are a fixed cost that cannot be passed onto consumers due to the price-taking nature of the sector. The current taxation method is inefficient and generally inequitable across council jurisdictions. Further streamlining of regulations surrounding farmland rates will benefit the entire agricultural sector.

Road Infrastructure

Another regulation that inhibits business operations, especially in agriculture, is the inability for individuals to perform minor road works on rural, unsealed roads which affect the ability of a producer to be able to transport produce. Many Local Governments possess significant backlogs of infrastructure and road work projects. This backlog has affected the quality of roads in rural areas, particularly unsealed major access ways to rural properties. This

backlog affects productivity by restricting the freight capabilities of an entire area, resulting in significant logistical inefficiencies. Many producers possess the appropriate equipment to rectify this issue, by performing simple road works, including grading, to make to road more passable to larger carriers. A regulatory alteration that allowed these works would ease the burden on Local Councils whilst increasing productivity in the agricultural sector.

Planning

Local environmental plans ('LEPs') are prepared by local councils to guide planning decisions for the Local Government area. Through zoning and development controls, LEPs enable Councils to regulate land use to achieve Government policy outcomes regarding new development and biodiversity and heritage conservation policy.

All Local Governments in NSW are in the process of developing their LEPs. Through this process there is the potential for environmental zonings created under the new LEPs to restrict current and future landuse. The new LEPs may also affect controls on subdivision.

NSW Farmers believes that the model LEP used as a template for Local Government to develop their LEPs has created numerous problems for Local Government and landholders. While some standardisation of language and formats is desirable, this must not be at the expense of imposing unsuitable policy on regions that are highly variable in their social, economic and environmental structure.

NSW Farmers is seeking withdrawal of the model LEP and the restoration of flexibility to Local Government regarding environmental planning. We may support reintroduction of a standardisation policy for local plan making the context of the broader planning reforms. At a minimum, Regulatory Impact Assessments should be required, underpinned by rigorous socio-economic analysis as an essential building-block in the LEP process.

A key requirement for reduction in red tape and better government process is the simplification and standardisation of biodiversity policy across all zonings and industries and the removal of jurisdictional overlap (eg currently Local Government can override permissions under the *Native Vegetation Act 2003*). The costs associated with administering the plethora of biodiversity assessment systems currently in operation (PVP Developer; Biobanking; Biodiversity Certification; local government DAs) are significant. Related to this is the cost and ineffectiveness of compliance across this muddled regulatory territory which covers both local government and Catchment Management Authorities.

There needs to be recognition that statutory planning in regional NSW involves a different approach than does statutory planning in urban areas. Planning for rural zonings requires integration with natural resource management, with due consideration of biophysical factors and a commitment to maximising the opportunities of sustainable agricultural production. Compounding this are the Federal programs for carbon farming, environmental stewardship, biodiversity connectivity and land degradation which will require a robust and cost-efficient administrative framework.

Local governments have a role in managing weed problems on their own land, and support weed management through activities such as the development of local weed strategies and community weed management programs. In some states, local governments are responsible for planning, coordinating and monitoring noxious weed control.

On-Site Sewer Management System Benchmarking

Diffuse source water pollution is a key contributor to water contamination in coastal areas. On-site Sewer Management Systems maintained by local councils have proven to be poorly maintained. The management of this risk is the responsibility of the relevant local council, which has an increased scope when an effect is upon estuarine environments, particularly when this supports aquaculture enterprises.

There are some local councils which have demonstrated that effective OSMS, which manage these risks, are attainable. However, a number of these coastal councils have demonstrated their inability to effectively manage these OSMS, inhibiting small businesses and adding significant productivity losses which pose a threat to not only the aquatic health, but also human health and the viability of tourism and recreational users of the waterways.

Councils are required to manage the cumulative impact of sewage pollution for all OSMS in their local government area. This process includes the approval of the installation and operation of the OSMS.

*“The on-site sewage management regulations are **flexible** so that councils may determine the most appropriate sewage management strategy for local circumstances. Councils have wide discretion to determine the level of supervision of on-site systems to accommodate variation between high, medium and low risk areas, to minimise costs and to maximise community benefits. Councils have been encouraged to develop on-site sewage management strategies.”* NSW Department of Local Government, On Site Sewer Management.

The above section, taken from Department of Local Government website, highlights that it is at the Council's discretion to implement and supervise OSMS in their local government area. There is no legislative definition to ensure local councils are held accountable for their OSMS. Benchmarking is needed to ensure homogenous, enforced regulations that prohibit effluent pollution in waterways.

The three councils with successful systems in place (Hornsby, Port Stephens, Great lakes) have demonstrated the possible benefits of such regulation. However, the current flexible nature of the regulations has led to a system of inequitably distributed gains, over which the producers have little control. The uneven distribution of regulatory enforcement has led to a significant drop in productivity in the industry, as a direct result of negative externalities. The inability to adequately manage these externalities through a market based mechanism, combined with the current regulation, strongly suggests that a stricter, homogenous regulatory approach is needed. This is set to benefit the oyster industry up to \$900,000 per annum¹, as well as accruing benefits to the tourism and recreational sectors.

¹ NSW DPI Value of Production 2009/10